

UNIT - I

Introduction to Intellectual property

Intellectual Property

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.

IP is protected in law by, for example, [patents](#), [copyright](#) and [trademarks](#), which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.

IPR Law:

means intellectual property law and this intellectual property law deals with the rules for securing and enforcing legal rights to inventions, designs, and artistic works. Just as the law protects ownership of personal property and real estate, so too does it protect the exclusive control of intangible assets. The purpose of these laws is to give an incentive for people to develop creative works that benefit society, by ensuring they can profit from their works without fear of misappropriation by others and this Intellectual property is the product of the human intellect including creativity concepts, inventions, industrial models, trademarks, songs, literature, symbols, names, brands,....etc. Intellectual Property Rights do not differ from other property rights. They allow their owner to completely benefit from his/her product which was initially an idea that developed and crystallized. They also entitle him/her to prevent others from using, dealing or tampering with his/her product without prior permission from him/her. He/she can in fact legally sue them and force them to stop and compensate for any damages.

Intellectual property is divided into two categories: Industrial Property includes patents for inventions, trademarks, industrial designs, and geographical indications. Copyright covers literary works (such as novels, poems, and plays), films, music, artistic works (e.g., drawings, paintings, photographs, and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television program.

Types of Intellectual Property Rights

There are four types of intellectual property include:

1.Trademarks

2.Copyrights

3 Patents

4 Trade secrets

(1) Trademark:

A trademark is a sign by which a business identifies its products or services and distinguishes them from those supplied by competitors. It can be distinctive words, marks or other features. Its purpose is to establish in the mind of the customer a link between all the different products and/or services that the

company offers and then distinguish them from those supplied by competitors.

A trademark may consist of any signs capable of being represented graphically, particularly words, including personal names, logos, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.

Examples of trademarks



pepsi



Microsoft

www.ECONline.com

(2) Copyright:

Copyright is a legal term describing rights given to creators for their original literary, musical or artistic works which allow them to control their subsequent use. These include for example:

- # computer software
- # drawings, maps, charts or plans
- # photographs and films
- # architectural works
- # sculptures
- # sound recordings
- # TV and radio broadcasts

Copyright protection has two components:

- # Moral rights, which are not transferable and give the creator the right to be identified as the author of the work and the right to object to any distortion or mutilation of the work.
- # Economic rights, which entitle the owner to control the use of its creation in a number of ways (making copies, issuing copies to the public, performing in public, broadcasting, etc) and to obtain an appropriate economic reward.

(3) Patent:

A patent is a title which provides its owner the right to prevent others from exploiting the invention mentioned in the patent. It does not allow by itself making or selling an invention but it rather gives the right to exclude others from making, using, selling or importing the patented invention.

This monopoly is granted for a specific field, in a defined country and for a maximum of 20 years in return for the full disclosure of the invention with the publication of its technical details.

Hence patent consists of a deal between inventors and society:

- # for the inventor - a patent is the way to prevent competitors from copying its invention
- # for society - a patent consists on improving the innovation process by the public disclosure of innovations. In return investment is encouraged by the delivery of exclusivity right and the derived benefits.

4) Trade Secret

Trade secrets concern secret or proprietary information of commercial value. These are not covered by specific statutory provisions as other types of IP are, although there could be

aspects contract law or employment law that might be relevant in a particular case. The level of protection conferred to trade secrets varies significantly from country to country. The notion of a secret is mentioned in the Commission Regulation No 772/2004 as being "not generally known or easily accessible". Indeed, trade secret represents an interest for its holder, which is often a competitive advantage. Trade secrets do not receive any protection from intellectual property rights, even though a doctrinal discussion exists on this issue and some authors consider trade secrets themselves as an IP right.

In any case, they could fall under the scope of protection of civil law and unfair competition law. In addition, some countries also provide penal sanctions for persons who fraudulently disclose an industrial secret.

