

KEY CONCEPTS

■ Industrial Property ■ Patents ■ Trade Marks ■ Copyright ■ Geographical Indication ■ Industrial Design

Learning Objectives

To understand:

- Concept of Industrial Property
- Nature of Intellectual Property
- Intellectual Property Right Laws
- General Agreement on Trade in Services
- World Intellectual Property Organization
- TRIPS Agreement
- IPR Policy

Lesson Outline

- Scope of Intellectual Property Right
- Need of Intellectual Property Right
- Generation of Intellectual Property Right
- Administration and Management
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

INTRODUCTION

As the term intellectual property relates to the creations of human mind and human intellect, this property is called Intellectual property. Creators can be given the right to prevent others from using their inventions, designs or other creations and to use that right to negotiate payment in return for others using them. These are Intellectual Property Rights. The creation of Intellectual Property Rights (IPR) is increasingly being recognised in today's global economy and society. Intellectual Property Rights are considered to be the backbone of any economy and their creation and protection is essential for sustained growth of a nation. The intellectual property rights are now not only being used as a tool to protect the creativity and generate revenue but also to build strategic alliances for the socio-economic and technological growth.

Intellectual Property is the Property, which has been created by exercise of Intellectual Faculty. It is the result of persons Intellectual Activities. Thus Intellectual Property refers to creation of mind such as inventions, designs for industrial articles, literary, artistic work, symbols which are ultimately used in commerce. Intellectual Property rights allow the creators or owners to have the benefits from their works when these are exploited commercially. These rights are statutory rights governed in accordance with the provisions of corresponding legislations. Intellectual Property rights reward creativity & human endeavor which fuel the progress of humankind.

The areas of intellectual property that it covers are: copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data.

Intellectual property is a vital component of economic growth and a tool for corporate competitiveness in today's highly competitive global market. Intellectual property rights serve as a catalyst for the development of innovations and inventions. Ideas, innovations, and creative expressions on the basis of which there is a public desire to grant the status of property are referred to as intellectual property rights (IPR). In order for the inventors or developers of that property to profit commercially from their creative efforts or reputation, IPR grant them specific exclusive rights. There are various forms of intellectual property protection, including trademark, copyright, and patent.

Technology management is to promote the effective and efficient use of created technology. Intellectual property rights (IPR) are ideas, inventions, and creative expressions on which the public is ready to bestow the status of property. It is increasingly important to manage technology, including efficient commercialization plans that take use of IPR benefits, in a dynamic global context with shifting industry and competitor landscapes.

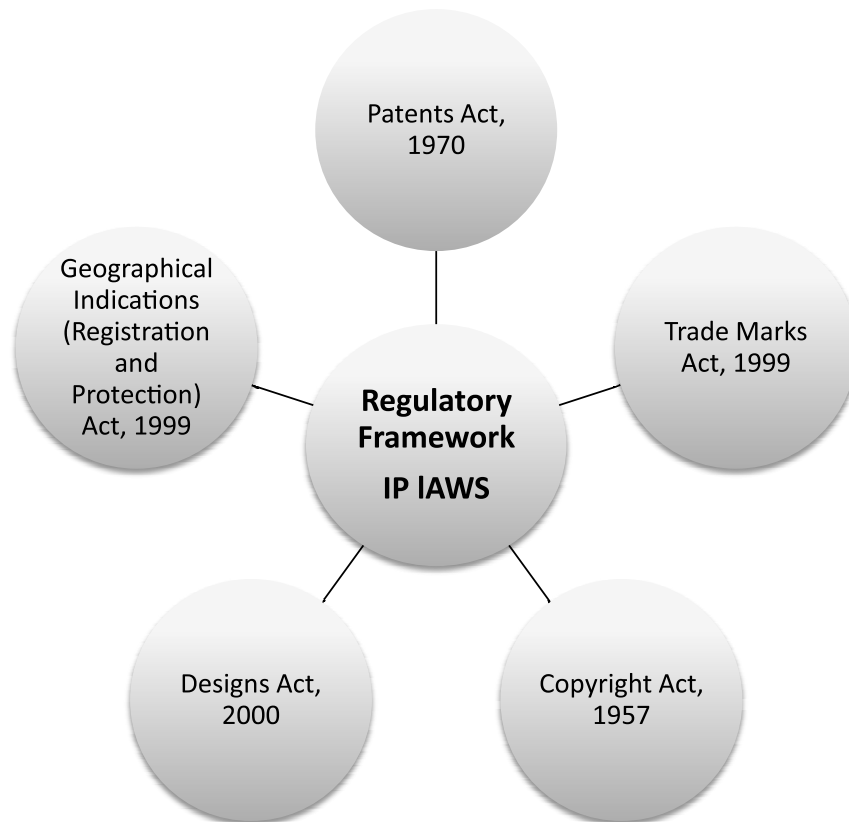
Any original work of the human intellect, including works of art, literature, technology, and science, is considered to be a work of intellectual property (IP). The legal privileges granted to the inventor or creator to safeguard his invention or creativity for a predetermined amount of time are known as intellectual property rights (IPR). For a specific amount of time, these legal rights grant the inventor or creator's assignee the sole right to fully exploit their idea or production. The importance of IP in the contemporary economy has long been established. Furthermore, it has been unequivocally proven that the intellectual work involved in the innovation must be given the attention it deserves if the innovation is to serve the greater good.

