

INTELLECTUAL PROPERTY RIGHTS (IPR) IN DIGITAL ENVIRONMENT: AN OVERVIEW IN INDIAN DIGITAL ENVIRONMENT

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Abstract

In the present scenario, IPR awareness is the key to technological innovations and in the emerging knowledge-based economy; the importance of IPR is likely to go further. The awareness among the creators of information and knowledge about IPR has become essential in the digital environment because in the digital environment it is becoming difficult to prove rights violation whenever they occur. In the present paper we are discussing of Intellectual Property Rights (IPR) in the Digital environment. We are focussing an overview of IPR in Indian digital environment.

Keywords: Intellectual Property Rights (IPR), Digital Environment, Information and Communication Technology.

INTRODUCTION

“IPR is a general term covering patents, copyright, trademark, industrial designs, geographical indications, protection of layout design of integrated circuits and protection of undisclosed information (trade secrets). IPRs refer to the legal ownership by a person or business of an invention/discovery attached to particular product or processes which protects the owner against unauthorized copying or imitation.”(Business Guide to Uruguay Round, WTO, 1995) [1]

What is Intellectual Property?

Intellectual property refers to the product of a person's imagination and creativity and the rights of these people to control the use of their products. Intellectual property can be bought, sold, exchanged and licensed to other people or organisations by the intellectual property holder. Intellectual property is insubstantial and is not linked to the tangible artistic, dramatic or musical work which may have resulted from it. For example: a book is actual property and can change hands without affecting the intellectual property (in this case copyright) of the artist. Intellectual property is protected by intellectual property law. There are six major types of intellectual property law: copyright, patents, designs, trademarks, circuit layouts and new plant varieties; however, confidential information, the duty of fidelity, trade secrets, confidentiality and moral rights are also included.

HISTORICAL BACKGROUND

Through the years history has documented remarkable men and women which have contributed much of their facts to improving society. Intellectual Property Rights plays a very important role in not just protection the individual to protect the use of their facts from misuse but it was meant to promote originality and creativity. Intellectual Property Rights has evolved with the appearance of new technologies its possibility has grown and several factors including globalization of economies as well as changes in the way businesses operate and politicization of IPR issues have been factors influencing its direction. If one were to assess the Philippine setting it would appear that our progress is slow compared to our other neighbours. Our earliest record of laws on intellectual property rights dated back in 1947. We joined the World Organization (WIPO) in 1980 only after 10 years after it was established and our Intellectual Property code has only taken into effect during 1987. Furthermore the country is viewed as one of the nations that are weak in enforcing laws governing Intellectual Property. Resulting in Millions lost in revenue for corporations and the government in taxes. Consistent enforcement is critical because of the reality that there are people who do not respect the Intellectual property rights of others. The reason may vary from greed, lack of awareness, perceived necessity, criminal intent or even an innocent mistake. When illegal copies take market share or even kill a potential market the enforcement mechanisms become vital to not only protect the players and the entities but also the general public as well. Most of the industries that are affected include computer software, music, films, luxury goods and fashion, perfumes, books, watches, medicine among others. According to World Intellectual Property Organization (WIPO) the factors that influence the increase include a significant gap in the consumer purchasing power, inability to meet the market demand and emergence of new technologies making it easier to produce volumes of illegal copies at faster rate. Enforcement measures are in the form of actions involving administrative, criminal, civil and technological. But in order to succeed a concerted effort to enhance public awareness and a strong political will can make a difference in minimizing if not eradicating the problem.

Why Intellectual Property Rights:

The Intellectual Property rights were basically documented and accepted all over the world due to some very significant reasons. Some of reasons for accepting these rights are:

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.

NEED OF IPR

1. Monetary profit is the most important, in most cases, the only motive behind man's relentless toil, inventiveness and ingenuity.
2. With the advent of technology one of issue is legal characterization of the new invention.
3. It is created to protect the rights of individual to enjoy their creations and invention.
4. Created to insure protection against unfair trade practices.
5. To assure the world a flow of useful, informative and intellectual works.
6. To encourage the continuing innovativeness and creativity of owners of IPR.

LITERATURE REVIEW:

Bomanwar considered intellectual property rights in the context of new information society, noted the thrust area of economic activity shifted to knowledge based industries and intellectual goods, and described impact of piracy of intellectual property act viz. viopiracy, geopiracy and IT products of new information society. He noted that developed countries demand protection against piracy while developing countries feel that such protection will prevent entry of new comers and felt that in the free flow of information IPR was hurdle to it [2].

Panda; K C and others examined copyright law in the electronic age and noted proliferation of electronic information creating interest in the minds of authors, publishers, users and intermediates regarding the copyright law. 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 [3].

Lakshmana Moorthy, A and Karisiddappa, C.R. observed 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. They discussed the Indian Copyright law 1957 and its amendments, mentioned major worldwide projects to protect copy right of electronic information and concluded that the library professional should negotiate few electro copying

privileges for legitimate non-commercial usage of electronic information similar to the kind of fair use as in the case of printed materials [4].

