

## INTELLECTUAL PROPERTY RIGHTS

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Abhishek Sharma\*

### ABSTRACT

*Intellectual property rights refer to the property rights which are granted to an author or creator of a new invention or intangible asset. The concept of intellectual property was developed in the 18th century, with the first federal statute on patents being passed in 1790. These are the legal protection granted to individuals who have invented something new or created something original that is capable of being physically reproduced or transmitted. The scope of these rights varies from country to country, but generally any form of expression that falls within the jurisdiction of copyright-law and also patent-law is protected as intellectual property.<sup>1</sup> More than other business models, e-commerce frequently involves the sale of goods and services that are dependent on IP and its licensing. Through e-commerce, you may exchange things like software, designs, training materials, systems, and more, with the IP serving as the major source of value. The protection for any creative work such as music, text, software code, graphic design etc. cannot be revoked by anyone at all as it is not owned by anyone in particular. IP rights protect intellectual property in a wide variety of ways, covering protection of inventions and designs, protection for data and software, as well as protection for literary material like books and films. IP plays a role in facilitating smoother E-Commerce transactions.*

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**Keywords:** Intellectual Property Rights, E- Commerce, Legal Protection.

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### Introduction

Intellectual property rights can be defined as all rights associated with intangible assets owned by a person or company and protected against use without consent. Intangible assets refer to non-physical property, including right of ownership in intellectual property. As like

- Patents
- Domain names
- Industrial design
- Confidential information
- Inventions
- Moral rights
- Database rights
- Works of authorship
- Service marks
- Logos
- Trademarks
- Design rights
- Business or trade names
- Commercial secrets
- Computer software

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\* Research Scholar, Department of Law, Shyam University, Lalsot, Dausa, Rajasthan, India.

<sup>1</sup> See section 20(1)(b) of the Copyright Act 1957

Intellectual property (IP) is the term used to describe exclusive rights pertaining to creative works. These rights allow their owners to profit financially or gain recognition from their inventions or creations. Electronic commerce, or simply E-commerce, is the practice of conducting business dealings online.

Among them would be starting or running a business, trading products and services, or both, primarily online. Ecommerce platforms like Amazon, Swiggy, Zomato, and others might serve as examples. E-commerce often entails the sale of goods or services based on licensed intellectual property.

Music, photos, graphics, software, content, and so many other sorts of intellectual property can all be transferred through an e-commerce platform in the domain of digital goods. IPR is extremely critical in each of these situations since it's important to safeguard the items' worth. Tools like intellectual property laws and technology security measures are used to provide the protection.

### **Significance of Intellectual Property**

Intellectual property laws shield businesses against unfair competition as well as the disclosure of their trade secrets. Intellectual property legislation's primary goal is to promote the production of several different intellectual goods. To do this, the law grants individuals and organisations ownership rights to the knowledge and intellectual products they produce, typically for a finite amount of time.

Because it enables people to make money from the knowledge and intellectual products they produce, this provides an economic incentive regarding their creation. Depending on the level of protection provided to innovators, these economic incentives are anticipated to encourage innovation and advance technology in countries. The modern digital economy makes the importance of IPR in E-commerce particularly obvious. In addition to preserving the creator's labour, the existence of regulations and procedures that govern the operation of IP laws has promoted new creations.

### **History of Intellectual Property Rights**

**Origin and History of Patents** Origin in India: The Act VI - 1856 was the country's first piece of law pertaining to patents. The 1883 amendment was the only change made to the law during its 30-year lifespan. All prior laws in India were repealed by the Indian Patents and Design Act. This act created provisions for the granting of secret patents, patents for additions, and extending the duration of a patent from 14 to 16 years.

Following independence, several committees were established to look at the changes to the law, and as a result, a bill was tabled in 1965 in the Lok Sabha but failed to pass. Although it expired in 1965, a revised measure was filed in 1967, and on the committee's final suggestion, the Patents Act, 1970, which is currently in use in India, was enacted.

### **Origin and History of Copyright**

In India, copyright law was first established in 1847 as a result of an East India Company-era ordinance. The copyright's term at the time was 42 years + 7 years post-mortem. If the copyright holder refused to allow the publication of a work after the author's passing, the government might issue a compulsory licence. In order to enforce rights under this act, copyright registration was required. Under the British Raj, in 1914 the Indian government of the time passed a new copyright law that was remarkably similar to the United Kingdom Copyright Act of 1911. There weren't many significant differences, though.

