

INTELLECTUAL PROPERTY RIGHTS

Introduction:-

Intellectual Property (IP) is a term referring to creation of the intellect (the term used in studies of the human mind). for which a monopoly (from greek word monos means single polein to sell) is assigned to designated owners by law. Some foreign countries intellectual property rights is referred to as "Industrial Property", copyright, patent and trademarks, trade secrets all these covers music, literature and artistic works, discoveries and inventions and words, phrases, symbols and designs.

⇒ Intellectual property rights are themselves a form of property called intangible property.

Types of Intellectual property:-

The term intellectual property is usually thought of as comprising four separate legal fields:

- 1) Trade marks
- 2) Copy rights
- 3) Patents
- 4) Trade Secrets.

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1) Trademarks and Service marks:- A Trademark (or) Service mark is a word, name, symbol (or) device used to indicate the source, quality and ownership of a product (or) service. A trademark is used in the marketing is recognizable sign, design (or) expression which identifies products (or) service of a particular source from those of others.

⇒ The Trade mark owner can be an individual, business, organization, (or) any legal Entity. A Trademark may be located on a package, a label, a vouches (or) on the product itself.

General logos (R) The Trademark Registration Logo.

⇒ In addition of words, trademarks can also consists of slogans, design (or) sounds. Trademark provides guarantee of quality and consistency of the product (or) service they identify.

⇒ Companies expend a great deal of time, effort and money (in establishing consumer recognition of and confidence in their marks.

Federal Registration of Trademarks:-

Applicants for federal registration of trademarks are made with the PTO (paid time off). Registration is a fair lengthy process, generally taking anywhere from twelve

to twenty-four months or even longer. The filing fee is \$335 per mark. (Present \$225 per class) per class of goods

(b) Services covered by the mark. (3)

⇒ A Trademark registration is valid for 10 years and may be renewed for additional ten year periods thereafter as long as the mark is used in interstate commerce.

⇒ To maintain a mark the registrant is required to file an affidavit with the PRO between the fifth and sixth year after registration and every ten years to verify the mark is in continued use. Mark not in use and then available to others.

⇒ A properly selected, registered and protected mark can be of great value to a company or individual desiring to establish and expand market share and better way to maintain a strong position in the market place.

Copyright:-

The subject matter of Copyright is extremely broad including literary, dramatic, musical, artistic, audio visual, and architectural works. Copyright protection is available to both published and unpublished works.

⇒ Copyright protection is available for more than merely serious works of fiction or art. Marketing materials, advertising copy and cartoons are also protectable.

⇒ Copyright is available for original working protectable by copyright, such as title, names, short phrases, and lists of

ingredients.

⇒ General definition of copyright "Copyright owner", with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

(4)

Federal Registration of Copyrights:- The works are protected under federal copyright law from the time of their creation in a fixed form.

⇒ copyrighted works are automatically protected from the moment of their creation for a term generally extending for the author's life plus an additional seventy years after the author's death.

3) Patents:- A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office.

⇒ The right conferred by the patent grant is, in the language of the statute and of the grant itself, "the right to exclude others from making, using, offering for sale, the invention in the United States or, "importing" the invention into the United States. What is granted is not the right to make, use, offer for sale or import, but the right to exclude others from making, using, offering for sale or importing the invention.

There are three types of patents:

- 1) Utility patents
- 2) Design patents
- 3) plant patents.

② Utility patents:- It may be granted to anyone who invents (a) discovers any new and useful process, machine, article of manufacture (b) composition of matter, (c) any new and useful improvement thereof. (5)

Design Patents:- It may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture.

Patent of plant:- It may be granted to anyone who invents (a) discovers and asexually reproduces any distinct and new variety of plant.

Federal registration of copyrights:- patents are governed exclusively by federal law (35 USC 100 et seq). An inventor must file an application with the PTO (the same agency that issues trademark registration) that fully describes the invention.

⇒ Patent prosecution is expensive, time consuming and complex.

⇒ Patent protection exists for twenty years from the date of an application for utility and patents and fourteen years from the date of grant for design patents. After this period of time, the invention falls into the public domain and may be used by any person without permission.

4. Trade Secrets:- A Trade secret consists of any

(6) valuable business information. The business secrets are not to be known by the competitor. There is no limit to the type of information that can be protected as trade secrets:

eg:- recipes, marketing plans, financial projections, and methods of conducting business can all constitute trade secrets.

⇒ If Trade secrets were not protectable, companies would have no incentive to invest time, money and effort in research and development that ultimately benefits the public. Trade secret law thus promotes the development of new methods and processes for doing business in the market place.

Protection of Trade Secrets:- Trade secrets are protectable under various state statutes and cases and by contractual agreements between parties.

eg:- Employers often require employees to sign Confidentiality agreements in which employees agree not to disclose proprietary information owned by the employer.

⇒ If properly protected, trade secrets may last forever, on the other hand, if companies fail to take reasonable measures to maintain the secrecy of the information, trade secret protection may be lost.

- ④ Another method by which companies protect valuable information is by requiring employee to sign agreements promising not to compete with the employer after leaving the job. Such covenants are strictly scrutinized by courts, but generally, if they are reasonable in regard to time, scope and subject matter, they are ~~all~~ enforceable.
- ⑦

Agencies responsible for intellectual property Registration

United States patents and trademark Office:-

The Agency charged with granting patents and registration trademarks is the United States Patent and Trademark Office (PTO), one of fourteen **bureaus** within the US Department of Commerce. The PTO, founded it is located in 18 building in Arlington, Virginia. Its website is <http://www.uspto.gov> and it offers a wealth of information, including basic information about trademarks and patents, fee schedules, forms, and the ability to search for trademarks and patents.

The PTO is led by the Under Secretary of Commerce for intellectual property and director of the United States Patent and Trademark Office (the director), who is appointed by the president. The Secretary of Commerce appoints a Commissioner for patents and Commissioner for trademarks.

International organizations, Agencies and treaties:

⑧ These are a number of international organizations and agencies that promote the use and protection of intellectual property.

International Trademark Association (INTA): It is a not-for-profit international association composed chiefly of trademark owners and practitioners. It is a global association. Trademark owners and professionals dedicated in supporting trademarks and related IP in order to protect consumers and to promote fair and effective commerce. more than 4000 (present 6500 members) companies and law firms more than 150 (present 190 countries) countries belong to INTA, together with others interested in promoting trademarks.

The INTA is formed to protect and promote the rights of trademark owners, to secure useful legislation (The process of making laws), and to give aid and encouragement to all efforts for the advancement and observance of trademark rights.

World Intellectual Property Organization (WIPO):

It was founded in 1883 and is specialized agency of the United Nations whose purposes are to promote intellectual property throughout the world and to administer 23 treaties (present 26 treaties) dealing with intellectual property. WIPO is one of the 17 specialized agencies of the United Nations. It was created in 1967, to encourage creative activity, to promote the protection of intellectual property throughout the world.

③ Berne Convention:- An international copyright treaty called the convention for the protection of Literary and artistic works signed at Berne, Switzerland in 1886 under the leadership of Victor Hugo to protect Literary and artistic works.

⑨ ⇒ The Berne convention is administered by WIPO and is based on the precept that each member nation must treat nation must treat nationals of other member countries like its own nationals for purposes of copyright.

Madrid protocol:- It is a legal basis is the multilateral treaties madrid (it is a city situated in Spain) agreement concerning the international Registration of marks of 1991.

