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Law

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Introduction

Intellectual Property (IP) plays an increasingly important role in development of economy and global trade. The regulation regarding the creative works which can be considered as a physical property or asset is the intellectual property law which established to provide protection to unique creativity ideas of human being. This law provides security for copyrights, trademarks, design rights and patents. Basically this protection is given for the ideas which belong to a particular individual. So the principle of granting these rights has a difficulty when justifying the grant of such right. This study is broadly discuss the intellectual property law in relation to copyrights, design rights, patents and trademarks and legal regulations which regulate intellectual property rights for each category. Also this has critically evaluated the basis of granting rights for each category. Those arguments are based on legal cases as well as on political, legal, socio-cultural and economical aspects at global, national and regional levels. Based on the arguments this assignment provides understandings on following areas; Characteristics of intellectual property rights of patents, design rights, copyrights and trademarksDifferent arguments on political, legal, socio-cultural and economical aspects for intellectual property rightsLegal principle regulating to intellectual propertiesArguments on granting the intellectual property rights.

Intellectual Property Law

Intellectual property law is considered as the branch of the law which protects some of the greater manifestations of human achievements and as per Bantly and Sherman (2004: p. 1) it is the law for regulates the creation, use and exploitation of mental or creativity labour. Intellectual property is type of property regime whereby creators are granted a right, which is entirely depending on the nature of the creation. It can be identified with the following characteristics; Treated as a property, a intangible assetOnly granted when the particular intangible asset can be identifiable to an individual creator or attributed group of creators. Enforced by both civil and criminal law.

Distinctive nature of Intellectual Property

In general term, a right of a property is the power to exclude. That means the owner of that property has the power to exclude others from using it or entering to it. Even though the Intellectual Property rights control over intangible assets, it is operates under the same principle as the tangible assets. Under the Intellectual Property law the property owner is given such a power to exclude others from accessing or using of that protected property. Even Intellectual Property shares the exclusionary aspects of property; it also has some distinctive features from the tangible assets. It is intrinsically intangible. Intellectual Property lies on information, symbols, concepts and mostly some creative expressions. As per Dratler (2006: p. 3) the argument here is, it is often impossible even to determine who possesses Intellectual Property as it would require the reading of mind. All the intangible assets are not subject to Intellectual Property rights. There are

some common forms of personal properties which are coming under intangibles assets such as; equity interest in corporation or reversionary interest in real property, which cannot qualify for Intellectual Property rights grants. To be qualifying those assets, it is important that the assets should be inexhaustible resources. Not like tangible (where the assets can be used and enjoyed the benefits only by the owner), the benefits of intangible Intellectual Property are enjoying everyone. For example there might be only one person who possess the invention and hold the copyright over it, but may possess its teachings in public or employ in industry.

Market constraints of Intellectual Property– Economic justification

According to Frunzosi (1997: p. 251) certain product and market need incentives to supply consumer demand of a particular creation. For example: Perceived need by the market for the creationWhether the creation satisfies the consumer markets cost-benefits analysis that is function and reliability of performance and relative cost. Whether the creation can be apply for competing social needs and demandsEx: characters of ergonomic, religious, environmental, aesthetic, spiritual or moralWhether the creation satisfies the consumer’s personal and emotional lifestyle needs. Ex: retail therapy, designer value and status of the creationImplication of the wider economic machinations

International law and political economy of Intellectual Property

The determination of what is creative and protectable at a policy level is subject to debate and constant revision. It is inherently a matter with

political and commercial and decided rarely on the basis of genuine objectively. In Dutfield and Surhersanen's (2008: p. 22) words, due to complexity and competition, Intellectual Property regimes undergoes some changes. Those are of three different types as follows; Protectable subject matter has widening including tendency to eliminate or reduce exceptions. Ex: extension of the copyrights protection for computer programmes, cells, protons and genes and life forms. Removal of exclusions on patents for drugsCreation of new rights such as plant variety protection, layout designs of integrated circuitsStandardisation of the basic features and termsEx: provide 20 year protection termsRequire prior art searches of noveltyexamination of inventive stepAssign rights to first applicant not to the first inventor.

