

**Intellectual property rights and its protection in Cyberspace and Media laws****Ankita Sharma**

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**Abstract**

Intellectual property rights, as defined by the World Trade Organization, are the rights given to persons over the creations of their minds.<sup>1</sup> An original creator of any invention, literary work, artistic work, etc has an exclusive right over his/her work over a specific period of time.

However, with the advent of internet, incidences of infringement of such rights have been proliferating. While internet and digital media have helped many creators get recognition for their work, it has also proved to be a platform for miscreants to steal original work of someone and sell it in their name for selfish gains.

There are several organizations and laws that work towards protecting Intellectual Property Rights, at both global<sup>2</sup> and national level. In this paper, we will shed a light on a few provisions available for IPR protection.

IPR are given in the form of patent, copyright, trademark, utility model, geographical indication and so on. 'Office of the Controller General of Patents, Designs and Trademarks' handles IPR issues in India. In this context, this paper discusses role of judiciary in the protection of IPR.

Cyberspace and media are the most vulnerable platforms to be affected when it comes to violation of intellectual property rights. In the modern times, cybercrimes and intellectual property infringement cannot be separated. The impact generated by the same is briefly discussed along with its implications on the economy, at large.

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<sup>1</sup> WTO, trade topics-TRIPS-what are IPRS

<sup>2</sup> World Intellectual Property Organization: [www.wipo.int/](http://www.wipo.int/)

## 1. INTRODUCTION

Intellectual Property Rights are of different types, namely copyrights, patents, trademarks, industrial designs, geographical indications, utility model and trade secrets. Each of these acts as a separate category of IPR. They subsume a certain type of work and have different validity periods. Some of the prominent ones are as following:

- Copyrights: - These are legal rights over literary and artistic works. It covers a vast range from books, music, movies, and advertisements to paintings, sculpture, maps and databases. Copyrights, as a general rule of law, last for about 60 years.<sup>3</sup>
- Patents: - These are given for a novel invention. The term of a patent in India is usually of 10 or 20 year and it is subjective to change, if required.<sup>4</sup>
- Trademarks: - These are rights, in the form of signs, given to distinguish between a good or service of one enterprise from another enterprise. A trademark is initially, given for a period of 10 year which can be extended from time to time.<sup>5</sup>

Before delving more into the areas of IPR protection, cyberspace and media laws need to be discussed. Cyberspace is a virtual world of interconnected computers. It is used to facilitate online communication from one part of the world to another. It allows users to share information, conduct business, play games, chat and above all, share ideas and innovations, which is the primary concern related to IPR protection. Among many kinds of cybercrimes, theft of intellectual property is a dominant one. Internet gives the power to stealers to stay anonymous and escape accountability. With globalization and ever expanding world trade, the need for coalescing intellectual property rights and cybercrimes was realized. Hence, policy frameworks were put in place. If not for them, invading into privacy of a person or nation would have been easily possible leading to disastrous implications, from sex trafficking to nuclear bombing.

Media laws are enforced to protect rights of creators involved in the media and entertainment industry. An enormous amount of hard work and money goes into creation of a film, music, TV show or OTT content. There are thousands of stakeholders involved in a single project. The protection of their property rights not only preserves original work but also helps the economy from falling. Copyrights have acted as sole protectors of artistic work since long. However, digital medium has made it a bit overwhelming to keep a check on copyright infringement. Huge masses of audience like free content and it is made available on proxy websites on the internet. Courts and governments have shown grave concerns in this regard. A

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<sup>3</sup> The Copyright Act, 1957

<sup>4</sup> The Patent Act, 1970

<sup>5</sup> The Trademarks Act, 1999

well framed media law goes a long way in accelerating growth and encouraging young minds to keep innovating.



## 2. Literature Review

### 3.1. Role of courts and lawyers

Intellectual property rights are nothing but a legal defense mechanism against one's property. An owner who is being granted IPR enjoys absolute monopoly on the usage and selling of the product. It is the judiciary of a country that is vested with the power to implement, amend and enforce IP rights.

