

INTELLECTUAL PROPERTY RIGHTS IN HIGHER EDUCATION

Sr.Rosy Leema P.W

Mr.Gigi Mathai

Fr.Roy Abraham

Librarian, Mount Carmel College of Teacher Education for Women, Kottayam

Librarian, B P C College, Piravom

Librarian, Mount Tabor Training College Pathanapuram

Introduction

The word intellect originates from the root “intellectus” in Latin which means the power of knowing as distinguished from the power to feel. Man has own capacity to acquire knowledge and increase his knowledge bank by gathering knowledge throughout his life time. An intellectual product is nothing but the brain child of his original idea, creative thought, which forms a special kind of property known as intellectual property. The intellectual property is ownership of something intangible. A right is legally protected interest and object of the right is the thing in which the owner has interest. The object in intellectual property right is immaterial

Intellectual property (IP)

Intellectual property (IP) is a term referring to a number of distinct types of creations of the mind, both artistic and commercial, for which a set of exclusive rights are recognized—and the corresponding fields of law (Raysman et al, 2011).

Features of Intellectual Property:

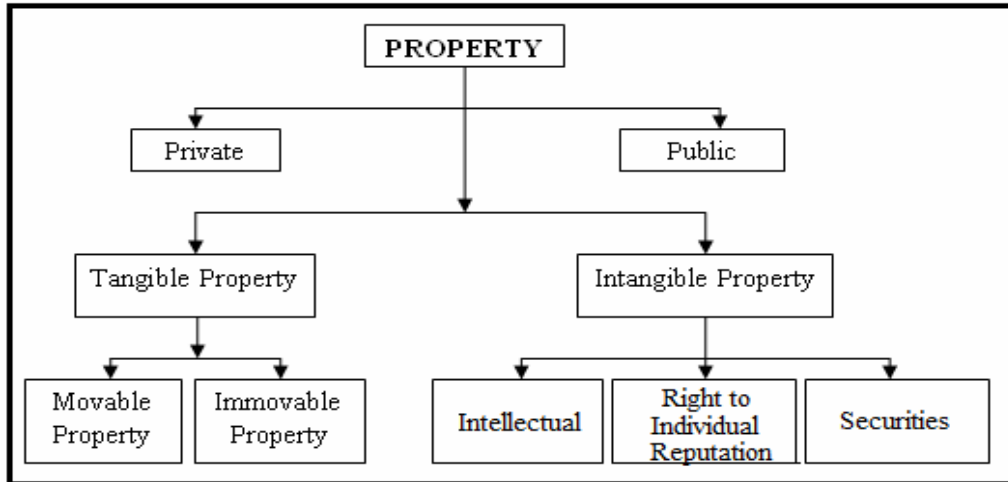
- It is a form of intangible property.
- It's existence distinct from the physical articles or goods which contain the rights.
- In some cases the rights are capable of existence and enforcement with no tangible form.
- The various rights might subsist in the same things.

For example, a document might be subject to patent, design rights and trademarks. A pictorial trademark might also be subject to copyright.

Need of IPR

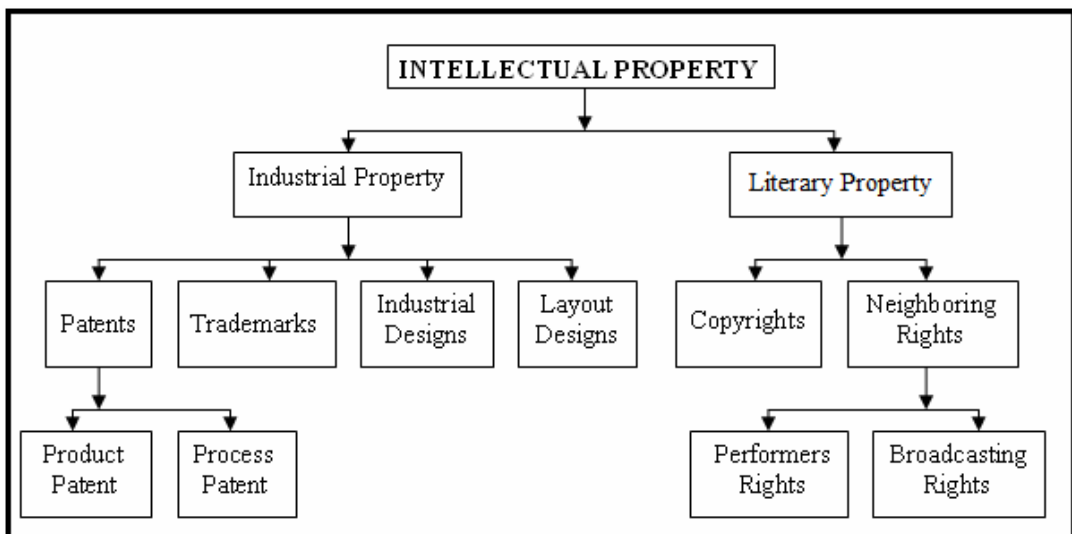
1. To provide incentive to the individual for new creation.
2. Providing the recognition to creators and inventors.
3. Ensuring material reward for intellectual property.
4. Ensuring the availability of genuine and original products.

