

UNIT 9: Contemporary Issues in E-Business

What is Intellectual Property?

Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation.

Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. 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 programs.

The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886).

Why promote and protect intellectual property?

There are several compelling reasons. First, the progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture. Second, the legal protection of new creations encourages the commitment of additional resources for further innovation. Third, the promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.

Patent

A patent is an exclusive right granted for an invention – a product or process that provides a new way of doing something, or that offers a new technical solution to a problem.

A patent provides patent owners with protection for their inventions. Protection is granted for a limited period, generally 20 years.

Patents provide incentives to individuals by recognizing their creativity and offering the possibility of material reward for their marketable inventions. These incentives encourage innovation, which in turn enhances the quality of human life.

Patent protection means an invention cannot be commercially made, used, distributed or sold without the patent owner's consent. Patent rights are usually enforced in courts that, in most systems, hold the authority to stop patent infringement. Conversely, a court can also declare a patent invalid upon a successful challenge by a third party.

Patents are granted by national patent offices or by regional offices that carry out examination work for a group of countries – for example, the European Patent Office (EPO) and the African Intellectual Property Organization (OAPI).

There are three types of Patents:

1. **Utility Patents**

A utility patent is the most common type of patent that people seek. This type of patent covers processes, compositions of matter, machines, and manufactures that are new and useful. A utility patent can also be obtained for new and useful improvements to existing processes, compositions of matter, machines, and manufactures. Processes refer to any acts or methods of doing something, usually involving industrial or technical processes. Compositions of matter are basically chemical compositions, which can include a mixture of ingredients or new chemical compounds. Machines include things that are generally defined as a machine, such as a computer, while manufactures are defined as goods that are manufactured or made.

2. **Design Patents**

In terms of obtaining a design patent, a design is defined as the "surface ornamentation" of an object, which can include the shape or configuration of an object. In order to obtain this type of patent protection, the design must be inseparable from the object. While the object and its design must be inseparable, a design patent with only protect the object's appearance. In order to protect the functional or structural features of an object, a person must also file for a utility patent.

3. **Plant Patents**

A plant patent can be obtained to protect new and distinctive plants. A few requirements to obtain this type of patent are that the plant is not a tuber propagated plant (i.e. an Irish potato), the plant is not found in an uncultivated state, and the plant can be asexually reproduced. Asexual reproduction means that instead of being reproduced with seed, the plant is reproduced by grafting or cutting the plant. Plant patents require asexual reproduction because it's proof that the patent applicant can reproduce the plant.

Trademark:

A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. Its origin dates back to ancient times when craftsmen reproduced their signatures, or “marks”, on their artistic works or products of a functional or practical nature. Over the years, these marks have evolved into today’s system of trademark registration and protection. The system helps consumers to identify and purchase a product or service based on whether its specific characteristics and quality – as indicated by its unique trademark – meet their needs.

Trademark protection ensures that the owners of marks have the exclusive right to use them to identify goods or services, or to authorize others to use them in return for payment. The period of protection varies, but a trademark can be renewed indefinitely upon payment of the corresponding fees. Trademark protection is legally enforced by courts that, in most systems, have the authority to stop trademark infringement.

Trademarks may be one or a combination of words, letters and numerals. They may consist of drawings, symbols or three dimensional signs, such as the shape and packaging of goods. In some countries, non-traditional marks may be registered for distinguishing features such as holograms, motion, color and non-visible signs (sound, smell or taste).

Registering Trademark

First, an application for registration of a trademark must be filed with the appropriate national or regional trademark office. The application must contain a clear reproduction of the sign filed for registration,

including any colors, forms or three-dimensional features. It must be distinctive, so that consumers can distinguish it from trademarks identifying other products, as well as identify a particular product with it. Finally, the rights applied for cannot be the same as, or similar to, rights already granted to another trademark owner. This may be determined through search and examination by national offices, or by the opposition of third parties who claim to have similar or identical rights.

Copyright:

Copyright laws grant authors, artists and other creators protection for their literary and artistic creations, generally referred to as “works”. A closely associated field is “related rights” or rights related to copyright that encompass rights similar or identical to those of copyright, although sometimes more limited and of shorter

duration. The beneficiaries of related rights are:

- performers (such as actors and musicians) in their performances;
- producers of phonograms (for example, compact discs) in their sound recordings; and
- broadcasting organizations in their radio and television programs.

Works covered by copyright include, but are not limited to: novels, poems, plays, reference works, newspapers, advertisements, computer programs, databases, films, musical compositions, choreography, paintings, drawings, photographs, sculpture, architecture, maps and technical drawings.