Types of the protection granting under Intellectual Property Law

According to Dutfield and Surhersanen (2008: p. 12) copyrights, trademarks, confidentialities and patens are the normal accepted rights of Intellectual Property and those types and their protection can be shown as follows. Type of rightProtectionPatent LawTechnological inventions and other functional matters including the use and manufacture or sale of inventionsCopyrightsDesign rights (sub category of copyrights)Performances of original works of literacy and scientific creations as well as expressions on art, music and dramas. Appearances of products and other artistic works. TrademarksSigns in the marketplace, specially the use of names, symbols, pictures, words and designs or combination of those, use for a purpose of identifying a particular brand of a productConfidentialityTrade secretes such

as privacy of data, documents and formulas which is maintained as confidential informationEach type of Intellectual Property has their own special domains. The key factor of varying each of them is the subject matter which they are protected under the Intellectual Property law.

Copyrights

Copyrights concern for the work that is recorded in some way in forms of literary, artistic, musical, books and magazines articles, speeches, motion pictures, dramatic work including films, other audiovisual works, computer programmes and database, typographical arrangement, sculptures and other work in fine art, poetry and sound recording, as per Davies and Cheng (2011: p. 27) the subject matter of granting the protection of copyright is ‘ creative expression’ and grants are given irrespective of the medium used to express the creative work. For example a novel is still protected by copyright whether it is recorded in the form of printed pages, typescript, computer disc or CD or any other electronic form or any other medium. But the argument here is, even the copyright is for a creative expression, it can only protect the form of the expression but cannot protect ideas, principles, themes or facts represented in recoded expression. Under copyright authors are granted following powers; specific rights in relation to workprohibits unauthorised actionsto allow author to take legal action if an infringement or plagiarism occurs.

Creative expressions/ categories under copyright protection

Literary Work

Literary work has defined in section 3 (1) of CDPA, as any work other than a dramatic or musical work which is written, spoken or sung. This is including poetry, novels, non-fiction books, song lyrics, periodical articles and also computer programs and table of compilations. As per McQueen, et. at. (2008: p. 60) work must be intended to give either pleasure or instructions and information in the form of literary creation. This was held by the court decision made to Exxon Corp. V Exxon Insurance Consultants International Ltd (1982). The company claimed copyright for the invention of single word " Exxon" because this name had been developed as a new company name and consumed big cost of money and time by the company. The court could held that this could not be a case with a single word, as the company had been involved with researches and put a great effort to create this name. Courts usually have some difficulties with the copyrights of literary works with single words and phrases. As indicated by Kamina (2004: p. 237) this was confirmed by the case Shetland Times V Wills (1997), the court held that the headline of the newspaper text has copyrights, on the view of that the creation of headlines had involved skills of labours, so copying them for reproduction even on their own website considered as an infringement. Generally the title of a work itself cannot be granted a copyright according to the case Francis, day & Hunder Ltd V Twentieth Century Fox Corporation (1940), the claim for infringement failed because the only copied item was the title, and it was considered that it was too insubstantial in facts to constitute any infringement. Table of compilationsIt has been required to

give copyright protection to collection of literary works which has written spoken or sung by reason of the selection and arrangement of their contents. As per Torremans (2007: p. 123) the act includes tables or compilations other than a database in to the category of literary copyrights. To be qualify for the grant, the work should be original and should not be copied from pre-existing work and a part of the creation should be a production of using labour, skills ideas and efforts. The count has given protection for broad range of compilations of information, for example football pool coupons, logarithmic tables and schedules for television programmes. These types of grants are giving by assuming that the author of such compilation has expended time and effort on the creation of that compilation, so he should receive the protection to his creation to protect from unwanted copying by others. Computer programmesAs per Colston (1999: p. 199) computer generated works are defined in the act as any work generated by computer in situations where there is a human author of the work. These are protected as a literary work under the copyright protection. Since the patent holds a very small room in protecting rights of computer programmes and software, copyright was chosen to grant protection to software even they seem functional but they are used to achieve a technical effort. Design material for computer programmesNot only computer programmes but also the preparation materials of such programmes coming under the literary work of copyright protection.

Dramatic work

This has defined as a work of dance or mime. Following criteria should be satisfied to grant a copyright for dramatic works as per McQueen, et. at.

