

## ROLE OF IPR ISSUES IN THE ERA OF INFORMATION AND COMMUNICATION TECHNOLOGY

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### INTRODUCTION

In the modern technology oriented e-society, libraries are also getting ICT oriented, giving due importance to digital resources to provide rapid, easy and seamless access to information. Digital technology has converted the library from paper based to electronic access point, where information is transmitted with a single click over interactive network. ICT and internet technology has changed the nature of libraries to establish a free flow of information, across the globe. Modern libraries are more powerful, dynamic and can reach their users without the restrictions of geographical boundaries, and open the opportunities for interoperability and information exchange. It allows users to access wide variety of information resources such as text, sound, images, video, according to their need under one umbrella. Internet, the ever expanding technology, is self sufficient to fulfill the varied needs of user community be it information, education, communication or research.

### INTELLECTUAL PROPERTY RIGHT (IPR)

Intellectual property is a term referring to a number of distinct types of creations of the mind for which a set of exclusive rights are recognized. Under the corresponding fields of law. (1) The term IP includes law protected intangible creation of human intellect.

IPR connotes the right to literacy, artistic and scientific work, and performances of performing artists, phonographs and broad-cast inventions in all fields of human endeavor;

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scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations and all other products resulting from intellectual activity in the industrial, scientific, literary and artistic fields. It is a generic term covering patents, registered design, trademark, copy right, layout of integrated circuits, trade secrets, geographical indicators and anti-competitive practices in contractual licenses. (2).

IPR represents the legal rights related to the form in which ideas are expressed. It protects use of information and ideas that are of commercial value.

IPR can be defined as “mix of ideas, inventions and creations on which society is willing to bestow the status of property”.

Today, the persons creating new ideas seek protection under IPR.

### **AREAS OF IPR**

There are three main areas of IPR Copyright, Trade-mark and patent.

### **COPYRIGHT**

Copyright is a type of property that is found on person’s creative skill and labour. It is designed to prevent unauthorized use by others.

It is a document granting exclusive right to an originator or an assignee to print, publish, perform, film or record literary, artistic or musical material.

Copyright is an exclusive privilege to the authors to reproduce, distribute, perform or display their creative works. Copyright is a legal concept that concern rights to copy, for a limited duration of time. It is an exclusive, legally secured right to publish and sell the literary, scientific, musical, dramatic and artistic works. A copyright is granted to the creator for his original work. It is a set of rights which include right to copy, distribute and adapt the work. Copyright owners have controlling right over copying, translating and any other exploitation of the work for a limited period of time. Copy right helps to shape the culture of modern society by preventing reproduction of works of original creator without prior permission of copyright owner.

Copyright protection helps in controlled and fair use of all creative works such as literary writings- fiction and nonfiction, scientific and technical texts, artistic works including drawings and paintings, architectural drawings, fine arts, photographs, musical works, audio-visual works,

sound recordings, broadcasts, motion pictures and also the computer programs preparatory design material for a computer program and databases. The copyright does not cover ideas, facts, titles, phrases, short titles, slogans, unrecorded extemporaneous speech, and works whose copyright have expired.

The first copyright statute of British (1709), says, 'An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchases of such copies, during the times therein mentioned.'

The copyright holders have the full right to control reproduction and/ or adaptation of work for a certain period of time life of author plus several decades.

Copy right owners can license or permanently transfer or assign their exclusive rights to others.

In essence, copyright is a legal advice designed to provide the opportunity for economic reward that enables authors to expand their time and talents to creating the works of literature, music and art, and enables publishers to invest their resources and efforts in making the authors' work available to the public. Copyright seeks to achieve this end by giving to authors, who may grant to publishers or other producers, broad rights, of controlling over the various modes of reproduction of their works, or, at least, the right to exact payment for their reproduction' (3).

Thus, copyright is an intellectual property right which gives limited monopoly to creators, publishers, and authors to copy, adapt, perform and broadcast their literary and artistic works. The copyright is an extremely relevant right to control the reproduction and publication or performance of the work with an objective to maximize the protection of intellectual property.

## TRADEMARK

Trademark, trade mark or trade-mark is a word or symbol used by manufacturers to identify goods.

Trademark is a legally registered symbol, word or words or established by use as representing a company or product. It is a distinctive sign or indicator used by an individual, business organization or other legal entity to identify that the products or services with which the trademark appears originate from a unique source, and to distinguish its products or services from those of other entities.(4)

Trademark is the means by which a business makes itself visible in the market place.

A trademark can be any distinctive name or logo designated by the following symbols:

TM It is an unregistered trademark, used to promote or brand goods.

SM It is an unregistered service mark, used to promote or brand services.

