

DIGITAL NOTES
Of
INTELLECTUAL PROPERTY RIGHTS

R22A2151

OPEN ELECTIVE

B.TECH III year I Sem



MALLA REDDY COLLEGE OF ENGINEERING & TECHNOLOGY

(Autonomous Institution – UGC, Govt. of India)

Sponsored by CMR Educational Society

(Affiliated to JNTU, Hyderabad, Approved by AICTE – Accredited by NBA & naac – 'A' Grade - I ISO 9001:2008 Certified)
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(R22A2151) INTELLECTUAL PROPERTY RIGHTS

COURSE OBJECTIVES:

1. To understand the concepts IPR
2. To understand Trademarks, Trade Secretes and GI of goods.
3. To understand Copyrights, Patents and Industrial Designs.
4. To learn about how to manage IP rights and legal aspects.
5. To understand the concepts of Cyber laws in IPR.

UNIT – I:

Introduction: Introduction to Intellectual Property Rights, types of intellectual property, importance of intellectual property rights, Evolution of IP acts and treaties, Agencies responsible for IPR registrations, Role and value of IP in international commerce, Issues affecting IP internationally.

UNIT – II

Trade Marks: Purpose and function of trademarks, Acquisition of trade mark rights, transfer of rights, Selecting and evaluating trademark, registration of trademarks, claims.

Trade Secrets: Trade secret law, determination of trade secret status, liability for misappropriation of trade secrets, trade secret litigation.

Geographical Indication of Goods: Basic aspects and need for the registration

UNIT – III

Copyrights: Fundamentals of copyright law, originality of material, right of reproduction, right to perform the work publicly, copyright ownership issues, notice of copyright.

Patents: Foundation of patent law, patent searching process, Basic Criteria of Patentability Industrial

Designs: Kind of protection provided in Industrial design

UNIT – IV:

Managing IP Rights: Acquiring IP Rights: letters of instruction, joint collaboration agreement, Protecting IP Rights: non disclosure agreement, cease and desist letter, settlement memorandum. Transferring IP Rights: Assignment contract, license agreement, deed of assignment

UNIT- V

Introduction to Cyber law: Information Technology Act, cyber crime and e-commerce, data security, confidentiality, privacy, international aspects of computer and online crime.

COURSE OUTCOMES:

1. Learner should be able to demonstrate understanding of basic concepts of IPR.
2. Able to differentiate between Trademarks, Trade secrets and GI of goods.
3. Able to understand Copyrights, Patents and Industrial Designs..
4. Able to manage and protect IP
5. Will gain Knowledge on Cyber law

TEXT BOOKS:

1. Intellectual property right by Deborah E Bouchoux
2. Cyber law, Text and cases South western special topics collection.
3. Intellectual property rights by N.K Acharya
4. Fundamentals of IPR for engineers, BY komal bansal
5. Intellectual property rights by P. Radhakrishnan.

REFERENCES:

R15

Code No: **R15A0069**

MALLA REDDY COLLEGE OF ENGINEERING & TECHNOLOGY

(Autonomous Institution – UGC, Govt. of India)

II B.Tech II Semester Supplementary Examinations, July 2021

Intellectual Property Rights

(AE)

Roll No										
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Time: 3 hours

Max. Marks: 75

Answer Any **Five** Questions
All Questions carries equal marks.

- 1 Explain about the Patent Cooperation Treaty. [15M]
- 2 Give an account of the development of IP law in India [15M]
- 3 How the copyright in a work is licensed? [15M]
- 4 What is originality under copyright law and explain the tests laid down for determining infringement of copyright in a computer program. [15M]
- 5 Explain the role of various agencies responsible for the IP Rights. [15M]
- 6 Discuss the Validity of Local IP Rights with suitable examples. [15M]
- 7 Discuss the salient features in transferring of IP rights [15M]
- 8 Discuss the process of solving IPR Issues [15M]

Code No: **R15A0069****MALLA REDDY COLLEGE OF ENGINEERING & TECHNOLOGY****(Autonomous Institution – UGC, Govt. of India)****II B.Tech II Semester supplementary Examinations, April/May 2019****Intellectual Property Rights****(AE)**

Roll No									
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Time: 3 hours**Max. Marks: 75****Note:** This question paper contains two parts A and B

Part A is compulsory which carries 25 marks and Answer all questions.

Part B Consists of 5 SECTIONS (One SECTION for each UNIT). Answer FIVE Questions, Choosing ONE Question from each SECTION and each Question carries 10 marks.

PART-A (25 Marks)

- 1). a What is meant by IPR [2M]
- b What is the purpose of TRIPS agreement [3M]
- c What is Trade secrets [2M]
- d What do you mean by Patent [3M]
- e What are the Validity of IP rights [2M]
- f What are contractual protection of IP rights [3M]
- g Define Non disclosure agreement [2M]
- h Define Addendum to unrecorded license. [3M]
- i Expand WTO and IPR [2M]
- j Define IPR evaluation [3M]

PART-B (50 MARKS)**SECTION-I**

- 2 Explain the role and value of IPR in international commerce? [10M]
- OR
- 3 Discuss the agreement on trade related aspects of IPR? [10M]

SECTION-II

- 4 Explain the rights of authorised user in relation to IPR [10M]
- OR
- 5 What is an IPR attorney? Explain the duties of IPR attorney? [10M]

SECTION-III

- 6 Explain the IP rights in international forums. [10M]
- OR
- 7 What companies will do to ensure the value of IP after creation stage. [10M]

SECTION-IV

- 8 Explain: (i) non disclosure agreement [5M]
- (ii) cease and desist letter [5M]
- OR
- 9 Explain the joint collaboration agreement in relation to IP rights. [10M]

SECTION-V

- 10 Explain the role of WTO in solving IPR issues [10M]

OR

11 Explain the role of GATT in solving IPR issues

[10M]

Code No: **R17A0051****MALLA REDDY COLLEGE OF ENGINEERING & TECHNOLOGY**

(Autonomous Institution – UGC, Govt. of India)

II B.Tech II Semester Supplementary Examinations, July 2021**Intellectual Property Rights****(CSE, IT & AE)**

Roll No									

Time: 3 hours**Max. Marks: 70**

Answer Any **Five** Questions
All Questions carries equal marks.

- 1 Discuss the process of Intellectual Property registration in India. [14M]
- 2 Explain the compliance and liability issues of Intellectual Property Rights. [14M]
- 3 Narrate how selecting, evaluating and registration of trademarks take place. [14M]
- 4 What are publicity rights? What are the legal provisions pertaining to publicity rights? What are the remedies available against the infringement of publicity rights? [14M]
- 5 What is copyright? What is originality of material in copyright works? What are the rights granted under copyright law? [14M]
- 6 Explain about the right to perform the work publicly, copyright ownership issues and notice of copyright. [14M]
- 7 What are the types of cybercrimes committed in e-commerce and what are the measures to be taken to prevent the cybercrimes in e-commerce and enhance e-commerce? [14M]
- 8 Give an overview on international intellectual properties with a focus on trade mark law and copyright law. [14M]

Code No: **R17A0051****MALLA REDDY COLLEGE OF ENGINEERING & TECHNOLOGY**

(Autonomous Institution – UGC, Govt. of India)

II B.Tech II Semester Supplementary Examinations, February 2021**Intellectual Property Rights**

(CSE, IT & AE)

Roll No									
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Time: 2 hours 30 min**Max. Marks: 70**

Answer Any **Five** Questions
All Questions carries equal marks.

- 1 a) Describe about tools used in intellectual property rights. [7M]
b) Discuss the importance of intellectual property rights [7M]
- 2 a) Discuss the law of relating to acquisition of trade rights [7M]
b) Explain the terms of patents and registration process of patents? [7M]
- 3 a) Explain about post examination procedure in trade mark registration [7M]
b) Discuss the law relating to acquisition of trade mark rights [7M]
- 4 a) Explain in detail about ownership of trade mark [7M]
b) Explain how do you select a trade mark [7M]
- 5 Explain how ownership of copy rights gained and how it can be transferred. [14M]
- 6 Discuss various subject matters covered under copy rights Act [14M]
- 7 a) explain about new developments in patent law [7M]
b) what is international patent protection law explain [7M]
- 8 a) Explain in detail about E-commerce and cyber crime [7M]
b) Discuss international laws related to online crime [7M]

Code No: R17A0051

MALLA REDDY COLLEGE OF ENGINEERING & TECHNOLOGY

(Autonomous Institution – UGC, Govt. of India)

II B.Tech II Semester Regular Examinations, April/May 2019**Intellectual Property Rights****(CSE, IT & AE)**

Roll No									
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Time: 3 hours**Max. Marks: 70****Note:** This question paper Consists of 5 Sections. Answer **FIVE** Questions, Choosing ONE Question from each SECTION and each Question carries 14 marks.

SECTION-I

- 1 Explain the role and value of intellectual Property rights in international commerce. [14M]

OR

- 2 Explain with examples the emerging forms of Intellectual Properties [14M]

SECTION-II

- 3 Write the process of protecting Intellectual property? [14M]

OR

- 4 Describe the process involved in ownership transfer of Intellectual Property rights? [14M]

SECTION-III

- 5 Explain in detail IP rights in international forums [14M]

OR

- 6 What are the intellectual property rights? Bring out the need for protecting intellectual property [14M]

SECTION-IV

- 7 Write a short note on [7M]
a) Unfair competition. [7M]
b) Ownership transfer.

OR

- 8 Explain detail the terms and condition of joint collaboration agreement [14M]

SECTION-V

- 9 Explain the role of WTO in promoting IPR [14M]

OR

- 10 Explain international aspects of IPR related to trademarks and trade secrets. [14M]

R15

Code No: **R15A0069**

MALLA REDDY COLLEGE OF ENGINEERING & TECHNOLOGY

(Autonomous Institution – UGC, Govt. of India)

II B.Tech II Semester Supplementary Examinations, February 2021

Intellectual Property Rights

(AE)

Roll No									
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Time: 2 hours 30 min

Max. Marks: 75

Answer Any **Five** Questions

All Questions carries equal marks.

- 1 Write about intellectual property law and its contribution to growth of intellectual property law globally. [15M]
- 2 Give the significance of IPR in international business. [15M]
- 3 What is meant by copy right? How is it transferred? [15M]
- 4 What are the limitations to patentee? Explain about patent cooperation treaty. [15M]
- 5 What are the key issues of IP? [15M]
- 6 What is the significance of IP in international forums? Explain with examples. [15M]
- 7 Write about the confidentiality agreement between Employer and Employee. [15M]
- 8 What are the objectives and functions of WTO. [15M]

UNIT I:

Introduction to Intellectual Property Rights, types of intellectual property, Importance of intellectual property rights, Evolution of IP acts and treaties, Agencies responsible for IPR registrations, Role and value of IP in international commerce, Issues affecting IP internationally.

INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS

Intellectual property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the Intellectual Property. The term intellectual property reflects the idea that this subject matter is the product of the mind or the intellect, and that Intellectual Property rights may be protected at law in the same way as any other form of property. Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest. Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time.

Intellectual Property

Intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property. Examples of intellectual property include an author's copyright on a book or article, a distinctive logo design representing a soft drink company and its products, unique design elements of a web site, or a patent on the process to manufacture chewing gum.

Intellectual Property Rights

Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time. Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

Categories of Intellectual Property

One can broadly classify the various forms of IPRs into two categories:

- IPRs that stimulate inventive and creative activities (patents, utility models, industrial designs, copyright, plant breeders' rights and layout designs for integrated circuits) and
- IPRs that offer information to consumers (trademarks and geographical indications)

IPRs in both categories seek to address certain failures of private markets to provide for an efficient allocation of resources

IP is divided into two categories for ease of understanding:

1. **Industrial Property**
2. **Copyright**

Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and

Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs

Intellectual property shall include the right relating to:

- Literary, artistic and scientific works;
- Performance of performing artists;
- Inventions in all fields of human endeavour;
- Scientific discoveries;
- Industrial designs;
- Trademarks, service marks and etc;
- Protection against unfair competition.

What is a property?

Property designates those things that are commonly recognized as being the possessions of an individual or a group. A right of ownership is associated with property that establishes the good as being "one's own thing" in relation to other individuals or groups, assuring the owner the right to dispense with the property in a manner he or she deems fit, whether to use or not use, exclude others from using, or to transfer ownership.

Properties are of two types - tangible property and intangible property i.e. one that is physically present and the other which is not in any physical form. Building, land, house, cash, jewellery are few examples of tangible properties which can be seen and felt physically. On the other hand there is a kind of valuable property that cannot be felt physically as it does not have a physical form. Intellectual property is one of the forms of intangible property which commands a material value which can also be higher than the value of a tangible asset or property.

TYPES OF INTELLECTUAL PROPERTY

The different types of Intellectual Property Rights are:

- Patents
- Copyrights
- Trademarks
- Industrial designs
- Geographical indications of goods
- Trade Secrets

Important Species of IPR

Out of the different types of Intellectual Property Rights the following are the most important species of IPR

TRADEMARKS

According to section 2, sub-section (1) of the Trade Marks Act 1999, "Trade Mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.

Trade mark registration is an effective and economic way of ensuring your brand is protected. Registration provides a safeguard against third party infringement and often acts as an effective deterrent against third parties considering or contemplating infringement. Failure to protect brand may reduce its value, and could damage your business' reputation. It is also important to be attentive to the activities of your competitors. If you suspect or witness your brand being infringed it is best to take action as soon as possible. The longer the infringing activity exists, the more difficult to maintain the registered trademark and chances of trademark becoming generic.

Genericide is the term used to describe the death of a trademark that results from the brand name becoming the name of the object itself.

COPYRIGHTS

1847 is the First Copyright law Enactment in India during British Regime. The term of copyright was for the lifetime of the author and 60 years counted from the year following the death of the author

Copyright law is designed to protect interests and balance the rights of the following stake holders

- Authors/ Creators
- Publishers/ Entrepreneurs
- Users /Audiences

Indian Copyright Act is the one of the best Copyright enactment in the world.

The Copyright Act 1911, while repealing earlier statues on the subject, was also made applicable to all the British colonies including India. In 1914, the Indian Copyright Act was enacted which modified some of the provisions of Copyright Act 1911 and added some new provisions to it to make it applicable in India. Copyright Act, 1911 was in existence in India till the new Copyright Act, 1957 was introduced in India Post Independence. In India, the Copyright Act, 1957 (as amended in 1999), the Rules made there under and the International Copyright Order, 1999 govern Copyright and neighbouring rights. This Act has been amended five times i.e 1983,1984,1992,1999 and most recently in 2012.

What can be protected under Copyright?

Literary, Dramatic, Artistic, Musical, Cinematographic, Photographic and Sound Recording works.

Literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings.

PATENTS

Patent is a grant for an invention by the Government to the inventor in exchange for full disclosure of the invention. A patent is an exclusive right granted by law to applicants / assignees to make use of and exploit their inventions for a limited period of time (generally 20 years from filing). The patent holder has the legal right to exclude others from commercially exploiting his invention for the duration of this period. In return for exclusive rights, the applicant is obliged to disclose the invention to the public in a manner that enables others, skilled in the art, to replicate the invention. The patent system is designed to balance the interests of applicants / assignees (exclusive rights) and the interests of society (disclosure of invention).

Meaning of 'Invention' under Patent

Law Sec.2(1)(J) - "Invention" means a new product or process involving an inventive step and capable of industrial application

There are three types of patents:

Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;

Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and

Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant

TRADE SECRETS

A trade secret consists of any valuable business information. The business secrets are not to be known by the competitor. There is no limit to the type of information that can be protected as trade secrets; For Example: Recipes, Marketing plans, financial projections, and methods of conducting business can all constitute trade secrets. There is no requirement that a trade secret be unique or complex; thus, even something as simple and nontechnical as a list of customers can qualify as a trade secret as long as it affords its owner a competitive advantage and is not common knowledge. If trade secrets were not protectable, companies would no incentive to invest time, money and effort in research and development that ultimately benefits the public. Trade secret law thus promotes the development of new methods and processes for doing business in the marketplace.

Protection of Trade Secrets: Although trademarks, copyrights and patents are all subject to extensive statutory scheme for their protection, application and registration, there is no federal law relating to trade secrets and no formalities are required to obtain rights to trade secrets. Trade secrets are protectable under various state statutes and cases and by contractual agreements between parties. For Example: Employers often require employees to sign confidentiality agreements in which employees agree not to disclose proprietary information owned by the employer. If properly protected, trade secrets may last forever. On the other hand, if companies fail to take reasonable measures to maintain the secrecy of the information, trade secret protection may be lost. Thus, disclosure of the information should be limited to those with a “need to know” it so as to perform their duties, confidential information should be kept in secure or restricted areas, and employees with access to proprietary information should sign nondisclosure agreements. If such measures are taken, a trade secret can be protected in perpetuity. Another method by which companies protect valuable information is by requiring employee to sign agreements promising not to compete with the employer after leaving the job. Such covenants are strictly scrutinized by courts, but generally, if they are reasonable in regard to time, scope and subject matter, they are enforceable

GEOGRAPHICAL INDICATIONS

GI is an indication, originating from a definite geographical territory. It is used to identify agricultural, natural or manufactured goods produced, processed or prepared in that particular territory due to which the product has special quality, reputation and/or other characteristics.

IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS

IPR is a significant tool in today's era. The risk of an innovation getting infringed without the knowledge of the inventor stands very high. With the increase in the importance of IP, instances of IP crimes have become the part and parcel of the digitized era sometimes even leading to failure of businesses. Companies rely on adequate protection of their patents, trademarks, and copyrights, while customers make use of IP to ensure that they purchase secure, assured goods. An IP asset is like any other physical property offering commercial benefits to businesses. In a web-based world, IP protection is much more relevant as it is comparatively simpler than ever to reproduce any specific template, logo, or functionality. Hence, strong IP laws give protection to IP and contribute to the economy of the respective state. IPR is one of the sources of security for intangible properties which are still open to the public and which can be quickly replicated by anyone.

Intellectual property rights are more important because today we are highly-connected to digital landscape. With all of the good the rise of the internet has done for the sharing of information and ideas, it has unfortunately become easier for ideas and works to be stolen, which can be damaging to both national economies and innovation.

