Role of International Institutions

Lesson 3

KEY CONCEPTS

■ Intellectual property ■ Paris Convention ■ Berne Convention ■ WIPO ■ PCT ■ TRIPS ■ UCC ■ UNESCO ■ National Treatment ■ Contracting States

Learning Objectives

To understand:

- The dual nature of intellectual property, i.e. national and international dimensions.
- The frame work governing the protection of IP, national laws, regulations and international treaties.
- The role of various consolidated international treaties, conventions, organization in providing protection to the Intellectual Property rights.
- The important international instruments and related concepts.
- The leading International Instruments and Institutions pertaining Intellectual Property Rights and their impact on the Indian laws governing to the Intellectual Property Rights.

Lesson Outline

INTRODUCTION

Intellectual property has a dual nature, i.e. it has both a national and international dimension. For instance, patents are governed by national laws and rules of a given country, while international conventions on patents ensure minimum rights and provide certain measures for enforcement of rights by the contracting states. Strong protection for intellectual property rights (IPR) worldwide is vital to the future economic growth and development of all countries. Since they create common rules and regulations, international IPR treaties, in turn, are essential to achieving the robust intellectual property protection that spurs global economic expansion and the growth of new technologies.

List of some leading Instruments concerning Intellectual Property Rights is as below:

1. The Paris Convention for the Protection of Industrial Property (1883)
2. The Berne Convention for the Protection of Literary and Artistic Works (1886)
3. The WIPO Copyright Treaty (WCT)
4. The Patent Cooperation Treaty (PCT)
5. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
6. The Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement
7. The Hague Agreement Concerning the International Deposit of Industrial Designs
8. The Trademark Law Treaty (TLT)
9. The Patent Law Treaty (PLT)
10. Treaties on Classification
11. Special Conventions in the Field of Related Rights: The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations ("the Rome Convention")
12. Other Special Conventions in the Field of Related Rights
13. The WIPO Performances and Phonograms Treaty (WPPT)
14. The International Convention for the Protection of New Varieties of Plants
15. The Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") and WIPO-WTO Cooperation.

INTERNATIONAL INSTRUMENTS

S.No.	International Instrument	Summary
1	The Paris Convention for the Protection of Industrial Property, 1883	The Paris Convention for the Protection of Industrial Property, signed in Paris, France, on 20 March 1883, was one of the first intellectual property treaties. It established a Union for the protection of industrial property. The Convention is still in force. The substantive provisions of the Convention fall into three main categories: national treatment, priority right and common rules.

S.No.	International Instrument	Summary
2	The Berne Convention for the Protection of Literary and Artistic Works, 1886	The Berne Convention, adopted in 1886, deals with the protection of works and the rights of their authors. It provides creators such as authors, musicians, poets, painters etc. with the means to control how their works are used, by whom, and on what terms. It is based on three basic principles and containsa series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them.
3	The WIPO Copyright Treaty (WCT) Signed 1996, Effective 2002	The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention which deals with the protection of works and the rights of the authors in the digital environment. In addition to the rights recognized by the Berne Convention, certain economic rights are also grated. The Treaty also deals with two subject matters to be protected by copyright: (i) computer programs, whatever the mode or form of their expression; and (ii) compilations of data or other material ("databases").
4	The Patent Cooperation Treaty (PCT), 1970	The Patent Cooperation Treaty (PCT) makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application. Such an application may be filed by anyone who is a national or resident of a PCT Contracting State. It may generally be filed with the national patent office of the Contracting State of which the applicant is a national or resident or, at the applicant's option, with the International Bureau of WIPO in Geneva.
5	Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977	Adopted in 1977, the Budapest Treaty concerns a specific topic in the international patent process: microorganisms. All states party to the Treaty are obliged to recognize microorganisms deposited as a part of the patent procedure, irrespective of where the depository authority is located. In practice this means that the requirement to submit microorganisms to each and every national authority in which patent protection is sought no longer exists.
6	The Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement, 1891	The Madrid System for the International Registration of Marks is governed by two treaties: The Madrid Agreement, concluded in 1891 and revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and amended in 1979, and The Protocol relating to that Agreement, concluded in 1989, which aims to make the Madrid system more flexible and more compatible with the domestic legislation of certain countries or intergovernmental organizations that had not been able to accede to the Agreement. States and organizations party to the Madrid system are collectively referred to as Contracting Parties.

S.No.	International Instrument	Summary
		The system makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect ineach of the designated Contracting Parties.
7	The Hague Agreement Concerning the International Deposit of Industrial Designs, 1925	The Hague Agreement Concerning the International Deposit of Industrial Designs, also known as the Hague system provides a mechanism for registering an industrial design in several countries by means of a single application, filed in one language, with one setof fees. The system is administered by WIPO. The Hague Agreement consists of several separate treaties, the most important of which are: the Hague Agreement of 1925, the London Act of 2 June 1934, the Hague Act of 28 November 1960 (amended by the Stockholm Act), and the Geneva Act of 2 July 1999. The original version of the Agreement (the 1925 Hague version) is no longer applied, since all states parties signed up to subsequent instruments. The 1934 London Act formally applied between a London act states that did not sign up to the Hague and/or Geneva Act in relation with other London act states until October 2016. Since 1 January 2010, however, the application of this act had already been frozen.
8.	Trademark Law Treaty (TLT), 1994	The aim of the Trademark Law Treaty (TLT) is to standardize and streamline national and regional trademark registration procedures. This is achieved through the simplification and harmonization of certain features of those procedures, thus making trademark applications and the administration of trademark registrations in multiple jurisdictions less complex and more predictable.
9.	The Patent Law Treaty (PLT), 2000	The Patent Law Treaty (PLT) was adopted in 2000 with the aim of harmonizing and streamlining formal procedures with respect to national and regional patent applications and patents and making such procedures more user friendly. With the significant exception of filing date requirements, the PLT provides the maximum sets of requirements the office of a Contracting Party may apply.
10.	Treaties on Classification, 1957	As early as the nineteenth century, it was recognized that in allthe major fields of industrial property — patents, trademarks and industrial designs — it was essential to create classification systems. The reasons were, immediately, administrative order for handling and registration within national industrial property offices, and, progressively thereafter, organized documentation to create conditions for easier retrieval, examination and other search procedures, and the need for harmonization on an international scale, in order to facilitate and further promote growing international cooperation in these fields. Although the International Patent Classification (IPC) was among the later classification agreements to be signed, it is dealt with below as the first, to reflect its particular worldwide importance, its long antecedents and the volume of documentation that it has generated.

S.No.	International Instrument	Summary
11.	Special Conventions in the Field of Related Rights: The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations ("the Rome Convention"), 1961	The Rome Convention secures protection in performances for performers, in phonograms for producers of phonograms and in broadcasts for broadcasting organizations. WIPO is responsible for the administration of the convention jointly with the Internation-alLabour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).
12.	Other Special Conventions in the Field of Related Rights, (1971, 1974)	Besides the Rome Convention of 1961, a basic legal instrument discussed in the previous section, two other international instruments have been drawn up with regard to certain related rights. These are the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded in Geneva in October 1971 and generally referred to as "the Phonograms Convention," and the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, concluded in Brussels in May 1974 and known briefly as "the Satellites Convention." These two Conventions are also within the area of related rights, and their purpose is to protect producers of phonograms and broadcasting organizations, respectively, against certain prejudicial acts that have been widely recognized as infringements or acts of piracy. With regard to the Rome Convention, the Phonograms Convention and the Satellites Convention may be regarded as special agreements, the conclusion of which is reserved for Contracting States insofar as the agreements grant to performers, producers of phonograms or broadcasting organizations more extensive rights than those granted by the Rome Convention, or contain other provisions not contrary to that Convention (Article 22 of the Rome Convention).
13.	The WIPO Performances and Phonograms Treaty (WPPT), 1980	The WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, held in Geneva in December 1996, adopted two treaties: the WIPO Copyright Treaty (the third section dealt with in this chapter) and the WIPO Performances and Phonograms Treaty (WPPT). In view of the technological developments of the 1980s, as also in the field of copyright, it was recognized that guidance in the form of recommendations, guiding principles and model provisions would no longer suffice, and that binding new norms were indispensable. The WCT and the WPPT were prepared in parallel at the same Diplomatic Conference.
14.	The International Convention for the Protection of New Varieties of Plants, 1961	The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization with headquarters in Geneva (Switzerland). UPOV was established by the International Convention for the Protection of New Varieties of Plants. The Convention was adopted in Paris in 1961 and it was revised in 1972, 1978 and 1991.

