PERIYAR UNIVERSITY

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SALEM - 636 011

CENTRE FOR DISTANCE AND ONLINE EDUCATION

(CDOE)

BACHELOR OF BUSINESS ADMINISTRATION

SEMESTER - IV

ELECTIVE COURSE: INTELLECTUAL PROPERTY RIGHTS-23BASE007

(Candidates admitted from 2024 onwards)

PERIYAR UNIVERSITY

CENTRE FOR DISTANCE AND ONLINE EDUCATION (CDOE)

B.B.A 2024 admission onwards

ELECTIVE – IV

Intellectual Property Rights

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UNIT-I

INTELLECTUAL PROPERTY RIGHTS

In this unit, learners will have a comprehensive understanding of Intellectual property rights and has increasingly assumed a vital role with the rapid pace of technological, scientific and medical innovation that we are witnessing today. In India several new legislations for the protection of intellectual property rights (IPRs) have been passed to meet the international obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The study material has been prepared to provide the students with a wide perspective and in- depth knowledge in intellectual property to enable them to get solid grounding in the legislative framework, practice and procedure of the intellectual property protected through patents, trademarks, copyrights, designs and geographical indications. The course contents of this study material have been so designed as to develop specialized skills in the corpus and complexities of the different aspects of the subject besides meeting the requirements of a future career in this area.

SECTION 1.1: INTELLECTUAL PROPERTY RIGHTS - AN INTRODUCTION

The domain of intellectual property is vast. Copyrights, Patents Trademarks and Designs are known to have received recognition for a long time. Newer forms of the protection are also emerging particularly stimulated by the exciting developments in scientific and technological activities.

Over the past two decades, intellectual property rights have grown to a stature from where it plays a major role in the development of global economy. In the 1990s, many countries unilaterally strengthened their laws and regulations in this area, and many others were poised to do likewise. At the multilateral level, the successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the World Trade Organization enhanced the protection and enforcement of IPRs to the level of solemn international commitment. The new global IPR system comes with both benefits and costs.

1.1.1 – Need for Intellectual Property Rights

The need for Intellectual Property Rights (IPR) arises from various factors and serves multiple purposes in today's globalized and innovation-driven world:

1. **Encouraging Innovation and Creativity**: IPR provide creators, inventors, and innovators with exclusive rights to their intellectual creations, thereby incentivizing them to invest time, effort, and resources into developing new inventions, artistic works, and technological advancements. Without the protection afforded by IPR, individuals and businesses may be less motivated to innovate due to the risk of their ideas being copied or stolen.
2. **Fostering Economic Growth and Development**: Intellectual property rights contribute significantly to economic growth and development by promoting innovation, entrepreneurship, and investment in research and development (R&D). Strong IPR frameworks attract foreign direct investment, spur job creation, and enhance competitiveness, particularly in knowledge-intensive industries such as technology, pharmaceuticals, and creative arts.

3. **Protecting Investments and Assets**: IPR protect the investments made by individuals, businesses, and governments in creating and developing intellectual assets, such as patents,

copyrights, trademarks, and trade secrets. By granting exclusive rights, IPR enable creators and innovators to commercialize their intellectual creations, recover investments, and generate revenue through licensing, sales, and partnerships.

4. **Promoting Technology Transfer and Collaboration**: Intellectual property rights facilitate technology transfer and collaboration between different entities, such as universities, research institutions, and businesses. Through licensing agreements and other arrangements, IPR frameworks enable the dissemination of knowledge, innovation, and technologies, leading to broader societal benefits and advancements in various fields.
5. **Ensuring Consumer Protection and Quality Standards**: IPR help maintain consumer confidence by protecting trademarks and brands, ensuring that products and services meet certain quality standards and specifications. Trademarks and geographical indications serve as indicators of origin and quality, allowing consumers to make informed choices and avoid counterfeit or inferior products.
6. **Preserving Cultural Heritage and Traditional Knowledge**: Intellectual property rights play a crucial role in preserving and promoting cultural heritage, traditional knowledge, and indigenous practices. By protecting folklore, traditional craftsmanship, and indigenous innovations, IPR frameworks contribute to the preservation of cultural diversity, empowerment of indigenous communities, and sustainable development.
7. **Encouraging International Trade and Investment**: Strong and enforceable IPR regimes are essential for facilitating international trade and investment by providing legal certainty, protecting intellectual property assets, and ensuring a level playing field for businesses operating across borders. IPR provisions are often included in trade agreements and treaties to promote innovation, technology transfer, and economic cooperation among countries.

Overall, the need for intellectual property rights is evident in their critical role in promoting innovation, economic growth, cultural development, consumer protection,

and international cooperation. A balanced and effective IPR framework is essential to address the evolving challenges and opportunities in the digital age while ensuring that the interests of creators, innovators, consumers, and society as a whole are safeguarded.

1.1.2 - Intellectual property rights in India – An Overview

In India, Intellectual Property Rights (IPR) are governed by a comprehensive legal framework that includes various statutes, regulations, and international agreements. Here's an overview of IPR in India:

1. **Patents**: The Indian Patents Act, 1970, governs the grant and enforcement of patents in India. It allows for the protection of inventions in all fields of technology, subject to certain exclusions such as inventions contrary to public order or morality. India is also a member of the Patent Cooperation Treaty (PCT) and has implemented the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) administered by the World Trade Organization (WTO).
2. **Copyrights**: Copyright protection in India is governed by the Copyright Act, 1957, which protects original literary, artistic, musical, and cinematographic works. The Act also covers related rights such as rights of performers, broadcasting organizations, and producers of sound recordings. India is a signatory to the Berne Convention for the Protection of Literary and Artistic Works and a member of the World Intellectual Property Organization (WIPO).
3. **Trademarks**: The Trade Marks Act, 1999, regulates the registration and protection of trademarks in India. It provides for the registration of trademarks, service marks, collective marks, and certification marks. The Act also recognizes well-known trademarks and prohibits the use of identical or deceptively similar marks. India is a party to the Madrid Protocol for the international registration of trademarks.
4. **Designs**: The Designs Act, 2000, governs the registration and protection of industrial designs in India. It provides for the registration of new and original

designs applied to articles of manufacture. India is also a member of the Hague Agreement Concerning the International Registration of Industrial Designs.

5. **Geographical Indications**: The Geographical Indications of Goods (Registration and Protection) Act, 1999, protects geographical indications in India. It provides for the registration and protection of goods originating from a specific geographical location, which possess qualities, reputation, or characteristics attributable to that location.
6. **Plant Varieties**: The Protection of Plant Varieties and Farmers' Rights Act, 2001, governs the protection of plant varieties and the rights of farmers in India. It provides for the registration and protection of new plant varieties and ensures the rights of breeders and farmers.
7. **Traditional Knowledge and Folklore**: India has taken steps to protect traditional knowledge and folklore through various initiatives, including the establishment of databases and the formulation of guidelines for the documentation and protection of traditional knowledge.

In addition to these statutory provisions, India has established specialized bodies such as the Intellectual Property Office (IPO), Intellectual Property Appellate Board (IPAB), and National Intellectual Property Rights Policy to oversee the administration and enforcement of intellectual property rights in the country. India's IPR regime is continually evolving to address emerging challenges and align with international best practices while balancing the interests of rights holders, consumers, and society as a whole.

1.1.3 Different classifications of IPR

Intellectual Property Rights (IPR) cover a wide range of creations of the human intellect, each classified into distinct categories based on their nature, characteristics, and legal protection. Here are the main classifications of IPR:

1. **Patents**: Patents protect inventions, granting inventors exclusive rights to use, make, and sell their inventions for a specified period, typically 20 years from the

date of filing. Inventions eligible for patent protection include processes, machines, manufactures, compositions of matter, and new and useful improvements thereof.

2. **Copyrights**: Copyrights protect original literary, artistic, musical, and other creative works fixed in a tangible form, such as books, paintings, music, and software. Copyright protection grants authors and creators exclusive rights to reproduce, distribute, perform, and display their works for a specified period, typically the author's lifetime plus 50 or 70 years.
3. **Trademarks**: Trademarks protect symbols, names, logos, slogans, and designs used to identify and distinguish goods and services in the marketplace. Trademark rights prevent others from using similar marks that could cause confusion among consumers. Trademarks can include word marks, logo marks, service marks, collective marks, and certification marks.
4. **Trade Secrets**: Trade secrets protect confidential information, such as formulas, processes, methods, techniques, or customer lists, that provide a competitive advantage to businesses. Unlike patents, trade secrets do not require registration and can potentially last indefinitely if properly maintained.
5. **Industrial Designs**: Industrial designs protect the visual appearance or aesthetics of products, including the shape, configuration, surface ornamentation, or a combination thereof. Industrial design protection prevents unauthorized copying or imitation of the design, enhancing the commercial value and marketability of products.
6. **Geographical Indications**: Geographical indications identify goods as originating from a specific geographical location and possessing qualities, reputation, or characteristics attributable to that location. Geographical indications protect traditional products, agricultural goods, and handicrafts associated with a particular region, ensuring their quality, authenticity, and market differentiation.
7. **Plant Varieties**: Plant variety protection (PVP) or plant breeders' rights (PBR) protect new and distinct plant varieties that are uniform, stable, and have specific characteristics. PVP grants breeders exclusive rights to reproduce, sell, and

distribute the protected plant variety for a specified period, typically 20 to 25 years.

8. **Database Rights**: Database rights protect databases that demonstrate a substantial investment in the selection, arrangement, and presentation of data. Database rights provide exclusive rights to prevent unauthorized extraction or reuse of the contents of a database.

These classifications represent the main categories of intellectual property rights, each serving to protect different types of creations, innovations, and assets in various fields and industries.

1.1.4 Important principles of IPR Management

Several important principles underpin the field of Intellectual Property Rights (IPR), guiding the development, application, and enforcement of intellectual property laws and regulations. Here are some key principles:

1. **Exclusivity**: Intellectual property rights grant creators, inventors, and owners exclusive rights to their intellectual creations, inventions, or innovations. This exclusivity allows right holders to control the use, reproduction, distribution, and commercial exploitation of their intellectual property for a specified period.
2. **Territoriality**: Intellectual property rights are generally territorial, meaning that they are granted and enforced within the jurisdiction of a particular country or region. While some international agreements provide mechanisms for seeking protection across multiple jurisdictions, intellectual property rights are primarily governed by national laws and regulations.

3. **Balance of Rights**: Intellectual property laws seek to strike a balance between the interests of creators, innovators, consumers, and society as a whole. This balance involves protecting the rights of creators and innovators to benefit from their intellectual creations while ensuring that intellectual property rights do not unduly restrict competition, innovation, access to knowledge, or the public interest.
4. **Public Domain**: Intellectual property rights are limited in duration and scope to encourage the eventual entry of intellectual creations into the public domain. Once intellectual property rights expire or are waived by the right holder, the intellectual creations become freely available for use, reuse, and adaptation by the public.
5. **Fair Use/Dealing**: Many intellectual property laws include provisions for fair use or fair dealing, allowing limited use of copyrighted works for purposes such as criticism, commentary, news reporting, research, teaching, or parody without the need for permission from or payment to the copyright holder. Fair use/dealing provisions balance the rights of copyright holders with the public's interest in accessing and using creative works.
6. **Non-Discrimination**: Intellectual property laws should not discriminate against particular fields of technology, industries, or types of intellectual creations. Instead, they should provide equal protection and enforcement mechanisms for all types of intellectual property, regardless of their origin, nature, or economic value.
7. **Innovation and Public Interest**: Intellectual property laws should promote innovation, creativity, and the dissemination of knowledge for the benefit of society. They should encourage the development and commercialization of new inventions, artistic works, and technological advancements while safeguarding public health, safety, and welfare.
8. **Enforcement and Remedies**: Intellectual property laws should provide effective enforcement mechanisms and remedies against infringement, counterfeiting, piracy, and other unauthorized uses of intellectual property. These mechanisms

may include civil remedies, criminal penalties, injunctions, seizure of infringing goods, and damages or compensation for right holders.

These principles serve as guiding principles for the development, interpretation, and application of intellectual property laws and policies, ensuring that intellectual property rights contribute to innovation, economic growth, cultural development, and the public interest.

1.1.5 Historical development of IPR

Historically the first system of protection of intellectual property came in the form of (Venetian Ordinance) in 1485. This was followed by Statute of Monopolies in England in 1623, which extended patent rights for Technology Inventions. In the United States, patent laws were introduced in1760.Most European countries developed their Patent Laws between 1880 to 1889.In India Patent Act was introduced in the year 1856 which remained in force for over 50 years, which was subsequently modified and amended and was called "The Indian Patents and Designs Act, 1911". After Independence a comprehensive bill on patent rights was enacted in the year 1970 and was called "The Patents Act, 1970".

Specific statutes protected only certain type of Intellectual output; till recently only four forms were protected. The protection was in the form of grant of copyrights, patents, designs and trademarks. In India, copyrights were regulated under the Copyright Act, 1957; patents under Patents Act, 1970; trade marks under Trade and Merchandise Marks Act 1958; and designs under Designs Act, 1911.

With the establishment of WTO and India being signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), several new legislations were passed for the protection of intellectual property rights to meet the international obligations. These included: Trade Marks, called the Trade Mark Act, 1999; Designs Act, 1911 was replaced by the Designs Act, 2000; the Copyright Act, 1957 amended a number of times, the latest is called Copyright (Amendment) Act,

2012; and the latest amendments made to the Patents Act, 1970 in 2005. Besides, new legislations on geographical indications and plant varieties were also enacted. These are called Geographical Indications of Goods (Registration and Protection) Act, 1999, and Protection of Plant Varieties and Farmers' Rights Act, 2001 respectively.

1.1.6 Uniqueness of IPR

Intellectual Property Rights (IPR) refers to legal rights that protect creations of the human intellect. These creations can be inventions, literary and artistic works, symbols, names, images, and designs used in commerce. IPR provide creators, inventors, and owners with exclusive rights to their intellectual creations, allowing them to benefit financially and control the use of their creations for a specified period.

The concept of IPR is rooted in the recognition of the value of intellectual creations and the need to incentivize innovation and creativity. By granting exclusive rights, IPR encourage individuals and organizations to invest time, effort, and resources into developing new inventions, artistic works, and other forms of intellectual property.

In today's knowledge-based economy, intellectual property rights play a crucial role in driving innovation, economic growth, and cultural development. However, they also raise complex issues related to access to knowledge, public health, and cultural diversity, requiring a balanced approach to ensure the interests of creators, innovators, consumers, and society as a whole are addressed.

Check your Progress:

1. **What is the main purpose of intellectual property law?**

A. To restrict the use of creative works

B. To provide financial assistance to inventors

C. To grant creators exclusive rights to their creations

D. To regulate trade between countries

2. Which of the following is NOT a type of intellectual property?

A. Trademark
B. Patent
C. Real estate
D. Copyright

3. How long does a copyright generally last?

A. 10 years from the date of creation

B. 50 years from the date of creation

C. 70 years after the author's death

D. Indefinitely, as long as the work is being used

4. Which international agreement deals with intellectual property rights?

A. NAFTA

B. TRIPS

C. TPP

D. NATO

5. What does a trademark protect?

A. An invention

B. A work of art

C. A brand name or logo

D. A trade secret

ANSWERS FOR CHECK YOUR PROGRESS

1. C. To grant creators exclusive rights to their creations
2. Real Estate
3. C. 70 years after the author's death

4. B. TRIPS
5. C. A brand name or logo

SECTION 1.2: COMMERCIALIZATION OF INTELLECTUAL PROPERTY RIGHTS BY LICENCING

1.2.1 Commercialization of IPR through Licensing

Commercialization of Intellectual Property Rights (IPR) through licensing involves granting permission to another party (licensee) to use, exploit, or commercialize the intellectual property owned by the licensor in exchange for compensation, typically in the form of royalties, licensing fees, or other financial arrangements. Licensing is a common strategy used by creators, inventors, businesses, and organizations to monetize their intellectual property and generate revenue while leveraging the expertise, resources, and market presence of licensees. Here's how the process of commercializing IPR through licensing typically works:

1. **Identifying Intellectual Property Assets**: The first step in licensing intellectual property is identifying the valuable assets that are eligible for licensing. This may include patents, copyrights, trademarks, trade secrets, industrial designs, or other forms of intellectual property owned by the licensor.
2. **Assessing Market Potential**: Before entering into licensing agreements, licensors need to assess the market potential and demand for their intellectual property in various industries, sectors, or geographical regions. This involves

conducting market research, identifying potential licensees, and evaluating the competitive landscape.

3. **Negotiating Licensing Terms**: Licensing agreements involve negotiating the terms and conditions of the license, including the scope of rights granted, territory, duration, exclusivity, sublicensing rights, royalties or licensing fees, performance obligations, quality standards, indemnification, and dispute resolution mechanisms.
4. **Drafting Licensing Agreements**: Once the parties reach a consensus on the licensing terms, they formalize the agreement in writing by drafting a licensing contract or agreement. The licensing agreement outlines the rights and obligations of both the licensor and licensee, as well as any restrictions, warranties, or limitations on liability.
5. **Executing the Licensing Agreement**: After the licensing agreement is drafted and finalized, both parties sign the agreement to formalize their commitment and legal obligations. The agreement may also require registration or filing with relevant intellectual property offices or authorities to ensure legal validity and enforceability.
6. **Managing the Licensing Relationship**: Throughout the duration of the licensing agreement, both the licensor and licensee need to manage their relationship effectively to ensure compliance with the terms of the agreement, monitor the use of the licensed intellectual property, address any issues or disputes that may arise, and maximize the commercial value of the licensed assets.
7. **Monitoring and Enforcement**: Licensors need to monitor the use of their licensed intellectual property to ensure compliance with the terms of the agreement and take appropriate enforcement actions against unauthorized use, infringement, or breach of contract. This may involve conducting audits, sending cease-and-desist notices, or pursuing legal remedies through litigation or arbitration.
8. **Renewal or Termination**: Depending on the terms of the licensing agreement, the parties may have the option to renew the agreement upon expiration or terminate the agreement in case of non-compliance, breach, or other reasons.

Renewal or termination provisions should be clearly defined in the agreement to mitigate risks and uncertainties.

Overall, commercializing intellectual property through licensing offers various benefits, including generating revenue, expanding market reach, mitigating risks, and leveraging the expertise and resources of licensees. However, it also involves certain risks and challenges, such as negotiating favourable terms, protecting against infringement, and managing the licensing relationship effectively. Therefore, licensors need to carefully assess their intellectual property assets, conduct due diligence, and seek professional advice to maximize the commercial value of their intellectual property through licensing.

1.2.2 Intellectual Property Rights in the Cyber world

Intellectual Property Rights (IPR) in the cyber world present unique challenges and opportunities due to the digital nature of information, ease of reproduction, and global connectivity facilitated by the internet. Here are some key aspects of IPR in the cyber world:

1. **Digital Piracy and Infringement**: The digital environment has made it easier to reproduce, distribute, and share copyrighted materials, leading to widespread piracy and infringement of intellectual property rights. Unauthorized downloading, streaming, sharing, and distribution of copyrighted content such as music, movies, software, and books pose significant challenges for copyright holders and require robust enforcement mechanisms.
2. **Online Copyright Protection**: Copyright protection in the cyber world involves various measures to safeguard digital content from unauthorized use and distribution. These measures include digital rights management (DRM) technologies, encryption, watermarking, and licensing agreements. Copyright

holders may also employ automated tools, algorithms, and digital fingerprinting to monitor and detect instances of copyright infringement online.