Taxonomy of Property



According to the World Intellectual Property Organization (WIPO) intellectual property is divided into two categories, namely industrial property and literary property. Industrial property includes patents of inventions, trademarks, industrial designs and geographical indications, whilst literary property includes copyright for literary and artistic works such as novels, poems, plays and computer programs, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs and neighboring rights for performance and broadcasting. The artistic creation is covered by copyright laws, which protect creative works, such as books, movies, music, paintings, photographs, and software, and give the copyright holder exclusive right to control reproduction or adaptation of such works for a certain period of time. All Intellectual Properties are given protection to the creators, except the trademark which can be renewed in unlimited time, for a defined period of time.

Intellectual Property Rights



Taxonomy of Intellectual Property Rights

Although many of the legal principles governing intellectual property have evolved over centuries, it was not until the 19th century that the term intellectual property began to be used, and not until the late 20th century that it became commonplace in the majority of the world (Lemley, 2005). The British Statute of Anne 1710, granted sole right and liberty of printing books to authors and their assigns for a period of 14 years (Cornish, 1996)¹⁴, and the Statute of Monopolies 1623 are now seen as the origins of copyright and patent law respectively (Brad and Bently, 1999).

History of Intellectual Property Rights in India

Modern usage of the term Intellectual Property began with the establishment of the World Intellectual Property Organization (WIPO) in 1967. IPR laws in India had a very docile and stagnant existence ever since the related laws were framed. The inadequacies prevalent in the acts were exploited commercially by opportunists all over the world. Cases like the Basmati, Turmeric, Tamarind sounded warning bells and alerted the IPR community in India to the reality that along with the continuation of our heritage of resources, products and devices. A statutory protection and preservation is necessary to prevent their transfer into the hands of other countries.

Types of Intellectual Property Rights

According to WTO¹⁶ there are 7 types of Intellectual Property Rights and the same are given below.

1. Copyright – Expression of an Idea
2. Patent- Idea – Invention which is New, Useful & Non obvious
3. Trademark – Signs like Logo, Symbol, and Brand etc; used to identify goods or services
4. Designs – Pattern or Structure
5. Geographical Indication – Goods known for its geographic origin
6. Lay out Designs for Semiconductor Integrated circuits
7. Undisclosed information (Trade secret) – Innovation or Know How

Copyright Act

Copyright is a bundle of exclusive rights granted by statute to the author of the works to exploit or authorize the exploitation of the copyright work, based on international norms like Berne Convention, Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement and WIPO Copyright Treaty (WCT). The copyright works in which rights subsist are 'original' Literary, dramatic, musical and artistic works, and cinematography films and sounds recording. Copyright Act was enacted in 1957 and amended in the year 1999.

Patents Act

A patent is a legal monopoly granted for a limited time to the owner of an invention. It empowers the owner of an invention to prevent others from manufacturing, using, importing or selling the patented invention. Patent Act was enacted in the year 1970 and recently amended in 2005.

Trademarks Act

Trademark means any mark used to represent or identify a product or its maker. In a market economy trademarks are most important because it is the biggest assets of a company that really sells the products. This page gives information as to Indian Law on trademark and has full texts of Legislation's, Cases and International Conventions. A Trademark can be generally defined as a sign or mark that individualizes and distinguishes the goods of a given enterprise from the goods of other enterprises. The Trademark Act was enacted in the year 1999.

Designs Act

Design means any features of shape, configuration, pattern, ornament or composition of lines or colours, industrially applied to an article or to a part that gives aesthetic value to such article. Designs Act was enacted in India in the year 2000 which deals with protection of industrial design in India. Design can be described as the totality of the ornamental or aesthetic aspects of a useful article. Manufactures of diverse products such as shoes, clothing, consumer appliances, automobiles, and furniture and computer software invest billions of dollars to develop industrial designs to make their products more attractive to consumers.

Geographical Indications Act

Geographical indication is an indication that identifies a good as originating in a territory where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Semiconductor Integrated Layout Design Act

A semiconductor chip is a device that gives effect to program instructions through a circuit fixed on a semiconductor material in a layered form. Popular examples of such chips are ROMs, RAMS etc. that form the basis of computer software. This Act was enacted in the year 2000.

Trade Secret Act

Trade secret is a formula pattern, physical device, idea, process, compilation of information or other information that provides the owner of the information with a competitive advantage in the marketplace, and is treated in a way that can reasonably be expected to prevent the public or competitors from learning about it.

