
Intellectual Property Rights : Some Aspects

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Abstract

Discusses the need for awareness of Intellectual Property Rights (IPR). Mentions the concept of Intellectual Capital with their key components. Classifies properties to understand the concept of intellectual property. Analyses different aspects of IPR and its issues in digital era. Concludes with the suggestion that Library and Information Professionals have an obligatory role to play in making aware their users about IPR.

Keywords: Intellectual Property Rights, Intellectual Capital, Copyrights, Digital Library

0. Introduction

In the recent past, the issues concerning Intellectual Property Right (IPR) have been debated in various meetings, seminars, conferences and forums all over the world. In today's post information age, which has been labeled as knowledge society, issues such as generation, valuation, protection and exploitation of Intellectual Property (IP) are becoming more and more critically important around this global village. Article 27 of the Universal Declaration of Human Rights, 1948, recognizes that "everyone has the right to the protection of the moral and material interest resulting from any scientific literary or artistic production of which he is the author" and that "everyone has the right ... to share in scientific advancement and its benefits". On the other hand, awareness on IPR becomes key to technological innovation. In this Digital Information/Knowledge Era, the importance of IPR is growing further. Indeed IPRs have assumed significant importance since the signing of the Agreement on Trade Related Intellectual Property Rights (TRIPS) under World Trade Organization (WTO). Many countries of the world have initiated measures to strengthen and restructure intellectual property regime as a result of commitments made under TRIPS by establishing Intellectual Property Cells to provide relevant information about IPR. In this regard, mentioned may be made of (a) establishment of IPR Helpdesk in October 1998 as the central point for intellectual property inquires and advice through out the European Union(EU) by the European Commission¹ (b) establishment of a special website in the USA by the Office of the Independent Inventor Programs(OIPP) of the US Patent and Trademark Office(USPTO) in March 1999 to provide basic information on a number of frequently asked questions about IPR² and (c) emphasis given by China to enhance the awareness for IPR Protection as the people do not have enough legal knowledge on how to protect IPR³. India has also initiated concerted efforts to provide IPR information at the national level to a large section of the society participating in many bilateral arrangements or multilateral international treaties and conventions concerning IPR⁴.

1. Intellectual Capital

Success in the marketplace is increasingly linked to an organization's ability to manage and leverage its intellectual capital – the intangible and invisible assets such as knowledge and competence of people, the intellectual property and information systems⁵. Intellectual capital has also been referred to as an asset that has been formalized, captured and leveraged to produce a high-valued asset⁶. It includes human centred assets, intellectual property assets, infrastructure assets and mental assets. Human centred assets comprise the collective expertise, creative capability, leadership, entrepreneurial and managerial skills embodied by the employees of the organization. Intellectual property assets include know-how, copyright and other related assets. Infrastructure assets cover those technologies, methodologies and processes, which enable the organization to function⁷. As such, intellectual capital

comprises knowledge assets regarding markets, products technologies and organizations that a business owns or needs to own and which enables its business processes to generate profits⁸. Intellectual Capital comprises of three elements as below⁹:

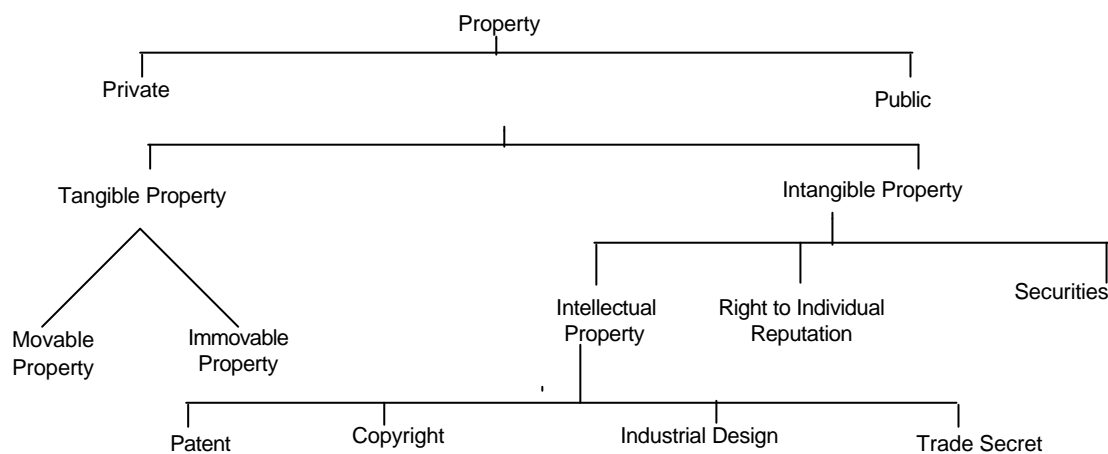
Human Capital : Knowledge, skills and experiences possessed by individual employees comprising of explicit conceptual knowledge and more tacit knowledge.

Structural Capital : Everything that remains in a firm after its employees go home which include explicit, rule-based knowledge embedded in the organization's work processes and systems or encoded in written policies training documentation or shared databases of best practices as well as intellectual property and copyrights.