The creators of works protected by copyright, and their heirs and successors (generally referred to as “right holders”), have certain basic rights under copyright law. They hold the exclusive right to use or authorize others to use the work on agreed terms. The right holder(s) of a work can authorize or prohibit:

- its reproduction in all forms, including print form and sound recording;
- its public performance and communication to the public;
- its broadcasting;
- its translation into other languages; and
- its adaptation, such as from a novel to a screenplay for a film.

Copyright and related rights protection is obtained automatically without the need for registration or other formalities. However, many countries provide for a national system of optional registration and deposit of works. These systems facilitate, for example, questions involving disputes over ownership or creation, financial transactions, sales, assignments and transfer of rights.

Electronic Transaction/Cyber Law:

- The Electronic Transactions Act, 2063 (2008) In Nepal
- Legal provisions for authentication and regularization of the recognition, validity, integrity and reliability of generation, production, processing, storage, communication and transmission system of electronic records by making the transactions to be carried out by means of electronic data exchange or by any other means of electronic communications.

This is the world of science and technology and technological advancement has made our work more convenient and made a world a small village. Along with the technological advancement and convenience we have been facing different problem over the internet like hacking, bullying, intellectual property theft, phishing and so on. For these crimes, the government of different countries made different laws with the intention to punish the person involving such activities which is recognized as “Cyber Law”.

Cyber law differs from different countries and is the issues related to the activities over the internet and other communication technology, including privacy, jurisdiction. Cyberlaw is very important since these days along with the use of internet the crimes over the internet has been increasing day to day. It also maintains the privacy of the end user so that they would be safe from being a victim of cybercrime. Cyber laws design a secure platform and also a standard model for the advancement of cybersecurity.

In Nepal cyber law is also known as ETA (Electronic Transaction Act) which deals with issues related to cybercrime and also help in making and implementing laws over cybercrime. It has made different laws so that if anyone found having cybercrime he/she will be punished according to the scene of the crime. He /she can be jailed for minimum from 6 months to maximum of 3 years and has to pay penalty according to the crime. However, the cybercrime has been growing rapidly in Nepal because of a poor tracking system and the advancement needs still to grow like in other developed countries. The lack of proper updates of ETA, the hackers still hacks the governmental confidentiality which is an embracing to tell.ETA still hasn't properly addressed Online payment, due to which we still don't have fast and reliable online payment system too. The strongest challenge in the field of cyberlaw in Nepal is the challenge of implement cyber laws. For the implementation of the law, people over the internet in Nepal should have proper knowledge about the cybercrime and its consequences. Without the knowledge of the cyber crimes and law people will have no awareness of them. Maintaining the privacy in the cyberspace, creating the strong passwords, updating the security software, updating password are some of the techniques to keep secure him /her.

With the increasing use of internet over the world, the number of crime also has reached its level. So before implementing law people in Nepal should have proper education about cybercrime and an effective law should be created and implemented too. If people involving in cybercrime are punished and security enforcement is made strong according to the advancement we can mitigate the cybercrime here in Nepal.

Cross-Border Legal issues:

Cross-border is defined as an action between different countries, or involving people from different countries. Globalization has fueled a massive increase in the potential for exchange of goods, services, and communication, and a growing need for legal norms to facilitate expansion of cross-border practice. The change began in the 1990s where in the corporate sector, global companies emerged with major technology and telecommunications companies evolved with the usage of internet, mobile technology and email.

1. Qualifications of Cross-Border E-Business Platform Operators

The development of cross-border e-businesses requires the liberalization of foreign investment market entry policies. The restrictions on the shareholding percentage of foreign investment in e-business services

2. Cross-Border E-business Contracts

User registration agreements, merchant settlement agreements and transaction rules are contracts between cross-border e-business platforms. These important legal documents define the rights and obligations of the parties.

3. **Cross-Border Intellectual Property Disputes**

- Commodities that are legal overseas can become violating in other countries.
- Disputes arise over parallel imports via different product sales channels.
- Authentic and fake licensing

4. **Cross-Border Customs Supervision Models; Taxation Issues**

- Customs clearance for cross-border e-businesses required.
- The total import tax burden on passenger luggage and postal articles is usually lighter than the tax burden on ordinary transactions that are subject to import customs duties, value-added tax and consumption tax.

5. **Cross-Border Payment; Exchange Collection and Payment Issues**

- Cross-border payment services involve a number of issues such as difficulties in examining bills and certificates, matching customs declaration information with fund flows, and determining the authenticity of basic transactions.

