

Intellectual Property Rights and Cyber Laws

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Abstract: *Intellectual Property is an important power tool in the modernization of technology and liberalization of economic conditions. It helps the inventors/discoverers to enrich themselves financially and social and interprets the concept of knowledge dissemination, Research and development is the main power house for the creation of new products assets. Intellectual property (IP) refers to creations of the mind like inventions, literary and artistic works, symbols, names, images and designs. The law of protection of IP changes with new discoveries or technology. The innovations can be encouraged by providing security by IPR, which can avoid the duplication or any other barriers to original Inventions. The innovations, inventions and discoveries of new assets/services can be encouraged and protected by the IP system under national laws and at the same time the Internet/Superhighway can be protected with security at world wide level by setting up Cyber laws.*

Keywords: IPR, Cyber law, Digitization.

I. INTRODUCTION

Intellectual Property Rights (IPRs) are the rights associated with intangible property owned by a person/company and protected against use without consent. Thus, rights relating to ownership of intellectual property are called Intellectual Property Rights. These rights aim to protect intellectual property (creations of human intellect) by allowing the creators of trademarks, patents, or copyrighted works to benefit from their creations. The Universal Declaration of Human Rights (UDHR) also refers to intellectual property rights under Article 27 which states that “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

DEFINITION INTELLECTUAL PROPERTY RIGHTS (IPR)

Intellectual property (IP) is an intangible property that comes into existence through human intellect. It refers to the creations of the mind or the products of human intellect such as inventions; designs; literary and artistic works; symbols, names and images used in commerce.

The term “Intellectual Property Rights (IPR)” is used to refer to the bundle of rights conferred by law on a creator/owner of intellectual property. These are the rights that a person has over the creations of his mind. They seek to protect the interests of the creators by rewarding their mental labour and allowing them to retain property rights over their creations. The creators and inventors are thus allowed to benefit from their creations. IP rights are the legal rights governing the use of intellectual property.

NEED FOR IPR PROTECTION

IPR law promotes monopoly creates a special policy for developing of new prod and services, which again influence the growth of trade and economy By protection to IP many such endeavors are encouraged and industries based on work can grow. This may also lead to financial returns for their hard w persons can get benefit from their intellectual creations. This can also give he protect the unwritten and unrecorded cultural expression (folklore) and this exploited to the benefit of the country and culture of origin. IP protection a factor for economic growth and advancement in the high technology Globalization and the rapid proliferation of technology have elevated the impertine of IP protection for small and medium sized enterprises.

The strategy of licensing IP is also perhaps the best way for all Indian comp to walk the middle road between services and products especially software I also act as a competitive barrier to stop other companies from targeting one's domain

A variety of bills, such as Collections of Information Antipiracy Act. Digital Millennium Act, the Digital Era Copyright Enhancement Act Sonny Bono copyright Term Extension Act are all leads for the protection of IPR

The various reasons behind granting protection to intellectual property through the enactment of suitable Intellectual Property (IP) laws are as follows:

- To encourage inventions and creations that promote the social, economic, scientific, and cultural development of society by incentivising the creators and allowing them to make economic gains out of their creations.
- To provide legal protection to intellectual creations.
- To prevent third parties from enjoying the fruits of someone else's creativity.
- To facilitate fair trading.
- To promote creativity and its dissemination.
- Giving recognition to the efforts of creators.
- Preventing the infringement of proprietary rights of creators in their creations from unauthorised use.
- To encourage investment of skill, time, finance, and other resources into innovation activities in a manner that is beneficial to society.

LAND MARKS OF IPR

1. Paris Convention This was mainly for protection of industrial property rights which was signed on March 20 1983 This established the International union for protection of Industrial property This convention had outcome with several agreements and treatise and also been revised several times and amended to requirements
2. Berne Convention This convention was signed on 6 September 1886 and aimed for protecting the literary and artistic works It gives protection to books and also documents. This convention was responsible for the formation of BIRPI (Bureau for Protection of Intellectual Property)
3. WIPO (World Intellectual Property Organization) Aim of WIPO to protect the Intellectual Property throughout the world through Co-operation with different nation, states, and International Organizations.

Advantages and disadvantages of Intellectual Property Rights

Advantages of Intellectual Property Rights

1. IPR protection gives your business a competitive advantage over other similar businesses.
2. IPR protection allows you to prevent unauthorised use of your intellectual property and works.
3. IPR enhances the value of your company and also opens avenues for collaborations and opportunities for generating income such as by entering into licensing agreements to exploit/work the invention/work.
4. IPR helps to attract clients and creates your brand value. For example, the consumers start identifying your products with the unique logo or registered trademark.