Intellectual property protection varies from country to country, but countries that have strong IP laws recognize the important impact original works, designs, inventions, etc. have on the overall economy. Almost every country that has a dependence on international trade takes strong measures to protect their intellectual property rights.³

With the rise of intangible assets that are shared across the internet, it is easy for people to unlawfully copy and share books, music, movies, and more. Copyrights, patents, trademarks, and trade secrets and the laws around these protections are all intended to encourage innovation and creativity and are essential to the practice of IP law to help curb illegal activities.

Organizations like the World Intellectual Property Organization (WIPO) underscore the importance of fostering IP-driven innovation to incentivize and protect creativity. WIPO is a global forum for intellectual property services and is a self-funding agency of the United Nations, with 193 member states.

EVOLUTION OF IP ACTS AND TREATIES

The evolution of international IP acts through different treaties and the formation of World Intellectual Property Organization (WIPO) is given below in brief.

1883 – Paris Convention (France)

The Paris Convention for the Protection of Industrial Property is born. This international agreement is the first major step taken to help creators ensure that their intellectual works are protected in other countries. The need for international protection of intellectual property (IP) became evident when foreign exhibitors refused to attend the International Exhibition of Inventions in Vienna, Austria in 1873 because they were afraid their ideas would be stolen and exploited commercially in other countries. The Paris Convention covers:

- Inventions (patents)
- Trademarks
- Industrial designs

1886 – Berne Convention (Switzerland)

Following a campaign by French writer Victor Hugo the Berne Convention for the Protection of Literary and Artistic Works is agreed. The aim is to give creators the right to control and receive payment for their creative works on an international level. Works protected include:

- Novels, short stories, poems, plays;
- Songs, operas, musicals, sonatas; and
- Drawings, paintings, sculptures, architectural works.

1891 – Madrid Agreement (Spain)

With the adoption of the Madrid Agreement, the first international IP filing service is launched: the Madrid System for the international registration of marks. In the decades that follow, a full spectrum of international IP services will emerge under the auspices of what will later become WIPO.

1893 – BIRPI established

The two secretariats set up to administer the Paris and Berne Conventions combine to form WIPO's immediate predecessor, the United International Bureaux for the Protection of Intellectual Property – best known by its French acronym, BIRPI. The organization, with a staff of seven, is based in Berne, Switzerland.

1970 – BIRPI becomes WIPO

The Convention establishing the World Intellectual Property Organization (WIPO) comes into force and BIRPI is thus transformed to become WIPO. The newly established WIPO is a member state-led, intergovernmental organization, with its headquarters in Geneva, Switzerland.

1974 – WIPO joins the UN

WIPO joins the United Nations (UN) family of organizations, becoming a specialized agency of the UN. All member states of the UN are entitled, though not obliged, to become members of the specialized agencies.

1974 – WIPO joins the UN (193 Member Countries in UN today)

WIPO joins the United Nations (UN) family of organizations, becoming a specialized agency of the UN. All member states of the UN are entitled, though not obliged, to become members of the specialized agencies.

1978 – PCT System launched

The PCT international patent system begins operation. The PCT expands rapidly to become WIPO's largest international IP filing system today.

The **Patent Cooperation Treaty (PCT)** makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application.

TRIPS Agreement

India along with other emerging nations graced a signatory to the **Treaty of TRIPS of the World Trade Organisation (WTO)** in 1995 with a matter that agreement will allow free

flow of trade, investment and eliminate the restrictions enduring in the norm of Intellectual Property.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO Members. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO).

The TRIPS Agreement aims for the transfer of technology and requires developed country members to provide incentives for their companies to promote the transfer of technology to least-developed countries in order to enable them to create a sound and viable technological base

AGENCIES RESPONSIBLE FOR IPR REGISTRATIONS

(a) National IPR Agencies:

The office of the Controller General of Patents, Designs and trademarks (CGPDTM), a subordinate Office under **The Department for Promotion of Industry and Internal Trade (DPIIT)**, carries out statutory functions related to grant of Patents and registration of Trademarks, Designs and Geographical Indications. The registration of copyrights is administered by the Registrar of Copyright Office, working under the CGPDTM. It functions out of offices situated in Delhi, Kolkata, Mumbai, Chennai and Ahmadabad, while the Central IP Training Academy is at Nagpur.

The appropriate office of the patent office shall be the head office of the patent office or the branch office as the case may be within whose territorial limits. Residence of applicant or Domicile; or their place of business; or the place where the invention actually originated.

The CGPDTM supervises the functioning of the following IP offices:

- i. The Patent Offices (including the Design Wing) at Chennai, Delhi, Kolkata & Mumbai.
- ii. The Patent Information System (PIS) and Rajiv Gandhi National Institute of Intellectual Property Management (RGNIIPM) at Nagpur.
- iii. The Trade marks Registry at Ahmadabad, Chennai, Delhi, Kolkata & Mumbai.

- iv. The Geographical Indications Registry (GIR) at Chennai.
- v. The Copyright Office at Delhi.
- vi. The Semiconductor Integrated Circuits Layout-Design Registry at Delhi.

Office	Territorial Jurisdiction
Patent Office Branch, Chennai	The States of Telangana, Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territories of Pondicherry and Lakshadweep
Patent Office Branch, Mumbai	The States of Maharashtra, Gujarat, Madhya Pradesh, Goa and Chhattisgarh and the Union Territories of Daman and Diu & Dadra and Nagar Haveli.
Patent Office Branch, New Delhi	The States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttar Pradesh, Uttaranchal, Delhi and the Union Territory of Chandigarh.
Patent Office, Kolkata	The rest of India

Intellectual Property Appellate Board (IPAB):

Intellectual Property Appellate Board (IPAB) has been established in the year 2003, under Section 84 of the Trade Marks Act, 1999. The Board hears appeals against the decision of Controller of Patents (under the Patents Act, 1970), Registrar of Trade Marks (under the Trade Marks Act, 1999) and Geographical Indication cases (under the Geographical Indication & Protection Act, 1999). The Copyright Board and Plant Varieties Protection Appellate Tribunal function under the ambit of IPAB in accordance with their respective Acts and Rules.

(b) International IPR Agencies:

There are a number of International organizations and agencies that promote the use and protection of intellectual property.

International Trademark Association (INTA)

INTA is a not-for-profit international association composed chiefly of trademark owners and practitioners. It is a global association. Trademark owners and professionals dedicated in supporting trademarks and related IP in order to protect consumers and to promote fair and effective commerce. More than 4000 (Present 6500 member) companies and law firms more than 150 (Present 190 countries) countries belong to INTA, together with others interested in promoting trademarks. INTA members have collectively contributed almost US \$ 12 trillion to global GDP annually. INTA undertakes advocacy work throughout the world to advance trademarks and offers educational programs and informational and legal resources of global interest. Its head quarter in New York City, INTA also has offices in Brussels, Shanghai and Washington DC and representative in Geneva and Mumbai. This association was founded in 1878 by 17 merchants and manufacturers who saw a need for an organization. The INTA is formed to protect and promote the rights of trademark owners, to secure useful legislation (the process of making laws), and to give aid and encouragement to all efforts for the advancement and observance of trademark rights.

World Intellectual Property Organization (WIPO)

WIPO was founded in 1883 and is specialized agency of the United Nations whose purposes are to promote intellectual property throughout the world and to administer 23 treaties (Present 26 treaties) dealing with intellectual property. WIPO is one of the 17 specialized agencies of the United Nations. It was created in 1967, to encourage creative activity, to promote the protection of Intellectual Property throughout the world. Around 193 nations are members of WIPO. Its headquarters in Geneva, Switzerland, current Director General of WIPO is Francis Gurry took charge on October 1, 2008.

THE ROLE AND VALUE OF IP IN INTERNATIONAL COMMERCE

Intellectual property rights (IP rights) are not inherently valuable. Their **value** is the strategic advantage gained by excluding others from using the **intellectual property**. To be valuable, your exclusionary rights should be strategically aligned with your business objectives.

The recognition of intellectual property rights is an important key to converting creativity into a marketable product with positive cash flow. Creativity is essential to economic growth. Consumer sales depend on attractive, efficient, safe, innovative, and dependable products and

services, and these qualities are built on intellectual property. The IP rights of a business are among its most valuable assets. The protection of those IP rights can promote creativity, distinguish a business and its products or services, and increase its profitability and endurance.

To understand the role of IP rights in practical terms, you must first appreciate the purpose of IP laws. Although IP laws will differ in detail from country to country, they have the same basic purpose, which is also reflected in international and regional agreements. In broad terms, exclusive rights in intellectual property are usually granted pursuant to laws that are intended to do the following:

- Define the monopolistic rights, namely, exclusive ownership rights that belong to the holder of the IP and are transferable to another holder in certain situations.
- Define the limitations on the monopoly, such as by restricting the application of exclusive rights to an invention, presentation, or specific goods only, by making exceptions to exclusive use for permitted acts (e.g., authorizing single copies for educational purposes), and by setting terms of duration.
- Define the remedies for violation of IP rights.

In other words, IP laws create affirmative rights, but not an absolute defensive shield against infringement. They give the owner of the IP the right to stop other persons from using the IP in a manner that is not permitted by the law. Unless the IP owner takes affirmative action, an infringement of IP rights may continue unchecked by any other authority. This concept is extremely significant: mere registration of IP rights is not alone sufficient to protect those rights against unauthorized use. If you are going to spend the money and labor to register your IP claim, you must be also willing to spend the money and labor to enforce your claim.

Your IP can be one of your most useful and most used business tools. If you own patents, copyrights, designs, or similar IP, you will realize value from utilizing them in your own exclusive manufacture or production. If you own marks, you will use them to distinguish your business and your products or services, to grow its customer base, and to promote its goodwill and reputation. If you own trade secrets, specialized mailing lists, secret recipes or processes, and similar IP, your business can provide distinctively unique services in contrast to your competition.

The cost of launching a new product or developing a new invention can sometimes be so costly that licensing or merging with another company is less expensive. When selling a business, the valuation of assets should always include the value of all IP rights held by the business. There are no limits on how valuable IP rights may become. The value of your IP could double your company's value. Your IP may become the most valuable asset in your business. Your business may even be or become the exploitation of your IP rights through licensing or other similar arrangements. For example, copyrights generate lucrative license fees and royalties.

Publishers, authors, music makers, record companies, entertainers, sports figures, television and movie studios make millions from IP protected by copyrights. A famous person can command millions for an appearance, and can sue for millions for unauthorized use of his or her famous name or likeness.

Companies holding patents can gain substantial market share while other companies are trying to find another way to replicate the same result. Small inventors and large companies alike often license patented technologies for substantial fees. It has been reported by the Asian Wall Street Journal that an inventor who has filed more than 500 patents in the United States in the last 35 years has made more than US\$500 million without directly engaging in any industrial application of the invention.

Intellectual property rights can become worth more than the physical assets of a company. For example, the IP produced and acquired by Microsoft Corporation is valued at more than the company's physical assets, and the company itself has been valued at more than the value of General Motors Corporation, despite the latter's significant physical assets. Similarly, the Internet Company Yahoo, Inc., has been valued at more than the value of New York Times, Inc., based on the IP rights developed and acquired by the former.

In addition to knowing the factors that complicate the value of your IP rights, you hold the key to identifying other intangible assets, which may be taken into account in combination with your IP rights or as separate assets

E-Commerce, more than other business systems, often involves selling products and services that are based on IP and its licensing. Music, pictures, photos, software, designs, training modules, systems, etc. can all be traded through E-Commerce, in which case, IP is the main component of value in the transaction. IP is important because the things of value

that are traded on the Internet must be protected, using technological security systems and IP laws, or else they can be stolen or pirated and whole businesses can be destroyed. The systems that allow the Internet to function - software, networks, designs, chips, routers and switches, the user interface, and so on - are forms of IP and often protected by IP rights. Trademarks are an essential part of E-Commerce business, as branding, customer recognition and good will, essential elements of Web-based business, are protected by trademarks and unfair competition law.

Finally, E-Commerce based businesses usually hold a great deal of their value in IP; so the valuation of your E-Commerce business will be affected by whether you have protected your IP. Many E-Commerce companies, like other technology companies, have patent portfolios and trademarks

ISSUES AFFECTING IP INTERNATIONALLY

The major IP Issue Areas to be considered in International Trade are as follows

- IP Rights are Territorial
- Secure Freedom to Operate
- Respect Deadlines
- Early Disclosure
- Working with Partners
- Choosing an Appropriate Trademark

IP Rights are Territorial

It is important to keep in mind that IP rights are only valid in the country or region in which they have been granted. Therefore, applying for such rights in other countries is important if there is an intention to go international. However, note copyright is automatically available through the provisions of the Berne Convention, famous marks have automatic protection, trade secrets are by their nature confidential.

IP Rights can be obtained Internationally as follows

National Route

Apply in each country, pay fees, translation into national languages

International Route(PCT)

The Patent Cooperation Treaty (PCT) is an international patent law treaty, concluded in 1970. It provides a **unified procedure for filing patent applications** to protect inventions in each of its contracting states. A patent application filed under the PCT is called an international application, or PCT application. In this the filing of an international application is done from the applicant's national Office

Freedom to Operate (FTO)

Analyzing FTO is to evaluate whether you are in any way infringing the patents, designs or trademarks of others. Such a evaluation is usually done by conducting a search in patent, trademark and design databases for patent applications, granted patents, registered trademarks or designs As patents, trademarks and designs are granted to particular territories an FTO search may reveal that the particular IP in question is not protected in the territory of interest. Reason for conducting searches: are

- Same or confusingly similar trademark may already exist in the export market
- Technology not patented in one country may be patented elsewhere

Respect Deadlines

Priority Period -Once an application for a patent or design right has been made domestically (priority date) an international application has to be made within the “priority period.” The international application will benefit from the priority date. A filing after the priority period has lapsed would mean you can’t benefit from the earlier priority date and novelty will be lost.

Patents: 12 months

Designs: 6 months

Risks of Early Disclosure

Patents and designs are required to be novel to merit protection If a product needs to be disclosed it should be done in a Non-disclosure Agreement. If not, the novelty could be lost and an application for registration be rejected. This is particularly important in disclosing products that embody inventions and/or designs to potential partners before protection has been obtained

Working with Partners

Ownership of IP Creation of new IP and who owns that Assignments/licenses for ownership Risk of unauthorized use or disclosure of trade secrets by partner Risk that partner will use trade secrets of others and expose you to litigation. Insist on indemnification Quality of product to be maintained so as to sustain brand image. Trademarks if registered in the partners name in the country could create problems once the relationship ends.

Choosing an Appropriate Trademark

Check whether the mark has undesired connotations or is likely to be rejected in any country. For example Mitsubishi was dismayed to find that PAJERO means 'wanker' in Spanish. Ford NOVA means no go in Spanish. But Coca-Cola was successful in finding a trademark in Chinese to say “happiness in the mouth”.

UNIT II

Trade Marks: Purpose and function of trademarks, Acquisition of trade mark rights, transfer of rights, Selecting and evaluating trademark, registration of trademarks, claims.

Trade Secrets: Trade secret law, determination of trade secret status, liability for misappropriation of trade secrets, trade secret litigation.

Geographical Indication of Goods: Basic aspects and need for the registration

DEFINITION OF TRADEMARK:

A trade mark is a word, phrase, symbol or design, or combination of words, phrases, symbols or designs used in the course of trade which identifies and distinguishes the source of the goods or services of one enterprise from those of others.

As stated above, the definition of "trade mark" under Section 2(1) is **“A mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from others and may include shape of goods, their packaging and combination of colours and covers both goods and services”**.

“Mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof”.
[Section 2(1)].

PURPOSE AND FUNCTION OF TRADEMARKS

A trade mark (popularly known as brand name in layman’s language) is a visual symbol which may be a word to indicate the source of the goods, a signature, name, device, label, numerals, or combination of colours used, or services, or other articles of commerce to distinguish it from other similar goods or services originating from another. It is a distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise. Its origin dates back to ancient times, when craftsmen reproduced their signatures, or "marks" on their artistic or utilitarian products. Over the years these marks evolved into today's system of trade mark registration and protection. The system helps

consumers identify and purchase a product or service because its nature and quality, indicated by its unique trade mark, meets their needs.

A trade mark provides protection to the owner of the mark by ensuring the exclusive right to use it or to authorize another to use the same in return for payment. The period of protection varies, but a trade mark can be renewed indefinitely beyond the time limit on payment of additional fees. Trade mark protection is enforced by the courts, which in most systems have the authority to block trade mark infringement.

In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trade mark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating international trade.

Trademarks perform two critical functions in the market place:

- **They provide assurance that goods are of a certain quality and consistency, and**
- **They assist consumers in making decisions about the purchase of goods.**

The main purpose of trademark is to show the difference about the quality of goods and service. **For example:** If a trademark such as NIKE could be counterfeited (imitating) and used by another on inferior merchandise (goods), there would be no incentive for the owners of the NIKE mark to produce high-quality shoes and to expend money establishing consumer recognition of the products offered under the NIKE marks.

Thus, protection of trademarks results in increased competition in the marketplace, with both the producer of goods and services and the consumer as the ultimate beneficiaries. Business benefits because they can reap the rewards of their investment in developing and marketing a product with one fearing another business will deceive consumer by using the same or a confusingly similar mark for like goods, and consumers benefit because they are able to identify and purchase desired and quality goods.

The value inherent in achieving consumer loyalty to a particular product or service through the maintenance of consistent quality of the products or service offered under a mark is called goodwill.

- They identify one maker's goods or services and distinguish them from those offered

by others

- They indicate that all goods or services offered under the mark come from a single producer, manufacturer, or “source”
- They indicate that all goods or services offered under the mark are of consistent quality and
- They serve as an advertising device so that consumers link a product or service being offered with a mark

TYPES OF MARKS

There are four different types of marks. They are:

1. Trademark
2. Service mark
3. Certification mark
4. Collective mark

Trademark

The term trademark thus refers to some physical and tangible good and service mark refers to an intangible service, in common usage the term *trademark* is often used to refer to marks for both goods and service. The key point in this legal description is that a trademark is a visual mark that may use any combination of letters and imagery to aid a company in differentiating itself from other entities.

The purpose of a trademark is to visually represent a person, company, or product and trademark should be designed to provide easy and definite recognition. The term **mark** will be used as a synonym for both trademark and servicemarks. The federal statute ((law) an act passed by a legislative body) governing trademark law, the U.S. Trademark Act (Lanham Act, found at 15 U.S.C 1051 et seq.) itself states that the term mark includes any trademark, servicemark, collectivemark, or certificatemark.