S.No.	International Instrument	Summary
		UPOV's mission is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.
15.	The Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") and WIPO-WTO Cooperation, 1994	Uruguay Round Agreement: TRIPS Trade- Related Aspects of Intellectual Property Rights. The TRIPS Agreement is Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994. Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade. Recognizing, to this end, the need for new rules and disciplines concerning: (a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions; (b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights; (c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems; (d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and (e) transitional arrangements aiming at the fullest participation in the results of the negotiations. Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods. Recognizing that intellectual property rights are private rights. Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives. Recognizing also the special needs of the least- developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base.

S.No.	International Instrument	Summary
		Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures. Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations.

THE BERNE CONVENTION

The Berne Convention deals with the protection of works and the rights of their authors. It is based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them.

(1) The three basic principles are the following:

(a) Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals (principle of "national treatment").

Under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the principles of national treatment, automatic protection and independence of protection also bind those World Trade Organization (WTO) Members not party to the Berne Convention. In addition, the TRIPS Agreement imposes an obligation of "most-favored-nation treatment", under which advantages accorded by a WTO Member to the nationals of any other country must also be accorded to the nationals of all WTO Members. It is to be noted that the possibility of delayed application of the TRIPS Agreement does not apply to national treatment and most-favored obligations.

(b) Protection must not be conditional upon compliance with any formality (principle of "automatic" protection).

(c) Protection is independent of the existence of protection in the country of origin of the work (principle of "independence" of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases.

(2) The minimum standards of protection relate to the works and rights to be protected, and to the duration of protection:

(a) As to works, protection must include "every production in the literary, scientific and artistic domain, whatever the mode or form of its expression" [Article 2(1) of the Convention].

(b) Subject to certain allowed reservations, limitations or exceptions, the following are among the rights that must be recognized as exclusive rights of authorization:

- the right to translate,
- the right to make adaptations and arrangements of the work,
- the right to perform in public dramatic, dramatic-musical and musical works,
- the right to recite literary works in public,
- the right to communicate to the public the performance of such works,

- the right to broadcast (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization),
- the right to make reproductions in any manner or form (with the possibility that a Contracting State may permit, in certain special cases, reproduction without authorization, provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author; and the possibility that a Contracting State may provide, in the case of sound recordings of musical works, for a right to equitable remuneration),
- the right to use the work as a basis for an audiovisual work, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work. Under the TRIPS Agreement, an exclusive right of rental must be recognized in respect of computer programs and, under certain conditions, audiovisual works.

  The Convention also provides for "moral rights", that is, the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation.

(c) As to the duration of protection, the general rule is that protection must be granted until the expiration of the 50th year after the author's death. There are, however, exceptions to this general rule. In the case of anonymous or pseudonymous works, the term of protection expires 50 years after the work has been lawfully made available to the public, except if the pseudonym leaves no doubt as to the author's identity or if the author discloses his or her identity during that period; in the latter case, the general rule applies. In the case of audiovisual (cinematographic) works, the minimum term of protection is 50 years after the making available of the work to the public ("release") or – failing such an event – from the creation of the work. In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of the work. Under the TRIPS Agreement, any term of protection that is calculated on a basis other than the life of a natural person must be at least 50 years from the first authorized publication of the work, or – failing such an event – 50 years from the making of the work. However, this rule does not apply to photographic works, or to works of applied art.

(3) The Berne Convention allows certain limitations and exceptions on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation. These limitations are commonly referred to as "free uses" of protected works, and are set forth in Articles 9(2) (reproduction in certain special cases), 10 (quotations and use of works by way of illustration for teaching purposes), 10bis (reproduction of newspaper or similar articles and use of works for the purpose of reporting current events) and 11bis (3) (ephemeral recordings for broadcasting purposes).

(4) The Appendix to the Paris Act of the Convention also permits developing countries to implement non- voluntary licenses for translation and reproduction of works in certain cases, in connection with educational activities. In these cases, the described use is allowed without the authorization of the right holder, subject to the payment of remuneration to be fixed by the law.

The Berne Union has an Assembly and an Executive Committee. Every country that is a member of the Union and has adhered to at least the administrative and final provisions of the Stockholm Act is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is a member ex officio.

The establishment of the biennial program and budget of the WIPO Secretariat – as far as the Berne Union is-concerned – is the task of its Assembly.

The Berne Convention, concluded in 1886, was revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and was amended in 1979.

The Convention is open to all States. Instruments of ratification or accession must be deposited with the Director General of WIPO. WTO Members, even those not party to the Berne Convention, must comply with the substantive law provisions of the Berne Convention, except that WTO Members not party to the Convention are not bound by the moral rights provisions of the Convention.

UNIVERSAL COPYRIGHT CONVENTION

The Universal Copyright Convention (UCC), adopted in Geneva, Switzerland, in 1952, is one of the two principal international conventions protecting copyright; the other is the Berne Convention.

The Universal Copyright Convention of 1952 provides a simple and ingenious solution to this problem. It prescribes that the formalities required by the national law of a contracting state shall be considered to be satisfied if all the copies of a work originating in another contracting state carry the symbol ©, accompanied by the name of the copyright owner and the year of first publication.

If it were to be as universal as its title claims, the Convention not only had to recognize copyright as a human right but also to act as a kind of bridge between the world's different legal and social systems. As an attempt to devise a legal common denominator which would foster respect for the rights of creators and also encourage the international circulation of literary, scientific and artistic works, the UCC had a dual thrust.

Before the Second World War, steps had already been taken to remedy the paradoxical situation whereby the United States was cut off, legally speaking, from the countries of Europe and Asia which since 1886 had become signatories to the Berne Convention – the International Convention for the Protection of Literary and Artistic Works.

The UCC was developed by United Nations Educational, Scientific and Cultural Organization (UNESCO) as an alternative to the Berne Convention for those states which disagreed with aspects of the Berne Convention, but still wished to participate in some form of multilateral copyright protection. These states included developing countries as well as the United States and most of Latin America. The former thought that the strong copyright protections granted by the Berne Convention overly benefited Western, developed, copyright-exporting nations, whereas the latter two were already members of the Buenos Aires Convention, a Pan-American copyright convention that was weaker than the Berne Convention. The Berne Convention states also became party to the UCC, so that their copyrights would exist in non-Berne convention states. In 1973, the Soviet Union joined the UCC.

The United States only provided copyright protection for a fixed, renewable term, and required that in order for a work to be copyrighted it must contain a copyright notice and be registered at the Copyright Office. The Berne Convention, on the other hand, provided for copyright protection for a single term based on the life of the author, and did not require registration or the inclusion of a copyright notice for copyright to exist. Thus the United States would have to make several major modifications to its copyright law in order to become a party to it. At the time the United States was unwilling to do so. The UCC thus permits those states which had a system of protection similar to the United States for fixed terms at the time of signature to retain them. Eventually the United States became willing to participate in the Berne convention, and change its national copyright law as required. In 1989 it became a party to the Berne Convention as a result of the Berne Convention Implementation Act of 1988.

Under United States law authors could only be protected if they carried out certain administrative formalities such as registering their work with the US Copyright Office. This legislation had affinities with that relating to industrial property, which only recognized an inventor's rights if his or her invention had been registered. This requirement stood in the way of the United States' accession to the Berne Convention, which enshrines the principle that a work is protected purely by virtue of its creation.

There was thus no legal mechanism whereby a work originating in the United States could be protected in Japan or in the countries of Western Europe, or whereby a work originating in the latter countries could be protected in the United States except when the requirements of American law were observed.

Ratified by the United States and by almost all the states parties to the Berne Convention, the UCC has successfully served its purpose as a pathway of communication between different legal systems, while also improving the international protection of intellectual works.

Under the Second Protocol of the Universal Copyright Convention (Paris text), protection under U.S. copyright law is expressly required for works published by the United Nations, by UN specialized agencies and by the Organization of American States (OAS). The same requirement applies to other contracting states as well.

Berne Convention states were concerned that the existence of the UCC would encourage parties to the Berne Convention to leave that convention and adopt the UCC instead. So the UCC included a clause stating that parties which were also Berne Convention parties need not apply the provisions of the Convention to any former Berne Convention state which renounced the Berne Convention after 1951. Thus any state which adopts the Berne Convention is penalised if it then decides to renounce it and use the UCC protections instead, since its copyrights might no longer exist in Berne Convention states.