It is often difficult to distinguish between different types of intellectual property. The chart below illustrates the key differences between patents, copyrights, trademarks, and trade secrets.

<i>Type of Intellectual Property</i>	Definition / What it Protects	Method of Protection	Duration of Protection	Infringement Standard
Patent	A patent is a limited property right relating to an invention in exchange for public disclosure of the invention	File for US patent in the USPTO File for International patent in the WIPO	For a utility patent, the term is generally 20 years from the earliest filing date of the application. For design patents (based on decorative, non-functional features) the term is 15 years from the issue date.	Infringement occurs if the new invention falls within the claims of a granted patent. If a single element of the claim is missing from the new invention, the invention does not infringe the patent.
Copyright	Grants the creator of original work, such as writings, music, and art, exclusive rights to its use and distribution.	Copyrights are automatically secured upon creation of the matter. However, it is advantageous to file for registration in the US Copyright Office	Generally, life of the creator plus 70 years.	Substantial similarity of protected elements between a copyrighted work and an allegedly infringing work.
Trademark	A trademark or service mark includes any word, name, symbol, device, or any	Common law trademark - automatically created if used	Trademark protection can last indefinitely as long as the	Likelihood of confusion - Are the marks sufficiently similar to cause consumer

	combination used or intended to be used to identify and distinguish the goods or services of one party from those of others, and to indicate the source of the goods or services. Trademarks are used to protect a brand.	in commerce	owner continues to use the mark to identify its goods and services. Federal trademarks must be renewed every 10 years.	confusion as to their source or origin?
Trade Secret	<p>A trade secret is a formula, practice, process design, instrument, pattern or compilation of information that is not generally known or reasonably ascertainable by which a business can obtain an economic advantage over its competitors.</p> <p>Protection is afforded by non-disclosure (NDA), confidentiality, and, non-compete agreements</p>		Indefinite, but must make reasonable efforts to maintain security	Competitors may lawfully obtain trade secrets through reverse engineering or employee poaching. If the competitor uses improper means to obtain the secret, such as industrial espionage, the competitor may be subject to a misappropriation claim.

INTERNATIONAL ORGANISATIONS OF IP

1.Trade Related Aspects of Intellectual Property Rights (TRIPS)

Trade-Related Aspects of Intellectual Property Rights (TRIPS) covers most forms of intellectual property including copyright, patents, geographical indications, trademarks, industrial designs, trade secrets, and exclusionary rights over new plant varieties. TRIPS came into force on 1 January 1995.

Intellectual Property Rights are the rights given to persons/agencies for their creativity/innovations. These rights usually give the creator, an exclusive right over the use of his/her creation for a certain period of time. The importance of intellectual property in India is well established at all levels- statutory, administrative and judicial.

This Agreement, inter-alia, contains an Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which came into force from 1st January 1995. It lays down minimum standards for protection and enforcement of intellectual property rights in member countries which are required to promote effective and adequate protection of intellectual property rights with a view to reducing distortions and impediments to international trade.

The obligations under the TRIPS Agreement relate to provision of minimum standard of protection within the member countries legal systems and practices.

2. United States Patent and Trademark Office (USPTO)

The United States Patent and Trademark Office (USPTO or Office) is an agency of the U.S. Department of Commerce. The role of the USPTO is to grant patents for the protection of inventions and to register trademarks. It serves the interests of inventors and businesses with respect to their inventions and corporate products, and service identifications. It also advises and assists the President of the United States, the Secretary of Commerce, the bureaus and offices of the Department of Commerce, and other agencies of the government in matters involving all domestic and global aspects of “intellectual property.” Through the preservation, classification, and dissemination of patent information, the Office promotes the industrial and technological progress of the nation and strengthens the economy. In discharging its patent related duties, the USPTO examines applications and grants patents on inventions when applicants are entitled to them; it publishes and disseminates patent information, records assignments of patents, maintains search files of U.S. and foreign patents, and maintains a search room for public use in examining issued patents and records. The Office supplies copies of patents and official records to the public. It provides training to practitioners as to requirements of the patent statutes and regulations, and it publishes the Manual of Patent Examining Procedure to elucidate these. Similar functions are performed relating to trademarks. By protecting intellectual endeavors and encouraging technological progress, the USPTO seeks to preserve the United States’ technological edge, which is key to our current and future competitiveness. The USPTO also disseminates patent and trademark information that promotes an understanding of intellectual property protection and facilitates the development and sharing of new technologies worldwide.