Service mark

A service mark is the same as a trademark, but instead of a particular product, it identifies and differentiates the source of a service. A service mark is nothing but a mark that distinguishes the services of one proprietor/owner from that of another. Service marks do not represent goods, but the services offered by the company.

They are used in a service business where actual goods under the mark are not traded. Companies providing services like computer hardware and software assembly, restaurant and hotel services, courier and transport, beauty and health care, advertising, publishing, etc. are now in a position to protect their names and marks from being misused by others. The rules governing for the service marks are fundamentally the same as any other trademarks.

The logo for Amazon.com, featuring the text 'amazon.com' in a lowercase, black, sans-serif font, with a yellow curved arrow underneath.



Certification mark

A certification mark is a word, name, symbol, device, or combination thereof used by one person to certify that the goods or services of others have certain features in regard to quality material mode of manufacture or some other characteristic (or that the work done on the goods or services was performed by members of a union or other organization). **For example:** Hallmark, ISO mark and in U.S Under writers Laboratory seals of approval (*Underwriters Laboratory is the large stand best known independent, not for profit testing laboratory in the*

world based in Northwood, Illinois, UL conducts safety and quality tests on abroad range of products, from firedoor's to CCTV cameras seals of approval).



Collective Mark

Acollectivemarkisoneusedbyacollectivemembershiporganization,such as a labor union, fraternity, or professional society, to identify that the person displaying the mark is a member of the organization. These are the trademarks used by a group of companies and can be protected by the group collectively. Collective marks are used to inform the public about a particular characteristic of the product for which the collective mark is used. The owner of such marks may be an association or public institution or it may be cooperative. Collective marks are also used to promote particular products which have certain characteristics specific to the producer in a given field. Thus, a collective trademark can be used by a more than one trader, provided that the trader belongs to the association.



ACQUISITION OF TRADEMARK RIGHTS

In a global scope, obtaining a trademark right through Use or through Registration are two major legislative models of system for the grant of trademark rights.

- By Use
- By Registration

The “**use**” model is based on the objective facts of trademark use, and decides the ownership of a trademark according to the time that the trademark was first used.

While the “**registration**” model grants trademark rights according to registration and the first applicant will obtain the trademark right.

In history, the earliest trademark legislations all took “**use**” **principle**, for instance, the first statute of trademark-Law of Manufacturing Signs and Trademarks concerning the Content of Use and Non-examination Principle enacted by France in 1857 took the “use” model.

However, since there are many defects of the “use” principle, France abandoned this principle which was already implemented for more than one hundred years in 1964 and shifted to adopt the “**registration**” model which was succeeded by the current Code of Intellectual Property. Article 712-1 of the code provides: “trademark rights shall be obtained through registration”.

In India one can acquire and claim a Trademark only by Registration and not by Use

The registration of a trade mark confers on the registered proprietor of the trade mark the exclusive right to use the trade mark in relation to the goods or services in respect of which the trade mark is registered. While registration of a trade mark is not compulsory, it offers better legal protection for an action for infringement. As per Section 17 of the Act, the registration of a trade mark confers the following rights on the registered proprietor:

- (i) It confers on the registered proprietor the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered.
- (ii) It entitles the registered proprietor to obtain relief in respect of infringement of the

trade mark in the manner provided by the Trade Marks Act, 1999 when a similar mark is used on (a) same goods or services, (b) similar goods or services, (c) in respect of dissimilar goods or services.

- (iii) Registration of a trade mark forbids every other person (except the registered or unregistered permitted user) to use or to obtain the registration of the same trade mark or a confusingly similar mark in relation to the same goods or services or the same description of goods or services in relation to which the trade mark is registered.
- (iv) After registration of the trade mark for goods or services, there shall not be registered the same or confusingly similar trade mark not only for the same goods or services but also in respect of similar goods or services by virtue of Section 11(1) of Trade Marks Act, 1999.
- (v) Moreover, after registration of the trade mark for goods or services, there shall not be registered the same or confusingly similar trade mark even in respect of dissimilar goods or services by virtue of Section 11(2) in case of well-known trademarks.
- (vi) Registered trade mark shall not be used by anyone else in business papers and in advertising. Use in comparative advertising should not take undue advantage of the trade mark. Such advertising should not be contrary to honest practices in industrial or commercial matters. The advertising should not be detrimental to the distinctive character or reputation of the trade mark.
- (vii) There is a right to restrain use of the trade mark as trade name or part of trade name or name of business concern dealing in the same goods or services. The registered trade mark continues to enjoy all the rights which vest in an unregistered trade mark. By registration the proprietor of an unregistered trade mark is converted into proprietor of the registered trade mark. An application for registration may be based on a trade mark in use prior to such application and such a trade mark is already vested with rights at Common law from the time the use of the mark was commenced.

TRANSFER OF TRADE MARK

The intellectual property rights assignment is a transfer of the rights of the owner, title and the interest in certain intellectual property. The party transferring the rights are called assignor and the party receiving the rights are called assignee. The assignor transfers to the assignee its property in intellectual property rights such as trademarks, patents etc.

The owner of the rights may transfer all of his rights or part of his rights. Like the copyright owner could assign only some of his economic rights. The license agreements, grants permissions to use the intellectual property rights under certain conditions. Likely, the general rule assignments are transfers of property rights without any condition under which rights will be used.

An intellectual property assignment agreement is a contract to transfer intellectual property ownership from assignor to assignee. It empowers the assignor to permanently consign all of his intellectual property rights to the willing candidate in exchange for a defined amount. This agreement makes the owner sell his rights similarly as he could sell a physical property marking a permanent transfer. It means he will no longer hold any control, involvement, or claim on the transferred rights.

Section 37 of the Trade Mark Act, 1999 recognizes the right of registered proprietor to assign the trade mark for any consideration and to give receipt. It provides that subject to the provisions of the act and to any right appearing from the register to be vested in any other person, the proprietor of a trade mark has the power to assign the trade mark and to give effectual receipt for any consideration for such assignment. It is a settled principle that the assignor cannot possibly transfer more rights to the assignee than what he himself has.

A registered trade mark is only assignable, whether with or without the goodwill of the business concerned and in respect either of all the goods or services in respect of the trademark which is registered for those goods or service.

Section 2(1)(b) of the Trade Mark Act, 1999 defines the “assignment” to mean “an assignment in writing by act of the parties concerned”. In view of this definition, an assignment has to be in writing and by the act of the parties concerned. Both the assignor and the assignee must execute the document. Such document will be known as the assignment agreement. There cannot be a unilateral execution of document by one party alone.

Type of Assignment of Trademark

Complete Assignment of a Trademark: Here the owner of the trademark transfers his ownership and rights completely to the assignee related to the trademark. Such also includes the right to make any further transfer to other person as assignee. After the complete assignment of the trade mark the owner loses his rights over the trademark and the assignee retains all the respective rights.

Partial Assignment of a Trademark: Here the transfer of the ownership is done to certain products and services only. The assignor holds the rights over the part which he has not transferred to the assignee in terms of assignment. The assignor has the right to make choice related to the partial assignment. The assignor can use such exclusive rights in his business and administration.

Trademark Assignment with Goodwill: Here the assignor can transfer the rights of ownership as well as the image valued rights over the trademark. Then the assignee can use such representation in the market reputation of the trademark for the promotion of the product.

Trademark Assignment without Goodwill: Here lies the restriction over the usage of the trademark product on the part of the assignee i.e the assignor can restrict the assignee for not using the trademark in business. The same trademark can be used by both, the assignor and the assignee in their different business filed. This assignment is also called as gross trademark assignment.

Registration of Assignment

Section 45 of the Trade Mark Act, 1999 lays down the procedure for the registration of the assignment. Where a person becomes entitled by assignment to a registered trade mark, he shall apply in the prescribed manner to the registrar to register his title. Registrar shall upon the receipt of the application, register him as the proprietor of the trade mark in respect of the goods or services in respect of assignment.

Registrar may require further evidences and statement in proof of title if there is any reasonable doubt about the veracity of the statement or any document furnished.

The assignment agreements are always considered important in the intellectual property. It allows the property owner to transfer his ownership rights for the commercial returns and

ensures the monetary gains to him. It is a written, enforceable contract that pertains to transfer the rights in a formalized agreement between two persons. It protects and regulates the rights of all the parties that are engaged in the agreement. Assignment agreement involves the exclusive sale of the rights which gives the assignee complete ownership over the marks of the assignor in whatever way, shape, or form it is in.

SELECTING AND EVALUATING TRADEMARK

Selecting a Mark

The selection of mark occurs in a variety of ways companies hold contests and encourages employees to create a mark for a new product line or service. Companies engage sophisticated research. Branding firms that will conduct surveys and create a mark and a logo or design for the company.

Once the mark is selected, it must be screened and evaluated for use and registrability, if failed then it leads to wastage in expenditure of time and money in advertising, using and applying for a mark that is rejected for registration by the PTO or, in the worst case scenario, might subject the owner to damages for trade mark infringement and unfair competition.

Once a mark is selected, it should be carefully scrutinized to ensure that it will not be excluded from protection under the Lanham Act.

- Firstly they have check whether the mark contains scandalous (giving offence to moral sensibilities and injurious to reputation)
- Whether consent from a living person will be required,
- Whether the mark is generic,
- Whether it is statutorily protected
- Whether the mark is descriptive of some feature of the goods and services offered under the mark,
- It also see that the mark includes foreign terms
- Many law firms specializing in trademark work use a questionnaire form or datasheet to gather questionnaire form or datasheet together basic information from clients about their marks.

Evaluating Trademark

Trademarks are not only used to provide legal protection to a company's name, design, word, etc. rather are intangible assets. Evaluating the exact value of the trademark is challenging.

Till a decade or two ago, no one used to evaluate the value of their intangible assets of the company. However now, brands create the reputation of a product; motivates the purchasing power; and makes the product different from other generic products. In fact, almost every brand fetches a good amount of value. But evaluating the exact value of the trademark is a big challenge, and one must know the correct way to evaluate it.

Valuating intangible assets of your company like trademark or patent is a complex task which can turn your head upside down, and thus makes the selling transaction adversative. But the need to evaluate a brand is essential for many business activities, like a merger or acquisition; sale or purchase of the trademark or if you want to sell your company.

The first step in evaluating the trademark is to examine the historical prospects of the trademark like the total cost invested in it; profit margin associated with the products and the time it was first used, etc.

After considering these options, one must follow the methodologies and different approaches as listed below:

The Income Approach

The most crucial element on which a trademark's value is determined is the income generating power of the business. The more the earning power, the higher the value of the brand would be.

Through future estimates of economic benefit, cash flows and risks involved, and converting this analysis into simple information; the income approach enables you to evaluate your company trademark.

Market Approach

In this method, the price of similar marks is considered and compared. It uses market-based indicators of value and takes similar marks into account; it analyses royalty rates and transaction prices to determine what the market is paying for similar intangible assets. In this approach, market trends are considered, and other transactions are analyzed.

Cost Approach

Cost approach considers the implicit as well as explicit cost incurred in creating the Trademark. Cost approach also covers the cost accrued in promoting the company and its brand promotion. A particular focus on forecasts of market transactions is employed and estimated time and cost that would be required to make a similar trademark are considered.

Other Factors

Along with the ones listed above, there are other factors which a company should consider while evaluating a trademark or trademarks and to maximize their values:

- Qualitative and quantitative characteristics of the trademark.
- If there is any contract assigned or associated with the trademark.
- Sustainability of the trademark in the market in future.
- Market position a trademark holds in the current business.
- The capital structure of the company and its modifications according to the needs.

Trademark carries a significant value in the business, and a company should evaluate its brand and know the exact value of their intangible assets. A company should work towards the goal of enhancing the value of trademark and other intangible assets for long-term profits.

TRADEMARK REGISTRATION PROCESS:

- Investing your time and money to build a particular brand and seeing the same brand name being used by another, robbing you of your hard-earned brand reputation is not an agreeable state of affairs.

- Many a time, trademark (TM) owners end up in protracted litigation because when the time was right, they did not do trademark registration in India of their brand name.
- Trademark registration process of the brand name is not a difficult task.
- A few simple steps, as explained below and you would have the much-needed legal protection of your brand name registration in India.

A trademark application can be made by:

- Private firms
- Individuals
- Companies- Limited Liability Partnership, OPC, Private limited, Public, Partnership, etc.
- NGO's

Note: In the case of NGOs and LLP companies the trademark has to be applied for registration in the name of the concerned business or a company.

Any person, pretending to be the proprietor of a trademark used or intended to be applied by him, may apply in writing in a prescribed manner for registration. The application must include the trademark, the goods or services, name and address of the candidate with power of attorney, the time of use of the mark. The application must be in English or Hindi. It must be registered at the appropriate office.

Step 1: Trademark Search

- Many entrepreneurs do not comprehend the importance of a TM search.
- Having a unique brand name in mind is not good enough reason to avoid a TM search.
- TM search helps you to know if there are similar trademarks available and it gives you a fair picture of where your trademark stands, sometimes, it also gives you a forewarning of the possibility of trademark litigation.
- Why waste your money in time-consuming trademark litigation later when you can choose to avoid it in the first place?

Step 2: Filing Trademark Application

- Based on the nature of product a class is chosen among 45 classes of trademark.
- Once the chosen brand name or logo is not listed in the Trademark Registry India, then we can opt for registering the same.
- The first step is to file a trademark application at the Trademark Registry India through online / offline.
- Once the application is filed, an official receipt is immediately issued for future reference with TM application number.

Step 3: Examination

- The examination might take around 12-18 months.
- The examiner might accept the trademark absolutely, conditionally or object.
- If accepted unconditionally, the trademark gets published in the Trademark Journal.
- If not accepted unconditionally, the conditions to be fulfilled or the objections would be mentioned in the examination report and a month's time would be given to fulfill the conditions or response to the objections.
- Once such response is accepted, the trademark is published in the Trademark Journal.
- If the response is not accepted, one can request a hearing. If in the hearing, the examiner feels that the trademark should be allowed registration, it proceeds for publication in the Trademark Journal.

Step 4: Publication

- The step of publication is incorporated in the trademark registration process so that anyone who objects to the registering of the trademark has the opportunity to oppose the same.
- If, after 3-4 months from publication there is no opposition, the trademark proceeds for registration.

- In case there is opposition; there is a fair hearing and decision are given by the Registrar.

Step 5: Registration Certificate

- Once the application proceeds for trademark registration, following publication in Trademark Journal, a registration certificate under the seal of the Trademark Office is issued.

Step 6: Renewal

- The trademark can be renewed perpetually after every 10 years. Hence, your logo or brand name registration can be protected perpetually.

While filing for the trademark registration, the documents required to provide are as follows:

Identity and business proofs: The trademark owner or the person who is approved by the trademark owner requires presenting their identity proof. It can be your Aadhar Card, Driving License, Passport, Ration card, or Voter's ID.

Using Logo with Tagline: If a trademark application is prepared for a tagline with only words, then there is no requirement for a logo. In cases where a logo is applied, then it must be submitted in black and white format. The number of words in the logo must exactly be the same as specified in the application for a trademark.

Brand Name & Logo: The logo must have the brand name.

User Affidavit: If a particular user data is to be claimed, the user affidavit is expected to be submitted.

Proof of TM use: To demand specific user date, documentary proof like invoices, registration certificates, etc. with the brand name must be given.

MSME or Start-up Recognition: A partnership firm or Corporate entities can give a certificate of registration under MSME or Start-up India scheme to get a 50% rebate on the Government fee

Signed Form TM – 48: M-48 is a lawful document that enables the attorney to file the trademark on your behalf with the trademark registry. The document will be made by LW professionals for the signature.

International Registration

The system of international registration of marks is governed by two treaties:

The Madrid Agreement, concluded in 1891 and revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957), and Stockholm (1967), and amended in 1979, and the Protocol relating to that Agreement, which was concluded in 1989, with the aim of rendering the Madrid system more flexible and more compatible with the domestic legislation of certain countries which had not been able to accede to the Agreement.

The Madrid Agreement and Protocol are open to any State which is party to the Paris Convention for the Protection of Industrial Property. The two treaties are parallel and independent and States may adhere to either of them or to both. In addition, an intergovernmental organization which maintains its own Office for the registration of marks may become party to the Protocol. Instruments of ratification or accession must be deposited with the Director General of WIPO. States and organizations which are party to the Madrid system are collectively referred to as Contracting Parties.

The system makes it possible to protect a mark in a large number of countries by obtaining an international registration which has effect in each of the Contracting Parties that has been designated

CLAIMS

Intellectual property claims are legal actions brought by one party against another when a party feels its intellectual property (IP) rights have been infringed upon. India being a mixed market has many industries that operate under the free market concept. The competition in the market system is extreme. For any enterprise to thrive in the open market, they have to create brand recognition and brand value. The simplest way through which this is achieved is via trademarks.

The need for trademarks can be considered a three-prong approach to represent goods or services by:

- Helping consumers recognize the source
- Helping consumers determine the quality

- Helping consumers make a purchasing decision

Once such value is attached to the trademark, it is imperative to protect it from misuse and infringement by others.

What is Trademark Infringement

The Trademarks Act, 1999 (hereinafter referred to as the Act) is the legislation that protects trademarks in India. The Act lays down the rules dealing with registration, protection and penalties against infringement regarding trademarks. Trademarks are given the status of intellectual property across the globe. There are many organizations, both international and national, that endeavor to protect intellectual properties such as trademarks.

In India, the organization that deals with the protection of trademarks is the Indian Patent Office administered by the Controller General of Patents, Designs and Trademarks. In simple words, trademark infringement is the unauthorized usage of a mark that is identical or deceptively similar to a registered trademark. The term deceptively similar here means that when an average consumer looks at the mark, it is likely to confuse him/her of the origin of the goods or services.

Types of Trademark Infringement

When looking into trademark infringement, one must know that there are two types of infringement:

1. Direct infringement

Direct infringement is defined by Section 29 of the Act. There are a few elements that have to be met for a direct breach to occur; they are as follows:

Use by an unauthorized person: This means that violation of a trademark only happens when the mark is used by a person who is not authorized by the holder of the registered trademark. If the mark is used with the authorization of the holder of the registered trademark, it does not constitute infringement.

Identical or deceptively similar: The trademark used by the unauthorized person needs to either be identical to that of the registered trademark or deceptively similar to it. The term 'deceptively similar' here only means that the common consumer 'may' be confused between the marks and may think of them being the same. The operational word here being 'may', it

only needs to be proven that this is a possibility and does not require proof of actually happening. As long as there is a chance of misrecognition of the marks, it is enough for proving infringement.

