

Intellectual Property
Prof. Feroz Ali
Department of Humanities and Social Sciences
Indian Institute of Technology, Madras

Lecture - 08
Kinds of IPRs and their Duration

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Kind of IPRs

- Copyright gives the creator the right to make more copies in different forms
- Trademark – using a symbol or word legally registered or established by use
- Patent – right to make, sell, use, offer for sale or import an invention



Now, we were mentioning that the exclusive set of rights that an intellectual property right and compasses would also vary depending on the kind of intellectual property right. And we were saying that if it is a copyright, then the copyright gives the creator fixed number of years to print, to publish, to perform, to film or to record literary artistic musical or other cinematographic works.

So, the set of exclusive right in copyright pertain to making more copies in different forms. The set of rights exclusive rights in trademark pertain to using a symbol or a word that is legally registered or established by used as representing a company or it is products; could be products or even services.

So, in trademark the right is for you to escribe a symbol or a set of words the Nicky mark or the Mercedes Benz logo or any of these things to a manufacturer or to a company which owns it; so this attribution is gives you a set of rights that are different. Now you could use this right for all your products, you could use this right for if you enter new

industries in which you were not there before. You could stop people from using it; even if you do not have products because you are rights have good will.

Now, there was a case where someone use the Benchmark the Benz Tristar logo for selling undergarments in India, the quote came Benz had no idea as far as I know of entering into the government business, but still they stopped it because that was the right holder has the right to use the mark in the way he or she wants. So, it may not be the businesses that in which you are very can stop others from using it you could also prem people from using it. If the mark is well know if it is a reputed mark the exclusive set of rights when it comes to patent law, on a patent pertain to the right to make, the right to sell the right to use, the right to offer for sale and the right to import an invention.

Now, now look at that. In patent law we are talking about rights relating to manufacture marketing sale and in some cases importation. So, the nature of the subject matter you know we are trying to define intellectual property right and we are trying to understand that the subject matter can be different for different rights. The registration process is different for different rights the exclusive set of rights that patents and trademarks and copyright encompasses they themselves can be different because of the subject matter being different.

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Duration

- Can be for a fixed term or renewed
- In trademarks a right that has not been renewed or used it cannot be enforced
- Right as long as right holder wants to keep it alive
 - Pay official fee
 - Needs to take action against people who are using it
- Trademark is an unlimited life IP



And the duration can also be different trademarks can be are for a fixed term, but they can be renewed as long as the right holder places some of the trademarks that are in operation like the coca cola mark are very old close to 100 years or more.

Some of the trademarks, trademarks can be situations where if the right is not renewed or if the right is not used then that marks cannot be enforced. So, but if you look at a business that is survived for 100 years and you would actually see that the marks are being kept alive, they paid the charges official fees for keeping the marks alive and you will find that it can be the trademarks in business parlance we say these are kind of unlimited life intellectual property.

There is no limit to this category of intellectual property because, their life is as long as the right holder wants to keep them alive; he just needs to pay money to the government has official fee and you also needs to take action against people who may use is right. So, there are 2 things the right holder needs to do 1 pay the official charges 2 he needs to be vigilant. And he needs to take action against people who are using the right without us consider, otherwise it could be assumed that he has given a pressure right.

Student: in case we too confusing coco cola with a large number of design (Refer Time: 04:55) right from 1900 to 2000, we have changed this (Refer Time: 05:00) quite updated on (Refer Time: 05:02) every 10 years every 5 years we changes design. Therefore, example I (Refer Time: 05:07) play in nineteen 10 if there are 1 designed coco cola, then we have that is not be renewable trademark that these are designed not renewed can that we used by some other party.

See coco cola has designs on it is bottle, coco cola has copy right protection in the way in which it is products are displayed it is an artistic work the way coco cola has trademark on the world. The trademark without doubt is an unlimited life IP intellectual property it is unlimited there is no limit to it. The other rights come and go if they had assumed that they had registered a design and there was a limited life for it would come and go, but the mark can always; can only be used by the right holder.

So, it is a combination there are multiple rights we will see that they will be multiple rights, but the way in which they take it forward is to get an unlimited life IP. Trade secretes they are again they are a category of a intellectual property right which fall

within the unlimited life IP, they are not limited by if you can keep the trade secret a confidential then you can enforce it as long as they are kept confidential. Duration is true for all the country could classify.

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Two types of IP

- Limited life IP - can go to public domain
- Unlimited life IP - subject to renewal
- Duration of patent 20 years from the date of Application
 - By virtue of TRIPS Agreement
 - A Patent is not technology specific
 - Originally the patent term was 14 years
 - It was an exclusive privilege



The entire lot of IP into 2 categories from business perspective, you have the limited life IP where the duration is limited after which it falls into the public domain and people can use it and you have the unlimited life IP where is subject to renewal it can be kept alive forever.

