



**UNIT 4 – QUESTION BANK**

**Course Code/Name: 19GE5M03/ INTELLECTUAL PROPERTY RIGHTS**

**Sem/Year: V/III**

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**19GE5M03 - INTELLECTUAL PROPERTY RIGHTS**

**UNIT V - ENFORCEMENT OF IPRs**

Infringement of IPRs-Enforcement Measures-Emerging issues-Case Studies.

**PART – A (2 Marks)**

Q.No.	Question	Max. Marks	CO-L Level	PO-PI Code
1.	<p>I suspect that my IP rights have been infringed. What can I do ?</p> <p><b>Ans. :</b> When you become aware about the possible unlawful use of your rights by third parties, should precisely identify the alleged infringers in order to eventually bring to an end to the infringing activity. There are several ways to enforce your IP rights, ranging from relatively simple measures to complex litigation. Court proceedings are costly and lengthy and therefore other preliminary tools should be used so as to prevent subsequent litigation. In many cases private negotiation via legal professional is more effective and should be considered as a viable option.</p>	02	CO5 -K3	1.6.1
2.	<p>What are civil and administrative procedures and remedies for enforcement of IP rights</p>	02	CO 5-K2	1.2.1

	<p>according to TRIPS agreement ?</p> <p><b>Ans. :</b> The TRIPS agreement provides that a right holder must be able to initiate fair and equitable civil judicial procedures against an infringer of IP rights covered under the agreement. It also contains disciplines on evidence, the right of information and indemnification of the defendant. Judicial authorities must be able to award three types of remedies: injunctions to order a party to stop its infringing action, damages to compensate for the injury caused by the infringement, as well as other remedies, such as the removal of infringing goods from channels of commerce or their destruction, subject to certain conditions. Some national legal systems deal with certain IP enforcement cases through administrative procedures, rather than court proceedings.</p>			
3.	<p>If an independent third party develops a program for a company, who owns the copyright?</p> <p><b>Ans. :</b> The copyright in works created by third parties on commission do not automatically belong to commissioning party. If the third party is an independent contractor, it is essential for the commissioning party to obtain the copyright through a written deed of assignment. It is a common misconception that the copyright automatically belongs to the commissioning party. Thus, it is only where the developer is an employee creating the work under a contract of service that the rights belong to the employer</p>	02	CO5-K3	2.5.1
4.	<p>Can I use someone else's song without their permission ? Can someone use my song without my permission ?</p> <p><b>Ans. :</b> The legal use of music is more complicated than it is for other forms of</p>	02	CO5-K3	1.5.1

	<p>intellectual property. Many uses of your music, such as public performances of your music and the use of it on non-interactive digital streaming services, are available to third parties through license agreements with BMI, ASCAP, SESAC, and Sound Exchange. However, to create a remix or a cover version of a song, you need permission from the owner of the rights to the original music or sound recording.</p>			
5.	<p>Enumerate about a cease and desist letter ?</p> <p><b>Ans. :</b> It is a common practice to approach the person who is supposedly infringing your IP rights by sending a letter of demand, also known as “cease and desist letter”. The letter will advise the alleged infringer that a court action may be taken if the infringing activities do not stop within a certain period of time.</p>	02	CO5-K2	1.6.1
6.	<p>Mention some copyright infringement issues?</p> <p><b>Ans.:</b> Copyright infringement (colloquially referred to as piracy) is the use of works protected by copyright law without permission for a usage where such permission is required, thereby infringing certain exclusive rights granted to the copyright holder, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works. 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</p>	02	CO5-K2	2.5.1
7.	<p>What may be the punishment in case of IP infringement cases?</p> <p><b>Ans.:</b> In this context, two different proceedings can take place; civil actions and criminal prosecution. Bringing a civil action to the court means that you are about to enforce</p>	02	CO5-K3	1.2.1