The most significant one is that it created sections 7 to 12 that established criminal penalties for copyright infringement. The Act (1911) was changed numerous times up to 1957, and as a result, independent India passed the Copyright Act that year in order to comply with the Berne Convention's rules. The most recent modification to the 1957 Act was made in 2012<sup>1</sup>.

### **Origin and History of Trademark**

The Trademark Act of 1940, which was adapted from the British Trademark Act of 1938, was the first trademark-related law in India. The Trade and Merchandise Act, 1958 was also passed after independence. Numerous changes were made up until December 30, 1999, when the Trade Mark Act, 1999, which is currently in effect in India, was established. The two main needs met by this act are to:

- Shield the owner from chaos and competitor mark duplication.
- Protect the company, commerce, and goodwill that the trademark owner has built up.

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<sup>1</sup> Kumari, P. (2018). THE INTELLECTUAL PROPERTY RIGHTS IN INDIAN CONTEXT. *Journal of Harmonized Research in Management*, 4(3), 59. <https://doi.org/10.30876/johr.4.3.2018.59-66>

### Three main types of IPR Patents

Researchers and inventors in the field of online enterprises receive a lot of incentives from patents. Patents facilitate licencing, outsourcing agreements, and the development of tactical alliances in ecommerce. Patents not only assist in capturing and creating new ideas for an E-Commerce business, but they also increase the sales of your items by granting them special qualities that set them apart from other online competitors<sup>1</sup>.

One of the best significant forms of IPR is the patent. A government authorization or licence that grants a right or title for a specific time period, particularly the exclusive right to prevent others from creating, utilising, or selling an invention, is what is meant by this definition. When individuals or organisations create new products or processes, they go to the patent office, describe the invention in detail, and pay a fee to have their "property" protected.

### Copyrights

Copyrights are crucial in the current digital era for protecting the information and creative work on websites. Because of the fast digitization, the owners of the copyrights seek copyright protection to stop any illicit distribution or copying of their works that are displayed online. Additionally, a variety of technological safeguards, including encryption and watermarking, can be employed to protect the intellectual property rights of online enterprises<sup>2</sup>.

Copyright describes the rights given to authors, painters, musicians, and other creators for their "original" works of creativity or to performers, artists, and broadcasters for the associated rights. Copyright regulations are monopolistic rights just like patent laws. Any literary, musical, dramatic, artistic, or architectural work created by the author is granted the exclusive right to be sold, published, and reproduced<sup>3</sup>.

### Trademarks

Trademarks are extremely important in the internet world and e-commerce to develop a brand image by expanding or selling the enterprises. A registered trademark also makes it simpler to file lawsuits and initiate legal processes against companies that online infringe on your company's intellectual property.

A trademark is a recognisable symbol that aids consumers in determining the source of specific goods or services. It can take the shape of text, words, numbers, phrases, symbols, designs, smells, colours, shapes, sounds, packaging, textures, or any combination of these things.

The purpose of a distinctive trademark is to enable consumers to connect a certain mark with a particular manufacturer of goods or service provider in the case of services. It aids in assuring the clients that the products are of a particular type and quality<sup>4</sup>.

### Intellectual Property in e-Commerce

Understanding the function of intellectual property in e-commerce is more crucial than ever thanks to ongoing advancements in the internet's technological infrastructure. IPR can be used in e-commerce in four different ways:

#### Protecting a Company's Business Interests

In essence, intellectual property laws protect a company's and its entities' business interests from unfair competition. Particularly in this digital economy, the absence of IP practices and rules can lead to a number of IPR infractions. As a result, everything from software to design to music could be stolen, copied, and distributed everywhere, and the creators may not be compensated for their original works. However, businesses can protect their rights through rules governing IPR in e-commerce<sup>5</sup>.