3. World Intellectual Property Organization (WIPO)

The World Intellectual Property Organization (WIPO) is a United Nations (U.N.) agency charged with protecting intellectual property (IP) through an international system that promotes and sustains creativity and innovation and helps develop international economies.

WIPO is dedicated to protecting IP by working with worldwide organizations. It enlists the cooperation of member states through the nine foundational goals of its Strategic Plan. Strategies adopted by member states and organizations include:

- Developing a global IP infrastructure
- Building international respect for IP
- Supporting structures used to facilitate financial and administrative functions
- Implementing global policy issues related to IP

Other strategic goals outlined at the WIPO website are designed to facilitate the Strategic Plan of WIPO

WIPO was established in 1967 in accordance with a mandate issued by the U.N. Primarily developed to focus on the preservation and meaningful use of IP, WIPO enlists the cooperation of member states and U.N. organizations to foster economic development and

other activities. Since 1967, organizations and member states have integrated and implemented goals related to the to enlist a Strategic Plan for WIPO to be released on or after 2015.

The International Bureau of WIPO in Geneva, Switzerland employs staff from more than 90 countries. WIPO employees include IP law and IT experts and public policy and economy specialists that are aligned with job duties that promote IP usage for strong economic development between U.N. member states. The International Bureau's divisions are responsible for arranging member state meetings, ensuring proper implementation of WIPO standards, developing and implementing WIPO programs and providing IP expertise to achieve WIPO strategies.

4. International Trademark Association (INTA)

The **International Trademark Association (INTA)** is a global [not-for-profit advocacy association](#) of brand owners and professionals dedicated to supporting [trademarks](#) and related [intellectual property](#) to foster consumer trust, economic growth, and innovation.

INTA's members are more than 7,200 organizations from 187 countries. INTA members collectively contribute almost US \$12 trillion / €8.8 trillion / ¥73 trillion to [global GDP](#) annually. For comparison, the 2013 annual GDP of the top three markets was \$9.2 trillion (China), \$17.9 trillion (European Union) and \$16.7 trillion (United States).

The association's member organizations represent some 32,000 trademark professionals and include brand owners from major corporations as well as [small and medium-sized enterprises](#), law firms and nonprofits. There are also government agency members as well as individual professor and student members.

INTA undertakes advocacy work throughout the world to advance trademarks and offers educational programs and informational and legal resources of global interest.

INTA, originally known as the United States Trademark Association (USTA), was established in November 1878 in [New York City](#) by 17 merchants and manufacturers to protect and promote the rights of trademark owners, secure useful legislation, and give aid and encouragement to all efforts for the advancement and observance of [trademark rights](#).

In 1908, the association became a business corporation under the Business Corporation Law of the State of New York, and it was given broad powers to act for the protection of trademarks in the United States and around the world.

In 1926, the USTA became a not-for-profit member organization.

In 1993, the association changed its name to the International Trademark Association.

INTERNATIONAL AGREEMENTS & TREATIES OF IP

1. Berne Convention for the Protection of Literary and Artistic Works (1886)

The Berne Convention deals with the protection of works and the rights of their authors. It is based on **three basic principles** and contains a series of provisions determining the **minimum protection** to be granted, as well as special provisions available to **developing countries** that want to make use of them.

(1) The **three basic principles** are the following:

(a) Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same

protection in each of the other Contracting States as the latter grants to the works of its own nationals (principle of "national treatment") [1].

