

**UNIT-I**

**Intellectual Property Law**

**I. Introduction to Intellectual Property Law in India:**

- Intellectual Property (IP) refers to creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images used in commerce.
- Intellectual Property Law in India aims to protect and promote various forms of intellectual creations, encouraging innovation, creativity, and economic growth.

**II. Types of Intellectual Property Rights (IPRs):**

**A. Patents:** - Patents grant exclusive rights to inventors for their inventions, providing them with a monopoly over the commercial exploitation of their inventions. - Example: A pharmaceutical company invents a new drug formulation and obtains a patent, allowing them exclusive rights to produce and sell the drug for a specified period.

**B. Copyrights:** - Copyrights protect original literary, artistic, musical, and dramatic works, including books, films, songs, software, and architectural designs. - Example: An author writes a novel and holds the copyright, which grants them the sole right to reproduce, publish, or adapt the work.

**C. Trademarks:** - Trademarks protect distinctive signs, symbols, logos, or words used to distinguish goods or services of one enterprise from others in the market. - Example: A company creates a unique logo and registers it as a trademark, preventing others from using a similar logo that may cause confusion among consumers.

**D. Industrial Designs:** - Industrial designs protect the visual appearance of a product, including its shape, configuration, pattern, or ornamentation. - Example: A furniture designer creates a unique chair design and obtains industrial design protection, preventing others from copying or imitating the design.

**E. Geographical Indications (GIs):** - GIs protect products originating from a specific geographical region, possessing qualities, reputation, or characteristics attributable to that origin. - Example: Darjeeling Tea, a tea variety originating from the Darjeeling region in India, is protected as a Geographical Indication to prevent misuse of the name by non-authentic producers.

**III. Registration and Protection of Intellectual Property:**

**A. Registration Process:** - Patents, trademarks, and industrial designs require registration with the respective intellectual property offices for legal protection. - Copyrights and GIs

are protected automatically upon creation or recognition, without mandatory registration.

**B. Duration of Protection:** – Patents: Generally, 20 years from the filing date. – Copyrights: Typically, the author's lifetime plus 60 years. – Trademarks: Initially valid for ten years, renewable indefinitely for successive periods. – Industrial Designs: Initially valid for ten years, extendable for another five years. – GIs: No fixed duration; protection can be maintained as long as the product maintains its characteristics.

#### **IV. Enforcement of Intellectual Property Rights:**

**A. Civil Remedies:** – Infringed parties can seek civil remedies such as injunctions, damages, accounts of profits, and delivery or destruction of infringing goods.

**B. Criminal Enforcement:** – Intellectual property infringement is a criminal offense, leading to imprisonment and/or fines.

**C. Border Measures:** – Customs authorities have the power to detain and seize goods suspected of infringing intellectual property rights at ports of entry.

**D. Alternative Dispute Resolution (ADR):** – Mediation and arbitration can be used to resolve intellectual property disputes outside traditional court proceedings.

#### **V. International Treaties and Obligations:**

- India is a signatory to various international treaties, such as the Berne Convention, Paris Convention, and Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

### **Concept of Property vis-a-vis Intellectual Property,**

The concept of property in relation to intellectual property (IP) involves the recognition and protection of certain rights and interests in intangible creations of the mind. Here's a detailed explanation of the concept of property vis-à-vis intellectual property:

#### **1. Tangible Property vs. Intellectual Property:**

- Tangible property refers to physical objects that can be owned, possessed, and transferred, such as land, buildings, and personal belongings.
- Intellectual property, on the other hand, relates to intangible creations of the human intellect and encompasses inventions, literary and artistic works, designs, symbols, and trade secrets.

#### **2. Rights and Ownership:**

- Similar to tangible property, intellectual property grants certain rights and ownership to creators or owners of intellectual creations.

- Intellectual property rights (IPRs) provide exclusive rights and control over the use, reproduction, distribution, and commercial exploitation of the protected creations.

### **3. Creation and Value:**

- Tangible property typically involves the allocation of physical resources, whereas intellectual property involves the allocation of ideas, innovations, and artistic expressions.
- Intellectual property creates value through creativity, innovation, and cultural expression, contributing to economic growth and societal development.

### **4. Legal Framework:**

- Intellectual property is protected and governed by legal frameworks, including national laws, international treaties, and agreements.
- These legal frameworks establish the rights and obligations of creators, owners, and users of intellectual property, ensuring a balance between the interests of creators and public access to knowledge and innovation.

### **5. Exclusive Rights:**

- Intellectual property grants exclusive rights to creators or owners, allowing them to prevent others from using, copying, or exploiting their creations without permission.
- These exclusive rights incentivize creators and provide them with an opportunity to benefit from their creative efforts, encouraging innovation and investment in research and development.

### **6. Limited Duration:**

- Unlike tangible property, intellectual property rights have limited durations.
- The duration of protection varies depending on the type of intellectual property. For example, patents are typically protected for a fixed period (e.g., 20 years), while copyright protection generally lasts for the creator's lifetime plus a certain number of years.

### **7. Balance of Interests:**

- Intellectual property laws aim to strike a balance between the rights of creators and the interests of the public.

- While intellectual property grants exclusive rights, it also recognizes the need for fair use, limitations, and exceptions to promote public access, education, research, and other societal benefits.

### **8. Intellectual Property as a Social and Economic Asset:**

- Intellectual property plays a significant role in the modern knowledge-based economy.
- It serves as an asset that can be licensed, sold, or used as collateral, enabling creators and businesses to monetize their innovations, creations, and brands.

#### **Examples:**

- A software developer holds intellectual property rights over a computer program they have created, allowing them to control its use, distribution, and modification.
- A fashion designer owns intellectual property rights over their unique clothing designs, enabling them to prevent others from copying or producing similar designs without authorization.

#### **OR**

The concept of property and intellectual property in India is similar to that in other countries. Property refers to tangible assets, such as land, buildings, and other physical objects, while intellectual property refers to intangible creations of the mind, such as inventions, literary and artistic works, and trademarks.

In India, Intellectual Property Law provides legal protection to creators of intellectual property, giving them exclusive rights to their creations and preventing others from using, copying, or distributing their work without permission. The key forms of intellectual property protection in India are patents, trademarks, copyrights, and designs.

**Patents:** In India, a patent is granted for a new invention or process that has industrial applicability. The patent owner has the exclusive right to manufacture, use, and sell the invention for a certain period. The patent system is regulated by the Indian Patent Act of 1970, which provides the legal framework for patent registration and protection in India.

**Trademarks:** A trademark is a unique symbol, word, or phrase used to identify a company's products or services. In India, trademarks are regulated by the Trade Marks Act, 1999, which provides for the registration and protection of trademarks in India. A trademark owner has the exclusive right to use the mark and prevent others from using a similar mark that could cause confusion among consumers.

**Copyrights:** In India, copyright protection is granted to original literary, artistic, musical, or dramatic works. The Copyright Act, 1957, provides the legal framework for copyright registration and protection in India. The copyright owner has the exclusive right to reproduce, publish, and sell the work and prevent others from using the work without permission.

**Designs:** In India, design protection is granted to the original and new design of an article that has industrial applicability. The Design Act, 2000, provides the legal framework for design registration and protection in India. The design owner has the exclusive right to use the design and prevent others from using the same or similar design without permission.

In summary, the concept of property and intellectual property in India is similar to that in other countries. Intellectual property protection is crucial for creators of intellectual property, and various forms of legal protection are available, including patents, trademarks, copyrights, and designs.

### **Basic concepts of Intellectual Property Law,**

some basic concepts of Intellectual Property Law:

1. **Intellectual Property (IP):** Intellectual Property refers to creations of the mind, such as inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. Intellectual Property Law is concerned with the legal protections granted to individuals or companies for their IP.
2. **Patent:** A patent is a legal protection granted to inventors for their inventions, giving them the exclusive right to manufacture, use, and sell the invention for a certain period. Patents encourage innovation by providing inventors with financial incentives to continue inventing.
3. **Trademark:** A trademark is a unique symbol, word, or phrase used to identify a company's products or services. Trademark Law provides legal protection to the owner of the mark, giving them the exclusive right to use the mark and prevent others from using a similar mark that could cause confusion among consumers.
4. **Copyright:** Copyright protection is granted to original literary, artistic, musical, or dramatic works. Copyright Law provides legal protection to the owner of the work, giving them the exclusive right to reproduce, publish, and sell the work and prevent others from using the work without permission.
5. **Trade Secret:** A trade secret is a confidential business information that is not generally known or readily available to the public. Trade Secret Law provides legal protection to the owner of the trade secret, giving them the exclusive right to use

the information and prevent others from using or disclosing the information without permission.

6. **Infringement:** Infringement refers to the unauthorized use, copying, or distribution of intellectual property without permission from the owner. Infringement of intellectual property rights can lead to legal action, including damages and injunctions.
7. **Licensing:** Licensing refers to the permission given by the owner of intellectual property to another person or company to use the IP. Licensing agreements often involve payment of royalties or other compensation to the owner of the IP.

In summary, Intellectual Property Law covers various forms of legal protection for intellectual property, including patents, trademarks, copyrights, and trade secrets. Infringement of these rights can lead to legal action, and licensing agreements provide a way for owners of IP to profit from their creations.

### **Nature of Intellectual Property,**

The nature of Intellectual Property (IP) is intangible, meaning it cannot be physically touched or seen. IP refers to creations of the mind, such as inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. The main characteristic of IP is that it is the result of human creativity and innovation.

Unlike physical property, such as land or buildings, IP is not physical in nature and can be easily replicated or shared without necessarily diminishing the original creation. This makes it difficult to protect and enforce IP rights, as it is not always easy to determine if someone has infringed on an IP right.

Another characteristic of IP is that it can be valuable to its owner, particularly in commercial or business contexts. A company's brand, for example, can be a valuable asset that distinguishes its products or services from those of its competitors. Patents can also provide significant value to their owners by allowing them to prevent others from using their invention.

IP rights are also generally considered to be a limited monopoly granted to the owner of the IP, providing them with exclusive rights to use and exploit their creation for a limited period. This encourages innovation by providing financial incentives to continue creating.

