

Intellectual Property

Intellectual Property can be defined as inventions of the mind, innovations, literary and artistic work, symbols, names and images used in commerce. The objective of intellectual property protection is to encourage the creativity of the human mind for the benefit of all and to ensure that the benefits arising from exploiting a creation benefit the creator. This will encourage creative activity and give investors a reasonable return on their investment in research and development.

IP empowers individuals, enterprises, or other entities to exclude others from the use of their creations. Intellectual Property empowers individuals, enterprises, or other entities to exclude others from the use of their creations without their consent.

The intellectual property right is a kind of legal right that protects a person's artistic works, literary works, inventions or discoveries or a symbol or design for a specific period of time. Intellectual property owners are given certain rights by which they can enjoy their Property without any disturbances and prevent others from using them, although these rights are also called monopoly rights of exploitation, they are limited in geographical range, time and scope.

Intellectual property rights

- Intellectual property rights (IPR) are the rights given to persons over the creations of their minds: inventions, literary and artistic works, and symbols, names and images used in commerce. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.
- These rights are outlined in **Article 27 of the Universal Declaration of Human Rights**, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.
- The importance of intellectual property was first recognized in the **Paris Convention for the Protection of Industrial Property (1883)** and the **Berne Convention for the Protection of Literary and Artistic Works (1886)**. Both treaties are administered by the **World Intellectual Property Organization (WIPO)**.

Kinds of intellectual Property

The subject of intellectual property is very broad. There are many different forms of rights that together make up intellectual property. IP can be basically divided into two categories, that is, industrial Property and intellectual property. Traditionally, many IPRs were collectively known as industrial assets.

It mainly consisted of patents, trademarks, and designs. Now, the protection of industrial property extends to utility models, service marks, trade names, passes, signs of source or origin, including geographical indications, and the suppression of unfair competition. It can be said that the term 'industrial property' is the predecessor of 'intellectual property'.

Copyright

Copyright law deals with the protection and exploitation of the expression of ideas in a tangible form. Copyright has evolved over many centuries with respect to changing ideas about creativity and new means of communication and media. In the modern world, the law of copyright provides not only a legal framework for the protection of the traditional beneficiaries of copyright, the individual writer, composer or artist, but also the publication required for the creation of work by major cultural industries, film; Broadcast and recording industry; And computer and software industries.

It resides in literary, dramatic, musical and artistic works in "original" cinematic films, and in sound recordings set in a concrete medium. To be protected as the copyright, the idea must be expressed in original form. Copyright acknowledges both the economic and moral rights of the owner. The right to copyright is, by the principle of fair use, a privilege for others, without the copyright owner's permission to use copyrighted material. By the application of the doctrine of fair use, the law of copyright balances private and public interests.

Patent

Patent law recognizes the exclusive right of a patent holder to derive commercial benefits from his invention. A patent is a special right granted to the owner of an invention to the manufacture, use, and market the invention, provided that the invention meets certain conditions laid down in law. Exclusive right means that no person can manufacture, use, or market an invention without the consent of the patent holder. This exclusive right to patent is for a limited time only.

To qualify for patent protection, an invention must fall within the scope of the patentable subject and satisfy the three statutory requirements of innovation, inventive step, and industrial application. As long as the patent applicant is the first to invent the claimed invention, the novelty and necessity are by and large satisfied. Novelty can be inferred by prior publication or prior use. Mere discovery 'can't be considered as an invention. Patents are not allowed for any idea or principle.

The purpose of patent law is to encourage scientific research, new technology, and industrial progress. The economic value of patent information is that it provides technical information to the industry that can be used for commercial purposes. If there is no protection, then there may be enough incentive to take a free ride at another person's investment. This ability of free-riding

reduces the incentive to invent something new because the inventor may not feel motivated to invent due to lack of incentives.

Trademark

A trademark is a badge of origin. It is a specific sign used to make the source of goods and services public in relation to goods and services and to distinguish goods and services from other entities. This establishes a link between the proprietor and the product. It portrays the nature and quality of a product. The essential function of a trademark is to indicate the origin of the goods to which it is attached or in relation to which it is used. It identifies the product, guarantees quality and helps advertise the product. The trademark is also the objective symbol of goodwill that a business has created.

Any sign or any combination thereof, capable of distinguishing the goods or services of another undertaking, is capable of creating a trademark. It can be a combination of a name, word, phrase, logo, symbol, design, image, shape, colour, personal name, letter, number, figurative element and colour, as well as any combination representing a graph. Trademark registration may be indefinitely renewable.

Geographical indication

It is a name or sign used on certain products which corresponds to a geographic location or origin of the product, the use of geographical location may act as a certification that the product possesses certain qualities as per the traditional method. Darjeeling tea and basmati rice are a common example of geographical indication. The relationship between objects and place becomes so well known that any reference to that place is reminiscent of goods originating there and vice versa.

