IPR -MATERIAL

UNIT I:

Introduction to Intellectual Property Law – Evolutionary past – Intellectual Property Law Basics Types of Intellectual Property – Innovations and Inventions of Trade related Intellectual Property Rights – Agencies Responsible for Intellectual Property Registration – Infringement – Regulatory Overuse or Misuse of Intellectual Property Rights – Compliance and Liability Issues.

INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS

Intellectual property rights are the legal rights that cover the privileges given to individuals who are the owners and inventors of a work, and have created something with their intellectual creativity. Individuals related to areas such as literature, music, invention, etc., can be granted such rights, which can then be used in the business practices by them.

The creator/inventor gets exclusive rights against any misuse or use of work without his/her prior information. However, the rights are granted for a limited period of time to maintain equilibrium.

Intellectual Property

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

Intellectual Property Rights

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

Categories of Intellectual Property

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

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

IPRs in both categories seek to address certain failures of private markets to provide for an efficient allocation of resources IP is divided into two categories for ease of understanding:

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

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

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

Intellectual property shall include the right relating to:

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

What is a property?

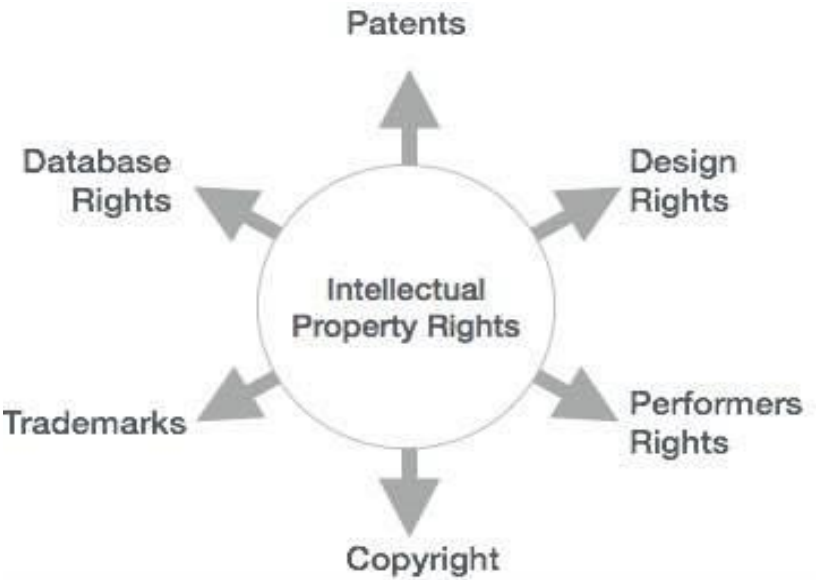
Property designates those things that are commonly recognized as being the possessions of an individual or a group. A right of ownership is associated with property that establishes the good as being "one's own thing" in relation to other individuals or groups, assuring the owner the right to dispense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

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

TYPES OF INTELLECTUAL PROPERTY

The different types of Intellectual Property Rights are:

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



Important Species of IPR

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

TRADEMARKS

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

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

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

COPYRIGHTS

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

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

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

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

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

What can be protected under Copyright?

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

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

PATENTS

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

Meaning of 'Invention' under Patent

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

There are three types of patents:

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

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

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

TRADE SECRETS

A trade secret consists of any valuable business information. The business secrets are not to be known by the competitor. There is no limit to the type of information that can be protected as trade secrets; For Example: Recipes, Marketing plans, financial projections, and methods of conducting business can all constitute trade secrets.

There is no requirement that a trade secret be unique or complex; thus, even something as simple and nontechnical as a list of customers can qualify as a trade secret as long as it affords its owner a competitive advantage and is not common knowledge. If trade secrets were not protectable, companies would no incentive to invest time, money and effort in research and development that ultimately benefits the public. Trade secret law thus promotes the development of new methods and processes for doing business in the marketplace.

Protection of Trade Secrets: Although trademarks, copyrights and patents are all subject to extensive statutory scheme for their protection, application and registration, there is no federal law relating to trade secrets and no formalities are required to obtain rights to trade secrets. Trade secrets are protectable under various state statutes and cases and by contractual agreements between parties.

