

# Challenges Faced in the Protection and Enforcement of Intellectual Property rights

Rajiv Verma

Department of Law

Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India

**ABSTRACT:** *As a member of the World Trade Organization and even a member state to the Intellectual Property Rights Agreement on Trade-Related Issues (TRIPS), India is expected to conform its intellectual property rights laws to either the TRIPS Agreement. The problem arises mostly from the development of legislation, but also from ones enforcement, provided that the Indian government must establish a balancing between needs of the people of the country and now the rights of patent holders. As the majority of research papers in India are filed by foreign firms, the problem has become ever more sensitive. This article addresses the laws on copyrights within India and the institutions' difficulties and inability to enforce them. It begins because of the need to protect intellectual property and how it is primarily focused on different international treaties and continues to address the difficulties of their implementation in India.*

**Keywords:** *Intellectual Property Rights, World Trade Organisation, TRIPS, Agreements, Guidelines.*

## INTRODUCTION

The implying, 'knowledge blossoms when shared' doesn't always hang true for intellectual property which would only end up losing its value if allowed to be shared. This requires it of utmost importance to its defence and the laws relevant to it. Protecting it would not only imply that the author is able to reap the products of his or her labour, but would also foster intellectual property growth. Different international treaties, such as TRIPS, which contributed to the creation of the World Trade Organization, led and the need for such security. The IPR regime of India itself would be broadly focused on these negotiations. India changed its patent law in 2005 would include a consumer patent, prior to which it was only valid for methods.<sup>1</sup>

The Paris Convention accepted concepts such as national care, common law and priority date, while the guarantee of automatic copyright was implemented in the Berne Convention regarding literary and artistic works as often as a copyrightable work made its debut. The Madrid Agreement provided for international trademark identification and incorporated international trademark filing.

Since its launch in 1995, India has always been a member state. This indicates that India must, in compliance with requirements, make amendments to its IP rules. The infringement of Intellectual property rights can even be rendered by civil courts and a limitation of moving for civil action is that people cannot seek substantial damages. It was also noted that there is a lack of seriousness when this comes to intellectual property and the penalties aren't really deterrence. The penalty for the offender at first instance is imprisonment for at least 6 months,

---

<sup>1</sup> <http://www.insightsonindia.com/2016/03/21/intellectual-property-rights-india>

which can also be extended to 3 years, and even a fine of at least Rs 50,000/- which can be extended to Rs 2,00,000./-<sup>2</sup>

In struggling economies, policymakers frequently fear that strict enforcement of intellectual property laws can result in job losses in this already struggling economy and thus ignore a need for more laws that are properly enforced. Nor would these economies have ample funds to invest in IPR development and then to set up specialised IP courts.

## DISCUSSION

### *Difficulties in implementation*

- Conducting raid

The legislation provides for the taking of the express authorization of the registrar to undertake a raid, which ends up taking a lot of time, which is not ideal when it happens to arrests as it makes space for leakage. A systematic, fast-paced process is therefore required that would allow the raids to be made simpler and quicker and therefore would not defeat their purpose.

- Filing of FIR:

In the case of IPRs as well, with ever problem in filing FIR is present. The police have declined to file a FIR several times and do not act unless the matter is very serious. In Lalita Kumari v. State of UP, the court found that 'acceptable enforcement measures must be taken against all police officers who do not file a FIR on cognizable offence complaints.'<sup>3</sup>

### *Absence of storing facility for seized goods:*

IPR-related confiscated items have no tracking details in which to store them. They are frequently lost or unrecognisable once they are operated on us by the courts for the purpose of recognition, which instead works in consideration of the accused.

### *Restoration of the goods:*

Regardless of the result of the case, the Copyright Act allows for the artifacts to be given to the owner. This rule is frequently looked over and never enforced and the items have been either released after yet another long time and therefore are not distributed at all.

### *Time gap:*

Regardless of the result of the case, the Copyright Act allows for the artifacts to be given to the owner. This rule is frequently looked over and never enforced and the items have been either released after yet another long time and therefore are not distributed at all.

### *Legal provisions and impediments:*

If one wants to bring a suit for infringement under that same Trademark Law, the trademark must have been licenced for the same reason. Section 27 of the Trademarks Act, 1999,

<sup>2</sup> The Enforcement of Intellectual Property Rights in Developing countries <<https://www.lawteacher.net/free-law-essays/international-law/the-enforcement-of-intellectual-property-rights-in-developing-countries-international-law-essay.php?vref=1>>

<sup>3</sup> WRIT PETITION (CRIMINAL) NO. 68 OF 2008.

however, acknowledges the common law right of the proprietor of the design patent to take some action against a certain person for the transfer of products as goods of some other person or as services or remedies rendered with another person.<sup>4</sup> The procedure of applying for a trade mark is set out in Chapter III of the Trade Marks Act, 1999. The filing process for a trademark:

Conduct a trademark search. To identify a completely original trademark, you may refer to the national trademark database online.

File the application for trademark registration along with the prescribed fees.

Once the mark is registered, the Trade Marks Registry sends the "Official Examination Report" asking for clarifications, if any, in accordance with the Trade Marks Act.

After the application is accepted, it is published in the 'Trade Marks Journal', a government publication to call upon opposition from the general public, if any.

If the application is not opposed within four months, then the registration is granted. In case of opposition, registration is granted only after the case is resolved.

After all due consideration is met, an official letter intimating the acceptance of the application along with the trademark certificate is issued by the Trade Marks Registry.

This entire procedure takes a good deal of time and has space for progress, so it makes it easier. Under the Copyright Act, any security guard not yet at the status of a short and mid may, if he is satisfied that if an infringement of copyright on the job has been, is or is committed, seize under authorization, all originals of the work, and if he is comfortable that an offense under Section 63 has been, is or is likely to commit. All plates, everywhere found, used for the motive of achieving infringing copies to the public, and all copies and plates so confiscated, shall be issued before the Magistrate as soon as reasonably practicable. Here, the phrases, 'if he is pleased,' are very broad and moving the entire and therefore are sufficient to result the investigator to an error in judgement. Rather, the officer would have been offered which was before act to look out for in order to take action. This unencumbered authority creates a unique domain for police officers to observe or abstain from. Police also deny action upon its ground that records such as attorney's power or copyright registrations are not in order. Two key reasons (1) Registration is not a legal condition for police action together under Copyright Act, 1957, which they do not understand. As soon as a work is created, copyright falls into existence and no formality is necessary to be done in order to obtain copyright & registration is discretionary. The certificate of copyright registration and even the declarations made throughout, furthermore, serve as prima facie evidence in legal proceedings of law relating to the copyright ownership dispute.<sup>5</sup>

## CONCLUSION

International treaties and agreements became bridge structures on legislation pertaining to intellectual property rights. Even if their application continues to be the jurisdiction of the nation in something they are implemented. When it comes to enforcing its laws, each country operates better but that is where the issue lies, even when the laws are exactly the same across

<sup>4</sup> Vasundhara Rastogi, IPR in India: Laws and Procedures for Registration.

<sup>5</sup> Dr. Shiva Satish Sharda and Shashvi Mehra, Procedural Difficulties in Implementation of IPR.

---

the member countries of those same treaties, not all of them have been properly prepared to comply with the law. The solution to this issue lies in the structuring of rules and procedures that, as they are, essentially revolve around in these laws. These laws and rules more aptly suited to India could do aside with the bureaucratic difficulties that are faced and make the experience of the award of justice more sustainable and quick paced.