⇒ The madrid system provides a centrally administered system of obtaining a bundle of trademark registration in separate jurisdiction. It provides a cost-effective and efficient way for trademark holder. It came into existence in 1996. It allows trademark protection for more than sixty countries, including all 25 countries of the European Union.

Paris Convention:- The Paris Convention for the protection of industrial property, signed in Paris France, on 20th March 1883, was one of the first Intellectual treaties.

⇒ The substantive provisions of the convention fall into three main categories:

- 1) national treatment
- 2) priority right
- 3) Common rules.

⑩

An applicant for a trademark has six months after filing an application in any of the more than 160 member nations to file a corresponding application in any of the other member countries of the Paris Convention and obtain the benefits of the first filing date. ~~The~~ priority is one year rather than six months. The Paris Convention is administered by WIPO.

North American Free Trade Agreement (NAFTA):

The NAFTA resulted in some changes to US trademark law, primarily with regard to marks that include geographical terms. The NAFTA was built on the success of the Canada-US Free trade agreement and provided a complement to Canada's efforts through the WTO agreements by making deeper commitments in some key areas.

General agreement on ~~tariffs~~ and Trade (GATT): It was included in 1994 and is adhered to by most of the major industrialized nations in the world. The most significant changes to US intellectual property law from GATT are that nonuse of a trademark for three years creates a presumption the mark has been abandoned and that the duration of utility patent is now twenty years from the filing date of the application.

The Increasing importance of Intellectual Property Rights:- ⑥

- ⑩
- ⇒ Protecting Intellectual Property rights.
 - ⇒ Technology has led to increase awareness about IP.
 - ⇒ Some individuals and companies offer only knowledge.
- Thus, Computer Consultant, advertising agencies, internet companies and software implementers sell only brainpower.
- ⇒ Domain names and moving images are also protected.
 - ⇒ more than fifty percent of US exports now depend on some form of intellectual property protection.
 - ⇒ The rapidity with which information can be communicated through the internet has led to increasing challenges in the field of intellectual property.
 - ⇒ The most valuable assets a company owns are its intellectual property assets.
 - ⇒ Companies must act aggressively to protect these valuable assets from infringement (breaching, violation of law) or misuse by others.
 - ⇒ The field of intellectual property law aims to protect the value of such investments.

TRADE MARKS

Defination of Trade mark:-

The modern definition of trademark is that

"It is a word, name, symbol or device or a combination thereof, used by a person [including a business Entity], or which a person has a bonafide intention to use, to identify and distinguish his or her goods from those manufactured by others and to indicate the source of those goods.

By viewing the mark, purchasers would immediately be able to identify the craftsman that made the goods and make an informed decisions about the quality of the material.

purpose and function of trademark:-

Trade mark perform two critical functions in the market place

- 1) They provide assurance that goods are of a certain quality and consistency.
- 2) They assist consumers in making decisions about the purchase of goods.

Thus, protection of trademarks results in increasing competition in the marketplace, with both the producer of goods and services and the consumer as the ultimate beneficiaries.

⇒ The value inherent in achieving consumer loyalty to a particular product (or) service through the maintenance of consistent quality of the products (or) service offered under a mark is called goodwill.

* They identify one maker's goods (or) services and distinguish them from those offered by others.

* They indicate that all goods (or) services offered under the mark come from a single producer, manufacturer (or) source.

* They indicate that all goods (or) services offered under the mark are of consistent quality. ~~and~~

* They serve an advertising device so that consumers link a product (or) service being offered with a mark

Types of marks:-

There are four different types of marks.

- 1) Trade mark
- 2) Service mark
- 3) Certification mark
- 4) Collective mark.

Trade mark (a) Service mark:-

The term trademark thus refers to some physical and tangible good and service, mark refers to an intangible service, in common usage the term trademark is often used to refer to marks for both goods and service.

↳ The key point in this legal description is that a trademark is a visual mark that may use any combination of letters and imagery to aid company in differentiating itself from other entities.

⇒ purpose of a trademark is to visually represent a person, company, or product and trademark should be designed to provide easy and definite recognition.

• The term 'mark' will be used as a synonym for both trademark and service marks.

Certification mark:-

A Certification mark is a word, name, symbol, device

or combination thereof, used by one person to certify that the goods or services of others have certain features in regard to quality, material, mode of manufacture, or some other characteristics.

Eg: Hallmark, ISO mark.

Collective mark:-

A collective mark is one used by a collective membership organization, such as a labor union, fraternity, or professional society, to identify that the person displaying the mark is a member of the organization.

Eg: The word: COCA-COLA, the stylized wave design, the slogan "things Go better with Coke", all of these marks are used on one product and all are protected by the Coca-cola company.

Acquisition of trademark rights:-

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Trademark rights arise from adoption and use of a mark. A person using a mark may have valid and enforceable rights in a mark even though the mark is not registered with the PTO, such an owner will have priority even over a subsequent user who has secured a federal registration for a mark with the PTO.

Establishing a date of first use is critical for a trademark owner because priority of trademark rights is measured from this date. ~~eg~~ If one party first used of mark on September 15, 2015 and another first used a similar work on October 15, 2015, the prior, senior, user will be able to preclude the junior user from using a confusingly similar work.

The general rule is that acquisition of trademark rights stem from use, there is one exception to this rule: the intent-to-use application.

~~eg~~ The United States was one of ~~the~~ only two countries in the world that required that a mark be in actual use before an owner could file an application to register it. After an applicant had begun using the mark and then filed an application, the PTO might refuse

registration of the mark on the basis it was confusingly similar to a prior work or was subject to some other defect. The applicant would then have invested substantial money and time in developing the mark, in using it in commerce, marketing and advertising, and in applying for registration, only to be told the mark was unregistrable.

⇒ minimal or token use cannot serve as the basis for securing or maintaining a registration, ensuring that an owner does not reserve or "warehouse" a mark by making only sporadic use of it with the intent to block others from using it rather than having a true commercial intent to exploit the mark for sales.

Common Law Rights & Federal Registration:-

Registration on the PTO's principal Register does offer several advantages.

⇒ nationwide constructive use effective from the filing date of the application.

⇒ The ability to importance of goods bearing infringing trademarks.

⇒ The right to bring an action in federal court for trademark infringement and recover lost profits, damages, costs, and possibly triple damages.

⇒ Incontestable status of the registration after five years⁽¹⁾ of continuous use subsequent to the registration.

⇒ The right to use the registration symbol with the mark.

⇒ A possible basis to claim priority to an internet domain name.

Laws and treaties Governing Trademark:

Lanham act - It providing for federal trade mark protection

the Lanham act also includes statutes prohibiting unfair competition. The Lanham Act has been amended numerous times. The most significant amendment occurred with the trade mark law, which provided following two critical changes.

⇒ It allowing for a trademark application based on the applicant's intent to use a mark in the future. ~~Rules~~

of

Anti cybersquatting Consumer Protection Act:

It was established a cause of action for

registration, trafficking in (a) Using a domain name confusingly similar to (a) dilutive of, a trademark (a) personal name.

⇒ The law was designed to "cybersquatters" who registers internet domain names containing trademarks with no

intention of creating a legitimate website, but instead plan to sell the domain name to the trademark owner or a third party. Before ACPA was enacted, trademark owners relied on the Federal Trademark Dilution Act (FTDA).

Categories of marks:-

Although marks can consist of words, symbols, designs, slogans or combination thereof, not every term is protectable. Even among marks that are protectable, some marks are stronger than others. In ascending order of strength and protectability, the five categories:

- 1) Generic mark.
- 2) Descriptive mark
- 3) Suggestive mark
- 4) Arbitrary marks
- 5) Fanciful marks.