	<p>your IP rights by filing a lawsuit for infringement in a national specialized civil court. That is to say, you are applying for a preliminary or permanent injunction or other forms of interim measures (i.e. seizure of bank account) and claiming for a compensation through the award of damages. Other relief measures may also be confiscation as well as the destruction of illegal goods. It is to be noticed that since IP legal proceedings are rather costly, you are advised to anticipate an approximate budget for enforcement litigation and insuring the organisation against the financial costs linked to it.</p>			
8.	<p>Enumerate the criminal procedures under TRIPS agreement for enforcement cases?</p> <p><b>Ans.:</b> Under the TRIPS agreement, criminal procedures and penalties are only mandatory in cases of willful trademark counterfeiting or copyright piracy carried out on a commercial scale. Members may, but are not obliged to, provide for criminal procedures to be applied in other cases of infringement of IP rights, in particular where those are committed willfully and on a commercial scale.</p>	02	CO5-K3	1.6.1
9.	<p>What action can be taken in case of design infringement?</p> <p><b>Ans.:</b> In regard to design infringement, you may, through the court civil procedures, seek an injunctive order against the infringement, demand damages, demand the restitution of unjust enrichment, or demand measures for the recovery of reputation. Further, if the infringement case turns criminal, the alleged</p>	02	CO5-K3	2.5.1

	infringer may be found punishable as a result of court criminal procedures.			
10.	<p>Elucidate the concept of “ poor man's copyright “</p> <p><b>Ans. :</b> The idea behind poor mans copyright is that if you mail yourself a copy of your work and leave it unopened, the official federal date can be used to enforce copyright infringement protection. This is a nice idea, but it doesn't work. In order to have access to the courts, you need to register your work with the Copyright Office, which you can do yourself online at <a href="http://copyright.gov">copyright.gov</a>, with the help of an attorney.</p>	02	CO5-K2	1.6.1

**PART – B (13 Marks)**

Q.No.	Question	Max. Marks	CO-K Level	PO-PI Code
1	<p>i)Mention the Techniques to Detect (or Deter) Intellectual Property Infringement (3 marks)</p> <p>ii)What are the major challenges faced in India for implementation of IPR ? (10 marks)</p>	13	CO5-K3	1.2.1
2	India has a well-established statutory, administrative and judicial framework to safeguard Intellectual Property Rights (IPRs), however, it is still facing problems with the enforcement of IPR. Mention the Enforcement of Intellectual Property Laws in India	13	CO5-K3	1.7.1
3	The WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated in the 1986-94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time. It’s one of the three main areas of work in the WTO, alongside trade in goods and services. The TRIPS Council’s job is to monitor how countries are applying the TRIPS Agreement and to discuss issues that arise from that. Discuss the various emerging issues.	13	CO5-K3	2.8.4

4	<p>i) A registered trade mark is a property right whereby the owner is granted exclusive rights in relation to the use of the trade mark. If someone uses an identical or similar trade mark for identical or similar goods or services to a trade mark already in use without the owner's consent, that person infringes the trade mark. Remedies are available to the owner to prevent an ongoing infringement, including damages for past infringements elaborate it. (7 marks)</p> <p>ii) The infringement of copyright takes place by reproducing the work in any material form, issuing copies of the work to the public not being the copies already in circulation including the work in any cinematographic film, making an adaptation of the work, communicating the work to the public, if aware that such act shall amount to infringement of copyright, making, selling, letting on hire, distributing, importing or holding trade exhibits in public of the infringed work. To make such awareness mention the terms associated with copyright infringement.</p>	13	CO3-K4	1.7.1
5	<p><b>Neem patent :</b> The patent for Neem was first filed by W.R. Grace and the Department of Agriculture, USA in European Patent Office. The said patent is a method of controlling fungi on plants comprising of contacting the fungi with a Neem oil formulation. A legal opposition has been filed by India against the grant of the patent. The legal opposition to this patent was lodged by the New Delhi-based Research Foundation for Science, Technology and Ecology (RFSTE), in co-operation with the International Federation of Organic Agriculture Movements (IFOAM) and Magda Aelvoet, former green Member of the European Parliament (MEP). A tree legendary to India, from its roots to its spreading crown, the Neem tree</p>	13	CO5-K4	2.8.4

