

INTELLECTUAL PROPERTY RIGHTS(IPR): AN OVERVIEW & IMPLICATIONS IN LIBRARY

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ABSTRACT

Intellectual Property Rights (**IPR**) have been defined as ideas, inventions and creative expression of human being. It is playing an important role in our society. It covers all the human beings and organization who innovate and create something from his/her own mind. IPR protect those creative works from using others without his/her permission. We discuss all about the IPR in the perspective of India. Copyrights and its implication in libraries are the prime aspect of this study and its responsibilities over the copyright works.

KEYWORDS; Intellectual Property Rights (IPR), Copyrights, Library, Society, Agreement, The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), World Intellectual Property Organization (WIPO) The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)

INTRODUCTION:

Intellectual Property Right (IPR) have been providing rights to individual or organisations over the creative work, symbols, inventions, literary and artistic works. They give owner the right to protect others from using their property. Hence the Industrial Revolution brought various changes regarding Intellectual property and in the business regulations as well. It had created various rules and laws of its own. These rights are outlined in Article 27 of the Universal Declaration of Human Rights. Its importance was first recognised in the Paris Convention for the protection of Industrial Property (1883) and the Berne Convention for the protection of Literary and Artistic works (1886). The Paris and Berne Conventions provide important basis for the international dimensions of current international conventions. These International treaties provide international protection to Intellectual Property Rights which provides framework for regulation of Intellectual Property Laws. Even the provisions of national legislations are taken from the International Convention and Treaties. The Paris Convention (1883) and the Berne Convention (1886) were two important multinational pillars which provide serious changes towards operations of Intellectual Property. Intellectual Property rights basically relates to laws of property which a person creates through an application of his mind. It can create value if other people are interested in acquiring the product or innovations.

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. It can be termed as "The exclusive right given by law for a certain term of years to an author, composer etc. to print, publish and sell copies of his original work".

OBJECTIVES OF THE STUDY-

The basic objectives of this paper are-

1. To study Intellectual Property Rights from the library point of view
2. To identify the implication of copyright over libraries

3. To analyze the copyright laws of India

METHODOLOGY-

To complete this paper, mainly the secondary data have been used. The data were collected from various sources like-Article of the Journal& Magazine, Conference Proceeding and online resources were also used to complete this study.

HISTORICAL DEVELOPMENT OF IPR:

It's not a modern concept but it's been present since the development of civilization. From civilization we have always given recognition to people who are talented, those who are intellectually capable of creating innovations and they have always got recognition and got respect in the society. Accordingly, the financial and commercial benefits coming out of those inventions. In the year of 1421, the world's first modern patent was awarded to an Italian inventor. Former Lord Justice of Appeal, Robin Jacob said that the history of Intellectual Property can be traced back to as early as 600BCE (6th century BCE), from Sybaris in Ancient Greece, granted a yearlong exclusivity for baker to make their culinary invention like related to cooking and kitchen invention etc. During 1623, the status of Monopoly¹ emboldened select group of individuals to control their industry. In that period publishers owned most of the rights associated with authored word and author had no control over their work. It was the year 1970 when "The status of Anne"² empowered authors with renewable 14 years protection for their original works. During the early 1800s, the idea of global protection of intellectual property right floated among the legislative bodies. The source of the agreement of "Trade Related Aspects on Intellectual Property Right" (TRIPS) started since 1800s period. After that Paris convention brought clarity and cooperation among the international jurisdictions in the year of 1883. It was the first convention which started internationally protecting Intellectual Property Right. After three years back, in the year 1886 Berne Convention extended the same protection to written expressions (Literary and Artistic works). After that trade mark were also granted international protection through the Madrid protocol.³ In the year 1966, WIPO (World Intellectual Property Organisation) came under the United State. Now it supervising all international agreements and Trade Related Aspects on Intellectual Property Right (TRIPS) has been controlled by WTO (World Trade Organization) come under United Nation.

NEEDS OF INTELLECTUAL PROPERTY RIGHTS-

Intellectual Property Rights is most essential for the Intellectual work done by human being due to some specific reasons. Some specific reasons are-

- Give recognition to creator.
- Reward the creator so that they as enjoy monopoly and economic benefits over his work.
- Motivate owner to be innovative & perform better,
- Maintain harmony among people of different kinds of skill.
- Registration of different kinds of Copyright.
- Safeguard the interest of person as well as public or society.