GEOGRAPHICAL INDICATIONS

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

IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS

IPR is a significant tool in today's era. The risk of an innovation getting infringed without the knowledge of the inventor stands very high. With the increase in the importance of IP, instances of IP crimes have become the part and parcel of the digitized era sometimes even leading to failure of businesses. Companies rely on adequate protection of their patents, trademarks, and copyrights, while customers make use of IP to ensure that they purchase secure, assured goods.

An IP asset is like any other physical property offering commercial benefits to businesses. In a web-based world, IP protection is much more relevant as it is comparatively simpler than ever to reproduce any specific template, logo, or functionality. Hence, strong IP laws give protection to IP and contribute to the economy of the respective state. IPR is one of the sources of security for intangible properties which are still open to the public and which can be quickly replicated by anyone.

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

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

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

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

EVOLUTION OF IP ACTS AND TREATIES

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

1883 – Paris Convention (France)

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

- Inventions (patents)
- Trademarks
- Industrial designs

1886 – Berne Convention (Switzerland)

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

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

1891 – Madrid Agreement (Spain)

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

1893 – BIRPI established

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

1970 – BIRPI becomes WIPO

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

1974 – WIPO joins the UN

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

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1978 – PCT System launched

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

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

TRIPS Agreement

India along with other emerging nations graced a signatory to the Treaty of TRIPS of the World Trade Organization (WTO) in 1995 with a matter that agreement will allow free flow of trade, investment and eliminate the restrictions enduring in the norm of Intellectual Property.

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

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

AGENCIES RESPONSIBLE FOR IPR REGISTRATIONS

(a) National IPR Agencies:

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

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

The CGPDTM supervises the functioning of the following IP offices:

i. The Patent Office's (including the Design Wing) at Chennai, Delhi, Kolkata & Mumbai.
ii. The Patent Information System (PIS) and Rajiv Gandhi National Institute of Intellectual Property Management (RGNIIPM) at Nagpur.
iii. The Trade marks Registry at Ahmadabad, Chennai, Delhi, Kolkata & Mumbai.
iv. The Geographical Indications Registry (GIR) at Chennai.
v. The Copyright Office at Delhi.
vi. The Semiconductor Integrated Circuits Layout-Design Registry at Delhi.

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

Intellectual Property Appellate Board (IPAB):

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

(b) International IPR Agencies:

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

International Trademark Association (INTA)

INTA is a not-for-profit international association composed chiefly of trademark owners and practitioners. It is a global association. Trademark owners and professionals dedicated in supporting trademarks and related IP in order to protect consumers and to promote fair and effective commerce. More than 4000 (Present 6500 member) companies and law firms more than 150 (Present 190 countries) countries belong to INTA, together with others interested in promoting trademarks.

INTA members have collectively contributed almost US $ 12 trillion to global GDP annually. INTA undertakes advocacy work throughout the world to advance trademarks and offers educational programs and informational and legal resources of global interest. Its head quarter in New York City, INTA also has offices in Brussels, Shanghai and Washington DC and representative in Geneva and Mumbai.

This association was founded in 1878 by 17 merchants and manufacturers who saw a need for an organization. The INTA is formed to protect and promote the rights of trademark owners, to secure useful legislation (the process of making laws), and to give aid and encouragement to all efforts for the advancement and observance of trademark rights.

World Intellectual Property Organization (WIPO)

WIPO was founded in 1883 and is specialized agency of the United Nations whose purposes are to promote intellectual property throughout the world and to administer 23 treaties (Present 26 treaties) dealing with intellectual property. WIPO is one of the 17 specialized agencies of the United Nations. It was created in 1967, to encourage creative activity, to promote the protection of Intellectual Property throughout the world. Around 193 nations are members of WIPO.