	<p>contains a number of potent compounds, notably a chemical found in its seeds named azadirachtin. It is used as an astringent in so many fields. The barks, leaves, flowers, seeds of neem tree are used to treat a variety of diseases ranging from leprosy to diabetes, skin disorders and ulcers. Neem twigs are used as antiseptic tooth brushes since time immemorial. The opponents' submitted evidence of ancient Indian ayurvedic texts that have described the hydrophobic extracts of neem seeds were known and used for centuries in India, both in curing dermatological diseases in humans and in protecting agricultural plants from fungal infections. The EPO identified the lack of novelty, inventive step and possibly from a relevant prior art and revoked the patent. Apart from this, several US patents were recently taken out on Neem-based emulsions and solutions.</p> <p>Question</p> <p>i) Identify the type of infringement for the given case (1 Mark)</p> <p>ii) Mention the various infringement remedies.</p> <p>Patent Infringement Remedies -4 marks  Copyright infringement remedies- 4 marks  Trademark infringement remedies -4 marks</p>			
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**COURSE INSTRUCTOR**

**H.O.D**

Include :

**Fictitious entry**, such as : Fictitious dictionary entry. An example is equivalence included in the New Oxford American Dictionary (NOAD).

**Trap street**, a fictitious street included on a map for the purpose of "trapping" potential copyright violators of the map.

**Watermarking** : Designing around a patent may in some cases constitute a way to avoid infringing it.

What are the major challenges faced in India for implementation of IPR ? (10 marks)

**Ans. : From process to product patents** : One of the binding point in TRIPS agreement is that all member countries are required to shift their patent regime from "Process Patent" to "Product Patent." The fundamental difference between a Process Patent regime and a Product Patent regime lies in the fact that the former protects for processes only while the latter products. It becomes a contentious issue when it comes to getting IP rights on pharmaceuticals and food products. Unlike developed countries where Capitalist Economic Model is working India has adopted a mixed development model striking a balance between Capitalism and Socialism. This approach was taken to safeguard the interest of ordinary people those are struggling for their basic needs including food and medicines. Developed countries are accusing countries like India and Brazil being protectionist when it comes to granting patents in pharmaceuticals and food sectors.

**Section 3(d) of the Indian patent act** : Another challenge that it is facing is the condemnation of section 3(d) of the Indian Patent Act. This section prevents multinational

companies ever greening their patents simply by making minor changes. Implementation of 3(d) was exercised in challenging the patent of Novartis Glevac drug. The Court rules that multinational companies can't evergreen their patents simply by making minor changes in earlier patents and they need to show considerable "Therapeutic Efficiency" to get patent protection in already existing patents.

**Compulsory licensing** : With the provision of compulsory licensing, the Govt of India can compel the owner company or other companies to mass produce some drugs in emergency irrespective of who got the patent. Multinationals are accusing India of being opportunistic in their stand and are asking to abrogate this provision. However, Indian Govt is not willing to cancel this provision to safeguard the interests of mass.

**Provision of drug price control order** : With this provision companies can't charge



an unfair price for drugs that they are producing. The price has to be justified regarding investments, and if someone plays foul, then the Govt has the right to intervene.

**Food security and IPR :** India is a land of farmers wherein most of the people are engaged in doing farming for their livelihood. In such a country Govt offers many subsidies to farmers. India's domestic support schemes are generally in the form of "minimum support price" for major agricultural commodities and "input" subsidies provided to farmers in the types of electricity, fertilizers, seeds, etc. However, for complete implementation of TRIPS agreements, these subsidies will have to be reduced or eliminated. Thus, the Indian Government is struggling to create a balance between food security and providing IP rights in India.

**IPRs, community property rights and indigenous knowledge :** Traditional knowledge gives ready-made leads for pharmaceutical companies and then simply come up with the new formulation to show the efficacy of the general traditional understanding. The Indian Government is bound to protect the rich source of traditional knowledge by not allowing multinationals to get patents on traditional culture. As a defensive mechanism, the Government has created TKDL (Traditional Knowledge Digital Library) to challenge patenting traditional Indian understanding. Multinationals and developed countries are also opposing this move.

## Qn no 2

### Enforcement of Intellectual Property Laws in India

India has a well-established statutory, administrative and judicial framework to safeguard Intellectual Property Rights (IPRs), however, it is still facing problems with the enforcement of IPR. It has always been a concern about slow judicial system involving lengthy and time-consuming procedure of trial in India, however, in recent years; Indian Courts have shown dynamism and zeal for effective protection of intellectual property rights. It has been observed that by adopting right policies and strategies, IPR can be effectively protected with the help of law enforcement authorities.

