

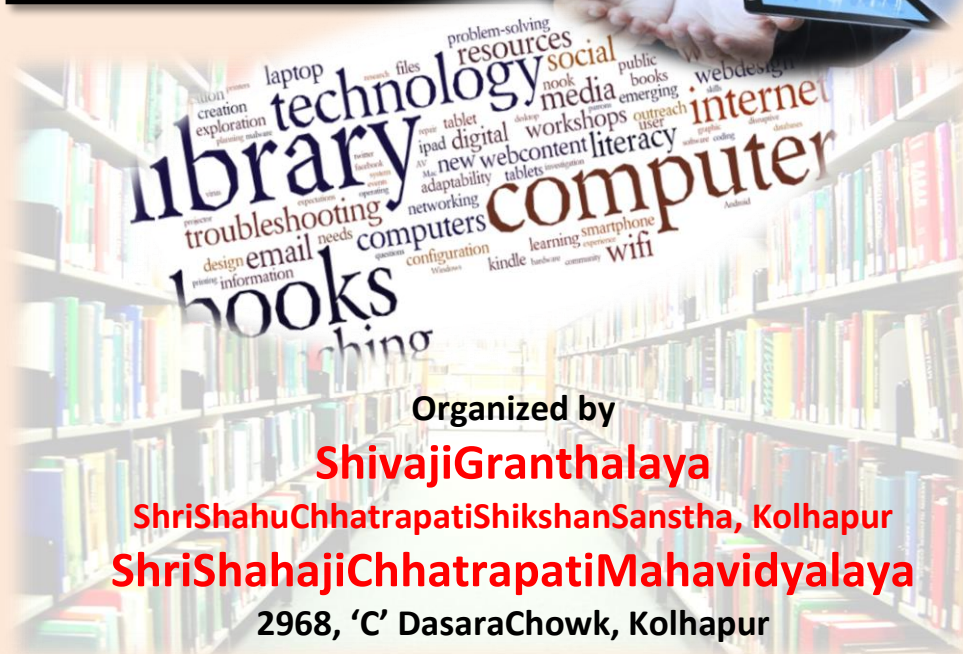
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# Intellectual Property Right (IPR) In India

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## Abstract:

Intellectual property includes patents, design trademark confidential information, copyright, geographical indications and know-how. The 21<sup>st</sup> century will be the century of knowledge, indeed the century of the mind. Intellectual property is the creative work of the human mind. It is therefore, essential to protect such intellectual property so that nobody else can enjoy the fruits of others efforts. The importance of intellectual property in India is well established at all levels- statutory, administrative and judicial. The **Copyright Act, 1957**(Act No. 14 of 1957) governs the laws & applicable rules related to the subject of copyrights in India. Copyright Law in the country was governed by the Copyright Act of 1914, was essentially the extension of the British Copyright Act, 1911 to India, and borrowed extensively from the new Copyright Act of the United Kingdom of 1956. All copyright related laws are governed by the *Copyright Act, 1957*. The Copyright Act today is compliant with most international conventions and treaties in the field of copyrights India ratified the agreement establishing the World Trade Organization (WTO). This Agreement, inter-alia, contains an Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which came into force from 1<sup>st</sup> January 1995. It lays down minimum standards for protection and enforcement of intellectual property rights in member countries which are required to promote effective and adequate protection of intellectual property rights with a view to reducing distortions and impediments to international trade. In India recently the Copyright (Amendment) Bill 2012 was passed, which is now the law of the land after the President gave his assent on 8<sup>th</sup> June 2012.

**Keywords:** Intellectual Property right, Patent, Copyright, Electro copying, Electronic Copyright, Cyber law, Amendment.

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## I Intellectual Property

Intellectual Property comprises all entities arising from Human intellect activity such as ideas, intentions, words (fact and fiction), music, theater or art. It includes document of all kinds, archives databases (whether online, CD-ROM, or delivered by other mechanisms), material on the internet individual items in databases, computer software, and inventive pieces of hardware that are subject to patent coverage. The subject of intellectual property has assumed international importance especially in respect of the implications and impact of patent laws on science and technology.

The facilitation of quick sharing and commercialization of new knowledge requires protection of such knowledge through appropriate Intellectual Property laws so as to prevent illegal use or copying.

The right to Intellectual Property encourages the creativity in man. The creative person contributes to the development of the society and in return enjoys the economic benefits of his labor. Intellectual Property includes all property resulting from the exercise of the human mind or intellect.

**Definition:**

Intellectual property is defined as “Any intangible asset that consists of human knowledge and ideas”.

