

INTANGIBLE PROPERTY - INTELLECTUAL PROPERTY*By*

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The world today is altogether revolving around the computers, their uses and problems. The computers are playing a major role in development. The development is not only making a good impact on the society but also a bad impact. This impact has given the world of Law a new subject “INTELLECTUAL PROPERTY LAW” that is vastly absorbing the *Intangible Intellectual Property* interests of individuals. This era of computing has taken an edge over the day-to-day life, making positive as well as negative impact in the society.

‘Property’ is the asset or belongings that is owned by an individual.

Intangible?

Intangible is that which is immaterial or volatile or imperceptible that which is not felt or visualized.

Intangible Property?

A property that cannot be visualized or felt.

Intellectual Property?

The most noticeable feature of Intellectual Property is that it is *intangible* that is, it cannot be defined or identified by its own physical parameters. The intangible property such as the Patents, Trademarks, Copyrights, Trade Secrets, Industrial Designs and Geographical Indication that which depicts the unique inventional works of an intellectual is collectively termed as “*Intellectual Property*” of that particular intellectual.

Intellectual Property! The most important feature of this intangible property is that the proprietor or owner may use his property as he wishes and that nobody can lawfully use his property without his authorization *i.e.*, the Intellectual Property owner has the right to prevent the unauthorized use or sale of property.

Copyright :—

Copyright is the lawful right of a person to copy his works. It applies to all the original works. The word ‘work’, include literary, dramatic, musical and artistic works. The above mentioned works cover a wide range of creations with expression irrespective of the idea behind it. Copyright is legal term describing the rights given to creators or owners for their literary and artistic works.

Copyright, basically protects the works of a person regardless of the medium in which they exist and this includes the Internet. Copyright gives rights to the creator or owner of certain unique material to control the various ways and means, in which the unique material may be exploited like,

- a. Make copies of the copyrighted work
- b. Distribute copies of the work (including rental)
- c. Create derivative works of the copyrighted work
- d. Publicize the works

Anyone who does or authorizes to do any of the things mentioned above without the permission of the creator or owner may be called as infringer and his works are termed as infringement of the copyright. You should also note that copyright does not protect ideas. It protects the way the idea is expressed but not the idea itself.

Copyright is owned by the author of the work only, unless the 'work made for hire. [A work must either, be created by an employee working within the scope of employment or a written agreement signed by the human author and the hiring party, that the work will be deemed made for hire] *i.e.*, if a person has done or created a work or unique material as an employee under an employer where both the employee and the employer have equal rights on the work.

There is no Official Registration like thing for copyright. It is an unregistered right that comes into effect immediately as soon as something that is unique is created and published in the public domain. The Copyright broadly covers -

- (1) protection from copying original literary works
- (2) protection of original dramatic works
- (3) protection of musical and artistic works
- (4) protection of sound recordings and video recordings
- (5) protection of all the intangible works that are the unique expressions of an idea protected under the copyright laws.

For Example: Computer Programs is intangible property protected by the copyright laws on the basis of Artistic and Literary works. However the extent of protection is uncertain. Facts and Data are not

copyrightable but their selection or arrangement can create a copyrightable compilation. Text files, Graphics, Sound files, Video files, and Data *etc.* do come under the wide range of copyrightable works on the **World Wide Web**.

The purpose of the copyright is to protect and promote the interests of the creators or owners of material (artistic, literary, dramatic, music recordings, film recordings, broadcast *etc.*) from making copies, publicizing, broadcasting and use as he wants. Thus allowing the creator or owner to gain the rewards for all the effort and labour that he has put in creating or expressing his material, encouraging him and other for developing a better material in future for the benefits of the society. This does not restrict or prevent others from making a 'fair use' [The use of an intellectual property for a fair or legitimate purpose] of the works.

Patent :—

Patent is an exclusive right granted for an invention [An invention can be machine (instrument), a process, a composition of matter, an article of manufacture and the improvements of existing inventions] 'that involves a unique process or which is a product that provides new way of making something or doing something, or a unique solution to a problem. Patenting a product or a process or something unique that leads to an invention would provide protection for that particular invention to the owner.

