

Intellectual Property Rights (IPR)

IPR is a general term covering patents, copyright, trademark, industrial designs, geographical indications, layout design of integrated circuits, undisclosed information (trade secrets) and new plant varieties.

What are the legislations covering IPRs in India?

Patents: The Patents Act, 1970 as amended in 1999, 2002 and 2005

Design: The Designs Act, 2000

Trade Mark: The Trade Marks Act, 1999

Copyright: The Copyright Act, 1957 as amended in 1983, 1984 and 1992, 1994, 1999

Layout Design of Integrated Circuits: The Semiconductor Integrated Circuits Layout Design Act, 2000

Protection of Undisclosed Information: No exclusive legislation exists but the matter would be generally covered under the Contract Act, 1872

Geographical Indications: The Geographical Indications of Goods (Registration and Protection) Act, 1999

Plant Varieties: The Protection of Plant Variety and Farmers' Rights Act, 2001

Patents

A patent is an exclusive ownership right granted by a country to the owner of an invention, provided the invention satisfies certain conditions stipulated in the law. A Letters Patent (a kind of certificate) is issued to the owner of the invention by the patent office of the country conferring this right. Exclusivity of right implies that no one else can make, use, manufacture or market the invention without the consent of the patent holder. This right is available to the owner of the invention only for a limited period of time. However, the use or exploitation of a patent may be affected by other laws of the country which has awarded the patent. These laws may relate to health, safety, food, security etc.

A patent in the law is a property right and hence, it can be gifted, inherited, assigned, sold or licensed. As the right is conferred by the State, it can be revoked by the State under very special circumstances for the benefit of public even if the patent has been sold or licensed or manufactured or marketed in the meantime. The patent right is territorial in nature meaning thereby, that a patent granted in India can only be enforced in India. In case the owner of the invention wishes to obtain patents in other countries, the owner will have to file separate patent applications in countries of his interest, along

with necessary fees.

What is the term of a patent in the Indian system?

Term of the patent is 20 years from the date of filing for all types of inventions.

How does one keep a patent in force for the full patent term?

A patent has to be maintained by paying the maintenance fees every year. If the maintenance fees are not paid, the patent will cease to remain in force and the invention becomes open to public. Anyone can then utilize the patent without the danger of infringing the patent.

Patent laws do not require that the information disclosed in the patent specification be sufficient for commercial exploitation of the invention. Thus, a patent will usually not disclose sufficient information for commercialization. Know how on the other hand, covers all information necessary to implement and commercialize the invention such as setting up a production plant, operating conditions, plant layout designs, details of the production methods, various designs and drawings etc. It is this know how which is traded while transferring technology. Know how is usually kept as a trade secret and not shared with public. Know how is not protected through patents as most of it may be non- patentable matter and one does not take patent on the remaining parts to avoid public disclosure. A know how developed around an existing patent and commercialized subsequently may be an infringement of the patent unless the patentee has agreed to commercialization on mutually agreed terms.

Copyrights

What does copyright cover?

- (i) Literary, dramatic and musical work. Computer programs/software are covered within the definition of literary work;
- (ii) Artistic work;
- (iii) Cinematographic films which include sound track and video films;
- (iv) Record-any disc, tape, perforated roll or other device.

What are the rights of a copyright holder (which when violated lead to infringement)?

(a) In the case of **literary, dramatic or musical work**, not being a computer program:-

- (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
- (ii) to issue copies of the work to the public not being copies already in circulation;
- (iii) to perform the work in public, or communicate it to the public;
- (iv) to make any cinematography film or sound recording in respect of the work;
- (iv) to make any translation of the work; to make any adaptation of

- the work;
- (v) to do, in relation to a translation or an adaptation of the Work, any of the acts specified in relation to the work in Sub-clauses (i) to (vi);

(b) In the case of **computer program** -

- (i) to do any acts specified in clause (a);
- (ii) to sell or give on hire, or offer for sale or hire any copy of the computer program, regardless of whether such copy has been sold or given on hire on earlier occasions;

(c) In the case of an **artistic work** –

- i. to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- ii. to communicate the work to the public;
- iii. to issue copies of the work to the public not being copies already in circulation;
- iv. to include the work in any cinematography film;
- v. to make any adaptation of the work;
- vi. to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(d) In the case of a **cinematography film** -

- i. to make a copy of the film including a photograph of. any image forming part thereof;
- ii. to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
- iii. to communicate the film to the public;

(e) In the case of **sound recording** -

- i. to make any other sound recording embodying it;
- ii. to sell or give on hire or offer for sale or hire, any copy of the ,sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;
- iii. to communicate the sound recording to the public;

Explanation: - For the purpose of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

How is computer defined for the purpose of copyright?

Computer includes any electronic or similar device having information processing capabilities.

What is the definition of a computer program?

Computer program means a set of instructions expressed in words, codes, schemes or any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result.

What is the term of a copyright?

- a. If published within the life time of the author of a literary work, the term is for the life time of the author plus 60 years.
- b. For cinematography films, records, photographs, posthumous publications, anonymous publication, works of government and international agencies, the term is 60 years from the beginning of the calendar year following the year in which the work was published.
- b. For broadcasting, the term is 25 years from the beginning of the calendar year following the year, in which the broadcast was made.

Trademarks

A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. A trademark may be one or a combination of words, letters and numerals. It may also consist of drawings, symbols, three-dimensional colours and combination of colours. It is used by traders/companies/firms etc to distinguish their goods and services from those of their competitors. A consumer associates some level of quality/price/prestige with the goods of a particular trademark. In other words the consumer uses the trademark for making a choice while buying a particular product. There are so many examples in our day to day life such as TATA, BATA, Liberty, Brooke Bond, Dabur, Baidyanath, Park Avenue, SAIL and so on. Trademarks do not protect the design or the ideas behind the goods or services from imitation or duplication, but prevent other traders/company/firm from deceiving customers into believing that goods or services actually produced by them were produced by the trademark holder.