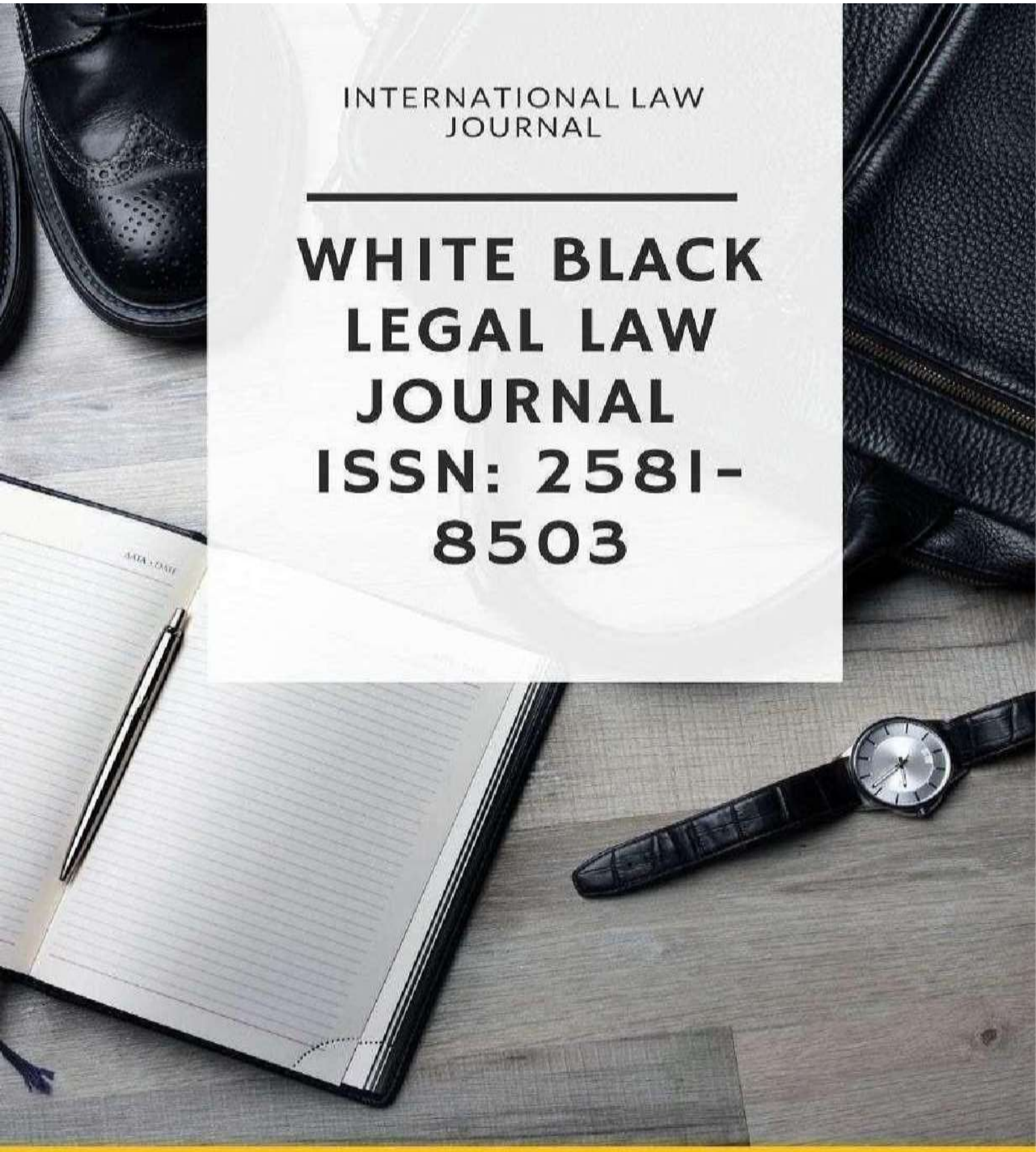

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INNOVATION VS. ACCESS: BALANCE IN IP

AUTHORED BY - SIMRANJIT KAUR & DR PRIYANKA GHAI

Abstract

The legal safeguards afforded to authors, artists, inventors, designers, symbols, and other creative works utilized for profit are all included in the framework of intellectual property (IP). This article explores how intellectual property laws seek to balance the interests of innovators and the public, promoting an atmosphere that stimulates creativity and innovation. It does this by delving into the history, goals, and many forms of intellectual property.