<sup>1</sup> Rakoto, A. (2018). The Protection of Intellectual Property Rights in E-Commerce. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3167687>

<sup>2</sup> Lee, H. (2020). A Study of Action Learning Model for Industry-academia Cooperation to Strengthen Export Competitiveness of SMEs. Korea Association for International Commerce and Information, 22(1), 393–413. <https://doi.org/10.15798/kaici.2020.22.1.393>

<sup>3</sup> Intellectual Property Rights and Legal Research: Issues and Challenges. (2021). Journal of Intellectual Property Rights, 26(6). <https://doi.org/10.56042/jipr.v26i6.40329>

<sup>4</sup> Geiger, C. (2021). Intellectual Property and Investment Protection: A Misleading Equation. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3958320>

<sup>5</sup> Chang, W. S. (2013). Are R&D and intellectual property rights related to the firms' financial performance? The perspectives on intellectual capital. International Journal of Technology, Policy and Management, 13(3), 245-260.

### **Protecting Vital Components**

A company's vital digital and technical assets are protected by intellectual property law in e-commerce. These could include networks, routers, plans, applications, processors, and other things. These elements are all distinct types of intellectual property that need to be protected in order for the internet to work properly. IPR in e-commerce also protects crucial elements with this in mind<sup>1</sup>.

### **Safeguarding Goods and Obtaining Patent Permits**

Patent and product licencing is the normal foundation for all online and e-commerce firms. The majority of internet businesses opt to outsource the creation of a few components or share their technologies through licence agreements because it requires numerous different technologies to generate a single product. The agreement is basically a set of rules and guidelines for IPR protection<sup>2</sup>.

### **Preserving Patent and Trademark Holdings<sup>3</sup>**

The most important asset for a company operating in the e-commerce industry is intellectual property. A portfolio of patents and trademarks that they normally possess adds to their company's value. Thus, these patents, portfolios, and trademarks are protected by IPR rules in e-commerce.

Although it has the biggest value-bearing component in E-Commerce, Intellectual Property (IP) is arguably the most undervalued, either because it isn't well understood or because its significance in relation to ECommerce isn't readily apparent. More than any other platform, e-commerce frequently involves the sale of products and services that are based on intellectual property and its licencing. Online firms should therefore make earnest efforts to guarantee that their operations are free of IP hazards that could hinder or even endanger their operations.

### **Elements Protected under IPR in E-Commers<sup>4</sup>**

IPR in retail and e-commerce pertains to the purchasing and selling of goods via a physical store and an online store, respectively. Owners of retail and online businesses must therefore safeguard a variety of intellectual properties. The items listed below are those that IPR in E-commerce covers under various models and legislation. Search engines, e-commerce platforms, and other crucial online technologies are covered by patents and utility models.

Depending on the country's IPR rules, specific software, including the text-based HTML code used by websites, is protected under the Patent Law or the Copyrights Act.

An e-commerce website's entire design is likewise shielded by copyright laws.

The Copyright Law protects all of the information on the website, including any written or visual materials, films, images, or other graphics. Companies can use copyright laws or country-specific database legislation to protect their databases under e-commerce in IPR.

Companies can use the Trademark Law to protect their brand names, product names, logos, domain names, and other similar identifying indications posted on their websites with reference to both IPR in retail and e-commerce.

Under the appropriate Industrial Design Law in their nation, businesses are also allowed to protect their computer-generated displays, graphic signals, webpages, and graphical user interfaces.

Websites frequently contain a number of hidden components that are protected by various trade secret laws, including secret visuals, object and source codes, algorithms, and programmes, technical descriptions, logic and data flow charts, user manuals, and the contents of their databases.

### **Conclusion**

The expansion of online commerce makes it easier for businesses to monitor and defend their trade activities, especially those that require maintaining anonymity. IPR owners are able to claim a portion of the company's revenues thanks to IP rights in e-commerce. Intellectual property rights will be implemented with a focus on characteristics that are unique and unavailable to others, successfully enabling E-commerce activity in the public domain.

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<sup>1</sup> Correa, C. (2020). Trade related aspects of intellectual property rights: a commentary on the TRIPS agreement. Oxford University Press

<sup>2</sup> Yu, P. K. (2016). The investment-related aspects of intellectual property rights. *Am. UL Rev.*, 66, 829.

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The legal protection of intellectual property rights promotes sturdiness in the use of intellectual property, which aids not only in licencing, contracting, and outsourcing but also in developing new concepts and forming strategic alliances, all of which improve sales and e-commerce operations by introducing features that rivals cannot offer. This promotes healthy competition online and generates income for the rightful intellectual property owners. Because of this, intellectual property protects e-commerce and promotes economic justice while the appropriate safeguards for protecting intellectual property rights are taken.

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