Since it gives the inventor or creator of an IP an exclusive right to exploit his invention or product for a specific length of time, IPR is a powerful weapon for protecting investments in time, money, and effort. By enabling healthy competition, industrial progress, and economic expansion, IPR thereby contributes to the economic development of a nation.

Any society's progress is directly influenced by IPR and the framework of its policy. Lack of understanding of IPR led to the demise of inventions, a high danger of infringement, financial loss, and the end of a nation's

intellectual era. Therefore, there is a critical necessity for the transmission of IPR knowledge in order to support home-grown discoveries and technological advancements. Only by teaching the many stakeholders, including policymakers, farmers, academia, industry, researchers, and consumers about the significance of IPR and technology management can the process of IP awareness be accelerated in an agrarian nation like India.

REGULATORY FRAMEWORK



NATURE OF INTELLECTUAL PROPERTY

- **Intangible Rights over Tangible Property:** IP's intangibility is the primary characteristic that sets it apart from other types of property. Although there are many significant differences between the various types of IP, one characteristic they all share is the establishment of property protection over intangible objects like ideas, inventions, signs, and information as opposed to close relationships and other intangible assets, which are tangible objects. When works are exploited for commercial purposes, it enables the creators or owners to profit from their creations.
- **Right to sue:** IP is a resource that can be owned and managed, to use the language of the law. The majority of intellectual property is challenged through legal rights of action that can only be carried out by people who have legal standing. Since intellectual property (IP) is a property right, it can be inherited, purchased, gifted, sold, licenced, entrusted, or pledged. Subject to certain restrictions, the owner of an IPR owns a sort of property that can be used however they like. They also have the legal right to sue anyone who uses their innovation without their permission and to be compensated with actual property.
- **Rights and Duties:** IP results in both obligations and property rights. The owner of the IP is entitled to carry out specific tasks in connection with his creations. He has the sole authority to create, copy, sell,

and otherwise exploit the work. Additionally, there is a negative right that bars others from using their statutory rights.

- **Coexistence of different rights:** In relation to a specific function, various IPR kinds may coexist. For instance, an image of an innovation might be copyrighted and the invention itself might be patented. A design may be included in a trademark and may also be protected under the Design Act. The numerous rights that can coexist in IP share many similarities and distinctions. For instance, there are similarities between a patent and an industrial design, a trademark and a geographical indicator, and so forth. Some of the rights related to intellectual property are positive rights, while the others are negative rights.
- **Exhaustion of rights:** The doctrine of exhaustion generally applies to intellectual property rights. Exhaustion fundamentally means that after the first sale made by the right holder or by the authority designated for its exhaustion, that person's right expires and he is no longer permitted to halt the movement of the goods moving forward. As a result, once an IP rights holder has sold a physical good that bears IPRs, it cannot stop subsequent sales of the good. The first consent marks the end of the right. This theory is founded on the idea of free movement of products, which is legitimate by the owner's permission or right. It is prohibited to use the exclusive selling privilege in connection to the same items twice.
- **Dynamism:** IPR is undergoing continual improvement. The realm of IP is expanding as quickly as technology in all spheres of human activity. New things are being added to the IPR scope and the scope of its protection is being enlarged in accordance with the demands of scientific and technical advancement. Biopatents, Software Copyrights, and Plant Diversity Protection are just a few examples of terms that highlight recent advancements in the IPR area. The value of intellectual property and its portability has long been recognised, and it is represented in all spheres of government, including legislative, administrative, and judicial levels.

