



INTELLECTUAL PROPERTY RIGHTS: AN OVERVIEW

Monisha Roy*

Abstract: Intellectual property rights (IPR) are the legal rights that are granted to individuals or organisations for their creations or inventions. These rights provide for exclusive ownership and control over intangible assets, such as inventions, artistic works, trademarks, trade secrets and designs. IPR protects the creators or owners of such intangible assets by giving them the ability to make profit from their innovations and creativity. Several types of IPR such as patent, copyright, trademark etc. are provided solely. Patents are such rights that grant inventors or creators the ability to prevent others from making, using, or selling their invention without permission for a limited period of time. Copyrights protect original works of literary, artistic, musical, and drama creations. Trademarks being distinctive signs, symbols, or logos help customers identify and associate certain qualities or characteristics with a particular brand or company. IPR is a requirement for improved innovation or creative work identification, planning, marketing, and protection. Depending upon the area of specialization, each industry has its own IPR policies, management styles etc. Without IPR businesses would struggle to maintain their creativity and competitive edge and would lose their revenue along their reputation. With this view, the paper provides a succinct summary of IPR.

Keywords – Intellectual Property, Intellectual Property Rights (IPR), intangible assets, patent, copyright, trademarks, identification, protection.

Introduction

“The intellectual property situation is bad and getting worse. To be a programmer, it requires that you understand as much as law as you do technology.”

Eric Allman.¹

The modern era has given birth to creative minds who create or invent something, be it a product or a brand for their business. Such creations of human intelligence are termed as Intellectual Property (IP) which can be protected under the Intellectual Property Rights (IPR). IPR allows the creator or the inventor or their assignee the right to fully take advantage of their idea for a specific amount of time. It is widely acknowledged that IP is essential to the modern economy. Additionally, it has unequivocally proven that the intellectual labour in respect to the invention or the creation ought to be given the reverence it deserves for the purpose of serving greater good. There has been a quantum jump in research and development (R&D) costs with an associated jump in investments required for putting a new technology in the market.² The stakes of the developers of technology have become very high, and hence, the need to protect the knowledge from unlawful use has become expedient, at least for a period, that would ensure

¹ Reference <https://www.coursehero.com/file/21176090/Intellectual-Property-UIIT/>

² New Delhi: Department of Science and Technology (DST), Government of India; 2002. Anonymous. Research and development statistics.

recovery of the R&D and other associated costs and adequate profits for continuous investments in R&D.³ IPR is a powerful weapon for protecting the time, money, investments and effort of the inventor as it grants the inventor an exclusive right to utilize his invention or creation for a specific period of time. It promotes fostering healthy competition and aids the economy along with encouraging industrial development.

What is Intellectual Property?

The administrative procedures and laws relating to IPR seemingly originated in Europe. In the fourteenth century, granting patents was increasingly becoming common practice. England, being comparatively more sophisticated in terms of technology, attracted artisans from around the globe, on special terms and conditions, though no concept or the term patent was used for such practice. The first known copyright appeared in Italy. Venice was the first place in the world to create laws and institutions governing intellectual property, as most of the legal thinking and research in the law field was done here, yielding the fact that Venice was the birthplace of the concept of IP.⁴ Sooner, other nations followed.

The concept of Intellectual Property (IP) evolved as a tangible property that comes into existence through human intellect.

The “Convention Establishing the World Intellectual Property Organization” states that “Intellectual Property” shall include the rights relating to:

- i. Literary, artistic, and scientific works,
 - ii. Performances of performing artists, phonograms, and broadcasts,
 - iii. Inventions in all fields of human endeavor,
 - iv. Scientific discoveries,
 - v. Industrial designs,
 - vi. Trademarks, service marks, commercial names, and designations,
 - vii. Protection against unfair competition, and
 - viii. All other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.⁵
- 

Other categories include property relating to geographical indications, rights in respect of know-how or undisclosed information, and layout designs of integrated circuits.

³ New Delhi: Department of Science and Technology (DST), Government of India; 2002. Anonymous. Research and development statistics.

⁴ Bainbridge DI. New York: Longman; 2002. Intellectual property.

⁵ Convention establishing the World Intellectual Property Organization signed at Stockholm on 14 July 1967.

Types of Intellectual Property (IP)

Basically, IP includes four major types, namely, patents, trademarks, copyrights, and trade secrets. To protect the intangible assets, property owners often combine several of these categories of IP. For instance, copyright law protects a product's slogan whereas trademark just protects the name. It is worth noting that the specifics of intellectual property laws can vary across countries, and certain jurisdictions may have additional or slightly different types of intellectual property protection.

