



Intellectual Property law

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Prepared By: MD QURSHEED ALI (B.Tech,LL.B)



Hi!

The *real* measure of your *wealth* is how much you'd be *worth* if you lost all your *money*.



PART-A

Short Answers

Industrial Designs

Industrial Designs are protected under the **Designs Act, 2000**, which repealed and replaced the earlier **Designs Act, 1911**. This Act provides the legal framework for the protection of industrial designs in India, ensuring exclusive rights to creators for their innovative designs.

Definition of Industrial Design: As per **Section 2(d) of the Designs Act, 2000**, an industrial design refers to:

- Features of shape, configuration, pattern, ornamentation, or composition of lines or colors applied to any article,
- Whether in two-dimensional or three-dimensional form,
- By any industrial process or means, whether manual, mechanical, or chemical,
- Which are judged solely by the eye.

This definition excludes designs that are:

1. **Purely functional** or dictated solely by the function the article performs.
2. **Modes or principles of construction.**
3. Not **new or original.**
4. **Obscene or contrary to public order or morality.**

Objective of Protecting Industrial Designs: The protection of industrial designs serves several purposes:

1. Encourages innovation by securing exclusive rights to designers.
2. Prevents unauthorized copying or imitation.
3. Enhances commercial value and competitiveness.
4. Contributes to the aesthetic appeal and marketability of products.

Requirements for Registration of a Design: For an industrial design to be registered under the Designs Act, 2000, it must fulfill the following criteria:

1. **Novelty and Originality:** The design should not have been published in India or any other country before the date of application.
2. **Applicability to Articles:** The design must be applicable to an article by an industrial process.
3. **Visual Appeal:** The design must be capable of being judged solely by the eye.
4. **Non-Functionality:** The design should not be functional but aesthetic.

Process of Registration: The registration process involves the following steps:

1. **Application:** Filed with the Controller of Designs in prescribed Form 1 along with the required fees.
2. **Examination:** The application is examined for compliance with the statutory requirements.
3. **Publication:** If approved, the design is published in the Design Journal.
4. **Grant of Certificate:** Upon acceptance, the design is registered, and a certificate of registration is issued.

Conclusion: The protection of industrial designs is crucial in fostering creativity and encouraging investment in innovative design processes. The Designs Act, 2000, ensures a robust legal framework to protect the aesthetic and non-functional features of products, thereby contributing to the growth of industries and markets in India.



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Geographical Indications.

Geographical Indications (GIs) are a type of intellectual property that identifies goods as originating from a specific geographical location, where the quality, reputation, or other characteristics of the goods are essentially attributable to their geographical origin. GIs are protected in India under the **Geographical Indications of Goods (Registration and Protection) Act, 1999** (GI Act).

Definition of Geographical Indications

As per **Section 2(1)(e) of the GI Act**, a Geographical Indication is:

- A mark used to identify agricultural, natural, or manufactured goods as originating from a specific territory, region, or locality.
- The quality, reputation, or distinctiveness of the goods must be attributable to their geographical origin.

Purpose of Protecting GIs

1. **Economic Development:** Promotes the economic well-being of producers in specific regions.
2. **Cultural Preservation:** Protects traditional knowledge and cultural heritage.
3. **Consumer Protection:** Ensures consumers receive authentic products of specific quality.
4. **Prevention of Misuse:** Prevents unauthorized use or misrepresentation of GIs.

Examples of Registered GIs in India: India has a rich heritage of GIs, including:

- **Agricultural Products:** Darjeeling Tea, Alphonso Mangoes, Basmati Rice.
- **Handicrafts:** Pashmina Shawls, Mysore Silk, Kanchipuram Sarees.

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- **Manufactured Goods:** Feni (Goa), Channapatna Toys.

Term of Protection: As per **Section 18**, the registration of a GI is valid for an initial period of **10 years**, renewable indefinitely in increments of 10 years.

Infringement and Remedies: Infringement occurs when a GI is used without authorization in a manner that misleads consumers.

1. **Civil Remedies:**

- Injunction to stop misuse.
- Damages or account of profits.
- Delivery of infringing goods.

2. **Criminal Penalties:**

- Imprisonment (6 months to 3 years) and/or fines (₹50,000 to ₹2,00,000) as per **Section 39**.

Conclusion: Geographical Indications play a pivotal role in safeguarding the identity and reputation of region-specific goods. The GI Act, 1999, not only protects India's rich cultural and geographical heritage but also fosters economic growth for local communities, ensuring the authenticity and quality of products in domestic and international markets.

Patent Co-operation Treaty.

The **Patent Cooperation Treaty (PCT)** is an international treaty administered by the **World Intellectual Property Organization (WIPO)**. It facilitates the filing of patent applications in multiple countries through a unified procedure, simplifying the process for applicants seeking protection in several jurisdictions. India is a contracting state to the PCT, which aligns with its commitments under the **Paris Convention for the Protection of Industrial Property**.

Key Features of the PCT

1. **Single International Application:** Under the PCT, applicants can file a single **international patent application** in one language, which has the effect of a regular national application in multiple designated countries.

2. **Filing Authority:** In India, the PCT application can be filed through the **Indian Patent Office**, acting as a Receiving Office for WIPO.

3. **Two Phases of the PCT Process**

a. **International Phase:**

- Filing of the international application.
- Conduct of an **International Search Report (ISR)** to identify prior art.
- Optional **International Preliminary Examination (IPE)** for assessing patentability.
- Publication of the application in the WIPO **Patentscope** database.

b. National Phase: The application enters the national phase in each designated country, where it is examined according to the local laws.

Role of PCT in India

1. Filing a PCT Application

- Indian residents can file a PCT application with the **Indian Patent Office** or directly with WIPO.
- The application must comply with the requirements of the **Patents Act, 1970**, and the **PCT Regulations**.

2. National Phase Entry in India

- As per **Section 7(1A) of the Patents Act, 1970**, a PCT applicant must enter the national phase within **31 months** from the priority date.
- The Indian Patent Office examines the application under the **first-to-file system**.

Advantages of PCT for Indian Applicants

1. **Global Market Access:** Facilitates entry into foreign markets.
2. **Cost Efficiency:** Reduces the initial financial burden.
3. **Strategic Planning:** Allows applicants to evaluate commercial potential before entering national phases.

Conclusion: The Patent Cooperation Treaty is a vital tool for Indian innovators and businesses aiming for international patent protection. By streamlining the filing process, providing extensive search and examination reports, and delaying significant costs, the PCT empowers applicants to strategically protect their inventions globally while complying with Indian and international patent laws.

Author's special rights and Moral Rights of an author.

In the realm of intellectual property law, the **Copyright Act, 1957** in India governs the rights of authors over their works. Among these, the author's special rights and moral rights are particularly significant as they go beyond mere economic considerations, focusing on the personal and dignitary relationship between the author and their creation.

1. Author's Special Rights

The **special rights of an author** are provided under **Section 57 of the Copyright Act, 1957**. These rights are available to the author of a literary, dramatic, musical, or artistic work, regardless of whether the copyright in the work subsists or has been assigned.

Scope of Special Rights: Special rights include the following:

1. **Right of Attribution (Paternity Right):**
 - The right of the author to claim authorship of their work.
 - It ensures the author is credited for their creation.

2. Right to Integrity (Right to Prevent Distortion):

- The right to prevent any distortion, mutilation, modification, or other acts that would be prejudicial to the author's honor or reputation.
- This includes the protection of the work from misuse or inappropriate alteration.

Nature of Special Rights

- These rights are **personal to the author** and can be exercised independently of the copyright owner.
- They are **inalienable and non-transferable**, though they can pass to the legal heirs upon the author's death.

2. Moral Rights of an Author: Moral rights are a subset of the author's special rights and stem from the notion that creative works are an extension of the author's personality. They are enshrined in **Section 57 of the Copyright Act, 1957**, and are recognized internationally under **Article 6bis of the Berne Convention**.

Components of Moral Rights

1. Right of Attribution:

- This overlaps with the special right to claim authorship.

2. Right to Integrity:

- The right to protect the integrity of the work from alterations, distortions, or derogatory treatment.
- It prevents harm to the author's reputation arising from misuse or misrepresentation of their work.

Distinction from Copyright

- Moral rights are independent of economic rights in the work.
- They cannot be assigned or waived, reinforcing the author's connection to their creation.

Conclusion: The author's special rights and moral rights play a critical role in protecting the personal and reputational interests of creators. By ensuring attribution and integrity, these rights not only safeguard the author's legacy but also uphold the ethical standards of intellectual property law. The recognition and enforcement of these rights under the **Copyright Act, 1957**, reflect India's commitment to the protection of creative expressions in accordance with global standards like the Berne Convention.

Infringement of copyright in films.

Copyright infringement in films occurs when the exclusive rights of the copyright holder, as provided under the **Copyright Act, 1957**, are violated without their authorization. Films, categorized as **cinematograph works** under the Act, enjoy copyright protection for a period of **60 years** from the year of publication.

Exclusive Rights of the Copyright Holder in Films: As per **Section 14(d)** of the Copyright Act, the copyright owner of a cinematograph film has the exclusive rights to:

1. **Make copies of the film** (reproduction in any material form, including storage in electronic media).
2. **Sell or distribute copies** of the film by any mode, including rentals.
3. **Publicly exhibit the film**, including broadcasting it.
4. **Make adaptations** or derivative works based on the film.

Forms of Copyright Infringement in Films

1. Unauthorized Reproduction

- Making and distributing pirated copies of a film in physical formats (e.g., DVDs, CDs) or digital formats (e.g., torrents, illegal downloads).
- Example: Piracy of newly released movies on websites or street markets.

2. Unauthorized Public Exhibition

- Screening a film in public places, such as community halls, without a valid license.
- Example: Cable operators broadcasting a movie without authorization.

3. Online Piracy

- Streaming or downloading films from unauthorized websites or platforms.
- Example: Uploading films on platforms like YouTube or torrent sites without the copyright holder's consent.

4. Adaptation Without Permission

- Creating derivative works, such as remakes, sequels, or spin-offs, without obtaining proper licenses.
- Example: Adapting a copyrighted Bollywood movie into a regional language film without authorization.

5. Unauthorized Broadcasting

- Broadcasting a film on television or radio channels without obtaining a license from the copyright holder.

Doctrine of Fair Use: Provides exceptions to copyright infringement for purposes such as education, research, criticism, and news reporting.

Maxim: "Ignorantia juris non excusat" – Ignorance of the law is no excuse; individuals involved in piracy cannot claim ignorance as a defense.

Conclusion: Copyright infringement in films not only harms the economic interests of producers and creators but also undermines the integrity of the entertainment industry. With strict legal provisions, technological advancements, and enforcement mechanisms, combating infringement and piracy is crucial to fostering creativity and ensuring the sustainable growth of the film industry in India.

Property Mark.

A **property mark** refers to a distinctive mark or symbol used to indicate the ownership of movable property, particularly when such property is associated with a business or trade. In the context of intellectual property laws in India, a property mark is specifically mentioned under the **Indian Penal Code, 1860 (IPC)** in relation to offenses involving false marks and counterfeiting.

Legal Definition: Under **Section 479 of the IPC**, a property mark is defined as a mark used to indicate that certain movable property belongs to a specific person.

Purpose of a Property Mark

1. **Ownership Identification:** It establishes the identity of the owner of a particular movable property.
2. **Prevention of Theft or Misuse:** Acts as a deterrent against unauthorized use or theft.
3. **Commercial Utility:** Used in trade to distinguish goods or equipment belonging to one entity from another.

Difference Between Property Mark and Trademark

- **Property Mark:** Used to indicate ownership of movable property and protect physical property.
- **Trademark:** Protects brand identity by distinguishing goods and services in the market. Governed by the **Trade Marks Act, 1999**.

Relevant Provisions Under the Indian Penal Code, 1860

1. Section 479:

- Defines property marks and their use in relation to movable property.

2. Section 482: Punishment for Using a False Property Mark

- Any person using a false property mark is liable for punishment.
- **Penalty:** Imprisonment up to **1 year**, or fine, or both.

3. Section 483: Counterfeiting a Property Mark

- Counterfeiting a property mark or imitating it with intent to deceive is a punishable offense.
- **Penalty:** Imprisonment up to **2 years**, or fine, or both.

4. Section 485: Possession of Instruments for Counterfeiting Property Marks

- Holding machinery or tools intended for counterfeiting property marks is a criminal offense.
- **Penalty:** Imprisonment up to **2 years**, or fine, or both.