The creators of the UCC set themselves another goal in relation to the universality asserted by its title. They wished to anticipate and provide for the prospect following the Second World War of a considerable increase in the number of sovereign states as a consequence of decolonization. Legal norms for the protection of authors should be sufficiently flexible and open to accommodate states at different stages of development, or states belonging to different economic and social systems. These norms could thus not be as precise and restrictive as those of the Berne Convention, while nevertheless providing sufficient recognition of authors' rights.

The 1952 Convention satisfies these two conditions. Its protective norms are expressed in the form of general principles which can be given different shades of interpretation depending on the specific identity of each state. The Convention limits the term of protection of copyright to twenty-five years after an author's death, thus permitting the accession of the USSR. But correlatively the Convention provides for the works of the citizens of each contracting state the same protection in other contracting states as it does for the works of authors belonging to those states. The prohibition of any discrimination in a given state between authors who are nationals of that state and foreign authors who may invoke the Convention is evidence of a universal concept of the protection of intellectual works.

Article 3 of convention states that-

1. Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities such as deposit, registration, notice, notarial certificates, payment of fees or manufacture or publication in that Contracting State, shall regard these requirements as satisfied with respect to all works protected in accordance with this Conventions and first published outside its territory and the author of which is not one of its nationals, if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication place din such manner and location as to give reasonable notice of claim of copyright.

2. The provisions of paragraph 1 of this article shall not preclude any Contracting State from requiring formalities or other conditions for the acquisition and enjoyment of copyright in respect of works first published in its territory or works of its nationals wherever published.

3. The provisions of paragraph 1 of this article shall not preclude any Contracting State from providing that a person seeking judicial relief must, in bringing the action, comply with procedural requirements, such as the complainant must appear through domestic counsel or that the complainant must deposit with the court or an administrative office, or both, a copy of the work involved in the litigation; provided that failure to comply with such requirements shall not affect the validity of the copyright, nor shall any such requirement be imposed upon a national of another Contracting State if such requirement is not imposed on nationals of the State in which protection is claimed.

4. In each Contracting State there shall be legal means of protection without formalities the unpublished works of national of other Contracting states.

5. If a Contracting State grants protection for more than one term of copyright and the first term is for a period longer than one of the minimum periods prescribed in Article IV, such State shall not be required to comply with the provisions of paragraph 1 of this Article III in respect of the second or any subsequent term of copyright.

Article 4 of convention states that -

1. The duration of protection of a work shall be governed, in accordance with the provisions of Article II and this article, by the law of the Contracting State in which protection is claimed.

2. The term of protection for works protected under this Conventions shall not be less than the life of the author and twenty-five years after his death.

   However, any Contracting State which, on the effective date of this Conventions in that State, has limited this term for certain classes of works to period computed from the first publication of the work, shall be entitled to maintain these exceptions and to extend them to other classes of works. For all these classes the term of protection shall not be less than twenty-five years from the date of the first publication.

   Any Contracting State which, upon the effective date of this Convention in that State, does not compute the term of protection upon the basis of the life of the author, shall be entitled to compute the term of protection from the date of the first publication of the work or from its registration prior to publication, as the case may be, provided the term of protection shall not be less than twenty-five years from the date of first publication, as the case may be, provided the term of protection shall not be less than twenty-five years from the date of first publication or from its registration prior to publication, as the case may be.

   If the legislation of a Contracting State grants two or more successive terms or protection, the duration of the first shall not be less than one of the minimum periods specified above.

3. The provisions of paragraph 2 of this article shall not apply to photographic works or to works of applied art; provided, however, that the term of protection in thos Contracting States which protect photographic works, or works of applied art in so far as they protected as artistic works, shall not be less than ten years for each of said classes of works.

4. No Contracting state shall be obliged to grant protection to a work for a period longer than that fixed for the class of works to which the work in question belongs, in the case of unpublished works by the law of the Contracting State of which the author is a national, and in the case of published works by the law of the Contracting State in which the work has been first published. For the purposes of the application of the preceding provision, if the law of any Contracting State grants two or more successive terms of protection, the period of protection of that State shall be considered to be the aggregate of those terms. However, if a specified work is not protected by such State during the second or any subsequent term for any reason, the other Contracting States shall not be obliged to protect it during the second or any subsequent term.

5. For the purposes of the application of paragraph 4 of this article, the work of a national of a Contracting State, first published in a non-Contracting State, shall be treated as though first published in the Contracting State of which the author is a national.

6. For the purposes of the application of paragraph 4 of this article, in case of simultaneous publication in two or more Contracting States, the work shall be treated as though first published in the State which affords the shortest term; any work published in two or more Contracting States within thirty days of its first publication shall be considered as having been published simultaneously in said Contracting States.

The 1952 Convention created a legal structure which could accommodate the United States, the USSR, the industrially developed countries and the developing countries. It also influenced its predecessor, the Berne

Convention. Fruitful cooperation led to the closer alignment of the two Conventions, which were revised in 1971. This revision gave concrete form to the twofold movement initiated in 1952 by the UCC: furtherance of the legal rights of creators and acknowledgement of the specific needs of developing countries.

Since almost all countries are either members or aspiring members of the World Trade Organization (WTO), and are thus conforming to the Agreement on Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), the UCC has lost significance.

THE PARIS CONVENTION

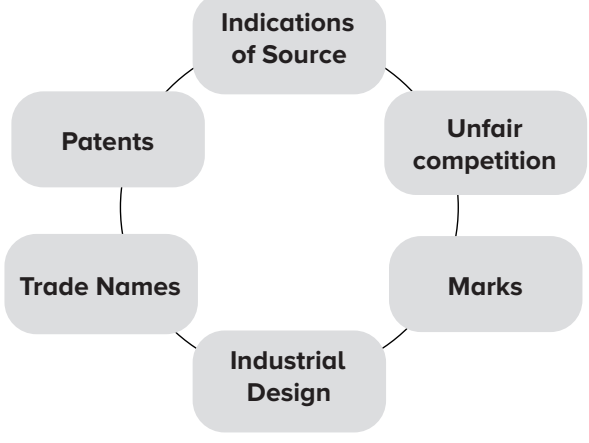
The Paris Convention applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models (a kind of "small-scale patent" provided for by the laws of some countries), service marks, trade names (designations under which an industrial or commercial activity is carried out), geographical indications (indications of source and appellations of origin) and the repression of unfair competition.

The substantive provisions of the Convention fall into three main categories: national treatment, right of priority, common rules.

(1) Under the provisions on national treatment, the Convention provides that, as regards the protection of industrial property, each Contracting State must grant the same protection to nationals of other Contracting States that it grants to its own nationals. Nationals of non-Contracting States are also entitled to national treatment under the Convention if they are domiciled or have a real and effective industrial or commercial establishment in a Contracting State.

(2) The Convention provides for the right of priority in the case of patents (and utility models where they exist), marks and industrial designs. This right means that, on the basis of a regular first application filed in one of the Contracting States, the applicant may, within a certain period of time (12 months for patents and utility models; 6 months for industrial designs and marks), apply for protection in any of the other Contracting States. These subsequent applications will be regarded as if they had been filed on the same day as the first application. In other words, they will have priority (hence the expression "right of priority") over applications filed by others during the said period of time for the same invention, utility model, mark or industrial design. Moreover, these subsequent applications, being based on the first application, will not be affected by any event that takes place in the interval, such as the publication of an invention or the sale of articles bearing a mark or incorporating an industrial design. One of the great practical advantages of this provision is that applicants seeking protection in several countries are not required to present all of their applications at the same time but have 6 or 12 months to decide in which countries they wish to seek protection, and to organize with due care the steps necessary for securing protection.

(3) The Convention lays down a few common rules that all Contracting States must follow. The most important are:



a. **Patents** - Patents granted in different Contracting States for the same invention are independent of each other: the granting of a patent in one Contracting State does not oblige other Contracting States to grant a patent; a patent cannot be refused, annulled or terminated in any Contracting State on the ground that it has been refused or annulled or has terminated in any other Contracting State.

The inventor has the right to be named as such in the patent.

The grant of a patent may not be refused, and a patent may not be invalidated, on the ground that the sale of the patented product, or of a product obtained by means of the patented process, is subject to restrictions or limitations resulting from the domestic law.