It performs three functions. First, they identify the goods as origin of a particular region or that region or locality; Secondly, they suggest to consumers that goods come from a region where a given quality, reputation, or other characteristics of the goods are essentially attributed to their geographic origin, and third, they promote the goods of producers of a particular region. They suggest the consumer that the goods come from this area where a given quality, reputation or other characteristics of goods are essentially attributable to the geographic region.

It is necessary that the product obtains its qualities and reputation from that place. Since those properties depend on the geographic location of production, a specific link exists between the products and the place of origin. Geographical Indications are protected under the Geographical Indication of Goods (Registration and Protection) Act, 1999.

Industrial design

It is one of the forms of IPR that protects the visual design of the object which is not purely utilized. It consists of the creation of features of shape, configuration, pattern, ornamentation or composition of lines or colours applied to any article in two or three-dimensional form or combination of one or more features. Design protection deals with the outer appearance of an article, including decoration, lines, colours, shape, texture and materials. It may consist of three-dimensional features such as colours, shapes and shape of an article or two-dimensional features such as shapes or surface textures or other combinations.

Plant variety

A new variety of plant breeder is protected by the State. To be eligible for plant diversity protection, diversity must be novel, distinct and similar to existing varieties and its essential characteristics under the Plant Protection and Protection Act, 2001 should be uniform and stable. A plant breeder is given a license or special right to do the following in relation to different types of promotional material:

1. Produce and reproduce the material
2. Condition the material for the purpose of propagation
3. Offer material for sale
4. Sell the materials
5. Export the materials
6. Import the materials
7. The stock of goods for the above purposes

Typically, countries are protecting new plant varieties through the Sui Genis system. The general purpose of conservation is to encourage those who intend to manufacture, finance, or exploit such products to serve their purpose, particularly where they otherwise do not work at all.

The enactment of the Protection of Plant Varieties and 'Farmers' Rights Act 2001 is an outcome of the India's obligation which arose from article 27(3)(b) of the TRIPs Agreement of 2001 which obliges members to protect plant varieties either by patents or by effective sui generic system or by any combination thereof India declined to protect plant varieties by a sui generis law, i.e. the Plant Varieties Act.

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Intellectual property rights are customarily divided into two main areas:

(i) Copyright and rights related to copyright:

- The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, **for a minimum period of 50 years after the death of the author**.

(ii) Industrial property: Industrial property can be divided into two main areas:

- **Protection of distinctive signs**, in particular **trademarks and geographical indications**.
 - **Trademarks** distinguish the goods or services of one undertaking from those of other undertakings.
 - **Geographical Indications (GIs)** identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin.
 - The protection of such distinctive signs aims to **stimulate and ensure fair competition and to protect consumers**, by enabling them to make informed choices between various goods and services.
 - The protection **may last indefinitely**, provided the sign in question continues to be distinctive.
- **Industrial designs and trade secrets:** Other types of industrial property are protected primarily to **stimulate innovation, design and the creation of technology**. In this category fall inventions (protected by **patents**), **industrial designs** and **trade secrets**.

Need of IPR

The progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture.

- **Encourages innovation:** The legal protection of new creations encourages the commitment of additional resources for further innovation.
- **Economic growth:** The promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.

- **Safeguard the rights of creators:** IPR is required to safeguard creators and other producers of their intellectual commodity, goods and services by granting them certain time-limited rights to control the use made of the manufactured goods.
- It promotes innovation and creativity and **ensures ease of doing business**.
- It **facilitates the transfer of technology** in the form of foreign direct investment, joint ventures and licensing.

India and IPR

- India is a member of the World Trade Organisation and committed to the Agreement on **Trade Related Aspects of Intellectual Property (TRIPS Agreement)**.
- India is also a member of World Intellectual Property Organization, a body responsible for the promotion of the protection of intellectual property rights throughout the world.
- India is also a member of the following important **WIPO-administered International Treaties and Conventions relating to IPRs**.
 - Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
 - Paris Convention for the Protection of Industrial Property
 - Convention Establishing the World Intellectual Property Organization
 - Berne Convention for the Protection of Literary and Artistic Works
 - Patent Cooperation Treaty
 - Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks- Madrid Protocol
 - Washington Treaty on Intellectual Property in respect of Integrated Circuits
 - Nairobi Treaty on the Protection of the Olympic Symbol
 - Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms

Intellectual Property Rights (WTO)

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated during the 1986-94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time.

TRIPS Agreement

Trade Related Aspects of Intellectual Property Right (TRIPS) is an agreement on international IP rights.

