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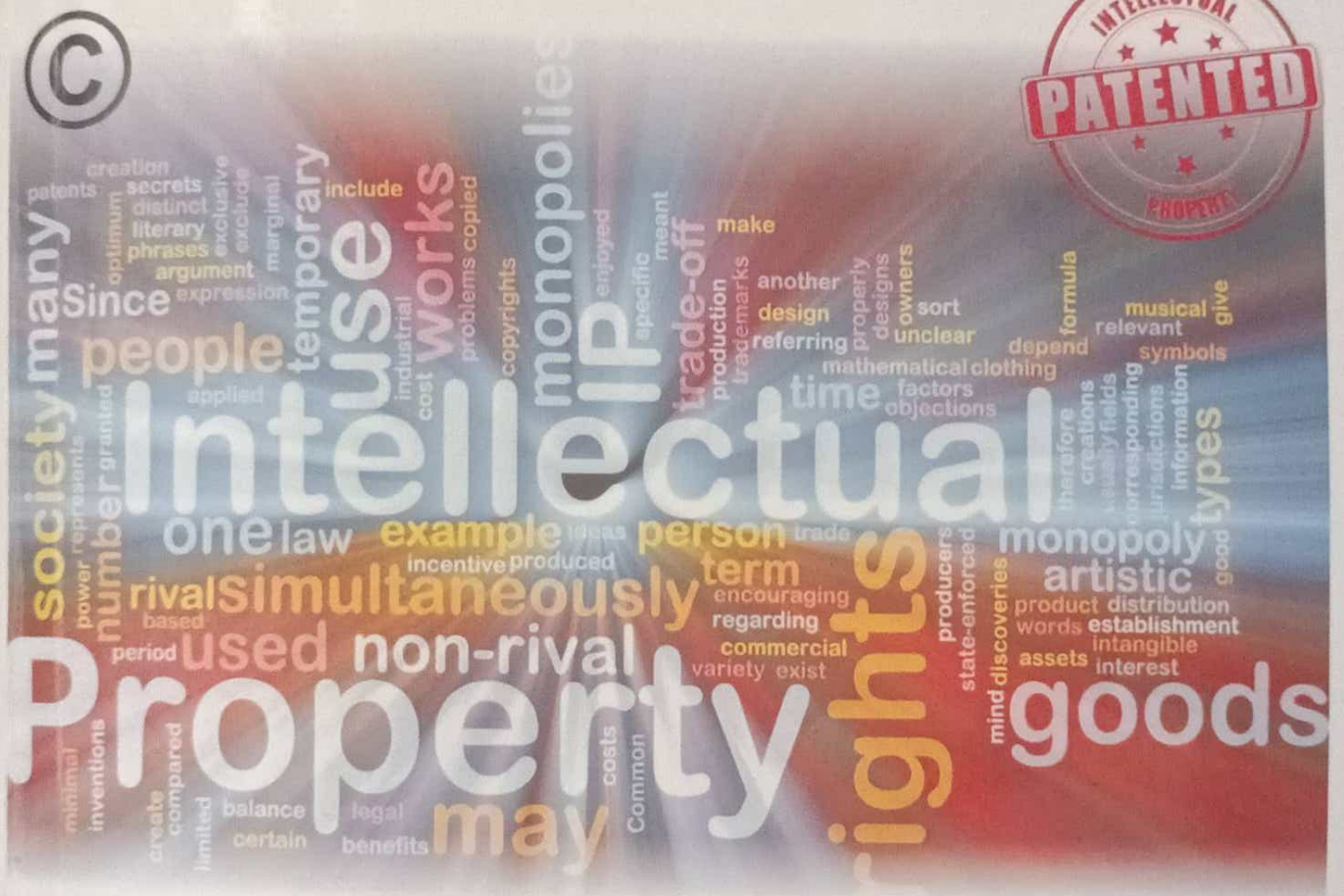
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# Intellectual Property Rights (IPR)



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## Types of Intellectual Property Right in India

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### Abstract:

A small introduction to Intellectual Property Right in India and its different types are discussed and several issues of concern to library community have been raised and discussed. 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.

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

### 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."

### 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.

### Types of Intellectual Property Right:

Following are the types of Intellectual Property Right

#### 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. A Patent is granted for an invention which is a new product or process that meets conditions of innovation. Non-obviousness and industrial use, Inventive steps in existing knowledge and that makes the invention not obvious to the person skilled in the art. Industrial use means that the invention is capable of being made or used in an industry.