Merriam Webster says "intellectual property: property (as an idea, invention, or process) that derives from the work of the mind or intellect: an application, right, or registration relating to this."

**II Intellectual Property Right (IPR)**

Intellectual Property Right connotes the rights to literary, artistic and scientific work; performance of performing artists; phonograms and broadcasts; inventions in all fields of human endeavor; scientific discoveries; industrial designs; trademarks; service marks and commercial names and designations and all other products resulting from intellectual activity in the industrial, scientific, literary and artistic fields. It is a generic term covering patent, registered design, trade mark, and copyright, layout to intergraded circuits, trade secrets, geographical indications and anticompetitive practices in contractual licenses.

The legal profession views intellectual Property as real (physical) property which can be mortgaged, sold, rented and passed on to heirs and successors. The owner of an intellectual property has certain rights which prevent third parties from using it without permission.

**Patent:**

A Patent is a legal monopoly granted for a limited period to the owner of an invention .Patent rights are granted as well as revoked by the state. The patent law is property right and it can be given away, inherited, sold, licensed and even abandoned.

**Copyright:**

It is one of the Important Intellectual Property that protects the labor, skill and judgment of someone – author, artist or some creator expends in the creation of an original piece of work.

In some countries copyright is an automatic right i. e. no registration is required but in some it can be individual or an organization.

The owner of copyright has the right to prevent others from, copying, selling hiring out, performing, broadcasting or amending the work. The skill labor and judgment of the author are protected irrespective of the form in which the product appears.

Fair Dealing or Fair Use, Permits copying for certain specific purposes and under certain conditions. It is indented as a defiance against an infringement action, and relies on the argument that the individual made the copy (or under certain circumstance, even multiple copies) of not too substantial a part if the literary work and the copying would not damage the legitimate interests of the copyright owner. What is fair dealing is expected to be specified in the local legislation? Typically, national legislations will permit fair dealing/Use for such purposes as private research. Commercial research, private study, criticism and book reviewing, reporting current events, and educational purposes.

The Reproduction Right Organizations (RROs) are a well-established part of the copyright scene. RROs are typically owned wholly or in part by publishers' representatives, and have authority to issue blanket licenses to organizations so that they may photocopy copyright materials beyond the legally permitted limits for a fee.

Following are the different types of work covered under copyright:

- a) Original literary, dramatic, musical and artistic works, computer programs/software.
- b) Cinematographic film
- c) Sound recording

The rights of a copyright holder are:

**A) In the case of literary, dramatic or musical work not being a computer program/software:**

1. To reproduce the work in any material form including the storing of it in any medium by electronic means.
2. To issue copies of the work in public not being copies already in circulation.
3. To perform the work in public or communicate it to the public.
4. To make any translation of the work.
5. To make any adaptation of the work.
6. To do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub – clauses (a) to (e).
7. In the case of computer program / software:
8. To do any acts specified in (A).
9. To sell or give on hire, or offer for sale or hire any copy of the computer program, regardless of whether such copy has been sold or given on hire on earlier occasions.

**B) In case of an artistic work:**

1. To reproduce the work in a material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work.
2. To communicate the work to the public.
3. to issue copies of the work to the public not being copies already in circulation.
4. to include the work in any cinematograph film.
5. to make any adaptation of the work.
6. to do in relation to an adaptation of the work, any of the acts specified in relation to the work in sub – clauses (a) to (e).

**C) In the case of cinematograph film:**

1. To make a copy of the film including a photograph of any image forming part thereof.
2. To sell or give on hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions; to communicate the film to the public.

**D) In the case of sound recording:**

1. To make any other sound recording embodying it.
2. To sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions.
3. To communicate the sound recording to the public
4. The term of copyright is.

5. If published during the life time of the author of a literary work, the term is for the life time of the author plus 60 years.
6. For cinematographic films, records, photographs posthumous publication, anonymous publication, works of government and international agencies the term is 60 years from the beginning of the calendar year following year in which the work was published.
7. For broadcasting the term is 25 years from the beginning of the calendar year following the year in which the broadcast was made.

### **Computer Program**

A computer program means a set of instructions expressed in words, codes, schemes or any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result.

### **Images**

Images are not covered by Literary Works but instead are known as Artistic Works the term includes photographs, microfilms, paintings and drawings, models of building, sculptures, diagrams, maps, slides, including OHP transparencies, engravings etchings; the design part of any trade mark or trade name; product labels; peoples signatures, charts engineering drawings, and plans.