3. **Cybersecurity and Trade Secrets**: Protecting trade secrets and confidential information in the cyber world requires robust cyber security measures to prevent unauthorized access, theft, or disclosure of sensitive data. Companies need to implement encryption, access controls, firewalls, and other security measures to safeguard their trade secrets from cyber threats such as hacking, data breaches, insider threats, and industrial espionage.
4. **Domain Names and Trademarks**: Domain names serve as online identifiers for businesses, brands, and trademarks, making them valuable assets in the cyber world. Domain name disputes, cyber squatting, and trademark infringement are common challenges faced by businesses seeking to protect their brands and trademarks online. Legal mechanisms such as the Uniform Domain Name Dispute Resolution Policy (UDRP) provide procedures for resolving domain name disputes through arbitration or litigation.
5. **E-Commerce and Counterfeiting**: E-commerce platforms have revolutionized the way goods and services are bought and sold online, but they have also created opportunities for counterfeiters and counterfeit goods to proliferate. Online marketplaces need to implement measures to combat counterfeiting, such as brand protection programs, seller verification, product authentication, and takedown procedures for infringing listings.
6. **Social Media and Brand Management**: Social media platforms play a significant role in brand management, marketing, and customer engagement in the cyber world. However, they also pose risks such as trademark misuse, impersonation, defamation, and unauthorized use of copyrighted content. Companies need to monitor social media channels, enforce their intellectual property rights, and engage with users to maintain brand integrity and reputation online.
7. **Open Source Software and Licensing**: The open-source software movement has led to the widespread adoption and use of open-source licenses such as the GNU General Public License (GPL), Apache License, and MIT License. Open-

source licenses allow developers to share, modify, and distribute software freely, but they also impose certain obligations and restrictions on users. Companies need to comply with open-source license terms and incorporate open-source compliance practices into their software development and distribution processes.

Intellectual Property Rights in the cyber world require a comprehensive and multi-faceted approach to address the complex challenges and opportunities presented by digital technologies, online platforms, and global connectivity. Effective IPR strategies in the cyber world involve leveraging legal, technological, and organizational measures to protect intellectual property assets, mitigate risks, and maximize opportunities for innovation, creativity, and economic growth in the digital age.

1.2.3 Salient features of IPR

Intellectual Property Rights (IPR) encompass various laws and regulations designed to protect creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images. The salient features of IPR include:

Types of Intellectual Property Rights

1. **Patents**
    - **Purpose**: Protects new inventions, granting exclusive rights to the inventor.
    - **Duration**: Generally 20 years from the filing date.
    - **Criteria**: Must be novel, non-obvious, and have industrial applicability.
2. **Trademarks**
    - **Purpose**: Protects brand names, logos, and symbols that distinguish goods and services.
    - **Duration**: Can be renewed indefinitely in periods of 10 years.
    - **Criteria**: Must be distinctive and not deceptive or misleading.
3. **Copyright**

- **Purpose**: Protects literary, musical, and artistic works, providing creators with exclusive rights to use and distribute their work.
- **Duration**: Life of the author plus 70 years (varies by jurisdiction).
- **Criteria**: Must be an original work fixed in a tangible medium of expression.

4. **Trade Secrets**
   - **Purpose**: Protects confidential business information from being disclosed or used without permission.
   - **Duration**: Indefinite, as long as the secret is maintained.
   - **Criteria**: Information must be secret, have commercial value, and reasonable steps must be taken to keep it secret.
5. **Industrial Designs**
   - **Purpose**: Protects the aesthetic aspect of a product.
   - **Duration**: Up to 15 years (varies by jurisdiction).
   - **Criteria**: Must be new or original and not dictated by technical function.
6. **Geographical Indications**
   - **Purpose**: Protects products with a specific geographical origin and qualities or reputation due to that origin.
   - **Duration**: Indefinite, as long as the indication is maintained.
   - **Criteria**: Must be associated with a specific location.

General Features of IPR

1. **Exclusivity**
   - Grants the right holder exclusive control over the use of their IP, allowing them to prevent unauthorized use by others.
2. **Territoriality**
   - IPR protection is generally confined to the jurisdiction in which it is granted, though international treaties can provide broader protection.
3. **Transferability**
   - IPR can be transferred or licensed to others, allowing right holders to monetize their IP.

4. **Enforcement**
    - Legal mechanisms exist for right holders to enforce their rights, including litigation and administrative procedures.
5. **Balance of Interests**
    - IPR aims to balance the interests of creators and the public by encouraging innovation while allowing access to knowledge and culture.
6. **Economic Incentives**
    - Provides economic incentives for creators and inventors by granting them a period of exclusive rights to benefit financially from their work.

International Frameworks

1. **World Intellectual Property Organization (WIPO)**
    - A specialized UN agency that administers various international treaties related to IPR.
2. **Agreements and Conventions**
    - **TRIPS Agreement**: Trade-Related Aspects of Intellectual Property Rights, administered by the World Trade Organization (WTO), sets minimum standards for IPR protection.
    - **Paris Convention**: For the protection of industrial property.
    - **Berne Convention**: For the protection of literary and artistic works.

Understanding these features helps in recognizing the importance of protecting intellectual creations and the mechanisms available to do so.

1.2.4 International Framework of IPR

The protection of IPR is governed by international agreements and organizations to ensure standardization and enforcement across borders. Key agreements include:

- **TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights)**: Administered by the World Trade Organization (WTO), it sets minimum standards for IP regulation.
- **WIPO (World Intellectual Property Organization)**: A specialized agency of the United Nations that promotes the protection of IP worldwide through cooperation among states and international organizations.

Conclusion

Understanding IPR is crucial for creators, businesses, and consumers alike. It not only protects the rights of innovators and creators but also fosters a competitive and dynamic marketplace, driving progress and economic development.

Check Your Progress

1. **Which organization oversees the implementation of the TRIPS Agreement?**

   A. World Health Organization (WHO)

   B. United Nations (UN)

   C. World Intellectual Property Organization (WIPO)

   D. World Trade Organization (WTO)

2. **What is the term of protection for a patent under the TRIPS Agreement?**

   A. 10 years from the date of application

   B. 20 years from the date of application

   C. 50 years from the date of application

   D. 70 years from the date of application

3. **What is the main difference between a patent and a trade secret?**

A. Patents are publicly disclosed, while trade secrets are kept confidential

B. Patents last longer than trade secrets

C. Trade secrets require registration, while patents do not

D. Trade secrets apply only to technological inventions, while patents apply to all inventions

4. **Which of the following is an example of a trade secret?**

A. A published novel

B. A company's confidential product formula

C. A patented machine

D. A registered trademark

5. **What is a patent?**

A. A legal document protecting artistic works

B. A trademark for brand names

C. A legal document granting exclusive rights to an inventor

D. A copyright for literary works

ANSWERS FOR CHECK YOUR PROGRESS

D. World Trade Organization (WTO)

B. 20 years from the date of application

A. Patents are publicly disclosed, while trade secrets are kept confidential

B. A company's confidential product formula

C. A legal document granting exclusive rights to an inventor

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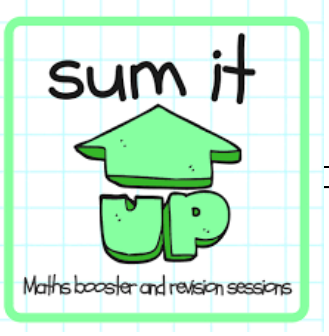


Unit Summary:

Overview of IPR

Intellectual Property Rights (IPR) are legal protections granted to the creators of original works, including inventions, literary and artistic works, symbols, names, and images. These rights are designed to encourage innovation and creativity by providing creators with exclusive rights to use, produce, and distribute their creations for a specified period.

Glossary of Intellectual Property

1. **Patents**: Protect inventions and grant the patent holder exclusive rights to use, make, and sell the invention for a limited time, typically 20 years from the filing date.
2. **Trademarks**: Protect brand names, logos, and symbols used to identify goods or services, distinguishing them from those of others. Trademark protection can last indefinitely, provided it is maintained and renewed.
3. **Copyrights**: Protect original works of authorship, such as literary, musical, and artistic works, giving the creator exclusive rights to reproduce, distribute, perform, and display the work. Copyright generally lasts for the life of the author plus 70 years.
4. **Trade Secrets**: Protect confidential business information that provides a competitive edge, such as formulas, practices, processes, designs, and instruments. Protection lasts as long as the information remains secret.

Importance of IPR

- **Encouragement of Innovation**: By granting exclusive rights, IPR incentivizes inventors and creators to develop new products, technologies, and creative works.
- **Economic Growth**: Intellectual property can be a significant economic asset, contributing to business growth, competitiveness, and economic development.
- **Legal Protection**: IPR provides legal recourse against unauthorized use, infringement, or imitation, safeguarding the interests of creators and businesses.
- **Consumer Protection**: Trademarks ensure that consumers can identify and purchase products that meet their expectations of quality and origin.

Self-Assessment Questions

1. What are Intellectual Property rights?
2. Why does Intellectual property need to be protected?
3. Describe the role of IPR in India.
4. Explain the legislations covering IPR in India.
5. Discuss the role of commercial banks in the economy.
6. India provides protection to IPR in accordance with its obligations under the TRIPS agreement of the WTO. Discuss.
7. Brief about the role of WIPO(World Intellectual property organization) and TRIPS in promoting IPR.
8. Enumerate the different classifications of IPR.

Case Study: Apple Inc. vs. Samsung Electronics Co.

Background

Apple Inc. and Samsung Electronics Co. are two of the largest and most influential companies in the global technology market. They have been embroiled in a series of legal battles over intellectual property (IP) rights since 2011. The primary contention revolves around the design and functionality of their smart phones and tablets.

Key Issues

The case involves multiple aspects of intellectual property, including:

- **Patents:** Apple claimed that Samsung had infringed on several of its patents, including design patents for the iPhone's shape and user interface features like the "bounce-back" effect when scrolling beyond the edge of a list.
- **Trade Dress:** Apple also alleged that Samsung copied the overall look and feel of the iPhone, which is protected under trade dress law.

Legal Proceedings

1. **Initial Lawsuits (2011):** Apple filed a lawsuit against Samsung in the United States, accusing the company of copying the design of the iPhone and iPad. Samsung countersued, alleging that Apple had infringed on its patents related to wireless communications.
2. **U.S. District Court (2012):** A jury found Samsung guilty of infringing on Apple's design and utility patents and awarded Apple over $1 billion in damages. This was a landmark decision in the technology industry.

3. **Appeals and Adjustments (2013-2015):** Samsung appealed the decision multiple times, resulting in various adjustments to the damages awarded. The U.S. Court of Appeals reduced the amount, and the case was remanded for a new trial on certain patent claims.
4. **Supreme Court Involvement (2016):** The case reached the U.S. Supreme Court, which ruled on the issue of how damages should be calculated for design patent infringement. The Court decided that damages could be based on the component of a product that infringed the patent, not necessarily the entire product.
5. **Settlement (2018):** After seven years of litigation, Apple and Samsung finally reached a settlement. The terms were not disclosed, but it marked the end of one of the most significant legal battles in the tech industry.

Impact and Analysis

1. **Financial Impact:** The litigation resulted in substantial legal fees and financial settlements, highlighting the high stakes of IP rights in the tech industry.
2. **Innovation and Design:** The case underscored the importance of design patents and the protection of innovation. It reinforced the value of unique product design in differentiating brands.
3. **Legal Precedents:** The rulings set important precedents for how damages are calculated in design patent cases. The Supreme Court's decision clarified that damages should be proportional to the infringing component, not the entire product.
4. **Market Dynamics:** The lawsuits brought attention to the competitive dynamics between leading tech companies and the role of IP in maintaining market dominance.

Conclusion

The Apple vs. Samsung case is a pivotal example of the complexities surrounding intellectual property rights in the modern technology landscape. It illustrates the challenges companies face in protecting their innovations while navigating the

competitive pressures of a rapidly evolving market. The case also highlights the significant legal and financial implications of IP disputes and the critical role of judicial systems in resolving such conflicts.

Question:

1. **Analyze and summarize the given case study.**

SUGGESTED READINGS

- https://www.tradecommissioner.gc.ca/india-inde/ip_rights-propriete_intellectuelle.aspx?lang=eng
- https://blog.ipleaders.in/registration-of-trademarks/
- https://blog.ipleaders.in/everything-you-need-to-know-about-trademark-and-its-types/
- https://gemini.google.com/app/59729cbc966d60d6?utm_source=google&utm_medium=cpc&utm_campaign=2024enIN_gemfeb&gad_source=1&gclid=CjwKCAjwmYCzBhA6EiwAxFwfgGQMLMMtR3D4mcAV1LUO1sJe_N5H2ryl3A3DwVZOHKQ5txiW0HlX8hoCZ48QAvD_BwE
- https://www.digip.com/blog/post/5-key-ways-to-protect-your-registered-trademark

I**ntellectual PropertyRights** byAshaVijayDurafe and DhanashreeK.Toradmalle,Wiley

IntellectualPropertyRights TextandCases:DR.R.Radhakrishnan,

References:

- LandmarkJudgementsonIntellectualPropertyrightsbyKushKalra.Central
- LawPublishing
- IntellectualPropertyRightsinIndiabyV.k.Ahuja,LexisNexis
- IntroductionTo Intellectual PropertyRightsSoftbound BySingh,Phundan,
- DayaPublishingHouse

UNIT-II

INTELLECTUAL PROPERTY RIGHTS-PATENTS

Intellectual property has increasingly assumed a vital role with the rapid pace of technological, scientific and medical innovation that we are witnessing today. Moreover, changes in the global economic environment have influenced the development of business models where intellectual property is a central element establishing value and potential growth. In India several new legislations for the protection of intellectual property rights (IPRs) have been passed to meet the international obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

In this unit, the students will have a comprehensive understanding of patents and its commercial utility which assumed a vital role with the rapid pace of technological, scientific and medical innovation that we are witnessing today. The domain of intellectual property is vast. Only those IPR legislations have been included which are of direct relevance to the profession. Every effort has been made to provide a self-contained material and an integrated approach has been adopted throughout

SECTION 2.1.1: PATENT - AN INTRODUCTION

A patent is a form of intellectual property that grants an inventor exclusive rights to their invention, preventing others from making, using, selling, or distributing the invention without permission for a specified period, usually 20 years from the filing date of the application. Patents are intended to encourage

innovation byproviding inventors with a temporary monopoly on their inventions in exchange for publicly disclosing the details of the invention.

Patent inventions play a vital role in advancing technology and innovation by providing inventors with exclusive rights to their creations. These rights incentivize the development of new and useful products, processes, and technologies, contributing significantly to economic growth and societal progress.

At the multilateral level, the successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the World Trade Organization enhanced the protection and enforcement of IPRs to the level of solemn international commitment. The new global IPR system comes with both benefits and costs in pertained to patents.

2.1.1 – key features of patents

1. **Exclusive Rights**: Patents grant inventors the exclusive right to exploit their inventions, allowing them to control who can use, make, or sell the patented invention. This helps inventors recoup their investment in research and development.
2. **Public Disclosure**: In exchange for the exclusive rights, inventors must publicly disclose detailed information about their invention. This disclosure is meant to advance technological knowledge and enable others to build upon the invention once the patent expires.
3. **Limited Duration**: The typical term for a patent is 20 years from the filing date of the patent application. After this period, the patented invention enters the public domain, allowing anyone to use it without restriction.

2.1.2- Basic concepts of Patent

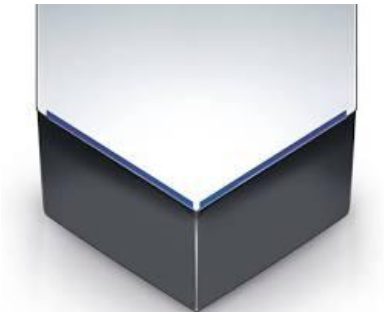
1. Exclusive Rights

- **Description**: A patent grants the inventor exclusive rights to make, use, sell, and import the patented invention for a limited period, usually 20 years from the filing date of the application.
- **Purpose**: These rights prevent others from using the invention without the inventor's permission, providing a competitive edge.

2. Territorial Nature

- **Description**: Patent protection is territorial, meaning it only applies in the country or region where the patent is granted.
- **Purpose**: Inventors need to file patents in each country where they seek protection.

3. Public Disclosure



- **Description**: In exchange for exclusive rights, the inventor must publicly disclose the details of the invention. This is typically done through the publication of the patent application.
- **Purpose**: This disclosure promotes further innovation by allowing others to build on the patented invention once the patent expires.

4. Novelty

- **Description**: To be patentable, an invention must be new, meaning it has not been publicly disclosed before the filing date.
- **Purpose**: Ensures that the patent system rewards truly novel advancements.

5. Non-Obviousness

- **Description**: The invention must be non-obvious to someone with ordinary skill in the field to which the invention pertains.
- **Purpose**: Prevents granting patents for trivial modifications of existing products or processes.

6. Utility

- **Description**: The invention must be useful; it must have a specific, substantial, and credible utility.
- **Purpose**: Ensures that patents are granted for inventions that have practical applications.

7. Patentable Subject Matter

- **Description**: Not all inventions are patentable. Patent laws exclude certain categories such as abstract ideas, natural phenomena, and laws of nature.
- **Purpose**: Defines the scope of what can be patented to ensure that fundamental knowledge and natural discoveries remain accessible.

8. Limited Duration

- **Description**: Patents are granted for a limited period, typically 20 years from the filing date of the application.
- **Purpose**: Balances the inventor's rights with the public interest, ensuring that inventions eventually enter the public domain.

9. Right to Exclude

- **Description**: The patent does not grant the inventor the right to use the invention but rather the right to exclude others from using it.
- **Purpose**: This right can be used to prevent competitors from using the invention or to negotiate licenses.

10. Maintenance Fees

- **Description**: In many jurisdictions, patent holders must pay periodic maintenance fees to keep the patent in force.
- **Purpose**: These fees ensure that only inventions with ongoing commercial interest are maintained, freeing up others for public use.

11. Patent Claims

- **Description**: Claims define the scope of the patent protection and determine what constitutes infringement.
- **Purpose**: Precisely outline the boundaries of the invention to inform the public and the courts.

12. Inventor's Duty to Disclose

- ****Description****: Inventors must disclose any known prior art or related information relevant to the patentability of their invention during the application process.
- ****Purpose****: Ensures the integrity of the patent examination process and prevents fraud.

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2.1.3 – Types of patents

1. **Utility Patents**: These are the most common type and cover new and useful inventions or discoveries, such as processes, machines, articles of manufacture, or compositions of matter.
2. **Design Patents**: These protect new, original, and ornamental designs for articles of manufacture. Design patents last for 15 years from the date of grant in the United States.
3. **Plant Patents**: Granted for new and distinct, invented, or discovered asexually reproduced plant varieties. Plant patents last for 20 years from the filing date of the application.

2.1.4 – Patent requirements

To be eligible for a patent, an invention must meet the following criteria:

1. **Novelty**: The invention must be new and not known to the public before the date of the patent application.
2. **Non-Obviousness**: The invention must not be obvious to a person with ordinary skill in the field to which the invention pertains.
3. **Utility**: The invention must be useful and have a practical application.
4. **Patentable Subject Matter**: The invention must fall within the categories of subject matter that are eligible for patent protection (e.g., processes, machines, manufactures, or compositions of matter).

5. **Patent Application Process**

2.1.5 – Patent process

1. **Preparation and Filing**: The inventor prepares a detailed patent application, including claims that define the scope of the invention. The application is filed with the relevant patent office (e.g., the United States Patent and Trademark Office - USPTO).
2. **Examination**: The patent office examines the application to ensure it meets all legal requirements. This process can involve multiple rounds of communication between the inventor and the patent examiner.
3. **Grant**: If the application satisfies all requirements, the patent is granted, and the inventor receives the exclusive rights to the invention for the duration of the patent term.
4. **Maintenance**: To keep the patent in force, the inventor must pay periodic maintenance fees.

