

IPR issues in India: Concept, Structure and Implementation

Abstract

This study is purposed to give an overview of different IP rights in the context of structure and implementation. In the electronic environment, IP rights infringement is become hard to protect. Lots of rights have been covered under Intellectual Property Rights, for example, Copyright, Trademarks, Patents, Geographical Indications, IC and Layout Design, etc. WIPO TRIPS etc organisation monitoring the IP right at world level and every nation has their own IP rules.

Keywords: IPR, WIPO, Copyright, Trademark, Patents, IC and Layout Design, Geographical Indications.

Introduction

Human is the only creation of god which have the capability of thinking, learning, evaluating of different things for the betterment of society which helps the human to create new things and develops new theories. Two kinds of property we have seen in our life first one is tangible and the second one is intangible property. Tangible property means which is touchable and having an entity in physical structure, in another hand the intangible property means which is untouchable or not existing in physical form. Intellectual Property is related to human mind creations or we can says that IP is emanate through human intellect, which is different in nature it can be different types of literary work & artistic work and industrial properties, literary work comprise copyright and patent, designs covers under industrial design. Intellectual property rights are those rights which are given to a person over the creations of their minds and provide some special rights to the creator over the utilization of his/her creation for a limited time period. During this period no one can misuse the invention or creation without the creator's permission if anybody misuses the creation without taking permission from the creator than the creator has right to file a case against that person in our judiciary. "In order to be eligible for copyright protection the work in question must be an "original fom or expression", that is, it must be independently created by its author. Originality requires only a minimal degree of creativity, and it does not require novelty or even aesthetic merit. The work must also be fixed in some tangible medium of expression. Thus, a dance such as the tango cannot be copyrighted but a visual recording of that dance would be eligible for copyright protection" (Spinello, 2007, p. 14). Intellectual property rights have played an important role in the development of a nation's economy as well as creators. "A second rationale for intellectual property rights is based on the philosophy of utilitarianism. It stipulates that intellectual property rights are necessary to maximize social utility by providing authors, inventors, and other creators with durable and tangible return on their investment of time, labour, and other resources used in the creative process. The presumption is that exclusive rights in inventions and literary creations are necessary to promote the public welfare" (Spinello, 2007, p.13). Due to the electronic media devices interference, IPR infringement is increasing day by day and it's very hard to protect IP rights in electronic environment as compare to traditional way. Sometimes due to the lack of evidence for accomplishing the claim on the creation of a few types of intellectual thing basically retain upon a copyright or a patent right. There is a massive domain of intellectual property. After 90s lots of changes have been done in Designs, Copyrights, and Patents acts after various reforms these laws have been working strongly on the creator's perspective. Now the newer sorts of the protection have been developed which is notably inspired by the emergence of technological and scientific activities. In this study, the author has highlighted the different issues of intellectual property and to find the different aspects related to IPR and to find out, which kind of rights given to the creators for his/her creation.

**Hitesh Yadav**

Research Scholar,
Dept. of Lib & Inf Science,
Vivekananda Library Building,
Maharshi Dayanand University,
Rohtak, Haryana, India

Aim of The Study

The objective of the study is to know about the historical developments of IPRs and what is the basic concept of copyright, patent, trademark, designs, etc. The study gives an overview in the perspective of IPR issues and it is beneficial for students who want to understand the IPR concept and its implementation in the Indian scenario.

Concept

In the socio, economic, technological and political perspective the Intellectual Property Rights (IPR) effects human creation in the terms of exclusive rights over the creation of creator. Different countries prepared their rules and guidelines regarding infringement of IPR using the tools of IPR such as copyright registration, patent registration, trademark registration, service mark registration, industrial design registration, and trade secrets act. WIPO (1967) is the organization of United Nations at world level which controls IP right at world level and headquarter of WIPO situated in Geneva, Switzerland. Human being always desire that it has right on his belongings and his creations so IPR plays an important role to fulfill human desires and creator gets some exclusive rights on his creation. "The history of copyright can be traced back to 1662, when the concept was developed to protect publishers against piracy following the technological advances of the day, which enabled cheap and easy printing of books. The world's first copyright legislation was the UK Copyright Act of 1709, sometimes referred to as the Statute of Queen Anne, which passed into law in 1710 and introduced the concepts of the author being the owner of the copyright of the created work and there being a fixed term of protection for published works" (Shalini R. Urs, 2004, p. 202).

