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TOWARDS UNDERSTANDING INTELLECTUAL PROPERTY RIGHTS

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ABSTRACT The term "intellectual property" refers to a loose cluster of legal doctrines that regulates the use of different sorts of ideas and insignia. Intellectual property denotes the rights over a tangible object of the person whose mental efforts created it. There is no intellectual property in mere ideas. Only the particular expression of an idea is protected. Intellectual property provides rights of ownership in the product created by human intellect but not in the product itself. The fortunes of many businesses now depend heavily on intellectual property rights. Intellectual property rights grant the holder, the ability to stop others from doing something, a negative right, but not necessarily a right to do it himself, a positive right. But intellectual property also gives two different rights- one positive and one negative. The positive one is the right to do certain things in relation to the subject-matter, i.e. the owner of the right is entitled to exploit commercially the idea the expressed previously. The negative right entitles its owner to prevent others from doing what his positive right permits him to do. The corollary of this right is the duty imposed on others to not to infringe rights of the owner. Subsequently, the owner of the right enjoys the privilege to exploit the idea in a monopoly position.

Intellectual property systems and net social benefits[1]

The linkage between intellectual property rights and economic benefits to the society as a whole has traditionally followed the logic that intellectual property rights increase the innovators' ability to obtain returns from their intellectual labors; the resulting potential for increased private gains to the innovators, stimulates additional innovation. Additionally benefits accrue to society as a whole because of increased innovation.

KEYWORDS: property, improvements

INTRODUCTION

The concept of property was totally alien to the nomadic community. Later, they came to recognise movables and chattels as property. Craftsmen kept their profitable secrets to themselves for as long as they could, from the fear of being exploited. As science developed, the need for publication of knowledge became inevitable. This necessitated some form of protection to be given to the creator. Early inventions were the foundation for the development of modern technology. Industrial development can take place only through improvements in industrial techniques. Incentive for disclosure was the method for encouraging disclosure. Thus, scientific knowledge was transformed into a form of property.

The term "intellectual property" refers to a loose cluster of legal doctrines that regulates the use of different sorts of ideas and insignia. Intellectual property denotes the rights over a tangible object of the person whose mental efforts created it. There is no intellectual property in mere ideas. Only the particular expression of an idea is protected. Intellectual property provides rights of ownership in the product created by human intellect but not in the product itself. The fortunes of many businesses now depend heavily on intellectual

property rights. Intellectual property rights grant the holder, the ability to stop others from doing something, a negative right, but not necessarily a right to do it himself, a positive right. But intellectual property also gives two different rights- one positive and one negative. The positive one is the right to do certain things in relation to the subject-matter, i.e. the owner of the right is entitled to exploit commercially the idea the expressed previously. The negative right entitles its owner to prevent others from doing what his positive right permits him to do. The corollary of this right is the duty imposed on others to not to infringe rights of the owner. Subsequently, the owner of the right enjoys the privilege to exploit the idea in a monopoly position.

Legal status

Intellectual property refers to certain kinds of exclusive rights to intellectual capital, some forms of which can expire after a set period of time, and other forms of which can last indefinitely.

Common types of intellectual property

The most common forms of intellectual property are patents, copyrights, trade marks and trade secretes, apart from other forms of protection.

Patents give the holder an exclusive right to use and license use of an invention for a certain period, typically 20 years.

Copyrights give the holder some exclusive rights to control some reproduction of works of authorship, such as books and music, for a certain period of time.

Trade marks are distinctive names, phrases or marks used to identify products to consumers.

Trade secrets, where a company keeps its information as secret. This is possible by enforcing a contract under which those given access to the information are not permitted to disclose it to others.

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In Mazer v. Stein[2], the US Supreme Court stated this rationale as

The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in 'Science and the useful Arts'.

Public goods and the underlying rationale for granting rights

In economic terms, a public good is one that has the property of non-exclusivity. Once the good has been produced, it is impossible to exclude any individual from benefiting from it, whether or not he or she pays. Individuals usually refrain from paying for the good in the hope of getting access as free riders. The inability to exclude free riders distorts market signals and results in inefficient allocation of resources. The establishment of a system of well-defined intellectual property rights can help alleviate this difficulty.

The framers of the US Constitution dealt with this market imperfection by giving the Congress power to grant copyrights and patents.