R It is a registered trademark or service mark. Owner of registered trademark may commence legal proceedings for trademark infringement to prevent unauthorized use of that trademark.

The main objective of trademark is to help the customer to get authentic and reliable products.

## **PATENT**

Patent is a kind of IPR granted by the Govt. to the inventor or applicant of the product or process. Patent is a legal monopoly granted for a limited period generally 20 years to the owner of an invention.

Patent is an exclusive right granted for an invention that provides, in general, a new way of doing something, or offer a new technical solution to a problem.

Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent.

Patent provides incentives to individuals by offering them recognition for which creativity and material reward for their marketable invention. These incentives encourage innovation, which assures that the quality of human life is continuously enhanced.

In order to get patentable, the invention must fulfill certain conditions –

- Must be an element of novelty.
- Should add new characteristics to already existing body of knowledge.
- Must be of practical use.
- The subject matter should be patentable under law.

## **COPYRIGHT DEFINED**

Under the Copyright Act, 1709 (enacted in the reign of Queen Anne), copyright meant "the sole right and liberty of printing; but under the subsequent Literary Copyright Act, 1842, it was extended to include copying by other means than the press and the right of multiplying copies by

printing, including the right to publish and sell. Obviously, copyright, before the enactment of the Imperial Copyright Act of 1911, meant the sole exclusive right of multiplying copies of a book by printing or otherwise and it extended throughout the British Dominions. It did not include the performing right in dramatic and musical works.

In 1911, the law of copyright was codified in England and was made applicable to India as well. Under the provision of this Act; the Indian Legislature was empowered to modify or alter its provisions, by the requisite legislation. By virtue of this power, the Governor-General of India enacted the Indian Copyright Act of 1914 (Act III of 1914) with certain modifications in the Act of 1911. After

India became independent; this Act was suitably revised and became the Copyright Act, 1957.

### **THE INDIAN COPYRIGHT ACT 1957**

#### **Meaning 14(1)**

For the purposes of this Act, "Copyright." means the exclusive right, by virtue of, and subject to the provisions of this Act,—

- (a) In case of a *literary, dramatic or musical work*, to do and authorize the doing of any one of the following: act, namely to reproduce the work in any material form
  - (i) To publish the work
  - (ii) To perform the work in public
  - (iii) To produce, reproduce, perform or publish any translation of the work
  - (iv) To make any cinematograph film or a record in respect of the work
  - (v) To communicate the work by radio-diffusion or to communicate to the public by a loud-speaker or any other similar instrument
  - (vi) To make any adaptation of the work
  - (vii) To do in relation to a translation or an adaptation of the work any of the acts specified in relation to the clauses (I) to (VI);
- (b) In the case of an *artistic work*, to do or authorize the doing, of any of the following acts, namely
  - (i) To reproduce the work in any material form

- (ii) To publish the work
  - (iii) To include the work in any cinematograph film
  - (iv) To make any adaptation of the work;
  - (v) To do in relation to an adaptation of the work acts of the acts specified in relation to the work in clauses (i) to (iii),
- (c) In the case of a *cinematograph film*, to do or authorize the doing, of any of the following acts, namely
- (i) To make a copy of the film;
  - (ii) To cause the film, in so far as it consists of visual images. .to be seen in public and, in so far as it consists of sounds to be heard in public;
  - (iii) To make any record embodying the recording in any part of the sound track associated with the film by utilizing such sound tricky
  - (iv) To communicate the film by radio-diffusion.
- (d) In, the case of a record to or authorize the doing of any of the following acts by utilizing the record namely
- (i) To make any other record embodying the same recording.
  - (ii) To cause the recording embodied in the record to be heard in public;
  - (iii) To communicate the recording embodies in the records by radio-diffusion,

#### Section 14(2)

Any reference in sub-section (1) to the doing of any act in relation to a work or a translation or an adaptation thereof shall include a reference to tie doing of that act in relation to a substantial part thereof.(5)

The Indian Copyright Act of 1957 brings into force a new body of copyright law to suit modern and up-to-date conditions prevailing in the world and particularly in India which is developing slowly but steadily. The Act has wrought radical changes in the law of copyright. It was enacted to protect literary, dramatic, musical and artistic works as the Act of 1914 did, but the language and phraseology derived from the Act of 1914 have not been blindly followed, but



mostly discarded, substituting entirely new provisions. Obviously, the Act contains revolutionary changes.

Besides protecting literary, dramatic, musical and artistic works, the novelties of the present Act are manifold, viz., affording protection to films, broadcasting and radio-diffusion, and provision for voluntary registration of copyrights—none of which was the subject of the former Indian copyright enactments.