Overall, the nature of Intellectual Property is intangible and the result of human creativity and innovation. It can be valuable to its owner and is generally considered a limited monopoly providing exclusive rights for a limited period.

**OR**

The nature of intellectual property (IP) encompasses its characteristics and fundamental attributes. Here are key aspects that define the nature of intellectual property:

### **1. Intangible and Non-Physical:**

- Intellectual property refers to intangible creations of the mind, existing in the form of ideas, concepts, knowledge, inventions, artistic works, designs, and brands.
- Unlike tangible property, which can be physically possessed or touched, intellectual property exists in the realm of intangible assets.

### **2. Exclusive Rights:**

- Intellectual property grants exclusive rights and control to creators or owners of the protected creations.
- These exclusive rights enable creators to prevent others from using, copying, or exploiting their intellectual creations without permission or proper authorization.

### **3. Creativity and Innovation:**

- Intellectual property arises from human creativity, innovation, and intellectual effort.
- It encourages and rewards individuals and entities for their inventive and artistic contributions to society by providing legal protection and the opportunity for economic benefit.

### **4. Legal Protection and Regulation:**

- Intellectual property is subject to legal protection and regulation under national laws and international treaties.
- These legal frameworks establish the rights, obligations, and limitations concerning the use, exploitation, and enforcement of intellectual property rights.

### **5. Economic Value:**

- Intellectual property has economic value and is considered an asset in the modern knowledge-based economy.
- It can be monetized through licensing, sale, or commercialization, contributing to economic growth, investment, and trade.

### **6. Time-Limited Protection:**

- Intellectual property rights are typically time-limited, providing exclusive rights for a specific duration.
- The duration of protection varies depending on the type of intellectual property. For example, patents are protected for a fixed period, copyrights last for the creator's lifetime plus a certain number of years, and trademarks can be renewed indefinitely.

### **7. Public Interest:**

- Intellectual property rights are intended to strike a balance between the rights of creators and the public interest.
- The protection of intellectual property serves various public policy objectives, including encouraging innovation, promoting access to knowledge, fostering cultural development, and facilitating fair competition.

### **8. Diverse Forms of Intellectual Property:**

- Intellectual property encompasses various forms of protection, including patents, copyrights, trademarks, industrial designs, trade secrets, and geographical indications.
- Each form of intellectual property has its specific characteristics, requirements, and scope of protection.

### **Examples:**

- A software company holds intellectual property rights over a computer program it developed, granting them exclusive rights to distribute, license, and modify the software.
- An author owns copyright in a novel they wrote, giving them the sole right to reproduce, publish, and adapt the work.

## **Origin and Development of Intellectual Property –**

### **Copy Right,**

The concept of copyright in India can be traced back to the British colonial era. The first copyright law in India was enacted in 1847, which was modeled after the British Copyright Act of 1842. However, the law only provided protection to books, maps, and charts.

In 1911, the Copyright Act was amended to include protection for photographs, music, and dramatic works. Subsequent revisions to the law expanded the scope of protection

to include other types of creative works, such as computer software, films, and sound recordings.

The current Copyright Act in India was enacted in 1957 and has been amended several times to keep up with the changing technological landscape. The most recent amendment was in 2012, which brought the law in line with international treaties and agreements.

Under the Copyright Act, the author or creator of a work is granted exclusive rights to use and exploit their creation. This includes the right to reproduce the work, distribute it to the public, and make derivative works based on the original. The Act also provides for the registration of copyright, which is not mandatory but can be helpful in enforcing copyright infringement.

In India, copyright infringement is a civil offense and can lead to damages and injunctions against the infringing party. In some cases, it can also be a criminal offense, punishable by fines and imprisonment.

Overall, the development of copyright law in India has been influenced by the British colonial era and has evolved over time to include a wide range of creative works. The current Copyright Act provides for strong protection for creators and rights holders, and the recent amendments have brought the law in line with international standards.

## **OR**

The origin and development of intellectual property (IP) rights, including copyright, can be traced back to historical and legal advancements. Here's an overview of the origin and development of copyright:

### **1. Historical Roots:**

- The concept of copyright can be traced back to ancient civilizations, such as ancient Greece and Rome, where certain privileges were granted to authors and creators.
- Early examples of copyright-like practices include ancient Roman laws that protected authors against unauthorized copying of their works.

### **2. Statutory Copyright:**

- The development of statutory copyright can be attributed to the emergence of the printing press in the 15th century.
- With the advent of the printing press, the need arose to regulate the reproduction and distribution of printed works.

- The first copyright law, the Statute of Anne, was enacted in England in 1710. It granted exclusive rights to authors and creators for a limited period, encouraging the creation and dissemination of literary and artistic works.

### **3. International Copyright Conventions:**

- As global trade and communication expanded, the need for international cooperation in copyright protection arose.
- The Berne Convention for the Protection of Literary and Artistic Works, signed in 1886, was the first significant international treaty addressing copyright protection.
- The Berne Convention established minimum standards for copyright protection and recognized the principle of automatic protection without the need for formalities.

### **4. Expansion of Copyright Scope:**

- Copyright laws have evolved over time to encompass various forms of creative expression, including literature, music, visual arts, films, software, and digital content.
- Amendments and revisions to copyright laws have aimed to adapt to technological advancements, addressing challenges posed by digital reproduction, online distribution, and new media formats.

### **5. Digital Era and Copyright Challenges:**

- The digital revolution and the rise of the internet have presented new challenges to copyright protection and enforcement.
- Issues such as online piracy, unauthorized file sharing, and the ease of copying and disseminating digital content have necessitated legal and technological measures to safeguard copyright interests.

### **6. Harmonization and International Treaties:**

- International efforts have been made to harmonize copyright laws across countries, facilitating the protection of copyrighted works globally.
- Treaties and agreements, such as the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), address copyright protection in the digital environment and provide frameworks for international cooperation.

### **7. Fair Use and User Rights:**

- Copyright laws include provisions for fair use or fair dealing, which allow for limited use of copyrighted works for purposes such as criticism, commentary, research, and education.
- These exceptions balance the rights of copyright holders with the public's interest in accessing and using copyrighted material in certain circumstances.

## **8. Continuous Evolution:**

- Copyright law continues to evolve, responding to technological advancements, societal changes, and emerging issues in the creative and digital landscape.
- Ongoing discussions and debates focus on finding the right balance between protecting creators' rights, promoting access to knowledge and culture, and fostering innovation and creativity.

## **Trade Mark & Patent,**

### **Trademarks:**

The concept of trademark protection in India can be traced back to the Trade Marks Act of 1940. This law provided for the registration of trademarks and gave owners exclusive rights to use the mark in connection with their goods or services. The Act was revised in 1958 and again in 1999 to provide stronger protection for trademarks.

The current Trade Marks Act of 1999 provides for the registration of trademarks and gives owners exclusive rights to use the mark in connection with their goods or services. It also provides for civil and criminal remedies for trademark infringement, including damages and injunctions.

Under the Act, trademarks can be registered for a period of 10 years and can be renewed indefinitely. The Act also provides for the cancellation of a trademark if it is not used for a period of five years.

The development of trademark law in India has been influenced by international treaties and agreements, such as the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Origin and Development of Intellectual Property – Trademark:

### **1. Historical Origins:**

- The use of trademarks can be traced back to ancient civilizations, where artisans and traders used distinctive marks to identify their goods or services.
- The practice of branding and marking products for commercial purposes evolved over time.

## **2. Guild Marks and Merchants' Marks:**

- During the Middle Ages, guilds and trade associations developed their own marks or symbols to denote the origin, quality, or craftsmanship of their products.
- Merchants also used marks or signs to distinguish their goods in trade and protect their reputation.

## **3. Trademark Registration:**

- The concept of formal registration of trademarks emerged in the 19th century.
- The first trademark registration system was established in the United Kingdom with the enactment of the Trademarks Registration Act in 1875.
- This system allowed individuals and businesses to register their trademarks with the government for legal protection.

## **4. International Cooperation and Harmonization:**

- With the expansion of global trade, the need for international cooperation in trademark protection became evident.
- The Paris Convention for the Protection of Industrial Property, signed in 1883, provided a framework for the international registration and protection of trademarks.
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) under the World Trade Organization (WTO) further harmonized trademark laws and established minimum standards for protection.

## **5. Expansion of Trademark Scope:**

- Trademark laws have expanded to cover not only traditional marks such as words, logos, and symbols but also non-traditional marks like sounds, colors, shapes, and scents.

- The recognition of non-traditional marks allows businesses to protect unique and distinctive aspects of their brands.

## **6. Digital Era and Trademark Challenges:**

- The rise of e-commerce, online advertising, and digital platforms has posed new challenges for trademark owners.
- Issues such as domain name disputes, online counterfeiting, and brand infringement in digital spaces have necessitated legal and technological measures to protect trademarks in the digital environment.

## **7. Continuous Evolution:**

- Trademark law continues to evolve to address emerging issues and developments in technology, branding practices, and consumer behavior.
- National laws and international treaties are regularly revised and updated to adapt to changing business landscapes and protect the rights of trademark owners.

## **Patents:**

The concept of patent protection in India can be traced back to the British colonial era. The first Indian patent law was enacted in 1856, which provided for the grant of patents for new inventions.

The current Patents Act of 1970 provides for the grant of patents for inventions that are new, non-obvious, and useful. The Act also provides for the registration of patents and gives owners exclusive rights to use the invention for a period of 20 years.

In recent years, the Patents Act has been amended to comply with international agreements, such as the TRIPS agreement. The most significant amendment was in 2005, which removed the requirement for patents to be granted only for products and allowed for patents to be granted for processes as well.

The development of patent law in India has been influenced by international agreements and has evolved over time to provide stronger protection for inventors and innovators. However, there have been some controversies over the patentability of certain inventions, such as pharmaceuticals and software, which has led to debates and legal challenges.

Origin and Development of Intellectual Property – Patent:

### **1. Early Forms of Patent-Like Protections:**

- Early forms of patent-like protections can be found in ancient civilizations, where rulers granted exclusive rights or privileges to inventors and innovators.
- These privileges aimed to encourage technological advancements and reward inventors.

