

ARE INDIAN IPR LAWS ADEQUATE?

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Last September, India enacted a new trademark law, with notable features such as service and collective marks registration, multi-class applications etc., and a brand new geographical indications law for protection of names like Basmati and Darjeeling. Meeting TRIPS obligations, India also amended its patents law in 1999 & 2002 and another one is in the offing. The Indian judiciary has also kept pace with the developments by pronouncing some remarkable IPR judgements in the Internet context.

However, the flipside is the glaring defects in some of the legislations coupled with poor enforcement and slow court systems despite the obligation in Art. 41 TRIPS for expeditious remedies and fair and equitable procedures.

For instance, the Patents Act is restrictive in providing for additional exceptions to patentability apart from those under Art. 27 TRIPS. Secondly, the granting procedures for EMRs (granted under veil of secrecy), are against principles of natural justice since there is no pre/post grant opposition, revocation or remedy against arbitrary rejection. Thirdly, the proposed amendment tries to re-introduce a repealed provision where a resident inventor has to compulsorily file in India first or seek prior permission before filing abroad. Apart from disabling the inventor from filing an invention, it hampers outsourcing activities. For instance, if after inventing, the resident inventor assigns it to a foreign assignee and if that foreign assignee, after filing abroad, wants to file in India, it would be rejected on the ground that the inventor is a resident of India.

The Copyright Act, although quite progressive, does not have statutory remedies in the digital and internet contexts for liabilities of intermediaries in infringement, rights management information, protection of anti-circumvention devices etc. Not forgetting to mention the lack of enabling rules and a registry for the Semiconductor Integrated Circuits Layout-Design Act, 2000.

Further, despite having adequate provisions, the piracy rates in India in respect of movies, music records, business software etc are alarming, mainly due to poor enforcement. The reasons for poor enforcement being overburdened, slow court systems, undeterred infringers, political interference, corruption and lack of technical expertise. Mechanisms for effective enforcement are legal power and willingness to conduct raids without notice to the infringer, willingness to follow through with quick prosecution of damage awards and to impose deterrent fines and jail terms, fast and fair criminal trials etc. Perhaps, India should consider establishing special courts for IPRs.

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