With early origins in British patent laws, intellectual property (IP) first appeared in the 17th and 18th centuries. The phrase "intellectual property" gained popularity in the 19th century. Current intellectual property laws give people and businesses ownership rights over their works, typically for a certain amount of time, which incentivizes them to create and innovate. The main goal of intellectual property laws is to encourage the creation of intellectual goods by granting authors the right to their creations while maintaining flexibility for wider applications.

Early codified patent regimes, such as the British Statute of Anne (1710) and the Venetian Patent Statute of 1474, as well as early court decisions establishing intellectual property rights, provide insight into the development of IP laws. The essay examines how patents have changed over time, from royal grants to legal protections for inventors, noting significant turning points and court rulings that have influenced how we currently see intellectual property.

The four primary categories of IP—copyright, patent, trademark, and trade secrets—are then covered in the article. It gives a summary of each category, outlining what it protects, the legal prerequisites for protection, and noteworthy instances or court rulings that demonstrate how it might be used. The copyright section delves into the protection of artistic, theatrical, musical, and literary works, among other forms of expression, and highlights the significance of uniqueness and material form. The trademark portion deals with the use of words, symbols, or designs to differentiate goods and services, whereas the patent section covers the requirements for patentable inventions, such as novelty and industrial applicability. The trade secrets section concludes by defining trade secrets and offering instances of proprietary business information and procedures.

The evolving global intellectual property framework is acknowledged in the article's conclusion, which calls for more policy flexibility and information access, especially for developing nations. It draws attention to the ongoing attempts to strike a balance between the interests of inventors and public knowledge by mentioning the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement and its disputes surrounding "one-fits-all" protection legislation. In the end, the IP system aims to promote originality and inventiveness while granting the general public access to the advantages of novel concepts and advancements in technology.

Keywords: *Intellectual Property (IP), Copyright, Patent, Trademark, Trade Secret Protection*

Introduction of IP

Intellectual property includes works of writing, artwork, innovative layouts, labels, characters, and pictures that are used for commercial purposes. Patents, copyrights, trademarks, and trade secrets provide legal protection for inventions and allow people to make money economically or gain prominence from their creations[1]. The IP system seeks to balance the interests of innovators and the general public interest in a way that promotes an atmosphere where innovative thinking and creativity are encouraged.

The phrase "intellectual property" was first used in the 19th century, while the idea of IP originated in Britain in the 17th and 18th centuries[2]. By providing individuals and companies ownership rights for particular data and IPs they produce, typically for a certain amount of time, the current intellectual property system aims to promote the production of a broad range of intellectual commodities. As a result, there are more powerful financial incentives for authors to produce as they can preserve the original content and stop illegal copying.

The primary goal of IP laws, according to those in favour, is to stimulate the production of a diverse range of intellectual goods. To accomplish this, the legislation grants individuals and companies property rights to specific data and the intellectual products they produce, typically for a set amount of time. Advocates contend that since intellectual property rules shield original ideas from unlawful use and prohibit duplication, creators are more financially rewarded for the information and intellectual commodities they produce, which increases their motivation to produce them in the first place[3].IP proponents think that these monetary rewards and legal safeguards encourage creativity and advance specific types of technology[4].