The Congress shall have power… to promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive rights to their respective Writings and Discoveries.[3]

In granting a limited monopoly through patent, the government attempts to compensate for distortions arising from non-exclusivity. According to this rationale, without the counterbalancing grants of monopoly power bestowed through patent, the inability of inventors to appropriate economic returns from their labors would result in the underproduction of new works and inventions. Economic theory typically suggests that a free market with no intellectual property rights will lead to too little production of intellectual works. Thus, by increasing rewards for inventors and other

1. See generally, Catherine Colston, Principles of Intellectual Property Law (Cavendish Publishing Ltd., 1999).
2. 98 L Ed 630: 347 US 201, 219 (1954).
3. US Constitution, Art. I, S. 8, cl. 8.

Producers of intellectual capital, overall efficiency might be improved. On the other hand, intellectual property law could in some circumstances lead to increased transaction costs that outweigh these gains.

Technological innovation, science and creative activity are recognised as important sources of material progress and welfare. However, despite the important scientific and technological advances and promises of the 20th and early 21st centuries in many areas, a significant "knowledge gap" as well as a "digital" divide continue to separate the wealthy nations from the poor. In this context, the impact of intellectual property has been widely debated in the past years. Intellectual property protection is intended as an instrument to promote technological innovation, as well as the transfer and dissemination of technology. Intellectual property protection cannot be seen as an end in itself. The role of intellectual property and its impact on development must be carefully assessed on a case by case basis.[4]

Theories of intellectual property[5]

The literature linking the patent system to economic theory is enormous.

The first approach is a natural theory of property, one which defends the claim, that natural facts determine what is property and who owns what. The second approach is in fact a broad class of theories that consider property as a social construction validated in terms of its instrumental capacity to produce or secure other ethical goals. The third approach is a labour theory that grounds property claims in productive activity.

Natural theory

It is possible to believe that certain things are naturally fit to become property, while others are not.

An element of natural property theory is one which treats all of nature as a heritage to be shared equally by all human beings. Burger J's majority opinion of the US Supreme Court decision **in Diamond v. M. Chakrabrty**[6] appeals to such a view implicitly, holding that Chakrabarty deserved a patent for his bacterium because it was his own handiwork, and not "a manifestation of nature, free to all men and reserved exclusively to none".

The natural rights influence in the development of modern patent doctrine is

4. James Boyle, "WIPO and Intellectual Property Reform" (September 2044)7(14) SEATINI BULLETIN, 5.
5. See generally, Anthony D'Amato and Doris Estelle Long (Eds.), International Intellectual Property Law (1st Edn., Kluwer Law International, London 1997).
6. 65 L Ed 2d 144: 447 US 303 (1980).

Encapsulatedin **Lord Ellenborough's decisionin Huddart v. Grimshaw[7]**. In this dispute over a patent for a new form of manufacturing cables, Lord Ellenborough states:

> An invention of this sort, and every other, through the medium of mechanism, there are some materials which are common, and cannot be supposed to be appropriated in the terms of any patent. There are common elementary materials to work with, in machinery, but it is the adoption of those materials, to the execution of any particular purpose, that constitutes the invention, and if the application of them be new; if the combination in its nature be essentially new; if it be productive of a new end, and beneficial to the public, it is that species of invention, which, protected by the king's patent, ought to continue to the person, the sole right of vending it, but if prior to the time of his obtaining a patent, any part of that, which is the substance of the invention has been communicated to the public in the shape of a specification of any other patent, or is a part of the service of the country, so as to be a known thing, in that case, he cannot claim the benefit of his patent; … and if in stating the means necessary to the production of that end, he oversteps the right, and appropriates more than is his own, he cannot avail himself of the benefit of it.

The structure of Lord Ellenborough's argument reflects the normative framework of Locke's labour theory of property.

Locke's labor theory of property

Another approach that currently dominates the theoretical literature springs from the propositions that a person who labor upon resources that are either not owned or "held in common", has a natural property right to the fruits of his or her efforts, and that the State has a duty to respect and enforce that natural right. These ideas, originating in the writings of John Locks, are widely thought to be especially applicable to the field of intellectual property.

The core of Locke's labor theory of property is presented in Chapter V, "Of Property", in the Second Treatise of the two treatises of government.

