



**RESEARCH PAPER**

**Intellectual Property: Public Understanding and Awareness**

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**ABSTRACT**

This paper attempts to create understanding and awareness with respect to concept of intellectual property among general masses. Intellectual Property has been the fastest growing and most vital field in Pakistan for the past two decades. Regardless of influential and powerful legal and institutional reforms by the government, it is very difficult to implement intellectual property rights within the country. Because of this non-implementation, the reports of United States Trade Representative from 2009 to 2016 have placed Pakistan on Priority Watch List. As per these reports, the standard of counterfeiting and piracy is very high in Pakistan and Pakistan must take steps to root out these evils. The biggest reason for this non-implementation is lack of public understanding and awareness with regard to concept of intellectual property. This paper is based on doctrinal research and concludes that public understanding and awareness is need of the hour and without it, we cannot take full advantage of the benefits of intellectual property.

**Introduction**

For socio-economic growth, intellectual property rights protection has greater significance not only in developed countries but also in developing countries. In those countries where IP protection and implementation system is strong, it causes to bring creativity as well as innovation in these countries and this innovation and creativity plays a great role in changing a nation's socio-economic fortune. This system has been adopted by most of the countries of the world. The intellectual property system plays an important role in attracting foreign investment, encouraging technology transfer and flowering trade prosperity. In present era, for attracting foreign investment and flourishing their exports, the majority of the countries are focusing on modernizing their IP mechanism.

IP system in Pakistan is a weak area and has been a neglected issue. The TRIPS Agreement was signed by Pakistan in 1995 but the government of Pakistan

failed to develop the awareness regarding the positive and negative effect of intellectual property system on our economy amongst business community and masses. Pakistan understands the significance of intellectual property rights protection and implementation system and acknowledges that violation of this system is a major threat to the contemporary global environment. Pakistan, for implementing and protecting IP system, is a member of various multilateral arrangements like TRIPS Agreement, Paris Convention, and Berne Convention.

Much public ignorance has been found with regard to intellectual property. The majority of people do not understand the IP concept. Intellectual property means the property of the brain or mind. In other words, mind creations are called intellectual property. What are creations of mind? Let us take a look at it.

### **Patents**

For an invention, a patent is the allotment of unshared title. There is difference between invention and patent. They are not synonyms. In fact, an invention is a theme. It is a theme of a patent. Thomas Edison observed that light is created when with the help of tungsten fiber in a vacuity a voltaic current is passed and on the basis of that finding, he developed light bulb. This creation made this person capable for award of a patent (Harms, 2005). A patent cannot be awarded for a discovered mineral or for a new plant. These discoveries are natural phenomenon and all persons are free to use them. They do not belong exclusively to a man ( *Diamond v. Chakrabarty*, 1980). Patent protection is based on the concept of bargain between public and inventor. For disclosure of invention, the inventor demands for exclusive right of exploitation for a limited time ( *Free World Trust v. Électro Sante Inc*, 2000). Patents are attributing of personal property. To exclude others is the essence of property right. In personal property right, others are excluded from free use of that property. Likewise through patent, others are excluded from free use of that invention for which the patent has been achieved. Like property right, patent right can be challenged and patent infringement like property right infringement can be called in question ( *Panduit Corp. v. Stahl Bros. Fibre Works*, 1978). A patent is not monopoly. An inventor does not deprive the public from anything rather it gives something valuable by adding to the total of humanistic wisdom ( *United States v. Dubilier Condenser Corp*, 1933).

### **Trademarks**

Trademarks have economic worth and they are called invisible property ( "*Anheuser-Busch Inc v. Portugal*," 2007). They are something of an unorthodox in IP law ( *Mattel Inc. v. 3894207 Canada Inc*, 2006). Neither they create monopoly nor they create a kind of copyright ( "*Glaxo Group Ltd v. Dowelhurst Ltd*," 2004). The registration of trademark is a privilege to utilize and prohibit, in relation of those goods and in relation of those services for which the registration has been obtained ( "*Kirkbi Ag v. Ritvik Holdings Inc*," 2005). A trademark must be unique