## **2. Medieval and Renaissance Periods:**

- In medieval and Renaissance Europe, exclusive privileges or patents were granted by monarchs to inventors and craftsmen.
- These privileges granted a temporary monopoly over inventions and facilitated the transfer of knowledge and technologies.

## **3. Emergence of Modern Patent Systems:**

- The modern patent system can be traced back to the 17th century.
- The Statute of Monopolies, enacted in England in 1624, provided a framework for granting exclusive rights to inventors in exchange for disclosing their inventions.

## **4. Industrial Revolution and Patent Laws:**

- The Industrial Revolution in the 18th and 19th centuries sparked a need for more comprehensive and standardized patent laws.
- Countries began enacting patent laws to protect and incentivize innovations in various industries, including machinery, textiles, and chemical processes.

## **5. International Patent Cooperation:**

- Efforts for international cooperation in patent protection began to emerge in the late 19th century.
- The Paris Convention for the Protection of Industrial Property, signed in 1883, established the foundation for international patent cooperation and provided for priority rights and mutual recognition of patents across countries.

## **6. Patentable Subject Matter:**

- Patent laws have expanded to include a wide range of subject matters, including inventions in various fields such as technology, pharmaceuticals, biotechnology, and software.

- The criteria for patentability typically involve novelty, inventiveness (non-obviousness), and industrial applicability.

### **7. Patent Offices and Examination:**

- National and regional patent offices have been established to administer and examine patent applications.
- Patent examination involves assessing the novelty, inventive step, and industrial applicability of inventions before granting patent rights.

### **8. Digital Era and Patent Challenges:**

- The digital revolution has brought forth new challenges for patent protection, particularly in areas such as software, algorithms, and business methods.
- Debates and discussions continue on the patentability of certain technological innovations and the balance between encouraging innovation and preventing excessive patenting.

### **9. Ongoing Development and Harmonization:**

- Patent laws and practices are continuously evolving to address emerging technologies, societal needs, and global harmonization.
- International efforts, such as the Patent Cooperation Treaty (PCT) and the harmonization of patent laws under the World Intellectual Property Organization (WIPO), aim to streamline and provide a unified framework for patent protection.

## **Commercial Exploitation of Intellectual Property,**

Commercial exploitation of intellectual property refers to the process of using intellectual property (IP) rights to generate revenue or economic benefits. There are several ways in which IP can be commercially exploited, including licensing, franchising, sale, and assignment.

In order to successfully commercialize IP, it is important to have a well-developed strategy that takes into account the market demand, competitive landscape, and potential revenue streams. It is also important to protect the IP through appropriate legal mechanisms, such as patents, trademarks, and copyrights, to prevent unauthorized use and infringement.

Here's an overview of the commercial exploitation of intellectual property:

## **1. Licensing:**

- Licensing is a common method of commercializing IP, wherein the IP owner (licensor) grants permission to another party (licensee) to use the IP in exchange for agreed-upon terms, such as royalties or licensing fees.
- Licensing allows IP owners to expand the reach of their IP, enter new markets, and generate revenue without directly manufacturing or distributing products.

## **2. Franchising:**

- Franchising is a business model in which the IP owner (franchisor) grants rights to independent individuals or entities (franchisees) to operate a business using the franchisor's brand, trademark, and business system.
- Franchising provides a structured approach to expanding a business and allows the franchisor to earn revenue through franchise fees and royalties.

## **3. Sale and Assignment:**

- IP owners can choose to sell or assign their IP rights to another party in exchange for a lump sum payment or other financial considerations.
- Selling or assigning IP allows the IP owner to transfer ownership and benefit from the immediate financial gain while relinquishing their rights to the IP.

## **4. Joint Ventures and Strategic Alliances:**

- IP owners can enter into joint ventures or strategic alliances with other companies to combine their IP assets, resources, and expertise for mutual commercial benefits.
- Such collaborations can lead to the development of new products or services, access to new markets, and shared costs and risks.

## **5. Spin-offs and Start-ups:**

- Entrepreneurs and innovators often commercialize their IP assets by establishing spin-off companies or start-ups.
- These ventures focus on developing and bringing IP-based products or services to the market, leveraging the unique aspects of the IP for commercial success.

## **6. Cross-Licensing:**

- Cross-licensing occurs when two or more companies mutually grant licenses to each other for their respective IP.

- This allows each party to access and utilize the other's IP while avoiding potential legal disputes and fostering innovation and collaboration.

## **7. Branding and Marketing:**

- Intellectual property, such as trademarks and brands, plays a crucial role in marketing and brand building.
- Companies leverage their brand equity and trademarks to create brand recognition, customer loyalty, and competitive advantage in the marketplace.

## **8. Research and Development Collaborations:**

- Collaborative research and development (R&D) initiatives allow companies to pool their resources, knowledge, and IP assets to develop innovative technologies, products, or solutions.
- By sharing the risks and costs of R&D, companies can accelerate the commercialization of IP and benefit from shared intellectual capital.

## **9. Online and Digital Exploitation:**

- The digital era has opened up new avenues for commercializing IP, such as online distribution, digital content platforms, and e-commerce.
- IP owners can monetize their IP assets through digital channels, including digital licensing, online sales, digital publishing, and streaming services.

## **10. Merchandising and Brand Extensions:**

- IP owners often expand their product offerings and revenue streams through merchandising and brand extensions.
- This involves licensing the IP for use on various merchandise, such as apparel, accessories, collectibles, and promotional items.

## **Enforcement of Rights and Remedies Against Infringement,**

Enforcement of intellectual property (IP) rights is crucial to protect the interests of the owners of the IP. Infringement of IP rights can result in significant economic losses, and therefore, it is important to have effective remedies in place to address such infringements. In India, there are several legal remedies available to owners of IP rights to enforce their rights against infringement.

### **Civil Remedies:**

In cases of infringement of IP rights, the owner can file a civil suit seeking injunctions, damages, and other reliefs. The suit can be filed in a court of appropriate jurisdiction, depending on the nature and value of the claim. The remedies available in a civil suit include:

1. **Injunctions:** Injunctions are court orders that prohibit the infringer from using the IP or engaging in infringing activities.
2. **Damages:** The owner of the IP can claim damages for losses suffered as a result of the infringement, such as lost profits, loss of reputation, and other economic damages.
3. **Accounts of profits:** The court can order the infringer to provide an account of profits made as a result of the infringement.
4. **Delivery-up or destruction of infringing goods:** The court can order the infringer to deliver up or destroy the infringing goods.

### **Criminal Remedies:**

In cases of deliberate and willful infringement of IP rights, criminal remedies can also be sought. The owner of the IP can file a complaint with the police, and the police can initiate an investigation and file a charge sheet against the infringer. The criminal remedies available include:

1. **Imprisonment:** The infringer can be sentenced to imprisonment for a period of up to three years, and/or fined.
2. **Seizure and forfeiture of infringing goods:** The police can seize and forfeit the infringing goods, as well as any equipment used to manufacture or produce them.
3. **Destruction of infringing goods:** The court can order the infringing goods to be destroyed.

### **Customs Enforcement:**

In addition to civil and criminal remedies, customs enforcement is also available to owners of IP rights. The owner can register their IP with the customs authorities, who can then prevent the import or export of infringing goods. Customs can also seize and detain infringing goods, and the owner can take appropriate legal action to enforce their rights.

In conclusion, effective enforcement of IP rights is crucial to protect the interests of the owners of IP. The remedies available in India include civil, criminal, and customs enforcement, which can be used to address different types of infringements and to protect the value of the IP.

## **International Character of Intellectual Property,**

The international character of intellectual property (IP) recognizes the global nature of creativity, innovation, and commerce. Intellectual property rights are protected and governed by international agreements, treaties, and organizations to ensure consistency, harmonization, and cooperation among countries. Here are key aspects highlighting the international character of intellectual property:

### **1. International Treaties and Agreements:**

- Various international treaties and agreements establish frameworks for the protection and enforcement of intellectual property rights on a global scale.
- Examples of important international IP treaties include the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Madrid Agreement and Madrid Protocol for the International Registration of Trademarks, and the Patent Cooperation Treaty (PCT).
- These treaties promote cooperation, mutual recognition, and minimum standards for IP protection among member countries.

### **2. World Intellectual Property Organization (WIPO):**

- The World Intellectual Property Organization, a specialized agency of the United Nations, plays a central role in promoting and coordinating international intellectual property protection.
- WIPO administers various international treaties, provides technical assistance and capacity building to member states, facilitates cooperation and information sharing, and supports the development of international IP policies and norms.

### **3. Harmonization of IP Laws:**

- International efforts aim to harmonize IP laws and practices across countries to ensure a level playing field for creators, innovators, and businesses.
- Harmonization reduces legal uncertainties, facilitates cross-border transactions, and promotes fair competition in the global marketplace.
- Examples of harmonization efforts include the alignment of copyright terms, standardization of patent examination procedures, and convergence of trademark registration systems.

### **4. Cross-Border Protection and Enforcement:**

- Intellectual property rights often transcend national boundaries, requiring mechanisms for cross-border protection and enforcement.
- International cooperation and coordination are crucial to combat counterfeiting, piracy, and other infringements that occur across different jurisdictions.
- Countries collaborate through mutual legal assistance, information sharing, and joint enforcement operations to address IP violations with an international dimension.

### **5. Global Economic Impact:**

- Intellectual property has a significant impact on global trade, investment, and economic growth.
- Protection and enforcement of IP rights facilitate technology transfer, foreign direct investment, licensing agreements, and cross-border collaborations.
- Countries with robust IP systems often attract innovation-driven industries and benefit from the economic value generated by IP-intensive sectors.

### **6. Cross-Border Licensing and Technology Transfer:**

- International licensing agreements and technology transfer play a vital role in the dissemination and commercialization of IP across borders.
- IP owners can license their rights to foreign partners or transfer technology to facilitate the transfer of knowledge, foster innovation, and stimulate economic development.