The protection of IP rights is done through laws made on the basis of unique requirement of a good or service. If these laws are breached, a court can initiate civil or criminal proceeding against the offender, provided a case is being lodged by the IP owner. Apparently, certain loopholes exist, especially in the Indian context. A civil prosecution does not have provisions to recover huge economic losses. A criminal prosecution, in contrast, cannot be initiated against patent or design infringement, which results in irreplaceable damages to the owner. In addition, the amount of time taken by court proceedings makes the entire framework appear bland.

Presently, India ranks 40 among 53 global economies in the latest IPR Index of 2021<sup>6</sup>. It is a grim situation considering the fact that India comprises of the highest youth population. The new generation needs to be encouraged to innovate and the judiciary needs to be more efficient in order to protect such innovative ideas.

As cybercrimes are increasing, a constant demand for legal machinery is evident. Linking, software piracy, cyber squatting, software counterfeiting are some of the cyberspace crimes related to copyright issues. There is plethora of theories floating in the market to prevent cybercrimes, however, what India requires is, more number of courts, judges and lawyers dedicated towards intellectual property issues. It is an excellent opportunity for budding lawyers to dive in. Be it government, private sector or non-profit firm, all of them require judicial protection to secure their assets. In this scenario, lawyers get to work on diverse areas, from defending the rights of a common man to fighting a case for a high profile firm.

Office of Controller General of Patents, Designs and Trademarks<sup>7</sup> under the Ministry of Commerce and Industry is the nodal agency for implementing intellectual property rights in trade and commerce. The objectives of the office complement international treaties and agreements and at the same time, desired modifications have been made in the laws to meet local needs. The lawmakers have a crucial role in designing IPR protection laws as there is a twofold motive: provide flexibility in world trade and preserve national interests.

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<sup>6</sup> IPR Index Rankings, 2021 by US Chamber of Commerce's Global Innovation Policy Centre(GPIC)

<sup>7</sup> <https://ipindia.gov.in/>

### 3.2. Freedom of thought and expression/ Human Rights

Advertisement companies, mostly small scale, often use the faces and voices of celebrities without their consent. The Copyrights Act<sup>8</sup> provides for a punishment for the same, although the word 'celebrity' is nowhere defined in the act. Using identity of a celebrity for malign motives is violation of their fundamental rights<sup>9</sup>.

The incidences of piracy and copyright infringement have been on a rise since decades, owing to constant surge in masses wanting to consume entertainment, primarily in the form of movies and songs. The 2000s was a decade of pirated CDs and DVDs. Soon after, cyberspace was flooded with torrent uploads and downloads. Even today, all you need is an internet connection to download pirated movies, music and e-books.

Media laws have always been subpar in curbing piracy in the entertainment industry. Currently, OTT content is also available in pirated version. Not only this results in insurmountable losses to the industry, but also it is an act of infringement of creator's intellectual property rights.

Further, the pandemic facilitated pirated content to expand its reaches when cinemas were closed, people were facing financial crunch and everybody was looking for online entertainment. Nothing is better than free content at the comfort of homes, for the majority. On top of it, Pakistan banning Indian films on several occasions, paved way for piracy even more. Pakistani audience consumes Indian content in such manner and this massively impacts Indian economy. Clearly, copyrights act falls short on addressing all of it. Media laws require amendments according to the pressing demands of time. The Information Technology Act, 2000, lacks any provisions related to cybercrimes related to IPR.

Right to thought and expression<sup>10</sup> is largely abused when people express their opinion on social media and this information is extracted for partisan gains. Spamming is a component of cybercrime. Especially with the help of social media, primarily, facebook and twitter, it has become very easy to segregate people based on their ideologies and thus, use this information for crooked agendas. Thereafter, misguided people can be lured into illegal businesses of piracy cybercrimes, or even terrorism. People from inside the media industry are the biggest culprits. They are the ones to leak confidential data for personal gains and eventually, piracy continues to exist dominantly.