### Enforcement Measures

IP Enforcement-Remedies – Civil • Infringement • Passing off – Criminal – Administrative
Civil action : Reliefs • Injunctions against future violations • Civil raids and Seizures • Damages OR Accounts of Profits • Delivery up/ Discovery of infringing material

/documents • Preservation of assets

Criminal Remedies- TM • Falsification of trademarks / Infringement of copyright is a cognizable offence • A complaint may be filed before a Magistrate; OR • Police can register an FIR and prosecute directly; (statutory requirement to obtain the Registrar's approval.

• Registration is not a requirement. • Imprisonment- 6 months to 3 years • Fine- 50,000 to 2 lakhs • Enhanced penalty on subsequent convictions. • Seizure, forfeiture and destruction of infringing goods/ material for placing before the Magistrate

Administrative remedies • Indian Customs Act, 1962 – Deals with import/ export of goods including protection of patents, trademarks and copyrights. • Confiscation of infringing material by Custom Authorities • Restrictions against parallel importation of goods

Oppositions, Cancellation and Rectifications of IPR In case the registration has been obtained by – Fraud – Misrepresentation – Wrongly – Against the rights of some other party

/ opponent – Registered by the Registrar erroneously – Registration prohibited under some law

– Registration is against public policy or morals

For any IPR related litigation, it is necessary to understand the Indian Judicial system and its psychology. It has been observed that the Indian Courts are very active in granting equitable reliefs like injunctions, etc., but are still reluctant in awarding punitive pecuniary damages.

**Authorities involved in the execution of orders of courts :** The Government Authorities including police are bound to execute and enforce the orders of court, and as such the courts are empowered to direct any government authority to do or not to do or prevent / compel any person to comply with the orders of the court. There are effective methods for the enforcement of the orders of the Court, including Contempt of Court proceedings, which provides for a fine as well as imprisonment, in case of non-compliance of the order of the Court. Execution/ compliance of the orders of the court are also done by way of appointment of the Local Commissioner/Receivers by the Court. In India, certain State Governments have formed Special Intellectual Property Cells, which deal with offences relating to infringement of IPR.

In any civil action for enforcement of intellectual property rights, the following

reliefs may be claimed in such suit :

- Permanent injunction;
- Interim injunction;
- Damages;
- Accounts and handing over of profits;
- Anton pillar order (Appointment of Local Commissioner by the Court for custody/sealing of infringing material/accounts);
- Delivery up of goods/packing material/dies/plates for destruction.

Additionally, in case of infringement of trademark, infringement of copyright, geographical indication, plant variety and semiconductor integrated circuits layout design following **Criminal** action can also be initiated :

- Registration of First Information Report (FIR); or
- Filing of a criminal complaint before a competent Magisterial Court with application for issue of search and seizure warrants directing the police to raid of the premises of the accused for seizure of the infringing material and arrest of the infringers.

It is interesting to note that in India, wherever provisions have been made for criminal prosecution for violation of any intellectual property rights, a criminal case can be filed against known as well as unknown persons. It is also important to note that both civil and criminal remedies, wherever applicable, can be availed simultaneously and both the remedies are coexistent.

**Competent Court :** In India, a suit may be instituted in any Court of original jurisdiction, subject to their pecuniary and territorial jurisdiction. In relation to IPR litigation, the designation of the lowest court is "District and Sessions Judge". These cases can also be filed in the High Court, directly, if such High Court is having original jurisdiction. The jurisdiction of the High Court can be invoked, subject to the payment of court fees. The structure of court fees payable varies from State to State.

**Border control measures for enforcement of IPR :** The Government of India under Section 11 of the (Indian) Customs Act, 1962, is empowered to prohibit importation and exportation of goods of specified description, if it deems necessary to do so. The provision, inter alia, empowers the government to prohibit the import or export of goods for 'the protection of patents, trademarks

and copyrights. The goods imported in contravention of the provisions of the Customs Act or any other laws for the time being in force are liable to be confiscated. In this regard, a customs officer is empowered to inspect any premises, conveyance, x-ray any person and effect search and seize in case where they have reasons to believe that the goods are of contraband nature. They can also investigate or interrogate any person and arrest him.

**Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 :** India has notified the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The rules comply with border measures as required by the TRIPS Agreement empowering the Customs Officers to enforce IPR over the imported products. Actions under Customs Act are independent to the remedies provided under various statutes on intellectual property. As per Rule 2(b) of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, intellectual property includes patents, designs, and geographical indications together with trademarks and copyrights.

Upon receipt of the application, in the prescribed format, the Custom Authorities may register the complaint and enforce border control measure for the protection of the intellectual property Rights. It is important to note that this right is not unfettered. Certain provisions have been also made and an elaborate procedure has been laid down for the release of the seized goods upon an application of the importer of the goods.

### Qn no 3

#### Emerging Issues

##### Principles

**A balance :** The balance is described in different ways. It's a balance between private rights (incentives to create) and public interest (ability to use or access the creations). It's also a balance between the short and long term.

- **Long-term :** Society benefits from creations and inventions, including when the period of protection expires and they enter the public domain.
- **Short-term :** Intellectual property protection is mostly limited in time (there are some exceptions). Generally, private rights are protected in the short-term as an incentive to create and invent. Where intellectual property protection has social costs, governments can meet their objectives for social welfare and development by adapting the protection through various exceptions and flexibilities, for example to tackle public health problems.

**Technology transfer :** Intellectual property protection should contribute to technical innovation and the transfer of technology. Producers and users should be benefitted. So should economies and societies at large.

##### Equal treatment

- **National treatment :** Treating one's own nationals and foreigners equally, with limited exceptions.
- **Most-favoured-nation treatment :** Equal treatment for nationals of all trading partners in the WTO, with limited exceptions.

**Different legal systems :** The TRIPS Agreement respects countries' own legal systems, which can vary considerably. Each can decide how to protect intellectual property and implement the agreement's

provisions so long as they meet the TRIPS Agreement's minimum standards. Countries have to meet minimum standards set by the TRIPS Agreement, such as the minimum number of years of protection. Each country is also free to set its own standards at a higher level than the agreement requires, sometimes called "TRIPS-plus", so long as this is consistent with the agreement.

**TRIPS and public health :** The 2001 Doha Declaration on TRIPS and Public Health was a political statement affirming that intellectual property protection and public health objectives do not contradict each other : "We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health."

It gave governments the confidence to use the flexibilities available in the TRIPS Agreement. For example : Compulsory licensing and parallel imports .

**Rule-change needed :** The "paragraph 6 system". One issue needed a change in the rules. The declaration's paragraph 6 dealt with TRIPS Article 31(f), which limited the amount nations could export under a compulsory license to countries needing the medicines. A "waiver" agreed in 2003, and a pending amendment agreed in 2005, allow generic medicines to be made under compulsory licenses exclusively for export to countries that cannot produce the medicines themselves. This "Par.6 system" is routinely reviewed in the TRIPS Council.

**WHO-WIPO-WTO cooperation :** An important result of the 2001 declaration has been closer work between the World Health Organization, World Intellectual Property Organization and WTO. This has focused both on access to medicines and on incentives for research and development so that new medical technologies become available. It has underscored the fact that intellectual property is only part of the picture. Ensuring poorer patients are able to access medicines and other health products,, involves proper ("rational") use of the products, affordable prices, properly designed health systems, suitable financing, and carefully selecting strategies for procuring the products.

**TRIPS, biodiversity, traditional knowledge, plants and life forms :** In the TRIPS Council, these topics are usually discussed under three merged agenda items a "triplet" of related issues. They come under the Doha Development Agenda although members disagree on whether they are negotiations. These issues are also discussed in separate consultations chaired by the Director- General or a deputy.

**Animals and plants :** TRIPS Art.27.3(b) deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties. It has been under review in the TRIPS Council for several years. The Doha Declaration added :

- TRIPS and CBD; the relationship between the TRIPS Agreement and the UN Convention on Biological Diversity.
- Traditional knowledge ;the protection of traditional knowledge and folklore.

The TRIPS Council's review of the three is guided by the TRIPS Agreement's objectives (Article 7 which says the objective is innovation and technology transfer for social and economic benefits) and principles (Article 8, which refers to health and other social and economic objectives, and to abuse of rights), and must take development fully into account.