THE ROLE AND VALUE OF IP IN INTERNATIONAL COMMERCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ISSUES AFFECTING IP INTERNATIONALLY

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

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

IP Rights are Territorial

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

IP Rights can be obtained internationally as follows

National Route

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

International Route (PCT)

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

Freedom to Operate (FTO)

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

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

Respect Deadlines

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

Patents: 12 months

Designs: 6 months

Risks of Early Disclosure

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

Working with Partners

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

Choosing an Appropriate Trademark

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

UNIT - II

Introduction:

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

Copyright –Definition:

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

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

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

Exclusive copyright rights

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

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

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

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

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

NEED FOR COPYRIGHT:

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

Indian perspective on Copyright Protection :

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

(a) Economic rights of the author

(b) Moral Rights of the author (i) Right of Paternity (ii) Right of Integrity

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

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

The Fundamentals of Copyright

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

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

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

(i) reproducing the work in any material form which includes storing of it in any medium by electronic means;

(ii) issuing copies of the work to the public which are not already in circulation;

(iii) performing the work in public or communicating it to the public;

(iv) making any cinematograph film or sound recording in respect of the work; making any translation or adaptation of the work. Further any of the above mentioned acts in relation to work can be done in the case of translation or adaptation of the work.

In the case of a computer programme:

(i) to do any of the acts specified in respect of a literary, dramatic or musical work; and

(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme. However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

In the case of an artistic work:

(i) reproducing the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

(ii) communicating the work to the public;

(iii) issuing copies of work to the public which are not already in existence;

(iv) including work in any cinematograph film; making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.

In the case of cinematograph film and sound recording:

(i) making a copy of the film including a photograph of any image or making any other sound recording embodying it;

(ii) selling or giving on hire or offer for sale or hire any copy of the film/sound recording even if such copy has been sold or given on hire on earlier occasions; and

(iii) communicating the film/sound recording to the public.

In the case of a sound recording:

(i) To make any other sound recording embodying it •

(ii) To sell or give on hire, or offer for sale or hire, any copy of the sound recording

(iii) To communicate the sound recording to the public

ORIGINALITY OF MATERIAL

There are three basic requirements for copyright ability:

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

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

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

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

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

Fixation of Material:

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

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

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

Works of Authorship: (17 U.S.C§102)

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

The eight enumerated categories are as follows:

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

Rights of Reproduction:

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

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

Rights to prepare Derivative works:

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

Definition:

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

New material represents original work of authorship

modifications is also a derivative work

Rights of distribution and the first sale doctrine:

- Section 106 (3) of the copyright act provides that the owner of a copyright has the exclusive right to distribute copies or phonorecords of the work to the public by sale or other transfer of ownership
- A violation of the distribution right can arise solely from the act of distribution itself
- The distributor did not make an unlawful copy or the copy being distributed was unauthorized
- Thus, blockbuster videos to recanbe liable for violating an owner's right to distribute
- Once the author has parted with ownership of copyrighted material, the owner
- The new owner the right to lend the book or movie to a friend, resell the work at a garage sale, or even destroy it.
- Thefirstsaledoctrinedoesnotapplytoorlimittheauthor'sexclusiverightstoprepared erivative works or rights of public performance and
- Without permission of authorship the goods are not permitted to imported into the U.S.

Rights to perform the work publicly

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

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

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

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

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

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

Joint Works[intent to create a unitary whole]

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

Ownership Rights in Joint Works

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

Ownership in Derivative or Collective Works

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

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

Works Made for Hire

- The general rule is that the person who creates a work is the author of that work and the owner of the copyright therein, there is an exception to that principle: the copyright law defines a category of works called **works made for hire**.
- If a work is “made for hire”, the author is considered to be the employer or commissioningpartyandnottheemployeeortheactualpersonwhocreatedthework
- The employer or commissioning party may be a company or an individual.
- There are two types of works that are classified as works made for hire; works prepared by an employer within the scope of employment and certain categories

of specially ordered or commissioned works.

Copyright Registration

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

THE APPLICATION FOR COPYRIGHT REGISTRATION

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

Application Forms

- The Copyright Office provides forms for application for copyright registration.
- Eachformisone8½by11”(inchs) sheet, printed front and back.
- An applicant may use photocopies of forms
- The Copyright Office receives morethan 6,00,000 applications each year, each application must use a similar format to ease the burden of examination.
- The type of form used is dictated by the type of work that is the subject of copyright.

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

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

Notice of copyright

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

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

International Copyright Law

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