



Intellectual Property Rights Issues and Challenges of Academic Libraries in Digital Environment

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Abstract: Intellectual property (IP) has emerged as a key driver in knowledge economy. In the present scenario, IPR awareness is the key to technological innovations and in the emerging knowledge-based economy; the awareness among the creators of information and knowledge about IPR has become essential in the digital environment because in the digital environment it is becoming difficult to prove rights violation whenever they occur. This paper gives an overview of intellectual property rights (IPR) issues & challenges in digital environment and the paper deals with the copyright law as well as the role of librarians in the protection of copyright literature. Study also focused on patrons need towards understanding IPR laws in using library services without infringement. With the advancement of technology, Intellectual Property Rights have added new dimensions and there is a strong need for awareness and understanding on Intellectual Property Rights for library patrons.

Keywords: Intellectual Property Rights, IPR, Digital Technology, Copyright.

Introduction

God gifted a wonderful thing called brain to man and nature endowed him with the abundant physical and biological resources on the earth. Man started creating his own world by application of his brain or mind and by utilization of these natural resources. Man has also been bestowed with imagination and creativity. With his imagination and creativity, he has been producing various articles or products for his needs, comfort and convenience (Dolli, 2012).

Libraries and their role in society has evolved in pace with technological development and copyright law. Originally a repository for published works which could be borrowed or physically accessed by the public. Anybody could use and copy these creations and inventions without any restriction, reservation, or payment (Sinha & Bhardwaj, 2010). However, with the passage of time, the importance and value of these

creations was realized. By end of Twentieth century, the things created and invented by the human mind were recognized as an intellectual property of the owner. The owner's right over these properties was accepted and is known as an Intellectual Property Right (commonly called I.P.R). (Kannan, 2010). A new set of laws called Intellectual Property Right Laws were enacted to protect these property rights. These I.P.R laws provided a protection to the owners under different categories and names like Copyrights, Patents, Trade Marks, Industrial designs, etc. (Rachchh, 2013).

What is Intellectual Property?

Intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property. Every human being is endowed with certain but varying degree of intellect. Each individual is uniquely gifted. The word intellect originates from the

root "intellectus" in Latin which means the power of knowing as distinguished from the power to feel. Man has the capacity to acquire knowledge and increase his knowledge bank by gathering more and utilizing it as and when required throughout his life time. An intellectual makes his living by selling the product intellect, which is nothing but the brain child of his original idea, creative thought, which forms a special kind of property known as intellectual property. A right as we know is legally protected interest and object of the right is the thing in which the owner has this interest. The object in intellectual property right is immaterial property (*Malwad & Anjanappa, 1994*).

Intellectual Property Right (IPR)

IPR connotes the right to literary, artistic and scientific work; performances of performing artists; phonographs and broad-cast; 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 patents; registered design; trademark; copyright; layout of integrated circuits, trade secrets; geographical indicators and anti-competitive practices in contractual licenses. Intellectual Property refers to creation of mind i.e. inventions, industrial designs for article, literary & artistic work, symbols etc. used in commerce. (*Reddy & Kumari, 2012*)

Intellectual property is divided into two categories: industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source: and Copyright, which includes literary and artistic works such as novels, poems, plays, films and musical works etc. According to the TRIPS Agreement, the intellectual property has been classified into-Patents, Industrial Designs, Trade Marks, Copyright, Geographical Indications, Layout Designs of Integrated Circuits, and Protection of Undisclosed Information/Trade Secrets. (*Kore et al, 2015*)

Why Intellectual Property Rights

The Intellectual property rights were essentially recognized and accepted all over the world

due to some very important reasons. Some of the reasons for accepting these rights are:

- To provide incentive to the individual for new creation.
- Provide due recognition to the creators and inventors.
- Ensuring material reward for intellectual property
- Ensuring the availability of the genuine and original products.

Significance of Intellectual Property Rights

The main purpose of intellectual property law is to give protection, encourage the research innovation and rewarded for their original work. Without IPR, creators and inventors would derive no benefit/ gain from new ideas from their work, and the investment made in that works would never be compensate. It can be valuable because it represents ownership and an exclusive right to use, manufacture, reproduce, or promote a unique creation or idea. Like other forms of property, Intellectual Property is also an asset which can be owned, sold, and exchanged.

The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO). IPRs have assumed significant importance since the signing of the Agreement on Trade Related Intellectual Property Rights (TRIPS) under World Trade Organization (WTO). India has been a World Trade Organization (WTO) member since 1995.

