

## INTELLECTUAL PROPERTY: ITS GENESIS AND EVOLUTION

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### INTRODUCTION

We live in the world of tangible and intangible things. We can see and define a house, in terms of area or its description having definite boundaries. What about things that are created by our minds? Does existence depend only upon the test of tangibility? The answer lies in the world of “intellectual property”. Mankind has been gifted with the power of creation, which should be endeavored and protected from misuse. In the world of growing technology, a system is necessary to protect our ideas on virtual platforms such as YouTube and Instagram. To give the creator his rights and economic benefit for his contribution is the crux of intellectual property legislation.

### CONCEPT OF PROPERTY:

The concept of property revolves around the element of “ownership”. There can be no property without ownership and no ownership without property. Society consists of living and non-living aspects; we as human beings try to acquire our rights on non-living objects termed “property”. Ownership creates proprietary rights which give us authority related to property and create liability on others. In absence of the Concept of property, confusion can be created regarding who owns what and whose rights are to exercise on a particular object. Property is a “Bundle of rights” which includes every right to mould the property on your whims and fancies.

### WHAT IS INTELLECTUAL PROPERTY?

Assertions based on doctrine of tangibility, the property can be divided into,

**Corporeal property:** Also called tangible property. It includes objects which can be experienced by our senses. We can see it, touch it and comprehend it in a specific structure. Corporeal property may be either movable or immovable (house, land, car furniture).

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**Incorporeal Property:** Incorporeal means no material existence or composition. The concept of intellectual property is born from this stem. Intellect is related to our mental activity of thinking which further takes the form of applying it to innovation. In a basic sense, intellectual property is a child of our brain.

According to WIPO - World Intellectual Property Organization

“Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; symbols, names, and images used in commerce”.<sup>1</sup>

Illustration: You have been interested in jazz music and decided to compose a unique tune. You put in months of hard work and finally compose a new tune, which is still not heard by anyone. Unfortunately, your computer gets hacked and the tune gets published by someone taking all credit. How would you feel? Your rights have been violated and this sphere is governed by the maxim “Jura In re propria “which deals with the rights of inventions using trademarks, copyright, patents, and many more

### **WHY INTELLECTUAL PROPERTY RIGHTS ARE PROTECTED?**

“Lose of Intellectual Properties may be detrimental to the overall development of the whole nation itself. For protecting the wealth of the nation, stringent laws should be enacted in all fields associated with handling Intellectual properties”.<sup>2</sup> Intangible objects have fuzzy boundaries, which cannot be easily described using our senses. For example, a house can be described by us in form of measurement, color, or type but the same is not the case with intellectual property. “While most tangible goods are rivalrous, meaning that they can be consumed by only one person at a time, this is not the case for intellectual works. My possession and use of a new computer program do not exclude your concurrent use and enjoyment; that is, intellectual property is no rivalrous”.<sup>3</sup> These intangible objects can be easily replicable within seconds in case of downloading a video as a non-authorized user. Protecting Intellectual property will provide an incentive to creators to innovate more.

<sup>1</sup> What is intellectual property (IP)? WIPO, <https://www.wipo.int/about-ip/en/> (last visited Jul 2022).

<sup>2</sup> Sreeragi R.G., INTELLECTUAL PROPERTY RIGHTS (IPR): AN OVERVIEW, Vol:1 Issue:2 February 2021, EIJLITR,27,30 (2021)

<sup>3</sup> Adam D. Moore, A LOCKEAN THEORY OF INTELLECTUAL PROPERTY, Vol.21:65, HLJ,65,77

## **COPYRIGHT: ORIGIN AND ITS ESSENCE**

Humans are gifted with the ability to communicate and express. We used mediums such as writing books, composing music, painting, and symbols. Our history depicts writings on leaves and parchments as the earliest examples. The originality of the work was preserved automatically due to the slow and cumbersome process of writing. Two key developments 1) the invention of Paper and 2) the printing press gave a push start to the Era of printing. Thousands of books were printed and copies were easily made in a short period. It was hard to control what was printed so “censorship” was established. It included giving license to particular authors to publish their work and restricting others. This was the nascent stage in the development of Copyrights