- TRIPS came into force in 1995, as part of the agreement that established the World Trade Organisation (WTO).
- TRIPS establishes minimum standards for the availability, scope, and use of seven forms of intellectual property namely, trademarks, copyrights, geographical indications, patents, industrial designs, layout designs for integrated circuits, and undisclosed information or trade secrets.
- It applies basic international trade principles regarding intellectual property to member states.
- It is applicable to all WTO members.
- TRIPS Agreement lays down the permissible exceptions and limitations for balancing the interests of intellectual property with the interests of public health and economic development.
- TRIPS is the most comprehensive international agreement on IP and it has a major role in enabling trade in creativity and knowledge, in resolving trade disputes over intellectual property, and in assuring WTO members the latitude to achieve their domestic policy objectives.
- It frames the IP system in terms of innovation, technology transfer and public welfare.
- The TRIPS Council is responsible for administering and monitoring the operation of the TRIPS Agreement.
- TRIPS was negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1986–1994.
- The TRIPS Agreement is also described as a “Berne and Paris-plus” Agreement.

The WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated in the 1986-94 Uruguay Round, introduced intellectual property protection rules into the multilateral trading system for the first time. Before the WTO’s Uruguay Round, intellectual property laws were a matter for domestic policy. But the introduction of the TRIPS Agreement made it mandatory for all WTO members to provide for internationally acceptable and enforceable patent protection for new inventions in all areas of technology. In turn, this may bring fundamental changes in the way of traditional agricultural approach which is practiced in developing countries. IPR linked path way may facilitate the growth of agri-business and industries. The TRIPS agreement is the most comprehensive international agreement on intellectual property to date. In 2001, developing countries concerned that developed countries

were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the Doha Declaration: a WTO statement that clarifies the scope of TRIPS; stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to technology for all. The TRIPS Agreement is covered in an elaborate WTO document - comprising 73 articles in 7 parts, namely, (I) General provisions and basic principles, (II) Standards concerning availability, scope, and use of IPRS (III) Enforcement of IPR, (IV) Acquisition and maintenance of IPR and related interpartes procedures, (V) Dispute prevention and settlement, (VI) Transitional arrangements, and (VII) Institutional arrangements. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation. Specifically, TRIPS contains requirements that nations' laws must meet for: copyright rights, including the rights of performers, producers of sound recordings and broadcasting organizations; geographical indications, including appellations of origin; industrial designs; integrated circuit layout-designs; patents; monopolies for the developers of new plant varieties; trademarks; trade dress; and undisclosed or confidential information. Role of TRIPS Agreement: After the Uruguay round, the GATT became the basis for the establishment of the World Trade Organization. Because ratification of TRIPS is a compulsory requirement of World Trade Organization membership, any country seeking to obtain easy access to the numerous international markets opened by the World Trade Organization must enact the strict intellectual property laws mandated by TRIPS. For this reason, TRIPS is the most important multilateral instrument for the globalization of intellectual property laws.

Major Provisions of TRIPS

TRIPS Article 27.3(b) requires countries to grant patent protection to micro-organisms, non biological and microbiological processes. WTO members must also protect plant varieties either through patents or through an effective sui generis system or a combination of both. Most developing countries have opted for the sui generis protection of plant varieties taking into account their agricultural development and farming practices.

Copyright terms must extend to 50 years after the death of the author, although films and photographs are only required to have fixed 50 and 25 year terms, respectively.

Copyright must be granted automatically, and not based upon any "formality", such as registration or systems of renewal. Computer programs must be regarded as "literary works" under copyright law and receive the same terms of protection.

National exception to copy right (such as fair use in the United States) must be tightly constrained.

Different types of Intellectual rights

Patents: The Patents Act, 1970 and was amended in 1999 and 2002. The amended Act after the amendments made in 2002 came in to force on May 20, 2003.

Design: A new Design Act 2000 has been enacted superseding the earlier Designs Act 1911.

Trade Mark: A new Trademarks Act, 1999 has been enacted superseding the earlier Trade and—
Merchandise Marks Act, 1958. The Act came in force from September 15, 2003

Copyright: The Copyright Act, 1957 as amended in 1983, 1984 and 1992, 1994, 1999 and the—
Copyright Rules, 1958. Layout Design of Integrated Circuits: The Semiconductor Integrated
Circuit Layout Design— Act 2000. (Enforcement pending)

Protection of Undisclosed Information: No exclusive legislation exists but the matter would— be
generally covered under the Contract Act, 1872.

Development of Intellectual property rights in India:

India has been a World Trade Organization (WTO) member since 1995. WTO member nations must include some IP protection in their national laws. This means that if you are doing business with India, you will find some similarity between local IP law and enforcement procedures, and those enforce in the UK.