The raw material is deemed to be held in common and the labor contributes to the value of finished products. The labor theory of property holds that a person's productive work is the basis for a property claim. People are entitled to claim what they make or create as their own. The mere act of

7. Dav Pat Cas 265, 298 (KB 1803).

Though the earth and all inferior creatures are common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labor of his body, and the work of his hands, we may say, is properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hart mixed his labor with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labor something annexed to it, that excludes the common right of other men: for this labor being the unquestionable property of the labor, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.

Discovery does not establish a property claim, but the appropriation of the discovered goods to some further purpose does imply some element of labor.

There are many difficulties in applying the general theories to intellectual property. This is true in the efforts to apply labor theory to intellectual property. An answer to the problem is found in the Second Treatise. Locke states:

Intuitions regarding self-ownership point in the direction of appropriating the fruits of one's labor. Each person plainly has a property in his own person, including the labor of his body, and the work of his hands. It seems only natural that whatever he mixes that labor with should belong to him as well. Most of the value of the things useful to men derives not from the value of the raw materials

from which they are made, but from the labor expended on them.

As the crux of the matter, the Second Treatise would seem to provide strong support for most forms of intellectual property. According to this view, intellectual property permits to reward the creator for his work in order to encourage him in his innovative work, he will be more inspired to produce and more willing to make his work available to the public. This establishes a labor criterion of property, whereby individuals may claim property in all goods they appropriate from the state of nature through the work of their hands.

The labor theory has a seam with regard to intellectual property. While the intellectual laborer is as entitled to own the immediate fruits of his or her labor as any other, this entitlement does not establish the terms on which publication will take place. In a totally laissez-faire system, such terms would presumably be negotiated between the intellectual laborer and other desiring the intellectual good.

Locke further emphasizes that in the state of nature, there is no positive law parceling out ownership or giving any particular person that right to command anyone else. There are, however, moral duties that constrain persons' behavior towards each other. All persons have a duty, not to harm others, except in some cases of extreme need. All individuals have many rights. Some we possess by virtue of what we do, and some we possess by virtue of our humanity.

The essential logic of Locke's labor theory of property is

Labour is mine and when I appropriate objects from the common I join may labor to them. If you take the objects I have gathered you have also taken my labor, since I have attached my labor to the objects in question. This harms me, and you should not harm me. You therefore have a duty to leave these objects alone. Therefore I have property in the objects.

The requirement of novelty easily fits into the Lockean moral and political schema that maintains that an individual's right to his property is grounded in the labor that begets property itself.

Utilitarian guidelines

The most popular or the familiar utilitarian guidelines that lawmakers' beacon when shaping property right should be the maximization of net social welfare. Pursuit of that end in the context of intellectual property requires lawmakers to strike an optimal balance between, on one hand, the power of exclusive rights to stimulate the creation of inventions and, on the other, the partially offsetting tendency of such rights to curtail widespread public enjoyment of those creations. The first task in developing a utilitarian theory of intellectual property is translating the Benthamite ideal of the "greatest good of the greatest number" into a more precise and administrable standard.

The concept of utilitarian guideline has been transposed to copyright law by William Lande and Richard Posner. According to them consumption of a copyrighted work does not reduce the enjoyment by one due to the enjoyment by another.[8] The theory also provides an answer to the financial loss suffered by the copyright holder due to the use by the copyrighted material without permission of the holder of the right. Licensing arrangements are argued by Landes and Posner as the solution to this problem. They also argue that trade marks reduce consumer search cost and is a utilitarian proposition from the viewpoint of the consumer.[9]

Monopoly was considered as spurring innovation. Though Adam Smith was in general opposed to the theory of monopoly, he supported limited monopoly for promoting innovation.[10] Jeremy Bentham had also supported the utilitarian concept of intellectual property rights and also argued that innovators

incur fixed cost which has to be recouped in the absence of which innovation will be deterred.[11]

Hegelian philosophy

The premise of the Hegelian approach, derived from the writings of Kant and Hegel, is that private property rights are crucial to the satisfaction of some fundamental human needs. Intellectual property rights may be justified on the ground that they create social and economic conditions conducive to creative intellectual activity, which in turn is important to human flourishing.

Individual's will was considered as the most important value in the existence of an individual. According to Hegel, the will depends on the personality of an individual. Hegelian theory can also be called as personality theory.

Intellectual property is the personification of the personality of an individual. The expression of an idea; a novel invention are all such personifications. The Hegelian theory thus supports the basic presumption of personality of an individual. The notion of moral rights in copyright, namely paternity right, integrity right, attribution right, etc., point to the personality of an individual and aptly supports the Hegelian philosophy.