NEED OF INTELLECTUAL PROPERTY

Every invention involves labour, time, and resources. The length of each project varies substantially. It could be anything from a few seconds to a few years. A certain amount of actual money is also necessary for any creative endeavour, along with education or knowledge of course. Any creative professional making all of these investments is making a significant one. Therefore, it is important to acknowledge and honour a creator's intellectual works. The word "intellectual property" did not become common usage until the 19th century, despite the fact that many of the legal rules governing intellectual property rights have developed over centuries. It wasn't until the latter half of the 20th century that it spread throughout much of the world.

In 1967, the World Intellectual Property Organization (WIPO) was founded as a UN body. Since then, the phrase has gained significant traction in the US. A comprehensive international system for defining, safeguarding, and upholding intellectual property rights exists. It consists of multilateral treaty systems as well as international organisations like the European Union, World Trade Organization, World Intellectual Property Organization, World Customs Organization, and United Nations Commission on International Trade Law (UNCITRAL).

SCOPE OF INTELLECTUAL PROPERTY

The range of IP rights is wide, and there are two methods for classifying IP as either copyright or industrial property. Patents or inventions, trademarks, trade names, biodiversity, plant breeding rights, and other commercial interests are all examples of industrial properties. In order to profit from the invention, a patent gives its holder the sole right to exploit the Intellectual Property.

A novel creation, procedure, tool, or product is considered to be an invention. Copyright protects the expression

of ideas that are distinct from patents but does not grant you the sole right to an idea. In addition to technological and scientific works, copyright also applies to the arts and literature. Copyright rules apply to everything, including music and audiovisual works. 60 years after the creator's passing, copyright protection continues to be in effect. In other words, a writer's book has copyright protection both during his lifetime and for 60 years following his passing. In contrast to patent laws, copyright laws do not mandate an administrative procedure.

The General Agreement on Trade in Services (GATS)

The General Agreement on Trade in Services (GATS) is the first ever collection of legally binding, multinational regulations governing global trade in services. One of the most important outcomes of the Uruguay Round, whose conclusions came into effect in January 1995, was the founding of the GATS. The General Agreement on Tariffs and Trade (GATT), the GATS's counterpart in merchandise trade, served as a model for it, sharing many of the same goals: establishing a trustworthy and reliable system of international trade regulations; guaranteeing the non-discrimination of all participants; boosting economic activity through guaranteed policy bindings; and advancing trade and development through progressive liberalisation. The GATS functions on three levels, similar to the accords on goods: the primary text, which contains basic principles and obligations; annexes, which deal with rules for particular sectors; and individual nations' explicit commitments to allow access to their markets. In contrast to goods, the GATS provides a fourth special element list that identifies the instances where the most-favored-nation principle of non-discrimination is not currently being followed by a country.

Although services today make up more than two thirds of global production and employment, when measured on a basis of balance of payments, they only account for no more than 25% of total commerce. However, this share—while appearing modest—should not be undervalued. Indeed, one of the GATS-defined modes of service supply—the supply through commercial presence in another country—is not included in balance-of-payments figures (mode 3). Additionally, even while trade in services is growing, they are also essential components in the manufacturing of products. As a result, when measured in terms of value added, services make up around 50% of global commerce.

The two key pillars that support the GATS' contribution to global services trade are (a) increasing the openness and predictability of pertinent rules and regulations and (b) fostering progressive liberalisation through subsequent rounds of talks. The latter idea is equivalent, within the meaning of the Agreement, to enhancing market access and extending national treatment to foreign services and service providers across a broader variety of sectors. But it doesn't involve deregulation. Instead, the Agreement emphasises clearly both the need for developing nations in particular to exercise this right, as well as governments' right to regulate and enact new regulations to fulfil national policy objectives.

The Agreement's overall framework and specific sections were influenced by the concerns of developing countries. In particular, the Preamble to the Agreement and the provisions of Article IV are motivated by the goal of supporting the growing participation of developing nations in services trade. This Article requires members to negotiate specific commitments regarding the improvement of developing countries' access to distribution channels and information networks, the strengthening of developing countries' domestic service capacity, and the liberalisation of market access in sectors of export interest to these countries, among other things.

Although one of the fundamental principles of the GATS is the idea of progressive liberalisation, Article XIX stipulates that liberalisation must take place with due consideration for national policy objectives and members' levels of development, both generally and in specific sectors. Thus, developing nations are given the option to gradually expand market access while opening fewer sectors and fewer types of transactions in accordance with their stage of development. Other sections make sure that developing nations have more freedom to pursue economic integration policies, uphold balance of payments limits, and control who can access and utilise their telecommunications transport networks and services. Additionally, the WTO Secretariat is permitted to provide technical assistance to developing nations.