Registered trademark: The Act only extends protection to trademarks that have been registered with the trademark registry of India. In the case of breach of an unregistered mark, the common law of passing off is used to settle disputes. It is a tort law that is used where injury or damage is caused to the goodwill associated with the activities of another person or group of persons.

Class of goods or services: For the infringement of the trademark, the unauthorised use of the mark has to be used for the propagation of goods or services that fall under the same class of the registered trademark.

2. Indirect infringement

Unlike direct infringement, there is no provision in the Act that deals with indirect infringement specifically. This does not mean that there is no liability for indirect infringement. The principle and application of indirect infringement arise from the universal law principle. It holds accountable not only the principal infringer but also anyone that abets, induces that direct offender to infringe. There are two types of indirect infringement:

Vicarious liability: According to Section 114 of the Act, if a company commits an offence under this Act, then the whole company will be liable. Therefore not only the principal infringer but, every person responsible for the company will be liable for indirect infringement, except for a person who acted in good faith and without knowledge of the infringement.

The elements for vicarious liability are:- When the person can control the activities of the principal infringer – When the person knows of the infringement and contributes to it – When the person may derive financial gains from the infringement The only exception to vicarious liability of a company for infringement is when the company has acted in good faith and had no idea about the infringement.

Contributory infringement: There are only three basic elements to contributory infringement:- When the person knows of the infringement – When the person materially contributes to the direct infringement – When the person induces the principal infringer to

commit infringement In the case of contributory infringement, there is no exception as there exists no chance of the contributory infringer to act in good faith.

Penalties for Trademark Infringement

In India, the infringement of a trademark is a cognisable offence which means that the infringer may also face criminal charges along with civil charges. It is also not required by the Indian law for the trademark to be registered for the institution of civil or criminal proceedings. As mentioned before this is due to the common law principle of passing off. In the case of trademark infringement, the court may award the following remedies:

- Temporary injunction
- Permanent injunction
- Damages
- Account of profits (damages in the amount of the profits gained from the infringement)
- Destruction of goods using the infringing mark
- Cost of legal proceedings

In the case of a criminal proceeding, the court dictates the following punishment:

- Imprisonment for a period not less than six months that may extend to three years
- A fine that is not less than Rs 50,000 that may extend to Rs 2 lakh.

The type of information that must be kept confidential in order to retain its competitive advantage is generally called a “Trade Secret”. A trade secret is any information that can be used in the operation of a business or other enterprise that is sufficiently valuable and secret to afford an actual or potential economic advantage over others.

The trade secret constitute a recipe, a formula, a method of conducting business, a customer list, a price list, marketing plans, financial projection and a list of targets for a potential acquisition.

Generally, to qualify for trade secret protection, information must

- ✓ be valuable;
- ✓ not be publicly known; and
- ✓ be the subject of reasonable efforts to maintain its secrecy

The rapid pace of technology advances the ease with which information can now be

rapidly disseminated and the mobility of employees require businesses to devote significant effort to protecting their trade secrets. If trade secrets were not legally protectable, companies would have no incentive for investing time money and effort in research and development that ultimately benefits the public at large.

Trade secrets law not only provides an incentive for companies to develop new methods and processes of doing business but also, by punishing wrongdoers, discourages improper conduct in the business environment.

The Law Governing Trade Secrets:

- Trademarks, copyrights, and patents are all subject to extensive federal statutory schemes for their protection, there is no federal law relating to trade secrets, and no registration is required to obtain trade secret protection.
- Most trade secret law arises from common law principles, namely, judge-made case law.
- The first reported trade secret case in the United States was decided in 1837 and involved manufacturing methods for making chocolate.
- In 1939, the Restatement of Torts (a wrongful act or an infringement of a right) adopted a definition of a trade secret, and many states relied on that in developing their body of case law, leading to greater consistency in the development of trade secrets law.

Additionally 1979, the National Conference of Commissioners on Uniform State laws drafted the uniform Trade Secrets Act (UTSA) to promote uniformity among the states with regard to trade secrets law. The UTSA was amended in 1985. The following definition of trade secret has been adopted by the UTSA:

- Trade secret means information, including a formula, pattern, compilation, program, device, method, technique or process that:
- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- is the subject of efforts that are reasonable under the circumstance to maintain its secrecy.

DETERMINATION OF TRADE SECRET STATUS:

Restatement of Torts (a wrongful act or an infringement of a right) §757 cmt.b lists six factors to be considered in determining whether information qualifies as a trade secret. Courts routinely examine these factors to determine whether a company's information constitutes a trade secret.

The extent to which the information is known outside the company:

Although information may be known to other outside the company and still qualify as a trade secret, the greater the number of people who know the information, the less likely it is to qualify as a trade secret. Secrecy need not be absolute.

The extent to which the information is known within the company:

Although an employer or company is permitted to disclose confidential information with a demonstrated "need to know" the information. If the information is widely known within the company, especially among those who have no business need to know the information, it may not qualify as a trade secret.

The extent of the measures taken by the company to maintain the secrecy of the information:

- One claiming trade secret protection must take reasonable precautions to protect the information.
- Courts are unlikely to protect information a company has not bothered to protect.
- A company is not obligated to undertake extreme efforts to protect information, but reasonable precautions are required.
- Some experts predict that courts will likely require advanced security measures to protect trade secrets transmitted via e-mail, including encryption and protocols to ensure confidentiality.

The extent of the value of the information to the company and its competitors:

- If information has little value either to its owner or to the owner's competitors, it is less likely to qualify as a trade secret.

- Conversely, information that is valuable to a company, such as the recipe for its key menu product, and that would be of great value to the company's competitors is more likely to be protectable trade secret.

The extent of the expenditure of time, effort, and money by the company in developing the information:

- The greater the amount of time, effort, and money the company has expended in developing or acquiring the information, the more likely it is to be held to be a protectable trade secret.

The extent of the ease or difficult with which the information could be acquired or duplicated by other:

- If information is easy to acquire or duplicate, it is less likely to qualify a trade secret.
- Similarly if the information is readily ascertainable from observation or can be easily reproduced, it is less likely to be a trade secret.
- On the other hand, if it can be reverse engineered only with significant expenditures of time, effort, and money, the product may retain its status as a trade secret.

LIABILITY FOR MISAPPROPRIATION OF TRADE SECRETS:

- Misappropriation of a trade secret occurs when a person possesses, discloses, or uses a trade secret owned by another without express or implied consent and when the person used improper means to gain knowledge of the trade secret.
- knew or should have known that the trade secret was acquired by improper means; or
- Knew or should have known that the trade secret was acquired under circumstances giving rise to a duty to maintain its secrecy.
- The term *improper* means includes bribery, theft, and misrepresentation, breach of duty to maintain secrecy, or espionage (the practice of spying or of using spies, typically by governments to obtain political and military information) or other means.
- Thus, misappropriation occurs either when a trade secret is lawfully acquired but then

improperly used or when the trade secret is acquired by improper means.

Absence of Written Agreement:

- A written agreement prohibiting misappropriation of trade secrets can be enforced through an action for breach of contract; a company's trade secrets can be protected against misappropriation even in the absence of any written agreement between the parties.
- A party owning trade secrets can bring an action in tort for breach of the duty of confidentiality, which duty can arise even without an express agreement.
- Courts will impose a duty of confidentiality when parties stand in a special relationship with each other, such as an agent-principal relationship (which includes employer- employee relationship) or other fiduciary (involving trust, especially with regard to the relationship between a trustee and a beneficiary) or good faith relationship.
- Courts have consistently held that employees owe a duty of loyalty, fidelity, and responsibility to their employers.
- In fact, more trade secret cases are brought in tort for breach of confidentiality than in contract for breach of written agreements.

For example: If XYZ company is attempting to make a sale to Jones and informs Jones that the XYZ product is superior to that of competitors because it involves a new breakthrough in technology and explains the trade secret, courts would likely find that Jones is subject to a duty not to disclose the information. Similarly, if XYZ co., explains its trade secrets to its bankers in an attempt to obtain financing, the bankers would likely be precluded from disclosing or using the information. Such implied contracts to protect the information generally arise when the parties' conduct indicates they intended the information to be kept confidential or impliedly agreed to keep it confidential.

Misappropriation by Third Party:

A number of other parties may also have liability for misappropriation of trade secrets if they knew or should have known they were the recipients of protected information.

For example:

1. Assume Lee is employed by XYZ co., In course of time Mr.Lee learns valuable trade secret information. If Mr.Lee resigns jobs and begins working for new company and it prohibited for both in using the information. He may not misappropriate the information because he was in an employee-employer relationship with XYZ company. New company should not use the information if Mr Lee reveals, if it happen so, then XYZ Company would generally prefer to sue New Company inasmuch as it is far likelier to have deep pockets, meaning it is more able to pay money damages than is an individual such as Lee.

2. If New Company has no reason to know the information was secret or that Mr. Lee may not reveal it, New Company would not have liability for such innocent use of the information. Similarly, if trade secret information were innocently obtained by New Company by mistake, New Company would have no liability for subsequent use or disclosure of the information.

Written Agreement:

Employers are generally free to require employee, independent contractors, and consultants to sign express agreements relating to the confidentiality of information. These agreements are usually enforced by courts as long as they are reasonable. The agreements usually include four specific topics:

- Ownership of Inventions
- Non-disclosure Provisions
- Non-solicitation Provisions
- Non-competition Provisions
- ✓ Purpose
- ✓ Reasonableness
- ✓ Consideration

PROTECTION FOR SUBMISSION:

Submission to Private Parties:

- In many instances individuals wish to submit an idea for an invention, process, game, or entertainment show to a company or business in the hope that the company or business will market and develop the idea and the individual will be compensated for the idea?
- Idea submission disputes frequently arise in the entertainment industry. In one case an individual claimed that the producers of the Cosby Show (American comedian) misappropriated her idea for a television program portraying a wholesome and loving African American family. A court held there were no people and the idea was so general as to lack the element of concreteness to be protectable.
- The solution to such a dilemma is for the “inventor” to submit the idea pursuant to an evaluation agreement, or submission agreement, whereby the other party agrees to evaluate the idea only for the purpose of considering a future transaction between the parties and further agrees not to circumvent the submitter or to disclose the idea to others.

Submission to Government Agencies:

- Private companies that present bids to government agencies in the hope of obtaining a government contract are often required to disclose confidential or trade secret information to the agency.
- Under freedom of information act (both at the state and federal levels), the proposal might later be released to any member of the public requesting the document, thus resulting in loss of confidential information to possible competitors.
- The protected information is usually blocked out.
- If a government agency discloses trade secret information, the owner may have a cause of action for an unconstitutional taking of private property and may be awarded compensation if the owner had a reasonable expectation of confidentiality.

REMEDIES FOR MISAPPROPRIATION:

A trade secret owner may request a variety of remedies from a court.

Among them are the following:

- **Injunctive relief:** In many cases, a trade secret owner is more interested in ensuring the defendant cease use of the trade secret (or is precluded from commencing use) than in recovering damages. In cases in which money damages are not sufficient to protect a trade secret owner, a court may issue an injunction. A court may also issue an injunction to compel the defendant to surrender or destroy trade secret information. In fact, courts may issue injunctions' to prevent inevitable disclosure, reasoning that even if a former employer cannot show a particular secret has been taken, it is inevitable that key employees will eventually disclose what they know to a new employer.
- **Money damages:** A trade secret owner whose information has been misappropriated may recover money damages from the defendant. The Plaintiff may recover its lost profits as well as the profits made by the defendant. Alternatively, the plaintiff may seek and recover a reasonable royalty arising from defendant's use of the trade secret. Punitive damages may also be awarded in cases in which the defendant's conduct is reckless, willful, and intentional. The UTSA provides that punitive damages not exceed more than twice the compensatory damages awarded.
- **Attorneys' fees and costs:** In most cases, the parties bear their own attorneys' fees and costs. The UTSA, however, provides that reasonable attorneys' fees and costs may be awarded to the prevailing party if bad faith or willfulness is shown.

TRADE SECRET LITIGATION:

- If a trade secret is disclosed in violation of a written confidentiality agreement, and the parties cannot resolve the dispute themselves, an action for breach of contract may be brought, similar to any other breach of contract action.
- The plaintiff may add other causes of action as well, for example, for misappropriation in violation of a state trade secret law. If no written agreement exists, the

plaintiff must rely upon case law or state statutes protecting trade secrets, or both.

- To protect itself against a lawsuit by another alleging trade secret violation, companies should require new employees who will have access to confidential information to acknowledge in writing that accepting employment with the new company does not violate any other agreement or violate any other obligation of confidentiality to which the employee may be subject.
- If grounds for federal jurisdiction exist (the parties have diverse citizenship and the claim exceeds \$75000), the action may be brought in federal court.
- The UTSA [Uniform Trade Secrets Act] provides that an action for misappropriation must be brought within three years after misappropriation is discovered or reasonably should have been discovered.
- In federal court, the action will be governed by the Federal Rules of Civil Procedure relating to federal civil actions generally.

Most states have rules relating to civil procedure that are modeled substantially after the Federal Rules of Civil Procedure and likewise govern the litigation.

- If the defendant has a cause of action to assert against the plaintiff relating to the trade secret, it must be asserted by way of a counterclaim in the litigation so that all disputes between the parties relating to the information can be resolved at the same time.
- After the complaint, answer, and counterclaim have been filed, various motions may be made. Discovery will commence. The plaintiff and defendant will take depositions to obtain testimony from those who may have information about the case.
- Ultimately, if the matter cannot be resolved by private agreement, it will proceed to trial. The trade secret owner must prove misappropriation by a preponderance of the evidence. Either party may request a jury trial; otherwise, a judge will render the decision. Appeals may follow.
- One of the difficult issues in trade secret litigation arises from the fact that the trade secret sought to be protected often must be disclosed in the litigation so the judge or jury can evaluate whether the information is sufficiently valuable that it affords its owner a

competitive advantage.

- Similarly, the owner's methods of protecting the information often must be disclosed so the fact-finder can determine whether the owner has taken reasonable measures to protect the alleged trade secrets.
- The dilemma faced by trade secrets owner is that they must disclose the very information they seek to protect.
- As technology progresses and the value of certain communication and entertainment inventions increases, trade secret litigation is becoming an increasingly common and high-stakes occupation.

TRADE SECRET PROTECTION PROGRAMS:

Trade secrets are legally fragile and may be lost by inadvertent disclosure or failure to reasonably protect them, companies should implement trade secret protection programs to safeguard valuable information. Because trade secret protection can last indefinitely, businesses should devote proper attention to the methods used to ensure confidentiality of information. Developing programs and measures to protect trade secrets is an easy way to demonstrate to a court that an owner values its information and takes appropriate measures to maintain its secrecy.

Physical protection

There are a variety of tangible measures a company can implement to protect trade secrets, including the following:

Safeguarding information under lock and key;

- Protecting the information from unauthorized access;
- Forbidding removal of protected information from the company premises or certain rooms;
- Retaining adequate security during evening and weekends either through alarm systems or security services;
- Ensuring tours of the company premises do not expose outsiders to valuable processes

or information;

- Using check-out lists when valuable equipment or information is removed from its normal location;
- Monitoring employees' use of e-mail and the Internet to ensure confidential information is not being disseminated;
- Using encryption technology and antivirus protection programs to protect information stored on computers;
- Educate employees on trade secrets and protection of trade secrets;
- Ensuring information retained on computers is available only on company networks so that access can be easily tracked.

Most companies will not need to implement all of the measures described above. Courts do not require absolute secrecy or that extreme measure be taken to protect information. Rather, reasonable measures will be sufficient to protect the status of information as trade secrets.

Contractual Protection

- Another method of protecting trade secrets is by contract, namely, requiring those with access to the information to agree in writing not to disclose the information to other or use it to the owner's detriment.
- Similarly, in licensing arrangements, trade secret owners should ensure the license agreements contain sufficient protection for trade secret information.
- Employers should use noncompetition agreements to ensure former employees do not use material gained on the job to later compete against the employer.
- With the advent of the Internet and the increased ease of electronic communications, employers have become concerned about the loss of trade secrets through dissemination over the Internet.

- It has been held that “*once a trade secret is posted on the Internet, it is effectively part of the public domain, impossible to retrieve*”.

Companies can also rely on other complementary methods of protection to safeguard trade secrets. Any material that qualifies for copyright protection should be protected by registration, or at a minimum, by ensuring a copyright notice is placed on the material or document to afford notice to other of the owner’s right and interest in the material.

GEOGRAPHICAL INDICATIONS

The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) is a sui generis Act of the Parliament of India for protection of geographical indications in India. India, as a member of the World Trade Organization (WTO), enacted the Act to comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights. The GI tag ensures that only those registered as authorized users (or at least those residing inside the geographic territory) are allowed to use the popular product name.

According to section 2 (1)(e) of the Act, Geographical indication has been defined as "an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be."

Registration process

- An application for registration must be made before the Registrar of Geographical Indications by any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods.

- The application must be made in an appropriate form containing the nature, quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, manufacturing process, natural and human factors, map of territory of production, appearance of geographical indication (figurative or words), list of producers, along with prescribed fees.
- The examiner will make a preliminary scrutiny for deficiencies, in case of deficiencies; the applicants have to remedy it within a period of one month from the date of communication.
- The Registrar may accept, partially accept or refuse the application. In case of refusal, the Registrar will give written grounds for non acceptance. The applicant must within two months file reply. In case of re-refusal, the applicant can make an appeal within one month of such decision.
- Registrar shall, within three months of acceptance may advertise the application in the GI Journal.
- If there is no opposition, the Registrar will grant a certificate of registration to the applicant and authorized users.

Duration

A GI is registered for an initial period of ten years, which may be renewed from time to time.

Some of the registered geographical indications include agricultural goods like Darjeeling tea, Malabar pepper, Bangalore Blue grapes, and manufactured goods like Pochampalli ikat, Kanchipuram silk sari, Solapuri chaddars, Bagh prints, and Madhubani paintings. A more complete list is available at List of Geographical Indications in India.

Effect of registration and infringement

Registration of a GI gives its owner and the authorized users the exclusive right to use the indications on the good in which it is registered. Further, registration gives right to institution of suit against infringement and recovery of damages for such infringement. Infringement can be caused by use of the GI on such goods which indicates that such goods originate in such place other than its true place of origin or due to unfair competition. However, in case of non-registered GIs, a case of passing off can be instituted. Registration acts as a prima facie evidence of validity of the indication and ownership. The registration cannot be transferred,

mortgaged, assigned or licensed, except in case of inheritance of the mark upon death of an authorized user.