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<sup>8</sup> Section 39 of Copyrights Act, 1957

<sup>9</sup> Article 21 , part iii, of the Indian Constitution

<sup>10</sup> Article 19(1)(a) , part iii, of the Indian Constitution

### 3.3. National Security

Intellectual property infringement upon a nation's security systems can paralyze the entire country. We are already aware that defense systems, space programs, financial institutions, etc have several goods and services protected under IPR regimes in cyberspace. Under such circumstances, if any cyber attack is launched upon a particular country, it will necessarily be fatal, proving to uproot government machinery, energy grid systems, banking institutions and hijacking defense information and space missions.<sup>11</sup>

Necessity is not only the mother of invention but also a reason to revive traditional practices. The need of the hour is to make the best use of modern technology. For instance, it is scientifically proven that certain radioactive elements can be fruitful to agriculture. In this manner, it is imperative that the usage of these elements must be patented for both military and civil purposes. Many countries are not hesitating from filing more than one patent for a single product. Thus, there is no dearth of innovations. We have already witnessed how different countries came together for the invention of COVID-19 vaccine. This was achieved through modifying IPR structures.

Titanium is a classic example of a metal that has multiple uses. It is used in nuclear submarines, submersibles, power generation, computers, automotives, medical implants, jewellery, house paints, enamels, plastics and so on. This implies, when we file patents for innovative use of titanium in defense armament, its indigenous uses must also be taken into consideration, in order to avoid wastage as there are always huge chunks of leftovers.

Outsourcing defense systems is not an uncommon phenomenon. Countries work together on a project frequently. Many a times, they allow other countries to use their intellectual property rights under a given intellectual property framework. India is in talks with France to obtain a license to produce indigenized versions of Rafael Advanced Defense Systems. Similarly, Brahmos missile development was an India-Russia joint venture. Both the countries enjoy protection of IPR for it. Lately, India is in favor of sharing the IPR of Brahmos with Vietnam and Philippines. DRDO<sup>12</sup> is the parent scientific agency that deals with military procurements.

Some might question if outsourcing and patent pooling<sup>13</sup> of defense systems hampers the protection of IPR in any way. The answer is, NO. When it comes to large scale production of defense and space technology equipments, it is always better to collaborate with other nations. The benefits include – giving birth to best ideas, enhancement of outcomes, saving of time and resources.

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<sup>11</sup> (Gupta, V.K., 2008)

<sup>12</sup> Defence Research and Development Organization, India

<sup>13</sup> Indian Patent Act, 1970 neither states any provision for formation of patent pools, nor refrains anyone from doing so. It is, nonetheless, a restrictive practice under Competition Act of 2002.

### 3. Research Methodology

The main objective of this paper is to discuss vital areas which directly or indirectly deal with issues of intellectual property rights and its protection. Protection of IP rights, be it in cyberspace or media, is done through laws. The methodology used to identify such laws is provided in this section.

- Research Design

The approach followed in this paper, is to focus on the changing demands of time and how intellectual property rights regimes can be modified to adapt to it. Firstly, the role of courts and international agreements come into play as they are the ones related to policy frameworks. Secondly, problem of piracy is discussed in cyberspace and entertainment industry and how it is here to stay, unless IPR are not effectively protected. Thirdly, the concept of patent pooling is touched upon by mentioning the collaboration of two or more countries' defence organizations.

- Data Collection

The roots of WIPO and various international conventions like 'Berne Convention for the Protection of Literary and Artistic Works', 1886 and 'Paris Convention for the Protection of Industrial Property', 1883 can be traced back to US Constitution. In Indian context, the department of Promotion of Industry and Industrial Trade under the Ministry of Trade and Commerce deals with IPR protection and its implementation on the similar lines of TRIPS Agreement.

According to WIPO statistics<sup>14</sup>, a total of 15,914 patents were filed in India in 2011. This number rose to 37,880 in 2020. Speaking of trademarks, the number rose from 194,796 in 2011 to 418,560 in 2020. IIT's have a record of filing the most number of patents in a year from India.

Coming to judicial cases files for IPR violation, a total of 1433 cases were given in favor of IP owners, during 1995-2014. Around 80% of the cases files against copyright infringement were domestic ones.

Online piracy cases rose to around 62% during lockdown in 2020 in India. Local TV channels are reported to stream pirated content around 60% of the times. According to a research by USIBC<sup>15</sup>, India loses around US\$ 2.8 billion to piracy every year. This results in a loss of about 11% in employment, leading to loss in GDP.