World Intellectual Property Organization (WIPO)

The United Nations organisation devoted to using intellectual property as a tool to foster innovation and creativity is known as the World Intellectual Property Organization (WIPO). Following the WIPO Convention's entrance into effect in 1967, WIPO was founded in 1970 with a mission from its Member States to advance the protection of intellectual property all over the globe through intergovernmental cooperation and cooperation with other international organisations. Its goal is to foster innovation and creativity through the creation of a fair and efficient international intellectual property system for the benefit of all nations' economic, social, and cultural development.

In 1974, the Organization was designated as a specialised agency of the UN. The WIPO's main office is in Geneva. It is committed to creating a fair and open worldwide intellectual property (IP) system that encourages innovation, rewards creativity, and advances economic growth while protecting the general welfare. By signing a cooperative agreement with the World Trade Organization in 1996, WIPO enlarged its mandate and further illustrated the significance of intellectual property rights in the administration of globalised trade.

In order to establish and unify laws and procedures for the protection of intellectual property rights, WIPO serves as a platform for its Member States. Additionally, WIPO provides global patent filing services as well as global registration services for trademarks, industrial designs, and appellations of origin. Systems for protecting intellectual property have existed in the majority of developed countries for decades. However, many emerging and developing nations are still constructing their legal frameworks and systems for copyright, patents, and trademarks. Through treaty negotiation, registration, enforcement, legal and technical assistance, and training in various forms, WIPO plays a critical role in assisting these new systems in evolving in light of the increasing globalisation of trade and the rapid changes in technological innovation.

The World Intellectual Property Organization works to advance the growth and application of the global intellectual property system by:

- Services - run systems which make it easier to obtain protection internationally for patents, trademarks, designs and appellations of origin; and to resolve IP disputes.
- Law - develop the international legal IP framework in line with society's evolving needs.
- Infrastructure - build collaborative networks and technical platforms to share knowledge and simplify IP transactions, including free databases and tools for exchanging information.
- Development - build capacity in the use of IP to support economic development.

Legal Frameworks under WIPO

- *Patent Cooperation Treaty (PCT)*: The Paris Convention's Patent Cooperation Treaty (PCT) enables public access to a plethora of technical data pertaining to such inventions while also assisting applicants in securing patent protection for their ideas on a global scale. Applicants are able to concurrently apply for protection of an innovation in a large number of nations by submitting a single worldwide patent application under the PCT.
- *Madrid Agreement*: The Madrid Agreement, signed in 1891, and the Protocol pertaining to that Agreement, signed in 1989, set forth the rules for the Madrid System for the International Registration of Marks. By acquiring an international registration that is valid in each of the specified Contracting Parties, the method enables the protection of a mark across a wide range of nations.
- *Vienna Agreement*: For marks that are composed of or incorporate figurative features, the Vienna Agreement creates an International Classification of the Figurative Elements of Marks known as the Vienna Classification.

- *Nice Agreement*: Regarding the International Classification of Goods and Services for the Registration of Marks, the Nice Agreement came into force.
- *Locarno Agreement*: The Locarno Agreement creates the Locarno Classification, an international classification system for industrial designs.
- *WIPO Copyright Treaty (WCT)*: A particular agreement under the Berne Convention known as the WIPO Copyright Treaty (WCT) deals with the protection of works and the rights of their authors in the digital sphere. The Treaty also addresses two items that must be covered by copyright protection: (i) computer programmes, regardless of how they are expressed; and (ii) collections of data or other materials (“databases”).
- *WIPO Performances and Phonograms Treaty (WPPT)*: In especially in the digital context, the WIPO Performances and Phonograms Treaty (WPPT) deals with the rights of two categories of beneficiaries: (i) performers (actors, singers, musicians, etc.); and (ii) manufacturers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds).
- *WIPO Intergovernmental Committee* : According to its mandate, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore is engaging in text-based negotiations to find a text or texts for an international legal instrument that will effectively protect traditional knowledge (TK), traditional cultural expressions (TCEs), and genetic resources (GRs).
- *Standing Committee on Copyright and Related Rights (SCCR)*: During the biennium of 1998–1999, the Standing Committee on Copyright and Related Rights (SCCR) was established to look into issues of substantive law or harmonisation in the area of copyright and related rights.
- *Hague System/Agreement*: Through the submission of a single international application, the Hague System for the International Registration of Industrial Designs offers a useful commercial option for registering up to 100 designs in 74 contracting parties spanning 91 countries.
- *Lisbon System/Agreement*: By using a single registration process and a single set of costs, the Lisbon System for the International Registration of Appellations of Origin and Geographical Indications provides a way to secure protection for an appellation of origin or a geographical indication in the contracting parties.