(b) Protection must not be conditional upon compliance with any formality (principle of "automatic" protection) [2].

(c) Protection is independent of the existence of protection in the country of origin of the work (principle of "independence" of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases [3].

(2) The **minimum standards** of protection relate to the works and rights to be protected, and to the duration of protection:

(a) As to works, protection must include "every production in the literary, scientific and artistic domain, whatever the mode or form of its expression" (Article 2(1) of the Convention).

(b) Subject to certain allowed reservations, limitations or exceptions, the following are among the **rights** that must be recognized as exclusive rights of authorization:

- **the right to translate,**
- **the right to make adaptations and arrangements** of the work,
- **the right to perform in public** dramatic, dramatico-musical and musical works,
- **the right to recite** literary works in **public,**
- **the right to communicate to the public** the performance of such works,

2.The Paris Convention

The Paris Convention offered some of the most widespread protections for individuals and businesses that own trademarks, patents, utility models, industrial designs, geographical indications and trade names. It was really the first major step in ensuring that creators are given protections for their works even in other countries. This convention created the provision of national treatment. This establishes that each state must offer individuals or businesses with a patent the same protections as they would give national citizens of their own state.

The convention also established the right of priority. This means that an individual could file a patent for his or her invention in whatever country that person lives in. After a given amount of time, the inventor could file for a patent within any other countries that have agreed to the Paris Convention. The amount of time a person would need to wait is six months for industrial marks and designs and 12 months for utility models and patents. This provision is incredibly beneficial because it means that patent filers do not have to file patents at several countries at the same time, which can cause a lot of headaches. You can focus on your homeland first and then decide what other countries would be best for getting a patent filed.

A few common rules are established. These go into great detail within the actual writing of the treaty, but one of them is that patents are independent of each other when dealing with different contracting states. While a patent cannot be terminated or refused on the grounds that it was terminated or refused in another state, a country is under no obligations to accept the patent if it fails in some other capacity. These common rules also apply to collective marks such as unfair competition, indications of source, trade names and industrial designs.

The Paris Convention for the Protection of Industrial Property is an interesting event to delve into if you are interested in one day filing for patents in other countries besides the one you currently live in. Companies that have worldwide reputations should particularly look into law to make sure everything is being handled correctly. This convention was brought together so that inventors are granted international protections, and its authority is clear based on the fact that it was created in 1883 and is still in effect to this day.

3.Madrid Protocol-1990

The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks -- the **Madrid Protocol** -- is one of two treaties comprising the Madrid System for international registration of trademarks. The protocol is a **filing** treaty and not a substantive harmonization treaty. It provides a cost-effective and efficient way for trademark holders -- individuals and businesses -- to ensure protection for their marks in multiple countries through the filing of one application with a single office, in one language, with one set of fees, in one currency. Moreover, no local agent is needed to file the initial application.

While an International Registration may be issued, it remains the right of each country or contracting party designated for protection to determine whether or not protection for a mark may be granted. Once the trademark office in a designated country grants protection, the mark is protected in that country just as if that office had registered it

The Madrid Protocol also simplifies the subsequent management of the mark, since a simple, single procedural step serves to record subsequent changes in ownership or in the name or address of the holder with World Intellectual Property Organization's International Bureau. The International Bureau administers the Madrid System and coordinates the transmittal of requests for protection, renewals and other relevant documentation to all members.

4.North American Free Trade Agreement (NAFTA)

The North American [Free Trade Agreement](#) (NAFTA) was implemented in order to promote trade between the U.S., Canada, and Mexico. The agreement, which eliminated most [tariffs](#) on trade between the three countries, went into effect on January 1, 1994. Numerous tariffs-particularly those related to agriculture, textiles, and automobiles-were gradually phased out between January 1, 1994 and January 1, 2008.

NAFTA's purpose was to encourage economic activity among North America's three major economic powers.

