INTELLECTUAL PROPERTY RIGHTS

By

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• Intellectual property laws and enforcement vary widely from jurisdiction to jurisdiction.

• Intellectual property laws confer a bundle of exclusive rights in relation to the particular form or manner in which ideas or information are expressed or manifested, and not in relation to the ideas or concepts themselves.
The term “Intellectual Property” denotes the specific legal rights -

1. Copyrights (e.g. book)
2. Patents (e.g. new drug)
3. Trademark (e.g. symbol)
4. Trade Secrets (e.g. new method)
Copyright may subsist in creative and artistic works (e.g. books, movies, music, paintings, photographs, and software) and give a copyright holder the exclusive right to control reproduction or adaptation of such works for a certain period of time (historically a period of between 10 and 30 years depending on jurisdiction, more recently the life of the author plus several decades).
A **patent** is a right to gives the patent holder to prevent others from practicing the invention without a license from the inventor for a certain period of time (typically 20 years from the filing date of a patent application).
Trade Mark

- A **trademark** is a distinctive sign which is used to distinguish the products or services of different businesses.

- An **industrial design** right protects the form of appearance, style or design of an industrial object (e.g. spare parts, furniture, or textiles).
A trade secret ("confidential information") is secret, non-public information concerning the commercial practices or proprietary knowledge of a business, public disclosure of which may sometimes be illegal.

Patents, trademarks, and designs rights are sometimes collectively known as **industrial property**, as they are typically created and used for industrial or commercial purposes.
Copyright (e.g. books, paintings, films)
1. Protects the work of expressions, not the ideas (i.e. the form a creator/publisher gives to ideas). Limited protection against substitute.
2. Protection focuses on copying
3. Long but limited protection (life + 50 years in Canada)
4. Covers original work of authorship in a tangible medium of expression (e.g. book)
5. Registration is inexpensive. Copyrights are easy to obtain
- **Patents** (i.e. inventions)
  1. Protect the ideas, not just expressions
  2. Registration is necessary (patent office)
  3. Requirements: utility, novelty, non-obviousness. Difficult to obtain
  4. Short protection periods but greater protection against infringers
- **Trademarks** *(e.g. brand names, product logos)*
  - Protect symbols and phrases
  - Registration is not necessary but easy
  - Protection periods vary
  - Distinctiveness is required

- **Trade Secrets** *(e.g. formula, program, technique, method, process)*
  - Derives independent economic value from not being known
  - Registration is not required. Perpetual protection is possible
There is a well-established statutory, administrative and judicial framework to safeguard intellectual property rights in India, whether they relate to patents, trademarks, copyright or industrial designs etc.

Well-known international trademarks have been protected in India even when they were not registered in India.

The Indian Trademarks Law has been extended through court decisions to service marks in addition to trade marks for goods.
Features

- IPR are property rights over information, knowledge and ideas
- IPR are exclusive, trade able and temporary
- IPR differ in the information being protected (copyright, patent, trade secrets, trademarks)
- IPR protect information that has public good characteristics (non-excludability and non-rivalry consumption)
Computer software companies have successfully curtailed piracy through court orders.

Computer databases 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.
International Organizations & Treaties

- A UN agency, namely, World Intellectual Property Organization (WIPO) based in Geneva administers treaties in the field of intellectual property. India is a member of WIPO.
- Department of Industrial Policy & Promotion is the nodal Department in the Government of India for all matters concerning WIPO.
India is also a member of the World Trade Organization (WTO).

The WTO agreement on Trade Related Aspects of Intellectual Property (TRIPS).

This Agreement made protection of intellectual property an enforceable obligation of the Member States.

TRIPS Agreement sets out minimum standards of intellectual property protection for Member States.
1. The Patents (Amendment) Act, 1999 passed by the Indian Parliament on March 10, 1999 to amend the Patents Act of 1970 that provides for establishment of a mail box system to file patents and accords exclusive marketing rights for 5 years.

2. The Trade Marks Bill, 1999 which repeals and replaces the Trade and Merchandise Marks Act, 1958 passed by the Indian Parliament in the Winter Session that concluded on December 23, 1999.

3. The Copyright (Amendment) Act, 1999 passed by both houses of the Indian Parliament, and signed by the President of India on December 30, 1999.

The Industrial Designs Bill, 1999 which replaces the Designs Act, 1911 on December 23, 1999 and is presently before the Lower House for its consideration.
The Patents (Second Amendment) Bill, 1999 to further amend the Patents Act, 1970 and make it TRIPS compliant was introduced in the Upper House of Indian Parliament on December 20, 1999.
Projects relating to the modernization of patent information services and trademarks registry have been implemented with help from WIPO/UNDP.

The Patents Law provides for compulsory license to avoid misuse of an Exclusive Marketing Right by the right holder.
In terms of the TRIPS Agreement, India has time till January 1, 2005 to extend patent protection to this area.
An **Intellectual Property Appellate Board (IPAB)** has been set up at **Chennai** to hear appeals against the decisions of Registrar of Trademarks, Geographical Indications and the Controller of Patents.
Both foreign and domestic IPR holders are treated equally under Indian law.