Importance of Patents

- **Encourages Innovation**: Patents provide financial incentives for inventors by allowing them to profit from their inventions.
- **Promotes Knowledge Sharing**: The public disclosure requirement promotes the dissemination of technical knowledge and encourages further innovation.
- **Economic Growth**: Patents can be valuable assets, contributing to business growth, attracting investment, and fostering competition.
- **Legal Protection**: Patents provide a legal basis for inventors to protect their inventions from unauthorized use, ensuring that they can control the commercialization of their innovations.

In summary, patents play a crucial role in promoting technological advancement by providing inventors with the exclusive rights to their innovations while contributing to the overall body of public knowledge.

2.1.6 – patent Inventions

Patent inventions refer to the creations or discoveries that are eligible for patent protection. These inventions can range from new machines and processes to chemical compositions and designs. Here's an overview of what constitutes a patentable invention and some notable examples:

Categories of Patentable Inventions

1. **Processes**: Methods or procedures for performing a specific task or achieving a particular result. This includes industrial or technical processes.
2. **Machines**: Devices or apparatuses that perform a function or task. This includes everything from simple tools to complex machinery.
3. **Manufactures**: Articles that are made or produced, including goods and products.
4. **Compositions of Matter**: Chemical compositions, mixtures, and compounds. This includes pharmaceuticals, chemicals, and materials.
5. **Designs**: Ornamental designs for manufactured items. While not technically the same as utility patents, design patents protect the visual appearance of products.

Check your Progress:

Basic Concepts

1. **What is a patent?**
   - A) A type of trademark
   - B) A government authority or license conferring a right or title for a set period
   - C) A form of copyright
   - D) A trade secret

   Answer: B

2. **How long does a utility patent typically last from the date of filing in the United States?**
   - A) 10 years
   - B) 14 years
   - C) 20 years
   - D) 25 years

   Answer: C

Types of Patents

3. **Which of the following is not a type of patent?**
   - A) Utility Patent
   - B) Design Patent

- C) Plant Patent
- D) Process Patent

Answer: D

4. **A design patent protects the:**
   - A) Invention of a new and useful process, machine, or composition of matter
   - B) Ornamental design of a functional item
   - C) New and distinct, invented or discovered asexually reproduced plant varieties
   - D) Method of doing business

   Answer: B

Patent Application Process

5. **What is the purpose of a provisional patent application?**
   - A) To provide a preliminary examination of the patentability of an invention
   - B) To establish an early filing date without submitting a formal patent claim
   - C) To protect an invention internationally
   - D) To grant a patent immediately upon filing

   Answer: B

6. **Which office is responsible for granting patents in the United States?**
   - A) World Intellectual Property Organization (WIPO)
   - B) United States Patent and Trademark Office (USPTO)
   - C) European Patent Office (EPO)
   - D) Intellectual Property Office (IPO)

   Answer: B

Legal Requirements

7. **Which of the following is not a requirement for an invention to be patentable?**
   - A) Novelty
   - B) Non-obviousness
   - C) Utility
   - D) Confidentiality

   Answer: D

8. **What does the term "prior art" refer to in patent law?**
   - A) The artistic design of a product
   - B) The state of knowledge existing before the filing date of a patent application
   - C) The legal document outlining the rights of a patent holder
   - D) The process of enforcing patent rights

   Answer: B

Rights and Enforcement

9. **A patent grants the inventor the right to:**
   - A) Use and sell the invention exclusively
   - B) Exclude others from making, using, selling, or importing the invention
   - C) Keep the invention a secret indefinitely
   - D) Publish the invention in scientific journals

   Answer: B

10. **If someone uses your patented invention without permission, this is known as:**

- A) Trademark infringement
- B) Patent infringement
- C) Copyright infringement
- D) Trade secret violation

Answer: B

SECTION 2:2 Criteria for patentability

For an invention to be patentable, it must meet several criteria:

1. **Novelty**: The invention must be new and not previously known or used by others in the same field.
2. **Non-Obviousness**: The invention must not be an obvious improvement or variation of existing products or processes to someone skilled in the relevant field.
3. **Utility**: The invention must be useful and serve a practical purpose.
4. **Patentable Subject Matter**: The invention must fall into one of the recognized categories of patentable subject matter.

Examples of Patent Inventions

1. **Thomas Edison's Light Bulb (US Patent No. 223,898)**: One of the most famous patents, it covers the electric light bulb and the method for producing it.
2. **Alexander Graham Bell's Telephone (US Patent No. 174,465)**: This patent covers the invention of the telephone, which revolutionized communication.
3. **Wright Brothers' Flying Machine (US Patent No. 821,393)**: The patent for the first successful airplane, which laid the foundation for modern aviation.

4.**Steve Jobs and Apple's Multi-Touch Interface (US Patent No. 7,479,949)**: This patent covers the touch-screen technology used in iPhones and other devices.

5.**Coca-Cola's Secret Formula (Trade Secret)**: While not a patent, the formula for Coca-Cola is protected as a trade secret, demonstrating how companies protect valuable information through different means.

2.2.1 - Importance of Patent Inventions

- **Economic Growth**: Patents can be a major driver of economic growth, encouraging investment in research and development.
- **Technological Advancement**: By protecting new inventions, patents help drive technological progress and innovation.
- **Business Strategy**: Patents can be a critical part of a business's strategy, providing competitive advantage and opening up licensing opportunities.
- **Public Knowledge**: The requirement to publicly disclose the details of an invention contributes to the broader base of technical knowledge, fostering further innovation.

Patents provide several important utilities and benefits, both for inventors and for society at large. Here are some of the key utilities of patents:

1. Protection of Intellectual Property (PATENTS)

- **Utility**: Patents give inventors exclusive rights to their inventions, protecting them from unauthorized use, copying, or sale by others.
- **Benefit**: This protection encourages investment in research and development by ensuring that inventors can reap the financial rewards of their innovations.

2. Incentive for Innovation

- **Utility**: By granting exclusive rights, patents create a financial incentive for inventors to develop new products, processes, and technologies.
- **Benefit**: This leads to technological advancement and economic growth as companies and individuals strive to innovate.

3. Market Advantage

- **Utility**: Patent holders can gain a competitive edge in the market by being the sole entity able to commercially exploit an invention.
- **Benefit**: This exclusivity can lead to higher profit margins, market share, and return on investment.

4. Revenue Generation

- **Utility**: Patents can generate revenue through licensing agreements, where the patent holder allows others to use the patented technology in exchange for fees or royalties.
- **Benefit**: This provides an additional income stream and can be particularly valuable for small businesses and individual inventors.

5. Attracting Investment

- **Utility**: A strong patent portfolio can attract investors and venture capitalists by demonstrating the potential for long-term profitability and market protection.

- **Benefit**: Access to funding can accelerate the development and commercialization of new technologies.

6. Legal Protection

- **Utility**: Patents provide a legal framework for inventors to defend their rights in court against infringement.
- **Benefit**: This legal protection ensures that inventors can enforce their rights and seek damages if their patents are violated.

7. Public Disclosure

- **Utility**: The requirement to publicly disclose the details of an invention in a patent application contributes to the collective knowledge base.
- **Benefit**: This disclosure facilitates further innovation and technological development as others can build upon existing inventions once the patent expires.

8. Strategic Business Tool

- **Utility**: Companies can use patents as strategic assets in negotiations, mergers, acquisitions, and partnerships.
- **Benefit**: Patents can enhance a company's valuation and bargaining power in business transactions.

9. Encouraging Research and Development

- **Utility**: The promise of patent protection encourages companies and individuals to invest time and resources in research and development.
- **Benefit**: This leads to the creation of new and improved products and technologies that benefit society.

10. Economic Growth

- **Utility**: Patents drive economic growth by fostering innovation, creating new industries, and generating high-quality jobs.
- **Benefit**: A robust patent system contributes to a dynamic and competitive economy.

11. Cross-Licensing Opportunities

- **Utility**- Patents enable companies to engage in cross-licensing agreements, where they exchange licenses for each other's patents.
- **Benefit**: This allows companies to share technology, reduce litigation risks, and access broader technological capabilities.

12. Enhancing Company Reputation

Utility- Holding patents can enhance a company's reputation as an innovator and leader

in its field.

Benefit This reputation can attract customers, partners, and talented employees.

13. Foundation for Further Research

Utility - Patented inventions often serve as a foundation for further research and development, leading to new innovations.

Benefit - This cumulative advancement accelerates technological progress and application.

By providing these utilities, patents play a crucial role in promoting innovation, economic growth, and the dissemination of knowledge, ultimately benefiting both inventors and society as a whole.

2.2.2 - The patent Application filing process

1. **Idea Conception**: The inventor conceives an idea and develops it into a patentable invention.
2. **Patent Search**: A thorough search is conducted to ensure the invention is novel.
3. **Drafting the Application**: The patent application, including claims, drawings, and a detailed description, is drafted.
4. **Filing the Application**: The application is filed with the appropriate patent office (e.g., USPTO).
5. **Examination**: The patent office examines the application to ensure it meets all criteria.
6. **Grant or Rejection**: The patent is either granted or rejected based on the examination.
7. **Maintenance**: Once granted, periodic fees must be paid to maintain the patent.

2.2.3- Inventions not patentable

Not all inventions are eligible for patent protection. Various categories of inventions are specifically excluded from patentability under patent laws. The criteria for what is not patentable can vary somewhat by jurisdiction, but generally, the following types of inventions are not patentable:

Categories of Non-Patentable Inventions

1. **Abstract Ideas and Mathematical Theories**: Abstract concepts, pure mathematical formulas, and scientific principles are not patentable because they are considered fundamental truths that everyone should be free to use.
    - **Example**: A mathematical algorithm by itself, without a specific practical application, cannot be patented.

2. **Natural Phenomena**: Laws of nature, natural phenomena, and products of nature are not patentable. This includes naturally occurring DNA sequences and naturally occurring substances.
    - **Example**: The natural genetic sequence of a gene cannot be patented, but a modified version or a specific application of that sequence might be.
3. **Mere Discoveries**: Simply discovering something that already exists in nature does not qualify for a patent.
    - **Example**: Discovering a new plant species in the wild cannot be patented, but a new and distinct plant variety developed through cultivation can be.
4. **Abstract Ideas and Mental Processes**: Purely mental processes or abstract ideas without a specific practical application are not patentable.
    - **Example**: A method of organizing human activities, like a business method without a technical implementation, is typically not patentable.
5. **Artistic Creations**: Artistic and literary works are protected by copyright, not by patents.
    - **Example**: A painting, book, or musical composition is not patentable but can be protected by copyright.
6. **Methods of Medical Treatment**: In many jurisdictions, methods of medical treatment for humans are not patentable, though this can vary.
    - **Example**: A surgical technique or method of treating a disease may not be patentable in certain countries but could be in others.
7. **Inventions Contrary to Public Policy or Morality**: Inventions that are deemed immoral, unethical, or harmful to public order are not patentable.
    - **Example**: Devices designed for illegal activities or methods of cloning human beings are typically not patentable.
8. **Computer Programs (Software)**: In some jurisdictions, software per se is not patentable, though software-related inventions that provide a technical solution to a technical problem may be.

- **Example:** A standalone software algorithm might not be patentable, but a software-controlled device that solves a specific technical problem could be.

9. **Business Methods**: Pure business methods are often not patentable unless they involve a specific technical implementation.
    - **Example**: A new way of calculating interest rates for loans is typically not patentable, but a computer system that implements the method in a novel way might be.

Jurisdictional Variations

Different countries have different rules and standards for what is patentable. For instance:

- **United States**: The U.S. allows patents on a wide range of inventions, including certain business methods and software, provided they meet the requirements of novelty, non-obviousness, and utility.
- **European Union**: The European Patent Convention excludes patents on software "as such," but software that produces a "technical effect" can be patentable.
- **India**: Indian patent law excludes business methods, mathematical methods, and algorithms from patentability, along with computer programs per se.

Conclusion

Patent inventions play a vital role in advancing technology and innovation by providing inventors with exclusive rights to their creations. These rights incentivize the development of new and useful products, processes, and technologies, contributing significantly to economic growth and societal progress.

Understanding what is not patentable is crucial for

inventors to avoid wasting time and resources on non-viable patent applications. While many inventions and innovations can be patented, the exclusions ensure that fundamental knowledge, natural phenomena, and purely abstract ideas remain accessible to all, fostering further innovation and development.

Historically the first system of protection of intellectual property came in the form of (Venetian Ordinance) in 1485. This was followed by Statute of Monopolies in England in 1623, which extended patent rights for Technology Inventions. In the United States, patent laws were introduced in1760.Most European countries developed their Patent Laws between 1880 to 1889.In India Patent Act was introduced in the year 1856 which remained in force for over 50 years, which was subsequently modified and amended and was called "The Indian Patents and Designs Act, 1911". After Independence a comprehensive bill on patent rights was enacted in the year 1970 and was called "The Patents Act, 1970".

Specific statutes protected only certain type of Intellectual output; till recently only four forms were protected. The protection was in the form of grant of copyrights, patents, designs and trademarks. In India, copyrights were regulated under the Copyright Act, 1957; patents under Patents Act, 1970; trademarks under Trade and Merchandise Marks Act 1958; and designs under Designs Act, 1911.

Glossary

Patents use specific terms that might not be familiar to everyone. Here's a glossary of some common terms you'll encounter in patents:

- **Application:** The legal document filed with a patent office to seek protection for an invention.
- **Claim:** Defines the specific aspects of the invention for which patent protection is sought. It's like a fence around your invention, marking its boundaries.

- **Description:** The detailed explanation of the invention in the patent application, including how it works and how to make and use it.
- **Drawing:** Visual representations (diagrams, figures) that complement the written description of the invention.
- **Inventor:** The person (or people) credited with creating the invention.
- **Non-obviousness:** A patentable invention can't be obvious to someone with ordinary skill in the relevant field. It should be a significant step forward from what already exists.
- **Novelty:** The invention must be new and not previously disclosed in any public way (publications, patents) before the patent application.
- **Patent:** A government-granted monopoly for a limited period, giving the inventor exclusive rights to make, use, sell, or import the invention.
- **Prior Art:** Existing knowledge (patents, publications) relevant to the field of the invention. The USPTO compares your invention to prior art to assess novelty and non-obviousness.
- **Utility:** The invention must have a practical use and be functional.

Activities of Patent:

1. Pre-Grant Activities: These occur before a patent is officially granted.

- **Invention Disclosure:** This is the initial step where the inventor documents the details of their creation. It includes sketches, descriptions of functionality, and potential applications.
- **Patent Search:** Before filing an application, it's crucial to research existing patents (prior art) to ensure your invention is novel and non-obvious.
- **Patent Application Preparation:** This involves drafting the formal application document with detailed descriptions, claims outlining the scope of protection desired, and drawings.

- **Patent Filing:** Submitting the application to the patent office (e.g., USPTO in the United States).

2. Post-Grant Activities: These happen after a patent is issued.

- **Patent Prosecution:** The patent office examines the application to determine if it meets the criteria for patentability (novelty, non-obviousness, utility). Communication might go back and forth between the inventor/patent attorney and the office to address any concerns.
- **Patent Maintenance:** Once granted, patents typically require maintenance fees to keep them in force throughout their lifespan (usually 20 years).
- **Enforcement:** The patent holder can take legal action against companies infringing on their patent rights by manufacturing, selling, or using the protected invention without permission.
- **Licensing:** The patentee can grant licenses to other parties, allowing them to use the invention in exchange for royalties or a one-time fee.
- **Patent Portfolio Management:** Companies and inventors might have multiple patents, and managing them strategically becomes important. This could involve selling patents, using them for cross-licensing agreements, or creating a patent portfolio focused on a specific technology area.

These activities can be complex and often involve patent attorneys or agents who specialize in navigating the legal and technical aspects of the patent system.

Check Your Progress

1. A patent grants the owner the exclusive right to:
   a) Advertise the invention

b) **Make, use, sell, or import the invention**

c) Name the invention

d) Share the invention with others

2. Which of the following is NOT a requirement for a patentable invention?

a) Be new and not previously disclosed

b) Be obvious to someone with ordinary skill in the field

c) **Be a natural phenomenon**

d) Have a practical use

3. The process of researching existing patents to see if your invention is novel is called

a) Patent defence

b) **Patent search**

c) Patent application

d) Patent maintenance

4. During patent prosecution, the patent office might reject your application if it finds:

a) A catchy marketing slogan for your invention

b) **Prior art** that makes your invention obvious

c) A beautiful drawing to illustrate your invention

d) Someone who wants to buy your patent rights

5. After a patent is granted, the owner can:

a) Lose their rights if they don't use the invention

b) **License the invention to others for a fee**

c) Sue anyone who criticizes the invention

d) Extend the patent term indefinitely

ANSWERS FOR CHECK OUR PROGRESS

1. b) Make, use, sell, or import the invention
2. c) Be a natural phenomenon
3. b) Patent search
4. b) Prior art that makes your invention obvious
5. b) License the invention to others for a fee

Case Study: Folding Bike with Compact Lock (Fictional)

Inventor: Alice Rider

Invention: Alice invents a folding bicycle with a unique locking mechanism that integrates into the frame, creating a more compact and secure fold than traditional designs.

Patent Process: Alice files a patent application with the USPTO (United States Patent and Trademark Office) for her folding bike design. The application details the novel locking mechanism and how it contributes to the compactness and security of the folded form.

Challenges:

- **Novelty:** During examination, the USPTO might find prior art (existing patents or publications) describing similar folding bikes or locking mechanisms. Alice will need to demonstrate how her invention is new and non-obvious compared to these references.

- **Utility:** The USPTO might require evidence that the folding bike with the locking mechanism functions as intended and offers a significant advantage over existing designs.

Potential Outcomes:

- **Patent Granted:** If Alice successfully addresses the challenges, the USPTO grants her a patent for a specific period (typically 20 years). This gives her exclusive rights to manufacture, sell, import, or use the invention in the US.
- **Patent Rejected:** The USPTO might reject the application if the invention lacks novelty or utility. Alice can appeal the decision or modify her claims to address the concerns.

Further Developments:

- **Licensing:** Alice can license her patent to bicycle manufacturers, allowing them to produce and sell bikes using her design in exchange for a royalty fee.
- **Infringement:** If another company manufactures or sells bikes that infringe on Alice's patent, she can initiate legal action to stop the infringement and potentially recover damages.

This is a simplified case study. Patent law can be complex, and the specific details will influence the outcome.

Observe and Analyze the above stated case study by exploring the below specified questions.

- **Youcan focus on a specific challenge Alice faces during the patent process and how she overcomes it.**
- **Explore the economic impact of the patent. How does it benefit Alice and the bicycle industry?**

Consider the ethical implications of patents. Does Alice's patent stifle innovation or promote it?

Self-Assessment Questions

- What is a patent?
- Who grants patents?
- What are the requirements in patent filing?
- Explain about non patentable inventions.
- Enumerate the benefits of patents.
- Explain the TRIPs agreements related to the patents.
- State the importance of patent filing.
- Enumerate the different classifications patents.