Why NAFTA Was Formed

About one-fourth of all U.S. imports, such as crude oil, machinery, gold, vehicles, fresh produce, livestock, and processed foods, originate from Canada and Mexico, which are the U.S.'s second- and third-largest suppliers of imported goods. In addition, approximately one-third of U.S. exports, particularly machinery, vehicle parts, mineral fuel/oil, and plastics are destined for Canada and Mexico.

Additions to NAFTA

NAFTA was supplemented by two other regulations: the North American Agreement on Environmental Cooperation (NAAEC) and the North American Agreement on Labor Cooperation (NAALC). These tangential agreements were intended to prevent businesses from relocating to other countries to exploit lower wages, more lenient worker health and safety regulations, and looser environmental regulations.

NAFTA did not eliminate regulatory requirements on companies wishing to trade internationally, such as rule-of-origin regulations and documentation requirements that determine whether certain goods can be traded under NAFTA. The [free-trade](#) agreement also contains administrative, civil, and criminal penalties for businesses that violate any of the three countries' laws or customs procedures.

5. General Agreement on Tariffs and Trade (GATT)

The General Agreement on Tariffs and Trade (GATT), signed on Oct. 30, 1947, by 23 countries, was a legal agreement [minimizing barriers to international trade](#) by eliminating or reducing [quotas](#), [tariffs](#), and [subsidies](#) while preserving significant regulations. The GATT was intended to boost economic recovery after World War II through reconstructing and liberalizing global trade.

The GATT went into effect on Jan. 1, 1948. Since that beginning it has been refined, eventually leading to the creation of the [World Trade Organization \(WTO\)](#) on January 1, 1995, which absorbed and extended it. By this time 125 nations were signatories to its agreements, which covered about 90% of global trade.

The Council for Trade in Goods (Goods Council) is responsible for the GATT and consists of representatives from all WTO member countries. As of September 2019, the council chair is Uruguayan Ambassador José Luís Cancela Gómez. The council has 10 committees that address subjects including market access, agriculture, subsidies, and anti-dumping measures.

- The General Agreement on Tariffs and Trade (GATT) was signed by 23 countries in October 1947, after World War II, and became law on Jan. 1, 1948.
- The GATT's purpose was to make international trade easier.
- The GATT held eight rounds in total from April 1947 to September 1986, each with significant achievements and outcomes.
- In 1995 the GATT was absorbed into the World Trade Organization (WTO), which extended it.
- One of the key achievements of the GATT was that of trade without discrimination. Every signatory member of the GATT was to be treated as equal to any other. This is known as the [most-favored-nation principle](#), and it has been carried through into the WTO. A practical outcome of this was that once a country had negotiated a tariff cut with some other countries (usually its most important trading partners), this same cut would automatically apply to all GATT signatories. Escape clauses did exist, whereby countries could negotiate exceptions if their domestic producers would be particularly harmed by tariff cuts.
- Most nations adopted the most-favored-nation principle in setting tariffs, which

largely replaced quotas. Tariffs (preferable to quotas but still a trade barrier) were in turn cut steadily in rounds of successive negotiations.

Why is it important to protect intellectual property rights?

IP rights are important because they can:

- set business apart from competitors
- be sold or licensed, providing an important revenue stream
- offer customers something new and different
- form an essential part of marketing or branding
- be used as security for loans

It may be surprising at how many aspects of business can be protected. name and logo, designs, inventions, works of creative or intellectual effort or trade marks that distinguish your business can all be types of IP.

Some IP rights are automatically safeguarded by IP law, but there are also other types of legal protection you can apply for.

To exploit your IP fully, it makes strong business sense to do all you can to secure it. we can then: protect it against infringement by others and ultimately defend in the courts your sole right to use, make, sell or import it

- stop others using, making, selling or importing it without your permission
 - earn royalties by licensing it
 - exploit it through strategic alliances
- make money by selling it