Each Contracting State that takes legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exclusive rights conferred by a patent may do so only under certain conditions. A compulsory license (a license not granted by the owner of the patent but by a public authority of the State concerned), based on failure to work or insufficient working of the patented invention, may only be granted pursuant to a request filed after three years from the grant of the patent or four years from the filing date of the patent application, and it must be refused if the patentee gives legitimate reasons to justify this inaction. Furthermore, forfeiture of a patent may not be provided for, except in cases where the grant of a compulsory license would not have been sufficient to prevent the abuse. In the latter case, proceedings for forfeiture of a patent may be instituted, but only after the expiration of two years from the grant of the first compulsory license.

b. **Marks**- The Paris Convention does not regulate the conditions for the filing and registration of marks which are determined in each Contracting State by domestic law. Consequently, no application for the registration of a mark filed by a national of a Contracting State may be refused, nor may a registration be invalidated, on the ground that filing, registration or renewal has not been effected in the country of origin. The registration of a mark obtained in one Contracting State is independent of its possible registration in any other country, including the country of origin; consequently, the lapse or annulment of the registration of a mark in one Contracting State will not affect the validity of the registration in other Contracting States.

Where a mark has been duly registered in the country of origin, it must, on request, be accepted for filing and protected in its original form in the other Contracting States. Nevertheless, registration may be refused in well-defined cases, such as where the mark would infringe the acquired rights of third parties; where it is devoid of distinctive character; where it is contrary to morality or public order; or where it is of such a nature as to be liable to deceive the public.

If, in any Contracting State, the use of a registered mark is compulsory, the registration cannot be canceled for non-use until after a reasonable period, and then only if the owner cannot justify this inaction.

Each Contracting State must refuse registration and prohibit the use of marks that constitute a reproduction, imitation or translation, liable to create confusion, of a mark used for identical and similar goods and considered by the competent authority of that State to be well known in that State and to already belong to a person entitled to the benefits of the Convention.

Each Contracting State must likewise refuse registration and prohibit the use of marks that consist of or contain, without authorization, armorial bearings, State emblems and official signs and hallmarks of Contracting States, provided they have been communicated through the International Bureau of WIPO. The same provisions apply to armorial bearings, flags, other emblems, abbreviations and names of certain intergovernmental organizations.

Collective marks must be granted protection.

c. **Industrial Designs** - Industrial designs must be protected in each Contracting State, and protection may not be forfeited on the ground that articles incorporating the design are not manufactured in that State.

d. **Trade Names** - Protection must be granted to trade names in each Contracting State without there being an obligation to file or register the names.

e. **Indications of Source**- Measures must be taken by each Contracting State against direct or indirect use of a false indication of the source of goods or the identity of their producer, manufacturer or trader.

f. **Unfair competition**- Each Contracting State must provide for effective protection against unfair competition.

The Paris Union, established by the Convention, has an Assembly and an Executive Committee. Every State that is a member of the Union and has adhered to at least the administrative and final provisions of the Stockholm Act (1967) is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is a member ex officio. The establishment of the biennial program and budget of the WIPO Secretariat – as far as the Paris Union is concerned – is the task of its Assembly.

The Paris Convention, concluded in 1883, was revised at Brussels in 1900, at Washington in 1911, at The Hague in 1925, at London in 1934, at Lisbon in 1958 and at Stockholm in 1967, and was amended in 1979.

The Convention is open to all States. Instruments of ratification or accession must be deposited with the Director General of WIPO.

PATENT CO-OPERATION TREATY

The Patent Cooperation Treaty (PCT) makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an “international” patent application. Such an application may be filed by anyone who is a national or resident of a PCT Contracting State. It may generally be filed with the national patent office of the Contracting State of which the applicant is a national or resident or, at the applicant’s option, with the International Bureau of WIPO in Geneva.

If the applicant is a national or resident of a Contracting State party to the European Patent Convention, the Harare Protocol on Patents and Industrial Designs (Harare Protocol), the Bangui Agreement, or the Eurasian Patent Convention, the international application may also be filed with the European Patent Office (EPO), the African Regional Intellectual Property Organization (ARIPO), the African Intellectual Property Organization (OAPI) or the Eurasian Patent Office (EAPO), respectively.

The Treaty regulates in detail the formal requirements with which international applications must comply.

Filing a PCT application has the effect of automatically designating all Contracting States bound by the PCT on the international filing date. The effect of the international application is the same in each designated State as if a national patent application had been filed with the national patent office of that State.

The international application is subjected to an international search. That search is carried out by one of the competent International Searching Authorities (ISA) under the PCT and results in an international search report, that is, a listing of the citations of published documents that might affect the patentability of the invention claimed in the international application. In addition, a preliminary and non-binding written opinion on whether the invention appears to meet patentability criteria in light of the search report results is also issued.

The international search report and written opinion are communicated to the applicant who, after evaluating their content, may decide to withdraw the application, in particular where the content of the report and opinion suggests that the granting of patents is unlikely, or the applicant may decide to amend the claims in the application.

If the international application is not withdrawn, it is published by the International Bureau, together with the international search report. At the same time, the written opinion is made available on PATENTSCOPE.

Before the expiration of 22 months from the priority date, the applicant has the option to request a Supplementary International Searching Authority (SISA) (an ISA willing to offer this service) to carry out an additional search of relevant documentation, specifically focusing on documents in the particular language in which that authority specializes. The goal of this additional search is to reduce the likelihood of further documents coming to light in the national phase that would make granting the patent unlikely.

An applicant that decides to continue with the international application with a view to seeking national (or regional) patents can, in relation to most Contracting States, wait until the end of the thirtieth month from the priority date to commence the national procedure before each designated office by furnishing a translation (where necessary) of the application into the official language of that office, paying to it the necessary fees and acquiring the services of local patent agents.

If the applicant wishes to make amendments to the application – for example, in order to address documents identified in the search report and conclusions made in the written opinion – and to have the potential patentability of the "as-amended" application reviewed – an optional international preliminary examination may be requested. The result of the preliminary examination is an international preliminary report on patentability which is prepared by one of the competent International Preliminary Examining Authorities (IPEA) under the PCT and which contains a preliminary and non-binding opinion on the patentability of the claimed invention. It provides the applicant with an even stronger basis on which to evaluate the chances of obtaining a patent and, if the report is favorable, a stronger basis on which to continue with the application before national and regional patent offices. If no international preliminary examination has been requested, the International Bureau establishes an international preliminary report on patentability on the basis of the written opinion of the ISA and communicates this report to the designated offices.

The procedure under the PCT has numerous advantages for applicants, patent offices and the general public:

(i) applicants have up to 18 months more than if they had not used the PCT to reflect on the desirability of seeking protection in foreign countries, appoint local patent agents in each foreign country, prepare the necessary translations and pay national fees;

(ii) applicants can rest assured that, if their international application is in the form prescribed by the PCT, it cannot be rejected on formal grounds by any designated office during the national phase;

(iii) on the basis of the international search report and the written opinion, applicants can evaluate with reasonable probability the chances of their invention being patented;

(iv) applicants have the possibility, during the optional international preliminary examination, to amend the international application and thus put it in order before processing by the various patent offices;