Examples of Property Marks

1. The logo or emblem engraved on machinery or tools used in manufacturing.
2. Marks stamped on equipment used by a logistics company.
3. Symbols used to mark government property, such as railway equipment or defense supplies.

Conclusion: The concept of a property mark underscores the importance of ownership rights over movable property. Protected under the **Indian Penal Code, 1860**, property marks help safeguard assets and deter fraudulent activities such as theft or counterfeiting. While distinct from trademarks, property marks serve a vital role in both personal and commercial contexts.



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Characteristics of Design.

In the context of **intellectual property law**, particularly under the **Designs Act, 2000**, a design refers to the features of shape, configuration, pattern, ornament, or composition of lines or colors applied to any article. The characteristics of a design determine its eligibility for protection and its utility in the marketplace.

Key Characteristics of a Design

1. Novelty and Originality

- The design must be **new** or **original** and not previously published or used in any country before the date of filing for registration.
- It should not be a mere reproduction or imitation of an existing design.

2. Applicability to an Article

- The design must be applied to an **article** by an industrial process.
- It must be visible and appeal to the eye when applied to the article.

3. Visual Appeal

- A design is primarily judged based on its **aesthetic appearance** and not its functional value.
- The design must add to the ornamental or decorative value of the article.

4. Non-Functionality

- The design should not be dictated solely by the **function** of the article.
- Example: The shape of a screw thread cannot be registered as a design, as it is purely functional.

5. Uniqueness: The design must be **distinctive** and capable of distinguishing the article to which it is applied from others.

6. Industrial Applicability: The design must be capable of being **produced and applied** to an article in large quantities through an industrial process.

7. Exclusion of Certain Features: Features that are **obscene, immoral**, or contrary to public order cannot be registered. Designs that include trademarks, property marks, or artistic works protected under copyright are also excluded.

Conclusion: The characteristics of a design are central to its eligibility for protection under the **Designs Act, 2000**. These characteristics ensure that designs contribute to the ornamental value of articles while encouraging creativity and innovation in industries. By meeting the legal criteria, a design gains the protection needed to prevent unauthorized copying or imitation.

Right to Secrecy.

The **right to secrecy** refers to the legal protection granted to confidential information, trade secrets, or proprietary data, especially when such information is of commercial value. In the context of intellectual property law, this right ensures that the holder of certain confidential information can prevent unauthorized disclosure, use, or exploitation of that information. The right to secrecy is crucial in protecting business interests, innovations, and trade secrets.

Legal Basis of the Right to Secrecy: While the Indian Copyright Act, 1957, the Patents Act, 1970, and other laws don't directly provide for a "right to secrecy," the protection of confidential and proprietary information is primarily governed by the Law of Contracts, Trade Secrets, and Employment Laws.

1. Trade Secrets Protection

- **Trade secrets** are a form of confidential information, such as business strategies, formulas, methods, or processes that are not publicly known and give the holder a competitive advantage.
- India does not have a standalone law for **trade secrets**, but **common law principles** and **contract law** provide protection to these secrets.

2. Contractual Agreements and Non-Disclosure Agreements (NDAs)

- Companies often enter into **Non-Disclosure Agreements (NDAs)** or **Confidentiality Agreements** to protect trade secrets and proprietary information.
- These agreements legally bind parties to maintain confidentiality and prohibit the sharing of sensitive information without authorization.

Legal Framework for Protecting the Right to Secrecy in India

1. Indian Contract Act, 1872

- Under the **Indian Contract Act**, a party may be legally bound by a **confidentiality clause** in a contract, which prevents the disclosure of certain information.

- **Section 27** of the Indian Contract Act imposes restrictions on the transfer of knowledge gained during employment or a contract relationship, thereby protecting secrecy.

2. Indian Penal Code (IPC)

- **Section 405 (Criminal Breach of Trust):** Imposes liability for the breach of trust, including the unauthorized disclosure of confidential information.
- **Section 409 (Criminal Breach of Trust by a Public Servant):** Deals with offenses related to the disclosure of secrets by individuals in positions of trust, such as employees or government officials.

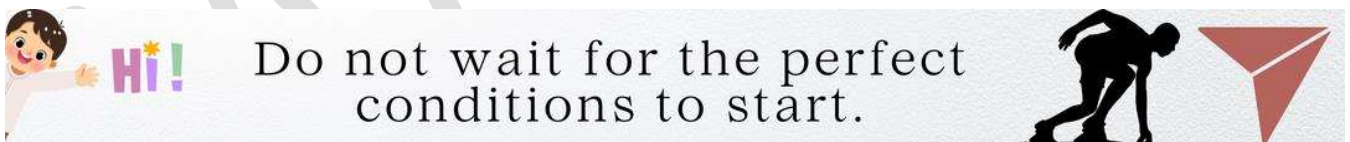
3. The Information Technology Act, 2000

- **Section 72** of the **Information Technology Act** criminalizes the disclosure of personal data or confidential information by a person in possession of such information, like an intermediary or an employee.
- This applies to both the private and public sectors, ensuring that individuals cannot misuse confidential information in their possession.

4. The Patents Act, 1970

- Under the **Patents Act**, when a patent is filed, the applicant may choose not to disclose the entire details of the invention, and such a right to secrecy exists for the **confidentiality of the invention** until it is publicly disclosed upon granting of the patent.
- The **Patent Cooperation Treaty (PCT)** and international patent laws also emphasize the protection of secrecy before patent applications are published.

Conclusion: The right to secrecy is an essential legal concept for protecting confidential information, especially in commercial and business settings. It ensures that individuals and companies can maintain the integrity and competitiveness of their proprietary information. The protection of this right is rooted in contract law, employment law, and intellectual property law, offering both civil and criminal remedies in case of unauthorized disclosure.



Trademarks and Prior User under Trademark Law.

In Indian trademark law, the concept of **prior user** plays a crucial role in determining the ownership of a trademark, especially when multiple parties claim rights to the same or similar trademarks. The **Trade Marks Act, 1999**, which governs trademark registration and enforcement in India, provides specific provisions related to the **prior use** of trademarks. Understanding the interplay between trademark registration and the prior use principle is essential for businesses and individuals involved in intellectual property protection.

The **prior user** of a trademark refers to the party that has used the trademark in commerce before another party, even if the other party has a later registration of the same or similar mark. The principle of prior use ensures that a person or entity that has been using a trademark in business or commerce before its registration has certain rights to that mark, even if they haven't formally registered it.

Legal Provisions Under the Trade Marks Act, 1999

1. Section 34: Effect of Registration

- **Section 34** of the **Trade Marks Act, 1999**, establishes that the registration of a trademark does not give exclusive rights if another person can prove that they have been using the trademark **prior to the registration**.
- The section specifically states that if a registered trademark is disputed on the grounds of prior use by another party, the registration may be contested if the **prior user** can prove continuous use of the mark before the applicant's registration date.

2. Section 33: Use of Trademark as a Defense

- Under **Section 33**, the **prior user** of a trademark has the right to defend their use of the trademark against a party that has a later registration. The prior user can show that the mark has been used in the course of trade before the applicant's mark was registered.

Principle of Prior Use in Trademark Law

1. Priority Based on Use

- Trademark law in India operates on a **first-to-use** basis, not merely a **first-to-file** basis. This means that the **earliest use** of the trademark in the market grants the user rights to it, even if another party later registers the same or a similar mark.
- The **first user** is given priority over the **first registrant**, provided they can prove they have been using the mark before the date of registration by the other party.

2. Burden of Proof

- The burden of proving prior use rests with the **prior user**. Evidence of use in commerce, such as invoices, advertising material, and proof of sales, is critical in establishing prior use.
- Continuous and bona fide use of the trademark for business purposes strengthens the case for prior use.

Conclusion: In Indian trademark law, the principle of **prior use** holds significant importance in determining the rights to a trademark. The **first user** of a trademark, who can prove continuous use in commerce, has stronger legal rights to the trademark, even if another party has a later registration. This concept serves to protect the interests of businesses that have invested in building their brands over time, ensuring that their trademarks remain exclusive to them. The **Trade Marks Act, 1999** provides the legal framework for asserting and defending the right to secrecy in the context of trademarks.

Plant Varieties Protection OR New Plant Variety Right

Plant Varieties Protection refers to the legal framework designed to safeguard new varieties of plants by granting intellectual property rights to the breeders of new plant varieties. In India, plant variety protection is governed by the **Protection of Plant Varieties and Farmers' Rights Act, 2001** (PPV&FR Act), which aims to provide legal protection to plant breeders, farmers, and researchers for their contribution to the development of new plant varieties. The Act also ensures the rights of farmers to save, use, exchange, and sell their farm-saved seeds.

Legal Framework for Plant Varieties Protection

1. Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPV&FR Act)

The **PPV&FR Act, 2001**, was enacted to fulfill India's obligations under the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**. The Act aims to:

- Protect the rights of **plant breeders** and **farmers**.
- Facilitate the development of new plant varieties by providing a **legal framework** for the protection of intellectual property rights over plant varieties.
- Recognize and protect the traditional knowledge and rights of farmers over the varieties they have developed or maintained.

Key Features of the PPV&FR Act

1. Definition of Plant Variety

A **plant variety** is defined under the Act as a group of plants that share common traits, and it must meet the criteria of distinctiveness, uniformity, and stability (DUS criteria).

- **Distinctiveness:** The plant variety should differ from known varieties in at least one characteristic.
- **Uniformity:** The plant variety must be consistent in its characteristics when propagated.
- **Stability:** The plant variety should retain its distinctive features over successive generations.

2. Plant Variety Protection

- The **PPV&FR Act** provides protection for **new plant varieties**, which are developed through breeding, selection, or other innovative techniques. The protection is available for a variety of plant species, including agricultural, horticultural, and forestry plants.
- The rights granted to the breeder or applicant are akin to a **patent** but are specific to plant varieties.

3. Categories of Protected Varieties

- **New Varieties:** A variety that has been created or discovered and is new, distinct, uniform, and stable.
- **Essentially Derived Varieties:** Varieties that are derived from an existing variety but have distinct characteristics.
- **Farmer's Varieties:** Varieties developed and preserved by farmers over generations, recognizing their traditional knowledge and contributions to plant diversity.

- **Wild Relatives and Landraces:** Wild species and traditional varieties that have evolved naturally or been conserved by farmers.

Conclusion: The **Protection of Plant Varieties and Farmers' Rights Act, 2001** provides a comprehensive legal framework for the protection of plant breeders' rights in India. It aims to foster innovation in the agricultural sector by providing breeders with exclusive rights while balancing the rights of farmers to maintain their traditional agricultural practices. While the Act has made significant strides in protecting plant varieties, challenges remain in achieving an equitable balance between the interests of breeders, farmers, and the public at large.

Literary Property.

Literary Property refers to the rights and ownership over literary works, which can include books, articles, poetry, and other written forms of expression. The concept of literary property is closely linked with **copyright**, a form of **intellectual property** that grants authors and creators exclusive rights to their works. In India, **literary property** is primarily governed by the **Copyright Act, 1957**, which provides legal protection to the creators of original literary, dramatic, musical, and artistic works.

Legal Framework for Literary Property

1. Copyright Act, 1957

The **Copyright Act, 1957**, is the main statute governing **literary property** in India. The Act provides protection to authors of literary works, ensuring that their creative expression is not reproduced or exploited without their consent. It establishes the legal rights of authors, provides remedies for infringement, and offers guidelines for licensing and assignment of rights.

Key Features of Literary Property Protection

1. Definition of Literary Work

Under the **Copyright Act, 1957**, a **literary work** is broadly defined to include:

- Books, articles, and other written works.
- Computer programs and software.
- Lectures, speeches, and sermons.
- Dramatic works, which involve dialogue or script.

Section 2(o) of the Copyright Act defines **literary works** as “a work, not being a dramatic or musical work, that is written, or a work that is written and can be read.”

Important Points:

- Literary works do not necessarily have to be published; the mere creation of the work in a tangible medium grants copyright protection.
- **Computer programs** are also included under literary works, as they are essentially a written script.

Rights Associated with Literary Property: The copyright granted to authors under the **Copyright Act, 1957** provides both **economic** and **moral** rights to the creators of literary works.

Conclusion: **Literary Property** in India is primarily protected under the **Copyright Act, 1957**, which provides authors with both **economic and moral rights** over their works. These rights allow authors to control the use of their literary works and protect their reputation. The Act also provides remedies in case of infringement and allows for the assignment and licensing of rights. In the modern digital age, literary property faces challenges such as piracy and unauthorized distribution, making it essential for authors and publishers to understand the nuances of copyright protection and enforcement. The evolution of intellectual property law continues to shape the protection of literary works, ensuring that authors are incentivized to create and innovate.