Any person who falsely applies or falsifies any geographical indication, tampers the origin of a good, make or have in possession of dye, blocks, machines to use in falsification of GI may be punished shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakhs (200,000) rupees. In case of second and for every subsequent offence, a person can be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. However, the judge may under certain condition, may reduce the sentence, and reasons for reduction of punishment must be written in the judgment. Other offences includes, falsely represent a GI to be registered, falsification of entries in register, falsely representing a place to be connected with GI Registry.

UNIT - III

Copyrights: Fundamentals of copyright law, originality of material, right of reproduction, right to perform the work publicly, copy right ownership issues, notice of copyright.

Patents: Foundation of patent law, patent searching process, Basic Criteria of Patentability

Industrial Designs: Kind of protection provided in Industrial design

Introduction:

In ancient days creative persons like artists, musicians and writers made, composed or wrote their works for fame and recognition rather than to earn a living, thus, the question of copyright never arose. The importance of copyright was recognized only after the invention of printing press which enabled the reproduction of books in large quantity practicable.

Copyright –Definition:

Copyright is a right of use given by the law to the creator of literary, dramatic, musical, artistic work , software etc for a limited period of time

In India all the law related to copyright is regulated by the copyright Act 1957. Its latest amendment was brought in 2012

A copyright is an exclusionary right. It conveys to its owner the right to prevent others from copying, selling, performing, displaying, or making derivative versions of a work of authorship.

Exclusive copyright rights

The entire bundle of rights that a copyright owner is exclusively entitled to exercise under the copyright laws. These rights consists of:

- the right to reproduce (copy) the work
- the right to prepare derivative works
- the right to distribute copies of the work
- the right to perform the work, and
- the right to display the work.

COPYRIGHT ACT, 1957: Copyright Act refers to laws that regulate the use of the work of a creator, such as an artist or author.

This includes copying, distributing, altering and displaying creative, literary and other types of work. Unless otherwise stated in a contract, the author or creator of a work retains the copyright.

Copyright does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information.

NEED FOR COPYRIGHT:

- It gives you the exclusive right to reproduce or copy the work or change its form.
- Registration informs the world that you own the work
- If you succeed in an infringement suit, you are entitled to money damages.

Indian perspective on Copyright Protection :

The Copyright Act, 1957 provides copyright protection in India. It confers copyright protection in the following two forms:

- (a) Economic rights of the author
- (b) Moral Rights of the author (i) Right of Paternity (ii) Right of Integrity

TERM OF COPYRIGHT: It varies according to the nature of work - 60 years, in India.

- Literary, dramatic, musical or artistic work (other than a photograph), when published during the lifetime of the author, copyright subsists during the lifetime of the author, plus 60 years.
- In the case of photographs, cinematograph films and sound recordings; the term is 60 years from the date of publication.
- When the first owner of copyright is the government or a public undertaking, the term of copyright is 60 years from the date of publication.

The Fundamentals of Copyright

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation

and translation of the work. It means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever (Kartar Singh Giani v. Ladha Singh & Others AIR 1934 Lah 777). Section 14 of the Act defines the term Copyright as to mean the exclusive right to do or authorise the doing of the following acts in respect of a work or any substantial part thereof, namely

In the case of literary, dramatic or musical work (except computer programme):

- (i) reproducing the work in any material form which includes storing of it in any medium by electronic means;
- (ii) issuing copies of the work to the public which are not already in circulation;
- (iii) performing the work in public or communicating it to the public;
- (iv) making any cinematograph film or sound recording in respect of the work; making any translation or adaptation of the work. Further any of the above mentioned acts in relation to work can be done in the case of translation or adaptation of the work.

In the case of a computer programme:

- (i) to do any of the acts specified in respect of a literary, dramatic or musical work; and
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme. However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

In the case of an artistic work:

- (i) reproducing the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- (ii) communicating the work to the public;
- (iii) issuing copies of work to the public which are not already in existence;
- (iv) including work in any cinematograph film; making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.

In the case of cinematograph film and sound recording:

- (i) making a copy of the film including a photograph of any image or making any other sound recording embodying it;
- (ii) selling or giving on hire or offer for sale or hire any copy of the film/sound recording even if such copy has been sold or given on hire on earlier occasions; and
- (iii) communicating the film/sound recording to the public.

In the case of a sound recording:

- (i) To make any other sound recording embodying it •
- (ii) To sell or give on hire, or offer for sale or hire, any copy of the sound recording
- (iii) To communicate the sound recording to the public

ORIGINALITY OF MATERIAL

There are three basic requirements for copyright ability:

- A work must be original
- A work must be fixed in a tangible form of expression; and
- A work must be a work of authorship

To be eligible for copyright protection, material must be original, meaning that it must have been independently created and must possess a modicum of creativity. The requirement of originality should not be confused with novelty, worthiness, or aesthetic appeal. The requirement is rather that the material must be an independent product of the author and not merely some copy or minimal variation of an existing work. A work can be original even if it is strikingly similar or identical to that of another. The Copyright Act only requires originality, meaning independent creation by the author.

Originality does not signify novelty; a work may be original even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying.

To illustrate, assume that two poets, each ignorant of the other, compose identical poems. Neither work is novel, yet both are original, and, hence, copyrightable. “Originality” thus

does not mean “first”; it merely means “independently created” rather than copied from other works.

Fixation of Material:

The Copyright Act protects works of authorship that are “fixed in any tangible medium of expression.” A work is “fixed” when it is embodied in a copy or phonorecord and is sufficiently permanent or stable to permit it to be perceived, reproduced, or communicated for a period of more than transitory duration.

There are thus two categories of tangible expression in which works can be fixed: “copies” and “phonorecords.”

- A copy is a material object from which a work can be perceived, reproduced, or communicated, either directly by human perception or with the help of a machine.
- A phonorecord is a material object in which sounds are fixed and from which the sounds can be perceived, reproduced, or communicated either directly by human perception or with the help of a machine.

Works of Authorship: (17 U.S.C§102)

- The copyright act provides that copyright protection subsists [support oneself] in original works of authorship fixed in any tangible medium of expression, now known or hereafter developed, from which they can be perceived, reproduced or otherwise communicated either directly or with the aid of a machine.
- 17 U.S.C. § 102. Section 102 then lists eight categories of protectable works. The list is preceded by the phrase that works of authorship “include” those categories, demonstrating that the listed categories are not the only types of works that can be protected, but are illustrative only.

The eight enumerated categories are as follows:

1. Literary works,
2. Musical works (including accompanying words)
3. Dramatic works (including accompanying music)
4. Pantomimes and choreographic works
5. Pictorial, graphic, and sculptural works
6. Motion pictures and other audiovisual works
7. Sound recordings
8. Architectural works

Rights of Reproduction:

The most fundamental of the rights granted to copyright owners is the right to reproduce the work

- A violation of the copyright occurs whether or not the violator profits by the reproduction
- Only the owner has the right to reproduce the work
- Secretly taping a concert, taking pictures at a performance, or recording all violate the owner's right to reproduce
- The suggestion of congress, in 1978 a group of authors, publishers and users established a not-for-profit entity called Copyright Clearance Center [CCC]
- CCC grants licenses to academic, government and corporate users to copy and distribute the works
- It collects royalty fees, which are distributed to the authors
- Companies that photocopy articles from journals and magazines often enter into licensing arrangements with the CCC so they can make copies.

Rights to prepare Derivative works:

- Section 106 of the copyright Act provides that the owner of a copyright has the exclusive right to prepare derivative works based upon the copyrighted work
- This right is often referred to as the right to adapt the original work

Definition:

- “A derivative work is broadly defined as a work based upon one or more preexisting works, such as a translation, dramatization, fictionalized motion pictures version, abridgment condensation or any other form in which a work maybe recast, transformed, or adapted.
- a work consisting of editorial revisions, annotations, elaborations, or other

New material represents original work of authorship

modifications is also a derivative work

Rights of distribution and the first sale doctrine:

- Section 106 (3) of the copyright act provides that the owner of a copyright has the exclusive right to distribute copies or phonorecords of the work to the public by sale or other transfer of ownership
- A violation of the distribution right can arise solely from the act of distribution itself
- The distributor did not make an unlawful copy or the copy being distributed was unauthorized
- Thus, blockbuster videos to recanbeliableforviolatinganowner’srighttodistribute
- Oncetheauthorhaspartedwithownershipofcopyrightedmaterial,thenewownerofalawfullymadecopycantreattheobjectashisorher own
- The new owner the right to lend the book or movie to a friend, resell the work at a garage sale,orevendestroyit.
- Thefirstsaledoctrinedoesnotapplytoorlimittheauthor’sexclusive rightstoprepare derivative works or rights of public performance and
- Without permission of authorship the goods are not permitted to imported into the U.S.

Rights to perform the work publicly

- Section 106 [5] of the Copyright Act provided that in the case of all copyrighted works other than sound recording & works of architecture, the copyright owner has the exclusive right to display the work publicly.
- Adisplayis“public”underthesamecircumstancesinwhichaperformanceis“public”.

Namely if it occurs at a place open to the public (or) at a place where a substantial number of persons outside of the normal circle of a family

Copyright Ownership Issues [17U.S.C. §201(a)]:

- Copyright in a work protected under the copyright activists [provide with power and authority] in the author or authors of the work

Ownership of a physical object is separate and distinct from ownership of the copyright embodied in the material object

- Issues about ownership arise when more than one person creates a work
- Unless copyright has been explicitly conveyed with those physical articles, the original authors generally retain all other rights associated with the works.

Joint Works[intent to create a unitary whole]

- A joint work is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.
- One copyright exists in the created works
- Joint authors are those who “mastermind” or “supermind” the creative effort.

Ownership Rights in Joint Works

- If individual are authors of a joint work, each owns an equal undivided interest in the copyright as a tenant in common, [each has the right to use the work, prepare derivative works, display it without seeking the other coauthor’s permission].
- If profits arise out of such use, an accounting must be made so, that each author shares in the benefits or proceeds.
- The death of a coauthor, his or her rights pass to heirs who then own the rights in common with the other coauthor.

Ownership in Derivative or Collective Works

- The author of the original book has rights only to his or her work and cannot reproduce or perform the derivative work without permission.
- If a work such as a book is created by one person who intends it to be complete at the time and illustrations are later added to it by another, the work cannot be a joint work because there was no intention of the parties to create a unitary whole at the time of their creation.
- The author of the derivative work cannot create further works based on the original book without permission and cannot reproduce the original work without permission.
- Multiple ownership rights may also arise if separately copyrightable works are compiled into a collection.

For Example: If essays written by Jerry Seinfeld, Ellen DeGeneres, and Paul Reiser are collected into a humor anthology by Bill Jones (with permission of the original authors), the original authors retain their exclusive rights (such as rights to reproduce, distribute, and perform) in their respective essays. No joint work is created because there was no intent at the time the separate essays were created to merge them into a unitary whole. No derivative work is created because the original works have not been transformed in any way and nothing new has been added to them. The anthology by the compiler, Bill Jones, is a collective work and pursuant to section 201(c) of the act, Jones acquires only the right to reproduce and distribute the contributions as part of the particular collective work or any revision of the collective work .

Works Made for Hire

- The general rule is that the person who creates a work is the author of that work and the owner of the copyright therein, there is an exception to that principle: the copyright law defines a category of works called **works made for hire**.
- If a work is “made for hire”, the author is considered to be the employer or commissioning party and not the employee or the actual person who created the work
- The employer or commissioning party may be a company or an individual.
- There are two types of works that are classified as works made for hire; works prepared by an employer within the scope of employment and certain categories

of specially ordered or commissioned works.

Copyright Registration

- A work is “created” when it is fixed in a copy or phonorecord for the first time.
- Although not required to provide copyright protection for a work, registration of copyright with the Copyright Office is expensive, easy and provides several advantages, chiefly, that registration is a condition precedent for bringing an infringement suit for works of US origin.
- To register a work, the applicant must send the following three elements to the Copyright Office: a properly completed application form, a filing fee, and a deposit of the work being registered.
- Registration may be made at any time within the life of the copyright

THE APPLICATION FOR COPYRIGHT REGISTRATION

- The following persons are entitled to submit an application for registration of copyright:
 - the author (either the person who actually created the work or, if the work is one made for hire, the employer or commissioning party)
 - the copyright claimant (either the author or a person or organization that has obtained ownership of all of the rights under the copyright originally belonging to the author, such as a transferee)
 - the owner of exclusive right, such as the transferee of any of the exclusive rights of copyright ownership (for example, one who prepares a movie based on an earlier book may file an application for the newly created derivative work, the movie); and
 - the duly authorized agent of the author, claimant, or owner of exclusive rights (such as an attorney, trustee, or any one authorized to act on behalf of such parties)

Application Forms

- The Copyright Office provides forms for application for copyright registration.
- Each form is one 8½ by 11” (inches) sheet, printed front and back.
- An applicant may use photocopies of forms
- The Copyright Office receives more than 6,00,000 applications each year, each application must use a similar format to ease the burden of examination.
- The type of form used is dictated by the type of work that is the subject of copyright.

For example: One form is used for literary works, while another is used for sound recording. Following are the forms used for copyright application.

- **Form TX** (Literary works, essays, poetry, textbooks, reference works, catalogs, advertising copy, compilations of information, and computer programs)
- **Form PA** (Pantomimes, choreographic works, operas, motion pictures and other audio visual works, musical compositions and songs.)
- **Form VA** (Puzzles, greeting cards, jewelry designs, maps, original prints, photographs, posters, sculptures, drawings, architectural plans and blueprints.
- **Form SR** (Sound recording)
- **Form SE** (periodicals, news papers magazines, newsletter, annuals and Journals.Etc.)

Notice of copyright

- Since March 1, 1989 (the date of adherence by the United States to the Berne Convention), use of a **notice of copyright** (usually the symbol © together with the year of first publication and copyright owner's name) is no longer mandatory, although it is recommended and offers some advantages.
- Works published before January 1, 1978, are governed by the 1909 copyright Act.
- Under that act, if a work was published under the copyright owner's authority without a proper notice of copyright, all copyright protection for that work was permanently lost in the United States.
- With regard to works published between January 1, 1978, and March 1, 1989, omission of a notice was generally excused if the notice was omitted from a smaller number of copies, registration was made within five years of publication,

and a reasonable effort was made to add the notice after discovery of its omission.

International Copyright Law

- Developments in technology create new industries and opportunities for reproduction and dissemination of works of authorship.
- A number of new issues have arisen relating to the growth of electronic publishing, distribution, and viewing of copyrighted works.
- Along with new and expanded markets for works comes the ever-increasing challenge of protecting works from piracy or infringement.
- Copyright protection for computer programs
- Copyright protection for Automated Databases
- Copyright in the Electronic Age
- The Digital Millennium Copyright Act

PATENTS

A patent is a government granted right for a fixed time period to exclude others from making, selling, using, and importing an invention, product, process or design, or improvements on such items. These exclusive, monopoly rights are powerful, and in return the inventor is required to describe the invention in writing. The end result is simply a written description, accompanied by diagrams and drawings, that explains the invention. The public benefits because anyone can read the details of the invention and improve upon it. Importantly, the patent not only allows the public to gain an understanding of the invention, but also defines its limits. Once the patent term expires (generally 20 years from the application filing date), the technology covered by the patent becomes a part of the public domain and is essentially free to use by the public.

Types of Patents

Generally, there are three main types of patents: utility patents, design patents and plant patents.

1) Utility Patent – When most people think of patents, they are referring mainly to utility patents. A utility patent is a patent that covers inventions, whether it's an innovative software

process, a new product that is distinct from prior art, or an improvement to a car engine. A utility patent can be granted for any new, useful, and non-obvious process or product.

2) Design Patent – A design patent covers a new and original ornamental design of a product. In other words, a design patent protects the look of a product. Examples of products protected by design patents include jewelry and watches, electronic devices, computer icons, and beverage containers. A design patent consists of numerous drawings that show a product from various angles and contains very little written description, if any.

3) Plant Patents - Plant patents were first created by the Patent Act of 1930, which had been proposed by Luther Burbank to protect new species of asexually reproduced plants, mostly flowers. These are different than the utility patents granted to bioengineered plants used in agriculture. The United States was the first country in the world to grant plant patents, and even today many countries continue to deny protection for plants. Indeed, even some signatories to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) administered by the World Trade Organization (WTO) reserve the right to deny patents for plants.

To be patentable, plants must be cultivated rather than found in the wild, and plant patents are granted only to protect a new, distinct, and non-obvious variety of asexually reproduced plant—i.e., those grown not with seeds but by grafting, budding, or cutting. A plant need not be useful to qualify for a patent, but it must be distinctive in its color, habit, soil, flavor, productivity, form, or other aspects.

FOUNDATION FOR PATENT LAW

The main motive behind patent was to encourage scientific research, new technology and industrial progress. Patent law grants a monopoly to the inventor to use their patented product and allow the use of the same to someone with prior permission against certain consideration.

Patent confers the right to manufacture, use, offer for sale, sell or import the invention for the prescribed period to the inventor. In short, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. Patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent. It protects against infringement of the patent i.e. if someone tries to replicate the invention or invents against an existing patent the original inventor can enforce their right against such duplicate product.

There is some evidence that some form of patent rights was recognized in Ancient Greece. In 500 BCE, in the Greek city of Sybaris (located in what is now southern Italy), "encouragement was held out to all who should discover any new refinement in luxury, the profits arising from which were secured to the inventor by patent for the space of a year." Athenaeus, writing in the third century CE, cites Phylarchus in saying that in Sybaris exclusive rights were granted for one year to creators of unique culinary dishes.

In England, grants in the form of letters patent were issued by the sovereign to inventors who petitioned and were approved: a grant of 1331 to John Kempe and his company is the earliest authenticated instance of a royal grant made with the avowed purpose of instructing the English in a new industry. These letters patent provided the recipient with a monopoly to produce particular goods or provide particular services.

The first extant Italian patent was awarded by the Republic of Venice in 1416 for a device for turning wool into felt. Soon thereafter, the Republic of Florence granted a patent to Filippo Brunelleschi in 1421. Specifically, the well-known Florentine architect received a three-year patent for a barge with hoisting gear, that carried marble along the Arno River.

