M S Ramaiah Institute of Technology

(Autonomous Institute, Affiliated to VTU)

**Department of Information Science & Engineering**

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| Term: | **13.08.2015-16.12.2015** | Course Code: | **IS523** |
| Course: | **Intellectual Property Rights** | Semester: | **V** |
| CIE: | **Test – III** | Max Marks: | **30** |
| Date: | **08.12.2015** | Time: | **09.30 -10.30 pm** |

**Mobiles are phone banned. Answer any 2 questions.**

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| **SL No** |  | **Questions** | **Marks** | **Bloom’s Level** | **CO** |
| 1 | a | Define with respect to Copyright  1) Monopoly Rights 2) Negative Right 3) Multiple rights | 6 | U | CO2 |
| b | Justify how a patent provides more secure protection than the copyright or trade secrets in terms of protection of software. | 9 | A | CO3 |
| 2 | a | Explain the main features of Copyright Act of 1957. | 6 | U | CO2 |
| b | Discuss the significance of Intellectual property rights in Cyberspace | 9 | A | CO3 |
| 3 | a | Distinguish between Author and Ownership of copyright | 6 | A | CO2 |
| b | Explain the copyright laws that govern free and open source code | 9 | U | CO3 |

#R – Remember; U – Understand; A - Apply

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| **SL No** |  | **Answer Scheme** | **Marks** |
| 1 | a | Monopoly Right  - Restraining the others from exercising that right which has been conferred on the owner of copyright  Negative Right  - it is prohibitory in nature. It is the right preventing others from copying and reproducing the work  Multiple rights  - Consists of a bundle of rights | 6 |
| b | Disadvantage of Copyright  Protection of software through copyright is a limited option. The copyright law does not protect an idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, or embodied in an otherwise copyrightable work. Thus, while the expression of a method of operation in a computer code is copyrightable, the underlying method of operation and principles of a computer programme cannot be protected by copyright. Functional aspects of computer programmes are excluded from copying. Further, copying for reverse engineering is a ‘fair use’, so also the reverse engineering of trade secrets is permissible.  A patent, on the other hand, provides a more secure protection than the copyright or trade secrets, wherein the protection is determined by the scope of the patent and not how the competitor developed the product. By way of a patent, the precise boundary of the patented software is known due to the very nature of the ‘claims’ laid down by the patentee in the patent document.  Patents can be used to protect the ideas in a software; to protect functional aspects of the software; and can be enforced against anyone who implements the patented feature-whether copied, reverse engineered or developed independently.  But for patent protection, it has first to be settled whether computer software is merely an algorithm (generally non-patentable) or a technical invention, entitled to protection. The term ‘technical’, however, needs a definition and interpretation.  It has also to be investigated how this requirement blends with other conditions for patentability, i.e., the invention should be new, non-obvious and industrially applicable (useful.  As computer software comprise mainly of mathematical algorithms, the requirement of ‘technical contribution’ or the interpretation of the word ‘invention’ to which ‘technical’ may be imminent, needs to be clarified.  Another difficulty is related to the requirement of disclosure to the public, particularly in view of the relative difficulty of detecting misappropriations in a computer programme.  But software combined with a machine or computer, under its influence becomes novel machine or computer and becomes patentable.  For that purpose, the invention has to fulfill the eligibility requirement of patentability, i.e., it should be a new product or process involving an inventive step and capable of industrial application (Section 2(1)(j) of the Patents Act). Thus, under the pre-revised Act, a software programme on its own was not eligible for protection without hardware, but the embedded system as a part of hardware was entitled to a patent. | 9 |
| 2 | a | Creation of copyright office and Copyright Board to   * facilitate registration, settle certain kinds of disputes * Definition of various categories of work in which copyright subsists * Provisions to determine the first ownership of copyright in various categories of work * Term of copyright for various categories * Provisions relating to assignment of ownership * Broadcasting rights * International copyright, * Definition of infringement of Copyright * Authors special right * Civil and criminal remedies against infringement   Remedies against groundless threat of legal proceedings | 6 |