Neighbouring Rights.

Neighbouring Rights (also known as Related Rights) are rights granted to those who contribute to the production and dissemination of creative works, but who are not the original creators of the works themselves. These rights are closely linked to copyright, but they are distinct from the rights of authors of literary, artistic, or musical works. Neighbouring rights primarily protect the interests of performers, producers of sound recordings, and broadcasting organizations. In India, the protection of neighbouring rights is governed by the Copyright Act, 1957, specifically through amendments made to the Act in 1994 and 2012 to bring it in line with international treaties such as the Berne Convention and the WIPO Performances and Phonograms Treaty (WPPT).

Legal Framework for Neighbouring Rights in India

Neighbouring rights are dealt with under Chapter VI of the Copyright Act, 1957, which was introduced by the Copyright (Amendment) Act, 1994. The provisions of this Chapter provide for the protection of rights of performers, producers of sound recordings, and broadcasting organizations.

Key Categories of Neighbouring Rights

1. Rights of Performers

A **performer** is an individual who acts, sings, reads, recites, or performs in any other manner in a work, such as:

- **Actors** in films or plays.
- **Musicians** and **singers**.
- **Dancers** and **other live performers**.

Under **Section 38** of the Copyright Act, performers are granted certain rights over their performances, which include:

2. Rights of Producers of Sound Recordings

A **producer of sound recordings** refers to the person or organization that **fixes** the sounds of a performance or other sounds in a recording. This can include:

- **Music producers.**
- **Recording companies.**
- **Film production houses.**

Under **Section 37** of the Copyright Act, the producer of a sound recording enjoys the following neighbouring rights:

These rights protect the financial interests of the producers who invest in the creation of sound recordings by allowing them to control the use and distribution of the recordings.

3. Rights of Broadcasting Organizations

Broadcasting organizations include television and radio stations that transmit content, such as news, entertainment programs, or sports events. Under **Section 37A** of the Copyright Act, broadcasting organizations are granted neighbouring rights over their broadcasts, which include:

This protection is particularly important for broadcasters who invest significant resources in creating and airing original content. Broadcasting rights extend to both **terrestrial** and **satellite** broadcasts.

Duration of Neighbouring Rights: Neighbouring rights are granted for a specific period, after which they expire, and the work enters the public domain.

1. **Performers' Rights:** The neighbouring rights of performers last for **50 years** from the date of the performance, or if the performance is recorded, from the date of its fixation.
2. **Producers of Sound Recordings' Rights:** The rights of producers of sound recordings last for **60 years** from the date of the first recording of the sound.
3. **Broadcasting Organizations' Rights:** The rights of broadcasting organizations last for **25 years** from the date of the broadcast.

After the expiry of these durations, the works become available for public use without restriction under the respective neighbouring rights.

Conclusion: Neighbouring rights play a crucial role in protecting the economic and moral interests of those who contribute to the **performance, recording, and broadcasting** of creative works. In India, these rights are enshrined in the **Copyright Act, 1957**, and offer protection to **performers, producers of sound recordings, and broadcasting organizations**. While the Copyright Act provides the foundation for neighbouring rights, the legal framework is supplemented by international treaties such as the **Berne Convention** and the **WIPO Performances and Phonograms Treaty**. The protection of neighbouring rights encourages investment in creative and cultural industries, promoting innovation and safeguarding the interests of those who contribute to the dissemination of works in various forms of media.



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Certification marks.

A **certification mark** is a special type of **trademark** used to indicate that a product or service meets certain standards or has particular qualities, characteristics, or origin as certified by an authorized entity. Unlike a regular trademark, which distinguishes the goods or services of one particular business, a certification mark indicates that the goods or services have been certified by an authorized body, typically in terms of quality, materials, or other features. The certification mark does not indicate the source of the goods or services but serves as a guarantee of certain standards.

In India, certification marks are governed under the **Trademarks Act, 1999**, and are registered and regulated by the **Controller General of Patents, Designs, and Trademarks**.

Legal Framework for Certification Marks

The **Trademarks Act, 1999**, provides for the registration and protection of **certification marks** under **Section 2(1)(e)**. This section defines a certification mark as:

"A mark used or proposed to be used to certify that goods or services in connection with which it is used, or is intended to be used, conform to the prescribed standards."

The Act allows for the registration of certification marks in the **Trademarks Register**, enabling their legal protection and use only by those who meet the certification requirements. The Act also ensures that unauthorized use of a certification mark is subject to penalties for infringement.

Characteristics of Certification Marks

1. Purpose

The primary function of a **certification mark** is to certify the quality, origin, method of manufacture, or other characteristics of the goods or services. It acts as a guarantee to the consumer that the product or service meets a certain standard or complies with regulatory requirements.

2. Use by Multiple Parties

Unlike **ordinary trademarks**, which are used by a single business entity, **certification marks** are used by multiple parties, provided they meet the certification standards. For example, several manufacturers may use a particular certification mark if their products conform to the standards set by the certifying body.

3. Certification Body

A **certification body** or organization is responsible for ensuring that the goods or services meet the required standards before permitting the use of the certification mark. The certifying body could be a non-profit organization, government authority, or any other agency authorized to issue certifications.

4. Restrictions on Use

The **certification mark** must be used only in connection with goods or services that meet the prescribed standards set by the certifying body. It cannot be used as a trademark or brand to distinguish the goods or services of a single business. The certification body itself is not allowed to use the mark on its own products or services, as its role is to certify others' products.

Conclusion: **Certification marks** play an essential role in ensuring quality standards for goods and services. In India, the protection of certification marks is governed by the **Trademarks Act, 1999**, which provides for the registration and enforcement of these marks. The marks are used by certifying bodies to indicate that goods or services conform to prescribed standards of quality, origin, or other characteristics. The certifying body, however, cannot use the mark for its own products but only for those goods or services it certifies. Certification marks are crucial for maintaining consumer trust, ensuring fair trade practices, and protecting the integrity of various industries.

Definition of Design.

In India, the term "**design**" is specifically defined under the **Designs Act, 2000** (and its subsequent amendments). According to **Section 2(d)** of the **Designs Act, 2000**, a **design** is: "Design means only the features of shape, configuration, pattern, ornamentation, or composition of lines or colors applied to any article, whether in two-dimensional or three-dimensional or in both forms, by any industrial process or means, whether manual, mechanical, or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye."

Key Elements of the Definition

1. **Aesthetic Features:**
 - A design must primarily concern the **aesthetic** or **visual appearance** of a product, such as its **shape, configuration, pattern, ornamentation**, or the **composition of lines or colors**.
2. **Applicability to Articles:**
 - The design must be applied to an **article** or product. This could be in the form of consumer goods, industrial products, or any manufactured article.
3. **Visual Appeal:**
 - The design must be such that it **appeals to the eye** and is **judged solely by its visual appearance**. This excludes functional elements of the article, which may be protected under patent law, not design law.
4. **Industrial Process:**
 - The design must be applicable to products manufactured through an **industrial process**—including manual, mechanical, or chemical processes. It is not limited to handmade products but must be capable of being reproduced on a large scale.

5. **New and Original:**

- For protection under the **Designs Act**, the design must be **new** and **original**. It should not have been publicly disclosed before the filing of the application for registration.

6. **Exclusions:**

- The definition excludes features of a design that are dictated solely by the **functionality** of the article or are **standard shapes** or **forms** that do not possess original or aesthetic qualities.

Examples of Designs:

- **Packaging:** The design of packaging for products like soft drink bottles, luxury products, etc.
- **Furniture:** The shape and pattern of chairs, tables, or other furniture items.
- **Textile Patterns:** Fabric designs, clothing prints, and patterns used in the fashion industry.
- **Electronics:** The external shape and appearance of gadgets like mobile phones, laptops, and televisions.

Conclusion: The **Designs Act, 2000** provides legal protection for **novel and original designs** applied to articles. The registration of a design confers **exclusive rights** on the owner, preventing others from copying, selling, or manufacturing articles using the same design without authorization. The protection lasts for **10 years**, which can be extended by an additional **5 years**. A **design** under Indian law refers to the visual appearance or aesthetic features of an article that are created through an industrial process, and it must be new and original.

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Exclusive Marketing Rights.

Exclusive Marketing Rights (EMR) refer to the special rights granted to the right-holder (such as the holder of a patent, trademark, or geographical indication) that allow them to exclusively control the marketing, distribution, and commercialization of a specific product, process, or service in a particular market or territory. In India, Exclusive Marketing Rights are particularly relevant in the context of patents and geographical indications (GIs).

Exclusive Marketing Rights under Indian Patent Law: The Patents Act, 1970 (as amended) provides for Exclusive Marketing Rights (EMR) in the context of patent law for certain pharmaceutical and agro-chemical products. The EMR provision was introduced to encourage pharmaceutical innovation and facilitate the marketing of products in India.

Section 92A of the Patents Act, 1970

Under **Section 92A** of the **Patents Act**, the government of India has the power to grant **Exclusive Marketing Rights** to the **holder of a patent** in cases where:

1. The **patent** is related to **pharmaceutical** or **agro-chemical** products.
2. The **patent** holder has not **exploited the patent** by manufacturing the product within India.
3. There is a **demand for the product** within India, and the **patent holder** is not supplying it.

Exclusive Marketing Rights under this section allow the holder to exclusively **market** the patented product in India for a period of **5 years** (or the duration of the patent, whichever is shorter).

Objectives of EMR in Patent Law:

- **Promote access to essential medicines:** EMR provisions are often used in the context of **generic drugs**. If a pharmaceutical company holds a patent for a life-saving drug but does not manufacture or sell it in India, the government can grant an **EMR** to another company, allowing them to market the drug.
- **Encourage competition:** EMR provisions may also be used to ensure that **generic manufacturers** can produce patented products after a certain period, reducing the monopolistic control of the patent holder.

Conditions for Granting EMR under Patent Law:

1. The **patent holder** must not be exploiting the **patent** in India.
2. The **product** must be patented, and the patent must be related to **pharmaceutical** or **agro-chemical** products.
3. The **demand for the product** must exist within India, and the **patent holder** must not be fulfilling that demand.
4. The **EMR** is granted for a maximum period of **5 years** or the remaining life of the patent, whichever is shorter.

Conclusion: Exclusive Marketing Rights (EMR) are an important mechanism within intellectual property law, particularly in the context of patents and geographical indications. EMRs ensure that the rightful owners of certain intellectual properties, such as innovative pharmaceutical products or locally unique goods, have the exclusive right to market and commercialize those products. These rights help protect innovation, local industries, and the quality of goods but must be balanced with ensuring fair competition and public access to essential products. In India, the Patents Act and the Geographical Indications Act provide the legal framework for granting exclusive marketing rights, subject to specific conditions and safeguards.

Layout Design.

Layout designs refer to the **three-dimensional configuration of electronic circuits** used in integrated circuits (ICs) or semiconductor chips. These designs are protected under the **Layout Designs Act, 2000** in India, which is aimed at safeguarding the unique arrangements or configurations of integrated circuits.

The **Layout Designs Act, 2000** provides protection for the **design** of **integrated circuits** or **semiconductor chips**. This protection is critical in the **electronics** and **technology** sectors, where the design of circuits can have a significant impact on performance and functionality.

Definition of Layout Design

Under **Section 2(d)** of the **Layout Designs Act, 2000**, a **layout design** is defined as:

“Layout design means the three-dimensional disposition, however expressed, of the elements of an integrated circuit, or a semiconductor chip, at least one of which is active.”

This definition includes the arrangement or placement of the components of an integrated circuit (IC), which can be either **active** (e.g., transistors) or **passive** (e.g., resistors, capacitors) elements.

Key Elements of Layout Design

1. **Three-Dimensional Arrangement:**
 - A layout design refers to the **three-dimensional arrangement** of the components within an integrated circuit or semiconductor chip.
2. **Electronics/Integrated Circuits:**
 - The layout design concerns the structure of **integrated circuits (ICs)** or **semiconductor chips**, which are the foundation of modern **electronics**.
3. **Active and Passive Elements:**
 - The layout design includes both **active** components (such as transistors or diodes) and **passive** components (such as resistors or capacitors) in the circuit's structure.
4. **Uniqueness:**
 - The layout design must be **original** and **novel**. It cannot be a mere reproduction of an existing layout design. The novelty requirement is important to secure legal protection under the Layout Designs Act.