KIND OF INTELLECTUAL PROPERTY RIGHTS (IPR)-

Every human being living in the world is directly and indirectly involved in IPR. There is a human being behind the creation of every object like a architect who planning and design a

¹ Means the single seller having full control on the entire market supply.

² An act of the Parliament of Great Britain passed in 1970, it was the 1st statute to provide for copyrights regulated by the government.

³ An international treaty designed to simplify the International trademark registration process.

building; innovation of new technology by scientist; a organization design a trade mark; the things that are created by a man like poem,drama,novel, article etc..The list is endless. So all these intellectual property come under the IPR.These items of intellectual properties can be classified into two prime categories-

- Copyright& related rights item
- Industrial property

The copyrights & related rights item cover all literary work like-writing novel, story book, poetry book, article, drama, and artistic work like- painting, photography, dance, music, artistic performance etc.; where Industrial properties includes trademark, patent, geographical indication and industrial designs.

Copyrights is also divided into two types on Ethical basis-

- Economic Right
- Moral Rights

Economic Rights mainly protect the economic value of copyright work, which it allow right owner to derive financial reward from the use of their works by others. And Moral Right arise automatically under the Copyright Act which keep the personal relationship between a creator and their work even if the creator no longer owns the works. It has expressed in section 57 of the Copyright Act, 1957.Moral rights exist in relation to artistic, literary, dramatic and musical works and films but not sound recordings. An example, a musician who has sold his copyright to a record label still has moral rights in his musical compositions.

COPYRIGHTS LAW IN INTERNATIONAL SCENARIO-

Copyrights law can define as the frame of law in a nation that governs the protection of the ownership and usage for creative works including creation of art, book writing, musical works, dramatic works, audio-visual works, photographic, broadcast,architectural works and other types of media. Copyrights is a creation of law in each country and there is no single 'International Copyrights' for whole world, in which each & every country is following its own copyrights laws.The Copyright Act of each country is compliant with most international conventions &treaties. Nearly 180 countries have ratified a treaty-"The Berne Convention", administered by WIPO (world intellectual property organization)-that set of standards for the protection of the right of creators of copyrighted works around the world. Most countries offer a protection to foreign works under certain condition that have been greatly simplified by international copyright treaties &conventions. There are mainly two principles followed by international copyright convention-

1. Berne Convention for the protection of literary and artistic works and
2. Universal Copyright Convention(UCC)

Normally, the works of a writer who is national that is a member of these treaties or works first published in a member country or published within thirty days of first publication in a Berne Convention country may claim protection under the treaties.

Most of the country's usage following six major multilateral treaties & conventions if any problem occurs related to copyrights treaty for adopting or changing their copyright laws-

- a) Berne Convention is an international agreement governing copyright first introduced in Berne, Switzerland in 1886,deal with the protection of literary works and right to their authors. It provides author to control how their works use, by whom and terms &conditions. It has 179 contracting parties.

- b) Universal Copyrights Convention (UCC) was adopted in 1952, standing as one of the principal international conventions for protecting copyright around the world. It was started as a project by UNESCO as an alternative to the Berne convention. Because of there were several people around the world who were disagreeing with the conditions of Berne Convention. So, the adoption of the UCC was seen as an alternative copyright protection treaty that countries could not enter into it if they happened to disagree with the Berne Convention.
- c) Rome Convention came into exist in 1961 for the protection of Performers, Producers of Phonograms and broadcasting organizations. 'Performers' means actors, singer, musician, dancer and other person who act, sing, declaim and otherwise perform literally and artistic works.
- d) WIPO Copyright Treaty is the full form of World Intellectual Property Organization was established by a convention of 14 July 1967, which entered into force in 1970. The objectives of WIPO was to promote intellectual property protection throughout the world through co-operation among states and, where appropriate, in collaboration with any other international organization. WIPO also aims to ensure administrative corporation among the intellectual property union created by the Paris and Berne conventions and Sub-Treaties.
- e) WIPO Performances and Phonograms Treaty (WPPT) is an international treaty signed by the member states of the world intellectual property organization which adopted in 1996 that supplement the Berne Convention for the protection of literary and artistic works (Berne Convention) Like the WIPO Copyright Treaty (WCT), WPPT was created to address changes in digital technology and communications, particularly the distribution of digitally protected works over the internet. The treaty has been signed by the 94 states.
- f) The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization. This agreement on Trade- Related aspects of IPR, including trade in counterfeit goods. It was introduced because of that intellectual property had become important in international trade relation. TRIPS Agreement cover up various Intellectual Property Rights like copyright rights producers, performer, sound recording, geographical indication (GI)⁴, industrial design, patent, trade mark, trade dress etc.