Ethical or other Public Policies Issues:

1. **Ethical issues**

In general, many ethical and global issues of Information Technology apply to e-business.

i. **Web tracking**

E-businesses draw information on how visitors use a site through log files. Analysis of log file means turning log data into application service or installing software that can pluck relevant information from files in-house. Companies track individual's movement through tracking software and cookie analysis. Programs such as cookies raise a batch of privacy concerns. The tracking history is stored on your PC's hard disk, and any time you revisit a website, the computer knows it. Many smart end users install programs such as Cookie cutters, Spam Butcher, etc which can provide users some control over the cookies.

The battle between computer end users and web trackers is always going on with a range of application programs. For example, software such as Privacy Guardian, My Privacy, etc can protect user's online privacy by erasing browser's cache, surfing history and cookies. To detect and remove spyware specially designed programs like Ad-Aware are present. A data miner application, SahAgent collects and combines Internet browsing history of users and sends it to servers

ii. **Privacy**

Most Electronic Payment Systems knows the identity of the buyer. So it is necessary to protect the identity of a buyer who uses Electronic Payment System.

A privacy issue related to the employees of company is tracking. Monitoring systems are installed in many companies to monitor e-mail and other web activities in order to identify employees who extensively use business hours for non-business activities. The e-commerce activities performed by a buyer can be tracked by organizations. For example, reserving railway tickets for their personal journey purpose can be tracked. Many employees don't want to be under the monitoring system even while at work.

As far as brokers and some of the company employees are concerned, E-Commerce puts them in danger zone and results in elimination from their jobs. The manner in which employees are treated may raise ethical issues, such as how to handle displacement and whether to offer retraining programs.

iii. **Disintermediation and Reintermediation**

Intermediation is one of the most important and interesting e-commerce issue related to loss of jobs. The services provided by intermediaries are:

- a. Matching and providing information.
- b. Value added services such as consulting.

The first type of service (matching and providing information) can be fully automated, and this service is likely to be in e-marketplaces and portals that provide free services.

The value added service requires expertise and this can only be partially automated. The phenomenon by which Intermediaries, who provide mainly matching and providing information services are eliminated is called Disintermediation.

The brokers who provide value added services or who manage electronic intermediation (also known as infomediators), are not only surviving but may actually prosper, this phenomenon is called Reintermediation.

The traditional sales channel will be negatively affected by disintermediation. The services required to support or complement e-commerce are provided by the web as new opportunities for reintermediation. The factors that should be considered here are the enormous number of participants, extensive information processing, delicate negotiations, etc. They need a computer mediator to be more predictable.

2. **Legal Issues**

Where are the headlines about consumers defrauding merchants? What about fraud e-commerce websites? Internet fraud and its sophistication have grown even faster than the Internet itself. There is a chance of a crime over the internet when buyers and sellers do not know each other and cannot even see each other. During the first few years of e-commerce, the public witnessed many frauds committed over the internet. Let's discuss the legal issues specific to e-commerce.

i. **Fraud on the Internet**

E-commerce fraud popped out with the rapid increase in popularity of websites. It is a hot issue for both cyber and click-and-mortar merchants. The swindlers are active mainly in the area of stocks. The small investors are lured by the promise of false profits by the stock promoters. Auctions are also conducive to fraud, by both sellers and buyers. The availability of e-mails and pop up ads has paved the way for financial criminals to have access to many people. Other areas of potential fraud include phantom business opportunities and bogus investments.

ii. **Copyright**

The copyright laws protect Intellectual property in its various forms, and cannot be used freely. It is very difficult to protect Intellectual property in E-Commerce. For example, if you buy software you have the right to use it and not the right to distribute it. The distribution rights are with the copyright holder. Also, copying contents from the website also violates copy right laws.

iii. Domain Names

The competition over domain names is another legal issue. Internet addresses are known as domain names and they appear in levels. A top level name is *qburst.com* or *microsoft.com*. A second level name will be *qburst.com/blog*. Top level domain names are assigned by a central non-profit organization which also checks for conflicts or possible infringement of trademarks. Problems arise when several companies having similar names competing over the same domain name. The problem of domain names was alleviated somewhat in 2001 after several upper level names were added to com.

Another issue to look out for is Cyber squatting, which refers to the practice of registering domain names with the desire of selling it at higher prices.

Security features such as authentication, non-repudiation and escrow services can protect the sellers in e-commerce.

One needs to be careful while doing e-commerce activities. The need to educate the public about the ethical and legal issues related to e-commerce is highly important from a buyer as well as seller perspective.

***** Best of Luck for your exams*****