(2008: p. 67); Need to fixed in material formProper representation, acting and scenery should be formed in a necessary ingredients according to the judgement granted in the case Fuller V The Blackpool Winter Gardens & Pavilion Co. Ltd (1985). Work should be capable of performance. Based on the argument raised in Norawian V Arks Ltd (2000), it was said that a film is itself a dramatic work not just a record of a dramatic work. It should be a work of action, with or without music or words which requires only performing of audience. As indicated by Colston (1999: p. 198) it was held in Creation Records Ltd V News Group Newspapers Ltd (1997) that their some of the scenes created to be part of the cover of the coming album cannot considered as a dramatic work because there was no action involved with those scenes. Sequences of computer videos also not coming under dramatic work as it varies too much each time and the unity of performance is lack. This decision was granted in Nova Production Ltd V Mazooma games Ltd (2006)

Drawing work

This is the most significant category of copyrights under artistic works including cartoon characters, sketches of garments, architectural designs, engineering and machinery parts drawings, label designs and etc. PaintingsEven the word painting has not defined by the CDPA act, Stokes (2001: p. 165) said as per Merchandising Corporation of America V Harpbond (1983) it was held that a painting should require a surface, before it could be protected under copyright. From this point of view some facial paintings and make-up forming parts could not be a painting for the purpose of copyright, even if that make-up is a part of a popular person's distinctive image.

CollegeThis can be described as per Davies and Cheng (2011: p. 34) a type of a picture constructed by young children where their first time of learning different types of medium. Photographs, graphic works, sculptures are received copyright protection under this category irrespective of the quality of the artistic work. Work of architectureThis has defined as a building or a model of building including any fixed structure and a part of a building. But the protection is only given if that model or structure properly created for producing architectural design of a intended building. In order to qualify for the protection it is necessary to have an artistic character and the relevant quality of that work. Work of artistic craftsmanshipAs per Stokes (2001: p. 174) there are some considerations of functions when defining artistic craftsmanship such as the intention of designer, function of the work, aesthetic sense of the design and creativity of the work. And also following criteria considered when granting a protection for those types of work as per the decision granted in George Hensher Ltd V Restawile Upholstring (Lance) Ltd. It must be a product of a person with skills and trained in making it. That need not to use solely by human hands but can use machinery even computers. According to Merlet v Mothercare PLC (1986), copyright s available for the craftsman’s contribution provided for a level of artistic quality of the work. But as per Vermant & Powel V Boncrest Ltd (2001), it was said that the artist and the craftsman may be two different persons. For this purpose to qualify for a grant there should be aesthetic element in the artistic craftsmanship. SculpturesThis is considered as a three-dimensional work and must be differentiate with architectural works and artistic craftsmanship. As per Wham-I Manufacturing Co. V Lincoln Industries Ltd

(1985), New Zeeland court was held that a sculpture could no longer be confined to the process carving, irrespective of the material used for crafting, it should be thought as the three-dimensional expression idea is with the creator. So even for a wooden model prototype could be given copyrights under the category of sculptures. But Golvan mentioned (2007: p. 146) as per Greenfield Products Pty Ltd V Rover-Scott Bonnar ltd (1999) it was held in the England court that a prototype could not be put under sculpture of copyright, because a prototype is merely a stage in production of the items. So it was considered outside of the copyright sculptures. This case established that the sculptures should be defined in accordance with the ordinary dictionary meaning and should be constructed narrowly.

Films

According to the section 5B (1) of CDPA, a film can be defined as ‘ a recording on any medium from which a moving image may be any means be reproduced’. As per Kamina (2004: p. 89) soundtrack is also considered as a part of the film, but a copyright are not being granted for a film if it is a copy, taken from a previous film.

Sound recording

Following are considered as a sound recording as per section 5A (1) of CDPA, A recording of a sound which can be reproduced; orA recording of a whole or part of any work of musical, literary or dramatic which can be reproduced. Grants are giving regardless of the medium of the recording or the method used to produce or reproduced the recording. This should not required to be

original but copyrights are not been granted if the sound recording which is a copy from a previous recording.

Broadcasts

This contains both television and radio broadcasts because there is no significant different in the technology used in both radio and television broadcasting. Only the difference is, television is embracing sounds as well as visual part of the broadcasting. As mentioned by Goldsten (2001: p. 39) according to the section 6(1) of CDPA 1988, broadcasting is defined as ' an electronic transmission of sounds and visual images as well as other information' this can be either transmitted by the member of public for simultaneous reception and has the capability of being reviewed lawfully by them or transmitted at a time determined by the person who making the transmission to the public. This can be both satellite broadcasting and internet transmission.