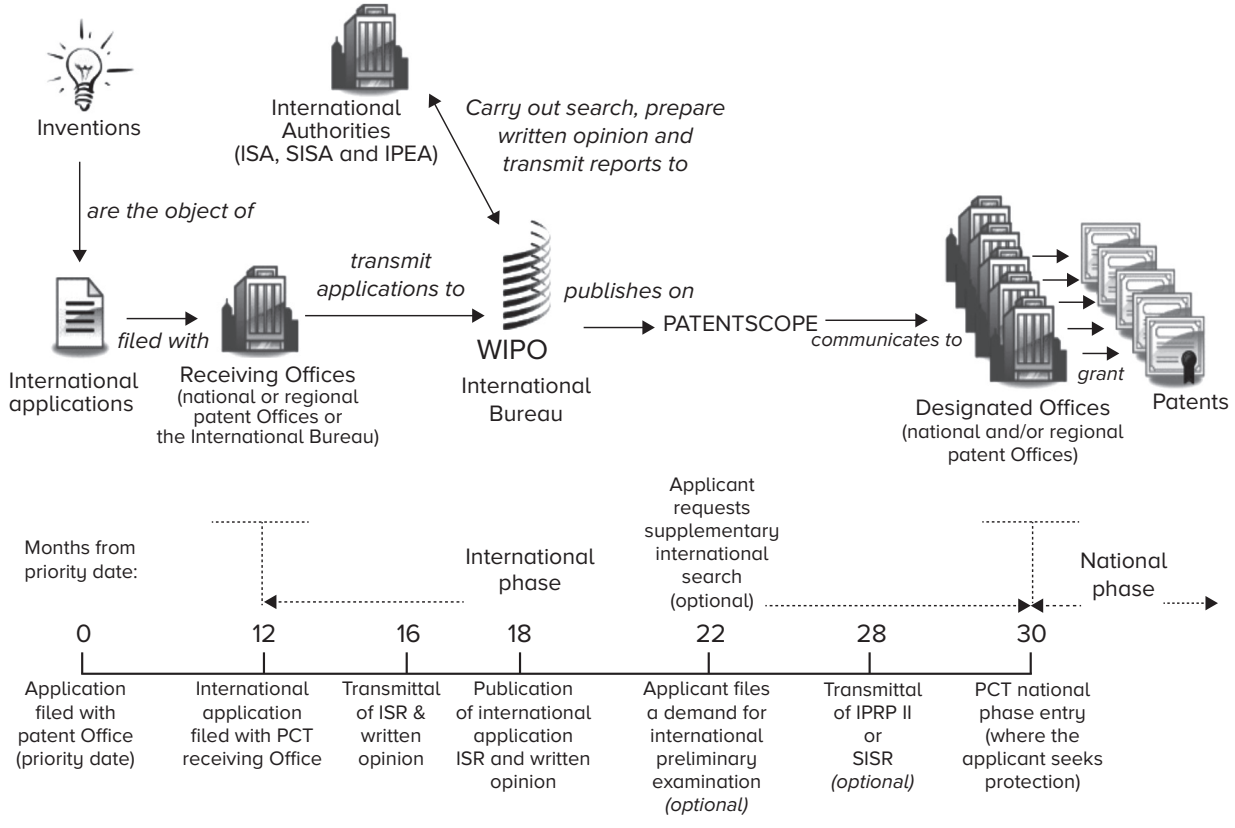
(v) the search and examination work of patent offices can be considerably reduced or eliminated thanks to the international search report, the written opinion and, where applicable, the international preliminary report on patentability which are communicated to designated offices together with the international application;

(vi) applicants are able to access fast-track examination procedures in the national phase in Contracting States that have PCT-Patent Prosecution Highway (PCT-PPH) agreements or similar arrangements;

(vii) since each international application is published with an international search report, third parties are in a better position to formulate a well-founded opinion about the potential patentability of the claimed invention; and

(viii) for applicants, international publication on PATENTSCOPE puts the world on notice of their applications, which can be an effective means of advertising and looking for potential licensees.

Overview of PCT System



Source - PCT FAQ's, WIPO

The PCT procedure includes:

1. **Filing:** You file an international application with a national or regional patent Office or WIPO, complying with the PCT formality requirements, in one language, and you pay one set of fees.
2. **International Search:** An "International Searching Authority" (ISA) (one of the world's major patent Offices) identifies the published patent documents and technical literature ("prior art") which may have an influence on whether your invention is patentable, and establishes a written opinion on your invention's potential patentability.
3. **International Publication:** As soon as possible after the expiration of 18 months from the earliest filing date, the content of your international application is disclosed to the world.
4. **Supplementary International Search (optional):** A second ISA identifies, at your request, published documents which may not have been found by the first ISA which carried out the main search because of the diversity of prior art in different languages and different technical fields.
5. **International Preliminary Examination (optional):** One of the ISAs at your request, carries out an additional patentability analysis, usually on a version of your application which you have amended in light of content of the written opinion.
6. **National Phase:** After the end of the PCT procedure, usually at 30 months from the earliest filing date of your initial application, from which you claim priority, you start to pursue the grant of your patents directly before the national (or regional) patent Offices of the countries in which you want to obtain them.

Ultimately, the PCT:

- brings the world within reach;
- streamlines the process of fulfilling diverse formality requirements;
- postpones the major costs associated with international patent protection;
- provides a strong basis for patenting decisions; and
- is used by the world's major corporations, research institutions and universities in seeking international patent protection.

The PCT created a Union which has an Assembly. Every State party to the PCT is a member of the Assembly. Among the most important tasks of the Assembly are the amendment of the Regulations issued under the Treaty, the adoption of the biennial program and budget of the Union and the fixing of certain fees connected with the use of the PCT system.

The Assembly of the PCT Union has established a special measure to benefit (1) an applicant who is a natural person and who is a national of and resides in a State that is listed as being a State whose per capita gross domestic product is below US$ 25,000 (according to the most recent 10-year average per capita gross domestic product figures at constant 2005 US$ values published by the United Nations), and whose nationals and residents who are natural persons have filed less than 10 international applications per year (per million population) or less than 50 international applications per year (in absolute numbers) according to the most recent five-year average yearly filing figures published by the International Bureau, and (2) applicants, whether natural persons or not, who are nationals of and reside in a State that is listed as being classified by the United Nations as a LDC. That benefit consists of a reduction of 90 per cent of certain fees under the Treaty.

The PCT was concluded in 1970, amended in 1979 and modified in 1984 and in 2001.

It is open to States party to the Paris Convention for the Protection of Industrial Property (1883). Instruments of ratification or accession must be deposited with the Director General of WIPO.

TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS) AGREEMENT

With the establishment of the world trade Organization (WTO), the importance and role of the intellectual property protection has been crystallized in the Trade-Related Intellectual Property Systems (TRIPS) Agreement. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) treaty in 1994.

The general goals of the TRIPS Agreement are contained in the Preamble to the Agreement, which reproduces the basic Uruguay Round negotiating objectives established in the TRIPS area by the 1986 Punta del Este Declaration and the 1988-89 Mid-Term Review. These objectives include:-

a) the reduction of distortions and impediments to international trade,

b) promotion of effective and adequate of intellectual property rights, and

c) ensuring that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

The TRIPS Agreement encompasses, in principle, all forms of intellectual property and aims at harmonizing and strengthening standards of protection and providing for effective enforcement at both national and international levels. It addresses applicability of general GATT principles as well as the provisions in international agreements on IP (Part I). It establishes standards for availability, scope, use (Part II), enforcement (Part III), acquisition and maintenance (Part IV) of Intellectual Property Rights. Furthermore, it addresses related dispute prevention and settlement mechanisms (Part V). Formal provisions are addressed in Part VI and VII of the Agreement, which cover transitional and institutional arrangements, respectively.

The obligations under TRIPS apply equally to all member states. However developing countries were allowed extra time to implement the applicable changes to their national laws, in two tiers of transition according to their level of development. The transition period for developing countries expired in 2005. For least developed countries, the transition period has been extended to 2016, and could be extended beyond that.

The TRIPS Agreement, which came into effect on 1 January 1995, is to date the most comprehensive multilateral agreement on intellectual property. The areas of intellectual property that it covers are:

(i) Copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations);

(ii) Trade marks including service mark;

(iii) Geographical indications including appellations of origin;

(iv) Industrial designs;

(v) Patents including protection of new varieties of plants;

(vi) The lay-out designs (topographies) of integrated circuits;

(vii) The undisclosed information including trade secrets and test data.

Issues Covered under TRIPS Agreement.

The TRIPS agreement broadly focuses on following issues:

- How basic principles of the trading system and other international intellectual property agreements should be applied.
- How to give adequate protection to intellectual property rights.
- How countries should enforce those rights adequately in their own territories.
- How to settle disputes on intellectual property between members of the WTO.
- Special transitional agreements during the period when the new system is being introduced.

Features of the Agreement

The main three features of the TRIPS Agreement are as follows-

Standards: The TRIPS Agreement sets out the minimum standards of protection to be provided by each Member.

Enforcement: The second main set of provisions deals with domestic procedures and remedies for the enforcement of intellectual property rights. The Agreement lays down certain general principles applicable to all IPR enforcement procedures.

Dispute settlement: The Agreement makes disputes between WTO Members about the respect of the TRIPS obligations subject to the WTO's dispute settlement procedures.

In addition the Agreement provides for certain basic principles, such as national and most-favoured-nation treatment (non-discrimination), and some general rules to ensure that procedural difficulties in acquiring or maintaining IPRs do not nullify the substantive benefits that should flow from the Agreement.

The TRIPS Agreement is a minimum standards agreement, which allows Members to provide more extensive protection of intellectual property if they so wish. Members are left free to determine the appropriate method of implementing the provisions of the Agreement within their own legal system and practice.

Protection of Intellectual Property under TRIPS

The TRIPS Agreement provides for protection of various kinds of intellectual property rights to ensure that adequate standards of protection exist in all member countries. The starting point is the obligations of the main international agreement of the World Intellectual Property Organization (WIPO) that already existed before the WTO was created; namely, the Paris Convention for the Protection of Industrial Property (patents, industrial designs, etc.) and the Berne Convention for the Protection of Literary and Artistic Works (copyright). However, some areas were not covered by these conventions while in some cases, the standards of protection prescribed were thought inadequate. So the TRIPS agreement adds a significant number of new or higher standards for the protection of intellectual property rights. Part II of the Agreement addresses, in its various sections, the different kinds of IPR and establishes standards for each category.

