

Unit. I

IPR.

Intellectual Property refers to the fruits of human creativity. It includes literature, songs, slogans, new inventions etc. Intellectual property law protects this human creativity & endeavour. It aims at protecting the knowledge created through human effort in order to stimulate and promote further creativity.

Ex: Authors who write books and musicians who compose songs will not show interest in further creating if their efforts are not protected. If their work is misappropriated and if they can not make profits from their efforts, they will not have any incentive to create further works. Pharmaceutical companies would not have invested millions of dollars into research and development of new drugs unless their inventions are protected and they are able to recover their costs and make profits.

Thus not only the creators but public also benefits from this law, because they are assured of quality products and services at reasonable prices. But this law tries to solve the conflicting ideas i.e. protecting the owners' rights and public interests.

If the owner of IP is given complete and perpetual rights to his invention or work, he will get monopoly power and charge high prices for their works. It will harm the public. So the owners' rights to reap the rewards must be balanced against the public need for competitive market price. So this law protects the inventions only for few years and after that it will fall into the public domain and anyone is free to produce and sell the product.

Intellectual property law - Features - (Types) The following are the various IPs and their features.

- I. Trademarks - (~~&~~ Service marks) - A trademark or service mark is a word, name, symbol, logo etc. used to identify the product from that of other competing products. It indicates the source, quality and ownership of a product or service. Trade mark is used to identify products. For ex: - "Reebok" for shoes. Service mark is used to identify services. For ex: - "Starbucks" for restaurant services. Trade marks ^{provide} _{guarantee} of quality. Companies spend a great deal of time, effort and money in establishing consumer recognition and confidence in their marks.
- Not all words and symbols are entitled for

Protection. Ex: - Mosquito repellent is a generic name/ common name and it is not entitled for protection. Others Banish, Moltin etc. are entitled for protection because they are special names given to mosquito repellents. In the same way the word "Rice" is not registrable but "Lalita Brand Rice" is protectable under law.

The trade mark law is introduced in 1959. But major changes were brought in 1999. The following are the features of the Trade mark law.

Features of Trademark law 1999:- (1) ensuring service mark registration along with the product mark registration.

- (2) Ensuring punishment for theft and infringement of trademark.
- (3) Availability of single form for registration of one or more goods and services.
- (4) Establishing boards to meet the demand for registration.
- (5) Ensuring that the trademark is not deceptively similar to existing marks.
- (6) The Registrar is at liberty to accept or reject the application on the basis of any changes, conditions, modifications or limitations made to it.
- (7) Theft or infringement of Trade mark will be a criminal offence and the person doing so will be imprisoned for 6 months to 3 years with a penalty.
- (8) Registration not compulsory but in its absence they may be copied.

This registration is valid for 10 years and it can be renewed for 10 more years.

(10) The marks that are not in use will be available for others.

II Copy Right:- Copy right is a form of protection granted to the authors of original works of authorship, including literary, dramatic, musical, artistic and certain other works. Thus books, songs, plays, Jewellery, movies, sculptures, paintings etc. are all protectable. Computer software is also protectable by Copyright.

Copyright protection exists automatically from the time a work is created in fixed form. Registration of a work is not compulsory. But it provides some advantages and statutory damages can be recovered for theft and infringement.

"The owner of a copyright has the right to reproduce the work, prepare derivative works, distribute copies of the work.

Copyright Law:- In India Copyright Act is enacted in 1957 which is based on Berne Convention 1886. The changes have been made in the act during 15 years/1983, 84, 94, 99.

According to this law protection will be given for authors throughout their life span plus 70 years

after the author's death. After that time the work will fall into the public domain. It may be reproduced, distributed & performed by anyone. The policy underlying the long period protection is, the author should enjoy the benefits to its greatest extent.

III Patents: - patent is a protection given to the owner for his new inventions. He can prevent others from making, using, importing, & selling an invention. patents are of three types.

(a) Utility patents: - These are the most common patents. They cover useful inventions, and discoveries. Ex: typewriters, automobiles etc.

(b) Design patents: - They cover new, original designs of articles such as furniture, interiors designs etc. They also cover Jewelry designs.

(c) Plant patents: - They cover new and distinct asexually reproduced plant varieties such as hybrid flowers, trees etc.

Patent law: - patent protection exists for 20 years ~~from~~ for utility patents, and plant patents, 14 years for design patents. After this period the invention falls into public domain and may be used by any person without permission.

This protection is available for useful, novel inventions. According to Indian Patents Act. Sec. 3 patents

may be rejected on the following basis.

- (i) Inventions that is likely to be harmful for public health.
- (ii) The discovery of new use of existing invention.
- (iii) The discovery of an existing scientific principles.
- (iv) Inventions of childish nature.
- (v) Rearranging the existing device.
- (vi) Agriculture methods.
- (vii) The Surgical and treatment procedures.
- (viii) Automatic energy related inventions.