Scope of Protection under Layout Designs Act, 2000

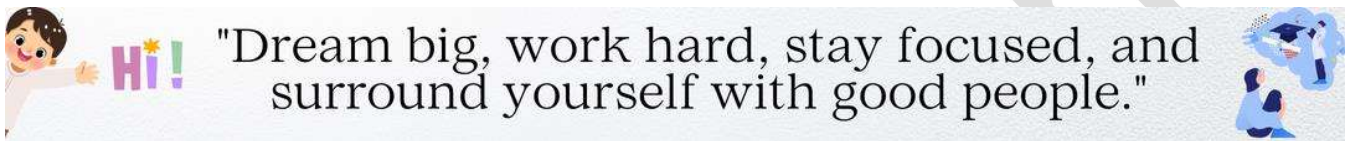
The **Layout Designs Act, 2000** provides protection to **original and novel layout designs** of **integrated circuits** or **semiconductor chips**. The act protects the **design** and **configuration** of the layout and prevents **unauthorized copying** or reproduction of the design.

Key Features of Protection:

1. **Exclusive Rights:**
 - The owner of a **protected layout design** has the **exclusive right** to use, reproduce, and market the design, as well as to prevent others from using the design without permission.
2. **Duration of Protection:**
 - The protection for a layout design lasts for **10 years** from the date of **registration**. However, the protection may be extended if the design is not exploited commercially or used within that period.
3. **Reproduction and Sale:**

- It is an infringement of the owner's rights if someone **reproduces, distributes, or sells** an integrated circuit or chip that contains an unregistered layout design or a layout design copied from a protected design.

Conclusion: Layout design protection is critical in the electronics and semiconductor industries, as it ensures the originality and novelty of integrated circuits or chips. The Layout Designs Act, 2000 offers legal protection to such designs, enabling the owner to control the use, reproduction, and commercialization of the design. This promotes innovation, protects intellectual property, and ensures that innovators are rewarded for their creativity. The protection lasts for 10 years, and the owner has the exclusive right to use, distribute, and exploit the layout design commercially. Unauthorized reproduction or sale of integrated circuits or semiconductor chips that infringe upon the protected layout design can result in legal consequences, including damages and injunctions.



Fair Use.

Fair Use is a doctrine in copyright law that allows the limited use of copyrighted material without obtaining permission from the copyright holder. It serves as a balance between the rights of the copyright owner and the public interest in the wider use of copyrighted works for purposes such as education, criticism, news reporting, and research. In Indian copyright law, the doctrine of fair use is not explicitly stated but is implicitly incorporated under Section 52 of the Copyright Act, 1957. This section provides a list of exceptions where the use of copyrighted material may not be considered an infringement, provided it meets certain conditions.

Fair Use in Indian Copyright Law

Section 52 of the Copyright Act, 1957 enumerates specific exceptions under which the **reproduction** of copyrighted work is permitted without infringing on the rights of the copyright holder. While **fair use** is not specifically defined, the section allows the use of copyrighted works for certain purposes, which aligns with the principles of fair use.

Section 52(1) – Exceptions to Copyright Infringement

Under **Section 52(1)**, the **fair use** exceptions include the following key situations where the use of copyrighted material may be permitted:

1. Private or Personal Use:

- Use of a copyrighted work for **private or personal use** is not an infringement. For example, copying music or a film for personal, non-commercial use.

2. Criticism or Review:

- Use of copyrighted material for **criticism or review** of the work, provided that the source is acknowledged. This allows for **fair commentary** on the work, including **quotations or excerpts** from a book or film.

3. **News Reporting:**
 - Use of copyrighted works in the form of **news reporting** or **journalism** is allowed, provided the work is used for a **non-commercial purpose** and the source is cited.
4. **Educational Purposes:**
 - Reproduction of works for **teaching, research, or scholarship** purposes may be permitted. This is often applied to situations where educational institutions use copyrighted works to **support the curriculum**.
5. **Parody, Satire, and Commentary:**
 - Use of copyrighted works for **parody** or **satirical commentary** may be permitted, provided it does not infringe on the original work's core artistic and expressive elements.
6. **Reproduction for Judicial or Administrative Purposes:**
 - Reproducing copyrighted material for the purposes of **judicial proceedings** or **government use** (e.g., court cases or legislation) is allowed.
7. **Library and Archival Use:**
 - Libraries, archives, and museums may make copies of works for **archival purposes, preservation, or access** under certain conditions, provided that the copy is not used for **commercial gain**.
8. **Use for the Purpose of Demonstration or Explanation:**
 - The use of a copyrighted work in the context of **demonstration** or **explanation** in **classrooms** or **public lectures** is also allowed, provided the work is not used for **profit**.

Conclusion: Fair use in Indian copyright law is a complex, balancing mechanism aimed at promoting the public interest in accessing and using copyrighted works without undermining the rights of copyright holders. Through **Section 52**, the law allows certain exceptions for the use of copyrighted material, provided these uses are for purposes such as **education, criticism, news reporting, research, and parody**. While **fair use** provides flexibility, it is **limited** and subject to specific conditions, and any use outside these exceptions may lead to **copyright infringement**.

Broadcast Reproduction Right.

The **Broadcast Reproduction Right** refers to the right of a **broadcaster** to control the reproduction, communication, or distribution of their broadcasted content. In India, the **Broadcast Reproduction Right** is a part of **copyright law** and is specifically covered under the **Copyright Act, 1957**.

In simple terms, this right grants broadcasters the **exclusive right** to authorize or prohibit the reproduction of their broadcasts, ensuring they can control how their broadcasts are used, recorded, or reproduced. It provides an important legal framework for the protection of content produced and transmitted by broadcasters, such as television and radio programs.

Legal Basis in India

Under **Indian Copyright Law**, the broadcast reproduction right is governed primarily by the provisions in the **Copyright Act, 1957**. The relevant provisions are as follows:

1. **Section 37 of the Copyright Act, 1957:**

- This section deals with the **broadcast reproduction right** and grants broadcasters the right to **authorize** or **prohibit** the reproduction of their broadcasts.
- The broadcaster's right is extended to the **reproduction of their broadcasts by means of recording** (e.g., in any form of physical medium such as CDs, DVDs, tapes, etc.), as well as **digital transmission**.

Key Features of the Broadcast Reproduction Right

1. **Exclusive Right to Reproduce:** Broadcasters have the **exclusive right** to reproduce their broadcasts in any **medium** (including digital recordings, tapes, CDs, DVDs, and other storage formats). This ensures that only authorized parties can make copies of the broadcast content.
2. **Right to Communicate to the Public:** Broadcast content may not be communicated to the public unless authorized by the broadcaster. This right is distinct from the **broadcasting right** itself but often intersects in practical scenarios.
3. **Duration of Protection:** The **broadcast reproduction right** lasts for a period of **25 years** from the first broadcast of the content. This ensures that broadcasters can control the reproduction of their content over a substantial period, allowing for financial gain through licensing or distribution.
4. **Right to License:** Broadcasters can license their right to reproduce broadcasts, allowing other entities to make copies of the content under certain conditions. The licensee must generally pay royalties for using the broadcast material.
5. **Prohibition of Unauthorized Reproduction:** Any **unauthorized reproduction** of a broadcaster's content is considered an infringement of their broadcast reproduction right. Legal action can be taken to stop such unauthorized acts and recover damages.

Infringement of Broadcast Reproduction Rights: Infringement of the **broadcast reproduction right** occurs when a person or entity makes an unauthorized copy or reproduction of a broadcaster's broadcast content, whether for commercial or private use. Common examples of infringement include:

1. **Recording Broadcasts without Permission:**
 - Unauthorized recording of television or radio broadcasts, whether for personal use or commercial sale, violates the broadcaster's reproduction rights.
2. **Public Performance without License:**
 - Using a recorded broadcast in a public place (such as showing a TV program in a hotel, restaurant, or event) without a proper license from the broadcaster.
3. **Reproduction for Commercial Gain:**
 - Copying broadcast content for resale, distribution, or further commercial exploitation without the broadcaster's consent is a clear violation of the rights granted under the Copyright Act.

Conclusion: The **broadcast reproduction right** under Indian copyright law grants broadcasters exclusive control over the reproduction of their broadcasted content, ensuring they can monetize and protect their intellectual property. The **Copyright Act, 1957** provides specific provisions for this right under **Section 37**, allowing broadcasters to control the use of their content and take legal action in case of infringement. This protection is essential for the **broadcasting industry**, particularly for **television** and **radio** broadcasters who invest in creating original content. At the same time, the law recognizes certain

exceptions for fair use, education, and government purposes, providing a balanced approach to protecting intellectual property while promoting public access to knowledge and culture.

WIPO (World Intellectual Property Organization).

WIPO (World Intellectual Property Organization) is a specialized agency of the **United Nations** (UN) responsible for promoting the protection of **intellectual property (IP)** worldwide. It plays a critical role in establishing global standards for intellectual property, facilitating international cooperation, and providing legal frameworks for protecting and enforcing intellectual property rights (IPRs) across member countries. WIPO was established in **1967** and is headquartered in **Geneva, Switzerland**. It provides a forum for governments, international organizations, and IP experts to negotiate and develop international IP treaties, conventions, and guidelines that harmonize IP laws across different jurisdictions.

Key Objectives of WIPO

1. **Promoting the Protection of Intellectual Property:**
 - WIPO works towards ensuring that creators, innovators, and businesses are adequately protected under the laws of member states.
 - It helps develop international agreements and treaties to protect various forms of intellectual property, such as patents, copyrights, trademarks, designs, and geographical indications.
2. **Fostering International Cooperation:**
 - WIPO facilitates cooperation among its **193 member states** to improve the administration and enforcement of intellectual property rights.
 - It encourages the exchange of knowledge and expertise between countries to harmonize and strengthen global IP systems.
3. **Capacity Building and Technical Assistance:**
 - WIPO provides technical assistance and capacity-building programs to developing countries and emerging economies. This support helps them build efficient national IP systems, enhance IP enforcement, and understand the economic significance of IP.
4. **Providing Legal and Policy Guidance:**
 - WIPO offers a platform for discussions and policymaking related to intellectual property, including advice to governments on the development of national and regional IP laws.
5. **Encouraging Innovation and Creativity:**
 - WIPO seeks to stimulate innovation and creativity worldwide by making IP accessible, ensuring that IP holders can benefit from the protection of their inventions, creative works, and trademarks.

Key Functions of WIPO

1. **Administering International Treaties:**
 - WIPO is responsible for administering several **international treaties** aimed at standardizing IP laws across the world. These treaties aim to protect IP rights on a global scale while harmonizing the rules between countries.

Some of the most notable treaties administered by WIPO include:

- **The Paris Convention for the Protection of Industrial Property (1883):** Provides protection for patents, trademarks, industrial designs, and geographical indications.
 - **The Berne Convention for the Protection of Literary and Artistic Works (1886):** Protects the copyrights of authors and creators across member countries.
 - **The Patent Cooperation Treaty (PCT):** Allows inventors to apply for patents in multiple countries through a single international application.
 - **The Madrid Agreement and Protocol for the International Registration of Marks (1891):** Provides a mechanism for the international registration of trademarks.
 - **The Hague Agreement for the International Registration of Industrial Designs:** Facilitates the international registration of industrial designs.
 - **The WIPO Copyright Treaty (WCT):** Extends protection to authors and creators of works in digital and online environments.
 - **The WIPO Performances and Phonograms Treaty (WPPT):** Protects the rights of performers and producers of phonograms.
- 2. Global IP Services and Solutions:**
- WIPO offers global services for the protection of IP rights, including:
 - **WIPO Global Brand Database:** A searchable database containing information on trademarks and their status.
 - **WIPO Patents Database:** A comprehensive database of patents filed globally.
 - **WIPO Lex:** A global database of national and international IP laws and treaties.
 - **WIPO Arbitration and Mediation Center:** A platform for resolving IP disputes through alternative dispute resolution mechanisms such as arbitration and mediation.
- 3. Capacity-Building and Education:**
- WIPO provides various **training programs, workshops, and seminars** to educate individuals, businesses, and governments about the importance of intellectual property. These programs help promote a better understanding of IP, especially in developing countries.
- 4. Dispute Resolution Services:**
- WIPO offers **alternative dispute resolution (ADR)** services, particularly **arbitration and mediation**, to resolve intellectual property disputes. This service is helpful in cases of **trademark disputes, patent conflicts, and domain name disagreements** (e.g., WIPO's role in the **UDRP** (Uniform Domain Name Dispute Resolution Policy) for resolving internet domain name disputes).
- 5. IP Awareness and Policy Development:**
- WIPO plays an important role in **IP awareness campaigns**, making information and resources available to the public, businesses, and creators to help them understand how to protect their creations.
 - It also supports the development of **IP policies** at the national, regional, and international levels by working with governments, international organizations, and other stakeholders.