Copyright and Related Rights

The TRIPS Agreement requires member countries to comply with the basic standards of the Berne Convention. This is expressed in Article 9.1 of the Agreement which makes reference to the Berne Convention for the Protection of Literary and Artistic Works of 1971 and establishes that Members should comply with Articles 1 through 21 and the Appendix thereto.

However, Members do not have rights or obligations under the TRIPS Agreement in respect of the rights conferred under Article 6bis of that Convention, i.e. the moral rights (the right to claim authorship and to object to any derogatory action in relation to a work, which would be prejudicial to the author's honour or reputation), or of the rights derived therefrom. The provisions of the Berne Convention referred to deal with questions such as subject-matter to be protected, minimum term of protection, and rights to be conferred and permissible limitations to those rights. The Appendix allows developing countries, under certain conditions, to make some limitations to the right of translation and the right of reproduction. That apart, the TRIPS Agreement clarifies and adds certain specific points.

Article 9.2 of the Agreement confirms that copyright protection shall extend to expressions and not to ideas, procedures, and methods of operation or mathematical concepts as such.

Computer programs and Compilation: Article 10.1 provides that computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971). This provision confirms that computer programs must be protected under copyright and that those provisions of the Berne Convention that apply to literary works shall be applied also to them. It confirms further, that the form in which a program is, whether in source or object code, does not affect the protection. The obligation to protect computer programs as literary works means e.g. that only those limitations that are applicable to literary works may be applied to computer programs. It also confirms that the general term of protection of 50 years applies to computer programs. Possible shorter terms applicable to photographic works and works of applied art may not be applied.

Article 10.2 clarifies that compilation of data or other material shall be protected as such under copyright even where the databases include data that as such are not protected under copyright. Databases are eligible for copyright protection provided that they by reason of the selection or arrangement of their contents constitute intellectual creations. The provision also confirms that databases have to be protected regardless of which form they are in, whether machine readable or other form. Furthermore, the provision clarifies that such protection shall not extend to the data or material itself, and that it shall be without prejudice to any copyright subsisting in the data or material itself.

Rental Rights: Article 11 provides that authors shall have, in respect of at least computer programs and in certain circumstances, of cinematographic works, the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. With respect to cinematographic works, the exclusive rental right is subject to the so-called impairment test: a Member is exempted from the obligation unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, the obligation does not apply to rentals where the program itself is not the essential object of the rental.

Term of protection: According to the general rule contained in Article 7(1) of the Berne Convention as incorporated into the TRIPS Agreement, the term of protection shall be the life of the author and 50 years after his death. Paragraphs 2 and 4 of that Article specifically allow shorter terms in certain cases. These provisions are supplemented by Article 12 of the TRIPS Agreement, which provides that whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication or failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Limitations and Exceptions: Article 13 requires Members to confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and makes it clear that they must be applied in a manner that does not prejudice the legitimate interests of the right holder.

Protection of Performers, Producers of Phonograms and Broadcasting Organizations: The provisions on protection of performers, producers of phonograms and broadcasting organizations are included in Article 14. According to Article 14.1, performers shall have the possibility of preventing the unauthorized fixation of their performance on a phonogram (e.g. the recording of a live musical performance). The fixation right covers only aural, not audiovisual fixations. Performers must also be in a position to prevent the reproduction of such fixations. They shall also have the possibility of preventing the unauthorized broadcasting by wireless means and the communication to the public of their live performance.

In accordance with Article 14.2, Members have to grant producers of phonograms an exclusive reproduction right. In addition to this, they have to grant, in accordance with Article 14.4, an exclusive rental right at least to producers of phonograms. The provisions on rental rights apply also to any other right holders in phonograms as determined in national law. This right has the same scope as the rental right in respect of computer programs. Therefore it is not subject to the impairment test as in respect of cinematographic works. However, it is limited by a so-called grand-fathering clause, according to which a Member, which on 15 April 1994, i.e. the date of the signature of the Marrakesh Agreement, had in force a system of equitable remuneration of right holders in respect of the rental of phonograms, may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

Broadcasting organizations shall have, in accordance with Article 14.3, the right to prohibit the unauthorized fixation, the reproduction of fixations, and the re-broadcasting by wireless means of broadcasts, as well as the communication to the public of their television broadcasts. However, it is not necessary to grant such rights to broadcasting organizations, if owners of copyright in the subject-matter of broadcasts are provided with the possibility of preventing these acts, subject to the provisions of the Berne Convention.

Any Member may, in relation to the protection of performers, producers of phonograms and broadcasting organizations, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention [Article 14.6].

The term of protection as per Article 14.5 is at least 50 years for performers and producers of phonograms, and 20 years for broadcasting organizations.

Trademarks

Protectable subject matter: The basic rule contained in Article 15 of the TRIPS Agreement is that any sign, or any combination of signs, capable of distinguishing the goods and services of one undertaking from those of other undertakings, must be eligible for registration as a trademark, provided that it is visually perceptible. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, must be eligible for registration as trademarks.

Where signs are not inherently capable of distinguishing the relevant goods or services, Member countries are allowed to require, as an additional condition for eligibility for registration as a trademark, that distinctiveness which has been acquired through use. Members are free to determine whether to allow the registration of signs that is not visually perceptible (e.g. sound or smell marks).

Members may make registrability depend on use. However, actual use of a trademark shall not be permitted as a condition for filing an application for registration, and at least three years must have passed after that filing date before failure to realize intent to use is allowed as the ground for refusing the application (Article 14.3).

The Agreement requires service marks to be protected in the same way as marks distinguishing goods.

Rights Conferred: The owner of a registered trademark must be granted the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion must be presumed (Article 16.1).

The TRIPS Agreement contains certain provisions on well-known marks, which supplement the protection required by Article 6bis of the Paris Convention, as incorporated by reference into the TRIPS Agreement, which obliges Members to refuse or to cancel the registration, and to prohibit the use of a mark conflicting with a mark which is well known. First, the provisions of that Article must be applied also to services. Second, it is required that knowledge in the relevant sector of the public acquired not only as a result of the use of the mark but also by other means, including as a result of its promotion, be taken into account. Furthermore, the protection of registered well-known marks must extend to goods or services which are not similar to those in respect of which the trademark has been registered, provided that its use would indicate a connection between those goods or services and the owner of the registered trademark, and the interests of the owner are likely to be damaged by such use (Articles 16.2 and 3).

Exceptions: Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties (Article 17).

Term of protection: Initial registration and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely (Article 18).

Requirement of Use: Cancellation of a mark on the grounds of non-use cannot take place before three years of uninterrupted non-use has elapsed unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark, such as import restrictions or other government restrictions, shall be recognized as valid reasons of non-use. Use of a trademark by another person, when subject to the control of its owner, must be recognized as use of the trademark for the purpose of maintaining the registration (Article 19).

It is further required that use of the trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form, or use in a manner detrimental to its capability to distinguish the goods or services (Article 20).

Licensing and Assignment: Members may determine conditions on the licensing and assignment of trademarks. Compulsory licensing of trade marks is not permitted (Article 21).

Geographical indications

Place names are sometimes used to identify a product. Well-known examples include "Champage", "Scotch", "Tequila", and "Roquefort" cheese, 'Basmati' rice and 'Darjeeling' Tea. Wine and spirits makers are particularly concerned about the use of place-names to identify products and the TRIPs agreement contains special provisions for these products.

Geographical indications are defined, for the purposes of the Agreement, as indications which identify goods as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin (Article 22.1).

In respect of all geographical indications, interested parties must have legal means to prevent use of indications which mislead the public as to the geographical origin of the good, and use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (Article 22.2).

The registration of a trademark which uses a geographical indication in a way that misleads the public as to the true place of origin must be refused or invalidated ex officio if the legislation so permits or at the request of an interested party (Article 22.3).

Protection for Wines and Spirits: Article 23 provides that interested parties must have the legal means to prevent the use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication. This applies even where the public is not being misled, there is no unfair competition and the true origin of the good is indicated or the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation" or the like. Similar protection must be given to geographical indications identifying spirits when used on spirits. Protection against registration of a trademark must be provided accordingly.

