

Intellectual Property Rights: An Introduction

This chapter deals with the definition, brief history, types, advantages, disadvantages, treaties for intellectual property.

1.1 PROPERTY DEFINITION

It is a relationship between a person, a legal person, or an entity and an object over which that person has authority.

Property is of two types:

1. Tangible property
 2. Intangible property
- 1. Tangible property:** It includes all of your belongings, such as your home, car, jewellery, furniture and money. There are owners for each property. They have the legal right to use the property, purchase a new one and sell it.
- 2. Intangible property:** A non-physical asset is referred to as an intangible asset. Creative ideas and inventions generate useful things through goodwill, brand recognition and intellectual property.

Invention and creativity are the two significant aspects that give benefits and help in the economic development of any nation. Protection of such creativity and invention by rules and laws is essential.

Intellectual Property Rights (IPR): World Intellectual Property Organization (WIPO), has defined “*Intellectual property as creations of the mind, inventions, literary and artistic works, symbols, names and images used in commerce*”.

Intellectual property (IP) refers to the original creation of any human intellect, such as artistic, literary, technical or scientific manufacture. The term intellectual rights’ is derived from the French “*droits intellectuels*”. Intellectual property rights (IPR) are legal rights given to the inventor or creator to protect his or her invention or creation for a certain period of time.

In general, IP is divided into two categories:

1. Industrial property
2. Copyright

Industrial property comprises patents for inventions, trademarks, industrial designs and geographical indications.

1.2 SUBJECT MATTER COVERED UNDER IPR

The World Intellectual Property Organization (1967) gives the following list of the subject matter to be protected by intellectual property rights:

- Themes related to literary, artistic and scientific products, presentations of performing artists, phonograms, broadcasts, scientific inventions, industrial designs, trademarks, service marks, slogan marks, logos, commercial names and designations, including “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields”.

Among all IP types patents, copyright and trademarks are most economically significant.

1.3 WHY COUNTRIES HAVE TO PROMOTE LAWS TO PROTECT INTELLECTUAL PROPERTY?

This is for two main reasons.

- The first is to give legal expression to creators' moral and economic rights in their creations, as well as the public's rights in access to those creations (Fig. 1.1).
- The second is to promote, follow legal acts of government policy, creativity, and the dissemination and application of its results, as well as to encourage fair trading, all of which would contribute to the nation's economic and social development.

1.4 BRIEF HISTORY OF INTELLECTUAL PROPERTY

- From 500 Before Common Era (B.C.E.), chefs (cooks) from the Greek colony of Sybaris were granted year-long monopolies for creating food items (B.C.E.). These are the first instances of intellectual property protection that have been documented.
- During a literary contest in Alexandria, Vitruvius (257–180 B.C.E.) exposed intellectual property theft. He exposed false poets, who stole the words and phrases of others, and this case was cited in Bruce Bugbee's illustrious book. *The Genesis of American Patent and Copyright Law* (Bugbee 1967) is one of the first statutes that protected

authors' rights was issued by the Republic of Florence on June 19, 1421, to Filippo Brunelleschi, a famous architect.

- This statute not only recognised the rights of authors and inventors to the products of their intellectual efforts, but it also included an incentive mechanism, which became a prominent feature of Anglo-American intellectual property protection. For a variety of reasons, including Guild influence, the Florentine patent statute of 1421 only granted Brunelleschi a single patent.
- The origins of patents and copyright can be traced back to England. A Letter Patent, a document bearing the King's seal granting the bearer the right to practice their craft or art in England, was the first recognisable modern form of intellectual property, awarded to a Flemish weaver in 1311. In 1449, the first Letter Patent was granted for an invention.
- The first patent laws in the United States were enacted by Congress in 1790 as part of the constitution.
- In 1641, first patent was granted in Massachusetts General Court to Samuel Winslow for a novel method of making salt.
- On July 31, 1790, George Washington signed the First United States Patent grant.
- In 1856, the British government established the patent system in India.
- The Indian Patents and Designs Act, 1911 was first enacted under the supervision of the Controller of Patents, with a 14-year patent term.
- The Patents Act (39 of 1970) went into effect on April 20, 1972.
- The Patent Act of 1970 initially provided terms of 7 years for pharmaceutical, agrochemical, and food products and 16 years for other categories.