Conclusion: WIPO is a vital institution for the global intellectual property system. It plays an indispensable role in creating an environment where IP rights are protected, facilitating innovation, and ensuring that creators and businesses can maximize the economic and cultural value of their intellectual property. Through its **international treaties, global services, and capacity-building initiatives**, WIPO

helps shape the future of intellectual property protection, fostering a balanced and accessible IP ecosystem for all stakeholders worldwide.

Artistic Work.

The term **artistic work** is defined under the **Copyright Act, 1957** and refers to various forms of **artistic expression** that are eligible for copyright protection. Artistic works are among the **categories of works** that can be copyrighted in India, and they encompass a wide range of creations that are the result of artistic or creative skill.

Legal Definition of Artistic Work: Under **Section 2(c) of the Copyright Act, 1957**, the term **artistic work** includes the following types of works:

1. Paintings, Drawings, and Sculptures:

- These are traditional forms of visual art and include **paintings, sketches, drawings, prints, and sculptures** that are original and creative in nature. Examples include oil paintings, pencil sketches, or sculptures crafted from any material like stone, wood, or metal.

2. Architecture:

- The design of **buildings and structures** is considered an artistic work. Architectural designs that are original and have artistic merit are protected under copyright law. However, functional buildings (like warehouses or factories) may not qualify unless they demonstrate distinctive artistic features.
- The protection covers not just the **exterior** design of the structure but also the **interior design** if it has artistic elements.

3. Engravings and Lithographs:

- Engravings or lithographs are reproductions or impressions created through specific techniques, such as **etching, woodcut, or printing**. These are included in the definition of artistic works if they show original creativity.

4. Works of Applied Art:

- **Applied art** refers to works that combine both **artistic expression** and **functional utility**, such as **designs of pottery, textiles, jewelry, and fashion**. These are eligible for copyright protection as artistic works if the artistic aspects are original.

5. Other Works of Artistic Craftsmanship:

- This category encompasses any other creative works that do not fit directly into the above-mentioned categories but still exhibit artistic creativity and craftsmanship, such as **decorative items, mosaics, or artistic designs** used in industrial products.

Moral Rights of Artists: The **Copyright Act, 1957** provides for the **moral rights** of authors, including those of artistic works. These rights are separate from economic rights and allow the author to protect the integrity and reputation of their work.

1. **Right to Attribution:**

- The author of an artistic work has the right to be **identified as the author** of the work. This means that the work cannot be used without proper attribution to the author, even if it is publicly displayed or reproduced.

2. **Right to Integrity:**

- The author has the right to object to any **modification, distortion, or mutilation** of their work that might be prejudicial to their honor or reputation. This is a protection against works being altered in ways that would misrepresent the artist's intentions.

Limitations and Exceptions

While **artistic works** are protected under copyright law, there are certain **limitations and exceptions** to this protection:

1. **Fair Use:**

- Artistic works can be used for **fair use** purposes without the copyright owner's permission, such as for **criticism, commentary, news reporting, teaching, or research**. However, the use must be within the limits of what is considered fair under the law.

2. **Public Domain:**

- Once the copyright in an artistic work expires (i.e., 60 years after the author's death), the work enters the **public domain**, and it can be freely used by anyone without the need for permission or payment.

3. **Non-commercial Use:**

- In some cases, the reproduction of artistic works for **non-commercial purposes** (e.g., educational, research, or non-profit exhibitions) may fall under exceptions where the use does not infringe on the rights of the copyright holder.

Conclusion: An **artistic work** is a vital category under **Indian copyright law**, which encompasses various forms of visual and creative expressions, including paintings, sculptures, architectural designs, engravings, and applied arts. Artistic works are eligible for **copyright protection** if they are original and fixed in a tangible medium. The **author's rights** include both **economic rights** (such as reproduction and distribution) and **moral rights** (such as the right to attribution and integrity). The **duration of protection** for artistic works is **lifetime plus 60 years** for the author, after which the work enters the **public domain**. Despite these broad protections, there are exceptions like **fair use** and **non-commercial use** that allow limited use without infringing the copyright. Additionally, India's membership in international treaties like the **Berne Convention** ensures that artistic works created in India are protected globally.

Patent Right.

A **patent** is an exclusive right granted to an inventor for their invention, which is new, involves an inventive step, and is capable of industrial application. The **Patent Right** confers the exclusive authority

to make, use, sell, or distribute the patented invention for a specific period, usually **20 years** from the filing date of the patent application.

In India, patent rights are governed by the **Patents Act, 1970**, and its subsequent amendments. The Act defines the procedures for obtaining a patent, the rights of the patent holder, the conditions for granting patents, and the enforcement of patent rights.

Definition of Patent: According to **Section 2(1)(m) of the Patents Act, 1970**, a **patent** is an exclusive right granted by the Government of India to an inventor or assignee over their **invention**, provided the invention meets the following conditions:

1. **Novelty:** The invention must be **new** and not part of prior art. It must not have been previously disclosed in any form.
2. **Inventive Step:** The invention must involve an **inventive step** or a **non-obvious** advancement over the existing knowledge.
3. **Industrial Applicability:** The invention must be **capable of industrial application**, meaning it can be made or used in some kind of industry (whether agriculture, manufacturing, etc.).

Rights Conferred by a Patent: Once a patent is granted, the inventor (or the assignee of the patent) enjoys the following exclusive rights under **Section 48 of the Patents Act, 1970**:

1. **Right to Make:**
 - The patent holder has the exclusive right to **make** the patented product or use the patented process.
2. **Right to Use or Sell:**
 - The patent holder has the exclusive right to **use, sell, or distribute** the patented product or process.
3. **Right to License:**
 - The patent holder can grant licenses to others to use the patented invention, either exclusively or non-exclusively, under certain conditions.
4. **Right to Assignment:**
 - The patent holder can assign (transfer) their patent rights to another person or entity. The rights can be fully assigned or partially assigned.
5. **Right to Prevent Infringement:**
 - The patent holder has the right to **prevent others from making, using, selling, or distributing** the patented invention without their consent. In case of infringement, the patent holder can take legal action for **infringement** and seek remedies such as **damages** and **injunctions**.

Conclusion: The **Patent Right** provides inventors with exclusive rights to their inventions, ensuring that they can benefit from their creativity and investment in research and development. The **Patents Act, 1970**, governs patent law in India, offering a framework for obtaining, enforcing, and protecting patents. It promotes innovation, ensures the **disclosure of inventions**, and strikes a balance between protecting inventors' rights and promoting public access to new knowledge.

Performer's Right.

Performer's right refers to the rights granted to performers for their performances, such as the right to protect the use and reproduction of their performances in various media. In India, **performer's rights** are governed under the **Copyright Act, 1957**, particularly **Chapter VIII** (sections 37 to 42) which specifically deals with **performers' rights**. These rights provide performers (such as musicians, dancers, actors, and singers) with the exclusive right to control the use of their performances and to prevent unauthorized use or exploitation of their work.

Legal Definition of Performer's Right

Section 2(q) of the Copyright Act, 1957 defines a **performer** as:

- Any person who performs, sings, reads, recites, or otherwise performs in front of an audience.
- The term also includes **dancers, musicians**, and any other person whose performance is captured, reproduced, or communicated to the public.

Key Features of Performer's Rights

1. Economic Rights:

- **Right to Perform:** Performers have the exclusive right to perform their works in public, whether it is a musical performance, a theatrical play, a dance, or any other form of live performance.
- **Right to Reproduce:** Performers have the exclusive right to **reproduce** their performance in any form, including recording, reproduction on physical media (such as DVDs, CDs), or digital formats.
- **Right to Distribute:** Performers can authorize or prohibit the distribution of their performances, whether through **sales, renting**, or **digital streaming** services.
- **Right to Broadcast:** Performers have the exclusive right to **broadcast** or **communicate their performances to the public**, whether through radio, television, or online streaming platforms.
- **Right to License:** Performers can **license** their performance to others, either on an exclusive or non-exclusive basis. This includes giving permission for reproduction, distribution, and public performance.

2. Moral Rights:

- **Right of Attribution:** Performers have the right to be **attributed** as the performer of the work whenever their performance is used, broadcast, or published. This is a form of **moral right** protecting the performer's reputation.
- **Right of Integrity:** Performers also have the right to object to any distortion, mutilation, or other modification of their performance that could damage their reputation or honor, even if the performer has consented to the performance initially.

Duration of Performer's Rights

Under **Section 38A** of the **Copyright Act, 1957**, the **duration of performer's rights** is **50 years** from the **first performance** of the work. This is applicable whether the performance was recorded or not.

1. **Reproduction and Distribution:** For performances that are **recorded**, the right to reproduce and distribute the performance lasts for **50 years** from the date of the first recording.
2. **Broadcasting:** If the performance is communicated or broadcast to the public, the performer retains the right for **50 years** from the first performance.

After the expiration of this 50-year period, the performer's rights are generally extinguished, and the performance enters the **public domain**.

Conclusion: Performer's rights under Indian law provide important protections for individuals who contribute to the creation of performances, whether through music, dance, acting, or other forms of creative expression. These rights ensure that performers have exclusive control over the use of their performances, allowing them to benefit financially from their creative efforts. The rights last for **50 years** from the date of the first performance, and performers can enforce these rights through legal action in case of infringement. Performers also have moral rights, ensuring that they are attributed for their work and that their work is not distorted or misrepresented. The law balances these exclusive rights with certain exceptions for **fair use** and **public interest** purposes. India's adherence to international treaties, such as the **Rome Convention** and **WIPO Performances and Phonograms Treaty**, ensures that performers' rights are globally recognized and protected.



Collective management of Copyright.

Collective Management of Copyright refers to the process by which the rights of copyright holders (authors, composers, performers, etc.) are managed and licensed by a **collective management organization (CMO)**. These organizations represent the interests of copyright holders and facilitate the licensing of works to users, while also collecting and distributing royalties on behalf of the copyright holders.

In India, the **Copyright Act, 1957** provides the legal framework for the management and protection of copyright. **Collective management** is an essential aspect of the copyright system, particularly in the music, film, and broadcasting industries, where it is impractical for individual creators to manage and monitor the use of their works across various platforms.

Legal Framework for Collective Management of Copyright in India: Under the **Copyright Act, 1957**, **Section 33** and **Section 34** provide the basis for collective management, while **Section 35** discusses the **licensing of rights** by CMOs.

Key provisions related to the collective management of copyright:

1. **Section 33 – Recognition of Collective Societies:**
 - o The **Central Government** has the authority to **recognize** collective management organizations (CMOs) under **Section 33** of the Copyright Act. These organizations are

typically responsible for managing specific types of rights (e.g., musical works, literary works, etc.).

- The recognition is granted only after the CMO meets the requirements laid down by the **Copyright Board** (established under the Act), which ensures that the organization operates in a transparent and efficient manner for the benefit of copyright holders.
2. **Section 34 – Functions of Collective Societies:**
 - Recognized CMOs are authorized to **collect royalties, license rights, and distribute proceeds** to the copyright holders they represent.
 - These organizations typically handle licensing for **public performances, broadcasting, reproduction**, and other forms of usage of copyrighted works.
 3. **Section 35 – Licensing of Rights:**
 - Collective societies can issue **licenses** to users (e.g., broadcasters, music streaming platforms, and event organizers) to use the copyrighted works they manage.
 - The license granted by the CMO gives the user the right to use the copyrighted works in exchange for paying royalties, which are then distributed to the respective copyright holders.

Benefits of Collective Management of Copyright

1. **Ease of Administration:**
 - Collective management makes it easier for copyright holders, especially individual authors, musicians, or performers, to manage their rights collectively through an organization, rather than dealing with each licensee separately.
 - This is especially important in industries like music, where works are used in multiple contexts (e.g., radio broadcasts, public performances, digital streaming), making it difficult for individual creators to track and license every instance of usage.
2. **Cost-Effective:**
 - For both copyright holders and users, collective management can be more cost-effective than negotiating individual licensing agreements. Users can obtain a **blanket license** that covers multiple works, while copyright holders can pool their resources and distribute administrative costs among many members.
3. **Wider Protection:**
 - Through collective management, copyright holders can extend the reach of their works and ensure that they are compensated for usage across a wide range of platforms, including broadcasting, public performance, and digital media.
 - CMOs help in increasing the enforcement of copyright by actively monitoring and tracking infringements on behalf of the copyright holders.
4. **Fair Compensation:**
 - CMOs ensure that copyright holders are **fairly compensated** for the use of their works. This is especially important in industries where works are used in ways that may be difficult for individual authors to track, such as online streaming or public broadcasting.