Patents were systematically granted in Venice as of 1450, where they issued a decree by which new and inventive devices had to be communicated to the Republic in order to obtain legal protection against potential infringers. The period of protection was 10 years. These were mostly in the field of glass making. As Venetians emigrated, they sought similar patent protection in their new homes. This led to the diffusion of patent systems to other countries.

The Venetian Patent Statute, issued by the Senate of Venice in 1474, and one of the earliest patent systems in the world.

King Henry II of France introduced the concept of publishing the description of an invention in a patent in 1555. The first patent "specification" was to inventor Abel Foullon for "Usaige & Description de l'holmetre", (a type of rangefinder.) Publication was delayed until after the patent expired in 1561. Patents were granted by the monarchy and by other institutions like the "Maison du Roi" and the Parliament of Paris. The novelty of the invention was examined by the French Academy of Sciences. Digests were published irregularly starting in 1729 with delays of up to 60 years. Examinations were generally done in secret with no requirement to publish a description of the invention. Actual use of the invention was deemed adequate disclosure to the public.

The English patent system evolved from its early medieval origins into the first modern patent system that recognised intellectual property in order to stimulate invention; this was the crucial legal foundation upon which the Industrial Revolution could emerge and flourish.

By the 16th century, the English Crown would habitually grant letters patent for monopolies to favoured persons (or people who were prepared to pay for them). Blackstone (same reference) also explains how "letters patent" (Latin *litterae patentes*, "letters that lie open") were so called because the seal hung from the foot of the document: they were addressed "To all to whom these presents shall come" and could be read without breaking the seal, as opposed to "letters close", addressed to a particular person who had to break the seal to read them.

This power was used to raise money for the Crown, and was widely abused, as the Crown granted patents in respect of all sorts of common goods (salt, for example). Consequently, the Court began to limit the circumstances in which they could be granted. After public outcry, James I of England was forced to revoke all existing monopolies and declare that they were only to be used for "projects of new invention". This was incorporated into the 1624 Statute of Monopolies in which Parliament restricted the Crown's power explicitly so that the King could only issue letters patent to the inventors or introducers of original inventions for a fixed number of years. It also voided all existing monopolies and dispensations with the exception of:

...the sole working or making of any manner of new manufactures within this realm to the true and first inventor and inventors of such manufactures which others at the time of making such letters patent and grants shall not use...

The Statute became the foundation for later developments in patent law in England and elsewhere.

James Puckle's 1718 early autocannon was one of the first inventions required to provide a specification for a patent.

Important developments in patent law emerged during the 18th century through a slow process of judicial interpretation of the law. During the reign of Queen Anne, patent applications were required to supply a complete specification of the principles of operation of the invention for public access. Patenting medicines was particularly popular in the mid-eighteenth century and then declined. Legal battles around the 1796 patent taken out by

James Watt for his steam engine, established the principles that patents could be issued for improvements of an already existing machine and that ideas or principles without specific practical application could also legally be patented.

This legal system became the foundation for patent law in countries with a common law heritage, including the United States, New Zealand and Australia. In the Thirteen Colonies, inventors could obtain patents through petition to a given colony's legislature. In 1641, Samuel Winslow was granted the first patent in North America by the Massachusetts General Court for a new process for making salt.

Towards the end of the 18th century, and influenced by the philosophy of John Locke, the granting of patents began to be viewed as a form of intellectual property right, rather than simply the obtaining of economic privilege. A negative aspect of the patent law also emerged in this period - the abuse of patent privilege to monopolise the market and prevent improvement from other inventors. A notable example of this was the behavior of Boulton & Watt in hounding their competitors such as Richard Trevithick through the courts, and preventing their improvements to the steam engine from being realized until their patent expired.

During the British reign in India, the Act VI of 1856 granted protection of inventions based to inventors of new manufacturers for a period of 14 years. It underwent many modifications thereafter and in 1911 Indian Patents & Designs Act was enacted. Then again modifications took place and the present Patents Act, 1970 came into force in the year 1972, amending and consolidating the existing law relating to Patents in India. The Patents Act, 1970 was again amended by the Patents (Amendment) Act, 2005(1), wherein product patent was allowed against all fields of technology including food, drugs, chemicals and microorganisms. The new law allows compulsory grant of patent except in prohibited cases as done earlier. The new amendment of 2005 also included pre-grant and post-grant opposition. A patent application in India can be filed either individually or jointly, by true and first inventor of the assignee.

PATENT SEARCH

Patent search is a search of the patent database to determine if there are any patent application similar or identical to an invention that is to be patented. Patent search can be done to

improve the chances of obtaining a patent registration or to find information about new inventions that have patent protection.

Before filing a patent application, a patent search can help with different objectives like:

- Determining the probability of having a patent granted to a proposed invention.
- Determining the claims to be filed in the patent application.
- Determining the freedom to operate.
- Determining whether a granted patent can be invalidated.
- Knowing more about similar inventions and status of similar patent filings.

The Seven Steps in a Preliminary Search of U.S. Patents and Published Patent Applications

1. Brainstorm terms to describe your invention based on its purpose, composition and use.
2. Use these terms to find initial relevant Cooperative Patent Classifications using the USPTO website's [Classification Text Search Tool](https://www.uspto.gov/web/patents/classification/) (<https://www.uspto.gov/web/patents/classification/>) Enter the keyword or keywords you wish to search in the Search Tool box. For example, if you were trying to find CPC Classifications for patents related to umbrellas, you would enter "umbrella". The default search system is CPC, Cooperative Patent Classification, so the button "All CPC" is selected. Click on the "Search" button. Scan the resulting classification's Class Schemes (class schedules) to determine the most relevant classification to your invention. If you get zero results in your Classification Text search, consider substituting the word(s) you are using to describe your invention with synonyms, such as the alternative terms you came up with in Step 1.
3. Verify the relevancy of CPC classification you found by reviewing the CPC Classification Definition linked to it (if there is one).
4. Retrieve U.S. patent documents with the CPC classification you selected in the PatFT (Patents Full-Text and Image) database (<http://patft.uspto.gov>). Review and narrow down the most relevant patent publications by initially focusing on the front page information of abstract and representative drawings.
5. Using this selected set of most relevant patent publications, review each one in-depth for similarity to your own invention, paying close attention to the additional drawings pages, the

specification and especially the claims. References cited by the applicant and/or patent examiner may lead you to additional relevant patents.

6. Retrieve U.S. published patent applications with the CPC classification you selected in Step 3 in the AppFT (Applications Full-Text and Image) database (<http://appft.uspto.gov>). Use the same search approach used in Step 4 of first narrowing down your results to the most relevant patent applications by studying the abstract and representative drawings of each on its front page. Then examine the selected published patent applications closely, paying close attention to the additional drawings pages, the specifications and especially the claims.

7. Broaden your search to find additional U.S. patent publications using keyword searching in PatFT or AppFT databases, classification searching of non-U.S. patents on the European Patent Office's Worldwide Espacenet patent database (<http://worldwide.espacenet.com>) and searching non-patent literature disclosures of inventions using the free electronic and print resources of your nearest Patent and Trademark Resource Center (<http://www.uspto.gov/ptrc>).

Patent search in India

There is no cost for doing a patent search in India. A patent search can be done through the Patent database of India available at: <http://ipindiaservices.gov.in/publicsearch>.

Depending on the status of a patent application, a patent search can be done under two publication types: published or granted. The user can choose the desired publication type by clicking on the checkbox. The user can view many categories like

- Application Date
- Title
- Abstract
- Complete Specification
- Application Number
- Patent Number
- Applicant Number
- Patent Number
- Applicant number

- Applicant Name
- Inventor Name
- Inventor Country
- Inventor Address
- Filing office
- PCT Application Number
- PCT Publication number

The entire category has a drop down box from which the user has access to change the category. There is a search box next to every category where the user can enter the keyword of the patent that he wants to view. By entering a query in more than one box, the applicant can run very precise patent searches. Once the required keywords are entered in the respective boxes, there is a captcha code the user has to clear.

Patent Information

Once the code is entered, there are a number of relevant patent results for the patent search query that the user has entered. On selecting an application, the document opens with the Application Number, Title, Application Date and Status. The user can get further details about the patent by clicking on the Application Number, Title, Application Date and Status. Through patent search, the applicant can find the following information about the patent:

- Invention title
- Publication Number
- Publication Date
- Publication Type
- Application Number
- Application Filing Date
- Priority Number
- Priority Country
- Priority Date
- Field of Invention

Classification

Inventor Name, Address, Country, Nationality

Applicant Name, Address, Country, Nationality

When each column is selected, the patent application's details about that section can be known by the user. When a user selects application number details like Invention Title, Publication number, date, type, etc. There are separate columns that give the user the inventor's and the applicant's Name, Address, Country, and Nationality.

Patent Status

There is an Abstract column which has a summary of the patent application that the user can view. Under this, there is a complete specification that gives the details about the specification if the user has mentioned any. At the end, there is an option through which the user can view the application status. When it is opened, the user can get the application details.

Basic Criteria for Patentability

An invention is patentable subject matter if it meets the following criteria –

- i. It should be novel.
- ii. It should have inventive step or it must be non-obvious
- iii. It should be capable of Industrial application.
- iv. It should not attract the provisions of section 3 and 4 of the Patents Act 1970.

An invention may satisfy the condition of novelty, inventiveness and usefulness but it may not qualify for a patent under the following situations:

- 1) An invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- 2) An invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human , animal or plant life or health or to the environment;
- 3) The mere discovery of scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;

4) The mere discovery of a new form of a known substance which does not result in enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;

Explanation: For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regards to efficacy;

5) A substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;

6) The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;

7) A method of agriculture or horticulture;

8) Any process for medicinal, surgical, curative, prophylactic (diagnostic, therapeutic) or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products;

9) Plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;

10) A mathematical or business method or a computer program per se or algorithms;

11) Literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;

12) A mere scheme or rule or method of performing mental act or method of playing game;

13) A presentation of information;

14) Topography of integrated circuits;

15) An invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components;

16) Inventions relating to atomic energy;

INDUSTRIAL DESIGNS

Among the different kinds of intellectual property rights (IPR), one of the most important ones is industrial design. Companies go enormous lengths to protect industrial design because it gives them a competitive edge in the market and a lot of energy and resources goes into developing them. If competitors are allowed to copy the industrial design without the owner's consent, there would be little incentive to develop new ways of improving things. It will act as a dampener to innovation.

So naturally, industrial design intellectual property rights are critical for a modern economy. According to the World Intellectual Property Rights Organization (WIPO), it is a composition of lines and colors or any three-dimensional form, which leaves a unique impression on a product. They maintain the essence of the ornamental or aesthetic aspect of a useful article, which usually appeals to sight and touch senses, and can be reproduced in significant quantities. Industrial design protection applies to several products, including packaging, lighting, jewelry, electronic goods, textiles and even logos.



The pre-requisites for a design to qualify for protection are as follows:

- It should be novel and original
- It should be applicable to a functional article
- It should be visible on a finished article
- It should be non-obvious
- There should be no prior publication or disclosure of the design.

Kind of protection provided in Industrial design

In principle, the owner of a registered industrial design or of a design patent has the right to prevent third parties from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

Industrial design intellectual property rights are protected in India by the Designs Act of 2000. India's Design Act, 2000 was enacted to consolidate and amend the law relating to protection of design and to comply with the articles 25 and 26 of Trade-Related Aspects of Intellectual Property Rights TRIPS agreement. The new act, (earlier Patent and Design Act, 1911 was repealed by this act) now defines "design" to mean only the features of shape, configuration, pattern, ornament, or composition of lines or colours applied to any article, whether in two- or three-dimensional, or in both forms, by any industrial process or means, whether manual or mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction.

Under this, registration offers the proprietor 'copyright' in the design, i.e. exclusive right to apply a design to the article belonging to the class in which it is registered. All models that are registered find their place in the Register of Designs, Kolkata. This includes the design number, class number, date of filing (in this country), the name and address of the proprietor and so on.

The registration is for a duration of ten years and can be extended for up to five years. Under the Designs Act, anyone violating the copyright of the design is liable to pay a sum of Rs. 25,000 for every offense to the registered proprietor subject to a maximum of Rs. 50,000 recoverable as contract debt for any one design.

Advantages of industrial design protection

There are many benefits of IPR in industrial design. It would be wise to understand them –

Monetary gain: The biggest benefit would be the financial gain that would accrue to the owner of the design right. As we mentioned earlier, companies spend a lot of resources to gain an edge over competitors, and good design can help them make a lot of money.

Unique selling proposition: In a competitive market, companies can get an edge by having a product that looks and feels different/unique. Often consumers make purchase decisions

based on the appearance. Industrial design protection enables companies to protect their USP and set their product distinctly apart.

Selling designs: If a company cannot profit directly from the design developed, they can sell it to third parties and make a profit from its design capabilities.

Image: Design protection helps build a positive image of a company. Industrial designs are considered critical business assets and can even increase the share price of a company that, in turn, helps sell their products.

The law offers high-level protection for IPR in industrial design. However, infringement of design rights is quite common in India more often than not because of weak enforcement. As competition heightens, the temptation to steal designs is stronger. Hence, it is crucial for the authorities to be more stringent in enforcing design rights. Companies, for their part, should be vigilant about their rights and take proactive measures to protect them.

UNIT IV

Managing IP Rights: Acquiring IP Rights: letters of instruction, joint collaboration agreement, **Protecting IP Rights:** non disclosure agreement, cease and desist letter, settlement memorandum. **Transferring IP Rights:** Assignment contract, license agreement, deed of assignment

Managing IP Rights

In an increasingly knowledge-driven economy, Intellectual Property (IP) is an important key consideration in day-to-day business decisions. New products, brands and creative designs appear almost daily on the market and are the result of continuous human innovation and creativity. Generally, the small and medium companies in India either do not understand the value of their intellectual property assets or are not aware of the intellectual property system or the protection it can provide for their inventions, brands, and designs. As the Intellectual Property forms an important part of companies' assets, its adequate protection is crucial in deterring potential infringement and in turning ideas into business assets with a real market value. In fact, the Intellectual Property system enables companies to profit from their innovative capacity and creativity and enhance their competitiveness. Companies that dedicate time and resources for protecting their intellectual property can increase their competitiveness in a number of areas, as it prevents competitors from copying or closely imitating a company's products or services; avoids wasteful investment in research and development (R&D) and marketing; creating a corporate identity through a trademark and branding strategy; negotiating licensing, franchising or other Intellectual Property based contractual agreements; increasing the market value of the company; acquiring venture capital and enhancing access to finance; obtaining access to new markets and most important a careful search for conflicting existing Intellectual Property rights, and the examination of application by offices can help an enterprise to avoid conflicts and unnecessary litigation.

Strategies for Effective IPR Management: The effective management of intellectual property assets requires implementation of a comprehensive asset management plan. In this process, one of the most important step is to review the existing intellectual property assets, so as to identify and locate the company's key intellectual property assets such as patents, patentable subject matter, copyrights, trademarks, designs, trade secrets, domain names, mask

works, inventions, works of authorship, hardware and devices, depending upon the nature of business. Once the intellectual property assets are identified, it becomes important to determine nature and scope of the company's rights in intellectual property assets, which may range from outright ownership to a license- including contingent rights in intellectual property to be developed in future. Capitalizing on intellectual property assets so identified require a most constructive approach keeping in view, among others, type of intellectual property assets, the type of business claiming ownership of intellectual property assets, long term and short term goals of the business organization including intended/possible use of intellectual property assets.

Intellectual Property – Risk Management: The ownership and control of intellectual property also attract certain risks and this requires strategies and plans to mitigate those risks. The most important among others being the infringement of rights in intellectual property, the risk management strategy should take into consideration the situations where company's own Intellectual Property Rights (IPRs) may infringe the IPRs of a third party; the company has a valid claim of infringement against a third party. It is also important to analyse the scope of any grant of rights in intellectual property assets, which may include licenses, distribution agreements, reseller arrangements and any other agreement or transaction involving transfer of IPRs that may impact its value. One of the most important IPR risk management techniques, particularly in respect of trade secrets, is to put in place a system requiring all new employees and consultants to execute a confidentiality agreement. It indeed allows company to establish ownership in IPRs developed by the employees during their employment and also help company to effectively contest infringement in case employee leaves the organization and discloses the same to new employer. In nutshell, effective management of Intellectual Property enables companies to use their intellectual property to improve their competitiveness and strategic advantage. Acquiring Intellectual Property protection no doubt is crucial but its effective management provides much more than just protection to an enterprise's inventions, trademarks, designs, copyright or other allied rights. Effective intellectual property management requires a company to commercialize its inventions and effectively monitor and enforce its intellectual property rights. Indeed, a company's portfolio of Intellectual Property must be viewed as a collection of key assets that add significant value to the enterprise. Thus, effective management of intellectual property may be seen as critical business strategy to maintain sustainable corporate growth and maximisation of shareholder value resulting into the economic growth.

Protecting IP Rights

Intellectual Property rights are key elements needed to maintain a competitive edge in the market in today's dynamic and competitive business environment. Intellectual property is a business asset, an integral part of the business process. Effective acquisition, management and protection of intellectual property can mean the difference between success and failure in businesses today. It is important that companies take appropriate steps to protect this valuable asset so as to get the possible commercial results from its ownership. The various statutes that have been enacted provide an adequate mechanism of protection to intellectual property rights. In the case of patents, a patent can provide an inventor/corporates with a 20-year government approved monopoly and once his 20 years of protection is up, it can be freely exploited for the good of society. However, some ideas cannot be patented and indeed, some innovators do not want to patent their ideas as for instance trade secret or confidential information.[Today more than ever, intellectual property also includes confidential business information, trade secrets, know-how and key business relationships]. If a trade secret is really kept a secret, the monopoly on an idea or product may never end. But once the genie's out of the bottle, like a champagne cork, you won't get it back in, it is lost forever and the companies are unlikely to extract sufficient damages from whoever breaches confidentiality. Trade secrets are free—just prevent the secret being disclosed. Though it is difficult indeed, but not impossible. Famous successful examples include the recipe for Coca-Cola and the formulation of the alcoholic beverage Chartreuse, which is only known by two monks. The need to protect these vital assets is more critical than ever. Knowledge has become the key strategic differentiator. If it is valuable to the company, it is valuable to its competitors as well. Most sophisticated business enterprises (whether small, medium, or large) recognize the need to protect this vital intellectual property. But little real attention is paid to protecting or securing these less formal types of intellectual property. It has been observed that many companies surprisingly are oblivious to the fact that these vital intellectual assets are walking out their front door on a daily, weekly or monthly basis, and heading across the street to rival competitors.