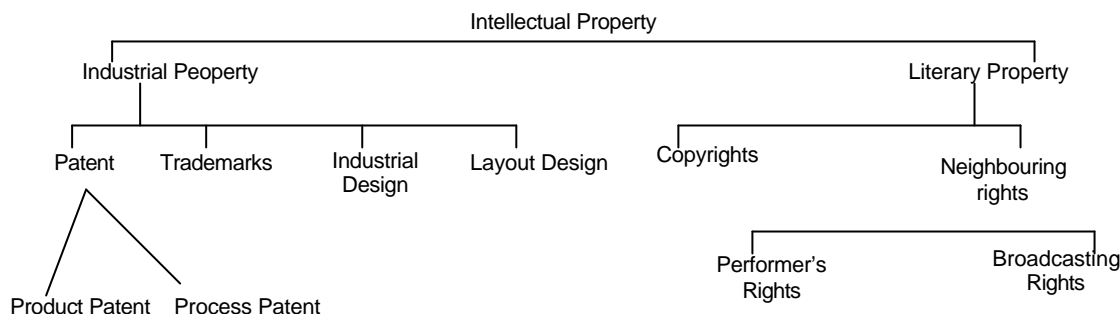
Social Capital : Ability of groups to collaborate and work together and it is a function of trust (i.e. professional, studied and national trust based on a shared context which provides a sense of anticipated reciprocity, predictability and reliability within a group).

2. Intellectual Property (IP)

Property can be of intangible which include intellectual property, securities, right to individual reputation, etc. Dr. G. B. Reddy ¹⁰ has classified property as below:



As such Intellectual Property is that property which is created by human intelligence or mental labour and it is mostly in intangible form even though it can be reproduced in tangible form. But in the recent past many new forms of IP have come into existence as shown below:



IP has loosely been defined as a product of mind. Indeed, it is any property consisting of movable or immovable things wherein the owner may use his property as he wishes and nobody else can lawfully use his property without his permission. It is simply the resulting outcome of human intelligence.

3. Protection of IP

It is essential to protect IP so that nobody else can enjoy the fruits of other's efforts. The IP of a person can best be protected if he keeps it out of the eyes and knowledge of the world. There are several ways to protect this IP. Like any other property, IP is not absolute. As such no private person can enjoy an exclusive right of IP without the control and regulation by the Government. Therefore appropriate national legislations govern the IPR. The World Summit on Information Society (WSIS) held in Geneva in December 2003 also reaffirmed that the protection of IPR is important to encourage innovation and creativity in the Information Society. It also concurrently agreed that the sharing and strengthening of global knowledge can be enhanced by removing barriers to equitable access to information and by facilitating access to public domain information.

4. Intellectual Property Rights (IPR)

IPR is the creation of human mind. Potential efforts of human beings lead to intellectual outcomes which in turn have considerable value in economy. Right associated with intellectual property which gives protection is referred to as IPR ¹⁰.

IPR can generally be defined as the rights given to persons over the creations of their minds. They usually give the creator an exclusive legal right over the use of his/her creation for a certain time and thus protect the owner against unauthorized copying ¹¹. IPR usually protects ideas or information of commercial value, playing a crucial role in the information market. As per TRIPS the different types of IPRs are:

Patents: A government granted and secured legal right to prevent others from practicing.

Copyrights and related rights : A set of property rights vested in the owner of a protected work.
Geographical Indications: Place names used to identify products with particular characteristics as they come from specific places.

Industrial Designs : Features conceived in the authors' intellect regarding pattern, ornament etc, applied to an article and not the article itself.

Trademarks : Identification symbol used in the course of trade to enable the purchasing public to distinguish one trader's goods from the similar goods of other traders.

Layout Designs of Integrated Circuits : Layout designs in accordance with the provisions of the IPIC (the Treaty of Intellectual Property in Respect of Integrated Circuits), negotiated under the auspices of WIPO in 1989.

Trade Secrets (undisclosed information) : Protection must apply to secret information that has commercial value and that has been subject to reasonable steps to keep it secret.

According to World Intellectual Property Organization(WIPO),IPRs include “rights relating to:

- ✍ Literary, artistic and scientific work
- ✍ Performance of performing artists, phonograms and broadcasts
- ✍ Inventions in all fields of human endeavour
- ✍ Scientific Discoveries
- ✍ Industrial Designs
- ✍ Trademarks, service marks and commercial names and designations
- ✍ Protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields”.

5. The Differences

There are major differences between IPR and other property rights. IPR are rights over intangible property or property incorporeal. Physical property get exhausted when consumed whereas the use of IP does not exhaust the same; rather it enhances the value of the property. Consequently, IP is one which can be economically used by many¹². So IP must be expressed in some discernible way for enabling it to be protected. Unlike a physical object, an intellectual property like an idea for invention, a piece of music or a trademark cannot be protected against other person’s use of them by simply possessing the object. Hence the necessity of enacting intellectual property laws distinct from conventional laws protecting personal property¹³.