IPs may be a bundle of the many intangible assets similar to patents, copyrights, geographical indications and industrial styles. The WIPO Convention establishing the world intellectual Organization in 1967 which offers the subsequent list of the topic matter protected under IP rights which comprise trademarks, service marks, and industrial names etc. inventions industrial designs; protection against unfair competition and whole alternative rights consequently from the intellectual activity within different fields the industrial, scientific, literary or creative fields. Intellectual protection role and significance are listed within the Trade-Related intellectual property Systems (TRIPS) Agreement, with the institution of the World Trade Organization (WTO).

Implementation in India and IPR protection

IPR related different treaties signed by different countries at world level and many conventions have been organized from time to time to protect intellectual property. "Nowadays, most countries have passed bills that protect intellectual property. It is quite another matter, however, whether the legislation is enforced, i.e. whether legal action is taken when somebody's copyright has been violated" (Clausen, 2004, p. 418). For instance, the Paris convention which was organized in 1883 basically based on industrial property and comprises the

protection of patent and trademarks, Madrid agreement (1881) is known for trademarks recognition at the world level, and the famous Bern convention (1886) is known for the protection of Literary & artistic work to protect copyright. Moreover Trade Related Intellectual Property Right (TRIPS) is protecting with eight types of IP Rights Copyright, Patent, Trademark, Plant Varieties, Geographical Indication, Industrial Design, IC layouts, trade dress of products. Almost first Indian IPR Law is Trade and Merchandise Marks Act-1884. A series of act passes in Indian legal philosophy perspective and enacted in 1856. In India Patent and design act implemented in 1911 and in 1914 the Indian Copyright Act came in to force. The Indian 'Trade and Merchandise Marks Act' and Indian 'Copyright Act' are replaced severally with the 'Trade and Merchandise Marks Act, 1958' and the 'Copyright Act, 1957'. "India is a member of both UCC and the Berne Conventions. The GATT negotiations led to agreement on Trade-Related Intellectual Property Rights (TRIPS) that included provisions relating to protection of computer software and databases under copyright law. The Indian IPR for computer software are covered under the provisions of the Indian Copyright Act 1957. Several amendments to Indian copyright law were introduced in 1994, which came into effect on 10 May 1995 as one of the toughest in the world" (Subba Rao, 2001, p. 182).

Structure of IPR**Copyright**

"The first Indian Copyright Act was passed in 1911 by the British and India signed the Berne Convention in 1927. The Indian Copyright Act of 1957 has undergone numerous amendments, the latest being in 1999" (Mahesh & Mittal, 2009, p. 681). In India 'Copyright rights' comes under the IPR Copyright Act 1957 and it plays a vital role to protect of infringement of the creative work by other peoples in the areas of an inventive literature work like books, musical, sound recording, recreation, dramatic work, cinematographic work etc. The copyright is given to its creator for his original work for a specific time period and during that period the inventor has all kinds of IPR for his creation. In the original work of literature, theatrical and musical, and other creative works are granted for the time period of the creator's whole life plus sixty years counted from the death of that person. In the different cases similar to sound & cinema related works, works of presidency international organizations, these are valid for sixty years and it differs from country to country. This suggests that you simply will claim a copyright on the collection of your original works this could be exemplified any kind of music and films, books, drawings, monument, even technical drawings and technological programs, TV & Newspaper advertisements. One important thing is that you have to need to know about copyright is that it can solely safeguard your expression of the concept, not the thoughts or concept itself.

Patent

In Indian perspective patents are covered under Indian Patent Act 1970. Patents category measures the rights of an invention of an inventor and

the invention could be a product or moreover a method of creative work. Only a patent owner having exclusive rights to his invention the other people don't have rights to use the invention without the creator's permission for commercial purpose, distribution purpose, or sold it. when the patent owner does not give permission for use of his creation for commercial or distribution purpose and a person used it without permission the creator has right to file a case against him in the judiciary and file the economic claim. A patent has valid till for the twenty years after the filing of the application and after completion of the given amount of time, the validity of invention expires. After that period the information is available to the public domain, and people can use it without the permission of the creator. There is a further demand for quality that an Invention should fulfill the norms of newness with it relevant for society. Patents category mostly measure the vital scientific discipline in the areas of physics, pharmaceutical sciences, biotechnology, chemistry etc. If we talk about the Indian pharmaceutical industry it is standing as a leader in world level in Generic drugs because mostly Indian pharmaceutical companies use drug formulas after patent expiration. Before you begin employing a technology and invention, you ought to check that it doesn't violate any legal rights of other creators if it does so firstly you ought to get a license from the legal rights holder.