Under Patent law, the inventor is given the exclusive right to prevent others from making, using and selling a patented product for a fixed period of time in return to the inventors disclosing the details of the invention to the public. The limited period of the patent gives a scope for faster and better commercialization of the patented product and the greater scope of making it

available to the public. The right of a patent does not by itself give the authority or right to the inventor or creator himself to give rights of his invention or make copies or use or sell the invention etc. A patented product also restricts and avoids the duplication of the product rewarding the inventors or creators investment of time, money and effort associated with research and labour.

Basically, there are three kinds of patents:

1. Utility Patents
2. Plant Patents
3. Design Patents

1. Utility Patents are awarded or granted to those creators or inventors or discoverers who has created or invented or discovered any new process, machine, article of manufacture, compositions of matter or any new useful improvement of a previous invention or discovery or creation. This patent protects the way a process or machine or article etc is used and the way it works. A utility patent needs to be described in written, regarding the format, style *etc.* Obtaining this patent is expensive than the design patents. Finally, an Utility Patent protects the functional aspects of the invention. It is always suggested that a design patent be taken before taking a utility patent.

2. Plant Patents are awarded or granted to those creators or inventors who by asexual reproduction created or invented or discovered a new variety of plants. This patent provides protection to the rights of an individual who is the first to invent or discover the distinctive qualities of a plant reproducing it asexually (reproducing by other means, without using seed).

3. Design Patents are awarded or granted to those creators or inventors who have created or invented a new, original,

ornamental design for an article of manufacture. This patent protects the decorative and ornamental aspects of the creation or invention of a creator or inventor. Design patents are awarded for a unique creation or invention that is having a unique look or appearance.

In all the cases the patent can be applied on the basis of the following:

1. The complexity of the technology
2. The extent to which the technical information is already published or otherwise well known and finally
3. Improvements to existing inventions or creations are also patented provided that they lead to unexpected results.

The safest course of protecting your invention or creation is to disclose the invention or creation, taking appropriate protection before any public disclosures are made. A patent gives inventor or creator the right to prevent others from making duplicates or copying or using the original works, protecting the innovation [Bring in new changes, ideas, *etc.*, make changes] of the inventor or creator from infringement.

The above subject matter is not protected under the patents:

- Abstract [of or existing in theory rather than practice, not concrete; not representational] ideas
- Natural phenomena or laws of nature

A creation or an invention or a discovery must be *novel* [The invention must be the first in the world *i.e.*, the invention should not have been conceived by anyone in the world prior to the one that is being patented], *useful* [The invention must be useful for the benefit of the society], and *non-obvious* [That which is unexpected; the results of the invention should be unexpected], and must

be in a tangible form rather than it being in the form of an idea. Failure to protect a creation or an invention from infringement before publication can make severe impact on the creator or inventor's works. Therefore the creator or inventor should take a good patent before disclosing it to the public thus preventing the infringement of the creation or invention.

Trademark: :—

Trademark is a unique or distinctive signs or words or logos, which identifies certain goods as those produced by a specific person or company or which distinguishes one's products from the others. A *service mark* is a symbol that is used in offering or selling services. The laws that are applicable to the *service marks* are same as Trademarks.

Therefore, **Trademark** can be defined as, a unique or distinctive sign or word or logo or service, which identifies certain goods or services as those produced by a specific person or company or enterprise or which distinguishes one's products or services from the others.

Trademark protects not just a sign or logo or word but it symbolizes the goods or services that are offered or produced by the Trademark owner as distinct from the goods or services produced or offered by others.

For Example: The trademark sign is distinctive to just one company. *Intel* Company is a trademark company with a good name and value in the public. Now if a person makes use of this trademark or tries to confuse the public with an identical trademark or deceptively similar to that of the original trademark *Intel* and is selling products, then he is liable for the infringement of the Trademark and is liable for infringement.

After choosing a **Trademark**, search for the availability of the trademark and then proceed with the Trademark right. This care is needed to be taken otherwise you will not know if any other **party** owns the same trademark or a much similar one with superior rights, might force you to stop using the mark or sign that you have chosen as a Trademark.