Infringement of copyrights

According to the section 16 of CDPA, after the owner received the copyright for his work, there are certain rights which attach with the protection such as; he /she has a exclusive right to copy the work or to publish copies to others. The choice is up to the owner, whether he keeps the rights or to license them to someone else. But in any case that should be act only by the owner; he must be joined to any action regarding the copyright. According to Colston and Galloway (2010: p. 360) the infringement occurs as per section 16 (2) of CDPA, when following actions taken place; A person without the permission of the copyright owner do any of the acts restricted by the

copyright protection; orAuthorised any other person to do so. This can be an act in relation to whole work or a part of the work, both by indirect or direct action. According Blom-Cooper, et. al. (2009: p. 724) in British Leyland V Armstrong (1986), it was said that the copyright infringement should not occur only by direct action but also indirect action can be treated as infringement. According to Francis Dug & Hunter V Bron (1963) infringement does not taken place even if it proof the similarity between the works. That means copyright must be subconscious. With the above criteria, copyright infringement is taken place if any of the following actions occur; Copy of the workIssues copies to publicRent or lend the copiesCommunicate it to publicPerform it in the public. This was established as per the judgement granted in Jennings V Stephens (1836) law case.

Substantiality if copyright infringement

As per Macmillan (2006: p. 176) the decision made in Hawkes & Sons (London) V Paramount Film Service Ltd (1934) the infringement is happened even the substantial, but a vital and essential part of the copyright work is copied. But there is no specific quantitative criteria mentioned in the CDPA act or in case law. Therefore to measure the substantial portion of the infringement act, court uses rough quantitative guides as well as some qualitative criteria. They concern some factors such as use of skills, labour ad time for the creation; if it is more and significant then the defendant should not take any advantage over copying it.

Secondary/indirect infringement

This is not merely considered as a infringement but it is there to prevent certain activities under their copyright protection, as per Colston and Galloway (2010: p. 386) following are considered; Copying important informationDealing with such copiesProvide facilities to make such copiesTransmuting copying work in telecommunication systemsProviding opportunities for infringementSupply means such as sound recordings or films for a infringement performances.

Remedies

As discussed by Aplin and Davis (2009: p. 150) following remedies are available for the owner in case if there is any infringement of copyright work. Command a prohibition for future infringementAsk damage for the loss incurred due to the infringementAccount for the profit made by the infringementRight to seize the infringement workThere are some exemptions under the CDPA, such as; Fair dealing: Even the work is considered as infringement, if the infringer used it not for a commercial purpose that work of the copying will exempt. Following are considered as the fair dealing examples: Copying for the purpose of private research studiesCopying for the purpose of review or criticismCopying for the purpose of reporting current or new events to the public. According to Jones and Benson (2002: p. 207) in Peo Sieben Media V Carlton Television (1999) it was decided that the use of copyright, constituted for a fair dealing, for the purpose of reviews or criticism and also for the purpose of reporting a current issue to the public. Educational : this exemption can be gain by giving the sufficient acknowledge to the author and the copyright work can be used for the

purpose of examinations and instructionsArchive, library and public administration: NGO library can make copies of the copyright work to give people who use them for research. Public intents: If the copying work may be injurious to public life, create health and safety problems or the administration of justices, those works are exempted.

Strength of the protection

This varies according to the different types of property which is protected under Intellectual Property law. The protection can be either for specific term of years, potentially unlimited time with weaker or no exclusive rights or limited-term protection with specific exclusive rights. Copyrights are one of the strongest forms of Intellectual Property which only second to the patent. As per Goldstein (2001: p. 58) owner is having five exclusive rights regarding the copyrighted work. To reproduce the work, to publish it, to display it to public, to perform in in public and to prepare adoptions based on it. In corporate and anonymous works, copyrights last for more than 100 years after the creation. And 75 years granted after the first publication. Named individual’s works are protected for 50 years after the death of the copyright work creator.

Patent

This is the monopoly right which is given for an invention and under the law the grant of patent right for a particular invention is given for 20 years. As per Norman (2011: p. 89) to qualify for a grant of patent that invention should be covered following requirements according to the statutory requirements; The invention should be novelThere should be inventive

stepsIt should be capable enough to apply industryIt should not involve excluded materials but should be an inventionIf above criteria cannot be met, the patent will be invalid, so in that scenario there cannot be any infringement. As per the decision made of Young V Rosenthal & Co. (1884), an invention of an idea or mathematical formula or any other similar thing cannot be considered for patent right. Medical methods and treatments of disease are not subject of a patent but as per Murdie (2000: p. 194) in Wyeth & Brother Ltd's application V Schering Ag's Application (1985), it was held that any new invented drugs can be patentable. As per Dratler (2006: p. 14) patent are broadly covers inventions including products, improvements, compositions and processes. This addresses only the technology of the invention. In such, fundamental scientific principles such as abstract algorithms or formula are not patentable. Normally subject matter of the patent might be a new device or machinery, a new process of production or a new composition of matters such as chemical compositions. Thus the operative objective or the principle subject matter for granting the patent right is ' technology', it is not like other Intellectual Property rights such as creativity, symbols and fundamental ideas.