Copyright

Copyright protects the labour, skill and judgment of someone's author, artist or some other creator, expender in the creation of original piece of work. It provides legal rights exclusively given for a definite period to the creators of an intellectual work e.g. literary works (anything in writing) artistic works (drawing, maps, plans, etc.) musical works, films, sounds, recordings, computer programs for sale or any other use. Copyright protection begins when works are

actually created in the tangible form. Copyright was designed for three basic reasons that are to reward creators for their original works; to encourage availability of the works to the public; and to facilitate access and use of copyrighted works by the public in certain circumstances.

India has a very strong and comprehensive copyright law based on Indian copyright act 1957, which was amended in 1984,1992,1994 and 1999. The copyright has its origin from Indian copyright act 1847 enacted during East India Company. Further the copyright act of 1914 was modified version of British copyright act of 1911. As per the Indian law copyright falls into public domain 60 years after the death of the author. This means the author during his lifetime and his successor for 60 years after his death can enjoy the benefit of income from the writings of the deceased author. (*About Copyright Office, 2016*)

Patent

A patent is an exclusive right granted by a country for an invention to prevent others from making, using, and selling a patented invention for a fixed period of time (Once patent is granted, they are valid for 20 years from the date of filing an application, subject to an annual renewal fees). The purpose of this law is to encourage inventions by promoting their protection and proper utilization of invention. This in turn enhances the quality of human life. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and an invention enters the public domain. Patent right is territorial in nature and a patent obtained in one country is not enforceable in other country. The Patent System in India is governed by the Patents Act, 1970 (No. 39 of 1970) as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003, as amended by the Patents (Amendment) Rules 2006 effective from 05-05-2006.

The Patent Office, under the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, is located at Kolkata, Mumbai, Chennai and Delhi to deal with the applications for patents originating within their respective territorial jurisdictions. Patent Information System (PIS) located at Nagpur maintains a comprehensive collection of

patent specifications and patent related literature, on a worldwide basis and provides technological information contained in patent or patent related literature through search services and patent document supply services.

Trade Mark

A trade mark is a visual symbol which may be a word, letters, numerical, name, sign, signatures, symbol, design, or an expression distinguishes products or services provided by an individual or a company. It is popularly called as "Brand name". It is mainly used in commercial sector. Its nature and quality indicated by its unique trademark to help consumers to identify and purchase product or services. The initial registration term is valid up to 10 years; after it may be renewed time to time. It helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.

Industrial Designs:

Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. An industrial design protects the visual design or formal appearances of an industrial object i.e. configuration pattern, colour and style. It is also known as engineering design. An industrial design focuses on user aspects of products so it used to improve the production as well as marketable. The main purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. It may be two dimensional or three dimensional.

Trade Secret

Any information that may be used in the operation of a business and that is sufficiently valuable to afford an actual or potential economic advantage is considered a trade secret. A trade secret is non-public or confidential business information concerning with

the commercial practices. It may be process, methods or technique, strategies, design, formula, pattern and practices etc which is not generally known to other enterprises, if known that is illegal. Trade secret law varies from country to country. It is also called as industrial/ commercial/ manufacturing secrets.

Other Forms of Intellectual Property

Within the basic forms of intellectual property, many variations and special kinds of protection are possible.

Geographical indications identify a good as originating in a locality where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographic origin. A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods. Geographical indications may be used for a wide variety of agricultural products. The use of geographical indications is not limited to agricultural products. They may also highlight specific qualities of a product that are due to human factors found in the product's place of origin.

Layout- design of an integrated circuit

An integrated circuit (IC) is an electronic circuit in which the elements of the circuit are embedded into a single chip. Mainly silicon semiconductors are used to create integrated circuits. These are also called as a "chip" or a "silicon chip". Layout- designs are valid for 15 years from the date of its creation. The aim of the Semiconductor Integrated Circuits Layout-Design Act 2000 is to provide protection of Intellectual Property Right (IPR) in the area of Semiconductor Integrated Circuit Layout Designs and for matters connected therewith or incidental thereto. The main focus of SICLD Act is to provide for routes and mechanism for protection of IPR in Chip Layout Designs created and matters related to it.