Following are the types of IP:

- i. Patents – patents protect inventions and new technological advancements. They grant exclusive rights to the inventor for a limited period, typically 20 years, in exchange for public disclosure of the invention. Patents provide the right to prevent others from making, using, selling, or importing the patented invention without authorization.
- ii. Copyright – it protects original works of authorship, such as literary, artistic, musical, and dramatic works. It grants the creator exclusive rights to reproduce, distribute, display, perform, and modify their work. Copyright protection is automatic upon creation and generally lasts for the author's lifetime plus a certain number of years.
- iii. Trademarks – it protects brand names, logos, slogans, and other distinctive signs that distinguish goods or services in the marketplace. They help consumers identify and differentiate products or services and prevent others from using similar marks that may cause confusion or dilute the brand's reputation. Trademark rights can last indefinitely, as long as they are actively used and maintained.
- iv. Trade Secrets - Trade secrets refer to confidential and valuable information that gives a business a competitive advantage. This can include formulas, recipes, manufacturing processes, customer lists, and another proprietary knowledge. Unlike patents or copyrights, trade secrets rely on maintaining secrecy and can be protected indefinitely as long as the information remains confidential.
- v. Industrial Designs - Industrial designs protect the visual appearance or aesthetic aspects of a product, such as its shape, configuration, pattern, or ornamentation. Industrial design rights safeguard the unique visual features of a product and prevent others from copying or imitating its design.
- vi. Geographical Indications (GIs) - Geographical indications identify products that originate from a specific geographical region and possess unique qualities, characteristics, or reputations associated with that region. GIs protect names like Champagne, Parmigiano-Reggiano, or Tequila, ensuring that only products produced in the designated regions can bear those names.

About Intellectual Property Rights (IPR)

The Universal Declaration of Human Rights (UDHR)⁶ refers IPR 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.*”

The purpose of IPR is to reward and safeguard human intellect by providing exclusive rights to the creators over their inventions, artistic, musical works, etc. thus allowing benefit from their creations. IPR encourages the inventions that promote social, economic, scientific, and cultural development of society by innervating the creators and allowing them to make economic gains out of it. IPR prevents any third-party intervention, barring them from enjoying the fruits of someone else's innovations. Fair trading, global recognition, and prevention of infringement of propriety right of inventors or creators are some key concerns of the Intellectual Property Rights. It can stimulate economic growth by fostering entrepreneurship, attracting investments, and promoting competition. Industries such as technology, pharmaceuticals, and entertainment, who rely on IP contribute significantly to economic development and creation of new vacancies. IPR facilitates the transfer of knowledge and technology through licensing agreements, collaborations, and technology transfers. This promoted innovation diffusion and allowed for the spread of advancement across the different industries and regions.

However, IPR can limit access to information, knowledge, and cultural expressions. Patents, copyrights, and trademarks may hinder the availability of essential goods, medicines, or technologies, particularly in developing countries where affordability and accessibility are crucial. Strict enforcement of IPR can discourage innovation and hinder collaboration. Overly broad patents and copyrights may create barriers for new players, stifling competition and hindering the development of new ideas and products. IPR can even contribute to inequality and monopolistic practices. Companies or individuals holding exclusive rights may exploit their monopolistic powers, setting up higher prices and restricting access to essential goods or services, particularly in sectors like healthcare or technology. IPR can be abused by patent trolls, who acquire patents solely for the purpose of filing lawsuits and extracting settlements from alleged infringers. This practice can lead to excessive litigation, diverting resources from innovation and causing a burden on businesses.

IPR can vary depending upon the context, industry, and implementation of these rights. Striking a balance between protection and promoting access to knowledge and innovation is a complex task for policymakers.

Customary Division of IPR

Intellectual Property Rights (IPR) customarily has been divided into 2 major domains:

- i. Copyright and rights related to copyright – a minimum of fifty years after the death of author, copyright protects the rights of author of literary and creative works (such as books and other publications, musical compositions, paintings, sculptures, computer programs and films.⁷ The rights of performers such as actors, singers, and musicians, manufacturers of phonograms and broadcasting organizations are also protected by copyright. The primary goal of copyright and associated rights is to support and reward creative endeavor.
- ii. Industrial Property – Industrial property is further divided into 2 main domains:
 - a. Protection of distinctive signs – protects in particular, trademarks and geographical indications. Fair competition is ensured and encouraged by protecting the distinctive signs as they reflect the identity of a particular venture.

⁶ United Nations Peace, Dignity and Equality on a healthy Planet, Universal Declaration of Human Rights.

⁷ World Trade Organization. https://www.wto.org/english/tratop_e/trips_e/intell_e.htm

- b. Stimulation of Innovation – primary aim for the industrial property is to stimulate innovation, design, and creation of technology. Industrial designs and trade secrets are components of this category. In order to the objective is to protect the outcomes of investments in the creation of new technologies, thus giving the incentive and resources to support research and development activities.