Non-Disclosure Agreement

There are two principal sources of leakage of or trade secrets or confidential information to competitors or other third parties: disclosure and departure.

Disclosure - trade secrets can be leaked advertently or inadvertently to competitors or third parties through careless or deliberate disclosure by company representatives. For example, a sales representative or accounts manager meets with a potential supply chain about pooling resources to go after a new market or business opportunity. During the meeting, proprietary and confidential information are disclosed. The business purpose of the disclosure or exchange of information might be quite legitimate, but the legal effect of disclosing confidential information without the benefit of a confidentiality or non-disclosure agreement could be disastrous. Corporate must make it both a corporate policy and business practice not to engage in commercial negotiations with third parties (whether direct competitors or not) without first ensuring that they have a signed Confidentiality or Non-Disclosure Agreement in place.

Departure – The other source of leakage of confidential business information is the exit of executives or key employees from the organization. After employment ceases, the employee retains the right to use any general skill, experience and knowledge he has acquired in the course of performing his normal duties, in order that he can continue to earn a living. This has to be balanced against the employer's right to protect its confidential information. If the employee has retained any confidential information, he is not entitled to use that information without the employer's authority.

Employment or Confidentiality Agreement Employees should sign Employment Agreements to generally detail the terms of their employment. These should also include appropriate clauses which restrain the employee from making any unauthorised use or disclosure to third parties of confidential information during their employment and after their employment has ceased. Agreements should be signed before the employee commences employment. Existing employees should be encouraged to sign confidentiality agreements. However, usually they cannot be forced to do so. When employees cease employment, the employer should give them a letter confirming this, any monies being paid to them and reminding them of their confidentiality obligations. The employee should also be requested to return all property belonging to the employer and to sign an appropriate acknowledgement confirming that he has done so and will keep information confidential. If confidential information is to be divulged, a confidentiality agreement should be signed before the disclosure is made. The type of agreement will vary depending upon the nature and context of the disclosure. A simple exchange of letters may be sufficient or a formal confidentiality agreement may be required. In some cases, a confidentiality agreement must be made as a

Deed in order to be legally enforceable. This is where there is no consideration expressed for the agreement to keep information confidential. A confidentiality agreement should include the following acknowledgements: – the information is secret; – the disclosure is made to the recipient in confidence; – the recipient will not disclose the information to others or use the information for their own advantage, without the prior authority of the owner of the information; and – the unauthorised disclosure of the information could cause loss and damage to the owner of the information and the recipient will be liable for this. There is no specific legislation in India to protect trade secrets and confidential information. Nevertheless, Indian courts have upheld trade secret protection on basis of principles of equity, and at times, upon a common law action of breach of confidence, which in effect amounts a breach of contractual obligation. The remedies available to the owner of trade secrets is to obtain an injunction preventing the licensee from disclosing the trade secret, return of all confidential and proprietary information and compensation for any losses suffered due to disclosure of trade secrets. Further, a person can be contractually bound not to disclose any information that is revealed to him/her in confidence. The Indian courts have upheld a restrictive clause in a technology transfer agreement, which imposes negative covenants on licensee not to disclose or use the information received under the agreement for any purpose other than that agreed in the said agreement.

Cease and Desist Letter

An IP cease and desist letter often precedes intellectual property litigation. It is meant to inform the recipient that they have allegedly infringed a legal right of the sender. At the very least, it asks them to stop, or cease, their actions or face potential legal action. These letters are particularly common in trademark disputes, where the sender will usually claim legal rights to a trademarked word, phrase or design and request that the recipient immediately stop using it on any commercial merchandise. However, cease and desist letters can be used for any type of alleged intellectual property right infringement, such as infringement of patents, copyright or industrial designs.

The cease and desist letter enforceable is not a court order and on its own is not legally enforceable. Therefore, there are no immediate repercussions to non-compliance. However, if ignored, the recipient risks that the situation will escalate and the sender will start a legal proceeding against them to obtain a cease and desist order from the court called an injunction.

In some cases, the letter opens a pathway for negotiation between the sender and the recipient (for example, negotiating a licensing deal on a patented product).

Cease and desist letters do not have to follow a specific format, but they often have common features. The first and most obvious one is the use of the phrase "cease and desist" in the letter. What does cease and desist mean? It means to stop doing something and not resume doing it in future.

A cease and desist letter will often be multiple pages and will outline the alleged infringement in detail. The letter also generally includes a reference to the sender's intellectual property, like a patent number, copyright registration number or trademark registration number. In most cases, the sender will also include copies of the patent or copyright or trademark registration as an enclosure.

The cease and desist correspondence may be written on the letterhead of a law firm, but alternatively could be written by the intellectual property owner itself. If the letter is written by a lawyer, consider that the sender has already financially invested in enforcing its intellectual property rights and may be more serious about commencing legal proceeding against you if you do not comply.

Other identifiers of a cease and desist letter are partiality to the owner's legal position (i.e., citing specific facts and arguments in favor of the sender's position), a list of demands and a request for confirmation of receipt. Generally speaking, cease and desist correspondence also includes a deadline for complying with the demands.

A cease and desist demand need not be in the form of a hardcopy letter sent by mail. The demand can come electronically, not in the format of a formal letter, or alternatively could be in the form of a telephone call.

If the correspondence you receive comes from a court, rather than a lawyer or an individual, then it is not a cease and desist letter. If you receive a court order, you must comply with the order or you risk being found in contempt of court. If a letter is accompanied by court documents (which are not marked with the notice "draft"), then it is likely not cease and desist correspondence either. It may be that legal proceedings have already been commenced

against you, in which case prompt action is advisable. If you are unsure of the nature of document you received, it is best to seek the advice of a lawyer.

Next steps after receiving the letter:

Once you have ascertained that the communication you have received is or is likely a cease and desist letter, it is important to decide on a course of action. While there is typically no legal penalty for ignoring a cease and desist demand, doing so is generally ill-advised. It is best to evaluate the letter to assess whether the sender actually does have the intellectual property rights that it claims to have, whether you are the appropriate recipient of the letter, whether the sender's allegations of infringement are valid, whether you have any reasonable defences to the allegations, how likely it is that any claim based on the allegations would be successful in Court, and what the financial consequences to you might be.

While a cease and desist letter may come as a shock, it is important to stay calm and not to respond immediately without careful consideration of possible consequences. Any comments you make to the sender or on social media could be used against you in future litigation. As such, before a plan of action is determined, it is best to avoid publicly discussing the contents of the letter or your reaction to the letter. It is also key to keep a copy of the letter even if you choose not to respond or take any action, as all materials should be preserved in the event of a future lawsuit.

In addition to consulting a lawyer, you may also want to discuss the situation with any business partners or other individuals that may be affected by the course of action that you choose to take. Consider how complying with the listed demands may affect your revenues, profits, brand and reputation; also consider the cost and likelihood of a potential lawsuit and conduct a cost versus benefit analysis to determine which route may be less costly and damaging to your future prospects.

Settlement Memorandum

Settlement agreement is used in solving intellectual property (IP) disputes. It can be used to formalise the settlement terms of a dispute at any point in a dispute, from before litigation starts, to after trial. If the settlement agreement is used to settle existing court proceedings it would be scheduled to a Tomlin or Consent order. If no consideration is passing between the parties, a settlement deed should be considered as an option. The Precedent has been drafted

for use in the settlement of IP claims in particular, but could be adapted to be used for settlement of other types of claim. Longer form pre-action and post-commencement of proceedings settlement agreement Precedents containing more detailed provisions are also available.

Transferring IP Rights

When preparing to sell, many business owners think that their business doesn't have or own any intellectual property unless they have gone through the process of registering a copyright or trademark or procuring a patent. However, items such as domain names, trade secrets, and the special know-how of a business constitute intellectual property which have value and for which the business and/or business owners have rights. Additionally, items such as third-party licenses (Microsoft Office, for example), IT maintenance and support contracts, and web-hosting and development contracts also constitute valuable intellectual property. Proper consideration and handling of these items matter greatly in the sale of a business, as failure to consider or handle them properly can cause problems for the seller at the front and back end of a sale transaction.

Intellectual Property Licensing is a right by which the proprietor of the Intellectual Property Rights permits the licensee the enjoyment of commercial monopoly rights granted to him by the sovereign authority (Government) through Intellectual property legislations.

Licensing is a relationship where both parties to license agree to co-operate each other which benefit them. The proprietor (licensor) of the Intellectual property by a license agrees to share the monopoly right granted to him and Licensee agrees for negotiated compensation for such sharing of the monopoly right.

Intellectual Property License essentially is a contract by which licensor and license reduced the term of the license which can be enforceable as per the legal frame work under current municipal legislations where the contract has been executed.

Assignment Contract

The transfer of ownership in intellectual property is usually effected by a formal assignment. The whole, or part, of an intellectual property right can be assigned. An assignment of intellectual property is a document effecting the transfer of the ownership of intellectual property from one person to another. Assigning the ownership of intellectual property, should always be in writing by means of a formal agreement. Many IP rights cannot be properly assigned without a written document.

Assignment agreements are of considerable importance in IPR since they allow the intellectual property owners to transfer their intellectual property for commercial returns, ensuring that the intellectual property can be used for monetary gain. Intellectual property that is created is utilized and exploited by the Assignment Agreement, where the purchaser or assignee takes benefit of the assignment rights that are created. These assignment agreements give rise to legal and equitable rights in law and purport many issues if they are not carefully constructed as required by law. Issues relating to ownership of IPR must be carefully considered where employees may be creating IPR outside the scope, time and available resources of the company that they work for. Companies who own valuable IP rights should execute non-disclosure agreements with their employees, agents, or other third parties and make sure to define the term 'confidentiality' and the obligations of the parties not to disclose it. It is prudent to include Assignment Agreement clauses which address issues relating to governing law, jurisdiction, Alternative Dispute Resolution [ADR] to seek speedy resolution of disputes. Intellectual Property Assignment Agreement is a legal contract and required to be in compliance with existing Laws. It is important, in the field of intellectual property, to define transparent criteria for terms and conditions under which the institution/organization would be the owner of the IPRs and the situation in which the inventor or creator would have the right or privilege to be the owners of the IPRs that they created. The enforceability of Assignment Agreements act as an incentive to these individuals to create new inventions which ultimately benefits society. It is also essential to define the ownership of created intellectual property with relation to employer- employee agreements and contract for service to encourage innovation. IPR legislations in India provide specific rules, regulations and procedure when dealing with assignment agreements. The Rules/Acts make provisions for registering the Assignment Agreements and their respective schedules also provide for forms through which parties can register their assignment agreements. In order for an Assignment Agreement to be valid and enforceable, it is essential that the Assignment Agreement be recorded as prescribed by the Acts and relevant Rules. In addition to abiding by the Rules, to avoid ambiguity it is essential to ensure that the agreement clearly defines which person the ownership rests with. The assignment must be concrete and also clarify the tenure for which the individual would be the owner of the intellectual property. This would provide a precaution in case of a potential dispute on the ownership of the intellectual property. The position of an Assignment Agreement in the intellectual property law of India is one of great consequence despite being a private transaction between the assignor and the assignee. One

of the reasons for this is that the law is required to protect the owner of the intellectual property from being defrauded. It must be noted, however, that though the law does provide certain safeguards, the onus of creating a suitable assignment agreement is upon the parties concerned. A valid assignment agreement and one that benefits all parties involved can only come into being if the fundamental issues, some of which have been discussed above, are addressed.

Licence Agreement

License agreements differ from Assignment agreements on the ground that an Assignment agreement actually transfers the ownership of that intellectual property from the assignor to the assignee whereas a license agreement only permits the licensee to use the intellectual property for a given period of time.

The basic legal document is the Licence Agreement for transfer of technology. The other commonly used modes of technology transfer are technical assistance agreement, patents and patent agreement, know-how agreement, engineering services agreement, the trademark agreement and the franchise agreement. Licence Agreement is a formal instrument that serves several purposes. From it flows the legal rights and obligations of the parties to the transaction. Therefore, it is – (a) a statement of the expectations of the parties that have come to achieve a common specified purpose; (b) a memorandum defining the rights and responsibilities of the parties, ensuring adequate commercial benefits to them; (c) a prescription for resolving conflicts that may be anticipated in certain areas; and (d) a legal document whose provisions and undertakings can be enforced under the laws of the country in the context of which it is framed. License may be granted for IP that is necessary to further develop, reproduce, make, use, market, and sell products based on the technology to be transferred. The terms and conditions of a licensing agreement determine the success of the technology transfer. Therefore, while formulating the licensing agreement, the parties involved should define the technology to be transferred without any ambiguity. Certain factors to be considered while defining the technology in the licensing agreement include:

- Type of the technology i.e. product, process, facility, software, formula, etc.;
- Need for additional license for practicing the technology;
- Industrial standards or specifications associated with the technology; and
- Details required to practice the technology.

Other factors that need to be considered for a successful technology licensing are:

- Owner/s of the technology;
- Nature of ownership;
- Other non-exclusive or exclusive licensing associated with the technology;
- Assistance required from the licensor to further develop or practice the technology;
- Other IPRs such as trademark, copyright, trade secret, etc. associated with the technology;
- Nature of technology (e.g. standalone technology, platform technology);
- Scope of rights expected from the technology license;
- Territory and industry in which the technology can be utilized; and
- Terms and value of royalty, etc.

Deed of Assignment

Most businesses have intellectual property, or works created by human minds or, in some cases, by computers. Some examples of intellectual property include architectural drawings, ad campaigns, company or product names, inventions, and source code.

When a company is buying another company, and want to transfer your intellectual property into the company, or when a business buys product rights from another company or individual a deed of assignment is made

A deed of assignment can be done in one transaction, instead of one transaction for each item of intellectual property, by transferring all ownership rights of all intellectual property detailed in the deed. The document is signed by both the buyer and seller. No payment is required for it to be valid.

A deed of assignment must be in writing and should include:

- The names and addresses of the assignor and assignee
- A description of the program or product for which the rights are being transferred
- A statement that all intellectual property rights to the property are being transferred
- Signatures of the parties and the date of the agreement execution

The deed could also include the following sections, where applicable:

- Consideration, or payment, to be made to the original owner.

- Warranties, or promises that the intellectual property rights being assigned don't infringe on anyone else's intellectual property rights. For example, in a deed regarding the transfer of a copyright, this section could state that the copyrighted work is original and not owned by someone else.
- Indemnification, or promise by the seller to reimburse the assignee if there is some problem with title to the property.
- Future assignments. For example, the agreement could be ongoing, so that anything the assignor creates in the future for this product or program is also transferred to the buyer.

UNIT-V

Introduction to Cyber law: Information Technology Act, cyber crime and e-commerce, data security, confidentiality, privacy, international aspects of computer and online crime.

Cyber Law:

Cyber law is the area of law that deals with the Internet's relationship to technological and electronic elements, including computers, software, hardware and information systems (IS).

Cyber law is also known as Cyber Law or Internet Law.

Cyber laws prevent or reduce large scale damage from cybercriminal activities by protecting information access, privacy, communications, intellectual property (IP) and freedom of speech related to the use of the Internet, websites, email, computers, cell phones, software and hardware, such as data storage devices.

The increase in Internet traffic has led to a higher proportion of legal issues worldwide. Because cyber laws vary by jurisdiction and country, enforcement is challenging, and restitution ranges from fines to imprisonment.

The Information Technology Act, 2000 (also known as ITA-2000, or the IT Act) is an Act of the Indian Parliament (No 21 of 2000) notified on 17 October 2000. It is the primary law in India dealing with cybercrime and electronic commerce. It is based on the United Nations Model Law on Electronic Commerce 1996 (UNCITRAL Model) recommended by the General Assembly of United Nations by a resolution dated 30 January 1997.

Cyber Crime:

Intellectual property (IP) theft is defined as theft of material that is copyrighted, the theft of trade secrets, and trademark violations. A copyright is the legal right of an author, publisher, composer, or other person who creates a work to exclusively print, publish, distribute, or perform the work in public. The United States leads the world in the creation and selling of IP products to buyers nationwide and internationally. Examples of copyrighted material commonly stolen online are computer software, recorded music, movies, and electronic games.

Theft of trade secrets means the theft of ideas, plans, methods, technologies, or any sensitive information from all types of industries including manufacturers, financial service institutions, and the computer industry. Trade secrets are plans for a higher speed computer, designs for a highly fuel-efficient car, a company's manufacturing procedures, or the recipe

for a popular salad dressing, cookie mix, or barbeque sauce. These secrets are owned by the company and give it a competitive edge. Theft of trade secrets damages the competitive edge and therefore the economic base of a business.

A trademark is the registered name or identifying symbol of a product that can be used only by the product's owner. A trademark violation involves counterfeiting or copying brand name products such as well-known types of shoes, clothing, and electronics equipment and selling them as the genuine or original product.

The two forms of IP most frequently involved in cyber crime are copyrighted material and trade secrets. Piracy is a term used to describe IP theft—piracy of software, piracy of music, etc. Theft of IP affects the entire U.S. economy. Billions of dollars are lost every year to IP pirates. For example, thieves sell pirated computer software for games or programs to millions of Internet users. The company that actually produced the real product loses these sales and royalties rightfully due to the original creator.

Historically, when there were no computers, IP crimes involved a lot of time and labor. Movie or music tapes had to be copied, physically produced, and transported for sale. An individual had to make the sale in person. To steal a trade secret, actual paper plans, files, or blueprints would have to be physically taken from a company's building and likewise sold in person.

In the twenty-first century software, music, and trade secret pirates operate through the Internet. Anything that can be digitized—reduced to a series of zeroes and ones—can be transmitted rapidly from one computer to another. There is no reduction of quality in second, third, or fourth generation copies. Pirated digital copies of copyrighted work transmitted over the Internet are known as "warez." Warez groups are responsible for illegally copying and distributing hundreds of millions of dollars of copyrighted material.

Pirated trade secrets are sold to other companies or illegal groups. Trade secrets no longer have to be physically stolen from a company. Instead, corporate plans and secrets are downloaded by pirates onto a computer disc. The stolen information can be transmitted worldwide in minutes. Trade secret pirates find pathways into a company's computer systems

and download the items to be copied. Companies keep almost everything in their computer files. Pirated copies are sold over the Internet to customers who provide their credit card numbers then download the copy.