1) Generic mark:- Generic "marks" are devices which actually name a product and are incapable of functioning as trademark. Unlike descriptive marks, generic devices will not become a trademark even if they are advertised so heavily that secondary meaning can be proven in the mind of consumers.

⇒ A valid trademark can become generic if the consuming public misuses the mark sufficiently for the mark to become the generic name for the product.

2) Descriptive mark:- These are devices which merely describe the services (or) goods on which the mark is used. If a device is merely descriptive, it is not a mark at all, since it does not serve to identify the source of the goods (or) services.

⇒ Descriptive marks allows one to reach that conclusion without such imagination, thought (or) perception. This mark will not register in PTO until the consumer links the mark with a single source.

Eg:- i) FAST BAUD for modems (describing the quickness of the modem).

ii) 104 key for computer key boards (describing the number of keys on a key board).

iii) LIGHT for portable computers (describing the computer's weight).

iv) TUBELESS for computer monitors.

2) Suggestive mark:- These marks that suggest a quality (or) characteristic of the goods and services. Despite the fact that suggestive marks are not as strong as fanciful or arbitrary marks, suggestive marks are far more common due to the inherent marketing advantage of tying mark to the product in a ~~customer's~~ customer's mind.

Eg:- MICROSOFT (suggestive of software for microcomputers).

ii) SILICON GRAPHICS (suggestive of graphic oriented computers).

4) Arbitrary marks:- An arbitrary mark utilizes a device having a common meaning that has no relation to the goods and services being sold.

eg. APPLE (for computers)

LOTUS (for software)

5) Fanciful marks:- These are devices which have been invented for the sole purpose of functioning as a trademark and have no other meaning than acting as a mark. Fanciful marks are considered to be the strongest type of mark.

eg. EXXON, KODAK and XEROX

Protectable matter:-

Slogans, letters and numbers:-

A word or other groupings of letters is the most common type of a mark. Slogans from advertising campaigns are also used as trademarks.

⇒ Alphanumeric symbols may be protectable as long as they are not merely descriptive. It describes something about the product or service offered under the mark.

Logos and symbols:-

Logos are probably the next most common form of a mark. A Logo can be described as a design which becomes a -

A mark when used in close association with the goods or services being marketed. The logo mark does not need to be elaborate; it need only distinguish goods and services sold under the mark from other goods and services.

Names of performing Artists:-

A mark that merely serves to identify an artist or Entertainment is not registrable. However if the owner of the mark has controlled the quality of the goods or services, and the name of the artist or group has been used numerous times on different records.

Domain Names:-

Domain names for example, www.ibm.com are registrable as trademark or service marks only if they function as an identification of the source of goods & service.

⇒ Domain name registration is that the PTO has held that businesses that create a website for the sole purpose of advertising their own products or services cannot register a domain name used to identify that activity.

Shapes and Containers:-

A product or container shape can also serve as a source identifying function and therefore can be an enforceable

trademark. A product or container shape may also be subject to design patent. Trademark protection was not granted to product shapes until the consuming public recognized the shape as indicating the source of the product.

eg Coca-Cola bottle.

Trade Dress:- Trade dress is the overall commercial image (look and feel) of a product or service that indicates or identifies the source of the product or service and distinguishes it from those of others. Trade dress is referred to "get-up" or "product-design".

Color:-

The color of an item can also function as a trademark. The color alone could not be considered a trademark. The court in *Qualitex* rejected arguments based on this depletion theory, reasoning that alternative colors would usually be available for competitors.

Fragrances, Sounds, and moving images:-

A sound can also be a trademark or service mark. Sound trademarks recently were in the news when Harley Davidson announced that it was attempting to register.

⇒ Floral fragrance was allowed as a trademark for sewing thread and embroidery yarn and was not functional when used in connection with those goods. Internet has

given rise to applications for marks that consists of moving images such as Microsoft company's Spinning EXPLORER GLOBE.

Design and ~~copy~~ ornamentation:-

A design can function as a trademark as long as it is distinctive rather than merely functional or ornamental. Some designs are protected on their own, such as Nike's famous "swoosh" design.

Serialized Literary and movie titles:-

The title of a single book or movie title is generally not protectable.

Picture and drawings:-

pictures or drawings of a character or scene or often used as trademarks or service marks.

Selecting and Evaluating a trademark:-

Selecting a mark:-

The selection of mark occurs in a variety of ways.

- * Companies hold contests and encourages employees to create a mark for a new product line or service.
- * Companies engage sophisticated research.
- * Branding firms that will conduct surveys and create a mark and a logo or design for the company.

* There are name creation software programs that help individuals and companies create marks.

⇒ Once the mark selected, it must be screened & evaluated for use and registrability; if failed then it leads to wastage in expenditure of time and money in advertising, using and applying for a mark that is rejected for registration by the PTO.

Reviewing a Proposed mark:-

Once a mark is selected, it should be carefully examined to ensure that it will not be excluded from protection.

⇒ Firstly they have check whether the mark contains standards.

⇒ whether consent from a living person will be required.

⇒ whether the mark is generic

⇒ whether it is statutorily protected.

⇒ Some features of the goods and services offered under the mark.

⇒ It also see that the mark includes foreign terms.

⇒ Trade mark work & gather basic information from clients about their marks.

The Trademark Search:-

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Scope of Search:-

There are a variety of sources that can be reviewed to locate potentially conflicting marks.

→ There are literally millions of marks registered or applied for at the PTO, and thousands of journals, trade magazines, directories, telephone books, Internet sources, state records and state trademark registrations that contain other marks or business names, a computer assisted or online search is the most effective method of searching.

The trademark searching is a two-step process.

1) Preliminary search

2) Comprehensive search.

1) The Preliminary Search:-

There are a variety of sources that can be used to conduct an initial trademark search, including online-subscription services, CD-ROM, the patent and trademark depository libraries, and the PTO website search services.

Following are some resources commonly used for conducting a preliminary search:

i) TRADEMARKSCAN is a database owned by Thomson & Thomson Company, which provides information on all active registered trademarks and service marks.

ii) DIALOG is another database offered by Thomson & Thomson. Its database includes trademarks from the United States plus numerous foreign countries as well as patent and copyright information.

iii) SAEGIS: It is an entire suite of services provided by that allows online world wide trademark searching as well as searching of domain name registries and websites to locate common law uses of proposed marks.

iv) TRADEMARK.COM is an online search service offered by micro patent LLC, offering a variety of searchable databases, including federal marks, and common law uses of potentially conflicting marks.

v) LEXIS and WESTLAW, The computer-assisted research system, offer access to vast trademark databases that may disclose potentially conflicting marks.

2) The Comprehensive Search

A separate professional trademark search firms are existing for the companies when their need of searching the trademark. These companies review the records of the PTO, review state trademark office records for state trademark

registration.

These professional search firms can save considerable time and money and more importantly provide a more thorough search than that which an individual can conduct on his or her own, they also check for identical and phonetically equivalent marks for similar goods and services and will also check for foreign equivalents. They will charge for the searching of the marks.

Trademark Registration Processes:

Preparing the application:-

* once a mark has been selected and evaluated for use and registrability, an application for federal registration of the mark should be prepared and filled.

* An application is provided by PTO

i) The name of the applicant

ii) The citizenship of the applicant

iii) The address of the applicant

iv) ~~An~~ identification of goods and services offered under the mark.

v) A drawing of the mark.

vi) A verification or declaration signed by the applicant or agent or attorney.