## **III. Intellectual Property Right in India**

### **(i) Patent Facilitating Cell**

The Intellectual Property system in India was enforced back in 1856 and re-enacted in 1859. The process of revision continued with the most recent development of setting up the "Patent Facilitation Cell" (PFC) set up by the department of Science & Tech. (DST), government of India with following objectives:

1. To introduce patent information as a vital input in the process of promotion of R&D programs.
2. To provide patenting facilities to scientists and technologists in the country for Indian and foreign patents on a sustained basis.
3. To keep a watch on developments in the area of Intellectual Property Right and make important issues known to policy makers, scientists, industry, etc.
4. To create awareness and understanding about patents and the challenges and opportunities about patents and the challenges and opportunities in the area through workshops, seminars and conferences.

The services offered by PFC include the following:

1. CD-ROM based patent search for European and US patents.
2. On-line patent searches in international databases via the Internet.
3. Mechanism for obtaining full patent documents and patent searching elsewhere.
4. Conducting patent awareness workshops.
5. Responding to queries relating to IPR, etc.
6. Facilities for patenting of inventions carried out in universities, R&D Institutions, etc.

### **(ii) Designs**

The Law for copyright for Indian designs was incorporated as the Designs Act, 1911 from 20 April 1972.

### **(iii) Copyright**

In India, the first Copyright Act was passed in 1914, with a number of amendments this act was affected in 1983 mainly to avail the benefits arising from the revision of the Bureau Convention and Universal Copyright Convention, to which India is an adherent. Recent amendments of 1992 extends the term of Copyright Protection from the lifetime of the author plus 50 years to the lifetime of the author plus 60 years.

### **(iv) Computer Software**

In India computer software is covered by the Copyright Act of 1957, amended in June 1994. The Act makes it illegal to make or distribute copies of software without proper or specific authorization, also, it prohibits the sale, or to give on hire or offer of sale or hire, any copy of a computer program without specific authorization of the copyright holder.

The National Association of Software & Services Companies (NASSCOM) and Manufactures Association of Information Technology (MAIT) have jointly formed the Indian Federation against Software Theft (INFAST) to minimize software piracy.

## **IV. Database**

Database whether comprising words or numbers, will be considered in most legislation as compilations, which is typically a collection of individual items that may or may not in themselves merit copyright protection. Databases can be simultaneously protected that represent a substantial investment in terms of Human, Technical and financial resources in the collection, assembly verification, organization presentation of the contents of the database.

The rights provided for under this system shall attach when a database meets the above requirements and shall endure for at least 25 or 15 years from the first day of January in the year following the date when the database first met the above requirements.

When a database that is substantially changed it becomes a new database, entitled to its own term of protection, provide the task of change involves substantial investment.

The protection provided for in the proposal may not be subject to registration, notice, marking or any other formality.

Enforcement provisions of the TRIPS Agreement will be applicable in this case as well.

## **V. Internet and Copyright**

E-mail messages, Material Loaded on to FTP sites or www servers, and anything else put on the Internet is copyright. Internet URLs, E-mails addresses and so on are facts, and can be copyright, just as are Internet indexes such as those created by Yahoo, FAQs collections on Usenet newsgroups are copyright.

A World Wide Web Home page is copyright, and to copy it to use as the basis of another Home Page is clearly copyright infringement and may involve infringement to the Trade Mark Rights (Another form of Intellectual Property) if the www page included some device or logo that is a Registered Trade Mark.

### **Cyber Law Highlights:-**

- Legal framework to facilitate E-commerce.
- Computer data to be accorded legal sanctity.

- Cybercrimes to invite tough penalties.
- Appellate authorities to be set up to monitor and control Internet and other digital activities.
- Government authorized to disrupt any message transmitted in electronic or encrypted form in the interest of the nation.
- Certification authorities to be used for licensing, certifying and monitoring electronic deals.
- Proposes amendment in various acts to smoothen electronic governance (Source-The FPJ Business Journal.)

## **VI. Electro copying, Electronic Copyright, Multimedia, Networking**

Electro copying means the conversion of printed material into machine readable form, using document image processing and OCR technology. It is violation of copyright to convert without prior permission items owned by third parties into machines readable form and to store them on a database. Scanning of material in preparation for sending it down a network without permission is “adaption” of the work. Sending material via a telecom network, and printing out copies at a remote terminal without permission is infringement.

A networked environment gives user’s access to vast quantities and variety of material, some of it unpublished but still available for inspection, downloading and re dissemination. This creates a potential conflict between the right holders need to retain control and earn income, and the users’ right to make use of the material.