The law relating to Trade Secrets/Confidential Information/ Commercial Secrecy is not well developed in India. There is no legislation regulating this area of law. India follows common law approach of protection based on the case laws. However, there is no decision of the Honorable Supreme Court laying down the law. The decisions of the High Court involving the issues of Trade Secret were decided based on the Copyright/Design protection laws also.

IPR and Digital Rights:

In the digital age the issue of privacy is an important subject where unauthorized data sharing, data integration, unethical data utilization and unauthorized public disclosure are the major areas of concern. The major issues are to be considered as follows:

1. Is digitization to be considered as similar to reproduction, for example using Xerox machine?
2. Is digitization a creative activity such as translation from one language to another?
3. Can transmission of digitized documents through Internet be considered as commercial distribution or public communication similar to broadcasting?
4. Can we consider database as a special collected work that should be protected by the copyright law?
5. What can be considered as fair use in the Internet environment?
6. What are the concerns of the library community?
7. In the digital context if access restricted by the copyright owner, how could the public exercise fair use with those work?

The above issues are specific to the library. The libraries have allowed their users to read a document, to browse through the whole collection; to search through the library catalogue; to supply Xerox copy for research and education purpose; to procure photocopies of articles from other libraries or clearing centers; to widely distribute the re-produced copies of documents for public awareness and to provide inter library loan service. Whether all these activities will continue in the digital age? If digitization is considered as reproduction work, it is quite clear that in digitization the initial work is merely changed into the digital form and the process of changing is accomplished by a machine, without any creativity. If it is considered as a translation from one language to another, the digitization is also a change from natural human language in to machine language. However in digitization, there is no creativity involved and it could be considered as a similar activity to reprography. The copyright protects only creative works. Simply transformation in to the digital form of an original document cannot be considered as creative work. The transmission of information on Internet can be considered similar to broad casting; hence copyright law cannot be applied

Ways for Protection of Digital / Intellectual Property

Digital Rights Management (DRM) technologies (also known as Electronic Rights Management Systems) ensure copyright through identifying and protecting the content, controlling access of the work, protecting the integrity of the work and ensuring payment for the access. DRM technologies prevent illegal users in accessing the content. Access is protected through user ID and password, licensing agreements. Another way to protect digital content is through Technical Protection Measures (TPM). These technologies allow publishing companies in securing and protecting content such as music, text and video from unauthorized use. If an author wishes to collect fee for use of his or her work, then DRM technology can be used. The TPM and DRM technologies are increasingly employed to sell and distribute content over the Internet.

1. Cryptography

Cryptography is the oldest mechanism employed to ensure security and privacy of information over networks. This involves scrambling (or encryption) of the information to render it unreadable or not understandable language, which only the legitimate user can unscramble (or decrypt). However cryptography protects the work during transmission or distribution only. After the work is decrypted, it does not provide any protection.

2. Digital Watermark Technology:

A digital watermark is a digital signal or pattern inserted into a digital document. It is similar to the electronic on-screen logo used by TV channels. A unique identifier is used to identify the work. The message might contain information regarding ownership, sender, recipient etc or information about copyright permission. The system consists of a watermark generator, embedder and a watermark detector decoder. The legal user can remove these watermarks with a predetermined algorithm. The watermarking technology is extensively used in protecting multimedia works.

3. Digital Signature Technology:

Digital signature includes identity of the sender and/or receiver date, time, any unique code etc. This information can be added to digital products. This digitally marks and binds a software product for transferring to a specified customer. Digitally signed fingerprints guarantee document authenticity and prevent illegal copying.

4. Electronic Marking:

In this technique, the system automatically generates a unique mark that is tagged to each of the document copies. This technique is used to protect copyright as well as in electronic publishing where documents are printed, copied or faxed.

5. Security Features of Operating System:

For protection of files, data etc the operating system of computer such as Windows 2000 Professional, Windows 2000 Server, MS-SQL Server has some unique special security and integrity features.

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 libraries and the user. In digital environment 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 librarians in the digital environment have some responsibility to collect information and help the readers by giving it even if it is an electronic form. The copyright protection should be encouraging the creativity and not for creating hurdles in the use of information. The Librarians should work as a catalyst for the free flow of information between the owners of copyright and the users of the information.

References

- Bentley, Nicholas (2004). Distributed Intellectual Property Rights. Available at <http://www.commonrights.com> (Accessed on 05-01-13)
- In Technology management in libraries: Papers presented in honour of Dr E Rama Reddy, Librarian, Hyderabad University. (2006). edited by A.L Moorthy, *et al.* New Delhi, Allied.
- Malwad, N. M and Anjanappa, M. "IPR in digital environment: issues of concern to library community". Available at <http://ir.inflibnet.ac.in/handle/1944/130> (Accessed on 01-02-13)
- Paul, S. S. (2003). (A) Basic understanding of intellectual property. Kolkata: Diamond.
- Wherry, Timothy Lee. (2009). Intellectual property: everything the digital – age librarian needs to know. New Delhi: Indiana Publishing House.