Strength of the protection

This provides the strongest protection of any type of forms in Intellectual property rights. Under this patent owner has right of exclude all other from accessing and using the patented invention. Patents for plant and utility last more than seventeen years and design patents are last only fourteen years.

Confidentiality / Trade Secretes

The subject matter here is very broad. As per Heinemam (2009: p. 8) protection is given for any information or expression recorded or not, if it's limited availability gives a great economic value to it. This is not limited to technological or scientific and creative information but it is included financial or business information in relation to customer lists, costs and prices, recipes and etc. Trade secretes provide a significant supplement for both patents and copyrights. Because patent does not protect ideas but only protect the technology and copyright also on the other hand do not protect ideas but only the manner thy expressed. Thus trade secretes fills the gap between patent and copyright by providing protection for commercially available ideas and information. Following requirement needs to be satisfied to protect trade secrets; There is no requirement of registrationNo time limitations and tangible requirements as per Sanbar (2007: p. 154)No strict novelty requirementsSufficient economic and financial value or competitive advantages are requiredTrade secrets rights are based on weak paradigm of Intellectual Property law which applies for a unlimited duration of time. The owner can only prohibit acquisition of the protected secret by the means of breach of confidence or breach of contract. He has no power to exclude others from any other activity.

Incompatibility with other rights under Intellectual Property

In this aspect trade secrete protection in very vital for organisations and is incompatible with certain other forms of Intellectual Property rights. As per Holland, et. al. (2007: p. 208)Trade secrete protection cannot corporate with

patent protection, because the specification of patent right of invention is developed to make such inventions available for public access. But the trade secrete rights in not public exposure and it is inaccessible for others. Publication of confidentiality in a copyright work destroys the confidentiality in trade secrets. Ex: if someone is having a copyright for computer programme and he also he protected his programme under trade secrete protection, if he publish the computer program, confidentiality of the trade secrete will be no longer there. Without publishing the programme even it is not useful.

Characteristics of confidentiality

As indicated by Cavendish (2006: p. 5) to protect under trade secrets of Intellectual Property rights, that information must be of confidential nature, communicate in confidential circumstances. The general characteristics are as follows; Owner should believe that the information would be injurious to him or given an advantage to his competitors and that belief should be reasonable. These confidential information must be judged by the usage and the importance of that informationAs per the decision made in Lord Green MR in Saltman Engineering Co. Ltd V Campbell Engineering Ltd (1963) it was said that to be protected under the confidentiality right, those information must have the necessary quality of confidence of it and it must not be something which is from public knowledge. According to Coco Engineers V Clark (1969), the doctrine of confidential information should only used in situations with sufficient gravity and not some small things that are revealed to the public. As per Johnson V Heat & Air System Ltd (1941), the person who is receiving such information also under as obligation of protecting

confidentiality. According to Schering Chemicals V Falman Ltd (1982) even though the information has been published, confidentiality should be still maintain to prevent any damage through repetition.

Misappropriation of confidentiality

Misappropriation of trade secretes would be occur as per Dreyfuss and Strandbary (2011: p. 40) when; Acquisition it by improper manner, such as by theft, misrepresentation, bribery breach or through electronic media. Acquire trade secret by mistakenly or accidentlyUsing or disclosing the trade secrete by acquiring improperly on in violation of the duty to maintain the confidentiality. According to Burrows, et. al. (2007: p. 958) the judgement given in Seager V Copydex Ltd (1967), if a person is given certain kinds of information in confidence, he should not by any case disclose that information without permission. If he does so, it will be a breach of trust under Intellectual Property rights.