| b | * With the unprecedented advent of Computers and the Internet and growing popularity of E-commerce, the Intellectual property rights have gained tremendous significance. * However, there is a downside to this trend of increased dependence upon Internet and Information and communication Technologies (ICT), namely the difficulty posed in the detection & protection of Intellectual property infringements in the virtual space. * The quandary is how does one protect one’s Intellectual property rights and prevent its unauthorised use in the online medium. * The intellectual property infringements to a greater extent occur in the online medium rather than offline, due to the ease with which data can be accessed, copied and transferred and the anonymity associated with the cyberspace. * Intellectual property infringements in cyberspace comprise of any unauthorised or unlicensed use of trademarks, trade names, service marks, images, music or sound or literary matter. * The unique matrix of the cyberspace has produced different categories of infringements including Hyper linking, Deep Hyper linking, Framing, Meta-tags, spamming and Digital Copyrights violation and similar other concepts. * The Patent law provides powerful protection to the inventions & protects processes and invented devices and * Includes unique form of computer software’s, which lead to technical effect. * Under the Patent Act, 1970 penalizes the unauthorised use of patents, and provides for imprisonment for a term, which may extend to 2 years or with fine or both for contravention of secrecy provisions under section 118. * Section 120, penalizes unauthorized claim of patent rights, and penalizes with a fine of Rupees 1 lakh. | 9 |
| 3 | a | . Authorship   * The author of a work is the person who created the work. * If more than one person created a work, then all the creators would be considered as co-authors or joint authors. * The issue of authorship is especially relevant in connection with moral rights and in order to determine the date on which protection expires   Ownership   * The author is the first owner of copyright. It says ‘first’ because copyright is a property right (or more specifically an intellectual property right) and it can be bought or sold. * While the author of a work is the first owner of any copyright in it, one exception to that is when an employee in the course of their employment makes the work. Their employer is the first owner of any copyright in the work subject to any written agreement to the contrary. * The mere fact that a work has been commissioned and paid for does not automatically give the ownership of the copyright to the commissioning party. It is important therefore to ensure that appropriate mechanisms are in place to deal with the ownership of the rights in content. * For example, an organization may wish to put up information on to a website. That information may come from a number of sources (external developers and consultants, internal employees etc). The organization in question will therefore need to be certain that it secures assignments of rights from any third parties, and be sure that any employees created the content during the course of their employment. | 6 |
| b | Besides proprietary software, there are open source software, that are available to the public in source code form and that do not have licensing restrictions that limit use, modification or redistribution.   * The access to source code is subject to compliance with the terms of free/open distribution. * Through open sourcing, the community of software developers makes freely available to anyone the source code of software, free for alteration, sharing and distribution. * The software released through open sourcing is under a special class of licence known as GPL (general public licence), encouraging and permitting users to use, redistribute and improve the source code. * Licensing restrictions, nevertheless, exist regarding authorship right under copyright. ‘Copyright’ term guarantees users the freedom of distribution, to receive the source code and the liberty to modify or alter the software or use it in new free programs. * But, the integrity of author’s source code has to be respected, which means that the open source software must allow for the source code to be readily available and must also make sure that it is distributed as the original base source code and the patch files. * The distinction between open source software and proprietary software lies in the free use of the software and the licensing structure. * While the proprietary software is released in the market by concealing the source code, under open sourcing the source code is made available with the object code. * In proprietary software, the consumer is bound by the terms of licence. * The basic principles of open source licensing are: open source licences must permit non-exclusive commercial exploitation of the licensed work, must make available the work’s source code, and must permit the creation of derivative works from the work itself. * So far the validity of the open source licences has not been tested by the Indian courts.   Once it is decided that they are valid contract with an offer, acceptance and consideration, in the form of the promise of the licensee to abide by the terms and conditions of the licensor, they become enforceable. | 9 |