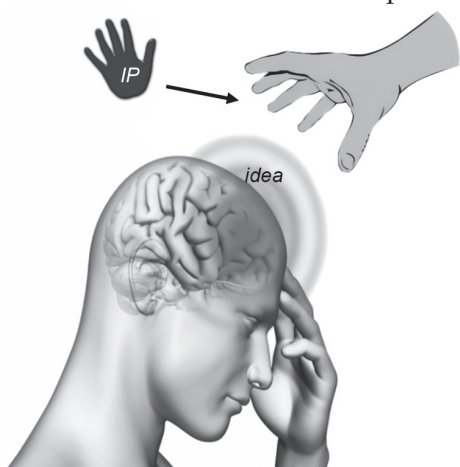


Fig. 1.1: IP protects person's own idea from misappropriation by the another

1.5 CATEGORIES OF INTELLECTUAL PROPERTY (FIG. 1.2)

The trade-related Aspects of intellectual property rights (TRIPS) Agreement, which

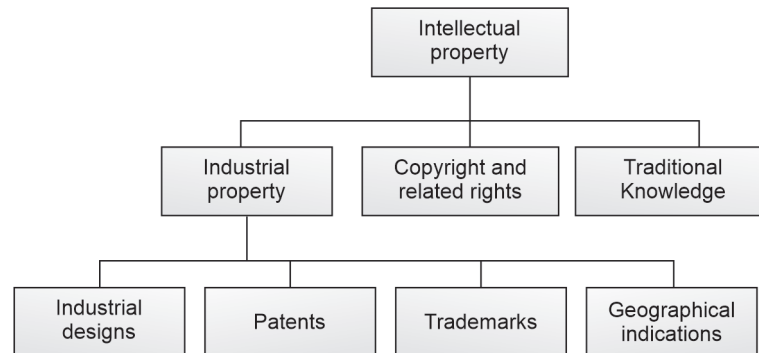


Fig. 1.2: Types of intellectual property

was put into force on January 1, 1995, is the most comprehensive multilateral intellectual property agreement to date. It covers the following types of intellectual property:

- Copyright:** Protection of literary, artistic and scientific works, e.g., books (Fig. 1.3).
- Related rights:** Protection of performances and broadcasts, e.g., concerts (Fig. 1.4).
- Patents:** Protection of innovative inventions, e.g., double-screen laptop, e.g., US 6667878 B2 (Fig. 1.5).

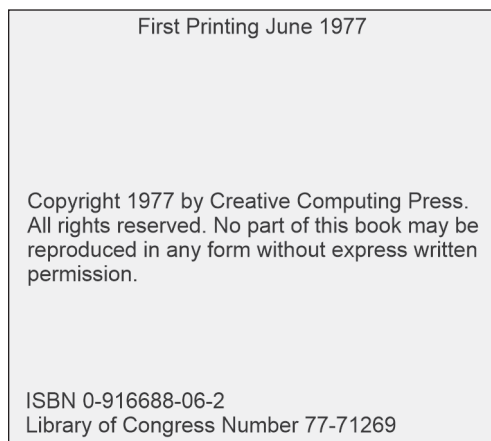


Fig. 1.3: Copyright



Fig. 1.4: Concerts

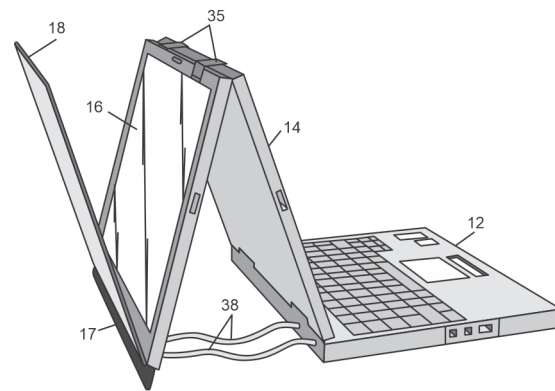


Fig. 1.5: Double-screen laptop

- Industrial designs:** Protection of industrial designs, e.g. shape of Coca Cola or Pepsi bottle (Fig. 1.6).



Fig. 1.6: Industrial designs of bottles

- e. **Trademark, service marks and commercial names and designations:** Protection of trademark logo and names, e.g. amazon trademark (Fig. 1.7). This provides the industry reserves with the right, exercisable at its sole discretion,



Fig. 1.7: Amazon trademark

to modify these guidelines and/or the approved service. It empowers to mark at any time and to take appropriate action against any use without permission or any use that does not conform to these guidelines. A trademark is used in trade to distinguish the goods from one to another. It could be a word, symbol or device (Fig. 1.8).