8. William Landes and Richard Posner, "An Economic Analysis of Copyright Law" (1989) 18 Journal of Legal Studies 325.
9. Ibid, 265.
10. Adam Smith (1776), The Wealth of Nations in E. Cannan (Ed.), (Oxford, Clarendon 1976), 277-78.
11. Jeremy Bentham, A Manual of Political Economy (New York, G.P. Putnam 1839) 71.

Immanuel Kant also maintained a natural obligation to respect the ownership of an author's work.

Incentive theory

The incentive theory is well illustrated by William Nordhaus' classic treatment of patent law.

Nordhaus was primarily concerned with determining the optimal duration of a patent, but his analysis can be applied more generally. Each increase in the duration or strength of patents stimulates an increase in inventive activity. Social welfare is reduced by such things as larger administrative costs and larger deadweight losses associated with the higher prices of intellectual products that would have been created even in the absence of the enhanced incentive. Ideally, patent duration or strength should be increased up to the point where the marginal benefits equal the marginal costs.

Incentive to invent theory

In analyzing how patents promote scientific progress, the courts have emphasized two mechanisms: first, the prospect of obtaining a patent monopoly provides an incentive to invest in research to make new inventions; and second, the patent system promotes disclosure of new inventions and thereby, enlarges the public storehouse of knowledge. The incentive to invent theory holds that too few inventions will be made in the absence of patent protection because inventions once made are easily appropriated by competitors of the original inventor who have not shared in the costs of invention. If successful inventions are quickly imitated by free riders, competition will drive prices down to a point where the inventor receives no return on the original investment in research and development. Patents serve to bring the private benefits of inventions in line with their social values by allowing inventors to use their monopoly position to extract a price.

Incentive to innovate theory

Although, courts have relied primarily on the incentive to invest and the incentive to disclose arguments in support of the patent system, there is an additional argument that a patent monopoly is necessary to induce firms to invest in innovation, i.e. putting existing inventions to practical use. Even after an invention has been made, considerable further investment,

research and development, and to bring it into large-scale production is often necessary before it is ready for commercial exploitation. The protection of a patent monopoly enhances the likelihood that a firm will be willing to undertake these investments.

The incentive to innovate theory holds that the patent system achieves its objectives by offering monopoly profits as a lure to promote innovation. Both the incentive to invent and the incentive to disclose theories are concerned with incentive that operates before patent issues. By contrast, the incentive to innovate theory gives existing patents an ongoing role in preserving the incentives of patent holders to invest in development during the patent term.

Reward theory

John Stuart Maill argued for a reward to the inventor and considered patent system as a limited monopoly that rewarded the inventor depending on the utility of the invention to the consumer.

Schumpeterian theory

The Schumpeterian thesis that monopolies are conducive to innovation is generally associated with the work of Joseph Schmpeter on economic development. While Schumpeter does not focus exclusively on either technological innovations or the patent system, his analysis suggests how patent monopolies might promote technological innovation. He emphatically distinguishes innovation from invention, noting that invention itself produces "no economically relevant effect at all". Innovation, on the other hand, brings about incessant revolutionary changes in the economic system through what Schumpeter calls "a process of creative destruction". In this process, new firms continually arise to carry out new innovations, driving out old firms that provide obsolete goods and service. Competition from new commodities and new technologies is far more significant in this model than price competition among firms offering similar goods and services.

Prospect theory

Edmund Kitch offers a more elaborate analysis of the role of patents in post-invention innovation in what he calls the "prospect theory" of patent protection. According to this theory, the patent system promotes efficiency in the allocation of resources to the development of existing inventions by awarding exclusive, publicly recorded ownership of new technological prospects shortly after their discovery.

Kitch asserts that the patent monopoly is generally not limited to the primitive version of the invention described in the patent application but extends to subsequent refinements as well. Subsequent improved versions of the invention falling within the scope of the patent claims and newly discovered uses for the invention, although the product of further research by others will still be subject to the control of the patent holder until the patent expires. The patent holder will, therefore, stand to benefit until the patent expires. The patent holder will therefore, stand to benefit from subsequent research to improve the invention, while other researchers will have little incentive to pursue further research on a patented invention without first arranging for a license to the underlying patent. Kitch argues that taken together, these features of the patent system tend to promote control over subsequent research on patented inventions by patent holders and their licenses, and that such control promotes efficiency.