Suggested Readings:

- https://gemini.google.com/app/59729cbc966d60d6?utm_source=google&utm_medium=cpc&utm_campaign=2024enIN_gemfeb&gad_source=1&gclid=CjwKCAjwmYCzBhA6EiwAxFwfgGQMLMMtR3D4mcAV1LUO1sJe_N5H2ryl3A3DwVZOHKQ5txiW0HlX8hoCZ48QAvD_BwE
- https://www.digip.com/blog/post/5-key-ways-to-protect-your-registered-trademark

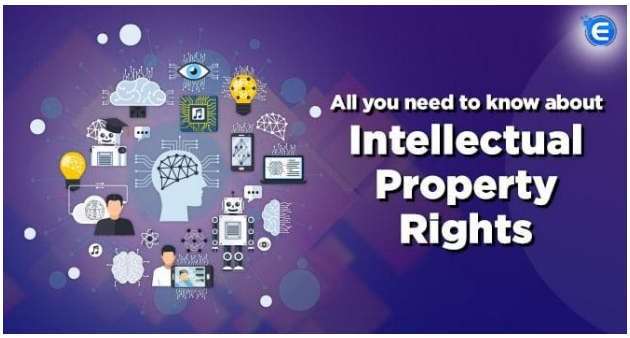
I**ntellectual PropertyRights** byAshaVijayDurafe and DhanashreeK.Toradmalle,Wiley

IntellectualPropertyRights TextandCases:DR.R.Radhakrishnan,

References:

- LandmarkJudgementsonIntellectualPropertyrightsbyKushKalra.Central
- LawPublishing
- IntellectualPropertyRightsinIndiabyV.k.Ahuja,LexisNexis

- IntroductionTo Intellectual PropertyRightsSoftbound BySingh,Phundan, DayaPublishingHouse
- Introduction To Intellectual Property Rights by Chawkam H.S, Oxford &Ibh



1.1.1INTRODUCTION OF INTELLECTUAL PROPERTY RIGHTS (IPR)

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. With the ever-changing technology and shrinking world boundaries, the term “Intellectual Property” is coming to be used more often than ever. From tech companies, such as Samsung, Apple and Google to Biotechnology enterprises such as Monsanto, everyone is vigil about protecting their Intellectual Property. Therefore, it becomes important to understand what Intellectual Property is and what are the rights that individual acquire as their Intellectual Property rights.

What is Intellectual Property?

Intellectual Property refers to the creations which are made using the mental labours of individuals. This includes a variety of creations such as literary works, technological inventions, performances, traditional practices etc. These can be broadly divided into two categories:

- Intellectual property used for protecting industrial inventions such as Patents, Trademarks etc.
- Intellectual property used for protecting literary interests such as copyright, related rights etc.

What are Intellectual Property Rights?

Every individual who creates a literary work or invents an industrial technology is vested with certain rights such as the exclusive right to such literature or invention, right to gain monetary benefits from such intellectual property. All such rights that accrue to a person from the creation of intellectual property are known as Intellectual Property Rights.

Intellectual Property Rights can be held by an individual or a company. Generally, rights pertaining to literary works are held by an individual and industrial inventions are held by companies. But there are exceptions to this argument as well.

1.1.2

- **Intangible Assets:** IPR safeguards non-physical property, products of human creativity and innovation. This includes inventions, designs, literary works, symbols, and even brand identities.
- **Legal Protection:** IPR grants the owner legal rights to control how their creation is used, copied, or distributed. This provides a mechanism to prevent others from exploiting their ideas without permission.
- **Incentivizing Innovation:** By granting exclusive rights for a period, IPR incentivizes creativity and development. Inventors and creators are more likely to invest time and resources knowing they can benefit from their work.
- **Fairness in the Marketplace:** IPR prevents unfair competition by stopping others from simply copying someone else's creation. This fosters a system where originality and effort are rewarded.
- **Knowledge Sharing and Collaboration:** While granting exclusive rights, IPR also facilitates collaboration. Owners can license or sell their IPR, allowing others to build upon their ideas or use them for new applications.
- **Balancing Interests:** The IPR system aims to strike a balance. Creators are rewarded, but knowledge isn't locked away forever. Patents eventually expire, allowing others to innovate further. Copyright allows for fair use of copyrighted material for criticism, education, and parody.
- **Global Considerations:** IPR is a territorial concept. Protection granted in one country might not extend to others. Filing for IPR in different regions might be necessary for comprehensive global coverage.
- **Constant Evolution:** IPR laws and regulations adapt to keep pace with technological advancements and new forms of creative expression.

In essence, IPR is a legal framework that promotes creativity, fosters innovation, and ensures fairness in the marketplace. It protects the intangible assets that drive progress in various fields.

1.1.3 PURPOSE OF IPR

Intellectual property rights not only protect the ideas or concepts of business but also protect the genuine business assets that are vital to the products and services.

- **Enhances market value -** Intellectual property rights can help you generate business through the licensing, sale and even commercialization of the products and services protected under IPRs. This will ultimately improve the market share and helps in raising profits. Having registered and protected intellectual property rights can also raise the business' value in case of sale, merger or acquisition.
- **Turn ideas and thoughts into profit-making assets -** Ideas have little value on their own but registering ideas under intellectual property rights can help you turn it into commercially successful products and services. Copyrighting or licensing the patents can lead to a steady stream of royalties and additional income.
- **Market your products and services -** Getting intellectual property rights can help your business' image. Intellectual property rights like trademark registration can help you separate your products and services from others.
- **Access or raise Capital -** Through sale, licensing, or by using IPRs as collateral for debt financing, an individual can monetize for debt financing. Intellectual property rights can be used as an advantage while applying for government funding like grants, subsidies, and loans.
- **Enhances export opportunities –** A business that has registered IPRs will be able to use brands and designs to market its products and services to other markets as well. A business can also tap into the franchising agreements with overseas companies or export patented products.

1.1.4 FUNCTIONS OF IPR

1. **Incentivizes innovation and creativity:** IPR grants inventors exclusive rights to their creations for a set period. This exclusivity provides a financial incentive to invest in research and development, ultimately leading to innovation and progress. For instance, if a company knows it can patent a new lifesaving drug, they are more likely to invest in the research and development required to bring that drug to market.

2. **Protects against unfair competition:** IPR prevents others from copying or imitating protected creations without permission. This ensures a fair marketplace where inventors can reap the rewards of their efforts. Imagine a company spends years developing a new brand of sneakers with a unique design. IPR protections like trademarks prevent other companies from simply copying that design and selling their own sneakers.

3. **Facilitates commercialization:** IPR allows inventors to control how their creations are used and disseminated. This enables them to license or sell their rights, facilitating the commercialization of inventions and bringing them to market. A company that invents a new energy-efficient light bulb could license the patent for that light bulb to other companies, allowing those companies to produce and sell the light bulb while the inventor earns royalties.
4. **Promotes technology transfer and collaboration:** IPR can be used to facilitate collaboration between inventors and companies. By licensing or sharing IPR, different parties can combine their expertise and resources to develop new technologies. For example, a university that develops a new medical treatment could license the patent for that treatment to a pharmaceutical company. The pharmaceutical company would then have the resources to conduct clinical trials and bring the treatment to market, while the university could use the licensing fees to fund further research.
5. **Protects Consumers:** Strong IPR safeguards consumers from being misled by counterfeit products. Imagine buying a phone that looks like a well-known brand but malfunctions easily. IPR helps ensure you get the quality and safety associated with the real brand.
6. **Encourages Cultural Exchange:** Copyright protects creative works like books and music. This allows for the dissemination of these works while ensuring creators are compensated, fostering cultural exchange and artistic expression.
7. **Supports Economic Growth:** Strong IPR encourages foreign investment and technology transfer. Companies are more willing to invest in a country with robust IPR protections, leading to job creation and economic development.
8. **Balances Public and Private Interests:** While IPR grants exclusive rights, some limitations exist. For instance, patents eventually expire, allowing others to build upon the invention and further innovation. This balances the interests of inventors with the public's access to knowledge and advancement.
9. **Strategic Tool for Businesses:** Trademarks help build brand recognition and customer loyalty. Businesses can leverage IPR strategically to gain a competitive advantage and maximize the value of their intellectual property.

1.1.5 CHARACTERISTICS OF IPR

- **Intangible:** Unlike a car or a house, IPR protects things that are intangible, meaning they can't be physically held. These are creations of the mind, such as inventions, designs, literary works, and symbols.
- **Exclusive Rights:** IPR grants the owner exclusive control over their creation for a limited period. This allows them to decide how it's used, who can use it, and potentially benefit financially through licensing or selling those rights.
- **Originality and Creativity:** Not all ideas qualify for IPR protection. The creations must be original and demonstrate a certain level of inventiveness or creative effort.
- **Territorial Limitations:** IPR rights are generally territorial. A patent granted in the US might not be valid in Europe, and separate filings might be necessary for protection in different regions.
- **Public Disclosure:** In exchange for exclusive rights, some forms of IPR, like patents, require the inventor to publicly disclose the details of their invention. This allows others to learn from the invention and potentially build upon it for further innovation.
- **Limited Duration:** Most IPR protections have a set time limit. Patents and copyrights typically last for a certain number of years, after which the creation enters the public domain and can be freely used by anyone. Trademarks can potentially be renewed indefinitely if they remain in use.
- **Enforcement:** The owner of IPR has the legal right to take action against those who infringe upon their rights. This can involve lawsuits, seeking financial compensation for damages, and preventing further infringement.
- **Evolving Landscape:** IPR laws and regulations are constantly evolving to keep pace with technological advancements and the changing nature of creative works.

SELF-ASSESSMENT

- **Which of the following is NOT a type of intellectual property?**
  - A. Trademark
  - B. Patent
  - C. Real estate
  - D. Copyright
- **How long does a copyright generally last?**
  - A. 10 years from the date of creation
  - B. 50 years from the date of creation
  - C. 70 years after the author's death
  - D. Indefinitely, as long as the work is being used
- **Which international agreement deals with Intellectual property rights?**
  - A. NAFTA
  - B. TRIPS
  - C. TPP
  - D. NATO

- **Which of the following is not an Intellectual property law?**
  - A. Copyrights Act, 1957
  - B. Trademark Act, 1999
  - C. Patent Act, 1970
  - D. Customs Act,1962
- **Intellectual property rights(IPRs) protect the use of information and ideas that are of**
  - A. Social value
  - B. Moral value
  - C. Commercial value

- D. Ethical value

1.2.1 TRADE MARK

A trademark is a symbol, name, word, device or any combination which is adopted by a company to distinguish their products from the rest. It is often referred to as brand name. The Trade Marks Act, 1999 and Trade Marks Rules, 2002 governs the laws with respects trademarks.

It is a mark that efficiently helps us to identify a product by distinguishing it from other goods and services belonging to the same class. It helps to identify the product when there is competition in the market. As per Section 2(zb) of the Trademark Act, 1999 a trademark means a mark capable of graphical representation and which is capable of distinguishing goods and services owned by one person from those of others in the market and includes the shape of goods, the combination of colours and their packaging. The primary function of the trademark is to stand out from the other brands belonging to the same class of goods and services and hence a mark that is distinctive is the best kind of trademark.

A trademark gives protection for a symbol, word, phrase, design, logo or combination of all of them. It gives an identity to a product that represents a source of goods or services. A trademark in India is protected under the Trademark Act, 1999 and common law. As per the trademark Act, it is not mandatory to register your trademark. However, a trademark once registered shall provide legal rights and protection to its owner for 10 years, and such a period shall be extended upon renewal. The benefits of a trademark include ease to market, creating a distinct identity and being a source identifier.

1.2.2 HISTORY OF TRADEMARKS

The first official trademark law was passed in 1940. However due to its limitations and non-use, it was replaced by the Trade and Merchandise Act, 1958. In 1994, India became part of the TRIPS Agreements which set basic standards for intellectual property rights. To meet these basic standards, a number of amendments were

introduced to the trademark laws in India. These amendments were made by replacing the former act with the Trade Marks Act, 1999 and the Trade Marks Rules, 2002.

Advantages of Registering a Trademark

- **Trademarks make it easier for your customer base to find you**: Trademarks distinguish your services and products from those of your competitors. This identifies you as the source and indicates a consistent level of quality of your services and products. Trademarks also increase brand awareness and goodwill.
- **Trademarks help prevent marketplace confusion:** Trademarks prevent confusion as to the source of the goods and services.
- **Trademarks are economically efficient tools:** Trademarks create a face value in the market among competitors. Furthermore, they give your business a monopoly over the brand name.

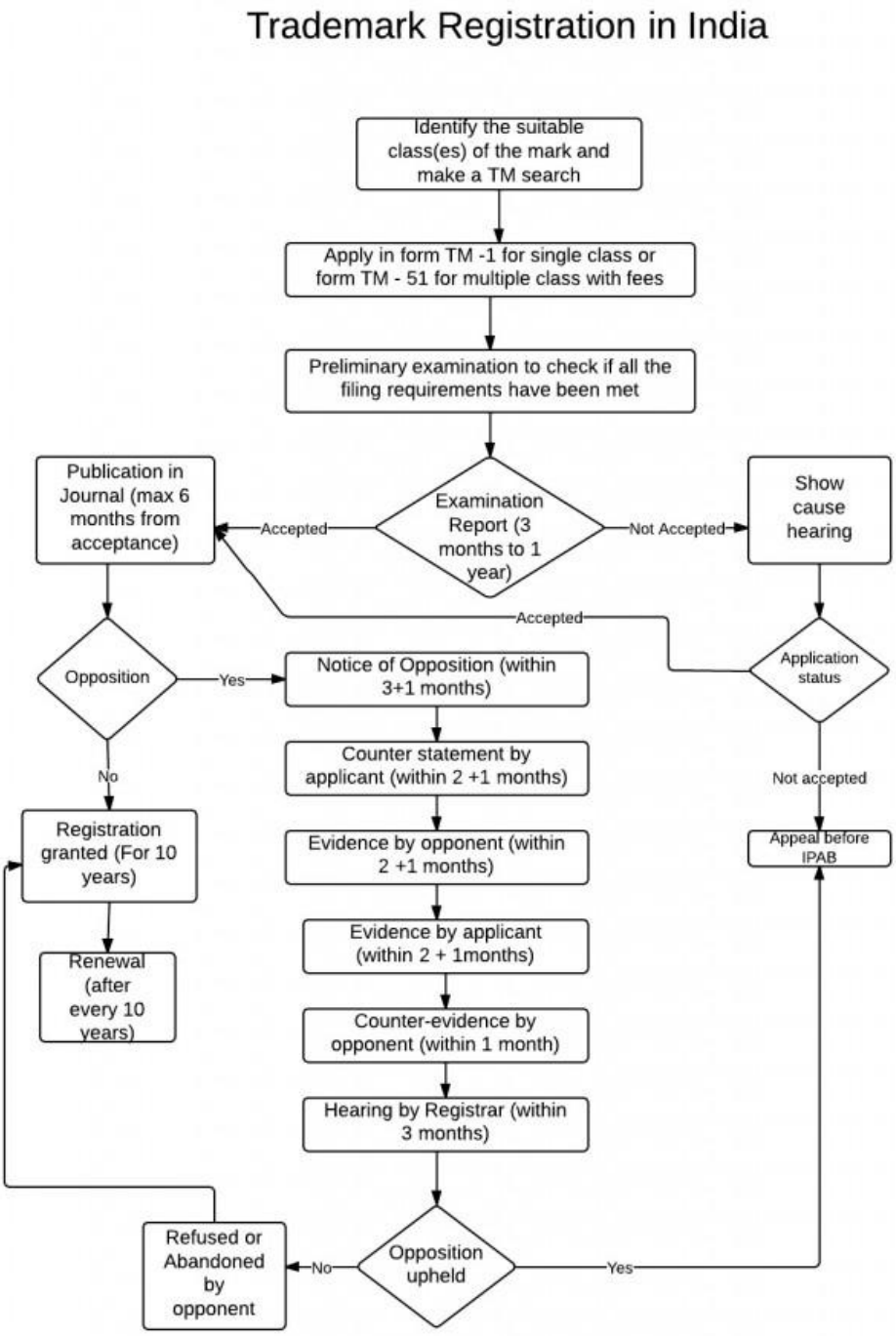
1.2.3 HOW TO REGISTER TRADEMARKS

The registration process in India is a 'first to file' basis. Therefore, it is important to apply for registration as soon as possible. A trademark usually takes 2-3 years to get registered, if the trademark is not being opposed by a third party. Trademark applications are handled by the Office of the Controller General of Patents, Trade Marks, Industrial Designs and Geographical Indications. Branches for these offices are available in Mumbai, Kolkata, Ahmedabad, Delhi and Chennai. The application must be filled as per territorial jurisdiction. To register a trademark in India the following steps must be followed:-

- **Select a trademark agent in India:** Proprietors are only allowed to file a trademark application if their place of business is in India. If this is not the

case, the right holder must file a trademark application through an agent or attorney. The agent or attorney usually takes care of the trivialities such as searching, preparing, filing and prosecution of the trademark.

- **Determination of the eligibility and availability of the trademark:** The agent usually starts the registration process by determining whether the trademark is eligible for registration and conducting a clearance search to see if there is a similar mark in the office of the controller general.
- **Completing the application form and filing:** If the trademark agent has the power of attorney from the right holder he can complete and file the application form. The form will require details such as name and address of the proprietor, a description of the goods and services associated with the mark, whether the mark is in use and a copy of the mark.
- **Review by the trademark office:** The trademark office reviews the application to see if it is complete and then allots the application a number. If the trademark is registered, this number becomes the registration number.
- **Preliminary approval and publication, show cause hearing or rejection of the application:** The trademark association determines if the application is barred from registration either on absolute or relative grounds for refusal as prescribed in the Trade Marks Act, 1999. After this, they issue an examination report within a period of one month. Depending on the examination report the registrar of the trademark determines whether the application must be accepted, rejected or put up for 'show cause ' During a 'show cause hearing' subject to the facts an application might be rejected, accepted or accepted with certain limitations. If the application is rejected, the applicant can appeal at the Intellectual Property Appellate.
- **Registration:** Within the term of three months publication in the Trademarks Journal, if not opposed by a third party, the trademark will proceed for registration and the trademark authority will proceed to give a registration certificate.


Trademark Registration in India
Identify the suitable class(es) of the mark and make a TM search
Apply in form TM -1 for single class or form TM - 51 for multiple class with fees
Preliminary examination to check if all the filing requirements have been met
Examination Report (3 months to 1 year)
Accepted
Not Accepted
Publication in Journal (max 6 months from acceptance)
Show cause hearing
Accepted
Opposition
Yes
Notice of Opposition (within 3+1 months)
Application status
No
Counter statement by applicant (within 2 +1 months)
Not accepted
Registration granted (For 10 years)
Evidence by opponent (within 2 +1 months)
Appeal before IPAB
Renewal (after every 10 years)
Evidence by applicant (within 2 + 1months)
Counter-evidence by opponent (within 1 month)
Hearing by Registrar (within 3 months)
Refused or Abandoned by opponent
No
Opposition upheld
Yes

1.2.4 TYPES OF TRADEMARKS

Product mark

It is a mark used for products or goods but not on services. Product mark is used to identify the provider, the reputation and the origin of the product. Applications for a trademark filed under class 1-34 The Fourth Schedule To Trade Marks Rules, 2002 are generally termed as product marks.

Service mark

It is similar to a product mark, but it is specifically used to identify a service and not a product. Applications for a trademark filed under class 35-45 The Fourth Schedule To Trade Marks Rules, 2002 can be termed as a service mark.

Word mark

Typically, a trademark is filed under a wordmark or a device mark. In a wordmark, only a word or text is used to denote a trademark, without any stylization or additional artistic elements. This type of registration gives the broadest legal protection to a trademark because it allows the owner to use such a wordmark in all styles, forms and

representations. A few examples of registered work marks are LITTLE HEARTS, COCA-COLA

Device mark

A device mark usually has an artistic element such as symbols, or an artistic or pictorial depiction in addition to the element of the wordmark. It generally comprises a wordmark along with multiple artistic elements. Such elements present in a device mark can be a combination of trademarkable and non- trademarkable features. Such a type of mark grants protection over the composite mark which is being registered but not the individual elements. Interestingly, a device mark when registered in colour is limited in protection to the colour combination in which it gets registered. However, a registered device mark that is black and white in colour gives broader protection wherein the owner can claim protection for colours for such a device registration.

