

A Review on Intellectual Property Right with reference to Digital Environment

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Abstract- As we know that God has given us power of Intellect through which we are able to think and discover the new things in our day to day life. But due to the changing world and introduction of advance technology in digital world, the need is arising to protect the right of an individual which is created with the help of intellect. In this paper, we are able to know about the Historical background of Intellectual property right with its meaning and types. Along with this, with the help of this paper we understand the issues which is faced by a creator to protect their intellectual property in digital world and also the way through which the creator is able to protect their Intellectual property in Digital Environment.

Keywords: Intellectual Property Right, Issues, way to resolve the issue.

HISTORICAL BACKGROUND

The term “Intellectual Property” generally means Creation of human mind which relates with the information that can be incorporated in tangible object and reproduce in different location.

Intellectual Property Right may be defined as the product of Knowledge which get created by Individual by the help of his/her Intellect. Intellectual i.e., Baudhik (Buddhi or knowledge) and Property i.e., Sampada (assets or property) and Right i.e., Ownership. So, Intellectual property Right means the right of ownership which an Individual have on that property which is created by him or her with the help of their intellect.

From the Historical point of view, Intellectual Property (Baudhik Sampada) have their historical background from ancient time.

In context to the text of Indian culture and history, During the period of Harappa Civilisation also known as Indus valley Civilisation, it was found that the Pottery belong to that time having their special

identification marks over it. (As per India’s Ancient Past, R.S. Sharma)

The People of Harappan civilisation has developed the township planning which was much more advance than the current township planning which we have today without any adequate advance technology, this shows the power of intellect that people have during the time. To do the trade related activities people use punched marks coins and seals as a medium of exchange also shows the knowledge of exchange system.

As per Vedic Culture, the Vedic knowledge was transmitted from Guru (teacher) to Shishya (Students) through oral mean. The system repetitions of Vedas help students to get memorise over them. This process is mainly done to preserved and protect the Vedas (Calboi and Ragvana, 2015).

From the ancient text it is found that, Gurus like Aryabhata (In 475 BC) proved that the Sun is round in shape and it revolve around the sun on its axis. Boudyana (In 800 BC) developed Geometry and Trigonometry.

Rishi Kunad (in 600 BC) Developed the concept of Atom.

As same as the Vedas, the other ancient text such as Mahabharata, Ramayana were passed down from generation to generation shows transfer of Intellectual knowledge from one generation to another generation. As per ancient Indian text, it is always found that sharing of knowledge from one generation to another generation provide a great benefit. As per Bhagwat Gita, Lord Shri Krishna states to Arjuna that, “*What is yours today, belonged to someone else yesterday, and will belong to someone else the day after tomorrow. You are mistakenly enjoying the thought that this is yours. It is this false happiness that is the cause of your sorrows.*”

This statement Pronounced that “As human we bring nothing, we produce nothing, everything is belong to supreme i.e., almighty god and nothing can be destroyed.” This shows that, Intellectual Property never get destroyed and it get transfer from one generation to another generation. (Hawley, 2011: xvii) In the context of current world scenario, the earliest record of Intellectual property right was found in Sybaria, a Greek state around 500 BC, where a patent was granting for a person’s creation.(Intellectual Property Rights History: Everything to Know (upcounsel.com).

In1409, a special privilege was given in construction of model mills to store grain. In order to encourage creator for doing creative work in England, a special and exclusive right was granted for stained glass. Initially, it is found that from the past that Invention was kept secret so that it will get protected from misuse with the development of technology and need of humankind, the invention was exhibits.

In 1867, Germany received the first genuine recognition as an Industrial Nation of Paris Convention. During Vienna Convention, America refuse to participate in the exhibition to safeguard the intellectual property in 1873 (Intellectual Property Right in Pharmaceuticals Industry).

Due to Globalisation, there is an increased interconnection among corporation and national state government, which lead to creation of International recognised standard and policies. The world Trade Organisation’s Trade Related Aspects of Intellectual Property Right (TRIPS) established in 1904 during the Uruguay round of trade talks, make agreement on Intellectual Property Right on global scale. All WTO Members are liable to follow the rule prescribed by the WTO and Intellectual property right get applicable all over the world.

OBJECTIVE OF THE STUDY

The Purpose of the study aims to:

- To know about the Historical Background of Intellectual Property.
- To Know about the Intellectual Property and its legal right
- To know the Intellectual Property Right Development in India

- To Identify the main issue faced by Intellectual property right in Digital Environment.
- To assess the ways through which the problem can be resolved.

RESEARCH QUESTION

The research question of the study is as under:

- Q.1. What is the issue which is mainly faced by Intellectual Property Right in Digital Environment?
- Q.2. Is there is any Act prescribed by Indian Law through which Intellectual Property Right can be protected?
- Q.3. Is there is any way through which the Issue faced by Intellectual Property Right can be solved in context to Digital Environment?