In comparison to traditional property like land or goods, IP is tougher to protect because it is intangible. Intellectual property, which is in contrast to traditional property, is "indivisible" because, in conceptual terms, an infinite number of people can "consume" an intellectual good without it

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[1] *World Intellectual Property Organization (WIPO) (2016). Understanding Industrial Property. World Intellectual Property Organization. doi:10.34667/tind.36288. ISBN 9789280525939. Retrieved 22 January 2024*

[2] < "property as a common descriptor of the field probably traces to the foundation of the World Intellectual Property Organization (WIPO) by the United Nations." in Mark A. Lemley, *Property, Intellectual Property, and Free Riding* Archived 26 February 2009 at the Wayback Machine, Texas Law Review, 2005, Vol. 83:1031, page 1033, footnote 4>

[3] Goldstein, Paul; Reese, R. Anthony (2008). *Copyright, Patent, Trademark and Related State Doctrines: Cases and Materials on the Law of Intellectual Property* (6th ed.). New York: Foundation Press. ISBN 978-1-59941-139-2.

[4] The Role of Intellectual Property Rights in Technology Transfer and Economic Growth: Theory and Evidence" (PDF). Retrieved 22 January 2024

running out[5]. Investments in IP are also engulfed by issues related to appropriation: while landowners can employ armed guards and erect a strong fence around their property to keep others out, authors and publishers typically have little control over the act of copying their work and selling it for less money. The main goal of contemporary intellectual property law is to strike a balance between protecting intellectual property rights that are strong enough to promote the development of goods while remaining flexible enough to allow for widespread use[6].

HISTORY OF IP LAWS

Most people agree that the Republic of Venice's March 19, 1474, Venetian Patent Statute is the world's first codified patent system[7]. It specifies that "any new and ingenious device, not previously made" may be granted a patent, given that it is useful. These tenets still serve as the cornerstone of the majority of modern patent legislation. The existing laws governing copyright and patents are thought to have their roots in the British Statute of Anne (1710) and the Statute of Monopolies (1624), respectively[8], which solidified the idea of intellectual property.

In British legal discussions during the 1760s and 1770s, the phrase "literary property" was primarily used to refer to the rights that authors and publishers of works had derived from the common law of property (Millar v Taylor (1769), Hinton v Donaldson (1773), Donaldson v Becket (1774). This is when the term "intellectual property" was first used, in a paper that appeared in the Monthly Review in 1769[9]. It was used as a heading title in a collection of essays in 1808, which is the earliest known instance of modern usage[10].

The German analogy was applied with the establishment of the North German Confederation, whose constitution gave the confederation legislative authority over intellectual property protection (Schutz des genistein Eigen tums).[11] In addition to adopting the term "intellectual property" in their new combined title, the United International Bureaux for the Protection of Intellectual Property, the

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[5] *Moberly, Michael D. (2014). Safeguarding Intangible Assets. Butterworth-Heinemann. pp. 33–35. ISBN 978-0-12-800516-3*

[6] Goldstein & Reese (2008), pp. 18–19.

[7] *Ladas, Stephen Pericles (1975). Patents, trademarks, and related rights: national and international protection. Cambridge, Mass: Harvard University Press. ISBN 978-0-674-65775-5.*

[8] Brad, Sherman; Lionel Bently (1999). *The making of modern intellectual property law: the British experience, 1760–1911*. Cambridge University Press. p. 207. ISBN 978-0-521-56363-5.

[9] *"intellectual property". Oxford English Dictionary (Online ed.). Oxford University Press.* (Subscription or participating institution membership required.) (Citing *Monthly Review*, vol. 41. p. 290 (1769): "What a niggard this Doctor is of his own, and how profuse he is of other people's intellectual property.")

[10] *"intellectual property". Oxford English Dictionary (Online ed.). Oxford University Press.* (Subscription or participating institution membership required.) (Citing *Medical Repository Of Original Essays And Intelligence*, vol. 11. p. 303 (1808): "New-England Association in favour of Inventors and Discoverers, and particularly for the Protection of intellectual Property.")

[11] 'Article 4 No. 6 of the Constitution of 1867 (German)' Hastings Law Journal, Vol. 52, p. 1255, 2001

administrative secretariats created by the Paris Convention (1883) and the Berne Convention (1886) merged in Berne in 1893.