Certificate trademarks

These marks are typically used by the owner in order to certify the origin, material, quality, mode of manufacture or performance of services and other characteristics of goods or services to which they are applied. Some examples of certified marks include

the ISI Mark which is issued by the Bureau of Indian Standards (BIS), AGMARK which is issued by the Director of Marketing and Inspection of the Government of India.

A mark used to indicate the particular goods or services are certified by the owner of the sport in terms of material, origin, quality, or any other characteristics is termed a certificate mark as given under the Trademark Act.

This varies from the typical Trademark that differentiates the goods or services made from a single company. Therefore, a certification mark is used to describe the standards of the goods or services. It safeguards the consumers of the goods or services that such product encounters the safety and other set standards. The certification mark on the product signifies that the product has gone through the quantified standard tests. It safeguards and assurances the consumers that manufacturers have assumed or gone through an audit process to safeguard the anticipated quality of the products. Some of the instances of certification marks include electrical goods, food products, cosmetics, etc. It is given under the Trademark Act.

Collective trademarks

This trademark is different from the ones we have studied above. This type of mark is typically used by an organisation or association of members in order to distinguish the goods or services of the members from those who are non-members. A very common example of this type of trademark is the CA mark which can only be used by registered members of the Institute of Chartered Accountants.

The mark used by the group of companies and protected by the group collectively is termed collective marks. The effect is used to represent or inform the public at large about the unique idea of the product. It is used to promote certain products with specific characteristics in that field. Such kind of mark is registrable under the Trademark Act.

The trader related with such mark has accountability to safeguard the compliance with the positive standards fixed by its members as given under the Trademark Act. The

chief purpose of the collective effect is to notify the public about the particular characteristic or features of the product for which a collective impact is used.

Pattern Mark

A mark that comprises a pattern capable of identifying the product or services that originate from a particular undertaking and can be distinguished from the other project can be termed the Pattern Trademark as provided by the Trademark Act. The method of evaluation is similar to other trademarks.

Series trademarks

When an owner owns several trademarks in relation to the same or similar goods, wherein all trademarks seem to possess a material resemblance to each other and are different in respect of non-distinctive character, such trademarks may be registered as series trademarks.

Unconventional trademarks

Above were the trademarks that are generally registered. Now let's understand some of the unconventional trademarks.

Colour trademark

Since the definition of a trademark under the Trademark Act, 1999 includes the words 'combination of colours' they are protected as a trademark. However, such a combination of colours to get registered as a colour mark must be unique, distinctive and must identify the product and its source. A simple combination of red and yellow to indicate orange will not be considered distinctive. The

colour to get registered under this type of trademark must be extremely distinct and must be recognisable by its consumers.

Sound trademarks

Graphical representation is an essential element in trademark registration and this applies to sound marks as well. To register a sound under the trademark, it must be in such a form that it is distinctive and identifiable by the consumer. Certain categories of sounds are specifically excluded from being registered as a sound mark as per the TM Manual. They are as follows:

- Songs used as chimes,
- Simple pieces of music consisting 1 or 2 notes,
- Nursery rhymes of children,
- Music that is strongly associated with a particular region,
- Popular music.

Shape trademarks

As per the definition of Trademark under the Trademark Act, 1999 the term ‘shapes of goods’ are used. So, under the Trademark Act, 1999 protection is granted to shape marks as well. However, a limitation is provided under Section 9(3) of the Act, wherein it expressly excludes registration of a trademark which consists only of:

- Shapes that result from the nature of the goods itself.
- Shapes which are necessary to obtain a technical result.
- Shapes which add substantial value to the goods.

Additionally, when such an application is made, it should be in relation to the goods and not in relation to the container of the goods.

Smell trademarks

A few trademarks registered under this type have been granted registration internationally. However, in India, for a mark to qualify as a trademark, it must be capable of being graphically represented. Such a representation should be recognised and identifiable by the public. Additionally, a smell that is functional cannot be granted registration.

Apart from the same, a smell that is either functional or descriptive also cannot be granted registration. For example, a perfume with an added nail polish remover to mask the chemical odour can qualify as a functional smell. A smell that is the natural result of a combination of the ingredients can also not be protected as a trademark. If an application for a trademark under this type is able to pass these tests and prove its distinctiveness, then it can be registered as a trademark.

Importance of types of trademarks

Before making an application for a trademark, it is important to understand the difference between each type of trademark. Firstly, a mark should not be generic, it must be unique and distinctive in order to seek legal protection under the Trademark Act, 1999. If your trademark seems to be a little similar to the ones existing in the market then, you may consider modifying your mark so that it qualifies to get registered.

The distinctiveness of a trademark is extremely important because it gives identity to the product. Prior to the regulation of the laws with respect to trademarks, there was a lot of ambiguity and confusion in the market. It was difficult to attain brand loyalty from the public since they were not able to immediately identify the provider of the goods or services.

1.2.5 KEY WAYS TO PROTECT YOUR REGISTERED TRADEMARK

It is hard enough to come up with an original business idea. But once you do, you have to protect your brand and your products from imitators. Not only that, it is crucial that you register your trademark and protect it from infringements. Although registration is just the first step towards protecting your trademark, there are many other strategies that a brand needs to adapt to protect against trademark infringement. Following are five necessary steps brands must follow to protect their trademarks from being copied.

1. Register Trademark in All Markets

After you settle on a trademark, one unique to you, you need to protect it from infringements. The first step is to register your trademark in all markets. Registration of your trademarks helps ensure that nobody else can use your trademark. Failure to register a trademark might result in a lot of confusion. People may confuse your brand with someone else's. That is not acceptable in any case. But if you don't register your trademark, you won't be able to take legal action against the other brand. It doesn't matter if you were the first to choose that particular trademark; if you haven't registered it, you can't file a suit against imitators.

Register everything related to your trademarks, such as your logo, your company's name, your slogan, and your product names. Register your social handles as well. That includes your Facebook handle, your Instagram handle or your Twitter, etc. Because somebody else may be using the same social handle as you. This trademark infringement may result in people being unable to differentiate between your band and the other brand. In this digital and social media marketing age, it is very important to register social media handles. Potential consumers are likely to visit your social media page before choosing you for the required product or service.

2. Domain Management

Once you have selected your trademarks, the next step is to file an application. The application process requires a picture of how your trademark looks. It can be in the form of a label or a brochure. However, conscious effort needs to go into the application filing process. Because if there is some fault with your application, your trademark won't be registered. And if the trademark is not registered, it will certainly not be protected.

It is advised that you secure your domain names with all your brand name variations. Once again, it is necessary to ensure that you own all the domain names that match your trademark. Developing a domain strategy is a crucial step that a brand must take to protect the registered trademark.

3. Shutting Down Similar Domains

Once you have registered your trademark, the next step is to ensure there are no other domains similar to yours that are owned by someone else. In case of the existence of one, you can take legal action. Since you possess the legal rights to that trademark, you can file a suit against domains similar to yours that are causing conflicts or have the potential to confuse. You can have them taken down. However, for you to possess the legal rights to that trademark, your trademark must be adequately registered.

4. Monitoring Against Infringement

Trademark infringement poses many problems for brands as it strips them of their right to control their brand and their brand's reputation. A brand must monitor new trademark applications. Because the sooner the problem is identified, the quicker it can be solved. Plus, the process becomes tedious as time goes on. Not only that, but it also becomes costlier to stop the trademark from hitting the market. For this purpose, you may seek the help of an intellectual property attorney.

Similarly, it is also crucial that you monitor against unregistered infringements. Someone might be using your mark or one similar to yours in their social media handles

or product names. It is on you to find out such unregistered infringements and take legal action against them. Because if your consumers confuse your brand with theirs, it may cost you lost sales or even spoil your reputation. Someone's bad experience with the other brand may negatively affect yours if they confuse both brands with being associated.

Filing a suit on time is very important because failure to identify infringements may cost you your brand. Your trademark is an intangible asset and is just as important as the physical assets. A conscious effort must be made to protect the trademark.

Many technologies can ease this process for you and help you keep a tab on your trademark and possible infringements.

5. Maintain Your Trademark Registration

Now that the trademark is registered and all the similar domain names were taken down, you are in complete control of your brand and its trademark. However, you need to maintain it by filing maintenance documents between the 5th and 6th year of registration and the 9th and tenth year of registration. That will ensure that your trademark, your intellectual property remains yours and cannot be copied by others. Failure to file these documents can result in the cancellation of your trademark registration.

For the protection of your trademark, you must make a conscious effort. Building a brand is not child's play and, protecting the registered trademark isn't either. So, go all out to protect your trademark and not let others benefit from what is legally yours.

1.2.6 WHAT ARE NON-REGISTRABLE TRADEMARKS?

These are marks that fail to meet the legal requirements for obtaining a registered trademark with a government trademark office. Registration grants exclusive rights to the mark, allowing you to prevent others from using it. Without registration, you have limited legal protection.

Types of Non-Registrable Trademarks:

There are two main categories:

1. **Inherently Weak Marks:** These lack the inherent distinctiveness to function as a trademark. They fail to identify the source of a particular brand. Examples include:
   - **Generic Terms:** These are common names for products or services, such as "Aspirin" for pain medication or "Bakery" for a bakery.
   - **Descriptive Terms:** These describe qualities or characteristics of the product, like "Sparkling Water" or "Heavy Duty Cleaner."
   - **Surnames:** Generally, your own surname cannot be a trademark (unless it has acquired distinctiveness).
   - **Symbols or Designs Common to the Trade:** These are symbols or designs everyone in the industry uses, like a wrench for a plumbing service.
2. **Legally Problematic Marks:** These violate trademark law or other regulations and cannot be registered. Examples include:
   - **Deceptive or Misleading Marks:** These mislead consumers about the product's source, nature, or characteristics. For instance, a mark claiming a toy is made of wood when it's plastic.
   - **Immoral or Scandalous Marks:** These contain offensive or vulgar language or imagery.
   - **Functional Shapes or Colors:** Shapes or colors dictated by the product's functionality cannot be trademarked. For example, the shape of a heart-shaped pizza wouldn't be registrable.
   - **Government Emblems or Flags:** Using national flags or government emblems is typically prohibited.
   - **Trademarks That Infringe on Existing Rights:** These are confusingly similar to existing registered trademarks for similar goods or services.

SELF-ASSESSMENT

1.What does a trademark protect?

- A. An invention
- B. A work of art
- C. A brand name or logo
- D. A trade secret

2.Which of the following is an example of a trade secret?

- A. A published novel
- B. A company's confidential product formula
- C. A patented machine
- D. A registered trademark

3.A company wishes to ensure that no one else can use their logo?

- A. Copyrights
- B. Trademark
- C. Patent
- D. Industrial design

4.Trademark law protects ___

- A. Words, symbols, or devices that differentiate goods or services from one another.
- B. only brand name
- C. Names of specific people and places
- D. inventions that feature some sort of utility function.

5.What is the process of using a competitor's trademark in a way that criticizes or compares products?

- A. Fair use
- B. Trademark dilution
- C. Passing off
- D. Infringement

1.3.1 INDUSTRIAL DESIGN

Industrial design is the process of designing physical products that are to be manufactured on a large scale. It's a blend of creativity and practicality, where designers consider both the aesthetics and functionality of a product, along with how it will be produced.

- **Focus on manufacturability:** Industrial designers create products that can be efficiently and cost-effectively produced in large quantities. This involves considering factors like materials, tooling, and assembly processes.
- **Balancing aesthetics and usability:** A well-designed product is not only attractive but also user-friendly. Industrial designers take into account ergonomics, user needs, and safety when designing a product.
- **Innovation:** Industrial design is a driver of innovation. Designers are constantly looking for new ways to improve products, whether it's through new materials, technologies, or functionalities.
- **Branding and marketing:** The design of a product is a key part of its brand identity. Industrial designers work with marketing teams to create products that are visually appealing and communicate the brand's message effectively.

Here are some of the benefits of good industrial design:

- **Improved product functionality:** Industrial design can help to create products that are more efficient, effective, and easier to use.

- **Enhanced user experience:** A well-designed product can be more enjoyable and satisfying to use.
- **Increased sales:** A product with a visually appealing and user-friendly design is more likely to appeal to consumers and sell well.
- **Reduced production costs:** By considering manufacturability from the outset, industrial design can help to reduce production costs.
- **Environmental benefits:** Industrial design can play a role in creating products that are more sustainable and environmentally friendly.

With brand examples

- **Apple:** Apple is renowned for its sleek and user-friendly product designs. From the iconic iMac to the iPhone, Apple's products are not only aesthetically pleasing but also prioritize usability.

- **Dyson:** Dyson is a brand known for its innovative and technologically advanced appliances. Their products, like the Dyson Airblade hand dryer and the Dyson V10 vacuum cleaner, are designed to be both functional and visually striking.

- **Herman Miller:** Herman Miller is a furniture brand that has a long history of producing high-quality, well-designed furniture. Their products, like the Aeron chair and the Eames Lounge Chair, are not only comfortable and ergonomic but also considered design classics.

- **Vitra:** Vitra is another leading furniture brand that is known for its collaboration with famous designers to create innovative and stylish furniture pieces. Their products, like the Panton Chair and the Eames Plastic Chair, are both functional and visually iconic.

- **Coca-Cola:** The Coca-Cola bottle is a prime example of how industrial design can be used to create a recognizable and iconic brand identity. The bottle's unique contour design is not only aesthetically pleasing but also functional, making it easy to hold and drink from.

These are just a few examples of brands that use industrial design effectively. Industrial design is a powerful tool that can help businesses create products that are not only successful in the marketplace but also leave a lasting impression on consumers.

1.3.2 NEED FOR PROTECTION OF INDUSTRIAL DESIGN

- **discourages copying:** Just like any intellectual property, industrial design protection discourages competitors from simply copying a successful design. If a company invests time and money into creating a unique and attractive design, they deserve to reap the benefits of that creativity. A registered design gives the owner exclusive rights to prevent others from making, selling or importing articles that embody the design without permission.

- **incentivizes innovation:** Protection encourages businesses to invest in design and development. Knowing their design will be protected allows them to focus on creating new and innovative products without the fear of immediate imitation. This can lead to a wider variety of products for consumers and a more competitive marketplace.
- **protects brand identity:** Often, a product's design is a key part of its brand identity. Think of the Coca-Cola bottle or the Volkswagen Beetle. By protecting the design, companies can control how their brand is represented in the market and prevent others from damaging their brand image by producing cheap imitations.
- **investment protection:** The design and development process can be expensive. Protecting a design allows companies to recoup their investment and potentially earn profits through licensing deals or royalties.
- maintains fair competition:** Design protection helps to ensure a level playing field for businesses. It prevents companies from succeeding solely by copying the designs of others, and encourages them to invest in their own creativity.

- **Increased foreign trade:** Strong industrial design protection can make a country more attractive for foreign businesses. If companies know their designs will be respected, they're more likely to invest in manufacturing or selling products in that country.
- **Attracting investment:** Investors are more likely to back companies that have a strong portfolio of protected designs. This is because protected designs are considered valuable assets that can generate revenue.
- **Enforcement against counterfeiting:** Design protection allows companies to take legal action against counterfeiters who are damaging their brand and potentially harming consumers with unsafe or low-quality products.
- **Protection in the global market:** With international design treaties like the Hague Agreement, companies can easily register their designs in multiple countries with a single application. This simplifies the process and reduces costs associated with protecting designs internationally.

- **Strategic advantage:** A well-protected design can give a company a significant competitive advantage. It allows them to differentiate their products from competitors and potentially command a premium price.
- **Boosts consumer confidence:** Consumers are more likely to trust and buy products from companies that invest in protecting their designs. This is because it suggests that the company is committed to quality and innovation.
- **Protects traditional knowledge:** In some cases, industrial design protection can be used to safeguard traditional knowledge and cultural heritage. This can be important for communities that rely on traditional designs for their livelihoods.

Need for protection of industrial designs with brand examples

Here's why protecting industrial designs is crucial, illustrated with real-world brand examples:

- **Discourages Copying & Protects Investment:** Imagine pouring resources into designing a revolutionary new shoe sole, like Nike's Air Max technology. Without design protection, competitors could easily copy the design, negating Nike's investment and innovation. Their registered design for the Air Sole unit protects its unique function and visual identity.

- **Incentivizes Innovation:** Knowing their sleek, single-body design for the Eames Lounge Chair would be protected, Herman Miller could confidently invest in its development. This iconic design, still popular today, wouldn't exist without design protection encouraging such innovation.

- **Protects Brand Identity:** The instantly recognizable shape of the Coca-Cola bottle is a prime example. If copycats flooded the market with cheap imitations, it could dilute the Coca-Cola brand image. Design protection safeguards this valuable brand asset.
- **Maintains Fair Competition:** Imagine a small company creating a unique furniture design. Without protection, a larger company could copy it, squeezing them out of the market. Design protection ensures a level playing field, encouraging creativity over imitation.
- **Increased Foreign Trade:** Strong design protection in a country like Italy attracts luxury brands like Ferrari. They know their iconic car designs will be respected, boosting foreign investment and manufacturing within the country.

- **Attracting Investment:** Investors are more likely to back companies with a portfolio of protected designs. Think of Dyson's innovative bladeless fan design. This valuable intellectual property attracts investment and fuels further development.

- **Enforcement Against Counterfeiting:** Ugg boots are famous for their unique design. Without protection, counterfeiters could flood the market with cheap, potentially harmful imitations. Design protection allows Ugg to take legal action against these counterfeiters.

- **Strategic Advantage:** The sleek design of the Apple iMac computer is a key part of its brand identity. Design protection allows Apple to maintain this advantage, differentiating their product and potentially commanding a premium price.

Advantages of industrial design

For Businesses:

- **Increased Sales and Brand Recognition:** Attractive, user-friendly products tend to attract more customers and build stronger brand recognition. Think of Apple's sleek product designs that have become synonymous with the brand.

- **Improved Product Functionality and Efficiency:** Industrial designers prioritize functionality alongside aesthetics. This can lead to products that are easier to use, more efficient, and perform better, like ergonomic keyboards or redesigned tools.
- **Reduced Production Costs:** By considering manufacturability from the start, industrial design can help streamline production processes and minimize waste. This can lead to significant cost savings for businesses.
- **Enhanced User Experience:** Well-designed products are simply more enjoyable to use. This can lead to increased customer satisfaction and loyalty. Consider the intuitive design of thermostats or the comfortable fit of well-designed clothing.
- **Innovation and Differentiation:**Industrial design plays a key role in driving innovation. It allows companies to create unique and differentiated products that stand out from the competition. Think of Dyson's revolutionary vacuum cleaners or the foldable design of smartphones.

For Consumers:

- **Improved Safety:** Industrial design often incorporates safety features into products. This can help to reduce accidents and injuries, especially with household items or power tools.
- **More Sustainable Products:** Industrial designers can consider eco-friendly materials and production methods, leading to more sustainable products with a smaller environmental footprint.
- **Greater Choice and Variety:** With a focus on innovation, industrial design helps create a wider variety of products to suit different needs and preferences.
- **Products that are Easier to Use:** Usability is a core principle of industrial design. This results in products that are intuitive and require minimal training or effort to use.
- **Aesthetically Pleasing Products:** Industrial design doesn't just focus on function; it also considers aesthetics. This can enhance the overall user experience and make products more enjoyable to own and use.