Conclusion: **Collective Management of Copyright** plays a crucial role in managing the rights of authors, musicians, performers, and other copyright holders in India. It provides a platform for creators to have their works used legally, with fair compensation for the exploitation of their works across various media. Recognized CMOs like **IPRS, PPL**, and others ensure that royalty collection and distribution are done

transparently, providing a cost-effective way for creators to manage their copyrights and for users to obtain licenses for their works. Through collective management, copyright holders can ensure wider protection of their works, fair compensation, and reduce the administrative burden of licensing their creations individually. However, challenges like transparency, accountability, and international enforcement need continuous attention to maintain the integrity and effectiveness of the collective management system.



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New forms of Intellectual Property.

Intellectual Property (IP) law is constantly evolving to address emerging technologies and new creative works in an increasingly digital and interconnected world. Traditional forms of IP—such as **patents, trademarks, copyrights, and industrial designs**—have been expanded to include **new forms of IP** that cater to innovations and developments in areas such as digital media, biotechnology, and artificial intelligence (AI). These new forms often present novel challenges for legal frameworks, but they also provide new opportunities for creators to protect their innovations.

1. Trade Secrets

Definition: Trade secrets refer to proprietary business information that is not generally known or easily accessible, which provides a business with a competitive advantage. This may include **formulas, processes, recipes, business strategies, or manufacturing techniques**. **Example:** Coca-Cola’s secret formula is a classic example of a trade secret.

2. Geographical Indications (GIs): Geographical Indications (GIs) are signs used on goods that have a specific geographical origin and possess qualities, reputation, or characteristics inherent to that location.

Significance: GIs protect products that have a strong association with a specific region, promoting both regional identity and economic value.

3. Integrated Circuit Layout Designs (ICLDS): Integrated Circuit Layout Designs (ICLDS) refer to the three-dimensional configurations of the electronic circuits in semiconductor products.

Example: The layout design of an integrated circuit used in electronic devices is an ICLD.

4. Plant Varieties Protection (PVP): Plant varieties refer to new, distinct, uniform, and stable plant breeds that have been developed or discovered by agricultural research or through natural processes.

Significance: It incentivizes agricultural innovation by rewarding plant breeders for the creation of new varieties, fostering sustainable agriculture.

5. Domain Names: A domain name is the web address used to identify a specific website on the internet, like example.com. Domain names are typically used as identifiers for businesses and can have significant commercial value.

Example: **google.com** and **facebook.com** are domain names that are heavily protected as trademarks.

6. Database Rights: Database rights refer to the rights associated with the collection and organization of data. This includes any compilation or collection of data, whether machine-readable or not, which requires protection due to the effort and investment involved in its creation.

Significance: Databases like Google Scholar or IMDb often rely on database rights to protect their vast collections of information.

7. Artificial Intelligence (AI)-Generated Works: AI-generated works refer to creative content (like art, music, and literature) produced by machines or software, often without direct human involvement in the creation process. **Example:** AI-created music or paintings.

8. Virtual Goods and NFTs (Non-Fungible Tokens): **Virtual goods** refer to digital items used in virtual environments, such as games, social media, or other online platforms. These items might include clothing, accessories, or skins in games.

- **NFTs (Non-Fungible Tokens)** represent unique digital assets verified through blockchain technology. NFTs are used to tokenize ownership of digital or physical items, such as artwork, music, or even tweets.

Example: **CryptoKitties** (a digital collectible game), **Beeple's digital art** sold as NFTs.

9. Genetic Resources and Traditional Knowledge: Genetic resources refer to the **genetic material** of plants, animals, or microorganisms that have value for research, agriculture, and biotechnology. **Traditional knowledge** refers to knowledge systems developed by indigenous and local communities over time, including medicinal knowledge, agricultural practices, and biodiversity conservation methods.

Significance: The protection of genetic resources and traditional knowledge prevents their exploitation without fair compensation and ensures that indigenous communities are recognized and compensated for their contributions.

10. 3D Printing and Digital Fabrication: **3D printing** refers to the process of creating physical objects from a **digital model** by laying down material layer by layer. As this technology becomes more prevalent, legal questions arise regarding the **IP protection** of 3D printed objects.

Example: 3D printing used to create **customized products** or **prosthetic devices**.

Conclusion: As technology continues to advance, new forms of intellectual property (IP) are emerging, creating new challenges and opportunities for creators, businesses, and legal systems. These new forms of IP are increasingly important in industries like biotechnology, digital media, and AI, and include trade secrets, geographical indications, artificial intelligence-generated works, and NFTs, among others. The legal protection for these new forms of IP is still evolving, and the need for comprehensive legal

frameworks that address the complexities of modern innovations has never been more critical. By understanding these emerging forms of IP, creators and businesses can better safeguard their innovations and contribute to the ongoing development of IP law.

Computer Programme per Se.

Definition: A **computer programme per se** refers to the **software** or **computer code** in its original and executable form. Under Indian copyright law, a computer programme is considered a literary work and is protected by copyright, even if it does not have a physical or artistic representation. The term **per se** means "in itself," indicating that the programme, in its basic form, is treated as an independent intellectual creation, without the need for other physical embodiments such as graphical interfaces or hardware.

In simple terms, a computer programme per se refers specifically to the **source code** or **object code** (machine-readable code) of a computer programme that is protected under **copyright law**.

Legal Framework in India

Under the **Indian Copyright Act, 1957**, the protection of computer programmes is explicitly provided, even though the law itself was enacted before the widespread use of software in everyday life. The key provisions for the protection of computer programmes as literary works include:

1. Section 2(o) of the Copyright Act, 1957

- Section 2(o) defines a **literary work**, which includes **computer programmes** (both **source code** and **object code**) as long as the code is original and represents the **author's intellectual creation**.
- Therefore, the copyright protection for computer programmes is treated the same way as other literary works such as books, articles, and plays.

2. Section 14 of the Copyright Act

- Section 14 provides that the copyright in a **computer programme** includes the exclusive rights to:
 - **Reproduce** the programme in any form, including **electronic form**.
 - **Translate** the programme into other languages or modify the programme.
 - **Distribute** copies of the programme.
 - **Adapt** or **arrange** the programme.

Thus, the copyright holder of a computer programme per se has the exclusive rights to control its use, reproduction, and distribution.

Protection of Computer Programme Per Se

The protection of computer programmes as literary works does not depend on the nature or purpose of the programme (whether it is a system software, application software, or utility programme). As long as the programme is original and has been created by the author, it is protected under copyright law.

Infringement of Computer Programme Per Se: Infringement of a computer programme occurs when the programme or any of its parts (such as its source code or object code) is **reproduced, distributed, or used without the permission** of the copyright holder.

Key acts of infringement include:

- **Copying** the programme without authorization.
- **Distributing or selling** pirated copies of the programme.
- **Decompiling or reverse engineering** the programme to extract its source code, unless allowed under certain exceptions like **fair use**.
- **Modifying** or adapting the programme without the consent of the copyright holder.

Exceptions and Limitations: There are certain **exceptions and limitations** to the copyright protection of computer programmes under Indian law. Some of the notable ones include:

1. Reverse Engineering

Under certain conditions, reverse engineering may be permitted to ensure **interoperability** between programs. This is allowed under the **Copyright Act**, but only when it is necessary to make a programme compatible with another. Section 52(1)(za) allows for **decompiling or disassembling** a programme if the sole purpose is to achieve interoperability, subject to certain restrictions.

2. Fair Use

The Copyright Act allows for **fair use** of a computer programme under specific circumstances, such as:

- **Criticism or review** of the programme.
- **Research or educational use**.
- **Private or non-commercial uses**.

However, these exceptions do not permit the use of the programme for commercial purposes without the author's permission.

Conclusion: A **computer programme per se** is considered a **literary work** under Indian copyright law, thus granting it protection similar to books, articles, and other literary works. The protection extends to both **source code** and **object code** and grants exclusive rights to the creator of the programme. Though there are exceptions, such as for **reverse engineering** for interoperability and **fair use**, copyright protection for computer programmes remains critical in safeguarding the interests of creators and promoting innovation in the software industry.

Traditional Knowledge Digital Library.

The **Traditional Knowledge Digital Library (TKDL)** is an initiative by the **Government of India** to digitally document and preserve **traditional knowledge (TK)** in various fields, including **medicine, agriculture, environment, arts, crafts**, and more. The aim is to protect India's **traditional knowledge** from unauthorized use or misappropriation (often referred to as **biopiracy**) and to make this knowledge accessible to the global community, while also safeguarding it for future generations.

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The TKDL is a comprehensive database that stores traditional knowledge in a structured digital format, allowing for easy search and retrieval. It primarily focuses on the **use of traditional knowledge in medicinal and therapeutic practices**, particularly related to the **Ayurveda, Siddha, and Unani** systems of medicine.

Objective of the TKDL

1. Protection of Traditional Knowledge:

- To protect **India's rich traditional knowledge** from unauthorized patents and claims of novelty, especially in international jurisdictions.
- The TKDL helps to prevent **biopiracy**, where foreign entities may attempt to patent **Indian traditional knowledge** (e.g., medicinal plants, formulas, and practices) as their own.

2. Access to Knowledge:

- To provide an **accessible digital platform** for researchers, policymakers, and communities worldwide, where they can understand and analyze **traditional knowledge**.
- TKDL enables the systematic recording of knowledge passed down through generations, ensuring its availability for future research, innovation, and development.

3. Prior Art in Patent Databases:

- The TKDL serves as **prior art** to prove that traditional knowledge existed before certain **patent claims**. This is particularly useful in **patent opposition** proceedings, where traditional knowledge is used to invalidate claims of novelty or inventive steps in patent applications related to Indian traditional knowledge.

Structure of the TKDL: The TKDL is organized into **different categories** based on the type of traditional knowledge it covers. These categories include:

1. Ayurveda:

- Traditional knowledge related to **medicinal plants, herbal formulations**, and therapeutic practices as described in ancient Indian texts such as the **Charaka Samhita, Sushruta Samhita, and Ashtanga Hridaya**.

2. Siddha:

- The **Siddha system of medicine**, which is widely practiced in Tamil Nadu and other parts of South India, is a key component of the TKDL. It includes knowledge of **herbs, minerals, and therapeutic processes** for treating diseases.

3. Unani:

- The **Unani system**, which originated in ancient Greece and was developed in India, also finds a place in the TKDL. It involves knowledge of **herbal remedies** and the **healing properties** of natural substances.

4. Other Traditional Knowledge:

- Includes traditional knowledge in **agriculture, food processing, craftsmanship, and environmental management**.

Conclusion: The **Traditional Knowledge Digital Library (TKDL)** is a significant step in protecting India's rich and diverse **traditional knowledge** from **misappropriation**. By documenting traditional knowledge in a digital format, the TKDL ensures that this valuable resource is preserved, accessible, and

protected under international patent laws. Through the TKDL, India has positioned itself as a leader in protecting **traditional knowledge** and **biodiversity**, advocating for the **fair use** and **benefit-sharing** of such knowledge on a global platform. As a tool for preventing biopiracy and promoting **sustainable innovation**, the TKDL is vital for **intellectual property management** in the context of India's traditional knowledge systems.



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Passing Off.

Passing off is a common law tort that occurs when one party misrepresents its goods or services as being those of another, leading to potential damage or confusion among consumers. In the context of **intellectual property law**, **passing off** typically deals with the **misrepresentation** of the origin or association of goods or services, which leads to **confusion**, **deception**, or a **loss of goodwill** for the aggrieved party.

The concept of **passing off** is primarily used to protect **unregistered trademarks**, **trade dress**, **brand names**, and other commercial identifiers from **misrepresentation** or **fraudulent practices** by a competitor. The principle aims to safeguard the **reputation** and **goodwill** of businesses and prevent unfair competition.

Passing Off in Indian Law

In India, the tort of **passing off** is governed under **Section 27 of the Indian Contract Act, 1872**, which provides protection for **unregistered trademarks**. The law recognizes the rights of individuals or businesses to prevent others from using their **distinctive marks** or identifiers that could lead to confusion in the marketplace.

Additionally, passing off is governed under the **Trade Marks Act, 1999**. Section 27(2) of the Act provides protection to unregistered trademarks and states that no person shall be entitled to **pass off goods or services** as those of another person, even if they do not possess a registered trademark.