Breach of confidence

According to Cavendish (2006: p. 4) the action for breach of confidence is covered personal and technical trade secrets and ideas which can be occur by the doctrines such as tort, property, equity and contract law. But according to Kitchnology BV V Unicor GmbH Plastmaschnee (1995), it was said the the claim if the breach of confidentiality did not arise in tort or contract but were part of equity. According to the judgement given in the case Coco V Clark, there are three elements that establish breach of confidence; Capability of information protection: information must have the necessary elements of confidentialityConfidentiality obligation: disclosure

should been made in confidenceDamage risk: the possibility of causing any damage if the information is disclosure in an unauthorised way.

Injunction in confidentiality

Court may be granted an injunction if the defendant intend to justify. As per Carvendish Lawcards Series (2004: p. 15) in Lock International PLC V Beswick (1987), only if the confidential information can be identified with some precisions, an injunction will be still granted. In case Shelfer V Ciry of London Electric Lightening Co. (1985) court was held that the relief may be denied if; The injury is smaller to the claimant's legal rightsIt has a capability of estimated in moneyCan be compensated adequately by a small money payment.

Trademark

The subject matter of this includes a commercial symbol which is used to define and identify products services in the marketplace. With regards to the patent or copyrights protection rights, there is an overlap between patent and copyrights with the trademarks, because trademark protection serves different purposes than patent, copyrights or trade secrets. As per Jehoram (2010: p. 241) even organisational point of view they always wish to protect specific intangible assets under the Intellectual property rights, especially from unlawful duplications by their competitors. So their production needs some forms of Intellectual Property rights. Trademarks can be in forms of names, slogans, logos and other identifiable such as sounds and colours. Some famous examples are as follows; NameSloganNike' Just Do It'Nescafe' Good to the last drop'MacDonaldi'm lovin' it

Importance of having trademark

For every commercial vendor, trademark protection is very useful because every products and services are sold under a specific trade name. As per Dinwoodie and Janis (2008: p. 398) it is important to even business to protect their trademark because they invested considerably big amount of money as well as time to build their brand recognition. And also trademark identity provides following advantages to businessPeople mostly tend to buy most recognised brands and well known brands by their trademark. Trademark helps consumers to prevent from being confused or mislead by use of similar trademarks. Prevent organisation from stealing their goodwill which they have generated by creativity to marketing their products in the industry.

Strength of protection

This is also like trade secret which has made on the weak paradigm of Intellectual property law. It might have an infinite duration of protection, but it is not much strong as copyrights and patents. Under this protection it covers according to Bird and Jain (2008: p. 82) only the likely confusion of public by using the similar mark or feature of the logo. But there is no liability for trademark infringement if the mark or the symbol used for different type of business lines with different types of products and it is not likely to confuse the public with the trademark symbol.

Defining trademark

According to section 1(1) of the Trade Mark Act of 1994, IIzkovitz and Sekkat (2011: p. 1) defined trademark as any 'sign' which represented graphically, may consists of words even personal names, designs, letters, shapes of

goods or numerals with the capability of distinguishing from the others. In Linde AG, Winward Industries and Radio Watch Co Ltd cases of registering their signs, it was said that all the trademarks must be capable of identify the product or service as operating under a particular organisation, thus that trademark helps to distinguishing from other organisation. Not like other forms of Intellectual Property rights such as patents and copyrights, with trademarks there is a definite indication for the need of commercial operation in relation to provisioning for goods and services. When recognising a ‘ sign’ there is no common definition on the Trade Mark Act but Bird and Jain (2008: p. 185 said as per Ralf Sieckermann V Deutsches Patent and Markemant (2002) it was stated that for a sign, the graphical representative should be contain some features such as precise, clear, easily accessible, self contained, intelligible, objective and durable. Meantime it should not be just a part of the advertising process but it should need to use as a mark to recognise the particular good belongs to the organisation.

Distinctive nature of the trademark

In Philips Electronics NV V Remington Consumer Products Ltd (1999) the court was refused Philips’s three-headed rotary shape for trademark application. As per Michaels (2002: p. 30) there were no of issues addressed under this case. First was related to the section 7(1) (b) and (c) of the act about the relationship between the distinctiveness and the ability of the mark to distinguish the products. Court was held that the two requirements are mutually interrelated, supportive and for any registration f trademark both should be satisfy. Second one is related to section 3 (2) (b) of the act with regards to attributable meaning of the trademark. That was concerned