SELF-ASSESSMENT

1. Industrial design protection covers:

a) The functionality of a product

b) The aesthetic appearance of a product

c) The brand name or logo associated with a product

d) All of the above

2. Which of the following is NOT a requirement for registering an industrial design?

a) The design must be new and original
b) The design must be commercially applicable
c) The design must be functional
d) The design must be clearly defined through drawings or photographs

3. What is the main benefit of registering an industrial design?

a) To gain copyright protection for any creative elements in the design
b) To prevent others from copying the design for a limited period
c) To automatically gain trademark protection for the product name
d) To establish ownership of the product itself

4. How long does industrial design registration typically last?

a) The duration depends on the specific design
b) Perpetually, as long as the design is in use
c) For a fixed term, typically 10-15 years, with the option to renew in some countries
d) Industrial designs cannot be registered indefinitely

5. What is the difference between a patent and an industrial design registration?

a) There is no difference; they protect the same things.
b) A patent protects the functionality of an invention, while an industrial design protects the appearance.
c) Patents are registered internationally, while industrial designs are registered nationally.
d) Industrial designs are easier and cheaper to register than patents.

Intellectual Property Rights (IPR) are legal protections granted to the creators of original works, including inventions, literary and artistic works, symbols, names, and images. These rights are designed to encourage innovation and creativity by providing creators with exclusive rights to use, produce, and distribute their creations for a specified period.

Types of Intellectual Property

- Patents
- Trademarks
- Copyrights
- Trade Secrets

Importance of IPR

- Encouragement of Innovation
- Economic Growth
- Legal Protection
- Consumer Protection

- **Intellectual property rights (IPR):**The it legal rights that give the owner of an intellectual property the ability to exclude others from using, making, or selling it without permission.
- **Patents**: protect inventions, new processes, and improvements to existing products.
- **Trademarks:** distinguish the source of goods and services. Examples include logos, slogans, and product names.
- **Copyrights:** protect original works of authorship and dramatic works.
- **Industrial designs:** protect the ornamental or aesthetic aspects of a product.

SELF-ASSESSMENT QUESTIONS

1. Narrate the importance of Intellectual property rights.
2. Explain the types of Intellectual property rights.
3. What are the functions of IPR?
4. Describe the types of trade marks.
5. How to protect trademark of an products? Explain with examples.
6. Explain about non-registerable trademark products.
7. What is industrial design?
8. Describe the importance of industrial design.

CASE STUDY

1. A small business developed a new, efficient method for brewing coffee. They want to keep the process a secret to maintain a competitive advantage. What type of IPR can help them achieve this (patent, trade secret, or copyright)? Explain your reasoning.

ACTIVITIES

- Find a recent court case involving a famous IPR dispute (e.g., Apple vs. Samsung patent wars). Analyze the case, identify the key legal issues, and discuss.

SUGGESTED READINGS

- https://www.tradecommissioner.gc.ca/india-inde/ip_rights-propriete_intellectuelle.aspx?lang=eng
- https://blog.ipleaders.in/registration-of-trademarks/
- https://blog.ipleaders.in/everything-you-need-to-know-about-trademark-and-its-types/
- https://gemini.google.com/app/59729cbc966d60d6?utm_source=google&utm_medium=cpc&utm_campaign=2024enIN_gemfeb&gad_source=1&gclid=CjwKCAjwmYCzBhA6EiwAxFwfgGQMLMMtR3D4mcAV1LUO1sJe_N5H2ryl3A3DwVZOHKQ5txiW0HlX8hoCZ48QAvD_BwE
- https://www.digip.com/blog/post/5-key-ways-to-protect-your-registered-trademark

REFERENCES

- Bayya subbaraoP.V.Appaji" IPR in pharmaceutical industry;theory and practice"
- Dr.Ruchi Tiwari , Dr.Gaurav Tiwari "Intellectual property rights".
- Intellectual property rights in india,legal,regulatory&tax: nishithdesai association
- Management of Intellectual property rightsinindia: R.Saha

UNIT-IV

1.1.1 WHAT IS COPYRIGHT?

Copyright is a legal protection for original works of authorship. It grants the creator exclusive rights to control how their work is used. This includes things like copying, distributing, adapting, displaying, and performing the work.

WHAT KIND OF WORKS IS COPYRIGHTED?

Copyright covers a wide range of creative expression, including:

- Literary works (books, poems, articles)
- Artistic works (paintings, sculptures, photographs)
- Musical compositions
- Sound recordings
- Computer programs
- Films
- Architectural works

HOW DO YOU GET COPYRIGHT?

In most countries, copyright automatically applies to an original work as soon as it's created and fixed in a tangible form. You don't need to register it to be protected. However, registering your copyright can provide some additional benefits, such as making it easier to enforce your rights in court.

WHAT RIGHTS DOES COPYRIGHT GIVE YOU?

Copyright gives the creator a bundle of rights, including:

- **Reproduction rights:** The right to control how the work is copied.
- **Distribution rights:** The right to control how the work is distributed or sold.
- **Adaptation rights:** The right to create derivative works based on the original work.
- **Display rights:** The right to control how the work is displayed publicly.
- **Performance rights:** The right to control how the work is performed publicly.

HOW LONG DOES COPYRIGHT LAST?

The length of copyright protection varies depending on the jurisdiction and the type of work. In general, it lasts for a number of years after the creator's death.

1.1.2 CONCEPT OF COPYRIGHTS

1. **Copyright grants a set of exclusive rights** to copyright holders, which means that no one else can copy, distribute, publicly perform, adapt, or do almost anything else other than simply view or read the work without permission of the copyright holder.
2. **Copyright grants rights to literary and artistic works that are original**. Copyright is available to everything from paintings to blog posts, but all works must meet a certain standard of originality to warrant copyright. Different countries frame the test in different ways, but it is often considered a test of originality and/or authorial presence. Generally speaking, this means the work must have been a creation of its creator and not copied from another work. Note that even a small amount of originality warrants copyright, such as taking a simple picture of your pet.
3. Copyright **does not protect facts or ideas** themselves, only the expression of those facts or ideas. The difference between an idea and the expression of that idea can be tricky, but it’s also quite important to understand. While copyright law gives creators control over their expression of an idea, it does not allow the copyright holder to own or exclusively control the idea itself.
4. As a general rule, copyright is **automatic** the moment a work is created, though some countries require that the work be fixed in a tangible medium before granting copyright. In countries that require fixation, such as the United States, you do not have a copyright until you type your poem, record a song, or otherwise capture your

work in a fixed form. While registration with the local copyright office often confers certain benefits to the copyright holder and allows you to record your authorship officially, registration is not required to gain copyright protection.

5. Copyright protection **lasts a long time**. More on this later, but for now it's enough to know that copyright lasts a long time, often many decades after the creator dies.
6. **Copyright protection is balanced against other public interests**. The rights granted to copyright owners may be considered against other public interests, such as freedom of expression rights, the right to access information, and the needs of people with disabilities. There are occasions when copyright protections may be limited to serve the public interest.

1.1.3 COPYRIGHTS AND RELATED RIGHTS

Copyright and related rights are legal protections for creators and those involved in bringing creative works to the public. Here's a breakdown of the key aspects:

Copyright

- Protects original works of authorship, including:
  - Literary works (books, articles, poems)
  - Artistic works (paintings, sculptures, photographs)
  - Films
  - Music
  - Software
  - Dramatic works (plays)
- Grants the copyright owner two main sets of rights:
  - Economic rights: Allow the owner to profit from the work through activities like reproduction, distribution, and public performance.
  - Moral rights: Protect the creator's non-economic interests, like attribution (being recognized as the author) and integrity of the work (preventing modifications).

- Copyright arises automatically upon creation of the work, no registration required in most countries. However, registration can provide advantages as proof of ownership.

Related Rights

- Protect rights similar to copyright, but for categories of individuals other than the original creator.
- Examples of related rights:
    - Rights of performers in their live performances
    - Rights of producers of sound recordings and films
    - Rights of broadcasters in their radio and television programs
- The specific rights granted can vary depending on the category and national laws.

1.1.4 AUTHOR AND OWNERSHIP OF COPYRIGHTS

Who is the Author under Indian Copyright Law?

The Indian copyright law distinguishes between authorship and ownership of copyright in India. An author is someone who actually writes, composes or creates the work utilizing his or her creativity, imagination and intellectual abilities. The author of a particular copyrighted work can also be owner of the work if such work is not created under the employment or direction from some other person.

The ownership of a copyrighted work can vary depending on the conditions surrounding its creation but an author will always remain the creator of the work because the authorship has been rewarded in order to appreciate the efforts that an author put into the creation of the work. The copyright Act, 1957 establishes a general rule that the author is the first owner of a copyright and the exceptions to this rule has been laid down under section 17 of the act, which also explains the difference between the authorship and the ownership of a copyright.

The rights of a copyright owner in India are wide, including the right to reproduce the work, the right to convey the work to the public, the right to adapt, translate, and many

more. Whereas the author of the work does not have such a broad range of rights, the author's rights are limited to the right of receiving remuneration for the work created and the moral rights of being known as the creator of the work (right to paternity) and protecting the work from exploitation (right to integrity).

The creator of a literary or dramatic work is referred to as the author in general, but under the copyright act, any individual who causes a work to be done is the author of that particular work. Section 2(d) of the Copyright Act of 1957 establishes a list of authors for various types of work protected by copyright. The section reads as follows:

- The author of a literary or dramatic work shall be the author.
- In musical works, the composer is the author.
- In artistic works, the artist is the author.
- The author of a photograph is the person who takes the photograph.
- The producer of a cinematographic film is the author.
- The author of a sound recording shall be the producer of such sound recording.

Who is the Owner under Indian Copyright Law?

As previously stated, the author of the work may also be the owner of the work; but, if the work is created in exchange for any consideration or in the course of employment, the person under whose direction the work is created becomes the owner of the work.

For instance, if a person X hires another person Y, who is an application developer, to develop an application for his business under a service agreement, then X will be the owner of such an application and Y, who developed the application under X's employment in exchange for monetary compensation, will have authorship of the application. On the contrary, if Y had created the application for himself or his business, he would have been both the author and the owner of the application.

Exceptions to the General Rule – 'Author is the first Owner'

The exceptions to the general rule that the author is the first owner of copyright is laid forth in Section 17 of the Indian Copyright Act, 1957, which states that a person who

pays or provides resources for a work to be created is the first owner of such work. Let us take a closer look at these exceptions.

Section 17	Subject matter
Clause (a)	Literary, dramatic & artistic work
Clause (b)	Photograph, painting, engraving, cinematographic film
Clause (c)	Work made under course of employment
Clause (cc)	Lectures delivered in public in behalf of another
Clause (d)	Work assigned by government
Clause (dd)	Work made on behalf of a public undertaking
Clause (dd)	Work of certain international organization

• Section 17(a) – Literary, Dramatic & Artistic Work

This clause states that if an author creates a literary, dramatic, or artistic work while working for the owner of a newspaper, magazine, book, or other publication under a contract for publishing such work, the owner of such newspaper or magazine becomes the first owner of the copyrighted work, unless an agreement to the contrary is in place.

Illustration – A journalist or writer working in a newspaper house is never the owner of the work he produces; only authorship is his.

• Section 17(b) – Photograph, painting, engraving, cinematographic film

This paragraph states that anytime a photographer is paid to take photographs, a painter is hired to paint, and a cinematographer is hired to shoot a film, the person who hired or caused such work to be done becomes the first owner of the copyright.

Illustration – A painter hired by a school to paint the school's boundary walls with storytelling paintings presenting social and moral values will not be the first owner of the paintings he made, but the school that hired the painter will be.

• Section 17(c) – Work made under course of employment

This section states that if a work is made during the course of employment or a service contract, the employer becomes the first owner of such copyrighted work.

In the well-known case of V.T. Thomas and Others vs Malayala Manorama Co. Ltd, the employee, an artist, created a cartoon character prior to his employment with the publishing house Manorama and continued to use it after his job terminated. The publishing house claimed that they were the first owners of the copyright because the cartoon was utilized while the artist was working for them. Although the cartoon was utilized by Manorama, it was not created by the artist during his employment with them; hence he was the sole owner of the artwork.

In another case of Neetu Singh vs Rajiv Saumitra, the court agreed that the defendant had served as a director of a company for two years, but the plaintiffs were unable to prove that the literary work authored by the defendant was part of his employment obligations.

• Section 17(cc) – Lectures delivered in public in behalf of another

This clause states that if a person provides a speech in public on behalf of another person, the person on whose behalf the speech was delivered is the original copyright owner, not the person giving the speech.

• Section 17(d) – Work assigned by government

If a copyrightable work is created as a result of a government tender, the government will be the first owner of the copyright deriving from and accruing to such works.

For example, the Indian government owns the copyright on the "statue of unity," not the engineers or architects who designed or built it.

• Section 17 (dd) – Work made on behalf of a public undertaking

In the absence of an agreement to the contrary, if a work is created or first published by or under the control or direction of a public undertaking, that public undertaking will be the original owner of Copyright.

• Section 17(dd) – Work of certain international organization

If an international organization commissions someone to create a copyrightable work on its behalf, that organization will be the original owner of the work.

1.1.5 RIGHTS CONFERRED BY COPYRIGHTS

Rights of the owner of a Copyright:

In order to exercise and enjoy the position of ownership of the copyrighted work, certain rights have been conferred to the owner in terms of morality and on monetary benefits by the copyright Act, 1957, and are also recognized by International conventions like TRIPS and Berne.

Economic rights of a Copyright Owner –

Any right that yields or payoffs the owner monetarily are said to be the economic rights. The economic right of the owner are been listed out in Section 14 of the principal Act, under the meaning of copyright.

Right to reproduce the work :

Reproduction is an act of copying from the previously finished works or giving it a differential form by adding, editing or modifying the same. In short in means the right to copy. Such right shall exclusively be exercised by the owner of the work and shall not be infringed by any other person since the act of reproduction of the work may economically make benefits to its owner. Be it a book which has been published or a compact disc that has been recorded and manufactured, right of reproduction of

copyrighted works are the basis to protect a work from the act of exploitation. The concept of substantial and material copying has also been enclosed within the reproductive right. In regards to the violation of copyright of the owner, it is not necessary to copy the entire subject matter of the work to held responsible for such infringement and a part of the reproduction of a particular work would be enough for the infringement of the same.

Right to distribute in market :

Similar to the right of reproduction, the owner of the copyrighted work also has a right to distribute in the market and make money out of it. The act of distribution may be in the form of sale, lending for free or for a consideration, rental, or free distribution by the way of gift. The right of distribution differs from case to case and shall not be exercised in a similar manner at each instance. If the work that has been sold is a book, the **rule of exhaustion** shall be applied. Wherein the right to distribute the book will be exhausted and ceases to exist after the first sale of it and the buyer of the book will be further entitled to resale it as a second hand material. Whereas this condition is not the same in case if the owner of copyright set ups a library and charges rental fee to read the books available there and the law does not prohibit to do so also the rule of exhaustion will not come to play.

Right to communicate to the public :

It means letting or making the product/work available to the public by way of broadcasting, simulcasting or webcasting. If a person not being the owner of the work, communicates it to the public would amount to the act of infringement. In **Indian performing right society Ltd. V Aditya Pandey,** the Delhi High Court held that “the defendant is accordingly restrained from communicating any of such works to the public, or performing them, in the public, without such appropriate authorization, or licensing”.[2]

Right of adaptation :

Conversion, alteration, transcription or rearranging a copyrighted work means and includes the right of adaptation. These rights are exclusively available only to musical,

literary or dramatical works and are not extended to the computer programmes. Although the right of adaptation are being protected by the statute, it is also been governed by the principles laid down under a classical case, by the Privy Counsel, in **Macmillan and Company Ltd. V K. and J. Cooper**[3]. The defendants were alleged on infringing the book published by the plaintiff and the nature of the book which was previously published by the Plaintiff was put to test and was figured out the work was made out of a non – copyrighted source, such that the Plaintiffs book lacked its nature of originality and held that the defendants are not guilty of infringement. The principle employed here is that, although a work has been adapted from such source it must possess a quality of originality to an extent.

Right to translate :

The owner of the copyrighted work has a right to translate his work to any other languages he wants.

Moral rights of a Copyright Owner:

A moral right would stand a step ahead of an economic right in which it is based on the dignity, uniqueness and the reputation that a work has gained and maintained. It has been well illustrated in the case of **Amarnath Sehgal v Union of India**[5],the plaintiff's masterpiece was damaged by the defendant by which it lost its aesthetic and market value. A mandatory injunction was passed by the court in addition of fine amount of 50 lacs as the cost of damage.

The moral rights of the copyright owner has been provided under Section 57 of the principal Act that encompasses three basic moral rights.

- Right of paternity;
- Right of integrity; and
- Right to retraction.

Right of paternity :

The right of an owner of copyright to claim and prevent others to claim the ownership of his copyrighted work is said to be a right of paternity. **Sholay Media Entertainment and Pvt. Ltd. V Parag M. Sanghavi**[6], was a landmark judgement delivered on the Right of paternity of the copyright owner, where the court granted protection to the title of the movie which made the defendant to replace his' movie title completely by refraining the use of the name which causes damage to the cult of the name "Sholay" since it was deceptively similar with the same.

Right of integrity :

The right of the owner of the copyright to protect the reputation of his own work from exploitation is the right of integrity. **Sajeev Pillai v. Venu Kunnapalli&ors**[7]., the respondent was alleged on the act of pre – release publicity of the movie which was yet to be released without ant authorized permission. The court granted relief to the aggrieved petitioner by restraining the respondent to carry on such act which damages the exclusiveness and reputation of the movie.

Right to retraction :

Retraction is an act of taking back the previous assertion made. The author at times may feel to give up his own right as an act of honoring the dignity of his work which sounds like assassinating ones own life for the sake of protecting the so far gained reputation. The principal Act, under section 57 grants the author the right to withdraw from the publication of his work. In simple terms it means waiving of his granted rights for the sake of protection of reputation or integrity. In **Amarnath Sehgal v Union of India[8],** the court pointed out the right to retraction as to withdraw ones own publication if the author feels the condition of his work is derogatory in nature and are advisable to do the withdrawal of the same. This would be the author's right to retraction.

SELF-ASSESSMENT

1. Copyright protects original works of authorship. which of the following is not protectable by copyrights?
    a. Literary work(books, poems)
    b. Ideas, facts, or discoveries
    c. Paintings and sculptures
    d. Musical compositions
2. Copyright automatically applies to :
    a. Published works only
    b. Unpublished works only
    c. Registered works only
    d. Original works from the moment of creation
3. The copyright symbol is :
    a. Mandatory for copyright protection
    b. Provides stronger copyright protection
    c. Recommended but not required
    d. Only applies to registered works
4. The fair use doctrine allows limited use of copyrighted material for purpose such as :
    a. Criticism and commentary
    b. Educational purposes
    c. News reporting
    d. All of the above
5. Generally, the copyrights for a creative work belongs to :
    a. The publisher
    b. The distributor
    c. The first person to register it
    d. The original creator of the work

1.2.1 REGISTRATION OF COPYRIGHTS

Process of Copyright Registration in India

The Complete guidance of the Copyright Registration process in India is given below:

Step 1: Filing the Application

When an individual seeks to prevent his/her creation by Copyright Registration in India, they have to file the application. It is the initial stage of Copyright Registration in India. The applicant also has to pay a suitable cost along with the application. The fee for Copyright Registration in India can be from ₹500 to ₹40,000, depending on the type of work.

Just after filing the application, the Registration office issues a diary number. The diary number is a unique identification that is given to the applicant during the Registration. This number helps in tracking and inquiring about the Registration procedure.

Step 2: Objection Procedure

After getting the Diary number, the applicant has to wait for a 30 days mandatory cooling-off period. In these 30 days, the examiner reviews the application and waits for any objection. Here one who has an issue regarding the similarity or piracy can file an objection and the application will be reviewed.

Step 3: Examination Process

When the objection period is over the application goes for the examination. During the examination process, the examiner scrutinises and tries to find out discrepancies.

Step 4: Registration Certificate

When the application undergoes all the above-mentioned steps then the final stage is Registration. At this stage, the applicant receives the Copyright Register Certificate.