and it is a symbol of creation (Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v. Qinghai Xinyuan Foreign Trade Co Ltd, 2009). Trademarks protect enterprises big and small (Laugh It Off Promotions CC v. SAB International (Finance) BV t/a Sabmark International (Freedom of Expression Institute as amicus curiae), 2006). Trademark gives undertaking regarding quality and it is an imaginative mum merchant ("L'Oréal SA v. Bellure NV," 2009). For constitution of trademark, three things must be satisfied, first one is sign, and second representation of that sign must be graphically, third sign must be in a position to distinguish the goods from other goods (Dyson Ltd v. Registrar of Trade Marks (Case C-321/03), 2007). A mark that is distinctive from the mark of other services or goods (Koninklijke Philips Electronics NV v. Remington Products Australia Pty Ltd, 2000). A trademark must be source identifier ("Qualitex Co. v. Jacobson Products Co," 1995). In order to establish whether the trademark can perform its duty as a symbol of creation, unshared privilege is bestowed ("Arsenal Football Club Plc v. Reed," 2002). Extremely unique marks have broader preservation in comparison with those that have a minor level of uniqueness (Lloyd Schuhfabrik Meyer & Co GmbH v. Klijsen Handel BV, 2000).

### **Copyrights**

Copyright does not protect against deception (Designers Guild Ltd v. Russell Williams (Textiles) Ltd, 2000). A person cannot be called author who just performs machinelike duty (Cala Homes (South) Ltd v. Alfred McAlpine Homes East Ltd, 1995). Without touching the owner rights, absolute licensees may also have privilege to defend (Klep Valves (Pty) Ltd v. Saunders Valve Co Ltd, 1987). The violation of copyright establishes inconvenience with smooth amusement of ownership ("Ashdown v. Telegraph Group Ltd," 2002). Evidence of copyright violation requires evidence of lack of assent (Positive Attitude Safety System Inc. v. Albion Sands Energy Inc, 2005). The word copyright derives from the expression copy of words. It is an absolute privilege to bestow, sell and economically utilize a scholarly work (Sahni, 2013). Copyright protections cover every creation in the scholarly, artistic and technological area no matter what the modus or style of expression is as long as it is an original creation (Sheikh & Khan, 2014).

### **Industrial Designs**

These are the elements which are included into mass produced products with the aim to improve their attraction by their appearance (Cornish & Llewelyn, 2007). These are aesthetic as well as ornamental aspects of an article. These can be three structural like externality or form of an article or two structural like colors, patterns or lines (WIPO, 2003).

## **Layout Design of IC**

“integrated circuit means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material which is intended to perform an electronic function; and layout-design means a three dimensional disposition, howsoever expressed, of the elements, at least one of which is an active element and of some or all of the interconnection of an integrated circuit or such a three dimensional disposition prepared for an integrated circuit intended for manufacture” (Registered Layout-Designs of integrated Circuits Ordinance 2000).

## **Geographical Indications**

These are indicators of quality. The consumers come to know that the product belongs to a specific area where a given reputation, value or other feature of the product is basically identifiable from its geographic origin. These promote the goods of a particular area (Horan, Johnson & Sykes, 2005). It is a memo that specific goods originate in a specific geographical domain (Chaudhry & Iqbal, 2005).

## **Plant Breeders Rights & Genetic Resources, Traditional Knowledge, Folklore (GRTKF)**

The plant breeders' rights are rights of breeders for growth of new plant varieties to get upgraded farm turnout. Genetic resources mean any material of plant or animal containing functional unites of heredity. Traditional Knowledge and Folklore mention towards long-standing practices and traditions of certain regional, local and indigenous communities. For example stories, legends, songs and even laws (Intellectual Property Organization of Pakistan [IPO-Pakistan], 2016, Annual Report 2008-2009).

USTR (2009) places Pakistan on Priority Watch List and finds although through successful raids Pakistan has shut down many optical disc plants and by these raids, reduction has been observed with regard to production of illegal visual discs and with regard to export of illegal visual discs. But a few has been arrested and prosecuted with minimal sentences. The prosecution system is not very successful and in result of that, deterrent impact is at lower level. The unpublished test and data which is produced to get commerce permission for pharmaceutical goods, Pakistan is unable to provide suitable preservation against wrongful commercial usability of that test and data. The pharmaceutical goods regarding which patent has been granted, Pakistan is unable to prohibit the commerce permission for illegal copies of those goods. Pakistan should insure implementation against book as well as optical disc piracy. She should aggressively prosecute intellectual property rights crimes and award deterrent level sentences.

USTR (2010) suggests that Pakistan should remain on the Priority Watch List. There are serious concerns regarding inadequate IP implementation and preservation. With regard to applications to vend pharmaceutical goods, Pakistan does not have a productive structure to handle patent problems promptly. Pakistan should strictly prosecute IP crimes and impose deterrent sentences for IP infringers.