Some advocate other ways of achieving these objectives without amending the TRIPS Agreement and without "disclosure". These include contracts with whoever is considered to be the rightful owner, and databases that patent examiners can use to avoid bad patenting.

Some countries oppose patenting all life forms outright, meaning patenting would not be possible at all and disclosure would not be relevant.

**Geographical indications :** Geographical indications are place names (in some countries also words associated with a place) used to identify the origin and quality, reputation or other characteristics of products (for example, “Champagne”, “Tequila” or “Roquefort”).

The TRIPS Agreement handles this in three articles.

- **Standard :** Article 22 defines geographical indications and sets a standard level of protection. All have to be protected in order to avoid misleading the public and to prevent unfair competition.
- **Higher :** Article 23 applies only to protection for wines and spirits and says that subject to a number of exceptions their names have to be protected against incorrect use even where this would not mislead the public.
- **Exceptions :** Article 24. For example, a term does not have to be protected in a country if it has become generic or has already been protected as a trademark in that country.

Two issues are debated in the TRIPS Council under the Doha mandate : Negotiations to create a multilateral geographical indications register for wines and spirits; and discussions on extending the higher (Article 23) level of protection beyond wines and spirits.

**‘Non-violation’ complaints :** WTO agreements allow countries to bring cases against each other if one feels that another government’s action or a specific situation has deprived it of an expected benefit, even if no agreement has been violated.

But opinions differ among WTO members on whether non-violation cases are feasible in intellectual property. The TRIPS Agreement contains a temporary restraint (a “moratorium”, Article 64.2) on bringing non-violation complaints. This has been extended several times, more recently from one Ministerial Conference to the next.

**Technology transfer :** Developing and least developed countries, in particular, see technology transfer as part of the bargain in which they have agreed to protect intellectual property rights. The TRIPS Agreement includes a number of provisions on this. For example, it says one of the purposes of protecting intellectual property is to promote innovation and technology transfer, and it requires developed countries’ governments to provide incentives for their companies and institutions to transfer technology to least-developed countries (Article 66.2).

**Least developed countries’ priority needs :** As least developed countries use their transition period to prepare to implement the WTO’s intellectual property provisions, they have been asked to identify their needs in order to receive support. An overview of the process of identifying and responding to least developed countries’ needs, with links to working materials, updates and tools for coordinating this on-going work can be found [here](#).

**Enforcement :** Intellectual property rights have to be enforceable. Or, more precisely, the TRIPS Agreement says governments have to provide effective procedures for enforcement.

#### **Qn no 4: i)**

**Exceptions :** The Trade Mark Act 1994 specifies the following defenses to trademark infringement,

all of which must be done in accordance with honest practices in industrial or commercial matters :

**Use of another registered trademark :** If someone else has in fact registered another trademark in relation to the same goods and services as an already existing trademark then there will be no trademark infringement.

**Use of own name and address :** If a company uses their name and address as a trademark then this will not be seen as trademark infringement.

**Use of certain indications :** If someone else uses certain indications such as the kind of goods or services, the quality and quantity of the goods or services, the value or geographical origin of the goods or services then this will not constitute an infringement of a registered trademark.

**Use of a trade mark :** Where it is necessary to indicate the intended purpose of a product or service will mean that there will be no infringement.

**The use of an earlier mark :** There will be no infringement where there has been use of an earlier right in the course of trade in a certain area.

**Passing off :** If you have not registered your trade mark you may still be able to take action against someone , who uses your mark on his or her goods or services without your permission, using a "passing off" legal action. Passing off comprises three elements, goodwill,

misrepresentation and damage. To be successful you must prove that : The mark is yours; You have built up a reputation in the mark; You have been harmed in some way by the other person's misrepresentation of your mark.

## **ii) Copyright infringements**

The infringement of copyright takes place by reproducing the work in any material form, issuing copies of the work to the public not being the copies already in circulation including the work in any cinematographic film, making an adaptation of the work, communicating the work to the public, if aware that such act shall amount to infringement of copyright, making, selling, letting on hire, distributing, importing or holding trade exhibits in public of the infringed work.

The true test to determine infringement is when a trader, spectator or viewer after having read or seen both the works should get an unmistakable impression that the subsequent work appears to be a copy of the first.