* The application is based on actual use of the mark or the owner's intent to use the mark.

* process of moving an application through the PTO is called prosecution (law) the institution and conduct of legal proceedings against a defendant for criminal behaviour)

⇒ The application must be in English.

→ The application is filled by electronically by provided PTO.

⇒ The application should be written on only one side of the paper.

⇒ The filling and prosecution of trademark application are governed by the TMEP (trademark manual, of examination procedure).

⇒ The PTO introduced an electronic filling system in 1998.

The applicant:-

⇒ The mark can be made only by the owner of the mark, (s) in the case of intent-to-use application, by a person who has a bonafide to use the mark in commerce.

⇒ Application may be natural persons or business entities such as Corporation, partnership, association, Unions or other organization.

⇒ The applicant name must be in correct legal form such as Government entities: nations, states, municipalities and other Governmental bodies.

⇒ The mark should be identified in the application by the name.

⇒ Client often make mistakes in their corporate names (s) in the punctuation.

⇒ The certificate of registration will issue the name of ⁽¹⁰⁾ the application as set forth in the application.

⇒ If the application is a person or business that conducts business under fake business name, the application will be rejected.

⇒ The applicant is a partnership, a trademark or service mark application is usually filled in the name of one party.

↳ The PTO has been reluctant [unwilling] to accept application by joint ~~applicants~~ applicants.

↳ A joint venture or a partnership cannot be joint applicants.

Identification of goods and services:-

The application must identify the goods and/or services offered or to be offered under the mark that is the subject of the application.

⇒ The PTO requires that the identification of goods and services be as clear, accurate and concise as possible. Once the application filled, no other item can be added in the process of registration, a separate application should be applied.

Registration:-

⇒ A registration will issue about twelve weeks after publication in the official gazette.

⇒ If no notice of application is filed to the application.

⇒ The PTO will issue a Certificate of Registration of the mark.

⇒ The term of the registration is presently ten years from the date of the mark is registered.

COPY RIGHTS

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Introduction:-

Every year millions of people create original works like books, music, research and other forms of creative expression. All these creations are intellectual property and all of them are protected by copyright. Writers, editors and publishers, understanding copyright issues are essential.

Especially now that the production of counterfeit (imitating) and pirated goods, including written works, has become so prevalent. Now-a-days the internet has made copying and distributing protected material easier than ever before for avoiding copying the material. So, in order to protect yourself from IP (intellectual property) theft, to know the basics about the rights.

Definition:-

"The legal protection given to published works forbidding anyone but the author from publishing or selling them. An author can transfer the copyright to another person or corporation, such as publishing company."

What is a copyright?

⇒ Copyright is a form of protection provided by law to the authors of "original works of authorship" fixed in any tangible

medium of expression. (2)

⇒ Creative expression may be captured in words, numbers, sounds, pictures or any other graphic or symbolic media.

⇒ The subject matter of copyright is extremely broad, including literary, dramatic, musical, artistic, audio visual and architectural works.

⇒ Copyright protection is available for both published and unpublished works.

History:-

⇒ In England prompted the first instance upon protection for publication of books.

⇒ Book binders and printers demanded protection from copying of books.

⇒ Authors also began to demand protection from unauthorised copying and demanded to share in the financial rewards.

⇒ The first copyright law is enacted under the new U.S. Constitution, protecting books, maps and charts for 14 years with privilege of renewal for another 14 years.

Common law right :-

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- ⇒ The enacted the first copyright act in 1790 and the first federal copyright registration were issued.
- ⇒ In 1978 an author has a perpetual common law right to their unpublished works. Once the work was published, the common law perpetual copyright was extinguished and protection was up to fifty six years.
- ⇒ publication is the distribution of copies of a work to the public for sale or other ~~the~~ transfer of ownership, by rental lease, or lending.
- ⇒ The dual nature of copyright should be removed because it was complex, often led to controversy.
- ⇒ A copyright registration from the copyright office provides certain advantages to author's of work, including:
 - i) Registration establishes a public record of the copyright claim.
 - ii) If made before (a) within five years of publication, registration will establish prima facie ^(primary) evidence. i
 - iii) If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fee will be available to the copyright owner in court action.

→ Copyright protection generally lasts until seventy years
from the death of the author.

⇒ In 1980, specific protection was afforded to Computer programs as works entitled to copyright protection.

→ Copyright Act © represents.

⇒ Among the more useful publications and materials are the following:

* Forms for Copyright Protection.

Circular 1: "Copyright Basics",

Circular 2, "Publication on Copyrights",

Circular 3, "Copyright Notice",

Circular 4, "Copyright Fees",

Circular 15, "Renewal of Copyright",

Circular 15a, "Duration of Copyright",

Circular 38a, "International Copyright Relations of the United States",

Circular 61, "Copyright Registration for Computer Programs".

⇒ If you do not know the document number of the items you want, you may request that a menu be faxed to you.

⇒ All the data pertaining to copyrights are available in internet.

→ The copyright office provides a free electronic mailing list "NewsNet", that issues periodic e-mail messages on copyright issues.

⇒ Copyright office process the application via electronically.

Originality of material:-

* These are three basic requirements for copyrightability.

- 1) A work must be original
- 2) A work must be fixed in a tangible form of expression.
- 3) A work must be a work of authorship.

* To be eligible for copyright protection.

↳ material must be original.

↳ Meaning.

↳ Independently Created.

↳ Passes a modicum of Creativity

↳ It should not confused with novelty, worthiness, aesthetic appeal.

* "Originality" thus does not mean "first", it merely means "independently created".

* slight amount of "Creative work".

Fixation of material:-

⇒ The copyright act protects works of authorship that are "fixed in any tangible medium of expression."

⇒ A work is "fixed".

⇒ Thus there are two tangible categories: (9)

i) Copies: a copy is a material object from which a work can be perceived, reproduced or communicated, either directly by human perception or with the help of a machine.

ii) phonorecords A phonorecord is material object in which sounds are fixed and from which sounds can be perceived reproduced or communicated either directly by human perception or with the help of a machine.

works of authorship

⇒ Copyright act provides that copyright protection subsists in original works of authorship fixed in any tangible medium of expression, now known or hereafter developed, from which they can be perceived, reproduced, or otherwise communicated.

→ The list of preceded by the phrase that works of authorship. "include" those categories:

- i) Literary works
- ii) musical works
- iii) Dramatic works
- iv) Pantomimes and choreographic works
- v) pictorial, graphic and sculptural works
- vi) motion pictures and other individual works
- vii) Sound recording and
- viii) Architectural works.

→ Not all works are protected by Copyright.

- i) Ideas, methods, or system.
- ii) Blank forms, titles, short phrases and common property.
- iii) Public domain works.
- iv) Facts
- v) Computing and measuring devices.

Rights offered by Copyright law

Introduction

* The copyright act provides that, subject to certain exceptions, the owner of a copyright has the exclusive rights to do, and to authorise any of the following:

- To reproduce the copyrighted work in copies or phonorecords.
- ⇒ To prepare derivative works based on the copyrighted work.
- To distribute copies or phonorecords of the copyrighted work.
- ⇒ To perform the copyrighted work publicly.
- ⇒ To display the copyrighted work publicly.
- To perform the copyrighted work publicly by means of a digital audio transmission.
- ⇒ Unless exemption exists, unauthorized exercise of any of these rights by another is an infringement.