After that, in 1960, the organization moved to Geneva, where it was replaced in 1967 by the World Intellectual Property Organization (WIPO), an agency of the United Nations, which was established by treaty. Legal expert Mark Lemley claims that the phrase did not become widely used in the United States (which was not a party to the Berne Convention) until the Bayh-Dole Act was passed in 1980. It was only at this point that the term started to be used in the United States[12].

The origins of patents can be traced back to royal grants of monopoly powers made by Queen Elizabeth I (1558–1603), not inventions. But a patent, acquired some 200 years after Elizabeth's death, is a legal privilege that grants an inventor sole authority over the manufacturing and commercialization of his scientific or mechanical innovation—illustrating the transition from royal prerogative to common-law theory on patents[13].

In the patent case Davoll et al. v. Brown, decided in October 1845, the Massachusetts Circuit Court used the term "only in this way can we protect intellectual property, the labours of the mind, productions and interests are as much a man's own... as the wheat he cultivates or the flocks he rears." Justice Charles L. Woodbury wrote the ruling[14]. The adage "discoveries are... property" was first used before. The French statute of 1791, section 1, read, "All discoveries are the property of the author; to assure the inventor the property and temporary enjoyment of his discovery, there shall be delivered to him a patent for five, ten or fifteen years[15]." A. Nion, a French author, discussed intellectual property in Europe in his 1846 book Droits civils des auteurs, artists et inventers.

Up until recently, the goal of intellectual property law was to promote innovation by providing as little protection as possible. As a result, historically, legal protection was only given temporarily and only in situations where it was deemed vital to promote creation. This is primarily because information has historically been seen as a public benefit, enabling its widespread diffusion and advancement[16].

It may be possible to determine the concept's ancestry further. Though the idea of intellectual

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[12] Mark A. Lemley, "Property, Intellectual Property, and Free Riding" (Abstract); see Table 1: 4–5.

[13] Mossoff, A. 'Rethinking the Development of Patents: An Intellectual History, 1550–1800,' Hastings Law Journal, Vol. 52, p. 1255, 2001

[14] *1 Woodb. & M. 53, 3 West. L.J. 151, 7 F.Cas. 197, No. 3662, 2 Robb.Pat.Cas. 303, Merw.Pat.Inv. 414*

[15] *"Patent Archives – Ladas & Parry LLP". Ladas & Parry. Ladas.com. Archived from the original on 15 January 2013. Retrieved 25 January 2024.*

[16] "The liquidity of innovation". *The Economist*. ISSN 0013-0613. Retrieved 25 January 2024

creations as property does not appear to exist, Jewish law contains several considerations whose effects are similar to those of modern intellectual property laws. Most notably, in the 16th century, the principle of Hasagat Ge'vul (unfair encroachment) was used to justify limited-term publisher (but not author) copyright[17]. The Greek state of Sybaris granted a one-year copyright "to all who should discover any new refinement in luxury" about 500 BCE[18].

"A paradigm shift is currently taking place in the global intellectual property regime," claims Jean-Frédéric Morin[19]. In fact, until the early 2000s, the world intellectual property regime was dominated by the strict protections found in IP laws from Europe or the United States. The idea behind these laws was to apply them uniformly to all nations and a variety of fields, with little regard for national economic development levels or social, cultural, or environmental values. Morin contends that "the emerging discourse of the global IP regime advocates for greater policy flexibility and greater access to knowledge, especially for developing countries." WIPO's 2007 adoption of the Development Agenda, a set of 45 recommendations, aimed to reduce distortions, particularly about issues like patients' access to medicines, Internet users' access to information, farmers' access to seeds, programmers' access to source codes, or students' access to scientific articles. The Development Agenda was designed to tailor WIPO's activities to the unique needs of developing countries. Nevertheless, at the international level, this paradigm change has not yet resulted in any significant legal revisions[20].