Disadvantages of Intellectual Property Rights

1. You have to incur additional costs for getting IPR protection including legal costs and other fees.
2. Even after getting the intellectual property right, you might still face a lot of difficulties in curbing the copying and unauthorised use of your work. Moreover, sometimes an attempt to enforce IP rights could lead to a reduction in the consumer base.
3. IP rights aren't absolute. There are certain limitations and conditions imposed by law on the exercise of these rights (such as a limited period of protection and compulsory licensing provisions) in the interests of the general public.

Components of Intellectual Property Rights

IPR covers the following

- Copyright
- Patents
- Industrial design
- Plant protection
- Related rights
- Unfair competitions etc.
- Trademarks
- Geographical indications

COPYRIGHT

This is concerned with protection of the work of human intellect, literary and artistic works, technologies based works such as computer programs and electronic databases.

The expression literary or artistic works includes every protection in the lite scientific and artistic domain, whatever may the mode or form of expression sch books, pamphlets and other writing, lectures, addresses, sermons dramatic musical works and entertainment in dumb shows, musical compositions with s without works, works of drawing, painting, architecture, sculpture, topogra translation etc. It covers which allow the owner of rights to derive

1 Economic rights from the use of his works

2. Merit rights which allow the author to take certain actions to preserve the perso link between himself and the work

Reproduction of a work without the permission of the original author isinfringement of copyright. It applies to all types of intellectual property "Copyright is understood as the right to copy or refuse copying. The same principle applies making copies of software

What kind of works can be protected under copyright?

The following categories of works typically come under copyright protection:

- Literary works such as novels, plays, poems, and newspaper articles;
- Computer programs and databases;
- Films, musical compositions, and choreography;
- Artistic works such as photographs, paintings, drawings, and sculpture;
- Architecture and advertisements, maps, and technical drawings.

Law relating to copyright in India: the Copyright Act, 1957

The Copyright Act, 1957 is a comprehensive legislation dealing with copyrights in India. The Act regulates the various aspects relating to copyright regime in India such as:

- Registration of copyright
- Publication, term of copyright
- Assignment, and licence of copyright
- Special rights of broadcasting organisation and performer's rights
- Infringement of copyright and remedies thereof
- Establishment of copyright authorities and copyright societies
- International Copyright

PATENTS

A patent is a grant given by the state in the form of a certificate for disclosing a invention, by which certain exclusive rights are conferred on the patentee (Proprietar) for a limited period Patents have been granted from medieval ages. Galileo wa granted a patent for an irrigation device in 1594 The British system is credited to be the oldest system of granting patents that is still in operation The city Government of Venice granted the first recorded copyright originally

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called a patent to a painter called John of Speyer in 1469. A patent like any other property can be brought and sold, assigned or licensed. The "Term of patent" refers to the period for which exclusive rights on the invention covered can be exercised by the patentee. The period varies from country to country. The grant of a patent for an invention is based on the Scientific and Technical details, which are contained in a document called the patent Specification.

The specification for patent right must describe the invention in sufficient basic knowledge of the subject. The specification will normally present the improvement in the present invention over the earlier ones. It must give an example or graphic illustrations of the invention. The applicant will finally add one or more claims which will clearly define the monopoly right.

The patent document consists of a patent number i.e. serial number assigned to it, date, name of the patentee, classification no, as per National Patent Office etc.

PURPOSE

Provides an award to the inventor. Provides protection, encourages the companies to continue the development of new technology and marketability and usefulness to public.

What kind of protection is given by patents

The patent owner possesses the exclusive right to prevent others from commercially exploiting the patented invention. Third parties are prevented from manufacturing, using, distributing, selling etc. the patented invention/product without the consent of the patent owner.

Patent law in India: the Patents Act, 1970

The invention of a person can be patented only if the procedure and other requirements prescribed in the Patents Act, 1970 are fulfilled. The Patent Act, 1970 provides for a detailed procedure for obtaining a patent, right from the filing of an application to the grant of a patent. The Act also contains provisions for rights and obligations of the patentee, term of the patent, transfer of patent, surrender, revocation, and restoration of patent, infringement of patent, and remedies thereof. The Act provides for patent protection for a period of 20 years after which the technology or invention goes to the public domain.