COPYRIGHTS OF THE OWNER IN INDIA:

An author of an original work is usually the owner of the copyright, even he or she has certain right to relinquish the right. The term of a copy right means the creator of a copyrightable work enjoys copyright throughout his/her life and also up to a certain period beyond their life. The term of copyright varies from country to country. In India copy right of literary, dramatic, musical and artistic works subsists until sixty years from the beginning of the calendar year next following the year in which the author dies. In case of other works copyright subsists until sixty years from the beginning of the calendar year next following the year in which the work is published. Even works published by the government, public undertakings, international organizations are covered by the Copyright Act, 1957.

The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent.

⁴It identifies agricultural, natural or manufactured product originating from a definite geographical territory.

The Copyright Act ,1994 has made the provision of the copy right society registered under Sub-section(3) of Section 33 which read as follows : “The Central Government may ,having regard to the interests of the authors and other owners of right under this Act, the interest and Convenience of the public and in particular of the group of persons who are most likely to seek licence in respect of the relevant rights and the ability and professional competence of the applicants ,register such association of persons as a copyright society subject to such conditions as may be prescribed: Provided that the Central Govt. Shall not ordinarily register more than one copyright society to do business in respect of the same class of work.”

INDIA AND INTELLECTUAL PROPERTY RIGHTS:

In India, Department of Industrial policy and promotion (DIPP), Ministry of Commerce, Government of India, oversees the development and changes in the field of Intellectual Property Rights. It works as a nodal department and guide the Intellectual Property Rights in India. The statue laws of Intellectual Property are undergoing changes day by day to bring them to harmonize with the laws in developed countries. This has become important after India signing the World Trade Organisation (WTO) and The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). India is a member of World Trade Organisation (WTO) and committed to Trade Related Aspects of Intellectual Property and World Intellectual Property Organisation, which is responsible for protection of Intellectual Property rights. The conventions were concluded in the year 1967 and entered into force in 1970. It became a specialised agency of the United Nations. World Intellectual Property Organisation (WIPO)deals with various aspects of Intellectual Property Rights (IPR).

The National Intellectual Property Right Policy (2016) was adopted to guide the Intellectual properties. The main objectives of Intellectual property right are generating Intellectual property right and protection it. It also provides legal and strong Intellectual property rights and laws which protects general public interest as well as the creators. It basically provides rights for intangible valuable products and services of human intellect.

Intellectual Property Rights helps in proper management and administration of Intellectual property right. It also helps in modernizing the administration of Industrial property rights. It helps in strengthening human resources, research, trainings etc. in Intellectual property rights.

TYPES OF INTELLECTUAL PROPERTY:

Intellectual property is generally can be divided into two broad categories- ‘Industrial Property’ and ‘Copyright’.

Industrial Property include patents, trademark, Industrial design, geographical Indication, Trade secrets etc.

PATENT: It is an intellect property that gives its owner the legal rights to exclude others from making, using or selling inventions. The right given to Patentee are purely statutory right conferred by Patents Act 1970. It is given only to the inventions which is new and useful.

TRADEMARK: The Paris convention had given provisions for protection of Trademarks for every country. It provides protection of state emblems, marks etc., and TheTRIPSagreement provides extra provisions. According to TRIPS agreement signs in particular words including personal names, numerals, combination of colours and any combination of such signs, shall be eligible for registration as trademark.

COPYRIGHTS: Copyright is an intellectual property that provides owner right to protect its property. It protects “tangible” forms of creations and original works- eg- art, architectural designs, music etc.

TRADE SECRETS: Trade secret is an Intellectual property under Intellectual Property Rights. These are trade secrets or confidential information’s of business which may be sold or licensed. It comprises of formulas, practices, processes, designs etc. the owner takes reasonable steps to keep secret.

