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Intellectual Property Right (IPR) In Cyber World

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Abstract

When first drafted the intellectual property law, computer technology did not exist. At that time, it was not foreseen that it would be necessary to protect information stored by digital form means, nor was it foreseen that information would become such a sought after commodity. The Internet, Software, Business methods for e-commerce applications & electronic databases are relatively new territories where innovators have created an environment in which information.

Introduction

When we are going to discussing about Intellectual Property Right then it is must to follow Thomas Jefferson. He is says that invention or creation cannot be a subject matter of property was rarely acknowledged in the civilized world and US Constitution it self. He made a provision to empower the inventors and creators by conferring exclusive rights on them. Intellectual Property (IP) can be loosely defined as creations of human mind. The impetus for the development of intellectual property law, at its starting point, was to ensure that sufficient incentives exist to lead to innovation and the creation of new and original works and products.

The physical world has been relatively successful at constructing barriers to prevent acts that would limit this innovation, in the form of copyright, trademark and patent regulations. This enabled Intellectual Property Rights (IPR) owners to use or disclose their creations without fear of loss of control over their use, thus helping their dissemination. It is generally assumed that IPR help encourage creative and inventive activity and make for orderly marketing of proprietary goods and services. But with the advent of internet, copying has become so simple and easy that rampant violation of intellectual property is taking place affecting the rights of IPR owners.

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Philosophy of Intellectual Property

The theory of intellectual property has not, until recently, attracted much philosophical interest or been the subject of deep controversy. Utilitarian theorists generally endorsed the creation of intellectual property rights as an appropriate means to expand innovation, subject to the caveat that such rights are limited in duration so as to balance the social welfare loss of monopoly exploitation. Non- utilitarian theorists emphasized creators' moral rights to control their work. With the increasing importance of intellectual property in society and the development of particular new technologies, most notably digital technology and the decoding of genetic structure, the theory of intellectual property has attracted huge interest.

Economists and policy analysts have greatly enriched our understanding of the complex relationship between intellectual property protection and innovation and diffusion of technological advances. Non-utilitarian theories of intellectual property have proliferated in recent years, as philosophers and legal scholars have applied traditional and novel philosophical perspectives to the realm of intellectual property. Locke describes a state of nature in which goods are held in common through a grant from God. God grants this bounty to humanity for its enjoyment but these goods cannot be enjoyed in their natural state. The individual must convert these goods into private property by exerting labor upon them. This labor adds value to the goods, if in no other way than by allowing them to be enjoyed by a human being. Locke proposes that in this primitive state there are enough unclaimed goods so that everyone can appropriate the objects of his labors without infringing upon goods that have been appropriated by someone else.

Personhood Theory:

The personhood justification for property derives from Kant's Philosophy of Law and Hegel's Philosophy of Right and has been elaborated in modern legal discourse in the work of Radin⁶⁸⁸. The premise underlying the personhood perspective is that to achieve proper development an individual needs some control over resources in the external environment. The necessary assurances of control take the form of property rights. The personhood justification for property emphasizes the extent to which property is personal as opposed to fungible: the justification is strongest where an object or idea is closely intertwined with an individual's personal identity and weakest where the 'thing' is valued by the individual at its market worth. Netanel traces the rich heritage of Continental copyright law and its moral rights tradition to the personality theory developed by Kant and Hegel, pointing out nuances distinguishing the various strains within the theory. For example, Kant viewed literary work as part of the author's person and hence is not alienable.

Future of IPR(Intellectual Property Right):

Intellectual property is rarely justified on one theory, although patents' grounding in utilitarianism comes to the closest. Consensus about philosophical perspective, however, has not produced consensus about what that perspective prescribes. Economic theorists have produced multiple plausible models for which empirical distillation will remain elusive and unlikely to be of much general predictive value due to the heterogeneity of inventive activity, the diversity of research environments, the complexity of technological diffusion, the richness and changing nature of real world institutions and the obvious measurement problems in conducting empirical research of this type.