### **7. Dispute Resolution and International Arbitration:**

- Intellectual property disputes can have international implications, requiring mechanisms for resolving conflicts between parties from different countries.
- International arbitration and dispute resolution institutions, such as the World Intellectual Property Organization Arbitration and Mediation Center and the International Chamber of Commerce (ICC), provide platforms for resolving IP-related disputes through neutral and internationally recognized processes.

## **Intellectual Property and Economic Development,**

Intellectual property (IP) plays a crucial role in economic development by incentivizing innovation, promoting creativity, and facilitating technology transfer. Here are key ways in which intellectual property contributes to economic development:

## **1. Incentivizing Innovation and Creativity:**

- Intellectual property rights, such as patents, copyrights, and trademarks, provide legal protection and exclusive rights to creators and innovators.
- By granting exclusive rights, IP encourages individuals and businesses to invest in research, development, and creative endeavors, knowing they can reap the financial benefits and gain a competitive edge.
- The promise of IP protection motivates inventors, artists, and entrepreneurs to generate new ideas, products, and services that drive economic growth.

## **2. Encouraging Investment and Entrepreneurship:**

- Intellectual property protection creates a favorable environment for attracting investment and fostering entrepreneurship.
- Investors and venture capitalists are more likely to support projects or startups that have IP assets, as they provide a tangible asset that can be monetized and generate returns on investment.
- IP protection gives confidence to innovators and entrepreneurs to commercialize their ideas, launch new businesses, and secure funding for further development.

## **3. Facilitating Technology Transfer and Collaboration:**

- Intellectual property serves as a means for transferring technology, knowledge, and expertise across borders and industries.
- Licensing agreements, joint ventures, and technology transfer arrangements enable the dissemination of innovations, allowing developing countries to access advanced technologies and accelerate their economic progress.
- IP-based collaborations between academia, research institutions, and industry facilitate the transfer of scientific breakthroughs into practical applications and commercial products.

## **4. Supporting Job Creation and Economic Sectors:**

- Intellectual property-intensive industries and sectors contribute significantly to job creation and economic output.
- IP-rich industries, such as pharmaceuticals, software development, biotechnology, entertainment, and design, often generate high-value jobs and export revenues.

- IP protection fosters a vibrant ecosystem where companies can invest in research and development, hire skilled workers, and create employment opportunities.

## **5. Fostering Trade and Global Competitiveness:**

- Intellectual property promotes trade by protecting brands, trademarks, and geographical indications, ensuring the origin and quality of products and services.
- Strong IP systems enhance the reputation and competitiveness of countries, attracting foreign investment, fostering exports, and creating a favorable business environment.
- IP protection encourages companies to invest in building strong brands, investing in marketing, and expanding their market presence domestically and internationally.

## **6. Knowledge Spillovers and Technological Advancement:**

- Intellectual property protection encourages the dissemination of knowledge and technological advancements through licensing and technology transfer.
- When IP rights are properly enforced, companies are more willing to share information, collaborate, and build upon existing innovations, leading to knowledge spillovers and further advancements.
- This cumulative innovation process drives economic development, as subsequent inventions and improvements build on the foundations laid by earlier innovations.

## **7. Cultural and Creative Industries:**

- Intellectual property supports the growth of cultural and creative industries, including music, film, literature, art, and design.
- Copyright protection enables artists and creators to monetize their works, preserve cultural heritage, and promote cultural diversity.
- The creative industries contribute to job creation, tourism, and the overall cultural and social fabric of societies, enhancing economic development.

## **International Protection of Intellectual Property –**

International Protection of Intellectual Property plays a crucial role in fostering global cooperation and ensuring harmonized standards for the safeguarding and enforcement

of intellectual property rights (IPRs). Here are some key aspects of international protection of intellectual property:

## **I. International Intellectual Property Treaties and Organizations:**

**A. World Intellectual Property Organization (WIPO):** – WIPO is a specialized agency of the United Nations responsible for promoting the protection of IP worldwide. – WIPO administers several international treaties related to intellectual property, facilitates cooperation among member states, and provides services for IP registration and dispute resolution.

**B. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):** – TRIPS is an agreement under the World Trade Organization (WTO) that sets minimum standards for the protection and enforcement of IP rights. – It requires member countries to provide effective protection for various forms of intellectual property, including patents, copyrights, trademarks, and trade secrets.

**C. Paris Convention for the Protection of Industrial Property:** – The Paris Convention is an international treaty that establishes the basic principles of protection for industrial property, including patents, trademarks, industrial designs, and unfair competition. – It provides for national treatment, priority rights, and the right to claim priority for an invention or design filed in one member country in other member countries.

**D. Berne Convention for the Protection of Literary and Artistic Works:** – The Berne Convention is an international copyright treaty that sets minimum standards for the protection of literary and artistic works. – It establishes the principle of automatic protection, without the need for formalities, and provides for rights such as reproduction, distribution, and public performance.

## **II. International Patent Protection:**

**A. Patent Cooperation Treaty (PCT):** – The PCT is an international treaty administered by WIPO that streamlines the patent filing process. – It allows applicants to seek patent protection in multiple countries by filing a single international application, simplifying the administrative and procedural aspects.

**B. Patent Prosecution Highway (PPH):** – The PPH is a cooperative program between patent offices that expedites the examination process for patent applications. – Under this program, if a patent claim is allowed in one participating country's patent office, the applicant can request accelerated examination in another participating country.

## **III. International Copyright Protection:**

**A. Berne Convention:** – The Berne Convention establishes minimum standards for copyright protection, ensuring that copyright works created in one member country are

protected in other member countries. – It promotes the principle of national treatment and provides automatic protection without the need for registration or formalities.

**B. International Copyright Registration:** – While copyright protection is automatic, creators can choose to register their works with the Copyright Office of a specific country or use international copyright registration services offered by WIPO.

#### **IV. International Trademark Protection:**

**A. Madrid System for the International Registration of Trademarks:** – The Madrid System is a treaty administered by WIPO that simplifies the process of international trademark registration. – It allows trademark owners to seek protection in multiple member countries by filing a single international application, reducing administrative burdens.

**B. Trademark Law Harmonization:** – International efforts aim to harmonize trademark laws across countries to provide consistent protection and enforcement standards. – The Nice Classification system, administered by WIPO, facilitates the classification of goods and services for trademark registration.

#### **V. Enforcement of International IP Rights:**

**A. Cross-Border Enforcement:** – Intellectual property rights holders can seek enforcement of their rights in other countries through legal actions, such as civil lawsuits or administrative proceedings. – The cooperation between national enforcement agencies and customs authorities is essential for detaining and seizing infringing goods at international borders.

**B. Dispute Resolution:** – International arbitration and mediation offer alternative methods for resolving IP disputes between parties from different countries. – WIPO provides services for the resolution of intellectual property disputes, including the WIPO Arbitration and Mediation Center.

International protection of intellectual property rights is essential to encourage innovation, facilitate international trade, and foster cooperation among countries to combat IP infringement. Through international treaties and organizations, countries work together to establish common standards and mechanisms for the effective protection and enforcement of intellectual property rights.

### **Overview of International Conventions – Berne Convention**

The Berne Convention for the Protection of Literary and Artistic Works is the oldest international treaty governing copyright. It was first adopted in 1886 in Berne, Switzerland, and has since been revised several times. The latest version of the convention is the Berne Convention of 1971.

The Berne Convention for the Protection of Literary and Artistic Works is an international treaty that aims to provide copyright protection for literary and artistic works on a global scale. Here is an overview of the Berne Convention:

### 1. Purpose and Objectives:

- The Berne Convention was established in 1886 and is administered by the World Intellectual Property Organization (WIPO).
- Its main purpose is to ensure that creators of literary and artistic works are granted automatic protection for their works without the need for formalities, such as registration or notice.
- The convention sets minimum standards for copyright protection, promotes international cooperation, and facilitates the free flow of creative works across borders.

### 2. Key Principles and Provisions:

- **National Treatment:** The convention requires member countries to grant the same level of protection to foreign works as they do to their own domestic works.
- **Automatic Protection:** Copyright protection is granted automatically upon the creation of a work, without the need for registration or any other formalities.
- **Minimum Standards:** The convention establishes minimum standards for copyright protection, including the duration of protection, rights of authors, and limitations and exceptions.
- **Exclusive Rights:** Authors are granted exclusive rights to reproduce, distribute, publicly perform, and display their works.
- **Moral Rights:** The convention recognizes the moral rights of authors, such as the right to be attributed as the creator and the right to object to any modifications or distortions of their work.
- **Duration of Protection:** The convention sets a minimum duration of copyright protection, which is generally the life of the author plus 50 years after their death.
- **Limitations and Exceptions:** The convention allows member countries to provide certain limitations and exceptions to copyright, such as for educational use, fair use, and public interest.

### 3. Membership and Global Reach:

- The Berne Convention has been widely adopted and currently has 179 member countries, making it one of the most significant international copyright treaties.
- Its membership covers a broad range of countries, including developed and developing nations, providing a framework for harmonized copyright protection globally.

#### **4. Relationship with Other International Treaties:**

- The Berne Convention has influenced and been complemented by other international copyright treaties and agreements.
- For example, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO) incorporates the principles of the Berne Convention into the framework of international trade.

#### **5. Amendments and Updates:**

- The Berne Convention has undergone several revisions and updates to address evolving challenges in the digital age and changes in the creative landscape.
- Notable revisions include the Paris Act (1971), which introduced provisions for the protection of computer programs, and the Beijing Treaty (2012), which addresses the protection of audiovisual performances.

#### **6. Impact and Influence:**

- The Berne Convention has had a significant impact on copyright laws and practices worldwide, serving as a foundation for national copyright legislation in member countries.
- It has facilitated the protection of literary and artistic works, encouraged international collaboration, and promoted the dissemination of creative works across borders.

### **WIPO Treaties 1996,**

The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) are two international treaties that were adopted in 1996 by the member states of the World Intellectual Property Organization (WIPO).

#### **1. WIPO Copyright Treaty (WCT):**

- The WCT is aimed at updating and strengthening the international copyright framework to address the challenges posed by digital technologies and the internet.
- It provides enhanced protection for authors and creators of literary and artistic works in the digital environment.
- The treaty establishes minimum standards for copyright protection and grants exclusive rights to authors, including the right of reproduction, distribution, and communication to the public.