Patent infringement and remedies

Any violation of the rights of the patentee constitutes infringement of patent such as a colorable imitation of your invention or taking of the essential features of your invention. Under the Patents Act, Sections 47 and 107-A provides for the acts that shall not be considered as an infringement of patent. The various remedies available against patent infringement are as follows:

- Injunction
- Damages or account of profits
- Delivery up or destruction of infringing goods
- Certificate of validity

TRADE MARK

TM are the symbols/signs that distinguish the goods or services of an enterprise and distinguish them from its competitors. A trade mark can be a word, mark, logo, number, slogan, sound or color which identifies the source of a product and/or service with which the trade mark is used. Trade marks should be distinctive and should not be too generic or merely descriptive of the goods or services they represent. Trade mark registration can however be obtained for trade marks that are merely descriptive, geographic or indistinct.

PURPOSE

A trademark is a symbol that identifies a product and its source.

- It reflects the goodwill of a business.
- It assures the consumer about the established quality of the product.

- It serves as an advertisement for the product.
- A registered trademark provides legal protection to your brand.
- It helps to establish a dedicated consumer base by preventing others from imitating your brand.

Law regulating to trademarks in India: the Trademarks Act, 1999

The Trademarks Act, 1999 was enacted to provide for the registration and better protection of trademarks for goods and services, as well as to prevent the use of fraudulent marks. The Act contains provisions regarding:

- Registration of trademarks
- Effect of registration
- Rights of the trademark holder
- Special provisions relating to protection of trademarks through international registration under the Madrid Protocol
- Use of trademark and registered users
- Collective marks
- Certification of trademarks
- Assignment and transmission of trademark
- Infringement and passing off action in trademark and legal remedies thereof, etc.
- A trademark is registered for 10 years but it can be periodically renewed and can be used for an indefinite period.

INDUSTRIAL DESIGNS

Industrial designs are useful articles which are ornamental or aesthetic. These may include three dimensional features - shape or surface of the article, two dimension features such as patterns, lines or color. By protecting the industrial designs, the owner is ensured an exclusive right against its unauthorized copying or imitation for a period of time which is typically up to a maximum of 15-20 years.

Type of protection provided by industrial design

The owner of registered industrial design reserves the right to prevent others from manufacturing, selling, or importing articles bearing or embodying a design which is a copy of or is substantially similar to the protected design.

- Kinds of products that can come under Industrial design protection
- Products of industry and handicraft items
- Household goods
- Lighting equipment
- Jewellery
- Electronic devices
- Textiles, etc.

Law relating to designs in India: the Designs Act, 2000

The Designs Act, 2000 seeks to promote the creation of novel, original designs along with balancing competing interests by granting the time-bound monopoly right to use registered industrial design by the owner. The Act contains provisions regarding registration of designs, copyright in registered designs, industrial and international exhibitions, restoration of lapsed designs, the penalty for infringement of registered designs, etc.

SOME OF NATIONAL IP ORGANIZATIONS/ASSOCIATIONS

National Intellectual Property Organization

Austin IP Law Association

Asia Pacific IP Association

URL <http://www.austinpla.org> e-mail belljar@haynesbrons.com

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South African Institute of IP Law
Japan Intellectual Property Association
Intellectual Property Institute of Canada

Geographical Indications (GI)

A geographical indication (GI) is used to identify goods having a specific geographical origin. These indications denote quality, reputation, or other characteristics of such goods essentially attributable to their geographical origin. Generally, geographical indications are used for foodstuffs, agricultural products, wine, industrial products and handicrafts. Examples of GI include Basmati Rice, Darjeeling Tea etc.

Law relating to GI in India: the Geographical Indications of Goods (Registration and Protection) Act, 1999

The Geographical Indications of Goods (Registration and Protection) Act, 1999 provides for the registration and better protection of geographical indications relating to goods. The Act contains provisions relating to the establishment of a Geographical Indications Registry, registration of geographical indications of goods, rights conferred by registration, registration of authorised users of registered geographical indications, provisions for renewal, rectification and restoration of geographical indications, and prohibition of registration of geographical indication as a trade mark, etc.

CYBER LAW

Any criminal activity that involves a computer, networked device, or any other related device can be considered a cyber crime. There are some instances when cyber crimes are carried out with the intention of generating profit for the cybercriminals, whereas other times a cyber crime is carried out directly to damage or disable the computer or device. It is also possible that others use computers or networks to spread malware, illegal information, images, or any other kind of material.