Overview of Laws Related To Intellectual Property Rights

The Rules and Laws governing Intellectual Property Rights in India are as follows:

1. The Copyright Act, 1957, the Copyright Rules, 1958 and International Copyright Order, 1999.
2. The Patents Act, 1970 The Patents Rules, 2003, The Intellectual Property Appellate Board (Patents Procedure) Rules, 2010 and The Patents (Appeals and Applications to the Intellectual Property Appellate Board) Rules, 2011.
3. The Trade Marks Act, 1999, The Trade Marks Rules, 2002, The Trade Marks (Applications and Appeals to the Intellectual Property Appellate Board) Rules, 2003 and The Intellectual Property Appellate Board (Procedure) Rules, 2003.
4. The Designs Act, 2000 and The Designs Rules, 2001.
5. The Geographical Indications of Goods (Registration and Protection) Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Rules, 2002.
6. The Semiconductors Integrated Circuits Layout-Design Act, 2000 and The Semiconductors Integrated Circuits Layout-Design Rules, 2001.

Role of Librarians in Copyright Protection

In any educational institute librarian plays a key role in many spheres, including copyright. The main role of librarian is to make available of library collections to students and faculty in support of teaching, learning, research and scholarship. Libraries are creatures of the historical and statutory balance in copyright law. Libraries lend materials based on the First Sale doctrine. Libraries share materials and preserve works under specific provisions for libraries

in the Act. Libraries are often the only entities that provide access to the vast majority of copyrighted works that lose market vitality long before the expiration of the copyrights, and are often the only entities that preserve public domain materials. From the above perspective, it is clear and reasonable that the role of librarians is very important for the following reasons:

1. To enable users to access copyrighted and public domain works and to exercise their rights under the exceptions and limitations to creators rights in the law. The creation of new intellectual property building on the old is stimulated as a result of the existence of libraries. Libraries are places where public and the proprietary meet.
2. To work for library as social organizations address the balance in the law and are shaped by it. The institutional role of libraries, librarians and their associations necessitate paying close attention to that balance and promote users' rights as well as creators' rights. Libraries are a small but significant market for published works. The vast majority of copyrighted works in library collections were purchased or acquired through license agreements. Often libraries pay more for copyrighted works than works of an individual. Hence, there is the need for library staff and users to know about copyright, their limitations and benefits, when making use of any of the materials on the library shelves, either in open or closed access in order to safeguard anti-piracy legislation. Libraries have an important role to play in caring for and providing access to other people's copyrighted work.
3. To recognize about copyrighted materials to the library users who are not aware of their dependence on balanced law and policy for access to information and for gaining knowledge.
4. To play a role as advocates for individual users of copyrighted materials. Librarians need to ensure that the rights and privileges of their customers are safeguarded i.e. they must assure the library users of uninhibited access to available collection in aid of research. Any user that is unsure if the material to be copied is protected by copyright needs to seek advice from the library staff.
5. To give the knowledge to the library users regarding "fair use legislation". This means that they can copy a very small amount of a work for educational purposes and not for commercial purposes. It may be possible to get permission to copy or use copyright material by contacting the copyright owner. Any copying now carried out for a commercial purpose requires prior permission from the copyright owner or payment of a copyright fee.
6. To give the orientation about rule of copyright infringement is the concept known as fair use. Under this principle, the law permits the use of portions of copyrighted works for such purposes as criticism, comment, teaching, and research, even without permission of the copyright owner.
7. There is a need for all the librarians in India to have copyright education in order to familiarize with the basic principles and concept of copyright laws in India. This will enable them to render their services without violating copyright laws. With adequate education in copyright, librarians will be able to know the risk involved in copying from copyright-protected material and operate within the laws. There is no doubt that libraries and Librarians in India have a lot of functions, very vital ones indeed, to play in the protection of author's rights. Firstly, they must provide the right guidance to their library users on how to make use of the library stock without infringing on the copyright of the authors of such works. The librarians can provide the following assistance to library users in order to properly enforce the copyright laws in the library. Research projects in the library should be made available to researchers for consultation only. Photocopying the entire work should not be allowed, and if there is the need to photocopy, the principle of fair use should be strictly adhered to. Also, the librarians should ensure that precise citation is done by any

researcher for any piece of information collected from a given source in the Library.

Conclusion

A common man comes across intellectual properties from dawn to dusk. He uses the products which are intellectual properties of some one. The socio-economic development of a country depends to a large extent on the creativity of her people and creative works can't be encouraged without effective administration of copyright laws. Librarians as the custodians of most of the intellectual property cannot be left out in the successful implementation of copyright laws. Violation of copyright laws can easily be carried out in the library. In order to have books, author and creators of literary and artistic works, there should be adequate reward commensurate with the work. Hence, the enactment of copyright law to encourage creativity. Librarians need to be carried along in the war against violation of copyright laws. Therefore, the knowledge about intellectual property right is must for a common man.

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