#### Trade Mark:

A trademark can be a name, word, slogan, design, symbol or other unique device that identifies a product or organization. Trademarks are registered at a national or territory level with an appointed government body and may take anywhere between 6 and 18 months to be processed. There is also the Madrid System that provides a facility to submit trademarks applications to many countries at the same time. Registered trademarks may be identified by the abbreviation 'TM', or the '®' symbol. (it is illegal to use the ® symbol or state that the trademark is registered until the trademark has in fact been registered). There is also a differentiation between marks used for products or services, with a classification called service-marks used for services, though they in fact receive the same legal protection as trademarks. In most countries, the national patent office will also administer trademarks.

#### Design:

The appearance of a product, in particular, the shape, texture, colour, materials used, contours and ornamentation. To qualify as a new design, the overall impression should be different from any existing design. Industrial Design protection is provided for a shape, configuration, surface pattern, colour, or line (or a combination of these), which, when applied to a functional article, produces or increases aesthetics, and improves the visual appearance of the design, be it a two-dimensional or a three-dimensional



### **Geographical Indications:**

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

### **Utility Model Design:**

A utility model is a statutory monopoly granted for a limited time in exchange for an inventor providing sufficient teaching of his or her invention to permit a person of ordinary skill in the relevant art to perform the invention. The rights conferred by utility model laws are very similar to those granted by patent laws, but are more suited to what may be considered as incremental inventions. Terms such as petty patent, innovation patent, minor patent, and small patent may also be considered to fall within the definition of utility model.

### **Plant Breeders Right:**

Plant breeders' rights (PBR), also known as plant variety rights (PVR), are rights granted to the breeder of a new variety of plant that give the breeder exclusive control over the propagating material (including seed, cuttings, divisions, tissue culture) and harvested material (cut flowers, fruit, foliage) of a new variety for a number of years. With these rights, the breeder can choose to become the exclusive marketer of the variety, or to license the variety to others. In order to qualify for these exclusive rights, a variety must be new, distinct, uniform and stable.

### **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. 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. 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

### **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.

**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 of 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.

**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.

**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 in 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.

#### IV. 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 technologist 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 issue 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.

### 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.

### 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, etc. These are the types of IPR for which we can take protection from law and get economic and social benefit of our intellectual efforts.

### References:

1. Bettig, R. V. (1996). Critical Perspectives on the History and Philosophy of Copyright. In R. V. Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*. (pp. 9-32). Boulder, CO: West view Press.
2. Arai, H. (2000) "Intellectual Property Policies for the Twenty-First Century: The Japanese Experience in Wealth Creation", WIPO Publication Number 834 (E). [www.wipo.int](http://www.wipo.int)
3. James, T. C., (2003), Copyright Issues in E-Publishing. *Journal of Intellectual Property Rights*, (8). 269-275 pp.
4. James, T. C., (May 2004). Copyright Law of India and the Academic Community, *Journal of Intellectual Property Rights*, Vol 9, 207-225 pp.
5. George, D. & Richard, T. (2004). *Intellectual Property Rights: In The Oxford Handbook of Business Ethics*, Oxford, England: Oxford University Press, n.d 1:408-439.



6. Hahn, R. W., (2005). Intellectual Property Rights in Frontier Industries: Software and Biotechnology, AEI Press.
7. Thakur, S. (2007). Library and Information Science, Danika Publishing Company, New Delhi.
8. Boldrin, M. and David, K. L. (2008). "Against Intellectual Monopoly", [www.dkleving.com](http://www.dkleving.com)
9. Saxena A, (2009). Electronic Publishing: Impact of ICT on Academic Libraries, Poster Papers, 670-672 pp.
10. Natarajan, M. (2009). Roles of Libraries and Publishers in Knowledge Access and Management, Vision and Roles of the Future Academic Libraries, 159-164 pp.
11. Harald, H.(2012). E-Publishing and the Challenge for Libraries, Discussion Paper, Von S. European Bureau of Library.
12. Jadhav, P. (2012). Indian Copyright (Amendment) Act 2012 – It's Impact on Library & Information Science
13. <http://copyright.lawmatters.in/2012/06/impact-of-2012-amendments-to-copyright.html>  
(Browse on 05/01/2015 at 4.40 pm)
14. <http://www.ipindia.nic.in/> (Browse on 06/01/2015 at 3.10 pm)
15. <https://en.wikipedia.org/wiki/India>