Similarly, it is based on this background that the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement requires members of the WTO to set minimum standards of legal protection. Still, its objective to have a "one-fits-all" protection law on Intellectual Property has been viewed with controversies regarding differences in the development level of countries[21]. Despite the

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[17] *"Jewish Law – Articles ("Jewish Law and Copyright")". Jlaw.com. Retrieved 26 January 2024.*

[18] Charles Anthon, A Classical Dictionary: Containing an Account of the Principal Proper Names Mentioned in Ancient Authors, and Intended to Elucidate All the Important Points Connected with the Geography, History, Biography, Mythology, and Fine Arts of the Greek and Romans. Together with an Account of Coins, Weights, and Measures, with Tabular Values of the Same 1273 (Harper & Brothers 1841). See also "The first patent law was enacted in Sybaris, a city in the South of Italy, before the Roman domination; The law was mentioned by Atheneus, an ancient writer..." in Takenaka, Toshiko (2013). Intellectual Property in Common Law and Civil Law. Edward Elgar Publishing, p. 419. (chapter by Mario Franzosi).

[19] *Morin, Jean-Frédéric. "Paradigm shift in the global IP regime: The agency of academics, Review of International Political Economy, vol 21-2, 2014, p. 275" (PDF*

[20] *Morin, Jean-Frédéric. "Paradigm shift in the global IP regime: The agency of academics, Review of International Political Economy, vol 21-2, 2014, p. 275" (PDF).*

[21] *Roisah, Kholis (26 December 2017). "Understanding Trade-Related Aspects of Intellectual Property Rights Agreement: From Hard and Soft Law Perspective". Hasanuddin Law Review. **3** (3): 277–289. doi:10.20956/halrev.v3i3.1153. ISSN 2442-9899.*

controversy, the agreement has extensively incorporated intellectual property rights into the global trading system for the first time in 1995 and has prevailed as the most comprehensive agreement reached by the world[22].

The IP has 4 types of property, which should be protected under the law.

TYPES OF INTELLECTUAL PROPERTY

- Copyright
- Patent
- Trademark
- Trade secrets

Copyright

The law allows authors of literary, dramatic, musical, and artistic works, as well as producers of sound recordings and movies, to use the term "copyright." It is a group of rights that covers the adaptation, translation, and public transmission of the work, among other things. There may be a few minor variations in the composition of the rights depending on the work. How copyright is applied:

Intellectual property is anything that requires a great deal of thought and creativity to produce, and it must be kept safe from unauthorized copying. Among the original works are examples of:

1. Novels
2. Art
3. Poetry
4. Films
5. Musical lyrics and composition
6. Graphic designs
7. Computer Software
8. Website content
9. Original Architectural design

One legal measure for maintaining the preservation of an original work of art is copyright. One is the US Copyright Office. "Copyright Authorship: What Can Be Registered." Under copyright law, a work is original if it was created by the author using solely their ideas and without any copies. This type of work is known as an Original Work of Authorship (OWA). The

[22] *"WTO | intellectual property (TRIPS) - Responding to least developed countries' special needs in intellectual property". www.wto.org. Retrieved 2024/02/07*

copyright to an original work is immediately acquired by the author, barring others from using or duplicating it. If it becomes necessary in the future, the original copyright owner may choose to voluntarily register their copyright to strengthen their position in the legal system. Not every type of work is covered by copyright. Copyright laws do not protect concepts, ideas, discoveries, or hypotheses. Under copyright laws, titles, domain names, slogans, and brand names are not protected. For an original work to be covered by copyright, it must exist in tangible form. This implies that a speech, discovery, musical composition, or idea needs to be physically documented for copyright protection to apply. In the United States, copyright laws protect original owners for the rest of their lives and for seventy years after their death.

