ISBN - 978-81-926265-0-5

Establishment Year - 1983

Seminar Proceedings

NAAC Sponsored
One Day National Seminar on

Intellectual Property Rights in Legal Framework

Organized by IQAC

MSP Mandal's

Shri Shivaji Law College, Parbhani.

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Emergence of Intellectual Properties: Role of World Intellectual Property Organization with special reference to the WIPO Copyright Treaty, 1996 : An analytical Study.

Dr. Waseem I Khan
Assistant Professor, Shri Shivaji law College, Parbhani

Ideas in your mind have no patent value. They must be expressed or reduced to practice before it is too late"
Kalyan C. Kankanala

Introduction :

Property plays important role in human's life, rather it affirms special status of such person in the society. Intellectuals are not born but they are made. A property created by human mind is called as intellectual property. This kind of property is not created by everybody but by some special persons. The properties which are created by human minds are most vulnerable and can be copied by any person easily and that is the reason to protect it from such type of miscreants. It need innovation, dare to ask why? This kind of property must be protected against rem. World Intellectual Property Organization is a highest body in the world which protects creation of human being. This organization is protector of various forms of intellectual properties and still going on by introducing several treaties time to time. In this research paper the researcher tried to discuss the role of World Intellectual Property Organization in the protection of computer based or database copyright. In this 21st century, the economic growth of every country much depends upon the development and protection of the intellectual property. The base of the Intellectual property is the human intellect and has commercial value. The required protection for Intellectual properties varies from country to country.

Significance of topic :

This topic is burning issue in the contemporary world, which need special attention. Hence researcher intentionally chosen this topic for this research article. World Intellectual Property Organization hereinafter called as (WIPO) is apex body or highest institution and it is necessary to study the role this organization in the area of protection of intellectual properties.

Objectives of the study :

1. To study the role of World Intellectual Property Organization in protection of intellectual properties.
2. To analyze the role of WIPO Copyright Treaty 1994 in the protection of copyright.

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Research Methodology :

The researcher has adopted doctrinal research methodology to conduct the present research. The researcher studied the theoretical aspect of role of World Intellectual Property Organization to find out it's exact role in the protection of intellectual properties.

Definition of Intellectual Property :

Intellectual Property (IP) refers to creations of the mind, such as inventions, literary and artistic works, designs, and symbols, names and images used in commerce.

University of London Press Ltd. v. Union Tutorial Press Ltd.[1]the word original means that 'the work must not be copied from another work that it should originate from the author'.

Intellectual properties, such as patents, copyrights and trademarks are protected by the Laws and its violation gives rights to the creators, to act against the wrongdoers. IP protection Laws are enacted by the legislature with an aim to provide healthy environment for the nourishment of creativity of creators.

Macmillan and Co. v. Cooper[2], to secure copyright for a product, it is necessary that the labour, skill and capital expanded should be enoughto import to the product some quality or character which the raw material did not passes, and which differentiate the product from the raw material.

What is World Intellectual Property Organization (WIPO) :

WIPO is the global forum for Intellectual Property (IP) services, policy, information and cooperation.WIPO was createdin 1967, came into force in 1970, and was made a specialized agency of the United Nations in December 1974.This is the self funding agency of the United Nations, at present there are 192 member states. The very aim of WIPO is to provide an effective platform at International level for the development of International IP system. At present FrancisGuerry holds the position of Director General of World Intellectual Property Organization and its head office at Geneva, Switzerland.

Role of World Intellectual Property Organization (WIPO) :

International treaties or conventions are the base of World Intellectual Property Organization. The role can be tresses out through various conventions or treaties. Following are some examples through which we will try to find out the role of World Intellectual Property Organization in the area of intellectual properties.

The main functions of World Intellectual Property Organization are:

1. Assisting campaigns development to improve IP protection all over the world and to harmonize national legislations in this field;
2. Signing international agreements on IP protection;
3. Applying the administrative functions of the Paris and Berne Unions;

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4. Rendering technical and legal assistance in the field of IP;
5. Collecting and disseminating the information, conducting researches and publishing their results;
6. Ensuring the work of the services facilitating the international IP protection;
7. Applying any other appropriate actions which the authorities of WIPO deem fit.

The WIPO providessuitable environment for the marketing of intellectual property products, it also helps to promote international trade. WIPO undertakes activities in three main areas, namely

A. To support positively and progressively in the development of international intellectual property law;
B. To aid developing countries to build intellectual property capacity at national and regional levels and encourage more effective use of IP as tool foreconomic development; and
C. To provide services to industry and the private sector, to enable them to understand the process of obtainingintellectual property protection in multiple countries.