Rights of Reproduction:

⑤

⇒ The most fundamental of the rights granted to copyright owners is the right to reproduce the work.

→ A violation of the copyright act occurs whether or not the violator profits by the reproduction.

⇒ only the owner has the right to reproduce the work.

Joint works:-

A joint work is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or independent parts of a unitary whole.

⇒ once copyright exists in the created works.

↳ In joint authors are those who "mastermind" (a)

"supermind" the creative effort.

Ownership rights in joint works

⇒ If individuals are authors of a joint work, each owns an equal undivided interest in the copyright as a tenant in common.

⇒ If profits arise out of such use, an accounting must be made so, that each ~~author~~ shares in the benefits or proceeds.

Copy right registration:-

- * ⇒ A work is "Created" when it is fixed in a copy or phonorecord for the first time.
- ⇒ To register a work, the applicant must send the following three elements to the copyright office: a properly completed application form, a filing fee, and a deposit of the work being registered.
- ⇒ Registration may be made at any time within the life of the copyright.

The application for Copyright Registration:-

- ⇒ following persons are entitled to submit an application for registration of copyright.
- ⇒ The author (either the person who actually created the work or if the work is one made for hire, the employer or Commissioning Party).
- ⇒ The copyright claimant (either the author or a person or organization that has obtained ownership of all of the rights under the copyright originally belonging to the author, such as a transferee).
- ⇒ The owner of exclusive right, such as the transferee of any of the exclusive rights of copyright ownership.

International Copyright Law

⑥

* Developments in technology create new industries and opportunities for reproduction and dissemination of works of authorship.

⇒ A number of new issues have arisen relating to the growth of electronic publishing, distribution, and viewing of copyrighted works.

⇒ Along with new and expanded markets for works comes the ever increasing challenge of protecting works from piracy and infringement.

* Copyright protection for computer programs.

* Copyright protection for automated databases.

* Copyright in the electronic age.

* The Digital Millennium Copyright Act.

Law of Patents

The word patent is a shorthand expression for "letters patent".

⇒ A patent is a grant from the U.S. government to exclude others from making, using, or selling another person's new, non-obvious and useful invention in the United States for the term of patent protection.

⇒ It is protected for 20 years.

⇒ Under patent law, inventors can enjoy the making, using, or selling of an infringing invention even if it was independently created.

⇒ Patent allows its owner to exclude others from using the owner's invention; it does not provide any guarantee that the owner can sell

the invention.

- ⇒ The application must describe the invention with specificity.
- ⇒ The application will be reviewed by a PTO examiner, and if approved, the patent will issue.

Advantages of Patents:-

- * Patents promote the public good in that patent protection incentivizes investors.
- ⇒ Introduction of New products and processes benefits society.
- ⇒ In return for the full disclosure to the public of specifics of the invention, thus advancing science and technology, the inventor is given a limited period of time within which to exploit his or her invention and excluded others from doing so.
- ⇒ Inventors are thus incentivized to create new products, and the public benefits from inventions that ultimately will fall into the public domain.

Rights under Federal Law:-

- * Patent law ~~patent~~ derives from the Constitution.
- ⇒ In 1790 pursuant to the direction provided in the Constitution, Congress passed the first patent, which in large part relied upon law.
- ⇒ These early Acts provided the structural framework for U.S. patent law and specified the four basic conditions, still existing, that an invention must satisfy to secure patent protection:
 - ⇒ The invention must be a utility, design, or plant patent.
 - ⇒ It must be useful (or ornamental in the case of design patent or distinctive in the case of a plant patent).

- ↳ It must be novel in relation to the prior art in the field; and ⑦
↳ It must not be obvious to a person of ordinary skill in the field.
Moreover, some inventions such as computer programs, are protectable under Copyright law as well as patent law.

Patent Searching Process:-

The need for a search:-

- i) Patentability requires novelty and non-obviousness.
- ii) The patentability search, sometimes called a novelty search.
- iii) A search is recommended to determine the feasibility of obtaining a patent.
- iv) Novelty search is somewhat limited in scope and is designed to disclose whether an application will be rejected on the basis of lack of novelty or obviousness.
- v) A novelty search can usually be completed for less than \$1,000.
- vi) This novelty search is thus more expensive.

Searching methods:-

- * The PTO provides public search facilities for patent searching.
- * Searching is free and the PTO allows searchers to review issued patents, complete with drawings.
- * Searching can be done either in the main public searching room or the examiners' search areas where examiners will assist in searching.
- * The PTO employs a classification system that provides for the storage and retrieval of patent documents.

* The patent examiners in the course of examining patent applications, the system also used by searchers, and classification files are divided into subclasses.

* most classes have approximately three hundred subclasses

patent application process:-

Overview of the application process:-

⇒ The process of preparing, filing and a patent application through the PTO towards issuance is called "Prosecution".

⇒ An application may be filed by the inventor himself or herself or, as is more usual, by a patent attorney.

⇒ The application is filed with PTO, it will be assigned to one of more than 3500 patent examiners having experience in the area of technology related to the invention who will review the application and conduct a search of patent records to ensure the application complies with the statutory requirements for patents.

⇒ The process may continue for several rounds.

Patent practice:-

while preparing trademark and ~~copyright~~ copyright applications is relatively straightforward, preparing a patent application requires skillful drafting as well as knowledge in the relevant fields, physics, computers and so forth.

⇒ To represent patent applicants before the PTO, an attorney must be registered to practice with the PTO.

Types of applications

1) Provisional application

2) Utility application

3) Design Application

4) Plant application

5) Continuation application

6) PCT (Patent Co-operation treaty) application.

7) Divisional application.

Ownership Rights:-

⇒ Patents are items of personal property and thus may be owned, sold, licensed, or devised by will.

⇒ Applications for patent must be filed by the actual inventor of the article, process, design or plant.

⇒ If there is more than one inventor, the application must be signed by all inventors.

⇒ In many instances, employees are required to sign agreements with their employers whereby they agree that any invention or discovery invented by them while on the job will belong to the employer, and that they will agree to assist and co-operate in any manner, including signing applications for patents, to ensure the employer's rights are protected.

Ownership transfer:

→ As objects of intellectual property @ intangible assets, patents and patent applications may be transferred.

→ A transfer of patent @ patent application can be the result of a financial transaction, such as an assignment, a merger, a takeover @ a demerger, or the result of an operation of law, such as in an inheritance process, @ in a bankruptcy.

TRADE SECRETSTrade Secret Law Introduction:-

The type of information that must be kept confidential in order to retain its competitive advantage is generally called a "Trade Secret".

⇒ A trade secret is any information that can be used in the operation of a business or other enterprise that is sufficiently valuable and secret to afford an actual or potential economic advantage over others.

⇒ A formula, a method of conducting business, customer list, a price list, marketing plans, financial projection, and a list of targets for a potential acquisition can all constitute trade secrets.

* Generally, to qualify for trade secret protection, information must:

- i) be valuable
- ii) Not be publicly known and
- iii) be the subject of reasonable efforts to maintain its secrecy.

⇒ If trade secrets were not legally protectable, companies would have no incentive for investing time money and effort in research and development that ultimately benefits the public.

at large.

⇒ Trade secrets law not only provides an incentive for companies to develop new methods and processes of doing business but also, by punishing wrongdoers, discourages improper conduct in the business environment.

The Law Governing Trade Secrets:-

⇒ Trademarks, copyrights, and patents are all subject to extensive federal statutory schemes for their protection, there is no federal law relating to trade secrets, and no registration is required to obtain trade secret protection.