The other distinguished features are that the Act has established a copyright office. It has also appointed the Registrar of Copyrights, and the Copyright Board with powers akin to the Performing Right Tribunal as established under the U.K. Act of 1956 with powers for settlement of certain disputes or objections concerning the public performance of copyright works with powers to grant compulsory licenses, including the power to grant translation rights of copyrights

Works under certain conditions and circumstances. It must, however, be noted that copyright does not extend to ideas, plots, dramatic situations and events. Rather it is limited only to the form of their expression.

India is a member of two International Conventions on copyright (1948) and the Universal Copyright (1952). Both these conventions were revised in Paris in 1971 whereby special concessions were given to the developing countries to enable them to issue compulsory licences for reproduction/translation of books of foreign origin for educational purposes.

The Indian Copyright Act, 1957 which came into force on January 21, 1958 was amended in August, 1983 with the specific purposes of (a) incorporating the provisions of the Paris Text of 1971 of the Berne Convention concerning the grant of compulsory licences for translations and reproduction of foreign works for required educational purposes; (b) providing adequate production to author's rights (Sec. 19 A); and (c) removing administrative drawbacks and other lacunae experienced in the administration of the copyright Act, 1957. The copyright (Amendment) Act, 1983 came into force w.e.f. 9 August, 1984.

The Copyright Act was further amended in 1984 in order to check the problem of wide-spread piracy in India. Provisions have been made in it to combat piracy by making punishment for various offences more stringent. Infringement of Copyright has been made a cognizable offence. The Act provides for enhanced punishment for the infringement of copyright, namely

imprisonment up to 3 years, with a minimum punishment of six months, and a fine up to Rs. 2 lakh, with a minimum of Rs. 50,000. The Act came into force w.e.f., 8<sup>th</sup> October, 1984.

## COPYRIGHT IN ICT ERA

In ICT era, copyright should be effective in preventing the commercial redistribution of information. Latest technologies are useful for the libraries to fulfill their objectives of immediate retrieval and instant dissemination of information. But, at the same time the new technologies have made the administration and protection of copyright quite difficult. The unauthorized copying and distribution of copyrighted works is badly affecting the owners.

Charles Clark rightly says, that the 'answer to the machine is the machine'. Thus the problems of technology should be handled by technology, protected by law. Licensing and fee collection should be automated. The copy right law will balance the intellectual property interest of authors and publishers, leading to fair use. The purpose of copying should be private and not the commercial. It should be in parts. As with digital technology document can be altered without detection,

The copyright should be effective in preventing the commercial redistribution of information. Copying should be done with an object to promote the progress of knowledge.

Institutional repositories are using (1) **Deposit License** which is an agreement between the creator or the copyright holder and the institution. It gives a right to repository for distributing and preserving the work and (2) **Distribution license** which is a agreement between the author or creator or copyright holder and the end user. It governs the uses of the work.

IPR and copyright issues are manifested in terms of license in digital world.

A License is an agreement between the publisher and the user wherein the publisher transfers the non exclusive and non transferable right to use materials to the users or licensee.

License agreements are used by the publishers as legal method for controlling the use of their e-resources.

E-resources are licensed and should be downloaded for personal, educational and research purpose only. Downloading and printing of entire issue of the journal should be prohibited. It is



again unfair to print several copies of an article. The copyright laws protect published material in digital format also, so it should not be copied except in accordance with fair un-harmful and non commercial use. If originals are not available in market, complete works may be copied keeping in mind the word fair use. With the same motive, artistic works may be copied. The new technology has increased the importance of intellectual property on web. Copyright is key issue in intellectual property rights in digital era.

Computer database are also eligible for copyright protection as it is a great deal of effort, skill and labour leading to originality. Database is protected as collections and compilations of literary and artistic works.

The Indian Copyright Act, amended in 1994, provides protection for database as 'literary works' which includes Computer Program, tables and compilation and computer databases (The Copyright Act, 1994). It is protection of the skill, labour and judgment of the author, irrespective of the form of the product.

The information technology act, 2000 defines 'Data' under section 2(0) as a representation of information, knowledge, facts, concepts or instructions, which are being prepared or have been prepared in a formalized manner and in intended to be processed, is being processed or has been processed in a computer, computer system or computer network and may be in any form (including) computer print outs, magnetic or optical storage media, punched cards.

Under the TRIPS Agreement, Computer program now qualify for copyright protection just as any other literary work as well as for other forms of IP Protection. Most commonly, they need affordable access to off the shelf business software packages, such as word processing, spreadsheets, email, and internet browsing products.

## CONCLUSION

Intellectual property rights are serving as life saving medicines providing right to literary, artistic and scientific work. Copyright laws have dual functions to protect the claims of authorship expressed through different Medias and also to prevent the illegal copying of copyrighted products. The copyright law balances the intellectual property to bring a fair use of knowledge, by limited legal reproduction to make the society well informative.

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