RESEARCH METHODOLOGY

The Proposed research would base upon a well-defined methodology:

- For the conceptual study of the topic, a wide range of literature would be reviewed.
- To get an information about the topic, Only Secondary data is used.
- The information is obtained by Journals, Books, Web-linking, Dictionary form National as well International Source.
- Case study method would be used for the presented study as case study are commonly used in social, educational, business research.

MEANING OF INTELLECTUAL PROPERTY RIGHT

The word “Intellect” originates its root from the Latin word which means the power of knowing as distinguished from the power to feel. Man, with his knowledge capabilities has acquire knowledge and with the help of knowledge the person create ideas, thoughts which forms a special kind of property knowns as Intellectual Property.

Intellectual Property Right refers to that right which is mainly given to the creator of that property in such a manner that the creator enjoys an exclusive right over such property over a specific period of time.

Intellectual Property Right (IPR) refers to the legal ownership by a person or a business of an invention/discovery attached to particular product or

process which protect the owner against the unauthorised copying or imitation (Business Guide to Uruguay Round, WTO, 1995).

In India, IPR is a generic term which mainly covers patents, registered design, trademark, copyright, layout of integrated circuits, trade secret and geographical indicators (Dr. Chandrashekhara M & Unnikrishnan G, 2016).

Intellectual property Right mainly related with the intangible product and mainly protected by Intellectual laws. The legal right of Intellectual property is outlined in Article 27 of the Universal Declaration of Human Right which provide the right to benefits from protection of Moral and Material interest resulting from authorship of scientific, artistic and Literary production.

In a Conclusive way, Intellectual Property Right refers to the bundle of legal right granted to an individual with an objective to protect the creation of knowledge either of an Individual or group of individuals.

TYPES OF INTELLECTUAL PROPERTY RIGHT

Intellectual Property Right is mainly divided into two categories;

1. Industrial Property: It mainly include that Intellectual property Right which relates with the Industrial uses like Patent, trademarks, Industrial design, integrated circuits and geographical indicators.
2. Copyright: It mainly include literary work and artistic work. Right related to copyright include the right over performing artistic in their performance, producers and those of broadcast in the radio or television programmes.

On the basis of the above, there are major six type of intellectual property laws: Patent, Copyright, Trademark, Circuit outlet, Geographical Indicator and Industrial design.

PATENT

A Patent is an exclusive right which is granted to a person for an invention done by him. It is a process which motivate the innovators to do more creative work, offer a new technical solution to the problem. Invention may be defined as the idea for making the useful and new things. Under this, the owner of patent has exclusive right over the assets for a period of 20 years and he/she have a right to decide who may or not

may use the invention. Once the period of patent gets expired, the patent owner has no any right over that assets because it gets open for Public at large.

COPYRIGHT

Copyright is a legal term which is mainly granted for literary and artistic work. It mainly applies on a large range of artistic work and literary work which include the right over the performance, production and the broadcasting in the radio or television. It mainly includes right over novel, poem, plays, book, literature, music, drawings, photographs, films and other artistic works. Copyright doesn't cover idea and information themselves, only the form or manner in which they are expressed (Simon, 2001). The right on the copyright is provided over a period of fifty years after the death of the creator.

TRADEMARK

A trade mark refers to a design or a distinct sign that create a specific identity of the product. They may mainly consist of symbols, design, logo which mainly help the consumer to identify the product and services. On the basis of these design, the consumer decides the nature and quality of the products and services and meet their needs. Trade mark is mainly granted for a period of 10 years and after that it get renewed every year.

INDUSTRIAL DESIGN

It mainly consists of the configuration of shape, size and pattern regarding a product. It may be of two- or three-dimension pattern that is mainly used for a specified product. As like as the tradition handcraft items like hand wool article that can also be registered for the protection of intellectual property right (Kannan, 2010)

GEOGRAPHICAL INDICATOR

It is mainly applying to a product of a specific area. It is mainly a sign that are used on a specific goods that belong to a particular area like "Shahi Litchi" belong to Muzaffarpur, Bihar, "Basmati rice" for Punjab, Haryana, Himachal Pradesh, Uttarakhand, parts of Uttar Pradesh and Jammu & Kashmir.(Geographical Indication tag for Basmati rice of 7 states approved -

GKToday). It may be used by all producers or traders whose products originate from that place and which share typical characteristics. Well-known examples of GIs include Bordeaux (wine), Darjeeling (tea), Chanderi (sarees), Kullu shawls and Tuscany (olive oil) (Dushyant Sharma, 2014).

WHY NEED OF INTELLECTUAL PROPERTY RIGHT?