WIPO Copyright Treaty (WCT) 1996 :

WIPO Copyright Treaty is having its base from Article 20 of Berne Convention for the Protection of Literary and Artistic Works, which empowers the countries of the Union to enter into special agreement to grants to author's more extensive rights than those granted by the convention. Basically, Berne convention provides protection to Literary and Artistic works only. Literary and Artistic works in this convention includes books, pamphlets and other writings, lectures, addresses, sermons, it also includes dramatic, or dramatico-musical works, choreographic works and entertainment in dumb show, cinematography, work of drawing, painting, architecture, sculpture and lithography.

Article 4 of WIPO Copyright Treaty 1996.

WIPO copyright treaty provides a protection to computer programs. Article 4 of the WIPO Copyright Treaty enumerates the protection to computer programme as literary works within the meaning of Article 2 of the Berne Convention. Such protection is provided to all the computer programs irrespective of their mode of expression.

Article 5 of WIPO Copyright Treaty 1996.

Under Article 5 of the treaty it is make clear that the parties must accord copyright protection to database that constitute 'intellectual creation' i.e. work in which the selection or arrangement of the content is the result of intellectual effort. The compilation of the content, (or data) is protected as copyright subject matter, but protection does not extent to the content itself.

In India the 'databases' protects under section 13(1) (a) of the Indian Copyright Act,

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1957, which says that copyright shall subsists throughout India in original literary, dramatic, musical and artistic works. The word 'Literary Works' as defined under section 2 (o) of the Copyright Act, 1957 includes computer programmes, tables and compilation including computer data bases. Any violation of database is a punishable offence under section 63B of the Indian Copyright Act, 1957. Section 63B has been inserted bythe Copyright (SecondAmendment) Act, 1994. As per section 63B any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees.

If the person has not used computer programme for any gain or in the course of trade or business, the court after mentioning the reason in judgment not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.

Microsoft Corporation v. Yogesh Papat[3], in this case the plaintiff was a world-renownedsoftware company and they were owners in copyright of certain operating system software. The defendant while carrying his business of selling computer, illegally downloading it on the computers of their customers. The plaintiff filed a suit for permanent injunction and damages. The court found that the Microsoft is a world-renownedcomputer software company and they would be entitled to wide ranging injunction to restrain any further infringement of their software which literary work under the Copyright Act is. The court held liable to the defendant and grants permanent injunction and grants damages in favour of plaintiff.

Adobe System Inc & Another v. P. Bhoominathan& Another[4] In this case plaintiff filed suit against defendant for use of counterfeited and duplicate software. It causes financial damages not only to the plaintiff but also causes deception to the public at large. The court grant sum of Rs. 5 lakhs as compensatory damages and a sum of Rs. 5 lakhs as punitive damages as well as damages on account of loss of reputation and damage to the goodwill of plaintiff by the defendant.

Right of Distribution (Article 6)

Article 6 of the Treaty authorized the Authors to make available all his literary and artistic works to the general public for sale or other transfer of ownership. This Article also authorized the contracting parties to determine the condition for sale and transfer of ownership.

Right of Rental (Article 7)

As per Article 7 of the Treaty the authors ofcomputer programs; cinematographic works; andworks embodied in phonograms, as determined in the national law of Contracting

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Parties, shall enjoy the exclusive right of authorizing commercial rental to the public of the originals or copies of their works. The author can make available his work for the general public and can avail the monetary benefit out of which.

Right of Communication to the Public. (Article 8)

As per Article 8 of the treaty, the authors of literary andartistic works shall enjoy the exclusive right of authorizing any communicationto the public of their works, by wire or wireless means, including the makingavailable to the public of their works in such a way that members of the publicmay access these works from a place and at a time individually chosen by them.

Conclusion :

The World Intellectual Property Organization is very useful to protect the right of author of patent, trademark and copyright. The present era is an era of digitalization, in view of that the World Intellectual Property Organization introduced the WIPO Copyright Treaty 1996. This treaty gives protection to the computer programming and databases. It also empowers the authors of intellectual property, to spread their intellectual works globally without fear of its violation and infringement. In case of computer based and databased intellectual property, the creator doesn't have the direct control, hence it can be easily copied and steamed by some other person and that is why such type of intellectual property needs some special kind of protection. The WIPO Copyright Treaty provides such protection to the authors. By this research paper the researcher concluded that the WIPO Copyright Treaty plays a pivotal role in the protection of computer based and internet based intellectual property rights.

(Endnotes)

[1](1916) 2 Ch.D. 601

[2]AIR 1924 P. C. 75 at 81

[3]2005 (30) PTC 245

[4]2009 (39) PTC 658 (Delhi)

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