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Beyond simply transporting items across borders, trade has developed to include the value it brings to societies. Today’s international trade involves a significant amount of value exchanged through innovation, creativity, and branding. Development and trade policy increasingly heavily weighs how to increase this value and make it easier for knowledge-rich commodities and services to move across borders.

The TRIPS Agreement is essential for facilitating intellectual property trade, settling intellectual property trade disputes, and giving WTO members the freedom to pursue their own national goals. The Agreement formally acknowledges the importance of the connections between intellectual property and trade. That was accomplished by the Uruguay Round. The TRIPS Agreement is an attempt to put these rights under common international law and to close the gaps in how they are safeguarded and upheld globally. It provides minimal requirements for enforcement and protection of intellectual property owned by citizens of other WTO members by each government.

WTO countries have a great deal of flexibility under the TRIPS Agreement to customise their methods to IP protection and enforcement to meet their needs and realise public policy objectives. The Agreement gives members plenty of leeway to strike a balance between the long-term advantages of encouraging innovation and the potential short-term costs of restricting access to works of creative genius. Through a variety of procedures

permitted by TRIPS provisions, such as exclusions or exceptions to intellectual property rights, Members can lower short-term costs. Additionally, the WTO's dispute resolution mechanism is accessible in cases of trade disputes involving the application of the TRIPS Agreement.

The TRIPS Agreement addresses five main topics:

- How general rules and fundamental ideas of the global trading system apply to international intellectual property?
- What are the minimum protection criteria for intellectual property rights that members should offer?
- What mechanisms should members offer to defend those rights in their home countries?
- Specific interim framework for resolving intellectual property disputes between WTO members in order to implement TRIPS requirements.
- Special transitional arrangements for the implementation of TRIPS provisions.

THE CONCEPT OF INTELLECTUAL PROPERTY

The term "intellectual property" refers to works produced by the human mind and intellect. In other words, intellectual property refers to information that may be used to create tangible goods simultaneously in an infinite number of copies at various locations throughout the globe. The information reflected in those copies, not the copies themselves, is what grants the property right. Similar to property rights in movable and immovable property, intellectual property is also characterised by certain rights as well as limitations such as right to use and licence and also limited duration in the case of copy right and patents.

Industrial Property

The expression 'Industrial Property' is sometimes misunderstood as relating to movable or immovable property used for industrial production. However, industrial property is a kind of intellectual property and relates to creation of human mind, e.g., inventions and industrial designs. Simply stated, inventions are new solutions to technological problems, and industrial designs are aesthetic creations determining the appearance of industrial products. In addition, industrial property includes trademarks, service marks, commercial names and designations, including indications of source and appellations of origin, and the protection against unfair competition.

The term 'Industrial Property' may not appear entirely logical in the sense that the inventions are only concerned with the industry. In other words, the inventions are exploited in industrial plants while the trademarks, service marks, trade names and service names are concerned with both the commerce as well as industry. Notwithstanding the lack of logic, this term has acquired a meaning which clearly covers inventions as well as other marks. The Paris Convention also recognised industrial property to cover patent, trademark, service mark, trade names, utility models, industrial designs, indication of source and appellations of origin and the repression of unfair competition.

Hence, industrial property right is a collective name for rights referring to the commercial or industrial activities of a person. These activities may include the activities of industrial or commercial interests. They may be called inventions, creations, new products, processes of manufacture, new designs or model and a distinctive mark for goods etc.

A person's commercial or industrial activities are covered by a group of rights known as industrial property rights. The actions of commercial or industrial interests may be among these activities. They can be referred to as inventions, creations, new products, manufacturing methods, new designs or models, and distinguishing marks for commodities, among other terms.

Patent

A patent is a monopoly award that gives the inventor control over the output and, up to a certain point in the demand curve, the price of the patented goods. The patent system's primary economic and commercial justification is that it encourages investment in industrial innovation. The upkeep and expansion of a country's stock of valuable, transferable, and industrial assets are both facilitated by innovative technologies.