However it is structured in a way whereby information flows freely with adequate safeguards. This allows information to flow directly from the immediate desktop of users who can harm the business of others. There is a need to define a security policy which restricts the user access to various locations on certain. The security technology and cyber law aims to protect the internet from external internal unauthorized visitors

A firewall is a collection of hardware and software that interconnects two or more networks and at the same time, provides a central location for managing security. A firewall typically consists of a bastion host, a computer that is fortified against the network attacks. A bastion host can be any computer in the network and is sometimes referred to as a server. In addition to the traditional firewall, we must use the router a special device which filters out data packets based on criteria that we specify

The Internet, while creating new and unique business opportunities has also introduced the new data security threats. Data theft is a broad term that is used not only for the actual theft of information but also the unlawful handling or viewing of the information. These can be avoided by national laws which can bring security to the Internet i.e. Cyber laws. The law defines what constitutes cyber crime and also has provisions to punish cyber criminals. It sets up a framework for transactions involving computer documents and communications. Computer crimes recognized under this law would affect hackers and those who are not authorized to enter a system to download data, introduce viruses, damage data/systems or block access to authorized users.

CYBER LAW DESIGN

A cyber law design can be a successful one, if it gives attention to the following points

Do we want Internet-based users to upload or download files to or from the company's intranet server

Are there particular users (such as competitors) for whom we want to deny all access?

Will the other company/institution/organization publish a web page?

Will our site provide support to Internet users?

Should the users of internet have unrestricted web access?

Do we need statistics for one who is trying to access the system in spite of firewalls/cyberlaws?

Will there be any staff who can dedicate their time and efforts in monitoring the cyber law?

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What would be the worst case scenario if an attacker does break into out Internet or laws?
Do users need to connect geographically dispersed intranets?

CYBER LAWS IN INDIA

In terms of cybersecurity, there are five main types of laws that must be followed. Cyber laws are becoming increasingly important in countries such as India which have extremely extensive internet use. There are strict laws that govern the use of cyberspace and supervise the use of information, software, electronic commerce, and financial transactions in the digital environment. India's cyber laws have helped to enable electronic commerce and electronic governance to flourish in India by safeguarding maximum connectivity and minimizing security concerns. This has also made digital media accessible in a wider range of applications and enhanced its scope and effectiveness.

In May 2000 both the houses of the Indian Parliament passed the Information Technology Bill. The Bill received the assent of the President in August 2000 and came to be known as the Information Technology Act, 2000, Cyberlaws are contained in IT Act, 2000. This act aims to provide the legal infrastructure against cyber crime in India The cyber laws have a major impact for e-business and the new economy India So, it is important to understand what are the various perspectives of the 11 Act, 2000 The Information Technology Act, 2000 also aims to provide for the legal framework so that legal sanctity is accorded to all electronic records and other activities carried out by electronic means. The act states that unless otherwise a an acceptance of contract may be expressed by electronic means of communication and the same shall have legal validity and enforceability

ADVANTAGES OF CYBER LAWS

The IT Act 2000 attempts to change outdated laws and provide ways to deal with cybercrimes. We need such laws so that people can perform purchase transactions over the net through credit cards without fear of misuse. The Act offers the much needed legal framework so that information is not denied legal effect, validity or enforceability, solely on the ground that it is in the form of electronic records In view of the growth in transactions and communications carried out through electronic records, the Act seeks to empower government departments to accept filing, creating and retention of official documents in the digit format The Act has also proposed a legal framework for the authentication and origin of electronic records/ communications through digital signatures

II. CONCLUSION

IP plays an important role in an increasingly broad range of areas. Today, possession of land, labour and capital are just not enough for a country to succeed - creativity and innovations are the new drivers of the world economy The policies adopted by a country shall determine how it is developing the trapped Intellectual capital An effective intellectual property system is the foundation of such a strategy With knowledge-based, innovation-driven economies, the intellectual property system is a dynamic tool for wealth creation, providing an incentive for enterprises and individuals to create and innovate, a fertile setting for the development of, and trade in, intellectual assets and a stable environment for domestic and foreign investment IPR is something that affects us every day. We should be conscious of its effect on our economy It is not enough to have strong laws, but strong mechanisms are also needed to enforce them In India, the IT Act, 2000 ensures a Cyber-Regulation Advisory Committee, a controller and an adjudicating officer to regulate cyber laws. There will also be a cyber Regulation Appellate Tribunal

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