Cyber stalking:

Cyber stalking is use of the Internet and email to "stalk" another individual. The crime of stalking has existed for decades; stalking refers to repeated harassment of someone where the stalker acts in a threatening behavior toward the victim. Threatening behaviors include following the victim, appearing at the victim's place of work or near his or her home, then making eye contact so the victim knows someone is following, and leaving threatening messages on paper or the telephone. Stalking leaves its victims fearful of bodily harm or death.

The use of the Internet provides easy pathways for stalking. In 2000 the Working Group on Unlawful Conduct Involving the Use of the Internet, an agency appointed by President Bill Clinton (1946–; served 1993–2001) reported on a recent example of Internet stalking: a fifty-year-old security guard used the Internet to stalk a woman who had rejected his sexual advances. He retaliated to her rejection by posting her personal details to the Internet. These included her physical description, address and telephone number, and even included details about how one could bypass her home security system. As a result of the posted message, at least six men came to her house and knocked on her door. The security guard was arrested, pled guilty, and sentenced to prison for Internet stalking.

Intellectual property pirates use the computer to steal vast amounts of copyrighted material and cause severe damage to the victimized companies. IP pirates never have to make sales in person or travel, their costs are minimal, and profits are huge. Internet pirates target the online shoppers who look for discounted, but legitimate, products. They do so by emails and Internet advertisements that seem to be the real thing. Not just individuals, but companies, educational institutions, and even government agencies have been tricked by IP pirates into buying stolen goods.

Arrest and prosecution of IP crimes is difficult for U.S. law enforcement agencies. U.S. laws combating this new type of crime were only beginning to be written by the early twenty-first century. Very little stops IP pirates, and organized crime groups have become involved as well. The profits they generate from IP crimes finances many other criminal activities such as drug trafficking, illegal gun sales, gambling, and prostitution (see chapter 7, Organized Crime).

Intellectual property pirates also come from many foreign countries such as China, South Korea, Vietnam (Southeast Asia), and Russia. International IP law is practically nonexistent. While offline IP violations can be investigated by the traditional law enforcement tactics such as using undercover agents, cyber IP criminals operate only in cyberspace and can disappear in seconds.

Intellectual Property in Ecommerce:

Intellectual property law protects against disclosure of trade secrets and, as a result, against unfair competition. That makes the intellectual property an asset that is perhaps worth more than any tangible asset. This can be seen most clearly in relation to technology and the digital economy.

Without intellectual property practices and laws, hard work is stolen and spread around the globe without paying the creator for their labor. Who, then, wants to create new works? Technical security is necessary to deter the less proficient thief and intellectual property laws are required to deal with the more serious crimes.

The two primary areas that you should be concerned about are:

- Safeguarding your own intellectual property
- Violating someone else's intellectual property

Safeguarding Your Own Intellectual Property

A common mistake is disclosing intellectual property prior to filing for protection of that property. Likewise, in many countries making trade secrets public automatically dissolves any protection. Consult with your legal adviser prior to disclosing anything pertaining to your intellectual property

Violating Someone Else's Intellectual Property

Your ecommerce website contains product descriptions and images. Do you have the legal right to publish those descriptions and images? What about all those logos, videos, photos, clip art, icons, sound effects, and background music? They sure make your site a more engaging. But, once again, do you have the right to be using them?

We have heard about many small ecommerce entrepreneurs who disregard intellectual property issues using the dictum, "whatever is available on the Internet is free for use!" The fact that they seem to get away with such IP violations makes the rest of us wonder whether we are spending our money right.

The fact is that when you are really small, you might be able to fly under the radar. But as you grow, your flagrant intellectual property violations will stand out. If you are not a fly-by-night operation, you need to take intellectual property issues seriously. Any content you place on your website must something that:

- you own
- you have the express permission to use
- is in the public domain
- is covered under fair use.

Explain about IP Issues When you Design and Build Your Web Site?

One of the basic elements of E-Commerce business is the design and function of the company web site. In designing and building your web site, the first thing to be aware of is whether you own the web site presentation and content and every aspect of IP in it. You may not, but thats OK, you just need to know what you own, what you have rights to use, and what you dont own or have rights to use. If you are using a consultant or company to design your web site, check out the provisions in the agreement concerning ownership and IP rights. Who owns the web site design and text? Check out what obligations the company has to make sure that it doesnot use any IP that belongs to a third party in the course of its work.

If you are using a database, E-Commerce system, or search engine or other technical Internet tools licensed to you by another company, check the terms in the license agreement to see who owns the system. Make sure that you do have a written agreement, and get it checked over by a lawyer before you sign it and before any design, custom work or installation of the site begins.

You will need written permission (also referred to as a license, a consent, or an agreement) to use any photos, videos, music, voices, art work, or software, etc. that belong to someone else. Just because you get material on the Internet does not mean that it is in the public domain. You may have to pay for permission to use these materials. In many countries you will need to communicate with a collecting society or association of artists in order to get permission.

You will need to make sure that, if your country's law (or the law that applies to your business) requires it, that you have permission to show trademarks owned by other companies that you refer to on your web site and that you recognize them.

Do not distribute or download any content or music on your web site that does not belong to you unless you have obtained written permission from the owner to distribute it on the Internet.

Be careful in linking to other web sites. Links are a great E-Commerce tool, and a useful service to your customers, but in many countries there is no clear law on when and how you can use links. The most careful practice is to seek and obtain permission from the other site before putting in the link.

Framing is a practice that is more controversial than linking. This means including large parts of another web site in yours in a way that makes it look as though it is part of your web site. Always get written permission before doing this.

Explain about IP Issues Related to Internet Domain Names

The choice of a domain name has become an important business decision. A domain name is registered by you to enable Internet users to locate your company's site on the web.

Company domain names may be registered in any number of "top level domains" called "TLDs". You can choose from the "generic top level domains" ("gTLDs"), such as .com, .net, .org and .info. Or you can choose from the specialized and restricted top level domains if you qualify (e.g. .aero for air travel and transport businesses, or .biz for commercial enterprises). You can also register your domain name under a "country code top level domain" ("ccTLD"), for example, .bg for Bulgaria, .cn for China, .ch for Switzerland.

The technical management of the domain name system is in the hands of the Internet Corporation for Assigned Names and Numbers ("ICANN"). However, in the gTLDs, the registrations themselves are handled by a number of Internet registrars accredited by ICANN, that can be found at ICANN's site at <http://www.icann.org>. You can also check whether a domain name has already been registered, either by searching via a registrar's site, or by using a 'Whois' search, like that offered by UWhois, at <http://www.uwhois.com>. For registrations in the ccTLDs, you will need to contact the registration authority designated for each ccTLD. To do this, you can consult a ccTLD database set up by WIPO, that links to the web sites of 243 ccTLDs, where you can find information about their registration agreement, Whois service and dispute resolution procedures.

When you choose your company's domain name, depending on where you register, you may pick a generic or common name, but if you pick a name that is distinctive, users may more easily be able to remember and search for it. Ideally, it could also be distinctive enough to be protected under trademark law, because domain names can be protected as trademarks in some countries. If you picked a very common domain name (e.g. "Good Software"), your company could have difficulty in building up any special reputation or good will in this name and more difficulty in preventing others from using your name in competition.

You should pick a domain name that is not the trademark of another company, particularly a well-known trademark. This is because most laws treat registration of another person's trademark as a domain name as trademark infringement, also known as 'cybersquatting', and your SME might have to transfer or cancel the domain name, and also pay damages. Also, all domain names registered in the gTLDs like .com, as well as many registered in the ccTLDs, are subject to a dispute resolution procedure (described below) that allows a trademark or service mark owner to stop the cybersquatting of their trademark. There are various databases that you can search on the web to determine if your choice of domain name is a registered trademark in a particular country. WIPO has established a Trademark Database Portal (at <https://www.wipo.int/amc/en/trademark/index.html>) to help you do this search.

If you find that someone else is using your trademark or service mark as a domain name, what can you do? Some unscrupulous people have made a practice of cybersquatting, usually to extract money from the rightful owner of the name or to mislead or confuse consumers. If you find that your trademark or service mark is being cybersquatted, there is a simple online

procedure you can go through where an independent expert will decide whether the domain name should be returned to you, and the registrars are required to follow this decision. This Uniform Administrative Dispute Resolution Policy ("UDRP") was first recommended by WIPO as a result of its Internet Domain Name Processes and then adopted by ICANN, and you can find information about it at WIPO's site at <https://www.wipo.int/amc/en/domains/index.html>.

In addition to trademarks, it is wise to avoid domain names that include certain other controversial words such as geographical terms (e.g. Champagne, Beaujolais), names of famous people, generic drug names, names of international organizations, and trade names (e.g. name of another person's business), that might interfere with the rights of others or international systems of protection.

Important contracts and IP:

In developing and protecting the IP of your E-Commerce company, you will have to be careful with contracts. Contracts and IP go hand in hand. No contract that is signed by your company is unimportant and all must be reviewed to make sure that you are maximizing and not damaging IP assets. This is because through contracts, IP rights may be sold or licensed or even given away. Bad contracts can result in litigation and unnecessary expense.

The risk areas are contracts with employees and contractors, development agreements, web design agreements, agreements to license your product or IP to another company ("licenses-out"), agreements to license a product or IP from another company ("licenses in"), distribution agreements, domain name and trademark license agreements, and patent licenses, cross licenses and pools. This is only a partial list.

Whenever you are using employees, contractors, consultants, or other companies to develop your IP (e.g. a contractor writing software), it is essential that there be a contract with that person or entity before work is started. Even the earliest start of work can give rise to important rights, and the contractor may become the author or owner of its work, or possibly a joint owner. Contracts must specify who owns IP that is created and how the IP will be treated in the future.

The greatest economic value of IP comes from its use in licensing. This can be in the form of product licensing (e.g. licensing out a product that contains IP, such as a software program, or course materials) or in the form of pure IP licenses (e.g. a license whereby another company is given the right to practice a patent).

As noted above in Checklist Item #3 & 6, it is important to have contracts that clearly state what rights you have or have given to others to use IP.

In most countries, contracts need not be long or even overly formal. But they must be clear and contain the right language concerning IP rights. As noted above, it is important to get expert legal advice in this area. Often it is useful to have a legal adviser provide you with a set of forms that can be used as starting points in various situations involving IP. This way you can operate efficiently, but it is always a good idea to check with your legal adviser before concluding a legally binding agreement involving IP, no matter how simple it seems.

It is a good idea for an E-Commerce business to archive copies of all contracts that affect IP. This is an important record keeping discipline so you can look up matters that may become important at a later date. One example is that contracts affecting IP will be very important if your E-Commerce business is involved in an acquisition, merger, sale of assets, or investment transaction. Pay attention to provisions in contracts that interfere with your ability to sell, license, assign or transfer your company's IP.

What is Data Security:

Data security refers to the process of protecting data from unauthorized access and data corruption throughout its lifecycle. Data security includes data encryption, tokenization, and key management practices that protect data across all applications and platforms.

Why Data Security?

Organizations around the globe are investing heavily in information technology (IT) cyber defense capabilities to protect their critical assets. Whether an enterprise needs to protect a brand, intellectual capital, and customer information or provide controls for critical infrastructure, the means for incident detection and response to protecting organizational interests have three common elements: people, processes, and technology.

Data Security Solutions

Micro Focus drives leadership in data security solutions with over 80 patents and 51 years of expertise. With advanced data encryption, tokenization, and key management to protect data across applications, transactions, storage, and big data platforms, Micro Focus simplifies the protection of sensitive data in even the most complex use cases.

- Cloud access security – Protection platform that allows you to move to the cloud securely while protecting data in cloud applications.
- Data encryption – Data-centric and tokenization security solutions that protect data across enterprise, cloud, mobile and big data environments.
- Hardware security module -- Hardware security module that guards financial data and meets industry security and compliance requirements.
- Key management -- Solution that protects data and enables industry regulation compliance.
- Enterprise Data Protection – Solution that provides an end-to-end data-centric approach to enterprise data protection.
- Payments Security – Solution provides complete point-to-point encryption and tokenization for retail payment transactions, enabling PCI scope reduction.
- Big Data, Hadoop and IofT data protection – Solution that protects sensitive data in the Data Lake – including Hadoop, Teradata, Micro Focus Vertica, and other Big Data platforms.
- Mobile App Security - Protecting sensitive data in native mobile apps while safeguarding the data end-to-end.
- Web Browser Security - Protects sensitive data captured at the browser, from the point the customer enters cardholder or personal data, and keeps it protected through the ecosystem to the trusted host destination.
- Email Security – Solution that provides end-to-end encryption for email and mobile messaging, keeping Personally Identifiable Information and Personal Health Information secure and private.

Confidentiality:

Confidentiality is roughly equivalent to privacy. Measures undertaken to ensure confidentiality are designed to prevent sensitive information from reaching the wrong people, while making sure that the right people can in fact get it: Access must be restricted to those authorized to view the data in question. It is common, as well, for data to be categorized according to the amount and type of damage that could be done should it fall into unintended

hands. More or less stringent measures can then be implemented according to those categories.

Sometimes safeguarding data confidentiality may involve special training for that privacy to such documents. Such training would typically include security risks that could threaten this information. Training can help familiarize authorized people with risk factors and how to guard against them. Further aspects of training can include strong passwords and password-related best practices and information about social engineering methods, to prevent them from bending data-handling rules with good intentions and potentially disastrous results.

A good example of methods used to ensure confidentiality is an account number or routing number when banking online. Data encryption is a common method of ensuring confidentiality. User IDs and passwords constitute a standard procedure; two-factor authentication is becoming the norm. Other options include biometric verification and security tokens, key fobs or soft tokens. In addition, users can take precautions to minimize the number of places where the information appears and the number of times it is actually transmitted to complete a required transaction. Extra measures might be taken in the case of extremely sensitive documents, precautions such as storing only on air gapped computers, disconnected storage devices or, for highly sensitive information, in hard copy form only.

Information Privacy:

Information privacy, also known as data privacy or data protection, is the relationship between the collection and dissemination of data, technology, the public expectation of privacy, legal and political issues surrounding them.

Privacy concerns exist wherever personally identifiable information or other sensitive information is collected, stored, used, and finally destroyed or deleted – in digital form or otherwise. Improper or non-existent disclosure control can be the root cause for privacy issues. Data privacy issues may arise in response to information from a wide range of sources,

such as:

- Healthcare records
- Criminal justice investigations and proceedings
- Financial institutions and transactions
- Biological traits, such as genetic material
- Residence and geographic records

- Privacy breach
- Location-based service and geo location
- Web surfing behavior or user preferences using persistent cookies
- Academic research

The challenge of data privacy is to use data while protecting an individual's privacy preferences and their personally identifiable information. The fields of computer security, data security, and information security design and use software, hardware, and human resources to address this issue. Since the laws and regulations related to Privacy and Data Protection are constantly changing, it is important to keep abreast of any changes in the law and to continually reassess compliance with data privacy and security regulations. Within academia, Institutional Review Boards function to assure that adequate measures are taken to ensure both the privacy and confidentiality of human subjects in research.

International aspects of computer and online crime:

There is no commonly agreed single definition of “cybercrime”. It refers to illegal internet-mediated activities that often take place in global electronic networks. Cybercrime is "international" or "transnational" – there are ‘no cyber-borders between countries’. International cybercrimes often challenge the effectiveness of domestic and international law and law enforcement. Because existing laws in many countries are not tailored to deal with cybercrime, criminals increasingly conduct crimes on the Internet in order to take advantages of the less severe punishments or difficulties of being traced. No matter, in developing or developed countries, governments and industries have gradually realized the colossal threats of cybercrime on economic and political security and public interests. However, complexity in types and forms of cybercrime increases the difficulty to fight back. In this sense, fighting cybercrime calls for international cooperation. Various organizations and governments have already made joint efforts in establishing global standards of legislation and law enforcement both on a regional and on an international scale. China–United States cooperation is one of the most striking progresses recently, because they are the top two source countries of cybercrime.

Information and communication technology (ICT) plays an important role in helping ensure interoperability and security based on global standards. General countermeasures have been adopted in cracking down cybercrime, such as legal measures in perfecting legislation and technical measures in tracking down crimes over the network, Internet content control, using public or private proxy and computer forensics, encryption and plausible deniability, etc.[2]

Due to the heterogeneity of law enforcement and technical countermeasures of different countries, this article will mainly focus on legislative and regulatory initiatives of international cooperation.

Internet Crime:

Internet crime is any crime or illegal online activity committed on the Internet, through the Internet or using the Internet. The widespread Internet crime phenomenon encompasses multiple global levels of legislation and oversight. In the demanding and continuously changing IT field, security experts are committed to combating Internet crime through preventative technologies, such as intrusion detection networks and packet sniffers.

Internet crime is a strong branch of cybercrime. Identity theft, Internet scams and cybers talking are the primary types of Internet crime. Because Internet crimes usually engage people from various geographic areas, finding and penalizing guilty participants is complicate

Internet crimes, such as the Nigerian 419 fraud ring, are a constant threat to Internet users. The U.S. Federal Bureau of Investigation (FBI) and Federal Trade Commission (FTC) have dedicated and appointed IT and law enforcement experts charged with ending the far-reaching and damaging effects of Internet crime.

Examples of Internet crime legislation include:

- U.S. Computer Fraud and Abuse Act, Section 1030: Amended in 2001 through the U.S. Patriot Act
- CAN SPAM Act of 2003
- Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011

As the U.S. works to combat Internet crime, other countries are experiencing increased cybercriminal activity. In 2001, Web sense (an organization focused on network abuse research) reported the alarming spread of Internet crime in Canada. This global shift is under review by the Canadian government.

Types of Internet crime include:

- Cyber bullying and harassment

- Financial extortion
- Internet bomb threats
- Classified global security data theft
- Password trafficking
- Enterprise trade secret theft
- Personally data hacking
- Copyright violations, such as software piracy
- Counterfeit trademarks
- Illegal weapon trafficking
- Online child pornography
- Credit card theft and fraud
- Email phishing
- Domain name hijacking
- Virus spreading

To prevent becoming an Internet crime, online vigilance and common sense are critical. Under no circumstances should a user share personal information (like full name, address, birth date and Social Security number) to unknown recipients. Moreover, while online, a user should remain suspicious about exaggerated or unverifiable claims.