- f. **Geographical indications:** Protection of product with unique geographical origin, e.g. Darjeeling tea (Fig. 1.9).
- g. **Protection of plant varieties:** Protection of new breed varieties, traditional farm varieties (Figs 1.10A and B).

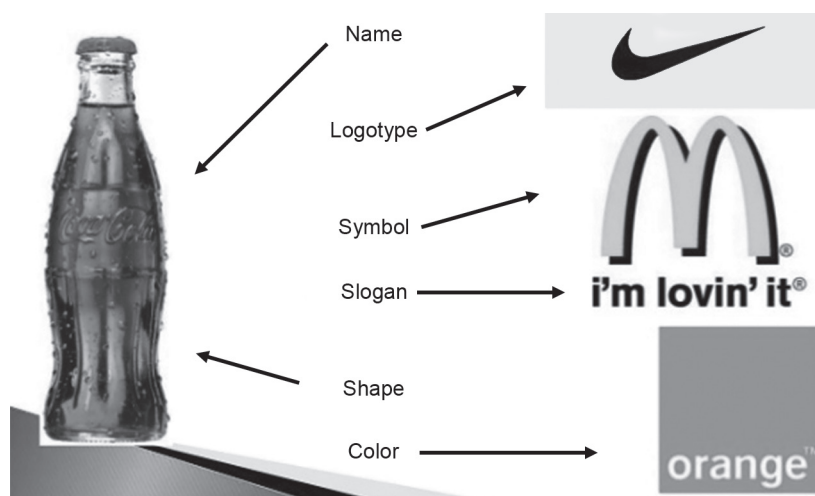


Fig. 1.8: Types of trademarks



Fig. 1.9: Logo of Darjeeling tea



Figs 1.10A and B: Traditional paddy seed bank (Source: VAANGHAI, Nagapattinam district, TN)

h. Trade secrets: Protection of both oral and written information (e.g., business plans, sales strategies, customer lists, computer source codes, methodologies, formulas, etc.), knowledge of which, if maintained in secrecy, provides an economic advantage from not being generally known, or readily ascertainable by proper means (Fig. 1.11).



Fig. 1.11: Example of trade secrets—NDA

1.6 TERRITORIALITY OF INTELLECTUAL PROPERTY (IP)

Both national and international aspects of intellectual property law exist. IP law is

concerned with a specific territory and is only applicable within a specific jurisdiction.

1.7 IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS

- When we buy the protected item, a portion of our payment (Royalty) is returned to the creator as compensation for the time, money, and effort they put into creating it.
- IPR provide the individual with a reward for new creations.
- They are giving recognition where credit is due to the creators and inventors.
- They are ensuring a monetary reward for intellectual property.
- They are assuring the original products' availability.
- They are promoting economic development and technological advancements in the trade sector.

The national and international forums for amending IP protection carried out various treaties and formulated IP rights. Interested nation's consent in different national and international treaties is called signatory. The reason for this is:

1. To provide an incentive for various mental creative endeavors by offering protection.
2. To officially recognize such creators.
3. To establish vital information repositories.
4. To facilitate the growth of domestic industry or culture and international trade through multilateral treaties.

1.8 BRIEF OUTLINE OF INTERNATIONAL CONVENTIONS AND TREATIES

Treaties and Conventions¹

Various IP laws spawned international conventions and treaties. WIPO is in charge of 26 treaties, including the WIPO Convention (Detailed explanation of each is given in Chapter 2).

1.8.1 IP Protection

- The treaties define essential intellectual property (IP) protection standards in each country that have been internationally agreed upon.
- Beijing Treaty (2012) derived IP Rights on audio–visual performances.
- The Berne Convention (1886) states the protection of works and the rights of their authors.
- The Brussels Convention (1974) on the distribution of satellite-transmitted program-carrying signals.
- Madrid Convention (1891) for the prohibition of false or deceptive source indications on goods.
- The purpose of the Permanent Law Treaty (PLT) 2000 is to harmonize and streamline formal WIPO procedures.
- Nairobi Treaty on the protection of the Olympic symbol (1981).
- The Paris Convention (1883) for the protection of industrial property is a treaty.
- The Geneva Convention for the protection of phonogram producers from unauthorized duplication of their phonograms (1971).
- Singapore Treaty on Trademark Law (2006).
- The Trademark Law Treaty (TLT) aims to standardize and streamline national and regional trademark registration procedures.
- The Rome Convention for the protection of performers, phonogram producers and broadcasting organizations (1961).
- The Washington Treaty (1989) protected integrated circuit layout designs.
- The World Intellectual Property Organization's Copyright Treaty (WCT) (1996)

protects works and the rights of their authors in the digital environment.