## **2. WIPO Performances and Phonograms Treaty (WPPT):**

- The WPPT focuses on the protection of performers and producers of phonograms (sound recordings) in the digital age.
- It extends copyright-like protection to performers in their live performances and recordings, as well as to producers of phonograms.
- The treaty grants performers and producers exclusive rights, such as the right of reproduction, distribution, and making available to the public.

## **3. Objectives of the WIPO Treaties:**

- The WIPO Treaties aim to harmonize and update international copyright standards to keep pace with advancements in technology and the digital economy.
- They seek to provide a framework for the protection and promotion of the rights of authors, performers, and producers of phonograms.
- The treaties aim to strike a balance between the interests of copyright holders and the public interest in accessing and using creative works.

## **4. Digital Environment and Technological Protection Measures:**

- The WIPO Treaties address the challenges of digital piracy and technological advancements by including provisions for the protection of technological measures (e.g., digital locks) used to control access to and the use of copyrighted works.
- They prohibit the circumvention of these measures and the removal of rights management information (RMI) that identifies the work and its rights holders.

## **5. Impact and International Recognition:**

- The WIPO Treaties have had a significant impact on international copyright law and practice, shaping the legal framework for the protection of intellectual property in the digital age.
- Many countries have acceded to the treaties, indicating the global recognition of the need for enhanced copyright protection in the digital environment.

## **Paris Conventions,**

The Paris Convention for the Protection of Industrial Property is an international treaty that was first adopted in 1883 and revised several times thereafter. The convention provides a framework for the protection of industrial property, including patents, trademarks, industrial designs, and geographical indications.

The main objectives of the Paris Convention are to:

1. Establish a minimum standard of protection for industrial property in all member countries.
2. Provide for national treatment of foreign industrial property, which means that foreign applicants are entitled to the same protection as domestic applicants in each member country.
3. Establish a right of priority, which means that an applicant who files a patent or trademark application in one member country can enjoy a period of priority in which to file in other member countries.
4. Provide for the recognition of trademarks as intellectual property and establish a minimum standard of protection for trademarks in all member countries.

The Paris Convention has been ratified by over 175 countries, making it one of the most widely accepted international treaties on industrial property. The convention continues to play a critical role in promoting innovation, trade, and investment worldwide, by providing a common framework for the protection of industrial property in different countries.

## **TRIPS Agreements etc.**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO). It was adopted in 1994 and sets out minimum standards for the protection and enforcement of intellectual property rights (IPRs) by WTO member countries.

The TRIPS Agreement covers a wide range of intellectual property rights, including copyright and related rights, trademarks, geographical indications, patents, industrial designs, trade secrets, and layout designs of integrated circuits.

The main objectives of the TRIPS Agreement are to:

1. Ensure that IPRs are protected and enforced in a manner that contributes to the promotion of technological innovation and to the transfer and dissemination of technology.
2. Strike a balance between the interests of right holders and users, by providing for the protection of IPRs while allowing for exceptions and limitations to IPRs.
3. Prevent the abuse of IPRs by anti-competitive practices and anti-competitive licensing conditions.
4. Provide for the effective enforcement of IPRs, including through civil, administrative, and criminal procedures and penalties.

The TRIPS Agreement has had a significant impact on the international intellectual property system, by promoting the adoption of minimum standards for the protection and enforcement of IPRs in different countries. It has also contributed to the growth of international trade and investment, by providing a common framework for the protection of IPRs in different countries.

### **India's Position vis-a-vis International Conventions and Agreements.**

India has been an active participant in the international intellectual property system and has signed and ratified several international conventions and agreements related to intellectual property rights. Some of the key international agreements and conventions to which India is a party are:

1. **Paris Convention for the Protection of Industrial Property:** India is a party to the Paris Convention since 1998. The convention provides for the protection of industrial property rights, including patents, trademarks, industrial designs, and geographical indications.
2. **Berne Convention for the Protection of Literary and Artistic Works:** India is a party to the Berne Convention since 1928. The convention provides for the protection of copyright in literary and artistic works.
3. **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):** India is a party to the TRIPS Agreement since 1995. The agreement sets out minimum standards for the protection and enforcement of intellectual property rights by WTO member countries.

4. **Patent Cooperation Treaty (PCT):** India is a party to the PCT since 1998. The treaty provides for a simplified and centralized system for filing and searching international patent applications.
5. **Madrid Protocol:** India became a party to the Madrid Protocol in 2013. The protocol provides for the international registration of trademarks and enables trademark owners to protect their marks in multiple countries with a single application.
6. **Budapest Treaty:** India is a party to the Budapest Treaty since 2001. The treaty provides for the international deposit of microorganisms for the purposes of patent applications.

India has also signed several other bilateral and multilateral agreements related to intellectual property rights with different countries and regional organizations. The country has taken steps to align its national laws and regulations with the international standards set by these conventions and agreements, while also addressing its domestic developmental priorities and concerns.

## UNIT-II

### The Copy Right Act, 1970

#### Meaning and Basis of Copy Right,

Copyright is a form of intellectual property that grants the creator of an original work the exclusive right to use, distribute and profit from that work for a certain period of time. Copyright law is based on the idea that creative works, such as books, music, and films, are valuable assets that should be protected from unauthorized use and exploitation.

The basis of copyright law is the recognition of the creative and intellectual effort that goes into the creation of original works. Copyright law aims to promote creativity and innovation by providing creators with the exclusive rights to their works, which encourages them to invest their time and resources into the creation of new works. This in turn benefits society as a whole by fostering the growth of art, literature, science, and other forms of intellectual and cultural expression.

Copyright law also provides an economic incentive for creators to create new works by allowing them to profit from their creations. By granting creators the exclusive right to use, distribute and profit from their works, copyright law creates a market for creative works, which benefits both creators and consumers.

Overall, the purpose of copyright law is to balance the interests of creators, users, and society at large. By protecting the rights of creators, copyright law encourages creativity

and innovation, while also ensuring that works are available to the public for their enjoyment and enrichment.

### **Copy Right Office and Copy Right Board,**

1. **Copyright Office:** The Copyright Office is a government body under the Ministry of Education, Department of Higher Education, responsible for the registration of copyright and related matters. The office is located in New Delhi and operates under the Copyright Act, 1970. Some of the key functions of the Copyright Office include:
  - **Registration of copyright:** The Copyright Office is responsible for registering copyright in literary, artistic, musical, and other works. This registration is not mandatory, but it provides evidence of ownership and helps in the enforcement of copyright.
  - **Issuing licenses for copyright works:** The Copyright Office issues licenses for the use of copyrighted works in certain circumstances, such as when a work is not being made available to the public or when the copyright owner is refusing to grant a license.
  - **Maintaining records of copyright ownership:** The Copyright Office maintains records of copyright ownership, which helps in the identification of copyright owners and the enforcement of copyright law.
2. **Copyright Board:** The Copyright Board is a quasi-judicial body established under the Copyright Act, 1970. It is responsible for resolving disputes related to copyright law, including issues related to licensing and royalty rates. The board is located in New Delhi and is headed by a Chairman who is appointed by the central government. Some of the key functions of the Copyright Board include:
  - **Resolving disputes related to copyright law:** The Copyright Board is responsible for resolving disputes related to copyright law, including issues related to licensing, royalty rates, and infringement of copyright.
  - **Granting compulsory licenses:** The Copyright Board has the power to grant compulsory licenses for the use of copyrighted works in certain circumstances, such as when a work is not being made available to the public or when the copyright owner is refusing to grant a license.
  - **Adjudicating on disputes related to copyright infringement:** The Copyright Board has the power to adjudicate on disputes related to the infringement of copyright, and can order injunctions and award damages to copyright owners in cases of infringement.

In addition to these functions, the Copyright Board also has the power to make rules and regulations related to copyright law, and can recommend amendments to the Copyright Act, 1970, to the central government.

Overall, the Copyright Office and the Copyright Board play important roles in the administration and enforcement of copyright law in India. While the Copyright Office is responsible for the registration and licensing of copyright, the Copyright Board is responsible for resolving disputes related to copyright law and ensuring that the rights of copyright owners are protected.

### **Subject Matter of Copy Right,**

The subject matter of copyright is the original and creative expression of an idea, rather than the idea itself. In India, the Copyright Act, 1957 provides a list of works that are eligible for copyright protection. These works include:

1. **Literary works:** This includes books, articles, poems, computer programs, lectures, speeches, and other written works.
2. **Artistic works:** This includes paintings, drawings, photographs, sculptures, and other visual arts.
3. **Musical works:** This includes songs, musical compositions, and other musical works.
4. **Cinematograph films:** This includes films, videos, and other audio-visual works.
5. **Sound recordings:** This includes recordings of music, speeches, and other sounds.
6. **Dramatic works:** This includes plays, scripts, and other dramatic works.
7. **Software programs:** This includes computer programs and software, including their source code and object code.

It is important to note that copyright protection is granted to the expression of an idea, and not the idea itself. For example, a book about a boy who discovers he is a wizard would not be eligible for copyright protection, but the Harry Potter series of books that express that idea in a unique and original way would be eligible for copyright protection.

In addition to the above works, copyright protection can also be granted to derivative works, which are works that are based on pre-existing works. For example, a movie that is based on a book would be considered a derivative work and would be eligible for copyright protection.

### **Ownership,**

Copyright ownership refers to the legal right of a person or entity to control and exploit the use of a copyrighted work. In India, the Copyright Act, 1957 provides guidelines for determining ownership of copyright.

The general rule of ownership is that the author or creator of the work is the first owner of copyright. For example, if a person writes a book, he or she is the owner of the copyright in that book. If a person takes a photograph, he or she is the owner of the copyright in that photograph.

However, there are certain exceptions to this rule. If a work is created by an employee in the course of his or her employment, the employer is the owner of the copyright in the work, unless there is an agreement to the contrary. For example, if an author writes a book as an employee of a publishing company, the publishing company is the owner of the copyright in the book.