Relevant Case Law:

Several landmark cases in India have helped shape the doctrine of passing off, including:

1. **Amritdhara Pharmacy v. Satyadeo Gupta (1963) AIR 449 SC:**
 - In this case, the Supreme Court of India outlined the key principles of passing off, emphasizing that the plaintiff must prove the **reputation** of its product, the **misrepresentation** by the defendant, and the **likelihood of damage**.

- The Court clarified that the use of a similar name or mark is sufficient to establish passing off if it leads to **confusion** or **misleading association** in the minds of consumers.
- 2. **Cadbury India Ltd. v. Neeraj Food Products (2007) 35 PTC 284 (Del):**
 - This case involved the protection of **trade dress** under the passing off doctrine. The Delhi High Court held that the **trade dress**, packaging, and overall appearance of Cadbury's products had built substantial goodwill. The defendant's similar packaging was likely to cause confusion and constitute passing off.
- 3. **M/S. Laxmikant V. Patel v. Chetanbhai Shah (2002) 3 SCC 65:**
 - This case focused on the issue of **similarities** in the **name** of two businesses and held that **passing off** occurs when the defendant's actions cause **confusion or deception** and damage the plaintiff's goodwill.

Remedies for Passing Off: When a plaintiff successfully proves the tort of passing off, they may be entitled to the following **remedies**:

1. Injunction:

- The court may issue an **injunction** to restrain the defendant from further **misrepresentation** or **use** of the offending mark, name, or trade dress. An injunction can prevent further damage to the plaintiff's goodwill and reputation.

2. Damages or Account of Profits:

- The court may award **damages** to the plaintiff for the loss suffered as a result of the defendant's passing off, or it may order the defendant to pay the **profits** they made from the unlawful use of the mark.
- The damages can be substantial, depending on the harm caused by the defendant's actions.

3. Delivery Up or Destruction of Infringing Goods:

- The court may order the **delivery up** or **destruction** of any infringing goods, materials, packaging, or documents that have been used in the passing off.

Conclusion: **Passing off** is a vital legal principle in protecting **unregistered trademarks** and **business goodwill** in India. It allows businesses to safeguard their **brand identity** and prevent competitors from **misleading consumers** by creating confusion in the marketplace. The protection extends to various forms of **intellectual property**, including **trade names**, **logos**, and **trade dress**, even when they are not registered with the authorities. The **doctrine of passing off** thus plays an essential role in preventing **unfair competition** and promoting a level playing field for businesses by recognizing and protecting the **reputation** of goods and services against misrepresentation and misappropriation.

Specification and Complete Specification.

"Specification" and "Complete Specification" are critical components of a patent application. They are documents submitted by an applicant to describe the invention and provide details on how it works, enabling the patent office to assess the invention's novelty, utility, and inventive step.

1. Provisional Specification: A **Provisional Specification** is an initial document filed to secure a **priority date** for the invention. It is primarily used when the invention is still in its developmental stage and the applicant requires additional time to finalize the details of the invention.

Key Features of a Provisional Specification:

- **Content:** It provides a **broad description** of the invention without detailing the specific claims. The goal is to protect the idea until a complete specification can be filed.
- **Filing Deadline:** A **Complete Specification** must be filed within **12 months** of filing the provisional specification, as per **Section 9 of the Indian Patents Act, 1970**.
- **Legal Effect:** The provisional specification does not result in the grant of a patent but serves as a placeholder to establish an **early priority date**.

Advantages:

- Gives inventors time to refine the invention.
- Secures a priority date, which is critical in a first-to-file system like India's.

2. Complete Specification

A **Complete Specification** is the final and detailed document that must be filed to proceed with the patent application. It contains a comprehensive description of the invention, including its **technical details, claims, and method of operation**.

Key Features of a Complete Specification:

- **Detailed Disclosure:** It provides a **complete and clear description** of the invention, enabling a person skilled in the art to replicate it.
- **Claims:** The claims section defines the **legal scope** of the patent, specifying the boundaries of protection.
- **Unity of Invention:** The complete specification must adhere to the **requirement of unity**, meaning it should relate to a single invention or a group of inventions linked by a single inventive concept.
- **Sections Covered:** Typically, a complete specification includes:
 - Title of the invention.
 - Field of invention.
 - Background of the invention.
 - Summary of the invention.
 - Detailed description of the invention.
 - Claims.
 - Drawings or diagrams (if applicable).
 - Abstract.

Legal Basis:

- Governed by **Section 10 of the Indian Patents Act, 1970**.

- The complete specification is examined by the patent office to determine if the invention meets the criteria for patentability (novelty, inventive step, and industrial application).

Conclusion: The **Specification** (Provisional) and **Complete Specification** are vital steps in the patent application process under the **Indian Patents Act, 1970**. While the provisional specification is used to secure an early filing date, the complete specification is a comprehensive document that forms the basis for examining and granting the patent. It is crucial to draft these documents meticulously to ensure effective protection of the invention.



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Part B

Long Answer Questions

What is Intellectual Property? Briefly discuss different forms of intellectual property.

Or

Explain the justification behind the Intellectual Property Rights. What are the different forms of Intellectual Property Rights?

Or

Explain the main forms of Intellectual Property.

Justification Behind Intellectual Property Rights (IPR)

Intellectual Property Rights (IPR) are designed to protect the creations of the human mind, providing creators and inventors with exclusive rights to use and benefit from their intellectual creations for a certain period. The justification for IPR can be explained through the following perspectives:

1. Encouragement of Innovation and Creativity

- **Reward for Effort:** IPR incentivizes individuals and organizations to invest time, effort, and resources into developing new ideas, technologies, and artistic works by ensuring they reap the benefits of their efforts.
- **Exclusive Rights:** The grant of exclusive rights encourages innovation and protects the creator from unauthorized use or copying by others.
- **Economic Development:** A robust IPR regime promotes technological advancement and economic growth by fostering innovation.

2. Moral Justification (Lockean Theory of Property)

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- **John Locke's Labor Theory:** According to Locke, individuals are entitled to the fruits of their labor. When a person applies their effort and creativity to produce something new, they acquire a natural right to the resulting work.
- **Recognition of Creativity:** IPR recognizes and rewards the creator's intellectual labor.

3. Social and Economic Benefits

- **Knowledge Sharing:** By protecting intellectual property, IPR encourages creators to disclose their work to the public, contributing to the overall pool of knowledge and technological progress.
- **Consumer Protection:** Trademarks and geographical indications help consumers identify the source and quality of goods, preventing deception and counterfeit products.

4. Preventing Free Riding

- Without IPR, others could exploit and profit from the creator's efforts without contributing to the creation or development process. IPR ensures fairness by preventing such exploitation.

5. International Harmony

- The global recognition of IPR under frameworks like the **TRIPS Agreement** (Trade-Related Aspects of Intellectual Property Rights) facilitates international trade and ensures consistent protection of intellectual property worldwide.

Forms of Intellectual Property Rights: IPR encompasses various types of rights aimed at protecting different forms of intellectual creations. The primary forms of IPR are as follows:

1. Copyright

- **Definition:** Protects original literary, artistic, musical, and dramatic works, as well as cinematographic films and sound recordings.
- **Duration in India:** Life of the author plus 60 years (as per the **Copyright Act, 1957**).
- **Example:** Novels, movies, paintings, software, etc.
- **Maxim:** *Animus possidendi* – the intention to own or possess intellectual work.

2. Patents

- **Definition:** Grants exclusive rights to an inventor for a novel, useful, and non-obvious invention, providing a monopoly for a certain period (20 years in India under the **Patents Act, 1970**).
- **Example:** Pharmaceutical drugs, technological devices, or chemical processes.
- **Legal Principle:** The patent system is based on a quid pro quo – the inventor discloses the invention to the public in exchange for a limited period of exclusivity.

3. Trademarks

- **Definition:** Protects signs, logos, symbols, or names that distinguish goods or services of one entity from another.
- **Duration in India:** 10 years (renewable indefinitely under the **Trade Marks Act, 1999**).

- **Example:** Nike swoosh, Apple logo.
- **Maxim:** *Dolus latet in generalibus* – Fraud lies in generalities, protecting consumers from misleading marks.

4. Industrial Designs

- **Definition:** Protects the aesthetic or ornamental aspects of a product, including shape, pattern, and configuration.
- **Duration in India:** 10 years (extendable by 5 years under the **Designs Act, 2000**).
- **Example:** Car models, furniture designs.

5. Geographical Indications (GIs)

- **Definition:** Identifies goods originating from a specific geographic location, where the quality, reputation, or characteristics are essentially attributable to that location.
- **Duration in India:** 10 years (renewable under the **Geographical Indications of Goods Act, 1999**).
- **Example:** Darjeeling Tea, Kanchipuram Silk.
- **Maxim:** *Res ipsa loquitur* – The thing speaks for itself, highlighting the product's intrinsic association with its origin.

6. Trade Secrets

- **Definition:** Protects confidential business information or processes that provide a competitive advantage.
- **No Formal Registration Required:** Protection is based on contractual and legal measures.
- **Example:** Coca-Cola formula, Google's search algorithm.
- **Maxim:** *Nemo dat quod non habet* – No one gives what they do not have, ensuring secrecy is maintained.

7. Layout Designs of Integrated Circuits

- **Definition:** Protects the unique layout of transistors and circuitry in integrated circuits.
- **Duration in India:** 10 years under the **Semiconductor Integrated Circuits Layout Design Act, 2000**.

8. Plant Varieties Protection

- **Definition:** Protects the rights of farmers and breeders over new and distinct plant varieties.
- **Act in India:** The **Protection of Plant Varieties and Farmers' Rights Act, 2001**.
- **Example:** Hybrid crops, genetically modified plants.

9. Performer's Rights

- **Definition:** Grants rights to performers (actors, musicians, etc.) to control the use of their performances.
- **Duration in India:** 50 years under the **Copyright Act, 1957**.

10. Collective Marks

- **Definition:** Protects marks used by a group or association to distinguish goods or services.
- **Example:** Labels identifying products from cooperatives or trade associations.

11. New Forms of IPR

- **Traditional Knowledge:** Protects indigenous cultural expressions, knowledge systems, and practices.
- **Digital Rights Management (DRM):** Protects digital content from unauthorized copying or access.
- **Genetic Resources:** Protection for genetic materials under frameworks like the Convention on Biological Diversity.

Conclusion: The justification for Intellectual Property Rights lies in their ability to reward creativity, foster innovation, and promote economic growth by granting exclusive rights to creators and inventors. The various forms of IPR, such as **copyrights, patents, trademarks, industrial designs, and geographical indications**, among others, cater to different aspects of intellectual creation, ensuring comprehensive protection for intellectual property. A well-defined IPR regime is essential for balancing the interests of creators, consumers, and society at large, while encouraging a culture of innovation and creativity.



Define an 'Invention'. Describe the yardsticks that determine the patentability of an invention.

The term '**Invention**' is defined under **Section 2(1)(j)** of the **Indian Patents Act, 1970** as:

"A new product or process involving an inventive step and capable of industrial application."

In simple terms, an invention is a novel solution to a problem or a technical advancement that contributes to the progress of science, technology, or industry. It can be:

- A **product** (e.g., a new machine, device, or chemical compound).
- A **process** (e.g., a method for manufacturing goods or improving existing techniques).

Key Components of an Invention

1. **New Product or Process:** The invention should introduce something not known or used before.
2. **Inventive Step:** It should involve a technical advancement or an economic significance that is not obvious to a person skilled in the art.
3. **Industrial Application:** The invention must be capable of being manufactured or used in an industry.

Yardsticks for Patentability of an Invention: For an invention to be patentable under Indian law, it must satisfy the following criteria:

1. Novelty (Newness)

- **Definition:** The invention must be new and not anticipated in any prior art (existing knowledge or technology) before the date of filing the patent application.
- **Legal Basis:** Section 2(1)(l) of the **Indian Patents Act, 1970**.
- **Tests for Novelty:**
 - No prior publication of the invention in any document.
 - No prior public use or demonstration.
 - No existing patent or application for the same invention.
- **Example:** A drug with a completely new chemical composition would be considered novel.

2. Inventive Step (Non-Obviousness)

- **Definition:** The invention must involve a technical advancement or an improvement that would not be obvious to a person skilled in the field.
- **Legal Basis:** Section 2(1)(ja) of the **Indian Patents Act, 1970**.
- **Tests for Inventive Step:**
 - The invention must solve a technical problem in a way that is not obvious.
 - The invention must involve a significant departure from prior knowledge or techniques.
- **Example:** An innovative design of a mobile phone that increases battery efficiency significantly.