According to the U.S. Copyright Office's "Duration of Copyright," copyright protection lasts for 120 years from the date of publication or 95 years if the original author of the work is firm. The length of copyright protection has been modified by several additions and adjustments to U.S. copyright law. The 1998 Copyright Term Extension Act, also referred to as the Mickey Mouse Protection Act or Sonny Bono Act, essentially extended copyright protections by 20 years and is responsible for the "life of the author plus 70 years" protection. Congress of the United States. "[23]

Wynk Ltd. and Anr. v. Tips Industries Ltd. (2019)

Facts: A substantial music archive is protected by the copyright of the Indian music label Tips Industries Ltd. (Plaintiff), and in 2016 it granted Wynk Music Ltd. (Defendant) access to the archive. In a failed attempt by both parties to renegotiate the conditions of the license at its expiration, Wynk sought protection under Section 31D of the Copyright Act. Tips challenged Wynk's usage of Section 31D and sued Wynk for violating their exclusive sound recording rights under Section 14(1)(e).

Issue: Whether there is a legislative licensing system for streaming services under the Copyright Act?

Judgment:

After hearing both sides' arguments, the Bombay High Court rendered a judgment and found that Wynk had violated the copyright on two separate occasions: first, by making the copyrighted work accessible under Section 14(1)(e)(ii), which permitted users to download and subscribe to the plaintiff's work offline; and second, by making the plaintiff's works accessible to users via their streaming platform. The court ruled in favour of the plaintiff, finding that they were qualified for an interim injunction since they had made a compelling argument and would suffer significant financial

[23] S.505 - Sonny Bono Copyright Term Extension Act.

loss.

PATENT

Everything tangible that was produced with the application of one's creative imagination and intellectual prowess is considered intellectual property under patent law. An inventor can make money from their knowledge and creative spirit in the fields of intellectual property rights and emerging industries. The creator of a given innovation may become extremely wealthy through royalties if they provide firms permission to utilize it in exchange for a license. The innovator can choose to launch his own business or sell his invention for a substantial profit, among other choices. The innovator may not be able to claim any of the aforementioned riches until he files his creation for patent protection.

As a result, the current essay first describes why it is necessary to register a patent in India before offering comprehensive, step-by-step directions on how to do so.

What is patentable? In Sections 3 and 4 of[24], the limitations on what can be patented in India were made clear. In India, several conditions need to be fulfilled to obtain a patent. As stated below:

1. Subject matter: The most important factor is to determine whether the innovation is related to a patent subject matter. Sections 3 and 4 of the Patents Act specify topics that are not eligible for patent protection. Unless the innovation is exempt from one of the rules in Sections 3 or 4, it is eligible for patent protection
2. Novelty: Innovation is a key component in determining whether an invention qualifies for patent protection. Under Section 2(l) of the Patent Act, "no invention or technology published in any document before the date of filing of a patent application, anywhere in the country or the world" is what is referred to as a novelty or new invention. This definition applies to the entire specification, indicating that the subject matter is not already known as public knowledge or state-of-the-art. To put it simply, an innovation should not have been made public according to the novelty requirement. It has to be the most recent and not be a copy of any earlier works.
3. Section 2(ja) of[25] defines an inventive step as "the characteristic of an invention that involves technological advancement or is of economic importance or both, as compared to existing knowledge, and invention not obvious to a person skilled in the art." This definition covers inventive steps and lack of clarity. This implies that an individual with ordinary aptitude in

[24] the Indian Patents Act, 1970
[25] Indian Patent act, 1970

the relevant discipline must not be able to recognize the innovation. It shouldn't be novel and obvious to someone with comparable knowledge.

4. Capable of industrial application: According to Section 2(ac) of the Act, "the invention is capable of being made or used in an industry" is the definition of industrial applicability. This means that an idealised version of the invention is not possible. It must be universally applicable, which suggests that it has real-world significance for patents. These legal conditions are necessary to patent an innovation. An additional essential requirement for obtaining a patent is the publishing of a competent patent. For someone with the necessary experience to implement the invention without undue difficulty, a competent patent disclosure requires that the invention be sufficiently described in a patent draft specification.