If a work is created by a person under a contract for services, the person who commissioned the work is the owner of the copyright, unless there is an agreement to the contrary. For example, if a company hires a freelance writer to write an article for its magazine, the company is the owner of the copyright in the article.

In cases where a work is created collaboratively by two or more persons, the ownership of copyright is jointly owned by all of the creators, unless there is an agreement to the contrary. For example, if two songwriters collaborate to write a song, both of them are owners of the copyright in the song.

It is important to note that copyright ownership can be transferred or assigned to another person or entity by way of a written agreement. For example, an author can transfer the ownership of the copyright in his or her book to a publisher by way of a publishing agreement.

### **Assignment and Infringement of Copy Right,**

**Assignment of Copyright:** Assignment of copyright refers to the transfer of the ownership of copyright from the copyright owner to another person or entity. This transfer of ownership is usually done through a written agreement, which is commonly known as a copyright assignment agreement.

An assignment of copyright can be partial or complete. In a partial assignment, the copyright owner transfers only a portion of the rights in the work, while retaining some of the rights. In a complete assignment, the copyright owner transfers all of the rights in the work to the assignee.

**Infringement of Copyright:** Infringement of copyright refers to the unauthorized use of a copyrighted work, in whole or in part, without the permission of the copyright owner. In

India, copyright infringement is a civil offence and can be enforced through legal remedies such as injunctions, damages and account of profits.

Copyright infringement can occur in a number of ways, such as:

1. Reproducing the work in any material form, including photocopying, scanning, or digital copying.
2. Distributing copies of the work, whether for free or for a fee, without the permission of the copyright owner.
3. Publicly performing the work, such as playing a song or showing a movie in a public place, without the permission of the copyright owner.
4. Broadcasting the work, such as on television or radio, without the permission of the copyright owner.
5. Making adaptations or modifications to the work, such as creating a derivative work or a translation, without the permission of the copyright owner.

The Copyright Act, 1957 provides for both civil and criminal remedies for copyright infringement. A copyright owner can seek civil remedies such as injunctions, damages and account of profits in a court of law. In cases of criminal infringement, the infringer can be fined and imprisoned.

## Remedies for Infringement,

### Remedies for Civil Infringement:

1. **Injunction:** A court can issue an injunction to prevent the infringing party from continuing to infringe on the copyright owner's rights.
2. **Damages:** The copyright owner can claim damages for any losses suffered as a result of the infringement. The damages can include both actual damages and statutory damages.
3. **Account of profits:** The court can order the infringer to pay the copyright owner an account of profits, which is the profit that the infringer made as a result of the infringement.
4. **Delivery up or destruction:** The court can order the infringing party to deliver up or destroy any infringing copies of the copyrighted work.
5. **Declaration:** The court can make a declaration that the infringing party has infringed the copyright owner's rights.

### Remedies for Criminal Infringement:

1. **Imprisonment:** Criminal copyright infringement can result in imprisonment for a term of up to 3 years.
2. **Fine:** The infringing party can be fined up to Rs. 2 lakhs for each act of infringement.
3. **Seizure and forfeiture:** The police can seize and forfeit any infringing copies of the copyrighted work.
4. **Investigation:** The police can investigate and prosecute cases of criminal copyright infringement.
5. **Search and seizure:** The police can obtain a warrant from a magistrate to search and seize any infringing copies of the copyrighted work, as well as any documents or materials related to the infringement.

### **Abridgement of the Work and Term of Copy Right,**

The abridgement of the work refers to creating a shorter version of the original work, while still retaining its essence. The Copyright Act, 1970 of India lays down the provisions for the term of copyright protection and the abridgement of the work.

#### **Term of Copyright:**

1. The general term of copyright protection is for the lifetime of the author plus 60 years after his death.
2. In the case of works of joint authorship, the term is for the lifetime of the last surviving author plus 60 years.
3. For anonymous or pseudonymous works, the term is 60 years from the year of publication.
4. For cinematograph films, sound recordings, photographs, and government works, the term is 60 years from the year of publication.
5. In the case of posthumous works, the term is 60 years from the year of publication.

#### **Abridgement of the Work:**

Abridgement of a work refers to the act of condensing or reducing the content of a larger work while retaining its essential ideas or themes. It involves summarizing or shortening the original work to make it more concise and accessible to a broader audience. Here are some key points about the abridgement of a work:

**Purpose:** The main purpose of abridging a work is to provide a more condensed version that is easier to read, understand, or consume. Abridgements can be created for various reasons, such as simplifying complex concepts, adapting a work for a different audience, or creating a shorter version for time-constrained situations.

**Selective Retention:** Abridging a work involves selecting and retaining the most significant or essential parts while omitting less important or tangential content. The aim is to capture the core ideas, plot points, or arguments of the original work.

**Shortening Techniques:** Abridgements employ various techniques to reduce the length of the work. These may include summarizing long passages, omitting repetitive information, condensing descriptive sections, or removing non-essential subplots or details.

**Maintaining Essence:** Despite the reduction in length, the abridged version should strive to preserve the essence and key elements of the original work. This requires careful consideration to ensure that the main ideas, narrative flow, or thematic coherence are not compromised.

**Adaptation for Different Formats:** Abridgements may be created to adapt a work for different formats or mediums, such as converting a lengthy novel into a shorter screenplay or transforming a complex academic text into a more accessible summary or infographic.

**Consideration of Copyright:** Abridging a work should be done with respect to copyright laws and the rights of the original author. Obtaining proper permissions or licenses may be necessary, especially if the abridged version is intended for commercial distribution.

**Reader/Viewer Experience:** A well-executed abridgement aims to provide an engaging and meaningful experience for the reader or viewer. It should retain the essence of the original work, capturing its key messages or themes, and allowing the audience to grasp its core content without feeling like essential aspects are missing.

## **Rights of Broadcasting Authorities**

In India, the Copyright Act, 1957 recognizes the rights of broadcasting authorities under Section 37, which deals with the "Broadcast reproduction right".

The following are the key rights of broadcasting authorities under the Copyright Act:

1. **Right to reproduce broadcasts:** Broadcasting authorities have the exclusive right to reproduce the broadcast or any part thereof in any material form, including the storing of it in any medium by electronic means.
2. **Right to communicate the broadcast to the public:** Broadcasting authorities have the exclusive right to communicate the broadcast to the public by radio-diffusion, television, or by any other means of communication to the public.
3. **Right to make any translation or adaptation:** Broadcasting authorities have the exclusive right to make any translation or adaptation of the broadcast.

4. **Right to sell or give on hire:** Broadcasting authorities have the right to sell or give on hire copies of the broadcast to the public or to any person other than the person who is entitled to receive the broadcast.
5. **Right to receive royalties:** Broadcasting authorities have the right to receive royalties for any use of the broadcast or any part thereof.

In addition, the Copyright Act also provides for the protection of rights of performers in relation to their performances broadcasted by broadcasting authorities.

## **UNIT-III The Patents Act 1970, & the Patents (Amendment) Act, 2002**

### **Object of Patent Law**

The main objective of patent law is to encourage innovation and creativity by granting inventors a temporary monopoly over their inventions in exchange for disclosing their invention to the public. The following are the key objectives of patent law:

1. **Encourage innovation:** The primary objective of patent law is to encourage innovation by granting inventors exclusive rights to exploit their inventions for a certain period. This encourages inventors to invest in research and development and come up with new and useful inventions.
2. **Disclosure of inventions:** In exchange for exclusive rights, inventors must disclose their invention to the public, which helps in disseminating knowledge and promoting further research and development.
3. **Economic growth:** Patents encourage economic growth by promoting investment in research and development, which results in the creation of new and improved products and services.
4. **Consumer protection:** Patents ensure that consumers have access to new and improved products and services, which enhances their quality of life.
5. **Promotion of competition:** Patents encourage competition by allowing inventors to compete in the marketplace with their exclusive rights.
6. **Promotion of technology transfer:** Patents encourage the transfer of technology between countries by protecting the intellectual property rights of inventors in foreign countries.

Overall, patent law aims to balance the interests of inventors and the public by promoting innovation and the dissemination of knowledge while also ensuring that consumers have access to new and improved products and services.

## Value of Patent System

The patent system is a valuable tool for promoting innovation and economic growth. It provides inventors and companies with an incentive to invest in research and development by granting them a limited monopoly over their invention. This allows them to recoup their investment and earn a profit, which in turn encourages them to continue developing new products and technologies.

The patent system also encourages the dissemination of knowledge and information. By requiring inventors to disclose their invention in detail in their patent application, other inventors can learn from their work and build upon it to create new and improved technologies.

Additionally, patents can be used to attract investment and generate revenue. A company with a strong patent portfolio is more attractive to investors, as it demonstrates the company's commitment to innovation and ability to protect its intellectual property. Patents can also be licensed or sold to other companies, providing a source of revenue for the patent holder.

Overall, the patent system plays an important role in driving innovation, promoting economic growth, and encouraging the dissemination of knowledge and information.

## Inventions-Patentable and Non-Patentable

Under the Patents Act 1970, an invention is patentable if it meets certain criteria. These criteria are as follows:

1. **Novelty:** The invention must be new and not known or used in any part of the world before the date of filing of the patent application.
2. **Inventive Step:** The invention must not be obvious to a person skilled in the relevant field of technology.
3. **Industrial Applicability:** The invention must be capable of being made or used in an industry.

Some examples of patentable inventions include:

- A new process for manufacturing a product
- A new machine or device
- A new chemical compound or composition
- A new use for an existing product
- A new method for performing a task

On the other hand, there are certain types of inventions that are not considered patentable under the Patents Act 1970. These include:

1. Inventions that are contrary to public order or morality.
2. Inventions that are not capable of being made or used in an industry.
3. Inventions that are mere discoveries or scientific theories.
4. Inventions that are methods of agriculture or horticulture.
5. Inventions that are methods of medical treatment or diagnosis.

It is important to note that the above list is not exhaustive, and there may be other inventions that are not considered patentable under the Patents Act 1970.

### **Process Patent and Product Patent**

In patent law, there are two main types of patents: process patents and product patents.