In dealing with a patent case, a court anywhere in the world would like to examine the policy reasons for protecting patents. These policy reasons can be grouped under the various theories.

Economic benefits of intellectual property

Intellectual property right is the government's attempt to encourage creative output by ensuring creators certain rights that limit or control the use of their inventions by others. Intellectual property system has been termed as

one of the cornerstones of modern economic policy. Intellectual property deals with creations of human intellect. Confidence in intellectual property protection is a powerful stimulus to innovation. The protection of intellectual property rights enable countries to participate in international trade. Intellectual property has acquired increased prominence at both national and international levels.

The existence of a patent system reduces the uncertainty that inevitably surrounds inventive activity. Without a patent system, there is not only technological uncertainty, but also uncertainty about whether the firm can appropriate and license the invention. A patent system is alleged to reduce the second kind of uncertainty. The prospect of obtaining a monopoly provides an incentive to invest in research to make few inventions. Disclosure and dissemination of the new knowledge enlarges the public storehouse of knowledge.[12] The concept of diminishing marginal utility is applicable toknowledge. The utility of the knowledge tends to decrease as you consume more of it. New knowledge is precious for the first time, but its utility decreases in subsequent uses. Hence, until some form of protection is given to knowledge, there will be no value in it.[13]

The patent system seeks to protect novel inventions. Inventions to be patentable must be new, non-obvious and capable of industrial application. In order to obtain protection, the inventor has to disclose the invention and also describe the method of performing it. Patent protection will be granted only if the disclosure is enabling.[14] The issuance of patent creates a legal situation in which the patented invention can be exploited only with the consent of the patent holder. While the protection is limited in time, disclosure is an important source of information. Effective use of this documentation is an aid in the transfer of technology. The technology disclosed serves to stimulate ideas for further invention and innovation. The economic value of patent information is that it provides industry with technological information that can be used for commercial purposes. Creation of new inventions requires substantial investment in terms of time, skill, material resources and funding. Obtaining exclusive rights in respect of an invention through a patent provides the successful inventor with a chance of recouping the investment. Technological progress is an important means of attaining economic growth. Patent system with the wealth of technological information is an important resource in technological development. An essential rationale of the patent system is to provide the necessary incentive for the creation of new technology. The value of the patent system is demonstrated by the fact that in almost all advanced countries, the number of patents granted has shown substantial increase.

The patent system is there to provide a research and investment incentive but it has a price. That price (what economists call “transaction costs”) is paid in a host of ways- the costs of patenting, the impediment to competition, the compliance cost of ensuring non-infringement, the cost of uncertainty, litigation costs and so on. If the encouragement of patenting and of patent litigation as industries in them were a purpose of the patent system, then the case for construing the categories narrowly (andindeed for removing them) is made out. But not otherwise.[15]

12. Incentive Theory.
13. For a detailed study, see, Paul A. Samuelson and William D. Nordhaus, Economics (McGraw Hill International).
14. European Patent Convention (EPC), Art. 83; Indian Patents Act, S. 10.
15. Aerotel Ltd.v. Telco Holdings Ltd., 2006 EWCA Civ 1371: 2007 RPC 7.

The economic literature concerning patents has recognised a wide range of advantages and

disadvantages stemming from their existence. Even those who believe an invention to have an element of spontaneity, accept that the expense of innovation in a risky world can justify the granting of a temporary monopoly for protection from imitation. Moreover, the very fact that a patent has to be accompanied by a specification leads to dissemination of technical knowledge. This is a beneficial externality made available by the patent system and must be counted among its benefits. The objection that a temporary monopoly will result in a price greater than marginal cost has not much force as the product concerned would, but for the existence of the patent system, not otherwise, have been available at all. The monopoly is only temporary, and the knowledge on which it is based is made public. After expiry of the period of protection, the knowledge becomes public property. The temporary monopoly itself provides supernormal profits which can be used by the original patent holder as the basis for further product development expenditure.

Of particular importance is the idea that a patent system provides protection for small firms, yielding both bargaining counters and sources of royalties as well as protection from economically more muscular organizations during the vital stage of market innovation.

Pinning down evolution

Intellectual property rights fall into different categories like patent, copyright, trade mark, etc. The Paris Convention and the Berne Conventions are attempts at international level for protection of patents and copyright. Madrid Convention is the international Convention to protect trade marks.

