



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

INTELLECTUAL PROPERTY RIGHTS: CHALLENGES AND ITS MISTREATMENT

Abstract

Any creation produced through an individual intellect will only be unique till the moment it does not have any imitation, the moment its imitation is detected it loses its uniqueness and raises the issue of infringement of Intellectual Property Rights. The article delves into the concept and discusses about what is Intellectual Property Right, what are its types, how is the protection to IP rights provided, mentioning the challenges and mistreatment of IPR. This article gives a brief narrative of the role of World Intellectual Property Organization and the TRIPS agreement.

Introduction

The world is a place of creations and all such creations originate from the mind of an individual. A person is an owner of things belonging to him like movable and immovable property similarly he is an owner of the creation produced by the mind and therefore every creation stands unique in its own way. And these creations are referred to as Intellectual Property. The issue arises over the protection, security and rights given to an individual over the creations produced. Hence comes the subject of Intellectual Property Rights. These are the rights that an individual can access for the creations of their mind providing an exclusive right over the use of the creations. Intellectual Property Rights aid in individual recognition for the work produced fostering a balance between creativity and innovation. The creations range from inventions like literacy and artistic works, designs and symbols, names and images used in commerce and trade. Intellectual Property shall also include the rights relating to literary, artistic and scientific works, inventions in all fields of human endeavor, scientific discoveries, protection against unfair competition, and all the other rights resulting from intellectual activity in the

industrial, scientific, literary or scientific fields. These areas are covered as per Article 2 of WIPO¹ (World Intellectual Property Organization), the governing organization of the Intellectual Property Laws.

Types Of Intellectual Property Rights

The IP rights cover the wide areas majorly divided into two classifications namely copyright and Industrial Property which includes protection of distinctive signs like trademark and Geographical Indication.

Copyright- It includes rights of authors of literary and artistic works ranging from paintings, sculptures, books, music, films, computer programs, databases etc.

Industrial property- It includes protection of distinctive signs like trademark and geographical indications, industrial designs, trade secrets, patents or inventions, biodiversity, and plant breeding rights. They are protected primarily to aid innovation, design and creation of technology.

Trademark- It's a sign used to distinguish goods and services of one enterprise from another striking a difference between two enterprises. For better protection and mistreatment of trademarks the Trade Marks Act, of 1999² was enacted.

Patents-It provides exclusive rights granted to the invention; it is different from the other IP rights as it provides the owner with the rights to decide how the invention can be used by others for their benefit.

Industrial designs-It protects the visual designs of the objects. It consists of shape, configurations, patterns, and two-dimensional and three-dimensional features such as colour, shape and texture.

Geographical Indications are signs that have a specific place of origin, it entails qualities and reputations that are specifically attributable to the place of origin such as Manipuri black rice. The Geographical Indications of Goods (Registrations and Protection) Act,

¹ <https://www.wipo.int/about-ip/en/>

² <https://ipindia.gov.in/writereaddata/Portal/ev/TM-ACT-1999.html>

1999³ provides for the registration and better protection of geographical indications relating to goods.

Trade secrets- they relate to the IP rights which contain confidential information. The unauthorized use leads to violation of trade secret protection.

Plant variety- this IP rights covers the protection for new varieties of plant breeder and to be granted protection the plant variety needs to be distinct and novel. This encourages the development of new breeders by the farmers. The Protection of Plant Varieties And Farmers' Rights Act, 2001⁴ provides for the system for the protection of plant varieties.

Challenges related to IPR

Intellectual Property Rights have certain challenges that hinder its implementation and narrow down its scope. These challenges are both conventional and non-conventional ranging from lack of awareness to Artificial Intelligence threats. Following are the few challenges listed that hinder growth of innovation and creativity:

Piracy and counterfeiting of the original creation- this generates trust issues amongst the competitors and the gradual downfall of the regime.

Threats to the stability of Copyright, Trademark, Patent and other areas of IP protection.

Infringement of Intellectual Property rights has become a global common because of the notion of not getting caught upon infringement of IP rights.

One of the greatest challenges to IPR is the maintenance of indigenous crafts and designs which diminishes the traditional culture.

The big fat cost of protection makes it a less accessible feature for individuals, moreover, delays in registration become another factor for lessening the accessibility of IP rights.

³ <https://ipindia.gov.in/act-1999.htm>

⁴ https://www.indiacode.nic.in/handle/123456789/1909?sam_handle=123456789/1362

One big challenge lies on the enforcement of Intellectual Property Rights via The Agreement on Trade-related Aspect of Intellectual Property Rights (TRIPS)⁵ Article 9-39 of the agreement covers the enforcement aspect.

Mistreatment of Intellectual Property

There has been a limited transparency of legal and judicial take on the abuse of IP. Initially, it was only limited to Patents later extending to copyrights. The concern is with respect to Trademark, Trade secrets, Geographical Indication and other types of IP rights. They remain outside the domain of the practical application of courts. Following are the different forms of IP mistreatment:

Copyright abuse- whenever there is unjustified use or violation of the copyright act it subscribes to the copyright abuse. It can be done by an individual or by a company. In Morton Salt Co. Vs. GS. Suppiger Co.⁶ The foundation of the copyright issue was laid down, though the reasoning given refers to patent misuse.

Patent misuse- wrongful use of a patent by its owner such as price fixing or illegal trying of products and services but situations like refusing to license a patent to someone in particular do not include its misuse.

One of the most harmful mistreatments of IP is its use for tax evasion by multinational corporations on a massive scale.

Infringement of trademarks in Cadila Health Care Ltd v. Cadila Pharmaceuticals Ltd. (2001) court held the case to be of deceptive similarity and laid down the factors to be considered for determining deceptive similarity in marks.

To address the misuse of IPR Article 40 of the TRIPS ⁷ agreement was inserted for combating misuse through required government intervention.

⁵ https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

⁶ <https://www.manupatrafast.in/pers/viewdocMain.aspx>

⁷ [https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#:~:text=Article%2040%20of%20the%20TRIP,of%20technology%20\(paragraph%201\)](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#:~:text=Article%2040%20of%20the%20TRIP,of%20technology%20(paragraph%201))

Conclusion

Our own intellectual and creations produced by the intellect are the most unique innovations which differ from person to person just like we all have unique fingerprints. These creations are the biggest asset of an individual and they require adequate safeguard and protection from its abuse. Implementation of these protective rights enhances economic growth and fosters innovations. Government role and cooperation of International legal bodies like WTO, WIPO and enforcement of TRIPS agreement plays a vital role. As WIPO said an efficient and equitable IP system can help all countries to realise the IP potential in economic development.