whether the three-headed rotary shape was decided by any technical result, if so the technical result should be excluding when qualifying the registration of the shape. This was held with the assumption of even other shapes also can achieved from the same technical result. Third it was stated that all the shapes in the mark should be functional, so including a capricious addition to the three-headed rotary sign has no functional purpose as per Stim (2012: p383). In that aspect the sign cannot be registered itself. Finally regarding the consumer recognition aspect of the product, and derived from a particular sources due to its shape and that shape is using only that source, then that shape may be become distinctive. This is a questioning situation where national courts determined the distinctiveness on the basis of reliable data. As discussed by Sathersanan (2003: p277) following criteria can be consider when identifying distinctive nature of the mark which consumer perceive; Physical characteristics including technical, descriptive and generic features such as signsIntended usage and the users of the goods and servicesNature of the goods and servicesDegree and the nature of the consumer recognitionTrademark should have the ability to influence competitors to find and use substitute shapes for their goods and services.

Concepts of trademark

Genuine Concept

As per Kur, et. al. (2013: p. 231) in Silberquell GmbH V Maselli Strickmode GmbH, the European court of justice established the concept of the ‘ genuine use’ of the trademark. Registering a trademark, which is not related to the goods and services that directly represented their business, will be liable to revocation. Further it was told that the genuine use should be understand as

a actual use and there should be essential functions of the trademark that guarantee the identification of the origin of goods and services to the end user. The trademark owner should put their trademark to genuine use for five successive years connecting to the goods and services.

Balance of convenience concept

The balance of convenience concept was explained by the High Court of London in the case of Nude Brands Ltd V Stella McCarthey Ltd and others in 2009. As mention by Michaels (2002: p. 176) it was held that if a brand owner wants to obtain an interim injunction to restrain an infringement of Trademark, he should provide adequate proves about the actual confusion in the market place due to the copying or having similar brands. Then the court will apply the balance of convenience test to confirm whether to grant interim injunction. Here interim injunction allows the brand owner only to block imminent ongoing infringement of trademark for a very short period of time.

Limitations, justifications, arguments and criticism

Intellectual Property and Control

It is a simple thing to guard the property right of typical commodities material because all the commodities are kept in warehouse or stores and the owner can watch over them. But in relation to the Intellectual Property the materiality used with the work is not relevant. In such manner, Intellectual Property protection requires not the control over things, but the control over people and information as per Moore (2009: p. 8) . For example any one can now download songs, films, books and computer programmes

and software at anytime in everywhere. So it is very intrusive to protect intellectual properties. For this purpose government mandate some modifications to limit the capacity of new technologies to violate intellectual property right.

The competition and Intellectual Property rights

According to Anderman (2007: p. 6) by the forms of intellectual Property rights such as copyrights, patents, trademarks and trade secrets change the nature of competition among the industry. Industries that do not have any intellectual property rights, find that they are involving in extreme competition. As such their profits are lower and have a small share of the market. On the other hand, industries which enjoying Intellectual Property rights face only a limited competition and have a superior profits with a big market share. Many famous companied enjoying elevated profits due to the Intellectual Property rights. For example in industries with tangible commodities and products such as agricultural products or electronic goods manufacturers, there is a powerful and huge competition forces to put extreme pressures on the profits. But other industries which are totally depend on intangible assets, specially software, pharmaceuticals, music, sound recordings films and etc have a weak competition since they are having copyrights, patents protection over their works. It is certain if they do not have any legal protection over their works, the competition would be very high and that will make such companies even bankruptcy.

The economic argument of Intellectual property

The economic factors in relation to ordinary assets depend on the basic concepts of scarcity. But as per Landes and Ponser (2003: p. 12) Intellectual Property such as information and creativity is not depend on scarcity. So the economical perspective can hardly use with the Intellectual Property. Many might say that these rights have been established to give financial incentives to the creators and inventors. But in history most of the inventors and creators operated without any benefit of copyrights or patents rights. Even now many authors are writing books, articles and publish them without expecting any financial incentive; they do not have any financial motivation towards their work..

