

INTELLECTUAL PROPERTY RIGHTS: DIGITAL ERA

Dr. Kumkum Rajawat

Asst. Librarian

Sardar Patel Medical College, Bikaner

Email: kumkum.rajawat@gmail.com

Abstract

This Paper explains the concept of Intellectual property rights (IPR) and related to Digital ERA. The author throws light on the global problem of copyright contravention and discusses the measure to control these at International level as well as in India. The author also discusses the scenario of digitization of Information and the Digital measures to overcome copyright and ensure IPR.

Keywords: copyright contravention, IPR, Digital ERA

1.0 Introduction

Intellectual property rights (IPR) are necessary in the formation and managing of digital libraries because of the preparation with the rights and control of the material. IPR is a type of law and has its own vocabulary of legal terms and concepts.

Intellectual Property laws and enforcement vary extensively from jurisdiction to jurisdiction. Intellectual property laws present a bundle of special rights in relation to the exacting form or manner in which ideas or information are articulated on manifested, and not in relation to the ideas or concepts themselves.

1.1 Intellectual Property

Intellectual property refers to creations of the intelligence inventions, fictitious and original works and signs, name and images used in commerce. Intellectual property is divorced into Two Categories:

1.2 Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications.

1.3 Copyright covers imaginary works (such as novels, Poems and plays) films, music, artistic works and architectural design Rights linked to copyright contain those of performing artists in their performances, producers of phonograms in their recordings and broadcasters in their radio and television programs.

1.4 Intellectual Property Rights

Intellectual property is the general term used to explain the things that are created by people's intellectual or creative activity. This covers a broad range of things- everything from novels and poetry to computer software or the design of a new product or industrial process.

It includes all the material that want to make an easily reached in a digital library or institutional repositories such as e-books, journal articles, personal papers, scientific data, photographs and illustrations. These things are treated by the law like a part of property can be owned and transferred from one person or company to another. By protecting Intellectual and creative products as a form of property. The law enables their creators to take benefit of them and make money from them.

Intellectual property rights or IPR is the term used to make clear the legal rights which the law provides to manage and protects intellectual property. They provide the owner of the IPR the exclusive right to do sure things with the intellectual property and prevent anyone else from doing those things without their permission.

Intellectual property rights are similar to any other property right. They allow creators or owners of Patents, trademarks or copyrighted works to advantage from their own work or investment in a creation. The significance of intellectual property was initial predictable in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic works (1886) mutually treaties are administered by the World Intellectual These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to advantage from the protection of ethical and material interests resulting from authorship of scientific, literary or artistic productions. Property Organization (WIPO).

2.0 Featers of Intellectual Property Rights

The means by rights is formed and accepted also varies depending on the type of intellectual property concerned. There is a require for some official registration before the rights are approved. This is the case with patents and registered designs and trademarks. There is no registration before the rights are in force as soon as qualifying work is created. The details of IPR between countries. This is because every country has its own set of intellectual property laws.

2.1 Nature of Intellectual Property Rights

Intellectual property rights are jus in re propria over irrelevant things. IPRs may be looked upon as proprietary rights over things intangible. This however, does not mean that these rights cannot cover tangible things. Since an IPR is a right over an idea, it goes with the idea and thus covers a thing covered by this idea. That is to say if an idea which is the subject matter of an IPR finds application in a material or tangible thing, this latter is also covered by that IPR. The point to note is that if an IPR is said to be vested in a physical object it is so vested in a physical object it is so vested only because of the ides, which it covers as its subject matter, is there in that material thing. The intellectual property as a concept is new and hence it has enriched our way of looking at things. Its presence, therefore, needs to be looked at from different perspective so as to examine the influences of IPR on the idea of ownership, morality, public, order, cultural property, environment and traditional knowledge.

2.2 Types of Intellectual Property Rights

The most important types of Intellectual property rights are

- | | |
|-----------------|----------------------|
| ➤ Copyright | Example : Book |
| ➤ Patents | Example : New Drug |
| ➤ Design rights | |
| ➤ Trademarks | Example : Symbol |
| ➤ Trade Secrets | Example : New Method |

Patents designs and trademarks are occasionally grouped mutually and referred to as Industrial Property as they usually relate

3.0 Copyright

Copyright is the type of IPR which protects original fictitious, dramatic, musical and artistic works. Copyright is a complete series of restricted rights. This includes the right to make copies of a work which covers making digital as well as physical copies of something it lasts for the author's life plus an additional period, usually between 50-70 years.

