

Piracy in Software and Music Industry

Dr. Hemant Kapil

Assistant Professor
S. A. Jain (Pg) College Ambala City

Intellectual property is a category of property that includes intangible creations of the human intellect, and primarily encompasses copyrights patents and trademarks. It also includes other types of rights, such as trade secrets, publicity rights, moral rights, and rights against unfair competition. Artistic works like music and literature, as well as some discoveries, inventions, words, phrases, symbols, and designs can all be protected as intellectual property. Intellectual property law has evolved over centuries. It was not until the 19th century that the term "intellectual property" began to be used, and not until the late 20th century that it became commonplace in the majority of the world. The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. Because they can earn profit from them, this gives economic incentive for their creation. The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is indivisible - an unlimited number of people can "consume" an intellectual good without it being depleted. Additionally, investments in intellectual goods suffer from problems of appropriation - a landowner can surround their land with a robust fence and hire armed guards to protect it, but a producer of information or an intellectual good can usually do very little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of intellectual goods but not so strong that they prevent their wide use is the primary focus of modern intellectual property law. Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

Intellectual property rights are customarily divided into two main areas:

(i) Copyright and rights related to copyright

The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author.

Also protected through copyright and related (sometimes referred to as "neighbouring") rights are the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound) recordings) and broadcasting organizations. The main social purpose of protection of copyright and related rights is to encourage and reward creative work.

Copyright usually refers to the rights of authors in their literary and artistic works. In a wider sense, copyright also includes 'related rights': the rights of performers, producers of phonograms and broadcasting organizations.

During the Uruguay Round negotiations, members considered that the standards for copyright protection in the Berne Convention for the Protection of Literary and Artistic Works were largely satisfactory. The TRIPS Agreement provisions on copyright and related rights clarify or add obligations on a number of points:

The TRIPS Agreement ensures that computer programs will be protected as literary works under the Berne Convention and outlines how databases must be protected under copyright;

It also expands international copyright rules to cover rental rights. Authors of computer programs and producers of sound recordings must have the right to prohibit the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copying, affecting copyright-owners' potential earnings from their films; and

It says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances (bootlegging) for no less than 50 years. Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a period of 50 years.

Trademarks

A trademark is a sign or a combination of signs used to distinguish the goods or services of one enterprise from another.

The TRIPS Agreement defines what types of signs must be eligible for protection as trademarks, and what the minimum rights conferred on their owners must be. It says that service marks must be protected in the same way as trademarks used for goods. Marks that have become well-known in a particular country enjoy additional protection.

Geographical indications

A name or indication associated with a place is sometimes used to identify a product. This "geographical indication" does not only say where the product comes from. More importantly, it identifies the product's special characteristics, which are the result of the product's origins. Well-known examples include "Champagne", "Scotch Whiskey", "Tequila", "Darjeeling" and "Roquefort" cheese.

Using the indication when the product was made elsewhere or when it does not have the usual characteristics can mislead consumers, and can lead to unfair competition. The TRIPS Agreement says members have to provide ways to prevent such misuse of geographical indications.

For wines and spirits, the TRIPS Agreement provides higher levels of protection, i.e. even where there is no danger of the public being misled.

Some exceptions are allowed, for example if the term in question is already protected as a trademark or if it has become a generic term.

The TRIPS Agreement provides for further negotiations in the WTO to establish a multilateral system of notification and registration of geographical indications for wines, which was subsequently extended to include spirits. The question of whether to negotiate extending this higher level of protection beyond wines and spirits is also being discussed in the WTO.

Industrial designs

Industrial design is generally understood to refer to the ornamental or aesthetic aspect of an article rather than its technical features.

Under the TRIPS Agreement, original or new industrial designs must be protected for at least 10 years. Owners of protected designs must be able to prevent the manufacture, sale or importation of articles bearing or embodying a design which is a copy or substantially a copy of the protected design for commercial purposes.

Patents

The TRIPS Agreement says patent protection must be available for eligible inventions in all fields of technology that are new, involve an inventive step and can be industrially applied. Eligible inventions includes both products and processes. They must be protected for at least 20 years. However, governments can refuse to issue a patent for an invention if its sale needs to be prohibited for reasons of public order or morality. They can also exclude diagnostic, therapeutic and surgical methods, plants and animals (other

than micro-organisms), and biological processes for their production (other than microbiological processes) from patent protection.

Plant varieties, however, must be protectable by patents or by a special system (such as the breeder's rights provided in the conventions of UPOV the International Union for the Protection of New Varieties of Plants) or by both.

The TRIPS Agreement describes the minimum rights that a patent owner must enjoy, and defines the conditions under which exceptions to these rights are permitted. The Agreement permits governments to issue "compulsory licences", which allow a competitor to produce the product or use the process under licence without the owner's consent. But this can only be done under specific conditions set out in the TRIPS Agreement aimed at safeguarding the interests of the patent-holder.

If a patent is issued for a process invention, then the rights must extend to the product directly obtained from the process. Under certain conditions alleged infringers may be ordered by a court to prove that they have not used the patented process. Compulsory licences for export of medicines.

Layout designs of integrated circuits

An integrated circuit is an electronic device that incorporates individual electronic components within a single 'integrated' platform configured to perform an electronic function.

The protection of layout designs of integrated circuits ("topographies") in the TRIPS Agreement is provided through the incorporation of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, a treaty that was concluded under the World Intellectual Property Organization in 1989, but has not yet entered into force. The TRIPS Agreement adds a number of provisions: for example, protection must be available for at least 10 years.

In practice, layout designs of integrated circuits are commonly protected under patents. Undisclosed information

Undisclosed information includes trade secrets and test data. Trade secrets must be protected against unauthorized use, including through breach of contract or confidence or other acts contrary to honest commercial practices. Such protection is conditional upon the information being secret, having commercial value and reasonable steps having been taken by its owner to keep the information secret.

Test data submitted to governments in order to obtain marketing approval for new pharmaceutical or agricultural chemicals must also be protected against unfair commercial use and disclosure. Extended transition periods continue to apply to least developed country members.

REFERENCES:

1. "What are intellectual property rights?" World Trade Organization. World Trade Organization. Retrieved 2016-05-23
2. "Intellectual property", Black's Law Dictionary, 10th ed. (2014).
3. Arai, Hisamitsu. "Intellectual Property Policies for the Twenty-First Century: The Japanese Experience in Wealth Creation", WIPO Publication Number 834 (E). 2000. wipo.int
4. 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: Westview Press.
5. Boldrin, Michele and David K. Levine. "Against Intellectual Monopoly", 2008. dkleving.com
6. Hahn, Robert W., Intellectual Property Rights in Frontier Industries: Software and
7. Spooner, Lysander. "The Law of Intellectual Property; or An Essay on the Right of Authors and Inventors to a Perpetual Property in their Ideas". Boston: Bela Marsh, 1855.
8. Vaidhyathan, Siva. The Anarchist in the Library: How the Clash Between Freedom and Control Is Hacking the Real World and Crashing the System. New York: Basic Books, 2004.
9. Burk, Dan L. & Mark A. Lemley (2009). The Patent Crisis and How the Courts Can Solve It. University of Chicago Press. ISBN 978-0-226-08061-1.