**Copyright :** Copyright is only infringed if the unauthorized use involves the whole or a 'substantial part' of the copyright work. Unauthorized use usually involves copying, issuing copies, renting or lending, performing, showing, playing, communicating or adapting the copyright work. In order to succeed with an action for infringement, it is necessary to establish that the alleged infringing party actually copied the work protected rather than arrived at their work by means of independent creative activity.

**Copyright crime :** Deliberate infringement of copyright on a commercial scale may be a criminal offence. This activity is usually known as copyright piracy and is often also linked to willful infringement of trade marks known as counterfeiting where criminal offences also exist. Piracy and counterfeiting are often also referred to as intellectual property or IP crime.

So, if the infringement of a copyright work is intentional, is on a large scale and copies of a work are being made for sale, being imported, distributed, sold or put on the internet, then it is worth informing the

police or the local trading standards department. They can decide whether action by them, including possible prosecution, is justified.

**Exceptions :** For copyright a number of exceptions and defenses apply to schools, universities and other educational establishments when using content that belongs to someone else. In general use of a copyright work is not an infringement if it is used fairly and with acknowledgement, for the purpose of non-commercial research, private study, illustration for instruction or criticism or review.

**Qn no 5:**

i) bio-piracy

#### Patent Infringement Remedies

A Suit for infringement of patent has to be filed before the District Court or the High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen. However if the counter claim for revocation has been filed against the same, only the High Court has the jurisdiction to entertain the matter. The right to move the court of law to enforce a patent is vested with any person who holds a valid claim on the subject matter of the patent.

The reliefs that a court may grant in a patent infringement suit, would include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff either damages or an account of profits. The court may also order that the goods which are found to be infringing and materials and implement, the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation.

#### Trademark Infringement Remedies

An owner of a trademark may commence legal proceedings against a party which infringes its registration. In case of trademark, statutory protection is available to both registered as well as unregistered trademarks. They are given both civil as well as criminal remedies for infringement or passing off. A suit for infringement has to be filed before the District Court or the High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen.

The proprietors of the trademark as well as licensed users have the option to initiate criminal prosecution against the infringers. The acts recognized as offences against which criminal complaints can be filed are falsifying and falsely applying a trademark, making or processing instruments for falsifying a trademark, applying false description, applying false indication of the country of origin, tampering with an indication of origin already applied to goods, selling goods or possessing or exposing for sale of goods falsely marked, falsely representing a trademark as registered, improperly describing a place of business as connected with the trademark office and falsification of entries in the register.

The criminal remedies available are that a suit for the above offences can be filed before the magistrate within whose territorial jurisdiction the offence is committed or Police can register an FIR and prosecute directly; (statutory requirement to obtain the Registrar's approval). Besides

confiscation of goods and machinery, the Code of Criminal Procedure, 1973, also provides for the imprisonment starting from six months which can be extended to three years or fine of Rs. Fifty thousand



which can be extended to two lakhs or both.

### Copyright Infringement Remedies

A suit for infringement of copyright has to be filed in a District Court or a High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen.

Copyright infringement is a cognizable (non-bailable) offence punishable with an imprisonment of six months which can be extended to three years or a fine not less than fifty thousand which can be extended to two lakhs. For the second and subsequent conviction, the minimum term of imprisonment has increased to one year which may extend to three years and minimum fine has increased to one lakh which may be extended to two lakh rupees. (These are the criminal remedies available to the copyright holders for infringement of their copy right).

The copyright act authorizes a police officer, not below the rank of a sub-inspector to seize without a warrant, all copies of work, and all plates used for the purpose of making infringing copies of work and produce them before the magistrate.

These should be considered as an alternative to civil remedies/actions, since they are conducted by local authorities, thereby causing a great cost saving to the intellectual property owner.

The civil remedies available to the aggrieved parties are almost the same for all the intellectual properties. They are injunctions against future violations civil raids and seizures, damages or accounts of profits, delivery up/ discovery of infringing material / documents, preservation of assets and interim / interlocutory injunction.

There are also administrative remedies available to the copyright, trademark and patent which include ban of import or export of goods including protection of patents, trademarks and copyrights confiscation of infringing material by Excise Authorities and delivery to the owner and restrictions against parallel importation of goods