

Chapter 12

Intellectual Property Rights

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ABSTRACT

This chapter explains the concept of IPR. The author throws light on the global problem of copyright violation and software piracy and discuss the legal measures to control these at international level as well as in India. The authors also discuss the scenario of digitization of information and the digital measures to overcome copying and ensure IPR.

INTRODUCTION

The desire of human beings to own is natural. It provides a sense of security and satisfaction. It is true of tangible and intangible things. The temptation to own, forces one to do it by fair or unfair means, by the educated and uneducated alike. A study conducted on global trends in software piracy by Business Software Alliance and the IDC, reports that 36% of the software in the world is not licensed, amounting to a heavy loss to the software industry. The economic implications reveal that for every purchase of software for 2 dollars, software worth 1 dollar is procured illegally. Another estimate puts the amount spent in 2003 on software purchase as

\$50 billion, implying a loss of \$30 billion to the software industry. China tops the list of countries in piracy rates with 92% and the United States lies at the bottom with 22% piracy. (Sharari, 2006). Moorthy and Karisiddappa (2005) inform that Indian music and film industry lost Rs. 350 crores due to piracy of films and video records in comparison to Rs. 6073 crores lost by the Indian music industry in 2001. The practice of illegal copying in the print industry is also quite common. Chemical impregnation of paper and the change of type faces that are not visible to the naked eye are some measures taken to prevent copying from paper to paper (Cornish, 2005). But these could not find use due to the exorbitant costs involved to implement. Digital Rights Management (DRM) technologies have been developed to prevent illegal copying

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and controlling the use of digital contents. The technologies include cryptography, watermarking, digital signatures, tagging, Secured Digital Music Initiative (SDMI) for digital music and Content Scrambler System for DVD. (Moorthy, 2006).

Advances in digital information have changed drastically the scenario of information access. It enables anyone to produce digital copies of works that are as good as original. Parts of works can be easily copied to create new documents due to digital technology. An individual's efforts behind creating something need to be protected. Law has come to the rescue of creators of knowledge. It protects their creations in recorded form. Such rights are termed as Intellectual Property Rights (IPR), provided to the creators/inventors of intellectual works. IPR are divided into copyright, patents, service and trade marks and design rights. It includes copyright for literary, graphical, musical and other artistic works; patents, trademarks, layout designs of integrated circuits. IPR comprise moral rights and economic rights. Moral rights help preserve the integrity of the work and attribution of the work to the author. Economic rights provide economic benefits to the creator. Their scope is explained by Ebersole (1994) as the right to: reproduce/copy, prepare derivative works, distribute its copies publicly, do public performance and public display. IPR also limits rights of libraries to reproduce, loan out to other libraries and also of individuals to make limited copies for use or archiving in the context of fair use.

PATENT

Patent is granted for an invention. It may be a process showing a new way of doing something or for a product created that is new. Novelty is important in the product or process for the patent to be granted. The criteria for an invention to be granted a patent is:

- i. It should be novel.
- ii. It should have inventive step or it must be non-obvious.
- iii. It should be capable of industrial application.
- iv. It should not fall within the provisions of section 3 and 4 of the Patents Act 1970".

Certain subjects are not patentable e.g., methods for medical treatment, scientific theories or discoveries of natural elements. Patents are beneficial to the society as they promote creativity and innovation. Patents have a long history. Edison got a patent for electric bulb. "Patent protection for inventions is older than copyright. The earliest patents giving the exclusive right to exploit an invention were awarded in Italy in the 1400s. In England the Crown awarded patents giving inventors a monopoly to exploit their inventions in the same way it gave printers monopolies to print books." Hofman (2009).

TRADEMARK

Trademark is a "word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies or distinguishes the source of the goods of one party from those of others" (United States. Patent and Trademark Office). A more elaborate definition of trademark "is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking" (India. Controller General of Patents, Designs and Trademarks. Office of the Registrar of Trademarks).

It identifies a product or an organization and helps the consumer to decide for buying it. It is granted at different levels, i.e., local, national and international level for different time periods in different countries. At the international level,

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