These are the essential elements of the patent. Without these elements, innovation cannot be protected under Indian law.

Trademark:

Any word, phrase, symbol, design, or combination of these that uniquely distinguishes your products or services can be used as a trademark. It's how consumers identify you in the market and set you apart from your rivals. Both service marks and trademarks may be referred to by the same term. A service mark is used for services, and a trademark is used for commodities.

Trademark:

- locates the supplier of your products or services.
- gives your trademark legal protection.
- aids in protecting you against fraud and counterfeiting.

A prevalent misunderstanding is that possessing a trademark entitles you to the exclusive use of a specific term or expression and the power to stop others from using it. You only own the right to the word or phrase as it relates to your particular goods or services; you are not entitled to use it generally. Let's take an example where you want to identify and set your small woodworking firm apart from competitors by using a logo as a trademark. This does not give you the authority to prevent others from using a similar logo for products or services unrelated to woodworking.

Trade secrets:

A trade secret is any corporate policy or method that is generally not disclosed to third parties outside the company. Knowledge that is protected as a trade secret gives the company an advantage over its competitors and is typically the product of internal research and development. Under American law, a corporation must take reasonable measures to conceal knowledge from the general public, have it

economically valuable on its own, and have information for it to be designated a trade secret. Trade secrets are part of a company's intellectual property. Unlike a patent, a trade secret is not generally known.

Trade Secret Treatment:

Any corporate strategy or procedure that is often kept under wraps from outside the organization is considered a trade secret. A trade secret is a piece of knowledge that provides a business with an edge over rivals and is usually the product of internal research and development.
To be considered a trade secret under American law, information must be confined, have independent economic value, and be appropriately protected by a company from exposure. One type of intellectual property owned by a business is trade secrets. A trade secret is not as well recognized as a patent. Trade secrets are "all forms and types of" the following information, according to federal law:

- Financial
- Business
- Scientific
- Technical
- Economic

Engineering Such information, according to federal law, includes:

- Patterns
- Plans
- Compilations
- Program devises Formulas
- Designs
- Prototypes
- Methods
- Techniques
- Processes
- Procedures
- Programs
- Codes

Information that is "tangible or intangible, and whether or how stored, compiled, or memorialized

physically, electronically, graphically, photographically, or in writing" is included in the aforementioned, according to federal law. The law further mandates that "the information derives independent economic value, actual or potential, from not being commonly known to, and not being easily ascertainable through proper procedures by, another person who can obtain economic value from the disclosure or use of the information." Additionally, the owner must have taken reasonable measures to protect the information's confidentiality. Other jurisdictions may treat trade secrets very differently; some may view them as property, while others may view them as an equitable right.

Examples: Trade secrets can be found in a variety of both concrete and abstract forms. For example, to safeguard and improve its operation, Google regularly improves its search algorithm, which is considered intellectual property. The Coca-Cola formula, which is stored in a vault, is an example of a trade secret, which is a formula or recipe that is kept confidential. Since it isn't patented, it has never been made public. The list of New York Times bestsellers is one instance of a trade secret process. Since the list considers book sales by combining chain and independent store sales with wholesaler information, books with lower total sales may make it on the list while those with higher sales may not.

SUGGESTIONS

The IP system gives inventions and creations legal protection, usually for a certain period, to strike a balance between the interests of innovators and the general public. This promotes the creation of a wide variety of intellectual products. Trade secrets, patents, trademarks, and copyrights are the four primary categories of IP. Original works of literature are safeguarded by copyright, innovative inventions are protected by patents, goods and services are identified and distinguished by trademarks, and private company information is protected by trade secrets.

The global intellectual property framework has changed to provide for more policy flexibility and improved knowledge access, particularly for poorer nations. However, because of disparities in the levels of development of the various nations, the "one-fits-all" TRIPS agreement has encountered controversy. In general, the IP system permits the public to share knowledge while also providing authors with limited monopolies to foster innovation and creativity. These conflicting interests are still being balanced out.

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