The Government also brought out A Handbook of Copyright Law to create awareness about copyright amongst the stakeholders, enforcement agencies, professional users like the scientific and academic communities and members of the public.
At present there are three registered copyright societies. These are -

1. The Society for Copyright Regulations of Indian Producers of Films & Television (SCRIPT) for cinematography films,
2. Indian Performing Rights Society Limited (IPRS) for musical works and
3. Phonographic Performance Limited (PPL) for sound recordings.
These societies, particularly the PPL and the IPRS, have been quite active in anti-piracy work.

The PPL has even set up a special anti-piracy cell under a retired Director General of Police, and this cell has been working in tandem with the police.
This Guide is the first of its kind published by World Intellectual Property Organization (WIPO).

It gives essential information on intellectual property by means of individual country profiles on WIPO Member States.

The profiles include Basic legislation, membership of international treaties, administrative structures, governmental and non-governmental bodies for information and enforcement, educational institutions and industrial property statistics; useful contact addresses are provided for readers needing further information.
It is intended as a tool for all kinds of readers, not only for officials working in this field, but for legal practitioners, teachers, students, researchers, creators or owners of intellectual property, as well as for interested members of the general public.

Certain Internet links to some country offices are provided for information purposes only.
The World Intellectual Property Organization (WIPO) is an international intergovernmental organization dedicated to ensuring that the rights of creators and owners of intellectual property are protected worldwide and that inventors and authors are thus recognized and rewarded for their ingenuity.
This international protection acts as a spur to human creativity, pushing forward the boundaries of science and technology and enriching the world of literature and the arts. By providing a stable environment for the marketing of intellectual property products, such protection also facilitates international trade.
The information in this Guide is drawn from data supplied by the governmental administrations of the countries concerned, as well as, in some cases, from WIPO sources, supplemented in parts by information from the World Trade Organization (WTO).

The titles of the laws and of the government administrations responsible for intellectual property in English, French and Spanish speaking countries are given, whenever available, in their original language.
Research and private study  Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

. Copying for purpose of research or private study

. Copying for purpose of criticism or review.

. Copying for non-profit educational purposes
THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998

- Nonprofit library, archive and educational institution exception (section 1201(d)).
- A good faith determination as to whether they wish to obtain authorized access to the work.
- Section 404 of the DMCA amends the exemption for nonprofit libraries and archives in section 108 of the Copyright Act to accommodate digital technologies and evolving preservation practices.
Prior to enactment of the DMCA, section 108 permitted such libraries and archives to make a single facsimile (i.e., not digital) copy of a work for purposes of preservation or interlibrary loan. Amended, section 108 permits up to 3 digital copies of unpublished and damaged works for preservation of
Copyrighted material provided that digital copies are not made available to the public outside the library premises or put on the Internet.

Also permits a library to copy a work into a new format if the original format becomes obsolete—that is, the machine or device used to render the work perceptible is no longer manufactured or is no longer reasonably available in the commercial marketplace.
These copies to be used by L library users within the library and inter-library loan purposes.

Legal issues: Libraries, particularly at universities without law schools, are often the source of legal information about copyright law, mainly U.S. Code Title 17 especially sections 107-108.

In addition to providing guidance to students and faculty about using copyrighted works appropriately and about their rights as
The most notable changes affect the definition of ‘fair dealing’ and libraries’ ability to make copies for entities conducting commercial research.

Such research is no longer covered as an exemption from copyright law.
Digital Copying Technology

- File sharing on Internet is easy
- 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 increasing 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 transfers the non-exclusive and non-transferable right to use materials to the user or licensee. License agreements are used by the publishers as legal methods for controlling the use of their e-resources.
The licenses for electronic resources impose two types of restrictions on its usage, namely:

i) who can use these resources; and

ii) how the resources can be used.
E-resource Licensing

Systematic or programmatic downloading, retention, and printing are prohibited. For example, you cannot download entire issue of a journal or print out several copies of the same article.
- Electronic distribution of content is generally restricted.
- Multiple copies of digital documents and their circulation 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
- Viewing, downloading, copying, printing and saving individual articles
- Using e-resources for scholarly, educational or scientific research, teaching, private study and clinical purposes
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Use of robots or intelligent agents to do systematic, bulk or automatic downloading is not permitted.

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Using e-resources for commercial gain is not permitted (i.e. reselling, redistributing or republishing.)
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- Posting the publisher's version or PDF of an article to an open class website is
Copy Protection Solutions

- Water-marking
  - Watermarking embeds a digital signal in text, image, audio 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 etc.
- Although 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
towards
. Section 62 of the Indian Copyright Act, 1957
provides for jurisdiction to any court having
a direct jurisdiction over the matter
Digital Signature

- Digital signature is an electronic rather than a written signature that can be used to authenticate the identity of the sender of a message or a document.
- It can also be used to ensure that the original content of the message or document has not been changed.
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.
THANK YOU