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Intellectual Property Rights : Challenges and Solutions

Rajneesh Kumar
Assistant Librarian, Central Library, IET,Bhaddal ,Ropar, Punjab, India

ABSTRACT

Intellectual property rights (IPR) are a set of rights associated with creations of the human mind. In the modern era IPR awareness is the key to technological innovations and in the emerging knowledge-based economy; the awareness among the creators of information and knowledge about IPR has become essential in the digital environment because in the digital environment it is becoming difficult to prove rights violation whenever they occur. This paper gives an overview of intellectual property rights and its types, laws, problems and solutions to tackle them.

Keywords: Intellectual Property Rights, Copyright, Patents, IPR, Problems related to IPR.

I. INTRODUCTION

Intellectual property, very broadly, means the legal property which results from intellectual activity in the industrial, scientific and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and such rights of the public in access to those creations. The second is to promote, as a deliberate act of government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development. Libraries and their role in society has evolved in pace with technological development and copyright law. Originally a repository for published works which could be borrowed or physically accessed by the public. Anybody could use and copy these creations and inventions without any restriction, reservation, or payment. However, with the passage of time, the importance and value of these creations was realized. By end of Twentieth century, the things created and invented by the human mind were recognized as an intellectual property of the owner. The owner's right over these properties was accepted and is known as an Intellectual Property Right (I.P.R).

II. HISTORY AND DEVELOPMENT OF IPR

With the development of human race, there have various new concepts, principles, inventions and cultures emerged on the canvas of earth. The concept of intellectual property rights is one of them, which takes birth as a collective effect of two growing up cultures of the time i.e. the culture of commoditization and the industrial culture. In the 19th century, when the industrialization was on the peak; great scientific inventions and technical development were taking place; distinctive forms of art, expression and entertainment were emerging; and various new theories were developing in all fields of knowledge. At the time, a necessity for an international law or regulatory force have been felt (in international arena) to promote such activities by protecting the rights of concern persons.

Accordingly, in year 1883, the first International Convention for the Protection of Industrial Property, popularly known as 'Paris Convention', was adopted. Similarly, in year 1986, another International convention i.e. Berne convention for the Protection of Literary and Artistic works was adopted. This was the initiative phase for the recognition and protection of intellectual property rights, which paved the way for its further development. In Indian context, it is clear

that the concept of intellectual property rights has been adopted from the western countries. There are various laws have been formed in India to fulfill the expectations of international conventions and to harmonies it with her domestic requirements. At present the principles and traditional filed of IPR (i.e. industrial property and copyright related IPRS) has been almost established. But, various new aspects and deranging dimensions of the concept of intellectual property rights are still emerging. The whole history and development of IPR can be understood by analyzing it's both aspects i.e. (i) the international development and, (ii) Development of IPR in India.

III. REVIEW OF LITRATURE

A large number of authors have been erlier discussed about IPR, we will discuss about some of them:

Lakshmana Moorthy, A and Karisiddappa, C.R. observed copyright and electronic information, observed the main objectives of copyright law as promoting the access and the use for information and protecting the work from infringement and for encouraging the authors for pursuit of knowledge. They discussed the Indian Copyright law 1957 and its amendments, mentioned major worldwide projects to protect copy right of electronic information and concluded that the library professional should negotiate few electro copying privileges for legitimate non-commercial usage of electronic information similar to the kind of fair use as in the case of printed materials.

Panda; K C and others examined copyright law in the electronic age and noted proliferation of electronic information creating interest in the minds of authors, publishers, users and intermediates regarding the copyright law. Discussed the role of IFLA in the protection of copy right in the global scenario and concluded that there is an urgent need to reconsider the existing copyright law to make it suitable in electronic age.

Rachchh ,2013 A new set of laws called Intellectual Property Right Laws were enacted to protect these property rights. These I.P.R laws provided a protection to the owners under different categories and names like Copyrights, Patients, Trade Marks, Industrial designs, etc.

Bomanwar considered intellectual property rights in the context of new information society, noted the thrust area of economic activity shifted to knowledge based industries and intellectual goods, and described impact of piracy of intellectual property act viz. viopiracy, geopiracy and IT products of new information society. He noted that developed countries demand protection against piracy while developing countries feel that such protection will prevent entry of new comers and felt that in the free flow of information IPR was hurdle to it.

Murthy, T.A.V. and Jain, S.P. they found the present copyright law which was framed after the invention of the printing press as by and large being forced on the existing electronic environment and felt that there is need to modify the IPR which confers exclusive right to the author to exploit the work created by him/her for monitory gains in compensation of labour, skill and capital investment in generating information.

IV. TYPES OF IPR

Patents : A patent is a type of intellectual property right which allows the holder of the right to exclusively make use of and sale an invention when one develops an invention. Invention is a new process, machine, manufacture, composition of matter. It is not an obvious derivation of the prior art (It should involve an inventive step). A person who has got a patent right has an exclusive right. The exclusive right

is a true monopoly but its grant involves an administrative process.

Copyright: It is an intellectual property which does not essentially grant an exclusive right over an idea but the expressions of ideas which makes if different from patent law. Patent is related with invention technical solution to technical problems. Copyright is a field which has gone with artistic, literary creativity, creativity in scientific works, audiovisual works, musical works, software and others. There are neighboring rights. These are different from copyright but related with it – performers in a theatre, dancers, actors, broadcasters, producers of sound recorders, etc. It protects not ideas but expressions of ideas as opposed to patent. Copyright protects original expression of ideas, the ways the works are done; the language used, etc. It applies for all copyrightable works. Copyright lasts for a longer period of time. The practice is life of author plus 50 years after his/her life. Administrative procedures are not required, unlike patent laws, in most laws but in America depositing the work was necessary and was certified thereon but now it is abolished.