Copyright one of the structure of intellectual property rights offers exclusive right for protecting the authorship of original & Creative work like dramatic, musical and literary in nature. Exclusive rights mean that the holder has the right to conclude who will be credited with the work, who will perform the work and who will be benefited financially from it. Copyright doesn't extend any protection to the facts, methods of operation, system, ideas except to the ways in which they can be expressed. Copyrighted item does not mean that other person cannot use or write on subject matter of particular item. For e.g. if a person has written on a new article and new term and he has

copyrighted his article then it means that other person cannot use that article but he is free to write his thoughts on the similar article and term. Example: Books, Movies, Paintings, Photographs, Software

3.1 Concept of Copyright

It offends the originality of the things in as much as now there exist two things of similar form and content, namely, the thing being imitated and the thing which comes out of such imitation, and hence it induces an element of duplicity to the thing which was regarded as original.

It lowers the reputation of the owner of the erstwhile original thing, which he so far enjoyed in the society which acknowledged him as an owner of an original thing, now turned duplicate through imitation.

It may also result in loss of money to the owner of the original thing, if thing is such as may be put to those uses which are financially and commercially very productive.

3.2 Copyright Includes:

The reproduction right (the right to make copies):

The right to create adaptations, or plagiaristic works

The right to share out copies of the work to the public

The right to achieve the work publicly

The right to show the work publicly

3.3 Indian Copyright ACT-1957

The Indian Copyright Act – 1957 states in so many words what is meant by a copyright.

According to the Act, Means the exclusive right to do or authorize the doing of a previously mentioned uses, the sale or given on commercial rental also, in case of computer programmes or cinematograph films.

- Copyright for Protection of Copyright
- Criteria for Protection of Copyright
- It should be original
- It should be literary, dramatic, musical work or a cinematograph film or sound recording.
- It should be a work of an Section 41 or, one covered under Section 40 if it is a foreign work
- In case of design, it should not be registered under Design Act, 1911
- It should be a work which is covered by the Act as regards protection of copyright.

The Indian Copyright Act, 1957 came into effect in independent India from January 1958. It has its origin from Indian Copyright Act 1847 enacted during East India Company. The Copyright Act, 1957 rented extensively from the new Copyright Act of the United Kingdom of 1956. Further, this Act has been amended five times since then, i.e., in 1983, 1984, 1992, 1994 and 1999, with the amendment of 1994 being the most considerable. The 1999 amendments have the Indian Copyright Act fully compatible with Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. Also, India is signatory to both the International Copyright Conventions i.e. the Berne Convention of 1886, and Universal Copyright Convention of 1952. The MHRD, Government of India has constituted a "Copyright Enforcement Advisory Council" to look after copyright issues and its proper implementation.

3.4 Management of Copyright Issues in Digital Library

Copyright issues concerned in developing digital collection as part of their digital library. some paper which is added as part of digital library and access is provided for wider use on the Internet has to have copyright cleared or one has to ensure that it does not abuse copyrights of the author or the owner of the rights. subsequent are some the ways how one could supervise copyright related issues:

3.4.1 Fair Use: If resources to be added have proviso stating that it is being used for non-commercial activities such as research, private or individual study, academic purpose, writing reviews and criticisms etc.

The fair dealing/use approach followed in India under "the Copyright Act 1957" is clearly limited towards the purposes of:

- private or personal use, including research,
- criticism or review, and
- Reporting of current events and current affairs, including the reporting of a lecture delivered in public.

3.4.2 Documents in Public Domain

Some of the often used documents which are considered for addition in the digital library and if they happen to be available in the public domain as a policy for wider use, one can safely add these to the collection.

3.4.3 Written Agreements & Permissions

Documents considered for digitisation but copyright rests with authors or publisher, one will have sought the written agreement with certain clear terms and condition. Then only such documents could be added to the collection.

3.4.4 Licensed Resources

There are certain documents where copyright holders have clearly stated what can be done with such documents and what cannot be done. Depending on the stated policy or licenses, one can consider adding documents to digital library.

3.4.5 Creative Commons

Presently, number of documents are generated in electronic only format. These are generated by individuals, institutions, associations, funding agencies, government departments and others. Considering either as policy mandate or other factors which favour authors and users, these documents are made available under any one of the six Creative Commons licenses. Depending on these licenses, one may decide to include documents in the digital collection. Mostly, all of these licenses encourage wider usage with due acknowledgement or credits to authors.