USTR (2011) places Pakistan on the Priority Watch List. In Pakistan, there is widespread copyright piracy including book piracy as well as software piracy. The trademark counterfeiting also persists. The Pakistani enforcement officers should be provided ex officio control as well as deterrent level penalties for IP violations.

USTR (2012) puts Pakistan on the priority observatory index. The standard of counterfeiting and piracy is very high in Pakistan. The solid steps should be taken by Pakistan to standardize its law of copyright.

According to USTR (2013), Pakistan is placed on the priority observatory index. The IPO Act 2012 was established by Pakistani govt. that provides IPR enforcement powers to the national authorities as well as provides for the establishment of specialized IP tribunals. However, piracy and counterfeiting is still in Pakistan.

USTR (2014) inserts Pakistan on the priority observatory index. Pakistan is unable to implement the IPO Act 2012. Pakistan is unable to establish specialized IP tribunals as well as an operational IPO Policy Board.

According to USTR (2015), Pakistan is on the Priority Watch List. The important outlines of IPO Act 2012 have not been fully implemented. The evils of piracy and counterfeiting have been found in Pakistan with regard to printed and electronic stuff and visual media.

USTR (2016) is moving Pakistan from the priority observatory index to observatory index because of Pakistan s' significant efforts to enforce important outlines of IPO Act 2012. However, the rates of counterfeiting and piracy are significantly high, especially in the areas of medication, computer program, visual media and printed stuff.

Sheikh and Khan (2014) examine that it is considered that funding for IP structure is only for the benefit of foreign interests. The copyright piracy and trademark counterfeiting are considered minor offences against multinational concerns that can easily manage the loss. It is presumed that cost of enforcing IPRs is higher than the return from foreign direct investment. This concept may result in direct harm to consumers in the delivery and sale of pirated services and goods.

Through IPRs, consumers can well understand that what they are purchasing is effective, reliable and safe. IPRs give guarantee that services and goods are of high standard and authentic. The peace of mind and self reliance can be created by IPRs. This peace of mind and self reliance is the need of consumer and markets rely on it (GIPC, 2016, Resources, What is IP, Why is IP important?). The public understanding and awareness is essential for proper intellectual property rights implementation.

## **Conclusion**

Intellectual property has no concrete form. It is creation of human mind like invention, books, musical album, new formula regarding medicine, industrial designs, film based on some new story, Kinos of Sargodha, Mangoes of Multan and Sohan Halwa, Ajrak of Sindh, Sindhri Mangoes, Methi of Qasoor, Basmati Rice, Chapal Qbaab of Peshawar, Khussa of Bahawalpur, Siji of Balochistan and Balochi Cap, etc. There are different forms of intellectual property. Trademarks are signs or words which create difference between products of one firm from those of others. The basic purpose of trademarks registration is protection against counterfeiting and unfair competition. Gold leaf is the IPR of Pakistan Tobacco Company. Its sign and words create difference from other packs of cigarette. Patents are exclusive rights of researches. Patents exclude others regarding commercialization of inventions. Discovery of new products is encouraged by preservation of patents. The goal of patents is to take care of an inventor's business benefits. It promotes R&D in the scientific and technological fields of the country. Copyright means right over the copy that is only available to the creator of the work. For example rights regarding music, films, paintings, artistic, literary works, sculptures, etc. The industrial designs include designs of pottery, textile as well as vehicles. The integrated circuits and lay out designs are silicon chips, microchips consisting of semiconductor devices. Geographical Indications include Hala Ajrak, Kamalia Khadar, etc. Plant Breeders' rights are rights of farmers, scientists and researches regarding new forms of plants for improvement in this field. Genetic resources mean any material of plant as well as animal that contains functional units of heredity. Traditional Knowledge and Folklore include stories, songs of regional, local and indigenous communities. Trade secrets and unfair competition are also new forms of intellectual property. Patents, GI, trademarks, industrial designs and utility models are examples of industrial property. Literary and artistic property includes copyrights and related rights containing printing, audio, video, motion pictures. Integrated circuits, plant breeders rights and database protection fall within the ambit of sui generis protection. USTR reports 2009-2016 clearly indicate the intellectual property rights situation in Pakistan. Only through public understanding and awareness regarding intellectual property, we can get rid of this mess.

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