So, this is true across the globe now let us look at the duration just a few examples today across the globe duration of a patented is 20 years from the date of application and now we have this uniform system thanks to the TRIPS agreement, the trade agreement on the trade related aspects of intellectual property rights; which is TRIPS are which is an agreement under the world trade organization WTO, WTO is an organization and it is also list of agreements. So, the TRIPS agreement is the agreement which covers intellectual property rights and every WTO member is bound to implement that agreement because, it was an international arrangement and most countries who are all members of the WTO have across the board 20 year term for patent this was not so before.

The duration of a patent was not 20 years in India it use to be 14 years and for pharmaceuticals in India the term used to be up to 7 years, it was a flexible term if it used

to be different for pharmaceutical food and agricultural products the term used to be even lesser. Now you may ask why 20 years, I mean where did we get the 20 years from I mean they should be some logic behind 20 because, we know that 20 years is not only true or not only applicable for all countries it is applicable it is technology agnostic. Every technology is now protectable in by virtue of the TRIPS agreement every technology even of the technology has a life span of 3 years, it still gets a 20 year term

So, patents or the patent term as we understand it today internationally is not technology specific, whether it is pharmaceuticals aeronautics biotechnology software the 4 countries which grant patents on software it is a 20 year period and you and I know that 20 year period does not make sense for all technology. Some technologies are so quick they are you know twenty years maybe many generations for all you know it could be many generations.

So, how do we understand this twenty year period 20 year period came in because of some international law being because, WTO before it came into being they worked 8 years of negotiations what we call the Uruguay rounds you know countries participated in it and it was a long drawn process after which the world trade organization was formed. And in that time they were stakeholders putting up their interest and pushing things to it and somehow we have this agreement on 20 years.

Now, mind you the predominant time period before this twenty year across the globe used to be 14 and there is a small explanation historical explanation as to how it came to be 14 years. In England it is said that it took 7 years to train an apprentice; that for time of an apprentice under master or a person with whom he learnt was 7 years; initially the British kings when they started granting patents and they we did not actually grant patents in the initial years they granted exclusive privileges.

Now, exclusive privileges were granted by the king or the queen to enable craftsman very talented craftsman to come from continental Europe and to setup the businesses here. Now imagine if these craftsman some of them made soap some of them made glassware some of them on perfumes playing cards n number of things, if the craftsman where asked to come without the protection of an exclusive privilege then they come in here and immediately they are trade gets copy is not it.

So, this is exclusive this is the historical part of patent law, this exclusive privileges actually came in a way in which some protection was granted to people with special skills. Now at that point we were not even talking about inventions we were not even talking about technologies some people have this exclusive privileges to import playing cards. And it was the royal privilege the king or the queen could give a royal privilege for anything; sometimes the royal privileges could be given for explorations of minerals Privileges were given.

In fact, this country was ruled by the British for a long time because, 1 company the east India company came with a pattern charter they came with a charter and that was an exclusive privilege that the queen gave to that company to explore business opportunities here and they came and we know registry and you know they colonized they came here and they colonized.

But the origin of their charter was an exclusive privilege the given by the ruler. So, exclusive privileges were there at all times, so the so the in the early days we find we do not find pattern grants we find exclusive privileges. So, when a technician or a craftsman was given an exclusive privilege to manufacture soaps for instance. The king or the queen would ask the craftsman to train 2 British nationals, because if you train to British nationals eventually they will learn the trade they will set up shop. And this was a way in which technology transfer or rather villages call it skill transfer happened in those days.

So, the privilege would be given in return of training to apprentices. So, apprentice normally takes 7 years 7 plus 7 14, that is how we came with the first term this is 1 explanation given as to why we had a 14 year pattern term before the trips agreement. So, this is 1 explanation so patents have a 20 year term which is universally applicable across the board all the WTO member countries have to honor that commitment and grand patents for 20 years regardless of the field of technology it is twenty years from the date of application. Copyright in India has a term which is computed as life of the author plus 60 years.

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- Copyright – Life of author + 60 years
- If institution – from date of publication + 60 years
- Trademarks – granted for 10 years can be renewed thereafter



So, if the author writes a book very early in his life. And if he guess to live long then the books get a longer right, in fact I think it was in 2009 all the works of Mohandas Karamchand Gandhi, Gandhiji they came into the public domain, because his life plus 60 years; I think it expired in 2009 I can check and tell you the date.

So, the duration of a copyright is life of the author plus 60 years, if it is not an author if the author or the creator is an institution then the institution from the date of the publication or from the date is varies for another term I think it is 60 years. Trademarks as I said trademarks the duration is it is granted for 10 years it can be renewed every 5 years.

So, this makes intellectual property rights, it puts intellectual property rights into 2 broad categories 1. As I said is the limited life IP copyrights and patents the other will be the unlimited life IP trade secrets trademarks.