Murthy, T.A.V. and Jain, S.P. they found the present copyright law which was framed after the invention of the printing press as by and large being forced on the existing electronic environment and felt that there is need to modify the IPR which confers exclusive right to the author to exploit the work created by him/her for monetary gains in compensation of labour, skill and capital investment in generating information. [6]

DIGITAL LIBRARIES:

Digital Libraries (DL) are now emerging as a crucial component of global information infrastructure, adopting the latest information and communication technology. Digital Libraries are networked collections of digital texts, documents, images, sounds, data, software, and many more that are the core of today's Internet and tomorrow's universally accessible digital repositories of all human knowledge.

According to the Digital Library Federation (DLF, USA - <http://www.dlf.org>), "Digital libraries are organizations that provide the resources, including the specialized staff, to select, structure, offer intellectual access to, interpret, distribute, preserve the integrity of, and ensure the persistence over time of collections of digital works so that they are readily and economically available for use by a defined community or set of communities".

In India currently the concept 'Digital Library' is being practiced by and large loosely or even confused by many information systems. It is therefore imperative that the concept is properly understood so that there is no ambiguity while we progress with the work of designing or developing a digital library which is fully justified in the technical sense of the word. It is important that embarking on a digital library project is something which will take away substantial amount of time, energy, manpower and of course the hard earned money being pumped into it – be it for system development or towards development and maintenance of the collection, in a meaningful way. There is consensus all over that there exists a very large quantum of digital information, scholarly as well as trade, which are scattered and distributed throughout the Net and also being stored in numerous other databases and repositories spread across the world. Also there is an unprecedented technology support and availability of infrastructure for digital libraries. [7]

IPR IN INDIAN DIGITAL ENVIRONMENT:

Deming Zhou while discussing Chinese copyright protection system has raised specific issues of IPR in digital context. These are also relevant in the Indian context. The advent of digital technology has greatly accelerated the dissemination and distribution of information with great speed and accuracy never seen before. It is much easier to disseminate literary, artistic and scientific work to a very large community of Internet users and users of electronic

media. At the same time poses some problems and issues for consideration. The major issues are,

- Is digitization to be considered as similar to reproduction, for example using Xerox machine?
- Is digitization a deductive activity such as translation from one language to another?
- Can transmission of digitized documents through Internet be considered as commercial distribution or public communication similar to broadcasting?
- Is the principle of exhaustion of the distribution right still effective in the digital age?
- Can we consider a database as a special collected work that should be protected by the copyright law or it can be considered as a special work requiring specific legislation for its protection?
- What can be considered as “Faire use” in the Internet environment?
- What are the concerns of the library community?
- In the digital context if access could be technologically restricted by the copyright owner, how could the public exercise fair use with regard to those work?
- Whether libraries should be prevented from employing digital technology to preserve work by making three copies-an archival copy, a master copy and a use copy?
- Whether Internet Service Providers (including libraries and educational institutions) should be liable for copyright infringement merely because they facilitated the transmission of digital data (Zeroes and Ones) that translated into another party’s copyrighted work.

The issues mentioned above are specific to the library community. The libraries as a service 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 specific individual research and education purpose; to procure photocopies of articles from other libraries or clearing centres; to widely distribute the re-produced copies of documents requiring 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, it is 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. At the same time if it is considered as a translation from one language to another, the digitization is also a change from natural language of humans in to binary language of machine. In digitization however, there is no creativity involved and it could be considered as an activity similar to reprography. The copyright protects creative works. Simply transformation in to the digital form of an original document cannot be considered as creative. [8]

IPR DEVELOPMENTS 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

HOW TO SECURE IPR

The legislative framework for securing IPR is as follows:

1. Contract Act, 1872
2. The Trade Marks Act, & (Amendment) 1999, 2002
4. Copyright Act, 1957 & (Amendment) 1994, 1999,2012
5. The Patents Act, 1970 & (Amendment) 2005,2006
5. The Designs Act, 2000, 2008
6. Plant Breeder Right, 2001
7. Geographical Indications of Goods (Registration and Protection) Act, 1999, 2002

CONCLUSION:

According to this paper we found the conclusion that, before the advent of Information and Communication Technology (ICT), IPR and copyright laws were seen as a dull and almost irrelevant area of law relating to information provision. But with the use of ICT the IPR now have become central point and one of the most dynamic and fast moving areas of law. In the present scenario, IPR awareness is the key to technological innovations and in the emerging knowledge-based economy; the importance of IPR is likely to go further. The awareness among the creators of information and knowledge about IPR has become essential in the digital environment because in the digital environment it is becoming difficult to prove rights violation whenever they occur. In the context of digital information, because it is distributed to a larger community, it is difficult to judge, "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. It is also impossible for copyright owner to give permission to use and receive remuneration. In this context it is necessary to modify the copyright law. The librarians in the digital environment have the same responsibility to collect information and help the readers by giving it even if the form is electronic information. The role of librarian is to be protected and enhanced. The copyright protection should be encouraging the use of information for creativity and not for creating hurdles in the use of information. The Librarians should continue to work as catalyst for the free flow of information between the owners of copyright and the users of the information.

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