The Trademarks cannot be registered if:

- It consists of immoral or deceptive [Likely to mislead; deliberately intended to make someone believe something that is not true] or confusing;
- It resembles a mark registered or used by another in case of producing or providing goods or services of a registered trademark in order to deceive or confuse and making profits;
- It contains that which is already in use say a word, a musical note, a sign, *etc.*

The Trademark plays a vital role in the market giving enormous value to a company or an enterprise. It is also associated with the quality of the goods or services produced or provided by a company or an enterprise. The Trademark is purely an information of the quality of a product or service produced or offered by a company or an enterprise and has nothing to do with the manufacturing or provision or marketing of the product or service. The Trademark not only protects the duplication of the product but also promotes fairness in business.

Trade Secrets :—

Trade Secret is a very secret information and is protected information, which is not generally accessible to the general public.

This kind of information has a lot of commercial value because the information is secret [That which is not disclosed to the public or that which is not publicized]. The person lawfully in control of the information keeps the information secret. This information can even be termed as an undisclosed information.

Secrecy needs to be maintained to protect the quality and value of the products or goods in regard to the new technology that mean a lot to a company or an enterprise in leading the market. Generally, a Trade Secret can be any information:

- that provides economic or commercial value to a product or to those who own or know the information
- that is kept secret from knowing to those who can take advantage economically as well as commercially
- that which is needed to be maintained as a secret because of its importance to the company

A Trade Secret provides its owner with certain rights to protect its secrecy and misappropriation [formal to dishonesty take something that you have been trusted to keep safe] by others. Misappropriation does not take place when a person unknowingly and independently develops a secret information or a person who legitimately acquires it from other sources similar to another trade secret. Misappropriation can be disclosure of the secret information or misappropriation in use, which affects the confidence of the trade secret. Usage of improper means to obtain a trade secret is also violation of the trade secret right of the owner of that particular trade secret. Trade Secret is lost if the secrecy of it is lost. Absolute secrecy is not necessary because it would be difficult to prove to whom the secret information belongs.

Industrial Design :—

Industrial Design is a decoration or ornamental aspect of an article with respect to its shape, pattern, lines, color, surface *etc*. It protects the aesthetic [of or sensitive to beauty; tasteful] value or visual appearance of a product or ornamentation or design, which may be applied to a product. The Industrial Design protects the outward look of the product but not the function or operation of the product. Industrial Design, gives the owner exclusive right to manufacture and sell the product. Any Industrial Design must be original *i.e.*, it can no way be similar to any of the existing registered Industrial Design.

The protection of the product through the Industrial Design is required for your product when the appearance or the design of your product is used to promote the sale of the product. Like other forms of the Intellectual Property, the registration of an Industrial design can prevent others from using or duplicating, using for the purpose of trade and business, selling, renting or offering to sell or rent your Industrial Design.

For Example: If anyone designs a similar product with the same functions but with different design then there is no violation of the Industrial Design right. Items like the board games design or layout of the board, shape of the containers or pattern of design on the container, or the consumer products, *etc.* you normally protect by the way of Industrial Designs.

Geographical Indication :—

Geographical Indications is an indication that identifies a good or a product originating from a territory where a given quality, reputation or other characteristics of the good or product is due to its geographical origin. A geographical indication is firstly an

indication that originates from a definite geographical territory. It is mainly used to identify the agricultural, natural or manufactured products or goods. The indication should possess a special quality or reputation or other characteristics.

The registration of a geographic indication provides legal protection to the good or product manufactured or produced in a country. This prevents unauthorized use of the registered geographical indication by a third party or others thereby encourages exports of the country and promotes economic prosperity of the producers and manufacturers of the products and goods in a geographical territory.

The registration of the Geographical Indication is not compulsory but registering geographical indication of a good or a product would give better legal protection and also gives the right to take action for infringement by the producer or a manufacturer of the good or product. Protection of a geographical indication in its

country of origin is obtained in accordance with the nationally applicable laws and regulations.

For example: A geographical indication of a country depends on the good or product manufactured or produced possessing certain good quality due to its geographic origin like the Basmati Rice, Darjeeling Tea, Neem, Turmeric *etc* in India. India owns the right over the Basmati Rice due to its geographical origin there it cannot be registered as a geographical indication by any third party or others.

It is not far that our country can do something in regard to the Intellectual Property, which is nevertheless a new subject that is having a wider scope presently here. But has its roots firm and strong in the countries around the world like United States of America, United Kingdom, Canada, Australia, *etc*. Now, it is left to us to take the precautionary measures in protecting our goods or products with the very technology available to us.