

# IPR and Digital World

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## I. INTRODUCTION

In social relations, property is one of the type which was divided into corporeal and incorporeal property. The corporeal property refers to physical entities like land, buildings etc., and incorporeal property refers to immaterial entities like copyright, patent, trademark etc. Incorporeal property also called as intellectual property.

Man has own capacity to acquire knowledge and increase his knowledge by gathering throughout his life time. An intellectual product is nothing but the brain child of his original idea, creative thought, which forms a special kind of property. The intellectual property is ownership of something intangible. A right is legally protected interest and object of the right is the thing in which the owner has interest. The object in intellectual property right is immaterial.

## II. INTELLECTUAL PROPERTY:

Intellectual property has many faces such as copyright, patents, geographical indication, industrial design, moral rights, personality rights, plant breeders' rights, trade dress, trade secret, traditional knowledge, domain name etc.

Let us discuss about some categories of intellectual property.

## III. COPYRIGHT

Only human beings are capable of creativity. They can be authors, composers, artists and designers for creating their original works. Copyright is a unique kind of intellectual property. The first intellectual property which received legal recognition in the world was "copyright".

- Subject matter of copyright:

The copyright can be enumerated as follows:

1. Artistic work:

It means painting, sculpture, drawing, photograph and a work of architecture.

2. Literary work:

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It means computer programmes, tables and compilations including computer databases.

3. Musical work:

It means a work composing of music and any graphical notation of such work.

4. Dramatic work:

It includes any piece of recitation, choreographic work or entertainment in dramas.

5. Cinematography and sound recording:

It means any work of visual and audio recording.

### **Indian Copyright Act, 1957:**

The main aim of this act is that creative expressions are protected but not the ideas behind them. Copyright comes into existence as soon as work is created.

Generally, the period of copyright lasts for 60 years. But for original literary, dramatic, musical and artistic works, sixty years will be counted from authors death.

### **Fair use:**

A copyright work can be used without consent of holder to facilitate education, research, dissemination of knowledge and information for promotion of economy and culture of a society.

### **Infringement of copyright:**

Any unauthorized use of works protected by copyright, when authorization of such use is required by law constitutes is known as copyright infringement. If copyright was infringed for first time minimum 6 months imprisonment and 50,000/- fine will be given. If it is more than one time minimum 1 year will be the imprisonment with 1,00,000/- rupees will be fine.

### **Copyright and Digital World:**

There are some exceptions that some websites can be copied freely in which the information is given by government or the copyright which is copied or which is unrestrained by the holder.

### **SIX RIGHTS OF COPYRIGHT:**

1. The right to copy:

If one creates something artistic that is fixed in some medium, only that person who holds the copyright may make a copy of the thing created.

2. The right to derivative works:

A derivative work is a movie made from a book or video game based on popular movie.

3. The right to distribute copies:

In the digital world distributing copies would be posting material on the internet.

4. The right to perform works publicly:

When a play is performed for an audience, it is publicly performed. If a copyright holder allows a play to be performed by others he/she is entitled to royalty fee and control over how the work is performed.

5. The right of public performance:

Sound recording by means of digital audio transmission.

#### IV. PATENT

A patent is an exclusive right granted for an invention – a product or process that provides a new way of doing something or that offers a new technical solution to a problem. A patent provides protection to patent owners for their inventions. Protection is granted for a limited period, generally 20 years. A patent can be 3 types: utility patent, design patent, plant patent. Utility patents are those inventions that are normally thought of as machines. Such as a cell phone or an MP3 player. Design patents are generally to the design of a functional thing. A plant patent is granted of a new type of plant that is created by human intervention.

Patent is a time limited monopoly which is granted from the date of the first filing for 20 years . the patent application could be either provisional or complete. To exploit the right to propriety, the inventors prefer to file the complete application is that in the provisional application only the outline of the invention is given and thus a tentative domain of the invention is described. The claim part, the patent rights subsist on this part, is written only in the complete application.

India has adopted post-grant opposition procedure without losing her old pre-grant opposition procedure. When a patent application is published but the patent has not been granted, any person in writing may oppose the application on any of the prescribed grounds. Similarly, any person, at any time after the grant of the patent but before the expiry of one year of the patent may give a notice of opposition to the controller in the prescribed

manner. If patent was infringed 3 years imprisonment will be given. In BAJAJ AUTO LTD v. TVS MOTOR COMPANY LTD JT 2009 [12] SC 103 deals with the patent issue.

## V. TRADE MARK

Trade marks are signs or symbols. i.e logo and names registered by a manufacturer or merchant to identify goods and services. Protection is usually granted for 10 years and is renewal as long as the trade mark continues to be used. Trade mark may be a brand name, trade dress, service mark, certification mark or collective mark. For example: the logo of Audi car or Apple mobiles cannot be used by other companies. If trade mark was infringed minimum 6 months imprisonment with 50,000 rupees will be given and maximum 3 years imprisonment with 2,00,000 rupees will be given. In CLINIQUE LABORATORY LLC AND ANR. V. GUFIC LTD AND ANR. 2009.

## VI. GEOGRAPHICAL INDICATION

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin. Most commonly a geographical indication consists of the name of the place of origin of the goods. Geographical indication may be used for a wide variety of agricultural products. Duration for geographical indication is 10 years from the date of registration. If geographical indication was infringed there is no minimum punishment or fine is mentioned but maximum 3 years imprisonment will be given.

For example: one year ago there is a conflict between Kolkata and Orissa that who manufactured the Rasagulla first. Finally Kolkata was given the rights of geographical indication. Some other examples in Tamil Nadu are Kanchipuram silk, Madurai jasmine, etc.,

## VII. TRADE SECRETS

A trade secret is secret, non-public information concerning the commercial practice or proprietary knowledge of a business, public disclosure of which may sometime be illegal. Unlike patents, trade secrets are protected as long as the information is kept secret. For example: In KFC products ingredients are secretly kept. It continues indefinitely as long as the secret is not revealed to public. In IT ACT, 2000 it is mentioned that if trade secret is infringed there will be 3 years imprisonment or fine 5 lakhs rupees or both.

## VIII. INDUSTRIAL DESIGN

An industrial design right is intellectual property right that protects the visual design of an object. It is concerned with 3 dimensional features. Such as the shape or surface of an article, or 2 dimensional features, such as pattern, lines or color. Industrial design is applied to wide variety of products. From watches, jewelry, luxury items to

industrial and medical implements; from house ware, furniture, electrical applications to vehicle architectural structure. In India, the Indian design act, 1911 has been replaced by the design act 2000. The term for a design is 10 years from the date of registration. This period can be extended by 5 years if application is made before the expiry of 10 years.

## **IX. CONCLUSION**

The fair use of print material by allowing reproduction in a reasonable way for private study. Research or education is well understood but in digital information, because it is almost impossible for a copyright owner to know which person used his/her work. It is also impossible for copyright owner to give permission to use and receive remuneration.

## X. REFERENCE

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