⇒ Most trade secret law arises from common law principles namely, judge-made case law.

⇒ Trade secret means information, including a formula, pattern, compilation, program, device, method, technique or process that:

i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its use.

ii) It is the subject of efforts that are reasonable under the circumstance to maintain its secrecy.

Determination of Trade Secret Status:-

②

Restatement of torts lists six factors to be considered in determining whether information qualifies as a trade secret. Courts routinely examine these factors to determine whether a company's information constitutes a trade secret.

The extent to which the information is known outside the company:-

↳ Although information may be known to other outside the company and still qualify as a trade secret, the greater the number of people who know the information, the less likely it is to qualify as a trade secret.

↳ Secrecy need not be absolute.

The extent to which the information is known within the company

↳ Although an employee or company is permitted to disclose confidential information to those with a demonstrated "need to know" the information,

↳ If the information is widely known within the company especially among those who have no business need to know the information, it may not qualify as a trade secret.

The extent of the measures taken by the company to maintain the secrecy of the information:-

↳ One claiming trade secret protection must take reasonable precautions to protect the information.

↳ Courts are unlikely protect information a company has not bothered to protect.

↳ A company is not obligated to undertake extreme efforts to protect information, but reasonable precautions are required.

↳ Some Experts predict that courts will likely require advanced security measures to protect trade secrets transmitted via e-mail, including encryption and protocols to ensure confidentiality.

The extent of the value of the information to the company and its competitors:-

↳ Information has little value either to its owner or to the owner's competitors, it is less likely to qualify as a trade secret.

↳ Conversely, information that is valuable to a company such as the recipe for its key menu product, and that would be of great value to the company's competitors is more likely to be protectable trade secret.

The extent of the expenditure of time, effort, and money by the company in developing the information:-

↳ The greater the amount of time, effort, and money the company has expended in developing or acquiring the information the more likely it is to be held to be a protectable trade secret.

The extent of the ease or difficult with which the information
could be acquired or duplicated by others ②

↳ If information is easy to acquire or duplicate, it is likely to qualify a trade secret.

↳ Similarly if the information is readily ascertainable from observation or can be easily reproduced, it is likely it is likely to be a trade secret.

↳ On the otherhand, if it can be reverse engineered only with significant expenditures of time, effort, and money the product may retain its status as a trade secret.

Liability for misappropriation of trade secrets:-

Misappropriation of a trade secret occurs when a person possesses, discloses, or uses a trade secret owned by another without express or implied consent and when the person.

↳ It used improper means to gain knowledge of the trade secret.

↳ Knew or should have known that the trade secret was acquired by improper means!

↳ Knew or should have known that the trade secret was acquired under circumstances giving rise to duty to maintain its secrecy.

Thus, misappropriation occurs either when a trade secret is lawfully acquired but then improperly

Used by when the trade secret is acquired by improper means.

Absence of written agreements:

- ↳ A written agreement prohibiting misappropriation of trade secrets can be enforced through an action for breach of contract; a company's trade secrets can be protected against misappropriation even in the absence of any written agreement between the parties.
- ↳ A party owning trade secrets can bring an action in tort for breach of the duty of confidentiality, which duty can arise even without an express agreement.
- ↳ Court will impose a duty of loyalty, fidelity and responsibility to their employers.
- ↳ In fact, more trade secret cases are brought in tort for breach of confidentiality than in contract for breach of written agreements.

Misappropriation by Third Party:-

A number of other parties may also have liability for misappropriation of trade secrets if they know or should have known they were the recipients of protected information.

Example Assume Ramesh is employed by XYZ company. In course of time Mr. Ramesh learns valuable

trade secret information. If Mr. Ramesh resigns⁽⁴⁾ jobs and begins working for New company and is prohibited for both in using the information. He may not misappropriate the information because he was in an employee - employer relationship with XYZ company. New company should not use the information if Mr. Ramesh reveals, if it happen so, then XYZ Company would generally prefer to sue New Company in as much as it is for. Easier to have deep pockets, meaning it is more able to pay money damages than is an individual such as Ramesh.

→ If new company has no reason to know the information was secret at that Mr. Ramesh may not reveal it, new company would not have liability for such innocent use of the information. Similarly, if trade secret information were innocently obtained by new company by mistake, new company would have no liability for subsequent use or disclosure of the information.

Written agreements:-

employers are generally free to require Employee, independent contractors, and consultants to sign express agreements relating to the confidentiality of information. These agreements are usually enforced by courts as long as they are reasonable. The agreements usually include four specific topics:

- ↳ ownership of inventions
- ↳ Non-disclosure provisions
- ↳ Non-solicitation provisions
- ↳ Non-competition provisions
- ↳ purpose
- ↳ Reasonableness
- ↳ Consideration.

Protection for submission:-

submission to private parties:-

In many instances individuals wish to submit an idea for an invention, process, game or entertainment show to a company or business in the hope that the company or business in the hope that the company will market and develop the idea and the individual will be compensated for the idea.

- ↳ The solution to such a dilemma is for the "inventor" to submit the idea pursuant to an evaluation agreement or submission agreement, whereby the other party agrees to evaluate the idea only for the purpose of considering a future transaction between the parties and further agrees not to circumvent the submitter or to disclose the idea to others.

Submission to Government parties:-

- ↳ private companies that present bids to government agencies in the hope of obtaining a government contract

are often required to disclose confidential or trade secret information to the agency. ⑤

↳ Under freedom of information act (both at the state and federal levels), the proposal might later be released to any member of the public requesting the document, thus resulting in loss of confidential information to possible competitors

↳ The protected information is usually blocked out.

↳ If a government agency discloses trade secret information, the owner may have a cause of action for an unconstitutional taking of private property and may be awarded compensation if the owner had a reasonable expectation of confidentiality.

Remedies for misappropriation

A trade secret owner may request a variety of remedies from a court. Among them are the following:-

* Injunctive relief:-

In many cases, a trade secret owner is more interested in ensuring the defendant cease use of the trade secret than in recovering damages. In cases in which money damages are not sufficient to protect a trade secret owner, a court may issue an injunction. A court may also issue an injunction to compel the defendant to surrender or destroy trade secret information. In fact, courts may issue injunctions, to prevent inevitable

disclosure, reasoning that even if a former employer cannot show a particular secret has been taken, it is inevitable that key employees will eventually disclose what they know to a new employer:

⇒ Money damages:- A trade secret owner whose information has been misappropriated may recover money damages from the defendant. The plaintiff may recover its lost profits as well as the profits made by the defendant. Alternatively, the plaintiff may seek and recover a reasonable royalty arising from defendant's use of the trade secret. Punitive damages may also be awarded in cases in which the defendant's conduct is reckless, willful, and intentional. The UTSA provides that punitive damages not exceed more than twice the compensatory damages awarded.

⇒ Attorney's fees and costs:- In most cases, the parties bear their own attorney's fees and costs. The UTSA, however, provides that reasonable attorney's fees and costs may be awarded to the prevailing party if bad faith or willfulness is shown.

Trade Secret Litigation:-

⇒ If a trade secret is disclosed in violation of a written confidentiality agreement, and the parties cannot resolve the dispute themselves, an action for breach of contract may be brought, similar to any other breach of contract action.

⇒ The plaintiff may add other causes of action as well, for example, for misappropriation in violation of a state trade secret law. If no written agreement exists, the plaintiff must rely upon case law or state statutes protecting trade secrets, or both.