This certificate serves as the legal proof of ownership where the applicant receives all the exclusive rights of the production and distribution of the original work. But if the application is rejected by the registrar so the rejection letter is sent to the applicant.

Documents Required for Copyright Registration in India

Here is the list of some common documents required for Copyright Registration in India:

- **2 Copies of the Work**
- **Demand Draft** (in case of Offline Registration)
- **NOC** from Author/ Various Copyright holders/ Publisher
- **Power of Attorney** (if the application is filed by any attorney)
- **Identity Proof** of the applicant (ex- Aadhar card, PAN card, etc)

Why Do We Need Copyright Registration in India?

Copyright Registration in India is essential in several aspects such as:

- **Legal Protection:** Copyright Registration serves as legal documentation for a specific work, providing legal protection to its creator.
- **Exclusive Rights:** Through Copyright Registration, the creator or author secures several exclusive rights to their work. He/She is the only one who can reproduce, distribute, display, and perform his/her creation through Registration.
- **Public Notice:** A creator can inform the public that certain work is protected by Copyright law by Copyright Registration. It prevents improper usage or infringement.
- **Infringement Lawsuit:** A Copyright Registration is required in order to take legal action against someone who has infringed on a copyrighted work. If you don't register, you have limited privileges.
- **Enhanced Marketability:** The main advantage of Copyright Registration is enhanced marketability. It enhances the value of a creator's work and helps to distinguish it from similar works. The original developer might also gain a number of financial advantages through Copyright Registration.

Benefits of Copyright Registration

Copyright registration offers several advantages to creators and intellectual property owners, including the following:

- **Safeguarding the Owner:** Copyright registration provides copyright owners exclusive rights over their work, encompassing reproduction, distribution, adaptation, dissemination, and translation.
- **Legal Protection:** Creators benefit from legal protection, ensuring their work cannot be reproduced without proper authorization.
- **Enhancing Brand Value:** A registered copyright serves as proof of ownership, allowing creators to use it for marketing purposes and contributing to goodwill creation.
- **Global Reach:** Copyright protection extends internationally. If a work is copyrighted in one country, it enjoys similar privileges in other countries, including India.
- **Copyright as an Asset:** Copyright is considered an intellectual property asset, making it an intangible resource that can be sold or licensed, adding economic value.
- **Owner Visibility:** Copyright registration raises the work profile, making it accessible worldwide and searchable in copyright registries. It also prevents unauthorized use of the work once registered.
- **Economic Stability:** Copyright registration promotes economic stability, enabling creators to reproduce and monetize their art in various forms, contributing to their financial well-being.

1.2.2 TRANSFER OF COPYRIGHTS

Copyright Transfer

Copyright transfer refers to transferring the exclusive right to any individual or third party from the owner of such Copyright. By transferring Copyrights, the delegate will enjoy all the rights associated with the Copyright of the mentioned work. Under section 14 of the Act discussed above, the owner of the copyrighted work has been given the right to transfer the work. According to the Indian Copyright Act of 1957, a prospective copyright owner of a future work may also assign his rights partially or wholly to a third party through Copyright.

In the unfortunate event of the assignee's demise before the work is created, the legal representatives of the assignee are entitled to the benefits of the copyright transfer.

Ways to Commence Copyright Transfer

Initiating a **copyright transfer** in India is the process through which the creator and authors can grant their rights to third parties for mutual benefit. These rights include exclusive control over the use of such work, its distribution, reproduction, and publication throughout India. Understanding the different methods of affecting a copyright transfer is essential for creators and recipients.

The Copyright exists with the original owner or author of the work for the entire span of his lifetime plus sixty years from his death. As discussed below, the rights can be transferred at any point within this duration. Section 19 of the mentioned Act deals with the mode of Copyright transfer.

1. Copyright Licensing

Copyright licensing deals with the transfer of complete or partial rights of a Copyright owner. The Licensing Agreement should be signed by both parties with their consent. The main aim is to qualify the licensee to utilize the copyrighted work for financial benefits and share the same with the owner.

Types of Copyright Licenses

The Copyright License can be voluntary or compulsory, as explained below.

Voluntary License:

A Voluntary License is voluntarily signed by two parties, the licensor and licensee. It contains the following details.

- Rights authorized and nature of the work.
- Geographical degree of the license.
- Agreements connecting with the termination, revision, and extension of the license.

- Total sum of amount to be paid in return of the permit

Compulsory License:

The Copyright Board will give the necessary permit to the outsiders without the consent of the Copyright proprietor when such proprietor won't make the work accessible in open space.

2. Copyright Assignment

The Copyright Assignment mechanism allows a protected work's proprietor to give privileges to another individual. The Assignment permits the chosen individual to practice the selective freedoms related to the Copyright, such as reproducing, distributing, and publicly displaying the copyrighted work.

To relegate a copyright, an Assignment Agreement must be endorsed between the assignor and the assignee and drafted correctly.

- The terms & conditions regarding the revision and termination of the Assignment should be clearly explained.
- The total amount of royalty paid for the Assignment should be mentioned.
- The copyrighted work and the rights assigned should be mentioned clearly.
- The copyright owner (assignor) should write and execute the assignment agreement.
- If the Assignment term is not mentioned, it can be considered five years from the date of Assignment by default. If the geographical limit is not stated, then it is assumed to the extent within India.

3. Copyright Transmission

If the original author working on a manuscript of dramatic, literary, artistic, or musical work dies, the rights will be transferred to the individual specified in the deceased's will.

4. Copyright Relinquishment

Copyright relinquishment refers to the intentional surrender or abandonment of all or explicit rights vested in the creator of a protected work. The proprietor of such Copyright should notify the Registrar of Copyrights in the endorsed structure. When the registrar gets the notification, he will distribute such notification in the authority Periodical or, in all likelihood, he can distribute it as he considers fit.

5. Copyright Transfer by Operational Law

Suppose there is a will; ownership transfers to the personal owner's representative upon death. As per section 20 of the mentioned Act, the transfer of Copyright by operation of law in the event of the Copyright owner's demise is discussed below.

Copyright Passing to Personal Representative

If no will is executed, the copyright is passed to the person's representative as part of their estate.

Inheritance of Copyright under Bequest

If an individual is entitled to Copyright through a bequest (inheritance) and the work has not been published before the testator's death, the Copyright shall be considered to have been transferred to that individual. This assumes that the testator was the Copyright owner immediately before their demise.

This also ensures a smooth transition of copyright ownership in the case of the original owner's death.

1.2.3 COPYRIGHT INFRINGEMENT

Copyright Infringement Explained

Copyright infringement occurs when the violating party exercises any of the creator's exclusive rights to the work without permission. This includes all manners of distribution (selling, broadcasting, performing, etc.), adaptation or other copying of the work. Infringement can occur whether or not the violating party seeks monetary gain through

the use of the material in question, though any argument against copyright infringement is usually considered stronger without a profit motive.

Examples of Copyright Infringement

- Illegally downloading music files
- Uploading someone else's copyrighted material to an accessible web page
- Downloading licensed software from an unauthorized site
- Modifying and reproducing someone else's creative work without making significant changes
- Recording a movie in a theater
- Distributing a recording of a TV show or radio broadcast
- Including someone else's photographs on a website without permission
- Publishing or posting a video with a copyrighted song to a company website
- Selling merchandise that includes copyrighted images, text or logos.

How Does Copyright Infringement Work?

In order to bring a claim of copyright violation to court, a plaintiff must first have proof that they are the rightful owner of the material in question—which is usually supplied by their work's copyright registration. They must then provide proof of actions that infringed upon rights unique to them as the copyright holder. Finally, there must also be proof the defendant's actions exceed standards of fair use. A valid claim does not require proof that the plaintiff suffered monetary harm as a result of these actions.

Copyright Enforcement

India's copyright law is based heavily on judicial precedent and case law. Enforcement is typically handled through claims brought to civil court. While states may have their own laws governing copyright, these are generally overshadowed by federal law.

Copyright enforcement is easier when the plaintiff has registered the copyright shortly after its creation and when clear documentation of all other relevant information (i.e., a

licensing agreement) exists. Willful infringement or an established profit motive can certainly damage a defendant in court, but neither must be proved to enforce a copyright. Creators may seek to enforce “moral rights” through copyright law such as the “right of attribution” or the “right of integrity,” which encompass the rights to claim authorship and prevent distortions of a work.

A copyright is harder to enforce when the work in question has little to no creative or expressive element, when its secondary use is limited to a small portion of the original work or when similarities between the plaintiff and defendant’s works appear coincidental.Defendants in a copyright case often argue the nature of their use follows fair use standards. Otherwise, the defendant assumes the burden of proof for arguing against the copyright’s validity.

There are certain times when copyright issues aren’t addressed through a traditional federal court process. As described in the section below, online copyrighted material is routinely protected from dissemination without any litigation at all by internet service providers.

Penalties for Copyright Infringement

Courts intervene in copyright cases in several ways. One common goal of copyright litigation is an injunction preventing any further violation of a copyright by the defendant. A court can even order the seizure of infringing materials to prevent further proliferation.

Plaintiffs also typically seek monetary compensation. They can also be entitled to compensation for legal fees, and stand to receive significantly increased compensation if they can prove infringement was committed willfully. The minimum fine for infringement of copyright is INR 50,000 and imprisonment for six months.

Types of Copyright Infringement

Copyright infringement can be broadly classified into two categories:

1. Primary Infringement
2. Secondary Infringement

Primary Infringement

Primary infringement refers to the real act of copying the work of the copyright holder. For example, photocopying a book and then distributing it for commercial purposes.
However, sometimes a person may only copy a part of the work, for example, a paragraph of an article. In such a case, the copyright holder is required to establish two things.

- **Substantial Taking**

A copyright is infringed only when an unauthorized person copies a substantial part of the work. For example, copying a catchy phrase of a lyricist.
While deciding the case, the court also tries to conceive, how an ordinary person will perceive the work. If an ordinary person will perceive that the work is copied from a different source then it will be considered infringement.

If the writing style, language and errors are similar to the copyrighted work then it will serve as evidence of copying in a court of law. The minor alterations made by the person in the work of a copyright holder will not affect the claim of infringement.

- **Casual Connection**

The copyright holder must prove that there is a similarity in the works of the copyright holder and the infringer. However, this may be because of several other reasons like both of them have used the same source for the research. In such a case, the copyright holder can not claim for infringement.

Secondary Infringement

Secondary Infringement refers to the infringement of copyright work without actually copying it. This can happen in the following ways:

- **Providing a place for Copyright Infringement**

If a person provides the place or permits the place (for profit) to be used for communicating of the work the public and such work amounts to copyright infringement then such person can be made liable for the offence of copyright imprisonment. However, if the person is unaware or has no reason to believe that the place is used for copyright infringement then cannot be made liable for the same.

It is important to note that the person should let the place for "profit" to be made liable for copyright infringement. If an NGO lets the place then the NGO cannot be made liable for the same.

- **Selling Infringing Copies**

If a person sells the copies that infringe the right of the copyright holder then it will amount to copyright infringement.

- **Distributing Infringing Copies**

When a person distributes infringing copies of the copyright holder works then it will amount to copyright infringement. For example, if a person uploads a movie on the internet for free then it is an infringement of copyright.

- **Importing Infringing Copies**

Importing the infringed work of the copyright holder in India also amounts to infringement of Copyright. However, if the person has imported the infringed work for the domestic or personal use then it will not amount to Copyright Infringement.

SELF-ASSESSMENT

1. Copyright infringement occurs when someone uses your copyrighted work without:

   a. Permission
   b. Proper citation
   c. Co-ownership agreement
   d. All of the above

2. When registering a copyright, you typically submit:

   a. A physical copy of the work
   b. A digital copy of the work(for some works)
   c. A detailed description of the work
   d. All of the above

3. Copyright registered fees are:

   a. Waived for all works
   b. Dependent on the type of work
   c. Extremely high
   d. Negotiable with the copyright office

4. Copyright registration with the copyright office is:

   a. Required for copyright protection
   b. Recommended for stronger evidence
   c. Necessary for suing for infringement
   d. Only applies to software

5. Copyright ownership can be transferred through:

   a. Sale
   b. Gift

c. Inheritance
d. All of the above

1.3.1 WHAT IS SOFTWARE COPYRIGHT?

Copyright does not protect facts, ideas, systems, or methods of operation, but instead protects the way that these things are expressed. You can outline your ideas in writing or drawings, but a copyright cannot protect the idea itself. Instead, it protects fixed, tangible mediums of expression that can be reproduced, i.e. the final written or artistic work.

Historically, computer programs were not protected by copyright because until 1974 computer programs were not viewed as fixed, tangible objects. However, in 1983 traditional copyright law was extended to include machine-readable software and the Copyright Act awarded computer programs the same copyright status as literary works. While many of the same legal principles and policies apply, there are a number of distinct issues that arise with software copyright.

Software Copyright Infringement

When you run a program on a computer it is often impossible to avoid copying some of the code as there is normally some automatic copying of the program that takes place within the computer's memory in order to enable the software to function. Also uniquely with software, copyright is not only infringed by taking a direct copy of the original work, but also by adapting versions of the original.

So for example, if the code (source code or compiled code) is re-written or otherwise converted into another computer language, this is also deemed an infringement of software copyright law as it is a 'derivative' work, and an appropriate licence is required to do this.

Software copyright can also be infringed without even taking a copy of the code. For example, using an original computer program for "inspiration", to create the same functionality in a new program. Even if none of the original code is actually used, the copyright in the original program may in some cases be infringed.

Software copyright is a complex and evolving area of law and unlike other artistic works, software copies are sold with specific terms attached, in order to highlight what constitutes acceptable usage.

If you are selling software and trying to figure out how to best protect your software IP, we recommend checking what we here at 10Duke offer.

How to Detect Software Copyright Infringement?

Software copyright is predominantly used by software developers and proprietary software owners to prevent unauthorized copying of their software. The copyright holder is typically the work's creator, or a publisher or other business to whom copyright has been assigned. Copyright holders routinely invoke legal and technological measures to prevent and penalize copyright infringement (more commonly referred to as piracy) where works protected by copyright law are used without permission.

For works such as software and web applications, the source code is primarily where copyright exists and a copyright notice should be inserted in the headers of all source code files, help files, user manuals and/or 'about this software' pages, to make the assertion of copyright explicit.

Where there is no direct copying of code, line-for-line, it can be difficult to prove that copying has actually occurred. One way of trying to make copying easier to detect is to include redundant code or program components in among the real code. If an alleged copy includes the same redundant program components, even if they are not line-for-line copies, it can provide a very strong inference that copying has occurred.

Independent software vendors should be very careful about disclosing source code. If someone can independently create from scratch what you have produced, just by looking at your source code, providing that the code is substantively different then your software copyright has not been infringed. The modification of your copyrighted software for personal use may also be deemed acceptable under the caveat of 'fair use' and also code breaking and reverse engineering when a 'legitimate reason' can be provided for doing so. However, ultimately any unauthorized use of the software is deemed to be piracy or theft, in recognition of the commercial harm of infringement of copyright holders.

1.3.2 COPYRIGHT PROTECTION ON THE INTERNET

Copyright protection on the internet extends to web pages and their contents, including:

1. Overall design.
2. All links.
3. Original text.
4. Graphics.
5. Audio.
6. Video.
7. Any other original elements.

It's crucial to understand that using any of these elements on other websites or posting them elsewhere without the owner's permission constitutes an Internet copyright violation.

Additionally, scanning and sharing materials from published periodicals and books on the internet without permission is also an infringement of copyright.

If you intend to use copyrighted material, it's advisable to seek permission, a straightforward process that typically involves contacting the owner, often via email, which can serve as documentation if needed in the future.

1.3.3 HOW COPYRIGHT WORKS WITH SOCIAL MEDIA

When you post your creative work on social media, you continue to own the copyright, if the work is eligible, for example, tweets on Twitter. No one can use the work without your permission, nor does the platform take ownership. However, there is an exception: by posting on a platform such as YouTube or Twitter, you are agreeing to the site's terms of use, which

often give the site a license to use your work. More importantly, you are also allowing other users to share the work within the platform (if your settings are configured to allow shares). As a user of social media, you need to understand the terms of service you are agreeing to and then comply with them.

Posting your work on social media does not mean that others can use it without attribution. For example, if you create a meme and post it to Twitter, other users can retweet it. However, if someone merely copies the meme, without attribution, and posts it on their own feed or even somewhere outside of social media, it does not automatically constitute fair use and most likely does not comply with the terms of service for the platform.

It is also important to understand that you cannot post a copyrighted work to a social media site without permission. Courts have held that the mere act of posting a photograph online, for example, is not transformative. Users should post only creative works that are in the public domain, works that qualify for fair use, work for which they have received permission to post, or their own work.

Because copyright is created as soon as you produce work, you do not have to post a copyright notice with your work. However, if you are posting work to social media, it can be useful to include a copyright notice, such as ©2019 Bob Jones, as a reminder to other users that you own it.

Because copyright and social media is an evolving area, it's important that users pay attention to changes in the law. To protect your creative interests, registering your copyright is advisable.

Now, let us have a look at some of the famous social media platforms where the users post stuff and how the third parties are debarred from using this content exhaustively while in other cases the concerned third party without any restrictions can use posts, images and write-ups created by others. So, it really depends as to what is the content

and where it is published. The platforms which are in popular use, now, include Facebook, Instagram, Whatsapp, Pinterest, Twitter, Quora, LinkedIn and many more as such where such copyright violations take place. It is a matter of great concern and measures should be taken to curb these practices.

Social media, like Facebook, Twitter, and Pinterest, allow online posting of material that may be copyrighted. The social media site does not own the work that has been posted on their site; the copyright is still retained by the owner. But by agreeing to post works on the site, you sign an agreement that gives the site a license to use the work. In these cases, the license is given without payment.

Twitter and Copyright

The Twitter Terms of Service state that:

You retain your rights to any Content you submit, post or display on or through the Services. By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).

In other words, Twitter users grant Twitter a license to make Tweets available to other Twitter users.

Facebook and Copyright

The Facebook Terms are similar, stating that you (the Facebook user) own “all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings.” In addition, for content protected by intellectual property rights, you grant us a non-exclusive, transferable, sub-licensable,

royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). When you leave Facebook, all content is deleted.

Pinterest and Copyright

Pinterest is a social media site that allows members to post photos from their websites and other places. Pinterest's terms of service says that Pinterest does not take your copyright to photos. But, by signing up for Pinterest and agreeing to their terms and privacy notice, you have agreed to give Pinterest a non-exclusive, royalty-free, transferable, sublicensable, worldwide license to use, display, reproduce, re-pin, modify (e.g., re-format), rearrange, and distribute your user content on Pinterest for the purposes of operating and providing the service to you and to our other users.

In other words, Pinterest can use your content on its site because you have agreed to give them a license to use it as described in this agreement, without payment. The Pinterest copyright statement includes a link where you can file a complaint against someone you feel has violated your copyright.

Protecting Your Own Content on Social Media

The best way to protect your intellectual property from being appropriated on social media is to not put it up there in the first place. Although you own the content you place on one of these social media sites, you have granted a license to the media site to use the content and for others to view it.

To protect content, include a copyright statement on the file for photos. And be aware that your property might get appropriated by someone (not associated with the social media site). You must be vigilant to keep track of possible violations and be quick to file complaints. If you are not vigilant, you may not be able to support your claims in a lawsuit.

Who owns the Content on Social Media?

There is a general-albeit mistaken-belief that everything that is on social media sites and, on the Internet, maybe used freely to the extent that everything that is found there is usually freely accessible and easily available, and also free of charge. Many believe that all the content posted on social media 'belongs to everyone and is free for all'. However, this is not the case. When content is posted on social media sites (either on a person's user profile or on the page related to a product brand or a company), it is simply being published. But this does not mean that the rights of social media users are automatically assigned to others to allow anyone to use the content as they see fit.