- Data Analysis

The ever increasing number of intellectual property rights registrations, indicates that India has a huge potential for innovation and creation. The young generation is taking it very seriously. We might have

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<sup>14</sup> [https://www.wipo.int/ipstats/en/statistics/country\\_profile/profile.jsp?code=IN](https://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=IN)

<sup>15</sup> US India Business Council

been slow in our approach but we are definitely going to overtake China or any other country in a matter of time, as suggested by statistics. A 2018 Report by 'Centre of American Entrepreneurship' titled "Rise of the Global Startup City" places India at a satisfactory position when it comes to startup culture.

The fact that more than 60% of the cases filed against IPR infringement went in favor of creators is a testament to slow but steady pace of legal machinery in our country. While this may sound dismal compared to strict protection laws in foreign nations, in Indian perspective, the situation is not too bad. There has also been a decline in cases by 75% during 2020-2021, owing to the pandemic and shut down of economy. Pending cases should be done with as soon as possible. Loss of employment caused during the process must be compensated appropriately.



#### 4. CONCLUSION

It is time that people realize the threats of internet. Digital literacy needs to be inculcated in academic curriculum, so that students from very young age are made aware of the ways in which illegal authorities use their information on the internet. In addition, people must be made aware of their legal rights. The Indian Constitution guarantees 'Right to Privacy' (article 21) as a fundamental right, which safeguards a citizen's identity on the internet. Celebrities need to be treated fairly and any misuse of their identity must be equally prevented. At the same time, 'Right to Internet' (article 19(1)(a)), granted to every citizen must be exercised judiciously. The legal machinery has to be equipped with being able to handle complex cases, at the end of the day.

Intellectual property rights infringement will always be more in online than in offline because cyberspace provides access and ease of copying with ample room to evade being caught. By the time laws are strengthened, it is the responsibility of the creators to try their best to protect their original creation. This necessarily means, being aware of the pros and cons of the virtual world. The most important is to protect national security, as we have already stated how an attack on a country's IPR can lead to its downfall. This would, ultimately, shatter world trade and commerce.

Above all, the idea behind development of IPR must never be forgotten. IPRs are granted to encourage new ideas and innovations. The possibilities in future are endless and we will require a robust IPR structure to move ahead. IPRs are the sole way to get recognition. Great minds like Albert Einstein might not have been the first ones to create an invention, but they were the first to get a patent. Rest is history.

**References**

1. Agreement on Trade-Related Aspects of Intellectual Property Rights art. 10, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, [hereinafter TRIPS Agreement].
2. Rathod, Riya. (2021, July 4) Role of IP in Media and Entertainment
3. Patel, Meera, Maharaja Sayajirao University, School of Law, Vadodara. Role of Judiciary in the development of IPR
4. Rутtenberg, John (2013). The OPIA Insiders Guide to IP and Cyber law
5. Gupta, V.K. (2008. July 4). India: IPR and National Security.
6. Banerjee, Debatree. The prevalence of piracy in the Indian film industry.
7. Bhatnagar, Konark Rishi, Senior Law Associate. India: Intellectual Property Rights in Cyber Space and The Need for Protection from Infringement.
8. An article on [www.legaldesire.com/](http://www.legaldesire.com/) – ‘Patent Misuse in Cyber Space’
9. <http://www.ipindia.gov.in/>
10. <https://www.cbic.gov.in/htdocs-cbec/customs/cs-act/formatted-htmls/ipr-enforcementrules>
11. [www.technopedia.com](http://www.technopedia.com)
12. <https://www.wipo.int/export/sites/www/treaties/en/agreement/pdf/trips.pdf>
13. <http://www.legalservicesindia.com/article/1742/Intellectual-Property-Rights-in-India.html>
14. <https://www.trade.gov/country-commercial-guides/india-protecting-intellectual-property>
15. Indian Brand Equity Foundation. (2021, May 7). Media and Entertainment Industry. <https://www.ibef.org/industry/media-entertainment-india.aspx>
16. TRIPS Agreement, art. 11
17. <https://www.geeksforgeeks.org/intellectual-property-in-cyberspace/amp/>
18. The Copyright Act, 1957. (Sec 38, 39, 51, 65a, 65b, 66)
19. The Trade Marks Act, 1999
20. The Patent Act of 1970.
21. Patent (Amendment) Rules, 2020