An innovation, such as a product or a technique that gives a novel approach to a problem or a new technical solution, is given an exclusive right known as a patent. An invention is the concept for creating a novel and practical product, process, or substance. Without the permission of the patent holder, the innovation cannot be made, utilised, disseminated, or sold for a profit. For the duration that the invention is shielded by a patent, the patent holder has the authority to decide who may or may not use the invention. The owner of the patent may provide another party a licence to exploit the innovation under mutually agreeable terms. Additionally, he has the option to transfer ownership of the patent to the buyer of the right to use the innovation. From the day the patent application was submitted, the patent is valid for 20 years. After a patent expires, the invention is no longer protected and becomes part of the public domain, meaning that the owner no longer has the sole right to use the invention.

Trade Mark

A trade mark tries to safeguard both the interests of the trader and the customer by differentiating the items of one manufacturer or trader from comparable goods of others. A trademark can be any combination of words, characters, numbers, symbols, or devices showing images of people, animals, or both. A trademark acts as an effective form of advertising for the goods and their quality since it denotes the relationship between the merchant and the items during the course of commerce. The goal of trademark law is to give businesses the ability to acquire an exclusive right to use, share, or assign a mark by registering their mark. Similar to this, service marks set one company's services apart from those of other companies.

Like inventions and industrial designs, it is patentable. Various combinations of words, letters, numbers, symbols, drawings, images, and even sounds can be used as a trademark. These are typically registered for seven years, but by reapplying, they can be renewed indefinitely. It guarantees the owner of the mark the sole right to use it to distinguish products or services, or to grant another person permission to use it in exchange for payment. Because of the nature and quality of the goods or service, which are denoted by its distinctive trademark, it aids consumers in recognising and purchasing it.

Copyright

The idea of Copyright protection only began to emerge with the invention of printing, which made it for literary works to be duplicated by mechanical processes instead of being copied by hand. This led to the grant of privileges, by authorities and kings, entitling beneficiaries exclusive rights of reproduction and distribution, for limited period, with remedies in the form of fines, seizure, confiscation of infringing copies and possibly damages.

However, the criticism of the system of privileges led to the adoption of the Statute of Anne in 1709, the first copyright Statute. In the 18th century there was dispute over the relationship between copyright subsisting in common law and copyright under the Statute of Anne. This was finally settled by House of Lords in 1774 which ruled that at common law the author had the sole right of printing and publishing his book, but that once a book was published the rights in it were exclusively regulated by the Statute. This common law right in unpublished works lasted until the Copyright Act, 1911, which abolished the Statute of Anne.

Copyright is a well recognised form of property right which had its roots in the common law system and subsequently came to be governed by the national laws in each country. Copyright as the name suggests arose as an exclusive right of the author to copy the literature produced by him and stop others from doing so.

There are well-known instances of legal intervention to punish a person for copying literary or aesthetic output of another even before the concept of copyright took shape. The concept of idea was originally concerned with the field of literature and arts. In view of technological advancements in recent times, copyright protection has been expanded considerably. Today, copyright law has extended protection not only to literary, dramatic, musical and artistic works but also sound recordings, films, broadcasts, cable programmes and typographical arrangements of publications. Computer programs have also been brought within the purview of copyright law.

Thus, the copyright deals with the rights of intellectual creators in their creation. The copyright law deals with the particular forms of creativity, concerned primarily with mass communication. It is also concerned with virtually all forms and methods of public communication, not only printed publications but also with such matters as sound, and television broadcasting, films for public exhibition etc. and even computerised systems for the storage and retrieval of information. The copyright law, however, protects only the form of expression of ideas themselves. The creativity protected by copyright law is creativity in the choice and arrangement of words, musical notes, colours, shapes and so on. In India, the law relating to copyright is governed by the Copyright Act, 1957 which has been amended in 1983, 1984, 1985, 1991, 1992, 1994, 1999 and 2012. The amendment introduced in 1984 included computer program within the definition of literary work and a new definition of computer program was inserted by the 1994 amendment. The philosophical justification for including computer programs under literary work has been that computer programs are also products of intellectual skill like any other literary work.

In 1999, the Copyright Act, 1957 has been amended to give effect to the provisions of Article 14 of the TRIPs agreement providing term of protection to performers rights at least until the end of a period of fifty years computed from the end of the calendar year in which the performance took place. The Amendment Act also inserted new Section 40A empowering the Central Government to extend the provisions of the Copyright Act to broadcasts and performances made in other countries subject to the condition however that such countries extend similar protection to broadcasts and performances made in India. Another new Section 42A empowers the Central Government to restrict rights of foreign broadcasting organisations and performers.