Chronological development of IPR in India:

1947: Patents & Designs Act, 1911

1995: India joins WTO

1998: India joins Paris Convention/PCT

1999: Patent amendment provided EMR retrospectively from 1/1/95

2003: 2nd amendment in Patents Act

Term of Patent – 20 years after 18 months publication

Patent Tribunal Set up at Chennai

2005: Patents (Amendment) Act 2005

1999 - 2005: Plant Varieties and Farmers' Rights Act & Biodiversity Act. Designs,

TM/Copyright Acts updated GI Registry set up at Chennai. IP Acts TRIPS Compliant

Intellectual property rights - systems in India:

India has been a member of the World Trade Organisation (WTO) since 1995. This requires member nations to establish intellectual property (IP) laws whose effect is in line with minimum standards. Consequently, there should be few major variances between India's laws and developed countries. Copyright India is a signatory to the Berne Convention on copyright. Though, it is good to register copyright of creative work as doing so may help to prove ownership if there are criminal proceedings against infringer. In most cases though, registration is not needed to maintain a copyright violation claim in India. Registration is made, in person or via a representative, with the Copyright Office. Internet piracy of films, music, books and software is an issue in India. Patents India's Patents Act of 1970 and 2003 Patent Rules set out the law concerning patents.

The regulatory authority for patents is the Patent Registrar within the department of the Controller General of Patents, Designs and Trade Marks, which is part of India's Ministry of Commerce and Industry. Patents are valid for 20 years from the date of filing an application, subject to an annual renewal fee. India's patent law operates under the 'first to file' principle - that is, if two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent. The laws governing designs are the Designs Act 2000 and

the Designs Rules 2001. Designs are lawful for a maximum of ten years, renewable for a further five years. Trademarks India's trade mark laws consist of the 1999 Trade Marks Act and the Trade Marks Rules of 2002, which became effective in 2003. The regulatory authority for patents is the Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion.

Major Issues

While the IPR system in India comprises of strong Intellectual Property laws but it has many loopholes as it lacks effective implementation, for which "least priority given to adjudication of IP matters" is often quoted as a reason. Major challenge is to inform the enforcement officials and the Judiciary to take up issues of Intellectual Property rights, at par with other economic offences, by bringing them under their policy locator. There are also many issues in having an Intellectual Property fund, which can be utilized for further developing the IP culture in the country. It is necessary to devise a National IP Policy for India, which will help in working towards realizing the vision of India in the area of Intellectual Property rights. This will enable the establishment of a strong socio-economic foundation and deep international trust.

In recent years, the issue of intellectual property rights protections is debatable among public policy approaches to issues in developing countries. The TRIPs agreement, implemented in 1993 among World Trade Organization member nations, sets minimum standards of intellectual property rights protections and enforcement in many developing countries, with the threat of negative repercussions if these guidelines are not followed.

Since many decades, intellectual property law has developed legal rules that cautiously balance the above competing interests. The objective is to provide enough legal protection to maximize

incentives to engage in creative and innovative activities while also providing rules and policies that minimize the effect on the commercial marketplace and minimize interference with the free flow of ideas generally. In short, the law has developed a careful balance between competing interests. It is observed that legislative enactments and judicial decisions have adopted an extensive view of intellectual property. The subject matter eligible for protection has continued to expand significantly in recent years. This expansion has removed the clear description between patent, copyright, and trademark law. It has also led to overprotection of intellectual property in the form of overlaps that allow multiple bodies of intellectual property law to concurrently protect the same subject matter. Such overlapping protection is difficult because it interferes with the carefully developed principles that have evolved over time to balance the private property rights in intellectual creations against public access to such creations.

Plagiarism is a major issue. It is the act of theft of another person's intellectual property which comprises of ideas, inventions, and original works of authorship, words, slogans, designs, proprietary information, and using them as own without giving credit to main author or inventor.

Today, digital technologies are major tools for creating and storing information for its speed and easy access. Intellectual property rights apply on the Internet but the main issue is to make them enforceable. The ease of reproducing works if they are in digital format is low-cost and there is a near-perfect quality of copies. Publishers argue that the Internet harms their intellectual property interests by fundamentally transforming the nature and means of publications and thus making their works extremely vulnerable to Internet piracy. The distributed nature of Internet's management makes it possible for any user to widely circulate a work on the electronic network termed as Cyberspace through any number of channels. A user can easily distribute a work to

news groups through e-mail or on personal website. Intellectual Property Rights Law has presented problems for advanced technologies such as computer programmers. The law adopts that something is either in writing protectable through copyright or a machine protectable by a patent but not by both concurrently.

In Indian situation, Indian Copyright Act kept track of international conventions, the current copyright law has many deficits as compared to the west. As India did not sign the "WIPO Internet Treaties" there is no corresponding legislation in India to the US DMCA. The present Copyright Act of India does not have requirements regarding the 'technological protection measures' nor the protection of electronic rights management information. Some provisions of the Indian Penal Code, 1860 (IPC) may serve to provide for legal protection for technological measures. Section 23 of the IPC speaks of 'wrongful gain or wrongful loss'.