Violation of IP

Violation of intellectual property rights refers to any unauthorized use, infringement, or exploitation of protected intellectual property without the permission or legal rights of the intellectual property owner.

Here are some common forms of intellectual property rights violations:

- i. Copyright infringement - This occurs when someone uses, reproduces, distributes, displays, or performs copyrighted work without the permission of the copyright holder. It includes activities like unauthorized copying of books, music, films, software, or artworks.
- ii. Patent infringement - Patent infringement happens when someone uses, makes, sells, or imports a patented invention without the permission of the patent owner. It involves the unauthorized use of patented technologies or inventions.
- iii. Trademark infringement - This occurs when someone uses a trademark or a similar mark in commerce without permission, causing confusion among consumers regarding the source or origin of goods or services. It can include using a similar brand name, logo, or slogan without authorization.
- iv. Trade secret misappropriation - Trade secret misappropriation happens when someone acquires, uses, or discloses a trade secret without the owner's consent. It involves the unauthorized use or disclosure of confidential business information that provides a competitive advantage.
- v. Counterfeiting - Counterfeiting refers to the production, distribution, or sale of goods that imitate or replicate genuine products, often with the intent to deceive consumers. Counterfeit products may bear fake trademarks, logos, or packaging, and they infringe on the intellectual property rights of the genuine product.
- vi. Piracy - typically refers to the unauthorized reproduction, distribution, or sharing of copyrighted materials such as software, movies, music, or digital content. It involves activities like illegal downloading, file sharing, or streaming of copyrighted works.
- vii. Domain name infringement - Domain name infringement occurs when someone registers, uses, or sells a domain name that is identical or confusingly similar to a trademark, causing confusion or dilution of the trademark owner's rights. Intellectual property rights violations can result in legal action, including civil lawsuits seeking damages or injunctions to stop the infringement. Penalties for intellectual property infringement can vary depending on the jurisdiction and the severity of the violation, and may include financial penalties, seizure of infringing goods, or criminal charges in some cases.

Laws related to IPR in IndiaThe Protection of Plant Varieties and Farmers' Rights Act, 2001

The said Act aims to provide protection to plant varieties, encourages the development of new varieties and safeguards the rights of farmers. Following are the key provisions of the said Act:

- i. Plant Varieties Protection: The Act establishes a system for the protection of plant varieties by granting breeders or developers of new plant varieties exclusive rights over their creations. It enables breeders to commercialize their varieties and prevents unauthorized use or exploitation by others.
- ii. Farmers' Rights: The Act recognizes and protects the rights of farmers in conserving, using, exchanging, and selling their farm-saved seeds and planting material. It acknowledges the traditional farming practices and contributions of farmers to the conservation and development of plant genetic resources.
- iii. Plant Varieties Registry: The Act establishes a Plant Varieties Registry, which is responsible for maintaining a register of plant varieties and granting registrations to eligible varieties. The registry ensures transparency and facilitates access to information about protected varieties.
- iv. Plant Varieties Protection Appellate Tribunal: The Act establishes an appellate tribunal to hear appeals against decisions of the Plant Varieties Registry and to adjudicate disputes related to plant varieties protection.
- v. Compulsory Licensing: The Act allows for the issuance of compulsory licenses under certain circumstances, such as when a protected variety is not widely available to farmers or when its availability is insufficient to meet public demand.
- vi. Benefit-Sharing: The Act includes provisions for benefit-sharing with farmers and local communities, particularly in cases where the commercial exploitation of a protected variety leads to significant economic benefits.

The PPV&FR Act aims to strike a balance between the protection of plant breeders' rights and the preservation of farmers' rights and traditional agricultural practices. It seeks to encourage the development of new plant varieties while safeguarding the interests of farmers and promoting sustainable agriculture.

The Biological Diversity Act, 2002

The said Act provides a legal framework for the conservation, sustainable use, and equitable sharing of benefits arising from the use of biological resources and associated traditional knowledge. It contains provisions relating to the regulation of access to biological diversity, the establishment of the National Biodiversity Authority and its functions, the establishment of the State Biodiversity Board and its functions, the constitution of Biodiversity Management Committees, and the constitution of the Local Biodiversity Fund, etc.

International Framework of IPR

Various agreements and conventions have been formulated at the international level to govern and regulate the various aspects and emerging issues relating to IPR. following are some major conventions and forums:

1. The Paris Convention on the Protection of Industrial Property, adopted in 1883, the said convention is the oldest and the very first major step towards the protection of IP rights. The convention contains 30 Articles dealing with various aspects and types of industry property. The convention was revised in the year 1967 in Stockholm.
2. The Berne Convention for the Protection of Literary and Artistic Works, 1886, establishes standards for the protection of copyright and related rights. It was first adopted in 1886 and has been revised several times since then. The main objectives of the Berne Convention are to promote and protect the rights of authors in their literary and artistic creations.