- The World Intellectual Property Organization's (WIPO) Performances and Phonograms Treaty (WPPT) (1996).

Global protection system treaties ensure that one international registration or filing will affect any of the relevant signatory States.

1.8.2 Global Protection System

- Budapest Treaty (1977) on international recognition of microorganism deposits for patent procedure.
- The Hague Convention relating to the international registration of industrial designs (1925).
- The Lisbon Convention (1958) for the protection of geographical indications and their international registration.
- The Madrid agreement concerning the international registration of marks (1891) and its protocol (1989).
- Patent Cooperation Treaty (PCT) (1970) concerning patent protection for an invention in a large number of countries simultaneously by filing an 'international' patent application.

1.8.3 Classification

Classification of treaties creates classification systems that organize information concerning inventions, trademarks and industrial designs into indexed, manageable structures for easy retrieval.

- The Locarno agreement creates a classification system for industrial designs (the Locarno Classification).
- The NICE agreement specifies the types of goods and services for which trademarks and service marks may be registered (the NICE Classification).
- The Strasbourg Agreement establishes the International Patent Classification (IPC), which categorizes technology into eight sections with roughly 70,000 subdivisions.
- The Vienna Agreement creates a classification (the Vienna Classification) for marks that include figurative elements.

Duration of protection of IPR (India) is given in Table 1.1.

1.9 ADVANTAGES AND DISADVANTAGES OF IPR

The original idea of intellectual property rights was the protection of inventors and scientists, with the aim to protect the creative process and benefit the society as a whole. Different IP categories and their

advantage and disadvantages are given in Table 1.2.

Indirect benefits

- Some countries reduced taxation on profits of the products by registering under IPR, which can increase the business's profits.
- Registered IP rights can also be used to assure the shareholders that their shareholdings are being properly protected through proper protection of new product developments.

Table 1.1: Duration of protection of different IP

IP category	Duration
Patent	20 years from the date of filing of patent application
Trademark registration	10 years from the date of making of the application
Copyright	Lasts period of 60 years
Geographical indication	Period of 10 years
Registration of chip layout design	Period of 10 years
Protection of registered varieties	18 years for trees and vines, 15 years for other crops and extant varieties

Table 1.2: Comparison of different advantages and disadvantages of different IP

IPR category	Advantages	Disadvantages
Copyrights	Protect work against unauthorized reproduction, even if the work has been 'published'. Copyright protection is available for database compilations of information.	They only protect against plagiarism of the original expression. They do not protect the underlying ideas, processes and procedures, methods of operation, conception or principles embodied in the copyrighted works. Competitors are free to use the ideas or facts (with acknowledgments) without violating the copyrights.
Trademark	Legally prevents others taking advantage by trading under innovator name (or something very similar)	Having a registered trademark does not give you the right to the related internet domain names. The extent to which similar (but not identical) trademarks infringe on a trader's business is a point of contention in a civil action with attendant costs.
Patent	Patents are only available if the applicant is the first to invent and the invention is novel, useful and 'not obvious' to someone of ordinary skill in the field. Patent protection is valid for up to 20 years from the date the patent application is filed.	Algorithms cannot be protected. Claims must cover a process for solving problems (which process may be based on one or more algorithms) or a product that embodies the process in order to be patentable. Unless a patent application is filed before the invention is first publicly marketed, rights to obtain patents in other countries may be lost.
Industrial design	Can be combined with copyright and design rights legal protection. Genuine design innovation can be protected for up to 25 years.	Cannot be used for designs that concern how a product works or that are not visible in normal use. Simple changes to the basic design can easily defeat it.
Trade secrets	Lasts as long as the technology or information is kept secret, does not necessitate government registration.	There is no protection, if another person or entity independently creates or discovers trade secret subject matter.

- In the case of academics, R&D teams, designers and businesses wanting to show that their technology is at the cutting edge of progress, patent applications, granted patents and registered designs are a powerful indication that their work is cutting edge.