⇒ If grounds for federal jurisdiction exist (the parties have diverse citizenship and the claim exceeds \$75000), the action may be brought in federal court.

⇒ The UTSA [Uniform Trade Secrets Act] provides that an action for misappropriation must be brought within three years after misappropriation is discovered or reasonably should have been discovered.

⇒ In federal court, the action will be governed by the federal rules of civil procedure relating to federal civil actions generally.

⇒ Most states have rules relating to civil procedure that are modeled substantially after the federal rules of civil procedure and likewise govern the litigation.

⇒ If the defendant has a cause of action to assert against the plaintiff relating to the trade secret, it must be asserted by way of a counterclaim in the litigation so that all disputes between the parties relating to the information can be resolved at the same time.

⇒ Ultimately, if the matter cannot be resolved by private agreement it will proceed to trial. The trade secret owner must prove misappropriation by a preponderance of the evidence. Either party may request a jury trial, otherwise, a judge will render the decision. Appeals may follow.

⇒ Similarly, the owner's methods of protecting the information often must be disclosed so the fact-finder can determine whether the owner has taken reasonable measures to protect the alleged trade secrets.

⇒ The dilemma faced by trade secrets owner is that they must disclose the very information they seek to protect.

⇒ As Technology progresses and the value of certain communication and entertainment inventions increases, trade secret ~~litig.~~ litigation is becoming an increasingly common and high-stakes occupation.

Trade Secret Protection programs:-

Trade Secrets are legally fragile and may be lost by inadvertent disclosure or failure to reasonably protect them, Companies should implement trade secret protection programs to safeguard valuable information. Because trade secret protection can last indefinitely, because businesses should devote proper attention to the methods used to ensure confidentiality of information. Developing programs and measure to protect trade secrets

is an easy way to demonstrate to a court that an owner values its information and takes appropriate measures to maintain its secrecy.

physical protection:

There are a variety of tangible measures a company can implement to protect trade secrets, including the following:

- ⇒ Safe guarding information under lock and key;
- ⇒ Protecting the information from unauthorized access.
- ⇒ Prohibiting removal of protected information from the company premises or certain rooms.
- ⇒ Retaining adequate security during evening and weekends either through alarm systems or security services.
- ⇒ Ensuring tours of the company premises do not expose outsiders to valuable processes or information.
- ⇒ Using check-out lists when valuable equipment or information is removed from its normal location.
- ⇒ monitoring employees' use of e-mail and the internet to ensure confidential information is not being disseminated.
- ⇒ Using encryption technology and antivirus protection programs to protect information stored on computers.
- ⇒ Educate employees on trade secrets and protection of trade secrets.
- ⇒ Ensuring information retained on computers is available only on company networks so that access can be easily tracked.

Contractual protection:-

- ⇒ Another method of protecting trade secrets is by contract, namely, requiring those with access to the information to agree in writing not to disclose the information to others to use it to the owner's detriment.
- ⇒ Similarly, in Licensing arrangements, trade secret owners should ensure the license agreements contain sufficient protection for trade secret information.
- ⇒ Employers should use non-competition agreements to ensure former employees do not use material gained on the job to later compete against the employer.
- ⇒ With the advent of the internet and the increased ease of electronic communications, employers have become concerned about the loss of trade secrets through dissemination over the internet.

Contractual protection:-

Companies can also rely on other complementary methods of protection to safeguard trade secrets. Any material that qualifies for copyright protection should be protected by registration, at a minimum, by ensuring a copyright notice is placed on the material (s) document to afford notice to others of the owner's right and interest in the material.

Unfair competition:-

(3)

Introduction:-

The law of unfair competition is based upon the notion that individuals should be protected from deceptive (looking down) and improper conduct in the marketplace. The law of unfair competition is found in case law, in state statutes prohibiting unfair business practices, in specific federal statutes, and in regulations promulgated by the FTC (Federal Trade Commission), the federal regulatory agency charged with protecting consumers from unfair or deceptive acts and practices.

The law of unfair competition continues to evolve as new methods of conducting business arise, such as electronic offers and sales through telemarketing, television infomercials, and the internet. There are a number of theories and actions that can be used by injured parties to protect against unfair competition. In many instances, actions for unfair competition will be to provide a plaintiff a wide array of possible remedies.

⇒ most common types of unfair competitions are

1) passing 'off' occurs when one party attempts to pass off or sell his or her goods or services as those of another.

↳ misappropriation.

↳ Right of publicity.

↳ False Advertising.

Misappropriation:-

⇒ The doctrine of misappropriation first arose in *International News Service v. Associated Press*, in which the Supreme Court held that an unauthorized taking of another's property, in that case, news information, that it invested time and money in creating was actionable as misappropriation of property.

⇒ In *INS*, news information originally gathered by the Associated Press relating to World War I was pirated by International News Service (INS) and sold to its customers.

⇒ Because the news itself, a factual matter, could not be copyrighted, the plaintiff could not sue for copyright infringement.

⇒ Instead it alleged that its valuable property right had been taken or misappropriated by the defendant.

Right of publicity:-

⇒ The right of publicity gives individuals, not merely celebrities, the right to control commercial use of their identities or personas.

⇒ The right of publicity protects a commercial interest, the vast majority of cases involve celebrities inasmuch as they can readily show economic harm when their names, photographs, or identities are used to sell products or suggest a sponsorship of ~~merchandise~~ merchandise.

- ⇒ publicity rights are governed by state law. ⑨
- ⇒ The right of publicity has evolved from the right of privacy which protected against unreasonable invasions upon another person's solitude and provided remedies for the disclosure of private information.
- ⇒ The right of publicity allows individuals to protect the marketability of their identities and punishes those who would unjustly enrich themselves by appropriating another's name for profit-making purposes.
- ⇒ Courts have articulated a number of reasons for upholding an individual's right to publicity, including the need to protect against confusion that would arise if consumers were led to believe individuals sponsor or approve products when they do not, the need to incentivize performers who provide entertainment and benefit society and should thus be provided with a protectable proper right in their identities.
- ⇒ The right of publicity does not apply to non-commercial uses: Using another's name, likeness, or identity for news reporting, scholarship, or research is permissible.

New Developments in the right of publicity:

- ⇒ As in common with intellectual property rights in today's society, some of the new issues relating to the rights of publicity stem from increasing technological advances.
- ⇒ Without prior permission one should not appear in the digital technology used movie.
- ⇒ The International Trademark Association has proposed

amending the U.S. trademark act to create a federal right of publicity with postmortem rights (although such rights would be limited to some specific period of duration after death.

⇒ Thus, in some instances, federal copyright law may control a plaintiff's rights, while in other instances; only the right to publicity will provide protection.

⇒ California recently passed the Astaire Celebrity Image Protection Act to allow heirs of celebrities to block commercial uses of deceased celebrities' likenesses while allowing a "safe harbor exemption" to artistic uses, such as the digital insertion of President Kennedy's image into the movie *Forrest Gump*, or uses for news, public affairs, and so forth.

False advertising:

⇒ In 1943, the federal trademark law, the Lanham Act, was passed.

⇒ Section 43(a) of the act prohibited false designations of origin, namely, descriptions or representations tending falsely to describe or represent goods or services.

⇒ It was not an effective vehicle to use when a party made misrepresentations relating to the nature or quality of goods or services.

⇒ Moreover, until the passage of the Lanham Act, plaintiffs, an element that was often difficult to demonstrate.

⇒ Although the individual states enacted statutes prohibiting false advertising, these statutes varied from state to state and were often ineffective to prohibit false advertising that was national in scope.