Impact of the Internet on Intellectual Property:

The internet has driven many changes in the intellectual property community. As a data and resource access tool, it has expanded the reach of every user localized, regional resources, to true global information access. Today the largest segment of business-to-consumer e-commerce involves intangible products that can be delivered directly over the network to the consumer's computer. While these intangible products, by their very nature, are difficult to measure, an increasing amount of the content that is being offered is subject to intellectual property rights. Some of the positive impacts of internet on intellectual property community are : (a) It has increased affordable access to intellectual property resources globally. (b) It has enhanced the ability of patent prior art search. (c) It has increased business , political and society awareness of the growing importance of all types of intellectual property. (d) It has shortened the data access time, that is, days or weeks have been shortened to minutes or hours. (e) There has been a geometric increase in the amount of accessible data and collections relative to intellectual property (f) It has provided access to an expanding number of web-based software and intellectual property management tools. (g) It has provided a path for developing countries to catch up with world developments with regard to intellectual Property.

Copyright Protection in Cyberspace:

The observation of Peterson J., in University of London Press V University of Tutorial Press that 'What is worth copying is prima facie worth protecting' is probably the best saying in relation to copyright protection in all ages industrial information. Sec. 14 of the Copyright Act, 1957 empowers authors of original literary, dramatic, musical, artistic works, computer programmers etc with various rights in relation to their works. They have exclusive right to reproduce their work, make copies, perform their work in public or display, make translation of their work, adaptation of work etc. History demonstrates that the Copyright law is the most affected one with the introduction of new technologies.

Conclusion:

In the concluding part I am define that, Information and Communication Technologies gives rise to a variety of legal problems. The problems themselves are not novel in their character. But they deserve special treatment, because of the environment in which they take their birth and the nature of the machinery used in the environment and the means employed for recording the information in question. The digital dilemma is that the information technology that is making more current information available more quickly and completely also has the potential to demolish the balancing of public good and private interest that has emerged from the evolution of intellectual property law. The relationship of copyright to new technologies that exploit copyrighted works is often perceived to pit copyright against progress. Historically, when copyright owners seek to eliminate a new kind of dissemination, and when courts do not deem that dissemination harmful to copyright owners, courts decline to find infringement. However, when owners seek instead to participate in and be paid for the new modes of exploitation, the courts, and law making bodies, appear more favourable to copyright control over that new market. Today, the courts and the legislatures regard the unlicensed distribution of works over the internet as impairing copyright owners; ability to avail themselves of new markets for digital communication of works; they accord control over those markets to copyright owners in order to promote wide dissemination. Copyright control by authors, particularly those excluded by traditional intermediary controlled distribution of information sources etc.

References:

1. Art.1 Sec.8 of US Constitution states that "Congress has powerTo promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;"
 2. Watal Jayashree, Intellectual Property Rights in the WTO and Developing Countries, Oxford University Press, New Delhi, 2001.
 3. Samuelson ,Pamela, "Digital Media and Changing Face of Intellectual Property Law",
 4. Chisum S Donald et., al , Cases and Materials-Principles of Patent Law, Foundation Press, New York, 1998
Peter Drahos in his Book'a Philosophy Of Intellectual Property',
Applied Legal Philosophy Series, Dartmouth, 1996,
 5. Hughes ,Justin, The Philosophy of Intellectual Property, Geo. L.J. 287 (1988
 6. Loke, John , Two Treatise of Government (edt by Macpherson), Hackett Publishing, US, 1980
 7. Hughes ,Justin, The Philosophy of Intellectual Property, 77 Geo. L.J. 287 (1988),
 8. Radin, Margaret J. 'Market Inalienability', 100 Harvard Law Review, 1987,
Netanel, Neil W. 'Copyright and a Democratic Civil Society', 106 Yale Law Journal, 1996 ,283-287.
 10. Aoki, Keith (1993-1994), 'Authors, Inventors and Trademark Owners: Private Intellectual Property and the Public Domain (parts 1 and 2)', 18 Columbia - VLA Journal of Law and the Arts, 197-267.
- Web sites:
<http://www.wto.org>
<http://www.thehindu.com/2005/02/06/stories/2005020603910300.htm>, <http://ssrn.com/abstract=459120>,
<http://www.law.berkeley.edu/faculty/profiles/facultyPubsPDF.php?facID=346&pubID=152>,
<http://www.law.harvard.edu/faculty/tfisher/music/Hughes1988.html>
<http://www.dklevine.com/archive/ittheory.pdf>
http://www.oecd.org/subject/e_commerce/summary.htm