

Intellectual Property Rights and The Digital World

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I. ABSTRACT

The digital age brings both promise and peril to the consumers and creators. At one side, it is easier for the people to have access to the information and also the cost of production or publication will be less. But the problem for the producers is “how many copies will be sold in the market?”. Many people fear that the answer will actually be one. Intellectual property right provides some sort of assurance or security to the producers, that their product is safe. It will promote innovative ideas and creativity. The authors who work so long, spend their time, skill and effort will get a recognition. This article clearly explains the scope of IPR, the changing trends and the legislations governing IPR in the digital world.

II. INTELLECTUAL PROPERTY RIGHT:

Intellectual property refers to the product of one's own imagination and creativity. The IPR protects the owner against unauthorized usage and imitation. It provides a differentiation between the author and the user.

The main aim of this right is:

- To provide incentive to the individual for his or her new creation.
- To provide recognition.
- To pave way for innovations and creations.

The intangible nature of the intellectual property created many questions in the minds of the people. The right can be better understood via the following explanation. The Intellectual Product has two components – intellectual component and physical component. A person writes or composes story solely by his own will be the intellectual component. Then he goes for publication and is printed in a book which will be the physical component. Now the person can apply for copyright. "Whether the copyright continue to exist if the physical component was destroyed?" is a question to be answered. The answer is of course yes. Because only the physical component was destroyed, but the intellectual component still exists. So the author can rewrite the book. It will not amount to re-creation. In most cases the violation or infringement of the right amounts to federal crime. The consequence of which include

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- Criminal fine
- Loss or suspension of license
- Imprisonment for seven years
- Civil charges

According to World Intellectual Property Organized (WIPO), the reason for increase in replications and imitations are consumer's inability to meet the market demand and the advent of new technology. So that the consumers will opt mostly for cheaper or inexpensive way of getting access to the resources.

III. TYPES OF IPR

According to WIPO, there are 7 categories of IPR. The most well known types are copyrights, patents, trademarks and trade secrets.

Copyright: Copyright laws grant authors, artists and other creators for their artistic and literary works. They will be given exclusive right to reproduce the product. This right lasts for the life of the author plus 70 years.

Patent: Patent law provides ownership for unique processes, methods, procedures and inventions. Discoveries are not always patentable. If suppose a person finds a new island, he cannot exercise his patent right over that island. Because it is merely a discovery (already in existence) and not an invention. The patent will be usually for a period of 20 years.

Trademark: A trademark consist of recognizable design, slogan, shape of the product, sign or expression which identifies product of a particular source. The main purpose of this law is to protect consumers from confusion about particular goods or services.

Trade secrets: This law protect trade secrets that a company or an organization creates or complies in order to have a competitive advantage over the other. Example: technical spec of unreleased product, formulae, etc.

IV. IPR AND THE DIGITAL WORLD

As our country is developing, it has become highly commercialized. The information in digital form radically reduces the difficulty and the cost of reproduction. The fact to be noted is that the cost of publication is less not only for the producers but also for the consumers. Because it will be easier for people to produce exact replicas. The consumers enjoy with the pool of information at the cost of unrecognized author's time, knowledge and skills. Intellectual Property Law is the one which changes constantly with the changing time. It is still facing lot of challenges. Because of digitalization, it will be difficult for the producers or creators to identify the person who violated his right at first. Though every source was regulated by providing user ID, password and

license, no one knows what will be the situation after one person gets access to use it. He may even reproduce the contents.

“Whether printing and sharing of documents from the source amounts to reproduction or re-creation, for example: xerox machine?” is a matter to be discussed.

People can come across this issue in the libraries where the librarian will pay and get access to a particular source. As the libraries are open to the public, mere printing or taking xerox does not amount to reproduction as long as the consumer does not publish or spread it using his own name. Anyone exercising any of these rights without the permission from the copyright holder is an infringer and subject to liability for damages.

The doctrine of first sale which was codified at 17 U.S.C. § 109 limits the copyright owner's right of distribution. It is based on the logic that when a copyright owner sells a book, he is transferring only the property rights and not the copyright to the buyer. But the buyer is not allowed to reproduce the book. And also it is quite difficult for the user to negotiate with the owner everytime he resell the copy of the book.

V. LEGISLATION

One of the first International Treaties relating to intellectual property was the International Convention for the protection of Industrial Property, also known as Paris Convention. The treaty written in 1883, provided protection for patents, industrial models and designs, trademarks and trade names.

The IPR in India is governed by

- The Trademark Act, 1999
- The Patents Act, 1970 (amended in 2005)
- The Copyright Act, 1957
- The Designs Act, 2000
- The Information Technology Act, 2000

VI. CONCLUSION

After the advent of digital age, the IPR has become more dynamic and fast moving areas of law. Before it, this topic was quite dull. Due to the growth of technology, the gap between publication and private distribution is debasing. A higher level of protection for valuable content requires special purpose hardware. The Intellectual Property Law will surely survive but it takes time and effort. Providing additional statutory rights and

limitations may be necessary to adapt this law to the digital age. Policy makers have to ensure that the important principles in the law continue to be fulfilled in the digital context.

“Create yourself, rather than using other's creation”.