



## Study of Intellectual Property Laws and Recent developments in intellectual property laws in India

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**Introduction :** Intellectual Property can be regarded as a single generic term that protects applications of novel ideas and information that are of commercial value. The Government of India in pursuit of increasing the economic

efficiency of the country acknowledged the Liberalization Privatization Globalization (LPG) era by liberalizing the economy and reducing governmental control. Currently the flourishing Indian economy is witnessing aggressive competition in every field. Healthy and fair competition has proven to be an effective mechanism which enhances economic efficiency. IP Laws are monopolistic legal rights granted to the creators and owners of work which are a result of human intellectual creativity. These can be in varied fields such as industrial, scientific, literary and art. Intellectual Property Rights (IPR) gives the owners the right to exclude others from using their invented subjected-matter for a limited period of time. Further, IPR laws pertaining to copyrights, patents, trademarks, industrial designs and trade secrets prevent commercial exploitation of the innovation by others. IP rights grant the owner an advantage over the rest of the industry or sector.

**Key Words :** Copyright, IP, IPR, Law, Competition Act, MRTP.

Copyright protects the expression of ideas (e.g. words and illustrations). Ideas alone are not protected. Copyright protects works like novels, computer programmes, plays, sheet music and paintings. Generally, the author of a copyright work has the right to reproduce, publish, perform, communicate and adapt his work. These exclusive rights form the bundle of rights that we call copyright and enable the owner to control the commercial exploitation of his work.

**The following may be protected under copyright law:**

- Literary works (e.g., written works, source codes of computer programs)
- Dramatic works (e.g., scripts for films and dramas)
- Musical works (e.g., melodies)
- Artistic works (e.g., paintings, photographs)
- Published editions of the above works



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- Sound recordings
- Films, Television and radio broadcasts
- Cable programs
- Performances etc.

**The following may not protected by copyright :**

Subject matter not protected by copyright include:

- a. Ideas or concepts, Discoveries, Procedures
- b. Methods, Works or other subject matter that have not be made in a tangible form in a recording or writing
- c. Subject matter that is not of original authorship

**Recent developments in intellectual property laws in India**

**1. Trademark law brought at par with international practices**

To bring Indian trademarks law in line with international practices and to ensure implementation of India's commitments under the TRIPS Agreement, India replaced the Trade and Merchandise Marks Act, 1958, with the Trade Marks Act, 1999. Some changes under the 1999 Act are as follows:

- a. Service marks, for the first time, made protectable through registration.
- b. The definition of "trade mark" now includes graphic representations, shapes, packagings and combinations of colours, thereby widening IPR protection.
- c. The procedure for registration of trademarks expedited by removing the earlier system of Part A and B registration. In addition, only a single application need now be filed for registration of a trademark in different classes. The 1999 Act also provides for the classification in conformity with recognized International Classification of Goods and Services.
- d. The period of registration and renewal has been increased from seven to ten years.
- e. The definition of "trademark infringement" has been broadened to give protection beyond the use of identical/deceptively similar marks in relation to goods for which they are registered.
- f. An action for infringement of trademark/passing-off can be filed in a district court within whose jurisdiction the plaintiff ( trademark proprietor) resides or carries on business, as against the earlier law which required the suit to be filed at the defendant's place.
- g. Under the new law, both registered and unregistered trademarks can be assigned with or without the goodwill of the business.



- h. Recently, by way of the Trademarks (Amendments) Rules, 2014, the fee with respect to trademark filing has been increased in certain cases. The fee for an expedited examination have also been increased. Further, the Trade Marks Registry recently issued an Office Order little with respect to alterations that may be made to an application for trademark registration. This Order enlists certain 'substantial alterations', which would not be allowed; and other alterations, primarily clerical in nature that would continue to be accepted by the Registrar.

## **2. Protection to Geographical Indications Provided**

- a. India has enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 (the GIG Act). The GIG Act provides for registration and better protection of geographical indications relating to goods to help identify the place of origin of goods, quality, reputation and other distinctive characteristics of these goods. The GIG Act now helps in protecting unique
- b. Indian products linked to some geographical region of India, such as Basmati Rice, Darjeeling Tea, Alphonso Mangoes, Malabar Pepper, Cardamom and Hyderabad Grapes, which are all well known in the international market. For many years, these products have been exported on a regular basis, demonstrating India's reputation of high quality of these products and, therefore, require such protection. Under the GIG Act, assignment of geographical indications is prohibited, being public property. The GIG Act also lays down provisions for infringement actions. The GIG Act helps prevent geographical indications of goods becoming generic which may otherwise lead to a loss of distinctiveness and consequently loss of protection.