3.4.6 Patents

Patents keep original inventions with Industrial application. They are one of the strongest forms of IPR. They give the owner the exclusive right to explain an invention for 20 years and to stop others using it or applying the patented process even if they have formed the same creation or process independently. Patents have to be functional for and are granted by the state usually through a Patent Office. Example: Inventions

3.4.7 Design Rights

The Design of a product is important to its commercial success and so it is has a type of IPR called design right. This protects the shape, configuration, pattern or ornament of an article to the extent that they are new and have individual character. There is usually a registration process after which the owner of the design has the exclusive right to make, import or sell items which use or embody the design. The maximum term of protection is between 10 and 25 years.

3.4.8 Trademarks

Trade Marks are signs or symbols placed on a product or services and used to distinguish it from similar products or services which are supplied by others. They are protected by law usually once they have been registered. The owner of a trademark has the exclusive right to use if and also to prevent other using it or similar mark which might confuse customers or the public. The period of protection varies but a trademark can usually be renewed indefinitely on payment of corresponding fees. Trade Marks can be very valuable as they easily identify trusted products and can act as guarantees of quality. Example : Spare Parts, Furniture , Textiles, Brand Names, Product Logos

3.4.9 Trade Secrets

Trade secrets are also protected by the law. These can be technical information such as the mechanics of an invention but can also include anything protected by IPR in a collection. IPR management is an essential part of developing digital collections. Example Confidential Information, Formula, Program, Technique, Method, Process

This process consists of **two stages**

Determining ownership

Allocating the necessary rights to the different parties to enable them to do what is required.

4.0 Global Concern for Copyright Treaties

The World Intellectual Property Organization (WIPO), a particular agency of under the sunshade of United Nations (UN), is responsible for administering 23 international treaties that cover up a variety of aspects of intellectual property protection. Currently, WIPO have currently 188 signatory member states.

The main convention and treaties related to copyright protection are:

4.1 Berne Convention

The Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention, is an international agreement governing copyright, which was first accepted in Berne, Switzerland, in 1886. As of May 2016, there are 171 states that are parties to the Berne Convention. This includes 170 UN member states plus the Holy See. It assists the nationals of its member states with international protection for such works as novels, poems and plays, songs and musicals, paintings, sculptures and architectural works.

4.2 Universal Copyright Convention

The Universal Copyright Convention (UCC), adopted in Geneva, Switzerland, in 1952, was developed by United Nations Educational, Scientific and Cultural Organization (UNESCO) as an option to the Berne Convention for those states which disagreed with aspects of the Berne Convention, but still wished to contribute in some form of mutual copyright protection. These states included developing countries as well as the United States and most of Latin America. Under this, each member state undertakes to provide for the sufficient, successful protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works including writings, musical, dramatic and cinematographic works, paintings, engravings and sculpture.

4.3 Rome Convention

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations was conventional by members of BIRPI, the predecessor to the modern World Intellectual Property Organization, on 26 October 1961. The agreement extended copyright protection for the first time from the author of a work to the creators and owners of particular, physical manifestations of intellectual property, such as audiocassettes or DVDs.

4.4 Geneva Phonograms Convention

The Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms, also known as the Geneva Phonograms Convention, is a 1971 international agreement relating to copyright protection for sound recordings.

5.1 TRIPS Agreement

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered in 1995 by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO Members. The TRIPS agreement introduced intellectual property law into the international trading system for the first time and remains the most complete international agreement on intellectual property to date. specially, TRIPS requires WTO members to provide copyright rights, covering content producers including performers, producers of sound recordings and broadcasting organizations; geographical indications, including appellations of origin; industrial designs; integrated

circuit layout-designs; patents; new plant varieties; trademarks; trade dress; and undisclosed or confidential information. A TRIP also specifies enforcement procedures, remedies, and dispute resolution procedures.

5.2 WIPO Copyright Treaty

In 1996, a recent international copyright treaty known as the "WIPO Copyright Treaty" was negotiated under the sponsorship of the World Intellectual Property Organization (WIPO) to address issues raised by new technologies. Under this treaty, the signatory countries have to offer legal protection to technologies, technological protection measures (TPMs), which can be used by rights holders' to control access to, and use of, digital copyrighted works.

5.3 Digital Millennium Copyright Act (DMCA)

DMCA Act is a United States copyright law that was passed on October 12, 1998. It criminalizes production and dissemination of technology, policy, or services intended to avoid measures (normally recognized as digital rights management or DRM) that manage access to copyrighted works. It also criminalizes the act of circumventing an access control, whether or not there is real contravention of copyright itself. The DMCA amended Title 17 of the United States Code to extend the reach of copyright, while limiting the liability of the providers of online services for copyright violation by their users.