Industrial Designs

Industrial designs belong to the aesthetic field, but are at the same time intended to serve as pattern for the manufacture of products of industry or handicraft. An industrial design is the ornamental or aesthetic aspect of a useful article, which must appeal to the sense of sight and may consist of the shape and/or pattern and/or colour of article. An industrial design to be protectable, must be new and origin. Industrial designs are protected against unauthorised copying or limitation, for a period which usually lasts for five, ten or fifteen years.

Textile designs were the first to receive legal protection. As early as 1787 the first Act for design protection was enacted in Great Britain for the Encouragement of the Arts of design and printing Linens, cotton, calicoes and Muslins, by vesting properties thereof in the Designers, Printers and Proprietors for a limited time. This was an experimental measure extending protection for a limited duration. Shortly thereafter its life was extended and soon afterwards it was made perpetual. In 1839 the protection under the Act was enlarged to cover "Designs for Printing other woven Fabrics".

In the same year another Act was passed for design protection for articles of manufacture generally. An Act to secure to Proprietors of Designs for Articles of Manufacture the Copyright of such Designs for a limited time. The legislative process for design protection took rapid strides thereafter. A consolidating and updating measure enacted in 1842. An Act to consolidate and amend the laws relating to the Copyright of Designs for ornamenting Articles of manufacture-repealed all the earlier statutes referred to above.

It is significant to observe that when the designs law was codified in 1842 and took its modern day shape, copyright protection had not yet been extended to drawings, paintings and photographs. This came only twenty years later with the enactment of the Fine Arts Copyright Act, 1862. Codification of copyright law was nowhere in sight and came only seventy years later with the enactment of the Imperial Copyright Act, 1911. Until 1883

the statutes relating to patents, designs and trademarks remained separate. They were combined in a single enactment by the Patents, Designs, and Trade Marks Act, 1883, which repealed all the then existing statutes in the three areas. Soon trademarks law parted company and was separately enacted as the Trade Marks Act, 1905, leaving patents and designs to remain together. The Patents and Designs Act, 1907, consolidated the enactments relating to patents and designs.

The first designs legislation enacted in India was the Patterns and Designs Protection Act, 1872. It was enacted as a supplement to the Statute-Act 15 of 1859-passed by the Governor-General of India in Council which for the first time made provision for granting to inventors of “new manufacture the exclusive privilege of making, selling and using the invention in India or authorising others to do so for a specified term. The Act of 1872 was passed to extend similar privileges to the inventors of new patterns and designs in British India, though for a very shorter duration of years. It included in the term new manufacture any new and original pattern or design, or the application of such pattern or design to any substance or article of manufacture”. The Act, however, left undefined the expression new pattern or design.

The Inventions and Designs Act, 1898, which consolidated and amended the law relating to the protection of inventions and designs contained provisions relating to designs in a separate part. The (British) Patents and Designs Act, 1907, became the basis of the Indian Patents and Designs Act, 1911. The patents provisions of the Indian Patents and Designs Act, 1911, were repealed by the Patents Act, 1970, a post-Independence updating and consolidation of the patents law. The design provisions of the Indian Patents and Designs Act, 1911, continue, with some consequential amendments, with the title as the Designs Act, 1911. The new Designs Act, 2000 has been passed by the Parliament.

Geographical Indication (GI)

Geographical Indicator is that part of industrial property that designates a nation or a location within it as the nation or place of origin of that product. Such a name typically carries a guarantee of quality and individuality, which is mostly due to the fact that it originated in the specified geographical place, region, or nation. Signs that identify a product’s exact geographic origin are known as geographic indicators. A GI identifies a product’s origin, which could be a village or town, a region, or a nation, and identifies the product’s unique traits. Since it is an exclusive privilege granted to a certain community, all of the community’s members profit from its registration. All producers or traders whose goods originate from that location and have defining traits may use it.

Geographical Indications are covered by Articles 22 to 24 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which was a component of the Agreements that concluded the Uruguay Round of GATT negotiations. The Geographical Indications of Goods (Registration and Protection) Act, 1999 was passed by India as a WTO member. It was enacted in December 1999, and it became effective on September 15, 2003. With this Act, geographical indicators for commodities in India are to be registered and given additional protection.

Bordeaux wine, Darjeeling tea, Chanderi sarees, Kullu shawls, Tuscany olive oil, Kanchipuram silk sarees, Alphanso Mango, Nagpur orange, and Kolhapuri (Chappal) are well-known examples of GIs.