## **3. Copyright Law Modified**

- a. The 2012 amendments in copyright law, which were made to make Indian copyright law compliant with the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty, introduced technological protection measures, ensured that fair use survives in the digital era by providing special fair use provisions, made many author-friendly amendments, special provisions for disabled, amendments facilitating access to works and other amendments to streamline copyright administration.
- b. The Government is considering further amendments to the Indian Copyright Act to help deter continuing piracy. Future amendments would provide for greater deterrents against infringement through more effective legislative and administrative frameworks. These amendments would also offer the police wider powers to conduct secret raids, seize and destroy infringing products, provide faster criminal proceedings and increased punishment for piracy.

## **4. Patents Law more aligned with TRIPS**



- a. Modifications in Indian patent laws have been made in accordance with TRIPS by widening the list of inventions not patentable, incorporating greater rights of the patentee, reversing the burden of proof in an infringement suit on process patents and creating a uniform period of patent protection of twenty years for all categories of invention.
- b. During 2014, the Indian Patent Office released guidelines pertaining to issuance of pharmaceutical patents. These guidelines primarily incorporate features of various court decisions so as to assist the Patent Office in establishing uniform standards of patent grant/examination. These guidelines are expected to bring in uniformity with regard to examinations of the patent applications across all Patent Offices in India and by different responsible officers, in addition to giving to the inventors and corporates much desired certainty on how their application will be examined by the Indian Patent Office. Furthermore, in the recent past, various administrative and procedural mechanisms have been improved in the field of intellectual property law. The infrastructure of the Indian Patent Office has been improved greatly, so as to develop facilities for proper management of International Searching Authority/International Preliminary Examining Authority operation under the Patent Cooperation Treaty.
- c. Indian Patent (Amendment) Rules 2014 recently introduced a third category of applicant being of "small entity", and provided procedural rules for governing the same. Furthermore, the fee for basic patent filing have been revised due to the introduction of the e-filing system of patents wherein the rates for e-filing are lower than those involved in physical filing.

## **5. Protection for Plant Varieties and Rights of Farmers established**

India, in giving effect to the provisions of the TRIPS Agreement, enacted the Protection of Plant Varieties and Farmers Rights Act, 2001, to provide for the establishment of an effective system for protection of plant varieties. The 2001 Act recognizes and protects the rights of farmers for their contributions made in conserving, improving and making available plant genetic resources for the development of new plant varieties. A variety that conforms to the criteria of novelty, distinctiveness, uniformity and stability is registrable under law. The 2001 Act provides for a total eighteen years protection for trees and vines and fifteen years for other plants.

## **6. New Designs Law**

India enacted a separate law for the protection of copyrights in an industrial design. The Designs Act, 2000 repealed the earlier Designs Act, 1911. The new law protects proprietors of novel or original designs and enforces those rights against infringers. The new law incorporates the definition of the term "original" to specify what is a registrable design. In relation to a design, the term "original" includes designs, which though old in themselves, are new in their application. Any design which is new or original, not previously published in any country, whether India or outside India, and which is not



contrary to public order or morality is registrable under the Act. The new Act amplified the definitions of "article" and "design" to bring them in conformity with internationally accepted definitions for providing wider protection. Designs do not need to be registered in more than one class, which was not the case under the earlier law. In view of India's accession to the Paris Convention and India being a signatory to the WTO, the right of priority has been extended to countries under the Paris Convention. The initial period for copyright in registered designs has been extended from 5 to 10 years. The new Act removes the earlier provisions regarding period of secrecy of the design for two years and enables the public to inspect any registered design during initial period of existence of the registration.

## 7. Integrated Circuits Provisions adopted

- a. In compliance with obligations under the TRIPS Agreement, India has enacted the Semiconductor Integrated Circuits Layout-Design Act, 2000. This Act provides for registration of original, inherently distinctive and not yet exploited layout-designs. Any misuse of a registered layout-design can be prevented by way of an infringement action. The Act provides a term of protection for 10 years.
- b. Although the Indian IP laws are still in the stages of development but the same are very much in conformity with the international IP laws as India is a signatory to international conventions and treaties including Paris Convention for the Protection of Industrial Property, Berne Convention on Copyright and TRIPS Agreement. Generally speaking, other than period of protection available and the time and cost taken to register an IP, there are but a few major differences between Indian and European IP laws and even those primarily relate to less significant procedural aspects. However, there have been significant concerns over IP enforcement, with a backlog of cases at both the civil and criminal courts and IP Offices, and this is the area where Indian needs to work.

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