In the modern view “Copyright (or author’s right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings”.<sup>4</sup> Copyrights are given for the protection of Expression but not for the Protection of Ideas. The idea of painting a waterfall picture is open to all, once you execute it, your work cannot be copied in the same form without your permission. Copyright lasts for the period of life of the author and the period after death can be extended as per the rules

## **TRADEMARK: ORIGIN AND ITS ESSENCE**

History of mankind shows, that the first activity started by man was agriculture, which later acted as a base for Trade where the surplus of products was exchanged in the barter system. The concept of trade got flourished with the increase in population and markets were filled with traders providing the same products. There was a race to secure the uniqueness of a particular product in the market to attract more customers and Trademark gave a way to secure it. Landmark case: Sykes v Sykes<sup>5</sup>

**Facts:** Plaintiff was a seller of powder flasks and shot belts, which had a unique mark embedded on them as “*Sykes patent*”. Later defendant started selling his products with imitation of the same mark. The matter of contention was that sales of the plaintiff started to

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<sup>4</sup> Copyright, WIPO, <https://www.wipo.int/copyright/en/> (last visited Jul 2022).

<sup>5</sup> Sykes v Sykes (1824) 107 ER 834

fall when customers thought both products were the same and started buying the defendant's products. The court upheld the verdict of the plaintiff.

This case showed us the importance of trademarks in securing the rights of the owner and protection of consumer rights against duplicate goods.

*“A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights”.*<sup>6</sup>

Trademarks have become an important instrument to maintain equilibrium in the market. To maintain the uniqueness of trade, a trademark can be registered which will give exclusive rights to its owner and even allow them to sell for its value which confirms the flexible nature. Trademarks can be in the form of symbols, logos, drawings, letters, words, sounds, or anything which can be correlated with your trade identity. Trademarks generally last for 10 years but can be extended at the owner's will.

The same trademark cannot be used for similar products but the same trademark can be used for dissimilar products. This was confirmed by Supreme Court in the case of Nandhini Deluxe v. Karnataka Co-operative Milk Producer Federation Ltd.<sup>7</sup>

**Facts:** Petitioner applied for the adoption of trademark NANDHINI for its use in the chain of restaurants owned by him in 1989. Respondents argued that the same mark was already adopted by them for use of milk products in 1985. The matter of contention was the use of the same trademarks will create confusion in minds of consumers. It was highlighted by Supreme Court that if products are different same trademark can be used and it will not create any confusion. The concept of a trademark is based on the connection established with its product. That exclusivity won't be hampered due to different stems of products.

### **PATENT: ORIGIN AND ITS ESSENCE**

*“As we enjoy great advantages from the inventions of others, we should be glad of an opportunity to serve others by any invention of ours, and this we should do freely and generously”.* – Benjamin franklin

<sup>6</sup> Trademarks, WIPO, <https://www.wipo.int/trademarks/en/> (last visited July 2022)

<sup>7</sup> Nandhini Deluxe v. Karnataka Co-operative Milk Producer Federation Ltd (2018) 9 S.C.C (India)

Inventions are the core of development. We would have still lived our lives as we did in the Stone Age without inventions. What is an invention? The answer lies in our mental capacity to comprehend the knowledge and apply it to create new techniques or products. Human psychology works on the theory of incentive, until and unless inventions are not protected and given recognition new inventions won't come out. This protection is granted by Patent.

