

INTELLECTUAL PROPERTY RIGHTS BOON OR BANE

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Intellectual property rights are a bundle of exclusive rights over creations of the mind. Both artistic and commercial. The former is covered by copyright laws. Which protect creative works, such as books movies, music, painting, photographs, and software, and gives the copyright holder exclusive right to control reproduction or adaptation of such works for a certain period of time.

Types of Intellectual property rights. –

Intellectual property rights are customarily divided into two main areas;

(i) Copyright and rights to copyright— The right of authors of literary and artistic works (such as books and other writings, musical compositions, painting, 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 “neighboring” rights are the rights of performers (e.g., actors, singer 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.

(ii) Industrial property- Industrial property can usefully be divided into two main areas:

- One area can be characterized as the protection of distinctive signs. In particular trademarks (which distinguish the goods or services of one undertaking from those of other undertaking) and geographical indication (which identify a good as originating in a place where a given characteristic of the good is essentially as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin). The protection of such distinctive signs aim to stimulate and ensure fair Competition and to protect consumers, by enabling them to make informed choices between various goods and services. The protection may last indefinitely, provided the sign in question continues to be distinctive.

- Other types of industrial property are protected

primarily to stimulate innovation, design and the creation of technology. In this category fall inventions (protected by patents), industrial designs and trade secrets.

The social purpose is to provide protection for the results of investment in the development of new technology, thus giving the incentive and means to finance research and development activities. A functioning intellectual property regime should also facilitate the transfer of technology in the form of foreign direct investment, joint ventures and licensing.

The protection is usually given for a finite term (typically 20 years in the case of patents.)

While the basic social objectives of intellectual property protection are as outlined above, it should also be noted that the exclusive rights given are generally subject to a number of limitations and exceptions, aimed at fine-tuning the balance that has to be found between the legitimate interests of rights holders and of users.

Importance of Intellectual Property right—

Intellectual property protection is the key factor for economic growth and advancement in the high technology sector. They are good for business, benefit the public at large and act as catalysts for technical progress. Whether IPRs are a good or bad thing, the developed world has come to an accommodation with them over a long period. Even if their disadvantages sometimes outweigh their advantages, by and large the overcome the problems so caused. Insofar as their benefits outweigh their disadvantages, the developed world has the wealth and infrastructure to take advantage of the opportunities provided. It is likely that neither of these holds true for developing and least developed countries Intellectual property rights give creators exclusive rights to their creations, thereby providing a n incentive for the author or inventor to develop and share the information rather than keep it secret. The legal protection granted by IP laws are created with significant contributions towards economic growth. Economists estimate that two-thirds of the

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value of large business in the U.S can be traced to intangible assets. Likewise, industries which rely on IP protections are estimated to produce 72 percent more value per added employee than non-IP industries.

Criticism of intellectual property right— 1. The basic public policy rationale for intellectual property laws is that they, in some way, protect the rights of the inventor, author, or creator. The rationale for patent law is that it grants the right to exclude others from making, using, offering for sale, selling, or importing the invention in (to) the country where it was patented. The public policy rationale for trademark rights are that they may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark. The public policy rationale for copyright law is that it is a form of protection provided to the authors of “original works of authorship: including literary, musical, artistic, and certain other intellectual works, both published and unpublished.

2. Many people believe that intellectual property provides a temporary monopoly that protects the use or exploitation of that good, supported by legal enforcement mechanism. In fact, intellectual property protection cannot properly be thought of as providing an economic monopoly, at least in part, because a monopoly can only exist in the presence of a market and the ability of an actor to manipulate the market to a point where higher than competitive prices are able to be maintained, which is something that is rarely achievable by an owner of intellectual property. 3. Furthermore, due to the rivalrous nature of intellectual property, comparing the unauthorized use of intellectual property to the crime of theft presents its own unique problems. In common law, theft requires deprivation of the rightful owner of his or her rights to possess, use, or destroy property.

4. In this a contrary view is that the deprivation of possession occurs at the outset – when an inventor, author, composer, etc has a new idea, he or she has the choice of keeping that idea private and using it solely for personal benefit or sharing that idea with the public in the form of a new invention, book, song, etc. In this context, the grant of limited rights is a “bargain” that the public uses to induce the creator to give up possession at the time the rights are granted, and in this sense, there is a voluntary and irretrievable surrender of possession of the property of the creator.

The unauthorized use of intellectual property is then seen as a violation of the fundamental bargain.

5. The global harmonization of intellectual property legislation under the World Trade Organization (WTO) has also been criticized, for example by the alter globalization movement. The exclusive rights granted by intellectual property laws are generally negative in nature and therefore only grant the holder of IP the ability to exclude third parties from infringing on their monopoly. For example, the owner of a registered trademark has an exclusive right to use their mark in relation to certain products or services, and can exclude others from using that mark in relation to those products or services (sometimes marks which are recognized as “famous” or “well known” are deemed to have developed sufficient goodwill and reputation to be protected across unrelated classes of products and services.)

6. Copyright licenses grant permission to do something. A patent license is a declaration not to do some things. Under certain conditions. Exclusive rights policies in certain countries provide for certain activities which do not require any license, such as reproduction of small amounts of texts, sometimes termed fair use. Many countries’ legal systems afford compulsory licenses for particular activities, especially in the area of patent law.

Intellectual property rights in India—India’s general argument was that it does acknowledge in principle the case for strict IPR protection, but this can be done only in phases suited by its own ground reality. The reality is that absence of international IPR protection for some decades has spawned employment for millions, so an overnight clampdown on IPR violators would foment social unrest. India’s general argument was that it does acknowledge in principle the case for strict IPR protection, but this can be done only in phases suited by its own ground reality. The reality is that absence of international IPR protection for some decades has spawned employment for millions, so an overnight clampdown on IPR violators would foment social unrest.

The Indian government has formed an advisory committee to recommend changes in the 1970 Indian Patents Act. A temporary ordinance for patent protection implementing the “mailbox” provisions of the WTO TRIPS agreement and providing for exclusive marketing rights was issued in December 1994. However the ordinance lapsed and the parliament has

yet to pass a new patent bill implementing the provisions of the ordinance. In July 1996, the U.S. initiated WTO dispute settlement procedures over India's failure to implement its TRIPS obligations. The final panel report on this case was issued in August 1997, and ruled that India had failed to meet its obligation under the TRIPS agreement.

The bottomline is that India considers itself a responsible member of the WTO which suggests that international class IPR protection should be in place by 2005. Besides, given India's determination to emerge as a power in the global software industry. It is most likely that all IPR protection laws will be instituted and enforced by 2005. Note. That Bill Gates, the chief executive officer of Microsoft Corporation, has

distinguished India as a most promising base for software development. If such an IPR conscious business leader like Gates is of this opinion. One can only conclude that India's IPR scene is no deterrent to foreign companies.

Conclusion—Intellectual property protection is the key actor for economic growth and advancement in the high technology sector. They are good for business benefit the public at large and act as catalysts for technical progress. Whether IPRs are a good or bad thing, the developed world has come to an accommodation with them over a long period. Even if their disadvantages sometimes outweigh their advantages, by and large the developed world has the national economic strength and established legal mechanisms to overcome the problems so caused.

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