Trade Mark: A trade mark is a visual symbol which may be a word, letters, numerical, name, sign, signatures, symbol, design, or an expression distinguishes products or services provided by an individual or a company. It is popularly called as "Brand name". It is mainly used in commercial sector. Its nature and quality indicated by its unique trademark to help consumers to identify and purchase product or services. The initial registration term is valid up to 10 years; after it may be renewed time to time. It helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.

Industrial Design: Law Some call this design right (European) and some call it patentable design, industrial design (WIPO and other international organization). A design is a kind of intellectual property which gives an exclusive right to a person who has created a novel appearance of a product. It deals with appearance: how they look like. Appearance is important because consumers are interested in the outer appearance of a product. It is exclusively concerned with appearance, not quality. The principles which have been utilized in developing industrial design law are from experiences of patent and copyright laws. It shares copyright laws because the design is artistic. It shares patent law because there are scientific considerations. Design law subsists in a work upon registration and communication. It makes them close to patent law since they are also founded in patent law. Duration is most of the time 20 years like the patent law trademark Rights law.

Geographic Indication: It is indications on products of the geographic origin of the goods. It indicates the general source. The indication relates to the quality or reputation or other characteristics of the good. For example, "made in Ethiopia" is not influenced by the geographical Indication. Geographical indications are sometimes called appellations of origin. For example, "Sheno lega", "Shampagne" (name of a region in France) are geographical indications.

Trade Secrets: It gives the owner of commercial information that provides a competitive edge the right to keep others from using such information if the information was improperly disclosed to or acquired by a competitor and the owner of the information took reasonable precautions to keep it secret. It protects confidential secrets of some commercial value. The holder of the secret wants this information to be protected. Some protect the holder from an unauthorized disclosure of the information. A tort law, unfair competition or contract law can protect such information which is secret /confidential information. The holder (owner) has to do his/her best to keep the information secret. Trade secrets exist without registration as it is to make the information public, for

example, the formula of Coca Cola. Information that are protected in trade secrets can be patentable if they are novel and non obvious. But it is, most of the time, not to make the secret public. However, their full fledged IP rights are contestable.

Laws Related To IPR

The Rules and Laws governing Intellectual Property Rights in India are as follows:

1. The Copyright Act, 1957, the Copyright Rules, 1958 and International Copyright Order, 1999.
2. The Patents Act, 1970 The Patents Rules, 2003, The Intellectual Property Appellate Board (Patents Procedure) Rules, 2010 and The Patents (Appeals and Applications to the Intellectual Property Appellate Board) Rules, 2011.
3. The Trade Marks Act, 1999, The Trade Marks Rules, 2002, The Trade Marks (Applications and Appeals to the Intellectual Property Appellate Board) Rules, 2003 and The Intellectual Property Appellate Board (Procedure) Rules, 2003.
4. The Designs Act, 2000 and The Designs Rules, 2001.
5. The Geographical Indications of Goods (Registration and Protection) Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Rules, 2002.
6. The Semiconductors Integrated Circuits Layout-Design Act, 2000 and The Semiconductors Integrated Circuits LayoutDesign Rules, 2001.

Problems Related to IPR

There are a few problems related to IPR but they are actively being solved by the government.

1. Slow patent office: This has been a problem since ages, sometimes patent office used to take more than 20 years to grant a patent. This issue is being tackled by the department and the patent office of today has become much faster. They are working hard and fast now, specially since early 2016. There have been instances where patent applications have been granted within a month from the date of filing. This is unprecedented speed and can even be considered faster than the patent offices of the developed world.

2. IPR Enforcement: As any developing country, India initially had lack of awareness about IPR in the country, specially in the enforcement related departments of the government, such as police, customs, etc. However, this has drastically changed, the police force is being actively trained about IPR, and the customs department has an IPR registration system to prevent import of counterfeit or knockoff products.

3. Litigation: The Indian court system drags cases for decades is the popular opinion, however, this is also poised to change after the establishment of commercial courts and fast tracking of IP matters. You can see recent caselaws which point towards a much faster court system in comparison.

4. Capacity Building: The intellectual property office is expanding its workforce and upgrading it's IT infrastructure, the number of patent agents is being increased, new courses such as integrated B.Tech + LLB is is being introduced in Universities, the government is introducing new policies in favour of IP owners such as SIPP scheme, tax breaks on IP licensing earnings, etc, there is also a booming LPO business that have far greater number of professionals (10,000+) who are already experts in the field of IP and are likely to make the transistion to Indian IP when sufficient capacity is built.

Findings and Suggestions

The study tells us that in the present digital environment the way of violating copyright has changed. Traditionally we found that in the past people copies intellectual work directly to earn money by not letting the creator know about it. But in the present time, scenario has changed and now it is kind

of a business to earn money in the name of sharing information. The violator shares the intellectual work in the name of sharing the information for the benefit of the society. But in response of that the violatorget hits or likes on their social networking sites or blog post which increases his/her social importance and popularity in the society. For me it is a kind of violation of copyright because nobody has any right to be popular with the help of someone else creativity.

V. CONCLUSION

Nothing is complete unless I put this research paper into final shape. Through this study I believe that intellectual property rights have been being a main driving force in our digital world. The role and advantages of intellectual property system has been becoming an important factor in all activities. It also becomes major national and international concern. I hope that India will more contribute to the world intellectual property culture through research and study experiences from developed countries. I am sure that this research study provides new knowledge that can be used to upgrade and strengthen IP protection system in India as well.

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