An Electronic Copyright Management System (ECMS) can address these issues. One type is software that would automatically tag the document in a tamper proof fashion. This could be a read by anyone to identify the original author and/or copyright owner of the material, and to identify who had made any amendments to the document. Another type of ECMS is software solely to govern or control distribution of the work, which may be in printed or electronic form. This can be used to limit what can be done with the original or a copy of the file containing the work. It can also limit the number of times the work can be retrieved, opened, duplicates or printed.

## **VII. IPR and International Conventions**

1. Berne Convention: It was established in 1886 and being revised five times till 1971. It is administered by WIPO. It deals with definitions, Literary and artistic work, Scope of rights and protection, term of copyright & freedom of member states.
2. Patent Co-operation Treaty (PCT): It became effective in 1978 and being ratified by 83 countries till 1996. India is not yet a member.
3. Paris Convention: It applies to industrial property which includes inventions (patent) marks, industrial design, utility models, trade names, Geographical indicator, etc, which were different form intellectual property as defined in the TRIPS Agreement.
4. Madrid Agreement on International Registration of Marks: It was adopted on 1981, modified and observed in 1995, to facilitate obtaining the protection of a trade mark or service mark in several countries through a single international registration. India is not a signatory.
5. Universal Copyright Convention: UGC, adopted in 1952 & administered by UNESCO has 92 countries in its list. India is also a member. Under this treaty, each member state grants the same protection to works ( whether published or not) of

nationals of, and to works first published in other member state as it grants to its nationals for work, first published in its territory or unpublished works created within its territory.

6. Trade Related Intellectual Property Right (TRIPS): The laws are being enacted to regulate the conduct of science and education the world over. It came into existence in 1995. It covers nine areas- Copyrights, trademarks, Trade secrets, Layout designs & integrated circuits, industrial designs, appellations of geographical origin, patents, protection of microorganisms and plant breeders' rights. India is a signatory.

**Fair Use:-**

Partial or limited reproduction of another's work may be permitted under the doctrine of fair use. This doctrine is liberal where the use advances public interests such as education and specifically permits making a backup copy expressions are protected not facts. The author of an online story has protection of his words but not for facts that he went to the trouble to collect or the basic plot. Similarly, a programmer has a protection from others duplicating a segment of code but not from writing different codes to accomplish the same end. Appropriate kinds of works are protected when they are fixed in triangle medium whether or not they can be directly perceived by human senses.

**Fair Use Provisions:**

The section 52 of the Act enumerates the acts that will not be an infringement of copyright. These are popularly known as fair use clause. Certain amendments have been made to extend these provisions in the general context.

The existing clause of this section provides fair use to 'literary, dramatic, musical or artistic works' only. Now it covers all works (except software), in effect covering sound recordings and video as well. This will help make personal copies of songs and films in order to make copies for research, to use film clips in classrooms, etc.

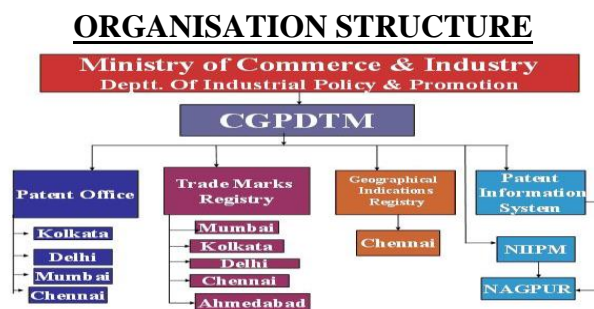
**Indian Copyright (Amendment) (Act 2012) 52 (Fair Use Clause)**

**General Context:** Sub Section (1) clause (a);

A fair dealing with any work, not being a computer programme, for the purpose of –

1. Private or personal use, including research
2. Criticism or review, whether of that work or of any other work;
3. The reporting of current events and current affairs, including the reporting of a lecture delivered in public

The storing of any work in any electronic medium for the purposes mentioned in this clause, including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright”.



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## CONCLUSION:

Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Intellectual property (IP) contributes enormously to our national and state economies. Dozens of industries across our economy rely on the adequate enforcement of their patents, trademarks, and copyrights, while consumers use IP to ensure they are purchasing safe, guaranteed products. We believe IP rights are worth protecting, both domestically and abroad. An intellectual property can be either artistic or commercial. The artistic works come under the category of copyright laws, while the commercial ones (also known as industrial properties), and include patents, trademarks, industrial design rights, and trade secrets

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