1.10 INTELLECTUAL PROPERTY RIGHTS— INDIAN SCENARIO

- The Government of India promotes the IP for creativity and innovation in science and technology, traditional knowledge, biodiversity and culture.
- India has made definite strategies for the protection, implementation and management of IP.
- The rights of the creators have been strengthened based on India's copyrights laws and amendments, which were translated in all 22 official languages.
- Copyright for visually impaired person introduced first time in India to ratify the Marrakesh Treaty, 2014.
- India implemented laws for protection for well-known marks, colour combinations and shapes that registered and enforced by both small and big entrepreneurs.
- In the year 2000, the Industrial Designs Act was amended. Through this act, industrially applicable designs are protected under IP. Every year approximately 8000 applications related to industrial designs are filed.
- So far, 200 registrations under geographical indications (GIs) have been granted. Indian government is committed to taking effort to effective protection of GIs in both national and international level.
- Traditional knowledge digital library (TKDL) has been created and managed by various Indian government institutes. TKDL includes major pool of Indian traditional knowledge. This traditional knowledge is utilized by validation and value-added for the betterment

of the people. This library is useful to prevent attempts to misappropriate Indian traditional knowledge.

- India being an agriculture-based country crop varieties are precise. They can be protected under the Protection of Plant Varieties and Farmers' Rights Act (2001), which is sui-generis system which provides protection for plant varieties as well as rights of farmers. Since 2007, over 8000 plant varieties applications have been filed under this act.
- In October 2014, the first registration under the Semiconductor Integrated Circuits Layout-Design Act, 2000, was granted, this provides the right to protect integrated circuit layout designs.
- The IP system in India raises awareness among creators and innovators, resulting in the development of a strong IP culture. India will continue to strike the proper balance between the protection of innovation and the larger goal of societal improvement. Chapter 10 contains information on various organizations and schemes run by the Indian state and central governments.

Rules and Laws—IPR in India

- The Copyright Act, 1957, The Copyright Rules, 1958 and International Copyright Order, 1999.
- The Patents Act, 1970, The Patents Rules, 2003.
- The Intellectual Property Appellate Board (Patents Procedure) Rules, 2010.
- The Trademarks Act, 1999, The Trademarks Rules, 2002.
- The Trademarks Intellectual Property Appellate Board Rules, 2003.
- The Intellectual Property Appellate Board (Procedure) Rules, 2003 – Section 92 of the Trademarks Act, 1999.
- The Geographical Indications of Goods (Registration and Protection) Act, 1999.
- The Geographical Indications of Goods (Registration and Protection) Rules, 2002.

- The Designs Act, 2000 and The Designs Rules, 2001.
- The Semiconductors Integrated Circuits Layout-Design Act, 2000.
- The Semiconductors Integrated Circuits Layout-Design Rules, 2001.
- The Protection of Plant varieties and Farmers' Rights Act, 2001.
- The Protection of Plant varieties and Farmers Rights' Rules, 2003.
- The Biological Diversity Act, 2002 and The Biological Diversity Rules, 2004.
- Intellectual Property Rights (Imported Goods) Rules, 2007.

National IPR Policy 2016:²

In India, National Intellectual Property Rights (IPR) Policy has been implemented. This policy recognized the idea, creativity and innovation.

Vision and Mission of National IPR Policy

Vision: A "India where creativity and innovation are stimulated by intellectual property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared".

Mission: "To stimulate a dynamic, vibrant and balanced intellectual property rights system in India to:

- Promote creativity and innovation for developing the entrepreneurship that enhance socio-economic development, and
- Focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance".

"The policy lays down the following seven objectives:

1. **IPR awareness:** To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
2. **Generation of IPRs:** To stimulate the generation of IPRs.
3. **Legal and legislative framework:** To have strong and effective IPR laws, which balance the interests of rights of owners with the larger public interest.
4. **Administration and management:** To modernize and strengthen service-oriented IPR administration.
5. **Commercialization of IPRs:** Get value for IPRs through commercialization.
6. **Enforcement and adjudication:** To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
7. **Human capital development:** To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPR.

Questions

1. Define intellectual property rights.
2. Write a brief note on intellectual property rights.
3. What are the various categories of intellectual property rights?
4. Explain the importance of intellectual property rights.
5. Write a general account on international conventions and treaties.
6. Write a comparative account on advantages and disadvantages of IPR.
7. Write an essay on IPR in Indian scenario.
8. Explain the national IPR policy.