Limitations of Intellectual Property

Intellectual Property is an increasingly important from the ownerships. It is more difficult to identify and determine what kind of an ownership should be allowed for Intellectual Property objectives such as inventions, writings and secrete business information. According to Lindbery (2008: p. 76) the complexity of Intellectual Property rights reflexes this ownership problem. There are some limitations when copyrighting and patenting an intangible asset under Intellectual Property law. It can copyright original work of the authorships such as writings, music, dances, movies, drawings and computer programmes. But still it cannot copyright the ideas, concepts, facts, knowledge and principles. The limitation here is, the expression form of the idea can copyright but idea itself is not. The concept of separation ideas from the mode of presenting idea is always problematic. As per Spinello and Bottis (2009: p. 5) it can be seen this difficulty in distinguishing of idea from

presenting mode in many artistic and creative forms such as fictions and poetries. Some mathematical formulas, methods of doing business and etc cannot be patented, only machines and processes or other means of inventions can be patented. For example a person cannot patent the scientific principle but he can patent a machine or process which he used this principle to operate it in a specific purpose and in a specific way.

Justification of the Intellectual Property grants

The constitutional justification for patents and copyrights are ' to promote and develop the progress of the science and the creativity'. This purpose provides the " Utilitarian Justification' of Intellectual Property. As indicated by Lindbery 92008: p. 15) to promote the creativity of making valuable intellectual works, always there should be some kind of protection and property rights. Adequate incentives for creation of intellectual products might not exist without patents, copyrights, trademarks and business secretes rights. The argument here is, if anyone, specially competitors can just simply copy others creations including books, records, movies and other inventions and technologies for their business purposes, it is no point that the owner spend so much of money, time, energy and effort to create or invent that work. Further there would be no incentives to spend of things for that person if his work cannot be protected. In this point of view no one ever going to develop or create new machines, methods or processes and inventions and no new writings or any other artistic works.

Critiques on justification arguments of Intellectual Property

Utilitarian argument

As per Spinello (2009: p. 167) this argument was made to prove that the innovations and creation works under copyrights and patents are good and necessarily required for the well being of the society and their generally happiness. And meantime that might established an argument that those creations and innovations might occur at an unacceptably slow rate as well as without any monitory incentive. So copyright and patent law are there for provide benefits with some monitory incentive for such artistic creation and innovations. In such ways, there are many monitory benefits of holding copyrights and patents. But on the other hand no one can obtain those rights by free of charge, while copyrights are automatic and free but as per Dratler (2005: p. 124) patent incurred some expenses to obtain. If someone wants to patent his/her creative work or invention he/she has to spend money to pay some related expenses such as application fees, registrations fees, legal fees such as lawyer’s fees and court fees. This obviously is a time consuming process. Also there might be some additional fees such as license fees which grant required rights to the owner regarding his/her patented invention. Some might think that man always has a natural and automatic right to his property, thus he needs not to have any copyright or patent towards his creative works. That may seem to those people as, by force exerted over their personal properties because copyright or patent holder under goes some limitations enforced by the government which might cause some difficulties to the owner. According to the law of Intellectual Property, there is

a restriction of using one's own Intellectual property in situations where their own penalties of fines or imprisonment.

Natural rights argument

As per Dooley (2006: p. 111) according to Locke's Labour Theory and Hegel's Personhood Theory, granting of Intellectual Property rights has justified on the basis of the inventor or artist has an exclusive right to their works because they are the ones who create or invent it. These two theories do not emphasise the ability to change for the reproduction of the protected work, but they try to protect the reputation of the inventor or artist in some ways. This argument might fail when considering the actual owner and the instance owner, where actual owner extend the ownership to a thing derived from a actual instance. Then there might be a creation of new principle ownership. The two might always conflicting, for example if the holder of the right decided to have the authority over the ownership, then the primary owner might lost some part of his labour involved to that work. Meantime if the primary owner decided to have the authority then the holder of the copyright or patent has no power over it at all. As per Andersen (2006: p. 114) in this aspect natural right arguments also not provide logical explanations to Intellectual Property Rights.

Conclusion

Intellectual property law is playing an important role in commercial entities as well as individuals by providing rights and protection to their valuable inventions, creative works and business secrets. These rights are coming under forms of copyrights, patents, trademarks and trade secrets. This study

broadly evaluates and provides understandings about all the forms of Intellectual Properties, there rights, subject matters of granting rights, infringements, and remedies. And also this report provides critical evaluation of the Intellectual Property rights with the perspectives of economic, competition, social and cultural. Justifications as well as limitations, arguments and their critical points are broadly discussed under this report. There are some theories and perspective which address the justification of Intellectual Property and mean time there are so many arguments and criticism for those Intellectual Property theories. Many of these arguments were based on the factors such as economical, political and social consideration in general terms. This report provides overall understanding and other related information about the Intellectual Property Act both within the country and international aspect.