A process patent protects a specific process or method of creating a product, while a product patent protects the product itself.

For example, a process patent might be granted for a specific method of producing a chemical compound, while a product patent might be granted for the chemical compound itself.

Process patents are generally considered to be narrower in scope than product patents, as they only protect the specific process or method outlined in the patent. Product patents, on the other hand, provide broader protection for the actual product or invention.

In some cases, both a process patent and a product patent may be granted for the same invention, allowing the inventor to protect both the process of creating the invention and the invention itself.

Process patent and product patent are two types of patents that grant exclusive rights to inventors or companies for a specified period of time. The main difference between the two types of patents is the scope of protection they offer. Here are some key points about process patent and product patent:

#### **Process Patent:**

1. A process patent grants the exclusive right to use or sell a particular method or process for producing a product.
2. The focus of a process patent is on the method of manufacturing or producing a product, rather than the product itself.

3. It is granted for a period of 20 years from the date of filing the patent application.
4. A process patent can be filed for various fields, such as pharmaceuticals, chemicals, and biotechnology.
5. A process patent does not prevent others from manufacturing the same product by a different method.

### **Product Patent:**

1. A product patent grants the exclusive right to make, use, and sell a particular invention or product.
2. The focus of a product patent is on the end product, rather than the process of manufacturing it.
3. It is granted for a period of 20 years from the date of filing the patent application.
4. A product patent can be filed for various fields, such as mechanical, electrical, and software-related inventions.
5. A product patent prevents others from making, using, and selling the same invention or product without the patent owner's permission.

### **Procedure for obtaining a Patent**

The procedure for obtaining a patent in India under the Patents Act 1970 and the Patents Rules 2003 is as follows:

1. **Filing of patent application:** The first step is to file a patent application with the Indian Patent Office. The application can be filed by the inventor or by a legal representative. The application must contain a description of the invention, its drawings (if any), and a claim or claims defining the scope of the invention.
2. **Examination of patent application:** After the patent application is filed, it is examined by a patent examiner. The examination process includes a search for prior art, i.e., any publicly available information that describes the invention or a similar invention. The examiner will also review the application to ensure that it meets the patentability criteria.
3. **Publication of patent application:** If the patent application meets the requirements for patentability, it is published in the Patent Office Journal. The publication date is the starting point for the examination of the application and the calculation of the term of the patent.

4. **Request for examination:** If the patent application is not automatically examined, the applicant must file a request for examination within 48 months from the date of filing or the date of priority, whichever is earlier.
5. **Examination report:** The patent examiner will issue an examination report, which may include objections to the patentability of the invention or the scope of the claims. The applicant can respond to the examination report within six months from the date of issue.
6. **Grant of patent:** If the patent examiner is satisfied that the invention meets the patentability criteria and any objections have been overcome, the patent will be granted. The term of the patent is 20 years from the date of filing of the application.
7. **Renewal of patent:** To maintain the validity of the patent, the applicant must pay the renewal fee every year, starting from the 2nd year.
8. **Post-grant opposition:** After the grant of the patent, any person can file a post-grant opposition within one year from the date of grant. The opposition can be based on certain grounds, including lack of novelty, inventive step, and industrial applicability.
9. **Infringement proceedings:** If a person uses, sells or imports a product or process that infringes on the patentee's rights, the patentee can initiate infringement proceedings before a court of law.

It is important to note that the patent application process can be complex and time-consuming, and it is advisable to seek the assistance of a qualified patent attorney to ensure the best chance of success.

### **Rights and Obligations of a Patentee**

As per the Patents Act 1970 and its amendments, a patentee is granted certain exclusive rights over the patented invention for a limited period of time. Along with these rights, the patentee also has certain obligations to fulfill, which are as follows:

#### **Rights of a Patentee:**

1. **Right to use the invention:** The patentee has the exclusive right to use the invention for which the patent has been granted.
2. **Right to prevent others from using the invention:** The patentee has the right to prevent others from using, selling, importing or distributing the patented invention without their consent.
3. **Right to license the invention:** The patentee has the right to license others to use the invention in exchange for a fee or royalty.

4. **Right to transfer the patent:** The patentee has the right to transfer or assign the patent to another person or entity.

### Obligations of a Patentee:

1. **Disclosure of the invention:** The patentee is obligated to disclose the invention in a manner that is clear and complete enough for a person skilled in the relevant field to be able to understand and reproduce the invention.
2. **Payment of annual fees:** The patentee is required to pay annual maintenance fees to keep the patent in force.
3. **Non-obviousness and novelty:** The patentee is obligated to ensure that the invention is new, non-obvious and useful at the time of filing the patent application.
4. **Non-infringement of others' rights:** The patentee must ensure that their invention does not infringe upon the intellectual property rights of others.
5. **Working of the invention:** The patentee is required to work the invention on a commercial scale within India within three years of the grant of the patent, or four years from the date of filing of the patent application, whichever is later. If the patentee fails to do so, the patent may be revoked by the government.

It is important for a patentee to fulfill their obligations to ensure that their patent remains valid and enforceable, while also benefiting from the exclusive rights granted to them over the patented invention.

### Revocation and Surrender of Patents

Under the Patents Act, 1970, a patent can be revoked or surrendered under certain circumstances.

### Revocation of Patents:

1. **By the Central Government:** The central government can revoke a patent under Section 66 of the Patents Act, 1970, if it is in the public interest to do so. This can be done only after giving the patentee an opportunity to be heard.
2. **By the Controller of Patents:** A patent can be revoked by the Controller of Patents under Section 64 of the Patents Act, 1970 on the following grounds:
  - That the invention was anticipated or known or used in India before the date of filing of the patent application.
  - That the invention was obvious and lacked novelty.
  - That the patent was not filed in good faith and is not useful.
  - That the invention is contrary to public order or morality.

**Surrender of Patents:** A patentee can surrender his patent by filing an application for surrender of patent under Section 63 of the Patents Act, 1970. Once the patent is surrendered, the patentee loses all rights and privileges conferred by the patent.

It is important to note that revocation or surrender of a patent does not affect any rights that may have already accrued to any person under the patent before its revocation or surrender.

**OR**

### **1. Revocation of Patents:**

- Revocation refers to the cancellation or invalidation of a patent by an authorized entity or judicial authority.
- In India, the revocation of patents can be sought through different avenues, including:

#### **A. Pre-grant Opposition:**

- Before the grant of a patent, any person can file a pre-grant opposition with the Indian Patent Office.
- The opposition should be based on specific grounds, such as lack of novelty, lack of inventive step, or non-patentable subject matter.
- If the opposition is successful, the patent may be refused or rejected.

#### **B. Post-grant Opposition:**

- After the grant of a patent, any interested person can file a post-grant opposition within a specific timeframe (within one year from the publication of the grant).
- The opposition can be based on grounds such as prior public knowledge, obviousness, or insufficient disclosure.
- The Patent Office examines the opposition, and if it finds merit in the opposition, it may revoke the patent.

#### **C. Revocation Petition:**

- A revocation petition can be filed before the Intellectual Property Appellate Board (IPAB) or the High Court challenging the validity of a granted patent.
- The petition should be based on grounds such as lack of novelty, lack of inventive step, insufficient disclosure, or that the invention is not patentable subject matter.

- The IPAB or the High Court conducts proceedings and may revoke the patent if it finds the grounds for revocation to be valid.

#### D. Invalidation Lawsuit:

- A patent can also be challenged by filing a lawsuit in a civil court seeking its revocation.
- The court examines the evidence and arguments presented by both parties and may revoke the patent if it finds the grounds for revocation to be valid.

## 2. Surrender of Patents:

- Surrendering a patent refers to the voluntary act of the patentee giving up their rights over the patent.
- In India, the surrender of a patent can be initiated by the patentee by filing a request with the Indian Patent Office.
- Once the request for surrender is accepted, the patent is considered to be surrendered, and the patent rights cease to exist.

Reasons for surrendering a patent can include:

- Lack of commercial viability or market demand for the patented invention.
- Inability to maintain the patent due to high maintenance costs or infringement challenges.
- Strategic decisions by the patentee, such as focusing on other inventions or business areas.

It's important to note that the surrender of a patent is voluntary and initiated by the patentee, while revocation is a result of a challenge to the validity of the patent by a third party or an authorized entity.

Examples:

- A pharmaceutical company holds a patent for a drug, but during post-grant opposition, it is successfully challenged on grounds of lack of novelty. The patent is subsequently revoked by the Patent Office.
- An inventor voluntarily surrenders their patent for a specific technology as they decide to focus on other innovative developments and no longer wish to maintain the patent rights.

## Infringement of Patent

Infringement of a patent occurs when a third party performs any of the activities that are protected by the patent without the permission of the patent owner. In India, patent infringement is governed by the Patents Act, 1970 and its amendments. The act defines patent infringement as the unauthorized making, using, selling, importing, or offering for sale of a patented invention.

In case of patent infringement, the patent owner can file a suit for infringement in a court of law against the infringing party. The court may then grant an injunction to prevent further infringement and award damages to the patent owner for any loss suffered due to the infringement.

It is important to note that not all activities infringe a patent. The Patents Act, 1970 provides for certain exceptions to patent infringement, such as using a patented invention for research or experimentation, or for the purpose of teaching or imparting education.

Furthermore, the act also provides for a compulsory licensing system, whereby the government can grant a license to a third party to use the patented invention without the permission of the patent owner in certain circumstances, such as when the invention is not being made available to the public at a reasonable price or when it is necessary to meet a national emergency.

Overall, patent infringement is a serious offense and can lead to significant legal and financial consequences for the infringing party. It is important for individuals and companies to be aware of their rights and obligations under the Patents Act, 1970 to avoid infringing on someone else's patent and to protect their own patent rights.

## **UNIT-IV**

### **The Trade Marks Act, 1999**

#### **What is a Trade Mark**

A trademark is a unique symbol, word, phrase, design, or combination of these elements that is used to identify and distinguish the goods or services of one person or organization from those of others in the market. It serves as an important tool for brand recognition and differentiation in the marketplace. A trademark is a type of intellectual property that is protected under the law to prevent unauthorized use or infringement by others.