→ The expansive language of section 43 of the Lanham Act, however, soon began to be used to protect not only against unregistered trademarks but also against nearly all forms of false advertising.

⇒ In 1989 Congress Amended the Lanham Act and broadened the scope of section 43 for infringement of trademarks and Trade dress, while the other portion of the statute allows the assertion of claims for false advertising and trade libel.

International protection against unfair Competition:-

⇒ The United States has assumed certain obligations under international agreements in the area of unfair Competition, chiefly under the Paris Convention.

→ The Paris Convention seeks to afford citizens of each of the more than 160 member nation's protection against unfair competition and trademark infringement and requires that member nations provide the same level of protection against competition to citizens of other member nations as they do for their own citizens.

⇒ The Paris Convention expressly prohibits acts that create confusion by any means with a competitor, false allegations

that discredit a competitor, and indications that mislead the public in regard to the nature & characteristics of goods.

⇒ The Lanham act implements the Paris Convention and expressly provides that any person whose country of origin is a party to any Convention or Treaty relating to the suppression of unfair competition, to which the United States is also a party, is entitled to effective protection against unfair competition.

NEW DEVELOPMENTS OF INTELLECTUAL PROPERTY

New Development in trademark law:-

The internet:- Trademark owners throughout the world are struggling with new issues presented by increased electronic communication, primarily that occurring through the internet.

⇒ The internet derives from a network setup in the 1970's by the Department of defense to connect military and research sites that could continue to communicate even in the event of nuclear attack.

Assignment of Domain names:-

⇒ A company's presence on the internet begins with its address
 (1) domain name not only serves as a locator for a company but also functions as a designation of origin and a symbol of goodwill - a trademark.

⇒ There are two portions to a domain name: the generic top-level domain, which is the portion of the name to the right of a period (such as .gov or .com) and the secondary level domain which is the portion of the name to the left of a period (such as "Kraft" in Kraft.com).

Internet Corporation for assigned Names and Numbers (ICANN):

- * To help resolve the problems in the domain names registration and use process.
- * The government created the ICANN.
- * It is a nonprofit corporation.
- * It is governed by a board of directors elected in part by various members of the internet community.
- * ICANN are authorized to register domain names ending with .com, .org and .net.
- * Registrations usually lasts one year, at which time they can be removed or will expire.
- * ICANN recently added seven new top-level domains, including .biz and .info.

Protecting a domain name:-

People register well-known marks as domain names to prey on consumer confusion by misusing the domain name to direct customers from the legitimate mark owner's site. This practice is commonly called cybersquatting.

- * There are three approaches for against cybersquatter.
 - ↳ An action can be brought under federal trademark dilution Act.

②
⇒ A civil suit can be instituted under the recent Anticybersquatting Consumer Protection Act.

⇒ An arbitration proceeding can be instituted through ICANN disputes resolutions process.

New Development in Copyright Law

⇒ while acknowledging that clothing is a useful article and thus not subject to copyright protection, New York court ruled that lace design, copyrighted as writing and incorporated into wedding dresses, were protectable and enjoined another maker of wedding dresses from making or marketing copies. Similarly, detailed Embroiders,

⇒ Federal court in California recently held that while type fonts themselves are not protectable under copyright law, a software program that generated and created the typefaces was protectable.

⇒ The electronic signatures in global and national Commerce Act, making digital execution, called e-signatures, as legally binding as their paper counterparts.

⇒ The copyright office has recommended that congress amend section 110 of the Copyright Act to grant educators the right to transmit copyrighted works for distance learning if certain

Conditions are met. ~~of plants and animals that are~~

New Development in patent law:-

The patent act has proven remarkably flexible in accommodating changes and development in technology. Thus, advancement in technology generally has not necessitated changes in the statutory changes in the statute governing patent protection.

Business method and software patent:-

Many of the cutting-edge issues in patent law related to patents for computer software. For several years, the conventional wisdom has been that unless a computer program had sufficient commercial value and application patent protection was often counterproductive or ineffective in that the PTO often took two years to issue a patent, roughly the same time it took for the software program to become obsolete.

Biotechnology patent:-

Medicines, Science, agricultural and pharmacology present the other cutting-edge issues in patent law. Research into genes may hold the key to curing disease throughout the world.

→ Agricultural research may hold the key to providing sufficient food for the world's ever increasing population.

The Development of strains of plants and crops that are resistant to drought and disease has also led to an increasing number of patents issued, and attendant litigation.

American Inventors Protection Act of 1999 [AIPA]:

The AIPA was signed into law in 1999 and represents the most significant changes to patent law in twenty years. Although some of the provisions of AIPA have been discussed earlier, its key subtitles are as follows

- 1) Inventor's Right Act.
- 2) The first Inventor Defense Act.
- 3) The patent term guarantee Act.
- 4) domestic publication of foreign filed patent applications.
- 5) The optional Inter parts re-examination procedure Act.

Introduction of International patent protection:-

The rights granted by a U.S. Patent extend only throughout the U.S and have no effect in a foreign country. Therefore, an inventor who desires patent protection in other countries must apply for a patent in each of the other countries or in regional patent office.

- i) Paris Convention.
- ii) European patent organization
- iii) Agreement on Trade-Related Aspects of IPR.

iv) Patent Law Treaty.

v) Foreign Filing Licences.

vi) Applications for United States patents by Foreign applicants.

The European patent organization:-

The European patent organization [EPO] was founded in 1973 to provide a uniform patent system in Europe. A European patent can be obtained by filing a single application with EPO headquartered in Munich.

⇒ Once granted, the patent is valid in any of the EPO countries designated in the application and has the same force as patent granted in any one of the contracting nations.

Intellectual property Audits:-

Many companies believe that copyright extends only to important literary works and therefore fail to secure protection for their marketing or other written materials. Similarly, companies often fail to implement measures to ensure valuable trade secrets maintain their protectability. Because clients are often unaware of the great potential and value of this property, law firms often offer their clients an intellectual property audit to uncover a company's protectable intellectual property. The IP audit is analogous to the accounting audit most companies conduct on an annual basis to review their

financial status.

(4)

Another type of IP investigation is usually conducted when a company acquires another entity. At that time, a thorough investigation should be conducted of the intellectual property of the target company to ensure the acquiring company will contain the benefits of what it is paying for and will not inherit infringement suits and other problems stemming from the target's failure to protect its IP. This type of IP investigation is generally called a due diligence review inasmuch as the acquiring company and its counsel have an obligation to duly and diligently investigate the target's assets.

Conducting the audit:-

- ⇒ The first step in the audit should be a face to face meeting of the legal team and company managers.
- ⇒ The legal team should make a brief presentation on what intellectual property is, why it is important to the company, why and how the audit will be conducted.
- ⇒ Managers will be more likely to co-operate if they fully understand the importance of the audit.
- ⇒ Obtaining this kind of "buy-in" from the client's managers and employees will speed the audit and reduce costs.

⇒ Moreover, education about the importance of intellectual property helps ensure that managers consider ways to further protect a company's valuable assets and remain alert to possible infringements of the company's intellectual capital on infringements by the computer of other's right.

⇒ Finally, having, outside counsel involved in the process will ensure that communications related to the audit are protected by the attorney-client privilege.

→ Once the company's managers have been advised of need for the audit, the legal team should provide a worksheet a) questionnaire to the company specifying the type of information that the firm is looking for so that company files can be reviewed and materials assembled for inspection by the firm and its representatives.