The confusion regarding this situation may be influenced, or even caused, by the fact that social media sites include a 'limitation of intellectual property rights' in their terms of use, which are agreed to by users upon registration. But these licences on intellectual

property rights are limited in scope. They are usually non-exclusive and authorise the use of the content posted by users on social media sites by social media or by other users. Nevertheless, a key point is that the content is normally authorised to be used only within the social media site or in connection with it, or with the services provided by it. Therefore, no other use or purpose is permitted. The terms of the licences applied by each of the social media sites must be considered in order to confirm the authorised uses in each case and at any given time.

SELF-ASSESSMENT

1. Copyright protects software in two primary ways:
    a. the source code
    b. The user interface
    c. The functionality
    d. a&b

2. copying and distributing someone else's software without permission is:

a. fair use
b. legal if for personal use
c. copyright Infringement
d. Encouraged for open-source projects

3. Copyright protects software for a limited time. The duration depends on:
   a. The type of software
   b. The registration date
   c. The author's lifetime
   d. The same term as literary works

4. Downloading a copyright movie illegally from the internet is:
   a. Fair use
   b. legal if for personal use
   c. copyright infringement
   d. permitted if you pay a small free

5. sharing a short clip of a copyrighted song in a positive online review is:
   a. definitely copyright infringement
   b. fair use depending on the length and purpose
   c. always legal with proper attribution
   d. requires permission from the copyright holder

- **Copyright:** A legal right that grants the creator of original creative expression exclusive rights to control its use, reproduction, and distribution.
- **Social Media Platform:** Websites and apps designed for users to create and share content online (e.g., Facebook, Instagram, Twitter, TikTok).

- **Original Content:** Creative works you create yourself, such as text posts, photos, videos, or music compositions.
- **Sharing:** Reposting or republishing someone else's content on your social media profile.
- **Fair Use:** A legal doctrine that allows limited use of copyrighted material for purposes like commentary, criticism, education, or parody.
- **Copyright Infringement:** Using copyrighted material without permission from the rights holder.
- **Copyright Takedown:** A formal request from a copyright owner to a social media platform to remove infringing content.

Copyright is basically a legal shield for original creative work. It gives the creator exclusive rights to control how their work is used, for a set period. This includes things like copying, distributing, adapting, or displaying the work.

- Protects original expressions of ideas, not the ideas themselves. So a song melody is protected, but the concept of a love song is not.
- Generally applies to creative works like books, music, movies, paintings, software, etc.
- Gives creators control over how their work is used for a limited time (usually decades after the creator dies).
- After the copyright expires, the work enters the public domain and can be freely used by anyone.
- Fair use is a concept that allows limited use of copyrighted material without permission, for purposes like criticism, commentary, or news reporting.

Exercises for students about copyrights

1. **Remix Challenge**: Divide students into groups and provide them with short, public domain works (e.g., poems, paintings, short stories). Challenge them to create a "remix" using the original work.This activity gets them thinking about derivative works and copyright permissions.

Activities for students about copyrights

1. **Copyright Fashion Show**: Challenge students to create outfits inspired by copyrighted works (books, movies, paintings) **without** directly copying them. This activity encourages them to understand the concept of derivative works and how to use copyrighted material creatively.

Here are a few more copyright case studies that you can use in your class discussions:

CASE STUDIES IN INDIA:

Here are two brief copyright case studies from India to spark discussion:

1. Yash Raj Films vs. Sri Sai Ganesh Productions (2004):

- **Issue:** Copyright infringement of a movie concept.
- **Facts:** Yash Raj Films (YRF) claimed their movie "Band BaajaBaarat" was copied by Sri Sai Ganesh Productions' film "Jabardasht." Both movies revolved around wedding planners and shared similar themes, plots, and characters.
- **Ruling:** The court ruled in favor of YRF, finding substantial similarities in the expression of the concept, not just the general idea of wedding planning. YRF's copyright on the unique way they presented the concept was infringed.

2. Super Cassettes Industries vs. YouTube & Google (2016):

- **Issue:** Copyright infringement of music recordings.

- **Facts:** Super Cassettes Industries (T-Series), a music label, sued YouTube and Google for allowing users to upload copyrighted music videos without permission.
- **Ruling:** The case highlighted the complexities of online copyright infringement. The court did not hold YouTube directly liable but asked them to implement stricter takedown mechanisms for copyrighted content.

Discussion Points:

- What is the difference between a copyright-protected idea and its expression?
- How can filmmakers ensure originality in their work while drawing inspiration from existing concepts?
- What are the challenges and responsibilities of online platforms regarding copyright protection?

These are just two examples, and many other copyright cases in India deal with music, literature, software, and artistic works. You can find more details on these cases and explore others through legal databases or news articles.

SELF-ASSESSMENT

1.What is copyrights?
2. Explain the types of copyrights.
3. Narrate the concept of copyrights.
4. What are the rights of owner in copyrights?
5. How to register copyrights?
6. What are the functions of copyrights?
7. How copyrights pertained with software and internet?

SUGGEST ED READINGS

- https://gemini.google.com/app/cfd836728355ed95?utm_source=google&utm_medium=cpc&utm_campaign=2024enIN_gemfeb&gad_source=1&gclid=CjwKCAjw34qzBhBmEiwAOUQcF3ltDyq5PzQtsduU9oSd9hzWk2xHAT35MSoG6Gb4GxSL-02dGmSVWBoCNpoQAvD_BwE
- https://www.investopedia.com/terms/c/copyright.asp
- https://intellectvidhya.com/authorship-and-ownership-of-copyright-in-india/
- https://www.litem.in/copyright-registration/index.php
- https://blog.ipleaders.in/social-media-copyright/

REFERENCE

- Copyright, its law and its literature – Richard Rogers Bowker
- Copyright book :A practical guide – William.S
- Crews, Kenneth D(2013) copyright law for librarians and education
- Alka Chawla (2011), law of copyright

Upwala (2012) the libraries exception: what the amended copyright act does for preserving and sharing knowledge in the digital era.

UNIT-5

GEOGRAPHICAL INDICATION (GI)

1.1.1 INTRODUCTION TO GEOGRAPHICAL INDICATIONS

Geographical Indications (GIs) are a type of intellectual property that recognizes the unique qualities and reputation of a product linked to its place of origin. This concept protects the distinctiveness of these products, ensuring that only those originating from the specified region can use the designated name. GIs are crucial for promoting and preserving the cultural and economic value of traditional products.

Meaning of Geographical Indications

A Geographical Indication is a sign used on products that have a specific geographical origin and possess qualities, reputation, or characteristics inherent to that location. The key aspects of GIs include:

1. **Geographical Origin**: The product must come from a specific place. This place could be a town, region, or country.
2. **Unique Qualities or Reputation**: The product must have qualities or a reputation that are attributable to its geographical origin. This can include unique production methods, climate, soil, or other local factors that give the product distinct characteristics.
3. **Legal Protection**: GIs are protected by international agreements and national laws, which prevent unauthorized use of the indication by producers outside the designated area. This ensures that consumers are not misled about the true origin of the product.

Definition: A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities, reputation, or characteristics that are essentially attributable to that place of origin.

- **Legal Protection**: GIs are typically protected by law to prevent unauthorized use of the indication, thereby protecting the reputation of the product and promoting its unique qualities.
- **Distinctive Features**: GIs may encompass various aspects, including natural factors (climate, soil), human factors (tradition, know-how), and cultural heritage associated with the geographical region.

Examples of Geographical Indications

1. **Champagne**: Only sparkling wine produced in the Champagne region of France using specific methods can be labeled as Champagne.
2. **Roquefort Cheese**: This cheese must be made from the milk of Lacaune sheep and aged in the natural caves of Roquefort-sur-Soulzon in France.
3. **Darjeeling Tea**: Tea labeled as Darjeeling must come from the Darjeeling district in West Bengal, India.

1.1.2 CONCEPT OF GEOGRAPHICAL INDICATION

- **Origin-Centric Identity**: GIs emphasize the importance of the geographical origin of products in defining their quality, reputation, and characteristics.
- **Link to Territory**: GIs establish a direct link between the product and its geographical origin, highlighting the unique attributes and qualities derived from that specific location.
- **Consumer Confidence**: GIs provide consumers with assurance regarding the authenticity, quality, and traditional production methods associated with products from specific regions.

- **Promotion of Local Economy**: GIs contribute to the economic development of regions by promoting local products, preserving traditional knowledge and skills, and creating market differentiation.

International Framework for GIs

The international framework for GIs is primarily governed by agreements such as:

- **The TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights)**: This WTO agreement sets minimum standards for the protection of GIs and provides a mechanism for settling disputes.
- **The Lisbon Agreement for the Protection of Appellations of Origin**: Administered by WIPO, this agreement offers protection for appellations of origin and their international registration.

In summary, Geographical Indications serve as a valuable tool for protecting the uniqueness of regional products, benefiting producers, consumers, and preserving cultural heritage.

1.1.3 PROTECTION OF GEOGRAPHICAL INDICATIONS

The protection of Geographical Indications (GIs) is vital to ensure that products associated with specific regions retain their unique qualities, reputation, and economic value. The protection mechanisms are implemented through international agreements, national laws, and regional regulations.

Mechanisms for Protecting Geographical Indications

1. **International Agreements**
    - **TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights)**: Under the World Trade Organization (WTO), the TRIPS Agreement provides a comprehensive framework for the protection of GIs. It requires member countries to provide legal means for interested parties to prevent the

use of GIs that mislead consumers or constitute unfair competition. Special protection is given to GIs for wines and spirits.

- **Lisbon Agreement and Geneva Act**: Administered by the World Intellectual Property Organization (WIPO), the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, along with the Geneva Act of the Lisbon Agreement, facilitates the international registration and protection of appellations of origin and GIs.

2. **National Laws**

Countries implement their own laws to protect GIs, often through specific GI legislation or through broader intellectual property laws. Key elements of national GI protection typically include:

- **Registration Process**: Producers must apply for GI registration, providing evidence that their product originates from the specified area and possesses unique qualities linked to that region.
- **Enforcement Measures**: Legal frameworks provide mechanisms to prevent unauthorized use of registered GIs, including administrative actions, civil litigation, and sometimes criminal sanctions.
- **Public Awareness**: National laws often include measures to raise awareness among producers and consumers about the significance of GIs and the legal protections available.

3. **Regional Agreements**

- **European Union**: The EU has a robust system for GI protection, including Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI). PDOs cover products with production, processing, and preparation stages in a specific area, while PGIs apply to products with at least one of these stages in the area.
- **Other Regional Frameworks**: Similar systems exist in other regions, such as the ASEAN Common Framework for GIs, which aims to harmonize GI protection among Southeast Asian nations.

Challenges in Protecting GIs

1. **Enforcement across Borders**: Ensuring GI protection in international markets can be challenging due to differences in national laws and enforcement capabilities.
2. **Counterfeiting and Imitation**: Unauthorized use of GIs and counterfeit products can undermine the value of genuine products and harm consumer trust.
3. **Awareness and Education**: Educating producers and consumers about the importance of GIs and the legal mechanisms available for protection is crucial for effective enforcement.

Benefits of Protecting Geographical Indications

1. **Economic Benefits**: Protection of GIs can enhance the market value of regional products, providing economic incentives for producers and supporting rural development.
2. **Consumer Confidence**: GI protection ensures that consumers can trust the authenticity and quality of products associated with specific regions.
3. **Cultural and Heritage Preservation**: Protecting GIs helps preserve traditional knowledge, cultural heritage, and local practices, maintaining diversity in global markets.
4. **Quality Assurance**: GI protection often involves strict quality controls and standards, ensuring that products meet certain criteria and maintaining high standards.

In summary, the protection of Geographical Indications involves a combination of international agreements, national laws, and regional frameworks, all aimed at preserving the unique qualities and reputation of region-specific products. Effective GI protection not only benefits producers economically but also safeguards cultural heritage and ensures consumer trust in the authenticity of these products.

1.1.4 SIGNIFICANCE OF GI

- **Preservation of Cultural Heritage**: GIs help preserve and promote traditional practices, cultural heritage, and artisanal craftsmanship associated with specific geographical regions.
- **Market Differentiation**: GIs enable producers from specific regions to distinguish their products from competitors, creating a unique selling proposition based on the product's geographical origin and qualities.
- **Consumer Protection**: GIs provide consumers with valuable information about the origin, quality, and authenticity of products, allowing them to make informed purchasing decisions.
- **Economic Development**: GIs contribute to the economic development of regions by enhancing the market value of local products, attracting tourism, and supporting local industries and communities.
- **International Trade**: GIs facilitate international trade by protecting the reputation and market exclusivity of products from specific regions, promoting fair competition, and preventing misappropriation or misuse of geographical indications
- **Economic Value**: GIs add economic value to products by highlighting their unique origin, which can attract premium prices.
- **Cultural Preservation**: They help preserve traditional methods of production and local heritage.
- **Consumer Protection**: GIs ensure that consumers are buying genuine products with specific qualities associated with their origin.
- **Sustainable Development**: By promoting local products, GIs can support sustainable rural development and employment.

SELF-ASSESSMENT

1.What is a Geographical Indication (GI)?

A. A mark used to identify a product

B. A label indicating the nutritional value of a product

C. A sign used on products that have a specific geographical origin and possess qualities or a reputation due to that origin

D. A type of patent for inventions

2. Which of the following is NOT an example of a Geographical Indication?

A. Champagne

B. Darjeeling Tea

C. Basmati Rice

D. Coca-Cola

3. Which international agreement primarily governs the protection of Geographical Indications?

A. TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights)

B. Paris Convention

C. Berne Convention

D. Madrid Protocol

4. In which country is the Geographical Indication "Roquefort" used for cheese?

A. Italy

B. France

C. Spain

D. Germany

5. What is the primary purpose of registering a Geographical Indication?

A. To grant a monopoly on a product

B. To promote the uniqueness and quality associated with a specific geographical area C. To ensure the product meets health and safety standards

D. To increase the market price of the product

6. Which organization in India is responsible for the registration and protection of Geographical Indications?

A. Indian Patent Office

B. Controller General of Patents, Designs and Trade Marks (CGPDTM)

C. Agricultural and Processed Food Products Export Development Authority (APEDA) D. Geographical Indications Registry

7. Which of the following products has a Geographical Indication tag in India?

A. Pashmina Shawls

B. Masala Dosa

C. Biryani

D. Samosa

8. Which of the following is a benefit of Geographical Indications?

A. Encouraging innovation and invention

B. Enhancing rural development and employment

C. Providing tax benefits to producers

D. Ensuring the product is sold at a higher price than competitors

9. "Darjeeling Tea" is a registered Geographical Indication from which country?

A. China

B. Sri Lanka

C. India

D. Nepal

10. Which of the following statements about Geographical Indications is true?

A. GIs can be transferred from one region to another.

B. GIs are time-bound and expire after 10 years.

C. GIs help in preserving traditional knowledge and cultural heritage.

D. GIs are only applicable to agricultural products.

CHECK YOUR PROGRESS

1. Define geographical indication.
2. Explain the concept of GIs.
3. Enumerate the framework of GIs.
4. Narrate the benefits of geographical indication

5. How to protect geographical indication? Explain with examples.

GLOSSARY IN GEOGRAPHICAL INDICATIONS

Here is a glossary of key terms commonly used in the context of Geographical Indications (GIs):

1. **Appellation of Origin**: A type of Geographical Indication where the product's quality and characteristics are determined solely or essentially by its geographical environment, including natural and human factors. The production, processing, and preparation of the product must take place in the defined area.
2. **Designation of Origin**: Similar to Appellation of Origin, this term is often used interchangeably but can be specific to certain jurisdictions or legal frameworks. It emphasizes that the product originates from a specific place and has qualities or characteristics due to that origin.
3. **Geographical Indication (GI)**: A sign used on products that have a specific geographical origin and possess qualities, reputation, or characteristics inherent to that location. It typically applies to agricultural products, foodstuffs, wine, spirit drinks, and industrial products.
4. **Protected Designation of Origin (PDO)**: A European Union classification for products that are produced, processed, and prepared in a specific geographical area using recognized know-how. All stages of production must occur in the designated area.
5. **Protected Geographical Indication (PGI)**: Another European Union classification where at least one stage of production, processing,

Geographical Indications (GIs) are essentially labels that identify products as originating from a specific location. Here's a quick rundown:

- **Function:** GIs link the reputation or quality of a product to its geographical origin. Think Darjeeling tea or Kashmir saffron - these places are known for producing those specific items with unique qualities.
- **Benefits:**
  - Consumers get a guarantee of authenticity and quality.
  - Producers get protection from imitations and can potentially fetch premium prices.
- **Examples:** GIs are commonly used for agricultural products, foodstuffs, and handicrafts.
- **International Recognition:** The World Trade Organization (WTO) has an agreement on GIs, ensuring international protection for registered products.

CASE STUDY

Darjeeling Tea and the Power of Geographical Indications

Product: Darjeeling Tea (India)

Geographical Location: The foothills of the Himalayas in the Darjeeling district of West Bengal, India.

Challenges:

- **Imitation:** Less flavorful teas from other regions were being sold as "Darjeeling," damaging the reputation of the genuine product and hurting producer income.
- **Price Pressure:** Consumers unsure of authenticity might be unwilling to pay a premium for real Darjeeling tea.

Solution:

- **GI Registration:** Darjeeling tea received Geographical Indication (GI) protection in India in 2003. This ensures only tea grown, processed, and packaged in the designated region can be labelled as "Darjeeling."

Outcomes:

- **Consumer Protection:** GI labeling guarantees authenticity and quality to consumers, who are now willing to pay a fair price for the unique Darjeeling flavor.
- **Economic Benefits:** Producers receive better prices for their tea, leading to increased income and improved livelihoods.
- **Reputation Enhancement:** Darjeeling tea's reputation as a premium product is secured, fostering international recognition and export growth.

Challenges Remain:

- **Enforcement:** Ensuring consistent enforcement of GI regulations against imitation products is crucial to maintain consumer trust.
- **Producer Awareness:** Educating producers on the benefits of GI protection and encouraging wider participation in the GI system is important.

Conclusion:

The Darjeeling tea case study demonstrates the effectiveness of Geographical Indications in protecting the reputation and economic value of unique agricultural products linked to a specific geographical location. GI registration empowers producers, fosters consumer trust, and contributes to rural development.

ACTIVITY

GI Scavenger Hunt

1. **Preparation:** Make a list of common food items in your region or country (cheese, fruits, spices).
2. **Research:** Investigate which items on your list might have GI tags. You can use online resources of your country's intellectual property office or search for "[Country Name] List of GI Products".
3. **Shopping Trip:** Head to a local grocery store and see if you can find any products with GI labels.
4. **Discussion:** Once you have a few GI products, discuss:

    - What kind of product is it?
    - Where is the geographical area associated with it?
    - Why do you think this product has a GI tag?
    - How might GI protection benefit producers and consumers?

SUGGESTED READINGS

- https://www.wipo.int/geo_indications/en/faq_geographicalindications.html
- https://blog.ipleaders.in/geographical-indication-gi/
- https://www.altacit.com/gi/the-protection-of-geographical-indication-in-india/
- https://www.rajstartup.com/blog/significance-of-geographical-indication-products

- https://en.m.wikipedia.org/wiki/Geographical_indication

REFERENCES

- T**he Economics of Geographical Indications** by Daniela Benavente (2013)
- **The Law of Geographical Indications** by Basil S. Markesinis (2013)
- **Geographical Indications: A Handbook for Policy Makers** by The World Intellectual Property Organization (2019).