Industrial Design

According to design Act 2000, an industrial design protects creator rights for maximum fifteen years. Industrial design is a process of designing a product with mass production through a technical method and it is prepared via following a standard. An ideal industrial design is designed to fulfilling the norms of market needs and which is technically strong at the user's perspectives options of pattern, form and configuration, enhancement or composition of lines or colors applied.

Geographical Indications

A well defined Geographical Indication should determine a product as originating in an enormously given place. It's solely granted if the standard or name of the merchandise is because of the place of the particular origin. A geographical indication denotes a sign, symbol or name which is used on a product to describe the significance of a selected geographical area or location individuality. For example, Banarasi Saree, Kancheepuram silk, Kashmir Pashmina, Darjeeling tea etc. all denotes a particular origin.

Trademark

In India, the 'logos Act' 1970, regulates the protection of logos of different enterprises. In the Simple words, logos is the area of the unit of those signs and symbols who differ from one company to another and give different fame and name. For instance, your company's mark or symbol distinguished from the companies who are involved in the same business. Maruti Suzuki has a different trademark as compare to his competitor other companies like Hyundai, Renault, Tata, Ford etc. every company have their own trademark to denote

his product in the market, which is also a status symbol for those companies and its customers. When the business grows, you further more may be got to keep an eye fixed out for any possible infringements to avoid any confusion between your shoppers and other peoples.

Fair Uses & Infringement

In simple words, 'infringement of copyright' means that remake and using any protected creativity or assets of human intellect without owner permission. Using the protected product or thing while not permitting by copyright owner which is protected under copyright, patent, design or any other law who covers under IPR, called it 'Copyright Infringement'. "Copyright piracy is thus like any other theft which leads to loss to the owners of the property. Besides economic loss, piracy also adversely affects the creative potential of a society as it denies creative people such as authors and artists their legitimate dues" (Jadhav, 2014, p. 1131). Moreover, through the people using the word 'Copyright Infringement', 'fair use' word is also used and in which used leading mentioned defense to infringement of copyright. Fair use is related to the use of an intellectual asset of the human with the permission and gives the credit to its original creator and help to avoid copyright infringement. 'Fair use' term comes up daily in our routine work and this term oftentimes used by us and we describe it appropriately and inappropriately.

Conclusion

This study has discussed the intellectual property rights given to the creator. Prominently we found that the intellectual property is different in nature and protected by IP rights which is given to the creators at the national level and also at world level. Many treaties have been signed by different countries to protect the inventor's inventions, and many conventions organize at the world level to protect it. In this study, the author has highlighted the structure of the IP rights who used in the form of Copyright, Trademark, Patents, Designs etc. the author also talks what are the norms to fair use and how to away from the issues of IPR infringement.

References

- Clausen, Helge (2004). *Intellectual property, the internet and the libraries*. *New Library World*, 105(11/12), 417-422. <https://doi.org/10.1108/03074800410568752>
- Jadhav, Vilas G. (2014). *Intellectual Property Rights with special reference to Copyright Laws in India*. *International Journal of Science and Research*, 3(7), 1130-1133.
- Mahesh, G. & Mittal, Rekha (2009). *Digital content creation and copyright issues*. *The Electronic Library*, 27(4), 676-683. <https://doi.org/10.1108/02640470910979615>
- Shalini R. Urs, (2004). *Copyright, academic research and libraries: balancing the rights of stakeholders in the digital age*. *Program*, 38(3), 201-207. <https://doi.org/10.1108/00330330410547250>
- Spinello, Richard A. (2007). *Intellectual property rights*. *Library Hi Tech*, 25(1), 12-22. <https://doi.org/10.1108/07378830710735821>
- Subba Rao, Siriginidi (2001). *IPR in the ensuing global digital economy*. *Library Hi Tech*, 19(2), 179-185. <https://doi.org/10.1108/07378830110394321>