“A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem”.<sup>8</sup> To trace back on trends, the first patent was granted to a cook for a unique dish created by him. Next patent was granted to a boat maker on his invention of a Vessel to carry heavy materials. “The first recorded patent for an industrial invention was granted in 1421 in Florence to the architect and engineer Brunelleschi. The patent gave him a three-year monopoly on the manufacture of a barge with hoisting gear used to transport marble. It appears that such privileged grants to inventors spread from Italy to other European countries during the next two centuries”.<sup>9</sup> Patents were later used by Guilds of the Roman Empire to protect their art and technique of making crafts. Issuing patents gave a boost to competition and became a source of revenue for people. Granting patents was important because it gave distinct recognition to that innovative idea with exclusive rights. Sometimes even an idea can be protected without converting it into a product. It was not always possible economically to give shape to an idea in physical form.

## **THEORETICAL JUSTIFICATION FOR INTELLECTUAL PROPERTY RIGHTS**

Every concept needs justification to provide it with a more substantial base and increase its credential values. Justification can be subjective and changes from everyone's perspective. But the common crux is it somehow around lands us to the rationale behind it. “The classical property theories and some newer theories appear to justify the protection of intellectual property rights, but for some of the unconventional forms of intangible property interests, other theories could be more relevant for their justification. For example, traditional knowledge protection may be better justified by theories of distributive justice”.<sup>10</sup>

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<sup>8</sup> Patents, WIPO, <https://www.wipo.int/patents/en/> (last visited July 2022)

<sup>9</sup> William Weston Fisher, patent, <https://www.britannica.com/topic/patent>

<sup>10</sup> DU BOIS M "Justificatory Theories for Intellectual Property Viewed through the Constitutional Prism", PER / PELJ 2018(21),1

## LABOUR THEORY

As said, it is labour that can bring change in everything, without labour final products would not be made. For example, raw cotton will be of no use until and unless labour is put in and cotton is woven into yarns and then crafted into clothes. Labour can be used sinuously with skill. This justification was put forward by eminent philosopher John Locke, Also known as the Father of Liberalism. “John Locke’s state of nature sets off with plentiful natural resources which have no sovereignty, trade, or finance. According to him, the first person who employs his or her labour to the resources available has the sole right to appropriate it without anyone else’s consent. And that person may be the farmer, who alters the land through his labour, and he/she only has the right to appropriate it, but the hunter who uses the land without making any significant alterations to the land will not have any right to appropriate it”.<sup>11</sup> John Locke highlighted labour cannot be separated from its product and anyone who mixes his labour becomes his property. We deserve fruits of our hard work was the main idea of labour theory.

## UTILITARIAN THEORY

Human is a social animal that exists within a society. Every contribution done should be for the benefit of society. This was the view put forth by Jeremy Bentham. “Utilitarian signifies „social welfare“ and this theory were advocated by extraordinary financial analysts Bentham and Mill makes every policy universal in the sense of accomplishing the greatest good for the greatest number”.<sup>12</sup> If protecting an artwork is supported by the creator and society as a good gesture then, this theory supports it. Intellectual property rights act as a medium to secure the interests of creators and consumers. It will protect consumers from deceptive practices and adulterated items. The Incentive system is building foundation of Intellectual property and if protection is not granted, people will fear to disclose and people will take undue advantage and use original work maliciously. Without an incentive, there won’t be any progress.

## CONCLUSION

After understanding the journey of Intellectual property from the golden day to the contemporary context, the picture becomes clear. Intellectual property is easily replicated and

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<sup>11</sup> Aravind Prasanna, John Locke’s Labour Theory: A Justification of IPRs, Legal Service India, <http://www.legalservicesindia.com/article/2536/John-Locke%E2%80%99s-Labour-Theory:-A-Justification-of-IPRs.html>

<sup>12</sup> Ritu Paul, Intellectual Property Rights: A Utilitarian Perspective, SSRN, 9 May 2021, 2

has fuzzy boundaries, so a wider ambit of protection is needed in a virtual world. We are entering into an era of smart technology where machines will work under our command and the world will experience a new wave of inventions, Intellectual property will work as an incentive to bring that change soon.