Trade Secret

A trade secret is a method, practise, procedure, design, instrument, pattern, or collection of information that is not widely known or easily discoverable and through which a company might gain a competitive edge over rivals or clients. An enterprise may gain a competitive edge from secret business information. Sales techniques, distribution strategies, consumer profiles, marketing plans, client and supplier lists, production procedures, and advertising strategies are all examples of trade secrets. A trade secret can be preserved indefinitely, but there must be a significant amount of secrecy, making it difficult to obtain the information unless inappropriate means are used.

NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY

The Indian government has provided the exclusive right of intellectual property to safeguard the originality of inventors' works. The simplest form of intellectual property is an intangible work of human imagination. This intellectual property contains rights centred on copyright, patents, trademarks, trade names, industrial designs, and merchandise. Maintaining intellectual property rights is crucial for the quality, safety, and effectiveness of all pharmaceutical products and services. For the certification and identification of products in a large market, it serves as a standard authority and certification body. The privileges granted to individuals over the works of their imaginations are known as intellectual property rights.

Typically, they grant the creator a limited time, exclusive permission to utilise his or her works. The term "intellectual property" refers to human inventions in the fields of art, literature, science, and industry. This application is crucial for protecting the inventor's invention and upholding the inventor's work's high standards of quality.

As a result of these changes, the government decided to create a roadmap for IPRs in the nation. The National Intellectual Property Rights Policy was put into place to encourage innovation, enhance the business climate, and make it easier to commercially utilise intellectual property. The Policy is in accordance with India's proclamation that this decade is the "Decade of Innovation".

On May 12th, 2016, the Union Cabinet approved the IPR Policy. It acknowledges India's well-established, TRIPS-compliant legal structure to protect IPRs and strives to balance her development objectives by making use of the flexibilities offered by the global regime. The Policy places a special emphasis on spreading knowledge about IPRs and emphasising their value as a marketable financial asset and a tool for the economy.

IPR Policy focus on:

- Improving access to healthcare, food security, and environmental protection, among other areas of critical social, economic, and technological importance.
- fostering creativity and innovation and thereby promote entrepreneurship and enhance socio-economic and cultural development.

The Policy outlines seven goals that are further defined with actions that must be taken by the designated nodal Ministry or Department. The goals are briefly discussed below:-

- **IPR Awareness: Outreach and Promotion** – To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
- **Generation of IPRs** - To stimulate the generation of IPR.
- **Legal and Legislative Framework** - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.
- **Administration and Management** - To modernize and strengthen service oriented IPR administration.
- **Commercialization of IPR** - Get value for IPRs through commercialization.
- **Enforcement and Adjudication** - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
- **Human Capital Development** - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

LESSON ROUND-UP

- A patent is a monopoly award that gives the inventor control over the output and, up to a certain point in the demand curve, the price of the patented goods. The patent system's primary economic and commercial justification is that it encourages investment in industrial innovation.
- A trade mark tries to safeguard both the interests of the trader and the customer by differentiating the items of one manufacturer or trader from comparable goods of others. A trademark can be any combination of words, characters, numbers, symbols, or devices showing images of people, animals, or both.
- A trade secret is a method, practise, procedure, design, instrument, pattern, or collection of information that is not widely known or easily discoverable and through which a company might gain a competitive edge over rivals or clients. An enterprise may gain a competitive edge from secret business information.
- Geographical Indicator is that part of industrial property that designates a nation or a location within it as the nation or place of origin of that product. Such a name typically carries a guarantee of quality and individuality, which is mostly due to the fact that it originated in the specified geographical place, region, or nation.
- The National Intellectual Property Rights Policy encourage innovation, enhance the business climate, and make it easier to commercially utilise intellectual property. The Policy is in accordance with India's proclamation that this decade is the "Decade of Innovation".

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Discuss the need of Intellectual Property Protection Laws in India.
2. What is Industrial Property?
3. A patent is a monopoly award that gives the inventor control over the output. Critically Examine.
4. What is Trade Secret?
5. Discuss briefly National Intellectual Property Rights Policy.

LIST OF FURTHER READINGS

- Intellectual Property Laws and Practice – Elizabeth Verkey
- Law Relating to Intellectual Property - Dr. BL Wadhwa

OTHER REFERENCES (INCLUDING WEBSITES / VIDEO LINKS)

- <https://ipindia.gov.in/>
- <https://www.wipo.int/porta/en/index.html>