Key provisions of the Berne Convention include:

- i. Minimum Standards of Protection: The Berne Convention sets out minimum standards for the protection of copyright, ensuring that authors' works are automatically protected in member countries without the need for formalities such as registration or notice.
 - ii. Automatic Protection: Copyright protection under the Berne Convention is automatic upon the creation of a work, providing authors with exclusive rights over the use, reproduction, distribution, and public performance or display of their works.
 - iii. Copyright Duration: The Berne Convention sets a minimum duration of copyright protection, which is typically the life of the author plus 50 years after their death. Some countries provide longer durations based on their national laws.
 - iv. Rights of Authors: The Convention recognizes the moral and economic rights of authors. Moral rights include the right to be attributed as the author of a work and the right to object to any modifications or distortions of the work that may damage the author's reputation. Economic rights include the exclusive right to authorize or prohibit the use and exploitation of the work.
 - v. National Treatment: The Berne Convention ensures that authors from member countries are granted the same rights and protections in other member countries as the nationals of those countries, without discrimination.
 - vi. Limitations and Exceptions: The Convention allows member countries to provide certain limitations and exceptions to copyright protection, such as for educational use, fair use, or specific uses for the benefit of disabled persons.
3. The Universal Copyright Convention, 1952 was established in 1952 to provide a framework for the protection of copyright works on a global scale. It aimed to harmonize and strengthen copyright protection among member countries.

Key features of the Universal Copyright Convention include:

- i. Minimum Standards of Protection: The UCC sets out minimum standards of protection for copyright works, including literary, artistic, and scientific works. It grants authors exclusive rights over the reproduction, distribution, public performance, and translation of their works.

- ii. National Treatment: The UCC provides for the principle of national treatment, which means that authors from member countries are granted the same rights and protections in other member countries as the nationals of those countries.
- iii. Copyright Notice: The UCC requires the use of a copyright notice (the symbol © or the word "Copyright" followed by the name of the copyright owner and the year of first publication) to indicate copyright ownership. However, the notice is not a prerequisite for copyright protection.
- iv. Duration of Copyright: The UCC sets a minimum duration of copyright protection, which is generally the life of the author plus 25 years after their death. Some member countries may provide longer durations based on their national laws.
- v. Economic and Moral Rights: The UCC recognizes both the economic rights and moral rights of authors. Economic rights include the exclusive right to authorize or prohibit the use and exploitation of their works. Moral rights include the right to be attributed as the author of a work and the right to object to any modifications or distortions that may damage the author's reputation.
- vi. Limitations and Exceptions: The UCC allows member countries to provide limitations and exceptions to copyright protection, such as for educational use, fair use, or specific uses for the benefit of the public.

The Universal Copyright Convention has been ratified by numerous countries and served as an important international agreement for copyright protection before the emergence of the Berne Convention. However, with the adoption and widespread acceptance of the Berne Convention, the UCC has lost its significance and is now mostly superseded by the Berne Convention and other international copyright treaties.

4. World Intellectual Property Organization (WIPO)

WIPO is a global forum for IP services, policies, cooperations and information which was established on 14th July 1967. It is a specialized agency of the United Nations dedicated to promoting the protection and use of IP worldwide, was established in 1967 and has its headquarters in Geneva, Switzerland.

WIPO develops and promotes international treaties, agreements, and guidelines to harmonize and strengthen intellectual property laws and practices across member countries. Examples of such treaties include the Patent Cooperation Treaty (PCT), the Madrid System for the International Registration of Trademarks, and the Copyright Treaty. It provides a range of services related to intellectual property, including the administration of international IP registration systems. This includes the Patent Cooperation Treaty (PCT) for international patent applications, the Madrid System for international trademark registration, and the Hague System for industrial designs.

WIPO promotes the development-oriented aspects of intellectual property through its IP Development Agenda. This initiative aims to ensure that intellectual property contributes to social and economic development, particularly in developing countries, by addressing issues such as access to medicines, technology transfer, and the protection of traditional knowledge and folklore.

Conclusion

In conclusion, intellectual property rights (IPR) play a crucial role in incentivizing innovation, creativity, and economic growth by providing legal protection and exclusive rights to individuals and organizations for their intellectual creations.

Intellectual property rights are essential for fostering creativity, innovation, and economic development. However, there is an ongoing need to strike a balance between protecting the rights of creators and ensuring access to knowledge, fostering fair competition, and addressing societal concerns. Continual evaluation, adaptation, and international cooperation are necessary to navigate the evolving landscape of intellectual property and maximize its benefits for society as a whole.