COPY RIGHTS AND LIBRARIES-

Intellectual Property Rights and its proper implementation is very essential. Because of difference types of intellectual properties, we use in our daily life. In a Library lots of photocopies are made, therefore the library staff must know thoroughly about the infringement of copyright. Infringement of copyright is an offence in the eye of the law. The offences may be of varied nature, first it dwells on offence of infringement of copyright or other rights covered by this Act, followed by enhanced penalty on second and subsequent convictions and thirdly knowing use of infringing copy of computer programme which is an offence.

The library plays a very important role to harmonizing rights of creator and user by disseminate various kinds of information at right time in the right way to the rights user where copyright laws and policies of authors can implement. Nowadays Copy rights has become a burning topic for library professionals and those who have scholarly communication. In the context of library, any document which is added as a part of digital collections and access is provides for wider use over the internet has to have copyright clear. And has to ensured that it doesn’t violate any copyright of the author or owner of the rights. So further the specific issues, libraries can manage the copyrights subsequently like-

- **Fair use-**if any resources to be added that have provision like it is being used for non-commercial purpose such as research, private, individual study and academic purpose etc. without permission from the owners. It is helpful to the libraries for the use of research and academic purpose.
- **Documents in Public domain-** the documents available in the public domains as a policy for wider use, one can safely add this to digital collection because that is already available in public domain. So that can be added to their digital library collection followed by some provisions.
- **Written agreements and permissions-**In this matter one has to seek the written agreement with certain clear permissions that terms and conditions from the authors or any publishers for adding their documents to digital library collection.
- **Licensed resources-**there are certain documents where copyright holder will clearly state that what can be done and what can’t. Depending on their licences, the library can consider to add those kinds of documents into their digital library.

Role of libraries in detecting plagiarism- Plagiarism means the representation of another person’s thoughts & ideas, language or expressions as one’s own original work. We know that campaign against the plagiarism is another role of a librarian. Librarian should concentrate on students or research scholar as to what constitutes plagiarism and how to avoid it. There is many software using in the library for checking plagiarism. Before the final submission of any research paper, dissertations and thesis of students, plagiarism is compulsorily checked and it should be bellow ten percent (10%).

COPY RIGHTS AND DIGITAL LIBRARIES-Nowadays information is being increasingly produced, accessed and captured in digital form. Information seeker can easily access and copy that information created in digital format for their needs & purposes without loss of quality. The digital library is a store house of information to provide all types of resource by digital form, which user can easily access and use, but there should give some terms& conditions as “Permission” to access resources. It is the key problem in creating digital library that acquiring permission because it’s not same with physical libraries. For creating a digital library librarian have to pay attention on copyright issues. He should have to take some steps-

1) Fair use

- Librarian should not give the user print of complete book but he can provide one chapter as per their need.
- A digital library can be protected by specific password or IP address to use library collection. It will restrict the unauthorised user and save from misuse of library.
- Watermarking may be used as a solution of copyright.
- Using of Digital Object Identifier (DOI)⁵
- One can’t download an entire electronic journal or an issue to his PC.It needs permission from copyright owners.
- One can access an E-Journal paid subscription by library. He can print out a hard copy of the article for research and personal study allowed by the license agreement.
- There is a software like self-images by which image can protect easily

2) Non-Fair use

- To scan the book into digital form, it need permission, if granted then library can use it for their repository.
- All of an E-Publication on a network or Website open to the public.
- All the E-Resources transferred to a rewritable CD-ROM disk, so he can keep and red at home.

IPR REGISTRATION CAN BE CANCELLED -

If it is -

- Fraud
- Misrepresentation
- Wrongful Means,
- Against the rights of some other party / opponent
- Registration prohibited under some law.
- Registration is against public policies or morals

CONCLUSION:

Copyright is an intellectual property that provides owner right to protect its property. It protects “tangible” forms of creations and original works- e.g- art, architectural designs, music etc.The Act is a powerful reference source which is useful both for the library staff and for the readers. It encourages new creations as it provides legal protections for innovations. It promotes economic growth as it creates new jobs and industries, which adds to the economic growth of our country. Intellectual property right is a right which also safeguard the right of creators and producers for their intellectual goods and services. It also helps in transfer of technology, which became possible with the help of foreign direct investment, licensing and joint venture.

⁵ DOI is a string of numbers, letters and symbols used to uniquely identify any documents and provide it with a web address(URL). It helps readers easily locate a document from the citation.

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