The Paris Convention established many fundamental principle like national treatment, the right of priority and the guarantee of a certain minimum protection. The nationals of a country belonging to the Convention must enjoy in other countries of the Convention. The same rights with regard to intellectual property as their own nationals.[16] The national treatment rule guarantees that not only foreigners will be protected, but also, they will not be discriminated against. Article 2(3) states an exception to the national treatment rule. The national law relating to judicial and administrative procedure, to jurisdiction and to requirements of a mere procedural nature is expressly reserved and special condition may be imposed on foreigners. The Convention also provides for the application of the national treatment rule to nationals of non-member countries, if they are domiciled or have an industrial or commercial establishment in a member country.

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16. Paris Convention, Art. 2.

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Berne Convention for the protection of Literary and Artistic works laid down standards for the protection of literary and artistic works and defined them.[17] The Berne Convention also guarantees authors in respect of works for which they are protected under the Convention, in countries of the Union other than the country of origin, the rights which

their respective laws grant to their nationals, as well as the rights specially granted by this Convention.[18] Moral rights are granted by the Berne Convention apart from the economic rights.[19]

Negotiating TRIPS

TRIPS is an international agreement and establishes minimum standards that require member countries to provide strong intellectual property protection in their domestic law.[20] The evolution of TRIPS Agreement can be traced to the GATT Agreement. Post World War II, there was a general consensus amongst countries to remove trade barriers that existed between countries. This desire found expression in the GATT Agreement. The GATT Agreement promulgated a new set of rules and relied on the principle of reciprocity. The Agreement also recognised the most favoured nation treatment principle, which means non-discrimination by importers across different foreign exporters.

The fundamental concept of national treatment found in the Paris Convention is also a dominating feature of the GATT Agreement. The domestic laws of many countries were found to distort trade and the World Trade Organisation (WTO) was established in the Uruguay round of trade negotiations. The Uruguay round of negotiations for the first time brought intellectual property rights within the fold of GATT round of negotiations. WTO became effective on 1 January 1995. India also became a member of WTO. Most favoured nation treatment and the principle of national treatment were the fundamental principles of WTO and encompasses all fields of intellectual property rights like patent, copyright, trade mark, industrial design. The Agreement requires each member to accord to the nationals of other member treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property.[21] The most favourednation treatment principle embodied in the

17. Berne Convention, Art. 2(1), reads:

The expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatic-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, architecture or science.

18. Berne Convention, Art. 5(1).
19. Ibid, Art. 6bis.
20. TRIPS Agreement, Art. 1(1).
21. Ibid, Art. 3.

Agreement requires members to grant with regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by the member to the nationals of any other country immediately and unconditionally to the nationals of all other members.[22] The Agreement also calls for protecting computer programs as literary works under the Berne Convention.[23] Taking into account the interests of performers, producers of phonograms (sound recordings) and broadcasting organizations, the Agreement envisions levels of protection for them.[24]

As far as trade marks are concerned, the Agreement makes eligible for registration, personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs. Where signs are not inherently capable of distinguishing the relevant goods or services, members may make

registrability depend on distinctiveness acquired through use. Members may

22. Ibid, Art. 4.
23. Ibid, Art. 10.
24. Ibid, Art. 14 reads:
    a. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.
    b. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduct of their phonograms.
    c. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).
    d. The provisions of Article 11 in respect of computer programs shall apply mutatis mutandis to producers of phonograms and nay other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.
    e. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.
    f. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, mutatis mutandis, to the rights of performers and producers of phonograms in phonograms,

    Require, as a condition of registration, that signs be visually perceptible.[25] The Agreement also lays down minimum standards for protecting geographical indication and industrial design.

    The most important change which affected India due to the TRIPS Agreement was in the area of patens. The TRIPS Agreement mandates granting product patent protecton.[26] India had to in consequence to this provision shift from process to product patent and amendments were made to the Patent Act of India in 2002 and 2005 to comply with the requirements of the TRIPS Agreement. The ramifications of the TRIPS Agreement was also felt in the area of protecting plant varieties. The Agreement required members to provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. [27] India legislated the Plant Varieties Protection and Farmers Rights Act, which was a sui generis

legislation, the first of its kind granting rights to farmers.

25. Ibid, Art. 15.
26. Ibid, Art. 27(1) reads:
Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as the place of invention, the field of technology and whether products are imported or locally produced.
27. Ibid, Art. 27(2).