- To encourage the new researcher to invent something new.
- Provide the recognition to the creator.
- In this world, money is always the most important thing so to get the monetary benefits, need of intellectual property arises.
- To encourage the continuing innovation and creativities of owners.
- For legal characterisation of the invention.
- To create a insure protection from unusual usages and practices

INTELLECTUAL PROPERTY RIGHT DEVELOPMENT IN INDIA

- 1947: Patents & Designs Act, 1911.
- 1995: India joins WTO
- 1998: India joins Paris Convention/PCT
- 1999: Patent amendment provided EMR retrospectively from 1/1/95
- 2003: 2nd Amendment in Patents Act
- Term of Patent- 20 years after 18 months publication
- Patent Tribunal set up at Chennai
- 2005- Patents (Amendment) Act 2005
- 1999-2005: Plant Varieties and Farmers' Rights Act & Biodiversity Act, Designs, TM/Copyright Acts updated GI Registry set up at Chennai. IP Acts TRIPS Compliant

WAY TO SECURE INTELLECTUAL PROPERTY RIGHT IN INDIA

There are certain Act through which the Intellectual Property Right get protect in India under the law of Indian Constitutions:

- The Indian Contract Act, 1872.
- The Trade Mark Act, 1999 (Amended in 2002)

- The Patent Act, 1970. (Amended in 2005,2006)
- Copyright Act, 1975. (Amended in 1994,1999,2012)
- The Design Act, 2000. (Amended in 2008)

ISSUES FACED BY INTELLECTUAL PROPERTY IN DIGITAL ENVIRONMENT.

Deming Zhou (Chinese Author) while discussing Chinese copyright protection system has raised specific issue in IPR in context to Digital Context. The issue which are arise by him is also applicable in Indian context. With the advancement of technology, and in the world of Digitalisation, technology plays an important role in the transmission of knowledge and information with great speed as never seen before. With the help of Internet facilities and other software it is easily to transmit literacy, artistic work, design, scientific work, films and others from one user to another user of electronic media.

Information and Communication technology (ITC) with the help of new digital technology not only allow users to make copies, but also allow the intermediaries to reproduce the Intellectual Property without the consent or knowledge of the owner or producers (Dr. Chandrashekara M & Unnikrishnan G, 2016).

Lakshmana Moorthy, A and Karisiddappa, R. while discussing 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.

Panda, K. C, 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.

The Major issues which arises in context of Digital Environment is as follow:

- Is Digitalisation to be considered as similar to the reproduction, like the printing of original article by xerox machine.?
- Transmission of Digital document with the help of internet from one user to another user or public domain without the knowledge of creator similar to broadcasting?
- What can be considered as the fair use of internet environment?

- The work of library is also copied so, what are the concerned regarding the library work.

WAY TO PROTECT DIGITALLY INTECTUAL PROPERTY

- With the help of Cryptography: Cryptography is a study which is mainly used to secure communication technique. Under this technique the sender and the receiver are only allow to view the content and it is fully end to end encrypted. It is one of the oldest mechanisms which is used to ensure privacy and security over the internet network work. But the drawback of this technology is that it only protects the work during the transmission only.
- Watermarks technology: With the help of Digital watermark technology the literary and artistic work of a creator get secured. Under this technology, a sign or a pattern or name is injected digitally on the documents and through which a unique identity is to provided to the work of the creator. This technology mainly protects the work from copying by the use of printing or xerox. This technology gets also used in electronic media where the logos and sign on-screen used by the television channel.
- Linking: It is also another important tools through which the work of a creator gets protected. Under this by using the hyperlinking, the web page direct it to the work of the original creator.
- Digital Signature: It is also considered as Electronic signature. It is a digital code (generated and authenticated by public key encryption) which is attached to an electronically transmitted document to verify its contents and the sender's identity (Oxford Dictionary). Digital signature mainly includes the identity, signature, date, time and unique code regarding the user. With the help of this, special identity is added to the original work of the creator and it marks and binds a software product for transferring to specific customers.

CONCLUSION

A number of issues are associated with the usage of digital information i.e. issue of single articles versus full issues of e-journals, user-friendliness,

incompatible hardware and software, formatting, graphics, scholarly recognition and obsolescence. While it is important to protect the copyright of the publishers, it is equally important to protect interest of the user. In digital world it is difficult to draw a boundary line between what is permissible, to what extent and what is infringement. Small-scale violations which do not conflict with owner's rights may be accepted as a part of fair use. In the context of digital information, it is difficult to judge, comprehend fair use, access and control the infringement of copyright law. It is almost impossible for a copyright owner to know which person used his/her work. In this context it is necessary to modify the copyright law. The copyright protection should be encouraging the creativity and not for creating hurdles in the use of information.

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