#### **Functions of a Trade Mark**

The primary functions of a trade mark are as follows:

1. **Identifying the origin:** A trade mark helps consumers to identify the origin of the goods or services that they are purchasing. It helps to distinguish the goods or services of one trader from those of another.
2. **Guarantee of quality:** A trade mark is a guarantee of the quality of the goods or services provided by the owner of the mark. Consumers associate the quality of the goods or services with the trade mark.
3. **Marketing tool:** A trade mark is an important marketing tool for businesses. It helps to create brand recognition, brand loyalty, and consumer goodwill.
4. **Asset value:** A trade mark can have significant asset value for a business. A well-known trade mark can be sold or licensed for a substantial amount of money.
5. **Legal protection:** A registered trade mark provides legal protection to the owner of the mark against infringement and unauthorized use. It also helps to prevent unfair competition and passing off by other traders.

### **Trade Mark Registry and Register of Trade Mark**

Under the Trade Marks Act, 1999, the Trade Marks Registry is responsible for administering the law relating to trade marks in India. The main functions of the Trade Marks Registry include:

1. **Registration of trade marks:** The Trade Marks Registry is responsible for receiving and processing applications for the registration of trade marks in India. The registry examines the applications and, if satisfied that the mark meets the criteria for registration, will register the trade mark.
2. **Maintenance of the Register of Trade Marks:** The Trade Marks Registry maintains a register of all registered trade marks in India. The register contains details of the owner of the trade mark, the goods or services for which the mark is registered, and other relevant information.
3. **Processing of applications for the renewal of registration:** A registered trade mark is valid for a period of 10 years from the date of registration. The Trade Marks Registry is responsible for processing applications for the renewal of registration.
4. **Processing of applications for the assignment and transmission of trade marks:** The Trade Marks Registry also processes applications for the assignment and transmission of trade marks. This involves transferring ownership of a trade mark from one person to another.

5. **Opposition proceedings:** If a person believes that a trade mark should not be registered, they can file an opposition with the Trade Marks Registry. The registry will consider the opposition and, if satisfied that the trade mark should not be registered, will refuse registration.

Overall, the Trade Marks Registry plays a crucial role in the registration and administration of trade marks in India.

## Registration of Trade Marks

Registration of a trademark is an important step for protecting the brand and its reputation. The Trade Marks Act, 1999 provides the procedure for the registration of trademarks in India. The following are the steps involved in the registration of a trademark:

1. **Search for the trademark:** Before filing an application for registration, it is important to conduct a search of the trademark to ensure that there is no identical or similar mark already registered.
2. **Filing of the application:** Once the search is done, the application for registration of the trademark can be filed with the Trademark Registry. The application can be filed online or offline.
3. **Examination of the application:** The Trademark Registry examines the application to ensure that it meets the requirements of the Trade Marks Act. The examination includes checking if the mark is distinctive and not similar to existing trademarks.
4. **Publication of the application:** If the Trademark Registry is satisfied with the application, it is published in the Trademark Journal. This is done to allow for any oppositions to be filed by third parties.
5. **Opposition proceedings:** If any oppositions are filed, the trademark owner has the opportunity to respond to the opposition. If no oppositions are filed, or if the opposition proceedings are resolved in favor of the trademark owner, the trademark will proceed to registration.
6. **Registration:** If the trademark is found to be eligible for registration, the Trademark Registry will issue a certificate of registration. The trademark will be registered for a period of 10 years from the date of registration.

It is important to note that the registration process can take several months to complete, and it is advisable to seek the assistance of a trademark attorney to ensure that the application is filed correctly and to handle any opposition proceedings that may arise.

## Effects of Registration

The registration of a trademark provides the following effects:

1. **Exclusive rights:** The owner of a registered trademark has the exclusive right to use the trademark in relation to the goods or services for which it is registered. It gives the owner the right to prevent others from using an identical or similar mark in connection with the same or similar goods or services without permission.
2. **Legal protection:** Registration provides legal protection to the trademark owner in case of infringement. The owner can take legal action against any person who infringes on their trademark rights.
3. **Assignability:** A registered trademark is an intangible asset that can be sold, licensed or assigned to another person or entity for commercial use.
4. **Public notice:** The registration of a trademark is a public notice of the ownership of the mark. It helps prevent others from claiming ignorance of the existence of the mark.
5. **Enhanced brand value:** A registered trademark enhances the brand value of a product or service. It helps distinguish the product or service from its competitors and establishes its identity in the marketplace.
6. **Protection against piracy:** Registration provides protection against piracy, counterfeiting, and passing off of goods or services.
7. **Incontestability:** After five years of continuous use, a registered trademark becomes incontestable, meaning that it cannot be challenged on the grounds of descriptiveness, genericness, or functionality.

Overall, the registration of a trademark provides valuable rights and benefits to the owner, which can help protect their business interests and promote brand recognition in the marketplace.

## Assignment and Transmission of Trade Marks

Assignment and transmission refer to the transfer of ownership of a trademark from one person or entity to another. The Trade Marks Act, 1999, lays down provisions for the assignment and transmission of trademarks.

Here are the details of the assignment and transmission of trademarks:

1. **Assignment of Trademarks:** A trademark owner can assign their trademark either completely or partially to another person. The assignment can be made for any consideration, such as a lump sum payment or royalties. The assignee becomes the owner of the trademark and can use it in connection with the goods or services covered by the trademark.
2. **Transmission of Trademarks:** Transmission refers to the transfer of ownership of a trademark on the death of the owner. The trademark passes on to the legal heir or successor of the deceased owner.
3. **Procedure for Assignment and Transmission:** In case of assignment or transmission of a trademark, a request for the same must be made in writing to the Registrar of Trade Marks. The request must be signed by both the assignor/transmitter and the assignee/transferee. The Registrar then registers the transfer of the trademark in his records and issues a certificate of registration to the new owner.
4. **Rights of Assignee/Transferee:** The assignee or transferee of a trademark enjoys the same rights as the original owner of the trademark, including the right to use the trademark in connection with the goods or services covered by the trademark.
5. **Rights of Assignor/Transmitter:** The assignor or transmitter of a trademark has no right to use the trademark after the transfer, except with the written consent of the assignee or transferee.
6. **Recording of Assignment/Transmission:** Once the assignment or transmission of a trademark has been registered, the Registrar of Trade Marks records it in the register of trademarks and publishes the same in the Trade Marks Journal.

## **Rectification and Correction of Register**

Under the Trade Marks Act, 1999, the register of trademarks can be rectified and corrected in certain circumstances. The following are the provisions related to rectification and correction of the register:

1. **Section 57 - Power to rectify the register:** The Registrar or the Appellate Board may, on an application made in the prescribed manner, rectify the register by:
  - Correcting any error or omission in the name, address or description of the proprietor of a trademark;
  - Entering any change in the name, address or description of the proprietor of a trademark;
  - Striking out any trademark that is wrongly entered or remains on the register;

- Correcting any other error or defect in the register.
2. **Section 58 – Power to correct the register:** The Registrar may, on an application made in the prescribed manner, correct the register by:
    - Amending any entry relating to a trademark or a registered user of a trademark;
    - Enter any memorandum of a transaction affecting the proprietorship of a registered trademark;
    - Cancel the registration of a trademark for non-renewal of the registration.
  3. **Section 59 – Procedure for rectification and correction:** The procedure for rectification and correction of the register includes:
    - Giving notice to the registered proprietor or registered user, as the case may be, of the application made for rectification or correction of the register;
    - Giving an opportunity to the registered proprietor or registered user to oppose the application;
    - If the application is granted, making necessary entries in the register or removing the trademark from the register, as the case may be;
    - Giving notice to the parties concerned of the rectification or correction made in the register.
  4. **Section 60 – Effect of rectification or correction:** The rectification or correction made in the register under sections 57 and 58 shall be deemed to have effect from the date when the entry should have been made or should have been corrected.
  5. **Section 61 – Restriction on rectification:** No amendment of the register of trademarks shall be made if the effect thereof would be to:
    - Convert a trademark registration of one type into a registration of another type;
    - Affect any rights acquired by any person on the basis of the original registration.
  6. **Section 62 – Saving of rights of assignees and licensees:** Any rectification or correction of the register of trademarks shall not affect the rights of any person who acquired any right in or to the trademark before the rectification or correction was made.

## Passing Off and Infringement Action

Passing off and infringement are two types of legal actions that can be taken to protect a trademark.

**Passing off** is a common law tort that protects the reputation and goodwill of a trader's business or goods. It involves the misrepresentation of goods or services by a third party, which can lead to confusion among consumers and damage to the reputation of the original trader. In order to succeed in a passing off action, the following elements must be established:

1. **Goodwill or reputation:** The claimant must show that they have established goodwill or reputation in connection with their business or goods.
2. **Misrepresentation:** The defendant must have made a misrepresentation to the public that is likely to cause confusion or deception. This can include using a similar or identical mark to the claimant's mark, or using similar packaging or trade dress.
3. **Damage:** The claimant must have suffered actual or potential damage as a result of the defendant's misrepresentation.

**Infringement**, on the other hand, is a statutory tort that is defined under the Trade Marks Act, 1999. It occurs when a third party uses a mark that is identical or similar to a registered trademark in relation to goods or services that are identical or similar to those covered by the registered mark, without the owner's consent. In order to establish infringement, the following elements must be shown:

1. **Ownership:** The claimant must own a registered trademark.
2. **Use:** The defendant must have used a mark that is identical or similar to the claimant's trademark.
3. **Identity/similarity of goods/services:** The defendant's use of the mark must be in relation to goods or services that are identical or similar to those covered by the claimant's trademark.
4. **Likelihood of confusion:** The use of the mark by the defendant must be likely to cause confusion among the relevant public.
5. **Lack of consent:** The use of the mark by the defendant must be without the consent of the trademark owner.

If a trademark owner can establish passing off or infringement, they may be entitled to a range of remedies, including an injunction to prevent further use of the mark, damages for any loss suffered as a result of the infringing use, and an account of profits made by the infringing party.