6.0 Intellectual Property Rights: Digital Era

Computers software companies have successfully curtailed piracy through court orders. Computers database have been protected. The courts under the doctrine of breach of confidentiality accorded an extensive protection of trade secrets. Right to privacy which is not protected even in some developed countries has been recognized in India. IP, Protected through law, like any other form of property can be a matter of trade, that is, it can be owned, bequeathed, sold or bought. The major features that distinguish it from other forms are their intangibility and non-exhaustion by consumption. IP is the foundation of knowledge-based economy. It pervades all sectors of economy and is increasingly becoming important for ensuring competitiveness of the enterprises.

6.1 Digital Copying Technology

A single digital copy can be used for worldwide distribution in spite of copyright laws. Any one with access to Internet and scanner can now copy a work and make it available to millions of users for download and print. Publishers are increasingly using the Internet as a global way to offer their publications to the users community. Publishers usually will agree to an author's request to retain rights to post content to a website or institutional repository. Faculty should be encouraged to retain these rights before and after publishing their work so they can contribute their content to online repositories.

A License is an agreement between the publisher and the user wherein the publisher transfer the non-exclusive and non transferable right to use materials to the user or licensee. License agreements are used by the publishers as legal method for controlling the use of their e-resources.

The Licenses for electronic resources impose two types of restrictions on its usage, namely

Who can use these resources?

How the resources can be used.

6.1.1 E-Resource Licensing

Systematic or programmatic downloading, retention and printing are prohibited.

Multiple copies of digital documents and their circulations is prohibited. Copyright laws protect published material in any format so that it cannot be copied except in accordance with fair use. Viewing, downloading, copying, Printing and saving a copy of search results, and save individual articles. Using e-resources for scholarly, educational or scientific research, teaching, Private study and clinical purposes. Sending a copy of an article to another authorized user. Posting the URL to the Publisher's version of the article on a class website. Publisher links will allow. Use of robots or intelligent agents to do systematic, bulk or automatic downloading is not permitted. Use

of robots or intelligent agents to do systematic, bulk or automatic downloading is not permitted; systematic downloading or printing of entire journal issues or large portions of other e-resources are not permitted. Transmitting, disseminating or otherwise making online content available to unauthorized users. Posting the publisher's version of PDF of an article to an open class website.

7.0 Copy Protection Solutions

7.1 Water- Marking

Watermarking embeds a digital signal in text, image, author or video files, which may contain information and proof of rights to a product's owner or publisher.

Challenges to copyrightable work in Digital Environment in India

In India the laws to consider about the use of Electronic Data Interchange (EDI) ecommerce, copyright, IPR

Provisions in IT Act, 2000 still need to change the Evidence Act to recognise digital signatures. Changes required in Indian Penal Code, 1860 Evidence Act, 1872, Indian Patents Act to recognise emerging technologies

Section 62 of the Indian Copyright Act, 1957 provides for jurisdiction to any court having a direct jurisdiction over the matter

7.2 Digital Signature

Digital Signature is an electronic slightly than an on paper autograph that can be used to confirm the individuality of the dispatcher of a message or a document. It can also be used to make sure that the unique satisfied of the message or text has not been transformed. The IT Act provides for extra-territorial jurisdiction to cyber crime cases. Section 74 provides that where any offence involves a computer or computer resource in India, it can be taken note of under Indian Laws.

8.0 Summary

Intellectual Property rights are the area of law which controls and process the products of intellectual and creative activity. There are different types of IPR which covers different types of intellectual property. Copyright is the most important for digital libraries and institutional repositories. The IPR of the contents of digital libraries has to be managed so that the necessary rights and permissions are given to the different parties involved them to do what they need to. This can be done through a series of licenses and agreements.

9.0 Reference:

1. Muir, A. (2003). Copyright and Licensing Issues for Digital Preservation and Possible Solutions. In *Proceedings of the 7th ICC/IFIP International Conference on Electronic Publishing* (pp. 89–94).
2. Tomaszewski, Z. (2000). Copyright and Its Effect on Digital Libraries, 1–8. Retrieved from <http://zach.tomaszewski.name/uh/copyrightpaper.html>
3. https://en.wikipedia.org/wiki/WIPO_Copyright_Treaty
4. https://en.wikipedia.org/wiki/Berne_Convention
5. https://en.wikipedia.org/wiki/Universal_Copyright_Convention
6. https://en.wikipedia.org/wiki/Digital_Millennium_Copyright_Act