IV Trade Secrets: - A trade secret is a valuable and Confidential information of the business which helps in gaining competitive advantage over the rivals. The information includes Recipes, marketing plans, financial projections, manufacturing techniques, formulas, etc. If trade secrets are not protected, Companies will not have incentives to invest money, time and efforts in research and development activities.

Trade secrets are generally protectable under various state statutes and by contractual agreements bet: parties. Ex: - Employers often require employees to sign Confidentiality report in which employees agree not to disclose Trade secrets to any one.

On the other hand if companies fail to take reasonable measures to maintain the secrecy, trade

Secret protection may be lost. Disclosure of information should be limited to those with a "need to know" to perform their duties. Secrets must be kept in secure & restricted areas.

V Other intellectual property rights: - Some other rights include

- (a) Semiconductor chip protection.
- (b) protection of Broadcasting and Transmission Sectors.
- (c) protection against unfair competition, false advertising.
- (d) Computer programs. etc.

International organisations, agencies and Treaties:-

(i) International Trade Mark Association (INTA): - It is a non-profit international orgn composed mainly of trademark owners and practitioners. more than 5000 trademark owners and professionals in more than 190 countries belong to INTA. It provides variety of educational seminars, publications, materials on the internet for no cost. It is located in New York.

(ii) World Intellectual Property Organisation (WIPO): - It was found in 1883. Its main purpose is to promote intellectual property throughout the world. It administers 24 treaties dealing with IP. It includes, Berne Convention, Madrid Protocol, Paris Convention etc.

more than 180 nations are members of WIPO. Its headquarters in Geneva.

There are a no. of international agreements and treaties to protect intellectual property. Int'l Treaties:-

- (i) Berne Convention for the protection of literary and artistic works:- It was created in 1886 under the leadership of Victor Hugo to protect literary and artistic works. It has more than 160 member nations. The US became party to it in 1989.

This treaty based on that each member nation must treat nationals of other member countries like their own nationals for purpose of Copyrights.

- (ii) Madrid protocol:- It came into existence in ~~1996~~ 1996. It gives trade mark protection for more than 70 countries by means of centralised trademark filing procedure. This treaty facilitates one-stop, low-cost, efficient system for the international registration of trademarks.

- (iii) Paris Convention:- It is designed in 1883 to protect the trade marks in foreign countries. It is based on the principle that the owners of trade marks and copy rights are entitled to the same protection, equal to the citizens of the member country.

A major benefit of the Paris Convention is the

option priority. Any one applying for a trademark may file the application in one of the 160 member countries within six months, the corresponding application can be submitted to any other member country and obtain the benefit of the first application filing date. This treaty is governed by WIPO.

(iv) North American Free Trade Agreement (NAFTA):-

This agreement signed by the 3 countries i.e. USA, Mexico and Canada on 1st Jan 1994. It resulted in some changes to US Trade mark law, primarily with regard to marks that include geographical terms.

(v) General agreement on Trade and Tariffs (GATT):- It is the predecessor of WTO which was signed to liberalise international trade. A significant impact of GATT on IPR was that, the non use of a trademark for three continuous years creates a presumption that the mark has been abandoned and that the duration of utility patent is now 20 years from the date of filing an application rather than 17 years from the date of issue of patent as was the case of previous.

Importance of IPR:- The importance of IP have been recognised world wide. Rapid changes in technology has led to increased awareness of IP rights. It

has assumed that much importance because, some Co's and individuals offer only knowledge. Ex: Computer consultant adv: agencies, internet companies, Software engineers etc. They sell only brain power. Their creativity and knowledge must be protected through IP laws.

Recently it has been estimated that around 5% of GDP is a part of IP-based enterprises including pharmaceuticals, motor vehicles, aircraft etc.

The development in the field of IT has increased the challenges for intellectual property rights. Availability of pirated version of movies, books, songs etc. online indicates the importance of intellectual rights. The world premiere movie "Revenge of the Sith" Episode III Counterfeit copies were available on the streets of New York City for just a few dollars and the movie was also available on the web site BitTorrent for free downloading. The creativity and hardwork done by somebody can be copied, infringed and sold illegally with the touch of a keystroke. US has estimated that industries lose 200 to 250 billion dollars annually from piracy, Counterfeiting of goods, and other infringements.

Intellectual property is the most valuable asset of a company. Ex: The value of the trademark

and Service mark owned by the Coca-Cola Co. has been estimated at more than \$70 billion, making it the world's most valuable brand. Companies must take care to protect their valuable assets from infringement or misuse by others. The IP law aims at protecting the value of such investments.