6. Copyright

Copyright stands for legal right to prevent others from copying an existing work of an individual. It is such a right exclusively given for a definite period of time to the originator (author or creator) of intellectual work such as publication, or an article or a literary work for sale or any other use. In other words, copyright is a set of property rights vested in the owner of a protected work which covers published and unpublished literary, scientific and artistic works, etc. Copyright broadly include : Literary works; Musical works; Dramatic works; Audiovisual works; Pantomimes and Choreographic works; Photographic works; Sound recordings; Broadcast; Architectural works; Sculpture; Drawing; etc. Recently an expression called “neighbouring rights” has been added to the concept of copyrights which cover the following three types of rights:

- ✍ The rights of performing artists in their performance
- ✍ The rights of producers of phenograms in their phenograms
- ✍ The rights of broadcasting organizations in their radio and television broadcasts.

7. IPR in Digital Era

IPR issues in the IT sector have assumed significance following rapid emergence of digital era. IPR cells are food to be set up in different countries of the world to launch awareness programmes in collaboration with Public Sector undertakings, industries, scientific societies, etc. as in India. Such cells extend support

to file applications for patents and copyrights. Recent advances in technology have produced radical shifts in the ability to reproduce, distribute, control and publish information. WWW has allowed everyone to be a publisher with worldwide reach. At this crucial scenario, in order to protect the right of authors, developers and to provide privacy and liberty to user, it becomes essential to introduce laws against computer crime and help to build IT infrastructure. In view of these facts, various laws, Electronic-fund transfer, Electronic cash digital intellectual property rights, etc. have been enacted¹⁴. In India specific studies are undertaken to enhance the understanding of IPR issues in the field of Software, Multimedia, National Information infrastructure, global digital economy, cyber laws, and feasibility of electronic right management system in the line with WIPO treaties on digital agenda. The initiatives taken by the Government of India, Private and NGOs to create awareness about IPR are creating a climate to face the challenges of the new IPR regime.

8. Conclusion

Protection of IP resulting from exercise of human intellect has been in existence since a long time, with the Vienna International Exhibition on Invention in 1873. Since then there has been an important landmark in the IPR scenario(as in Annexure). However, it is less known by the people due to lack of awareness on different aspects of IPR. It is essential to know about the laws, rules and regulations under IPR. Governments of different countries have taken up various strategies to make their citizens aware of it. There are different types of IPRs relating to different aspects. Intellectual property, being of intangible is quite differed from other properties. Issues of IPR have become more complex in this digital era. Today it is an obligation of the Library and Information Professionals to keep aware their users about IPR. Thanks to the University Grants Commission (UGC, India) for its timely and rightly inclusion of IPR in the Model Curriculum 2001 of Library and Information Science as done in other countries.

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Annexure

Important Landmarks in IPR: Global Scenario

- ✍ Vienna International Exhibition in Invention, 1873(in which foreign exhibitors refused to attend opining that their ideas will be known to others and exploited commercially in other countries); felt the need for Intellectual Property Protection at International Level for the first time.
- ✍ Paris Convention, 1883(for the protection of industrial property); revised in 1900 at Brussels, in 1911 at Washington, in 1925 at Stockholm and in 1979 last amendment was made, India became a signatory of the Paris Convention on Dec 7, 1998.
- ✍ Berne Convention, 1886(for the protection of Literary and Artistic Works); revised in 1896, 1908, 1928, 1948, 1967, 1971 and amended for protection of artistic works in 1979; renamed as Bureau for Protection of Intellectual Property(French acronym BIRPI); changed to World Intellectual Property Organization in 1970; became specialized agency of UN in 1974.
- ✍ Hague Agreement, 1925(concerning the International deposit of industrial designs); being implemented by the WIPO.
- ✍ Universal Copyright Convention (UCC) under the auspices of UNESCO, 1952 concerning copyright issues); came into force since September 16, 1995; revised in 1971 at Paris.
- ✍ The Rome Convention, 1961(International Convention for protection of Performers, Producers of Phonograms and Broadcasting Organizations).
- ✍ Budapest Treaty, 1973(for deposition of micro-organisms); revised in 1980, India became its member on December 17, 2001.
- ✍ Patent Co-operation Treaty ((PTC), 1978 concerning Patent Cooperation issues). India joined the same on December 7, 1998.
- ✍ Madrid Agreement, 1991(for repression of false or deceptive indications of source of goods covering their trademarks and service marks).
- ✍ WTO – TRIPS Agreement, 1994(on Trade related aspects of IPR).
- ✍ WIPO – WIPONET, 1998(for having a worldwide network to help in the process of generation, valuation, protection and exploitation of Intellectual property); expected to interconnect 332 intellectual property offices in 171 countries.
- ✍ Doha Declaration: 9-13 November, 2001(on TRIPS and Public Health); which permits the countries when faced Public Health crisis to issue compulsory licenses to domestic firms to produce generic drugs.

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