Exceptions: Article 24 contains a number of exceptions to the protection of geographical indications. These exceptions are of particular relevance in respect of the additional protection for geographical indications for wines and spirits. For example, Members are not obliged to bring a geographical indication under protection, where it has become a generic term for describing the product in question. Measures to implement these provisions shall not prejudice prior trademark rights that have been acquired in good faith. Under certain circumstances, continued use of a geographical indication for wines or spirits may be allowed on a scale and nature as before. Members availing themselves of the use of these exceptions must be willing to enter into negotiations about their continued application to individual geographical indications. The exceptions cannot be used to diminish the protection of geographical indications that existed prior to the entry into force of the TRIPS Agreement. The TRIPS Council shall keep under review the application of the provisions on the protection of geographical indications.

Industrial Designs

Requirements for Protection: Article 25.1 of the TRIPS Agreement obliges Members to provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

Article 25.2 contains a special provision aimed at taking into account the short life cycle and sheer number of new designs in the textile sector; requirements for securing protection of such designs, in particular in regard to any cost, examination or publication, must not unreasonably impair the opportunity to seek and obtain such protection. Members are free to meet this obligation through industrial design law or through copyright law.

Protection: Article 26.1 requires Members to grant the owner of a protected industrial design the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

Article 26.2 allows Members to provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

Duration of protection: The duration of protection available shall amount to at least 10 years.

Patents

Patentable Subject Matter: The TRIPS Agreement requires Member countries to make patents available for any inventions, whether products or processes, in all fields of technology without discrimination, subject to the normal tests of novelty, inventiveness and industrial applicability. It is also required that patents be available

and patent rights enjoyable without discrimination as to the place of invention and whether products are imported or locally produced (Article 27.1).

There are three permissible exceptions to the basic rule on patentability. One is for inventions contrary to order public or morality; this explicitly includes inventions dangerous to human, animal or plant life or health or seriously prejudicial to the environment. The use of this exception is subject to the condition that the commercial exploitation of the invention must also be prevented and this prevention must be necessary for the protection of order public or morality (Article 27.2).

The second exception is that Members may exclude from patentability diagnostic, therapeutic and surgical methods for the treatment of humans or animals [Article 27.3(a)].

The third is that Members may exclude plants and animals other than micro-organisms and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, any country excluding plant varieties from patent protection must provide an effective *sui generis* system of protection. Moreover, the whole provision is subject to review four years after entry into force of the Agreement [Article 27.3(b)].

Rights Conferred: The exclusive rights that must be conferred by a product patent are the ones of making, using, offering for sale, selling, and importing for these purposes. Process patent protection must give rights not only over use of the process but also over products obtained directly by the process. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts (Article 28).

Exceptions: Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties (Article 30).

Term of protection: The term of protection available shall not end before the expiration of a period of 20 years counted from the filing date (Article 33).

Conditions on Patent Applicants: Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application (Article 29.1).

Process Patents: If the subject-matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process, where certain conditions indicating a likelihood that the protected process was used are met (Article 34).

Other Use without Authorization of the Right Holder: Compulsory licensing and government use without the authorization of the right holder are allowed, but are made subject to conditions aimed at protecting the legitimate interests of the right holder. The conditions are mainly contained in Article 31. These include the obligation, as a general rule, to grant such licences only if an unsuccessful attempt has been made to acquire a voluntary licence on reasonable terms and conditions within a reasonable period of time; the requirement to pay adequate remuneration in the circumstances of each case, taking into account the economic value of the licence; and a requirement that decisions be subject to judicial or other independent review by a distinct higher authority. Certain of these conditions are relaxed where compulsory licences are employed to remedy practices that have been established as anticompetitive by a legal process. These conditions should be read together with the related provisions of Article 27.1, which require that patent rights shall be enjoyable without discrimination as to the field of technology, and whether products are imported or locally produced.

Layout-Designs of Integrated Circuits

Article 35 of the TRIPS Agreement requires Member countries to protect the layout-designs of integrated circuits in accordance with the provisions of the IPIC Treaty (the Treaty on Intellectual Property in respect of Integrated Circuits), negotiated under the auspices of WIPO in 1989. These provisions deal with, inter alia, the definitions of "integrated circuit" and "layout-design (topography)", requirements for protection, exclusive rights, and limitations, as well as exploitation, registration and disclosure.

In addition to requiring Member countries to protect the layout-designs of integrated circuits in accordance with the provisions of the IPIC Treaty, the TRIPS Agreement clarifies and/or builds on four points. These points relate to –

a) the term of protection (ten years instead of eight, Article 38),

b) the applicability of the protection to articles containing infringing integrated circuits (last sub clause of Article 36), and

c) the treatment of innocent infringers (Article 37.1).

The conditions in Article 31 of the TRIPS Agreement apply mutatis mutandis to compulsory or non-voluntary licensing of a layout-design or to its use by or for the government without the authorization of the right holder, instead of the provisions of the IPIC Treaty on compulsory licensing (Article 37.2).

Protection of Undisclosed Information

The TRIPS Agreement requires undisclosed information trade secrets or know how to benefit from protection. According to Article 39.2, the protection must apply to information that is secret, which has commercial value because it is secret and that has been subject to reasonable steps to keep it secret. The Agreement does not require undisclosed information to be treated as a form of property, but it does require that a person lawfully in control of such information must have the possibility of preventing it from being disclosed to, acquired by, or used by others without his or her consent in a manner contrary to honest commercial practices.

"Manner contrary to honest commercial practices" includes breach of contract, breach of confidence and inducement to breach, as well as the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

The Agreement also contains provisions on undisclosed test data and other data whose submission is required by governments as a condition of approving the marketing of pharmaceutical or agricultural chemical products which use new chemical entities. In such a situation the Member government concerned must protect the data against unfair commercial use. In addition, Members must protect such data against disclosure, except where necessary to protect the public or unless steps are taken to ensure that the data are protected against unfair commercial use.

Enforcement of Intellectual Property Rights

Intellectual properties are given protection in India under enactments given below. Remedies falling under the various acts fall under the civil and criminal remedy.

Sl No.	Act	Civil Remedy	Criminal Remedy
1	The Copyrights Act, 1957	✓	✓
2	The Trade Marks Act, 1999	✓	✓
3	The Patents Act, 1970	✓	✓

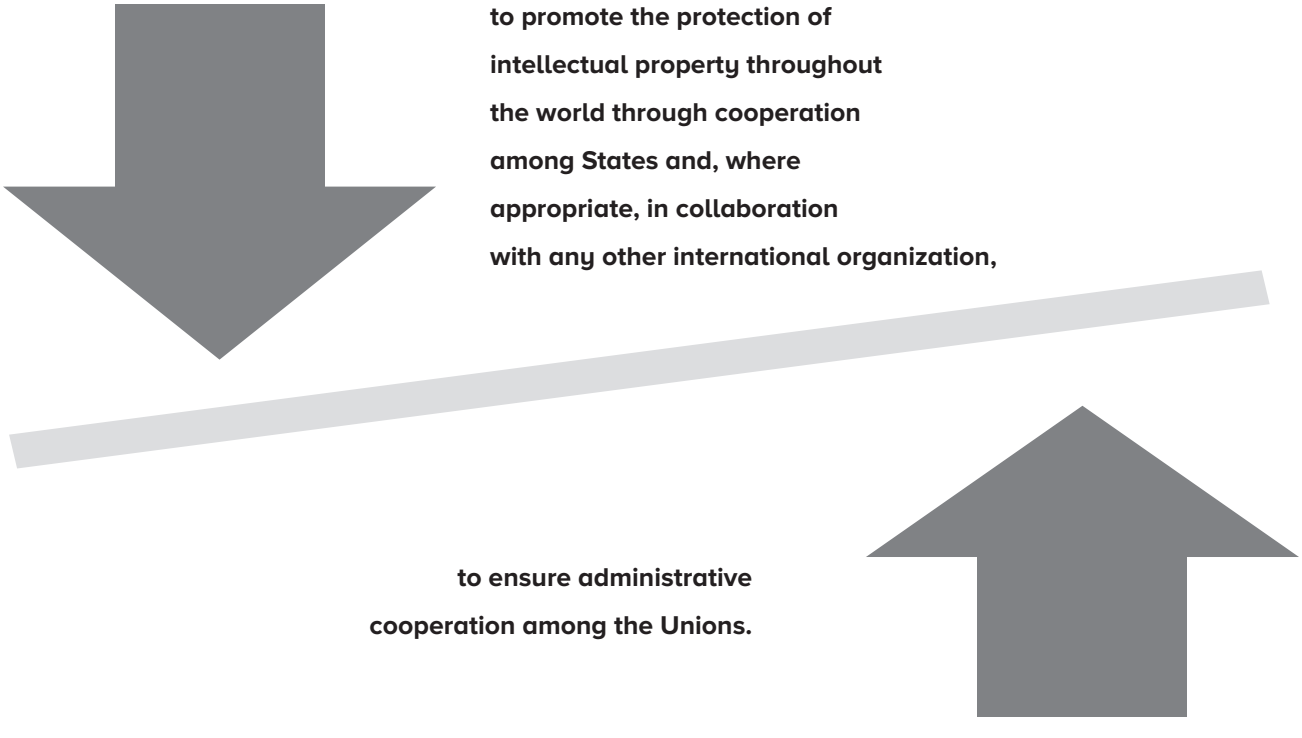
Sl No.	Act	Civil Remedy	Criminal Remedy
4	The Designs Act, 2000	✓	✓
5	Semiconductor Integrated Circuits Layout Design Act, 2000	✓	✓
6	The Geographical Indications of Goods (Registration & Protection) Act, 1999	✓	✓
7	The Protection of Plant Varieties and Farmer's Rights Act, 2001	✓	✓
8	The Biological Diversity Act, 2002	✓	✓

THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

The World Intellectual Property Organization (WIPO) is one of the 15 specialized agencies of the United Nations (UN). WIPO was created in 1967 "to encourage creative activity, to promote the protection of intellectual property throughout the world".

WIPO currently has 191 member states, administers 26 international treaties, and is headquartered in Geneva, Switzerland. The current Director-General of WIPO is Daren Tang Heng Shim. 188 of the UN member states as well as the Cook Islands, Holy See and Niue are members of WIPO. Non-members are the states of Federated States of Micronesia, Nauru, Palau, Solomon Islands and South Sudan. Palestine has permanent observer status.

The objectives of the Organization are:



Functions of the organization

In order to attain the objectives, the Organization, through its appropriate organs, and subject to the competence of each of the Unions:

- shall promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislation in this field;
- shall perform the administrative tasks of the Paris Union, the Special Unions established in relation with that Union, and the Berne Union;
- may agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property;
- shall encourage the conclusion of international agreements designed to promote the protection of intellectual property;
- shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property;
- shall assemble and disseminate information concerning the protection of intellectual property, carry out and promote studies in this field, and publish the results of such studies;
- shall maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in this field and the publication of the data concerning the registrations;
- shall take all other appropriate action.

WIPO- Development Agenda

In October 2004, WIPO agreed to adopt a proposal offered by Argentina and Brazil, the "Proposal for the Establishment of a Development Agenda for WIPO"—from the Geneva Declaration on the Future of the World Intellectual Property Organization. This proposal was well supported by developing countries. The agreed "WIPO Development Agenda" (composed of over 45 recommendations) was the culmination of a long process of transformation for the organization from one that had historically been primarily aimed at protecting the interests of right holders, to one that has increasingly incorporated the interests of other stakeholders in the international intellectual property system as well as integrating into the broader corpus of international law on human rights, environment and economic cooperation.

A number of civil society bodies have been working on a draft Access to Knowledge (A2K) treaty which they would like to see introduced.

In December 2011, WIPO published its first World Intellectual Property Report on the Changing Face of Innovation, the first such report of the new Office of the Chief Economist. WIPO is also a co-publisher of the Global Innovation Index.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

Copyright a traditional tool for encouraging creativity nowadays, has even greater potential to encourage creativity in the beginning of the 21st century. Committed to promoting copyright protection since its early days (the Universal Copyright Convention was adopted under UNESCO's aegis in 1952), UNESCO has over time grown concerned with ensuring general respect for copyright in all fields of creation and cultural industries. It conducts, in the framework of the Global Alliance for Cultural Diversity, awareness-raising and capacity-building projects, in addition to information, training and research in the field of copyright law. It is particularly involved in developing new initiatives to fight against piracy.

The digital revolution has not left copyright protection unaffected. UNESCO endeavors to make a contribution to the international debate on this issue, taking into account the development perspective and paying particular attention to the need of maintaining the fair balance between the interests of authors and the interest of the general public of access to knowledge and information

LESSON ROUND-UP

- Intellectual property has a dual nature, i.e. it has both a national and international dimension.
- For instance, patents are governed by national laws and rules of a given country, while international conventions on patents ensure minimum rights and provide certain measures for enforcement of rights by the contracting states.
- Strong protection for intellectual property rights (IPR) worldwide is vital to the future economic growth and development of all countries.
- List of some leading Instruments concerning Intellectual Property Rights is as below:
  - The Paris Convention for the Protection of Industrial Property
  - The Berne Convention for the Protection of Literary and Artistic Works
  - The WIPO Copyright Treaty (WCT)
  - The Patent Cooperation Treaty (PCT)
  - Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the
  - Purposes of Patent Procedure
  - The Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement
  - The Hague Agreement Concerning the International Deposit of Industrial Designs
  - The Trademark Law Treaty (TLT)
  - The Patent Law Treaty (PLT)
  - Treaties on Classification
  - Special Conventions in the Field of Related Rights: The International Convention for the
  - Protection of Performers, Producers of Phonograms and Broadcasting Organizations ("the Rome Convention")
  - Other Special Conventions in the Field of Related Rights

- The WIPO Performances and Phonograms Treaty (WPPT)
- The International Convention for the Protection of New Varieties of Plants
- The Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") and WIPOWTO Cooperation

- The Berne Convention deals with the protection of works and the rights of their authors. It is based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them.
- The Universal Copyright Convention (UCC), adopted in Geneva, Switzerland, in 1952, is one of the two principal international conventions protecting copyright; the other is the Berne Convention.
- The Paris Convention applies to industrial property in the widest sense, including patents, marks, industrial designs, utility models, trade names, geographical indications and the repression of unfair competition. The substantive provisions of the Convention may be divided into three main categories namely national treatment, right of priority, common rules.
- The Patent Cooperation Treaty (PCT) is an international patent law treaty, concluded in 1970. It provides a unified procedure for filing patent applications to protect inventions in each of its contracting states.
- A patent application filed under the PCT is called an international application, or PCT application.
- The World Intellectual Property Organization (WIPO) is one of the 15 specialized agencies of the United Nations (UN). WIPO was created in 1967 "to encourage creative activity, to promote the protection of intellectual property throughout the world".
- Copyright a traditional tool for encouraging creativity nowadays, has even greater potential to encourage creativity in the beginning of the 21st century. Committed to promoting copyright protection since its early days (the Universal Copyright Convention was adopted unde UNESCO's aegis in 1952), UNESCO has over time grown concerned with ensuring genera respect for copyright in all fields of creation and cultural industries.

GLOSSARY

Moral rights - Those rights that include the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation.

Free uses - The Berne Convention allows certain limitations and exceptions on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation. These limitations are commonly referred to as "free uses" of protected works.

International Searching Authority - ISA (one of the world's major patent Offices) identifies the published patent documents and technical literature ("prior art") which may have an influence on whether your invention is patentable, and establishes a written opinion on your invention's potential patentability.

Rental Rights - It means that authors shall have, in respect of at least computer programs and in certain circumstances, of cinematographic works, the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works.

Geographical indications - They are defined, for the purposes of the Agreement, as indications which identify goods as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Manner contrary to honest commercial practices - It includes breach of contract, breach of confidence and inducement to breach, as well as the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

TEST YOURSELF

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

1. Discuss in brief at least five leading International Instruments concerning Intellectual Property Rights.
2. Write a note on Berne Convention.
3. Write a note on Patent Co-Operation Treaty.
4. What are the areas of Intellectual Property covered under TRIPS?
5. Discuss the Protection of Undisclosed Information under TRIPs agreement.
6. What is WIPO – Development Agenda?
7. Explain the procedure under PCT.
8. Write a short note on-
   - WIPO
   - UNESCO
   - PCT

LIST OF FURTHER READINGS

- Mc John, S. M. (2019). Intellectual property. New York: Wolters Kluwer.
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- Wadehra, B. L. (2017). Law relating to Intellectual Property. Delhi: University law Publishing Co. Pvt. Ltd.
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OTHER REFERENCES (Including Websites / Video Links)

- https://ipindia.gov.in
- https://en.unesco.org/courier/news-views-online/universal-copyright-convention
- https://www.wipo.int/treaties/en/registration/pct/summary_pct.html
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