3. Industrial Applicability

- **Definition:** The invention must be capable of being used in an industry, meaning it should have practical utility.
- **Legal Basis:** Section 2(1)(ac) of the **Indian Patents Act, 1970**.
- **Tests for Industrial Applicability:**
 - The invention must be operable and functional.
 - It must be applicable to at least one industrial sector.
- **Example:** A method to extract clean water from seawater using a cost-efficient technique.

4. Subject Matter

- The invention must not fall under the categories of non-patentable subject matter listed in **Section 3** and **Section 4** of the **Indian Patents Act, 1970**. Examples include:
 - Frivolous or contrary to public morality inventions (Section 3(a)).
 - Discovery of a scientific principle (Section 3(c)).
 - Aesthetic creations like literary, artistic, or dramatic works (Section 3(d)).
 - Methods of agriculture or horticulture (Section 3(h)).
 - Traditional knowledge (Section 3(p)).

Additional Considerations

1. Sufficiency of Disclosure

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- The patent application must include a **complete specification** as per **Section 10** of the Act. This specification should:
 - Fully disclose the invention.
 - Enable a person skilled in the art to replicate the invention.

2. Priority Date

- The patent application must establish a **priority date** to determine the novelty of the invention. This is crucial in a **first-to-file system** like India.

3. Unity of Invention

- The invention must relate to a **single inventive concept**, as per **Section 10(5)**.

Examples of Patentable Inventions

1. **Pharmaceutical Drugs:** A new drug composition for treating a specific disease.
2. **Technological Advancements:** A new method to improve the speed of data transmission in a communication network.
3. **Industrial Machines:** A device that improves the efficiency of textile production.

Conclusion: An invention is patentable in India if it satisfies the criteria of **novelty, inventive step, and industrial applicability**, and does not fall under non-patentable subject matter. These yardsticks ensure that only deserving inventions are granted protection, encouraging innovation while balancing the interests of the inventor and the public.

What are not inventions under S.3 of Patents Act? Briefly explain the Novartis case in this regard.

Section 3 of the **Indian Patents Act, 1970** lists the subject matter that is **not considered an invention** and, therefore, is **non-patentable** under Indian law. The key provisions are as follows:

Categories of Non-Inventions (Section 3)

1. **Frivolous Inventions (Section 3(a)):**
 - Any invention that is frivolous or claims something contrary to well-established natural laws.
 - **Example:** A machine claiming perpetual motion, which defies the laws of thermodynamics.
2. **Inventions Contrary to Public Order or Morality (Section 3(b)):**
 - Any invention whose use could harm public order, morality, or cause serious prejudice to humans, animals, or plants.
 - **Example:** Biological weapons.
3. **Discovery of Scientific Principles or Abstract Theories (Section 3(c)):**
 - Discoveries of existing scientific principles or theories cannot be patented as they are not novel creations.
 - **Example:** Newton's laws of motion.
4. **Discovery of Living Things or Non-Living Substances in Nature (Section 3(d)):**

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- Natural substances or organisms are not patentable.
- **Example:** Naturally occurring minerals or plants.
- 5. **Mere Admixture or Arrangement (Section 3(e)):**
 - A mere admixture of substances resulting in only the aggregation of properties without any synergistic effect.
 - **Example:** A mixture of known drugs without improved therapeutic efficacy.
- 6. **Method of Agriculture or Horticulture (Section 3(h)):**
 - Methods related to cultivating or producing crops are excluded from patent protection.
 - **Example:** A method for increasing the yield of rice.
- 7. **Medical, Surgical, or Diagnostic Methods (Section 3(i)):**
 - Processes for treating humans or animals to cure diseases or improve health are not patentable.
 - **Example:** A surgical method for organ transplantation.
- 8. **Plants and Animals (Section 3(j)):**
 - Plants, animals, and their biological processes, excluding microorganisms, are not patentable.
 - **Example:** A new plant variety.
- 9. **Mathematical or Business Methods, Algorithms, or Computer Programs Per Se (Section 3(k)):**
 - Abstract mathematical or business models, as well as standalone computer programs, are not patentable.
 - **Example:** A stock trading algorithm.
- 10. **Presentation of Information (Section 3(l)):**
 - Methods for presenting data or information are not considered inventions.
 - **Example:** A way to display stock market information.
- 11. **Traditional Knowledge (Section 3(p)):**
 - Knowledge that exists within a community or is part of traditional wisdom is not patentable.
 - **Example:** Use of turmeric for wound healing.

Novartis Case and Section 3(d):: The **Novartis AG v. Union of India (2013)** case is one of the most significant decisions regarding Section 3(d), which deals with the **enhancement of the efficacy of known substances**.

Facts of the Case:

1. Novartis AG filed a patent application in India for its anti-cancer drug **Glivec** (Imatinib Mesylate) in a beta-crystalline form.
2. The beta-crystalline form was argued to be more stable and had better bioavailability than the previously known Imatinib Mesylate.
3. The Indian Patent Office rejected the application, citing **Section 3(d)**, as it did not demonstrate a significant enhancement in **therapeutic efficacy**.

Legal Provisions of Section 3(d):

- Section 3(d) excludes the following from patentability:

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- Mere discovery of a **new form** of a known substance that does not result in the enhancement of its **known efficacy**.
- Examples: New salts, polymorphs, or derivatives of a known compound unless they show improved therapeutic efficacy.

Supreme Court Ruling:

1. The Supreme Court upheld the rejection of Novartis' patent application.
2. The Court observed that the **mere improvement in bioavailability** does not equate to a significant enhancement in therapeutic efficacy.
3. The Court emphasized the intent behind Section 3(d) was to:
 - Prevent **evergreening** of patents (granting patents for minor modifications of known drugs).
 - Promote access to affordable medicines in India.

Significance of the Case:

1. The judgment reinforced India's strict approach to patentability, especially for pharmaceutical inventions, to prevent monopolies.
2. It balanced the rights of innovators with public interest by prioritizing affordable healthcare over trivial modifications in drugs.

Conclusion: Section 3 of the Indian Patents Act reflects India's commitment to ensuring that patents are granted only for true innovations. The **Novartis case** is a landmark decision that emphasized the principle of **therapeutic efficacy** under Section 3(d) and set a precedent for preventing evergreening, protecting both public health and the integrity of India's patent system.

Explain the procedure for obtaining patent for an invention in India and abroad.

Obtaining a patent involves a structured legal process designed to protect an invention. While the procedures differ slightly between jurisdictions, the core principles remain similar. Here's a detailed explanation of the procedure in **India** and **abroad**.

I. Procedure for Obtaining a Patent in India: The process for obtaining a patent in India is governed by the **Patents Act, 1970**, and its subsequent amendments. The steps are as follows:

1. Determine Patentability

- Before filing, ensure the invention satisfies the criteria of **novelty**, **inventive step**, and **industrial applicability** under **Section 2(1)(j)** of the **Patents Act, 1970**.
- Ensure it does not fall under the **non-patentable subject matter** listed in **Section 3** and **Section 4** of the Act.

2. Patent Search

- Conduct a patent search to ensure no prior art exists that might invalidate the novelty of the invention.

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- Tools like the **Indian Patent Advanced Search System (IPAS)** and global databases (e.g., WIPO's PATENTSCOPE) can be used.

3. File a Patent Application

- An application is filed with the **Indian Patent Office (IPO)**. The applicant can file:
 - **Provisional Specification:** If the invention is at an early stage, providing a basic description of the invention. This secures a priority date and must be followed by a **Complete Specification** within 12 months.
 - **Complete Specification:** If the invention is fully developed, it includes detailed claims, technical descriptions, and drawings.

Forms Required:

- **Form 1:** Application for Grant of Patent.
- **Form 2:** Provisional or Complete Specification.
- **Form 3:** Statement of Foreign Applications (if applicable).
- **Form 5:** Declaration of Inventorship.

Types of Applications:

- Ordinary application.
- Convention application.
- Patent Cooperation Treaty (PCT) application.
- Divisional application.
- Patent of addition.

4. Publication of Application

- After filing, the application is published in the **Patent Office Journal** after **18 months** (or earlier if requested via **Form 9** for early publication).
- Publication makes the invention publicly accessible, enabling objections if applicable.

5. Examination

- Submit a request for examination (**Form 18**) within **48 months** from the priority date.
- The application is examined for compliance with patentability criteria.
- The examiner issues a **First Examination Report (FER)** highlighting objections or required amendments.

6. Respond to Examination Report

- The applicant must respond to the FER within **6 months**, addressing objections and amending claims if necessary.
- The application may go through multiple rounds of review and responses.

7. Grant of Patent

- If the examiner is satisfied, the patent is granted and published in the **Patent Journal**.
- The term of the patent is **20 years** from the date of filing (or priority date).

8. Renewal and Maintenance

- Annual renewal fees must be paid to maintain the patent.

II. Procedure for Obtaining a Patent Abroad

Patents must be applied for separately in each country or region where protection is sought, unless a treaty system is used. Two common methods are:

1. Filing via the Paris Convention (Convention Route)

- The **Paris Convention for the Protection of Industrial Property** allows applicants to claim priority from the first-filed application in another member country.
- Key points:
 - The applicant must file in each desired country within **12 months** of the initial application.
 - Separate examinations are conducted in each country.

2. Filing via the Patent Cooperation Treaty (PCT)

- The **PCT** simplifies the process of filing patents internationally. It is administered by the **World Intellectual Property Organization (WIPO)**.
- Steps:
 1. **File a PCT Application:**
 - Filed with the **Receiving Office (RO)** in the applicant's home country or directly with WIPO.
 - Provides a single international filing date.
 2. **International Search:**
 - An **International Searching Authority (ISA)** conducts a search to determine prior art and issues an **International Search Report (ISR)**.
 3. **Optional Preliminary Examination:**
 - An **International Preliminary Examining Authority (IPEA)** provides a non-binding opinion on patentability.
 4. **National Phase Entry:**
 - After 30 or 31 months from the priority date, the applicant must enter the **national phase** in desired countries for local examination.

Differences in Patent Laws Abroad

1. **United States:**
 - Governed by the **United States Patent and Trademark Office (USPTO)**.
 - Adopts a **first-to-file system**.
 - Allows patents for utility, design, and plant inventions.
2. **European Union:**
 - The **European Patent Office (EPO)** grants patents enforceable across EU member states.

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3. China:

- Governed by the **China National Intellectual Property Administration (CNIPA)**.
- Mandatory examination for all applications.

Conclusion: Obtaining a patent involves navigating legal, procedural, and technical requirements. In **India**, the process is regulated by the Patents Act, 1970, while international filings depend on treaties like the **PCT** or **Paris Convention**. Following the correct procedure ensures legal protection for inventions and secures exclusive rights for the inventor.

How do you appreciate the 'Law of Passing-off'?

The **law of passing-off** is a fundamental principle in intellectual property law, primarily aimed at protecting the goodwill and reputation of a business or product from being misappropriated by others. It is based on the principle that **no person is entitled to represent their goods or services as those of another**. This doctrine forms an essential remedy under common law to safeguard the interests of traders and consumers alike.

Definition of Passing-Off: Passing-off refers to an act where one person **misrepresents their goods or services** as those of another, causing harm to the latter's goodwill and reputation. It is not dependent on the registration of a trademark and exists under common law.

As per Lord Diplock in the case of **Erven Warnink BV v. J Townend & Sons (Hull) Ltd. (1979)**, passing-off is defined as "a form of unfair competition in which a trader uses deception to represent his goods as those of another trader."

Essential Elements of Passing-Off: The classic case of **Reckitt & Colman Products Ltd. v. Borden Inc. (1990)** laid down the "classical trinity" or essential elements for establishing passing-off:

1. Goodwill:

- The plaintiff must prove that their business has a reputation and goodwill attached to the goods or services, which the public associates with a distinctive identifier (e.g., name, mark, or trade dress).
- Goodwill represents the attractive force that draws in customers.

2. Misrepresentation:

- The defendant must have made a misrepresentation to the public, leading them to believe that the defendant's goods or services are associated with the plaintiff.
- The misrepresentation can be intentional or unintentional but must result in deception.

3. Damage:

- The plaintiff must show that the misrepresentation has caused or is likely to cause damage to their goodwill or reputation.

Key Principles of Passing-Off

1. Protection of Goodwill:

- The doctrine protects the goodwill associated with a trader's business or product from being diluted or exploited by another.

2. **No Need for Registration:**
 - Unlike trademark infringement, passing-off provides protection even if the trademark is **unregistered**.
3. **Deceptive Misrepresentation:**
 - The misrepresentation must deceive or have the potential to deceive the public into believing that the goods or services of the defendant are those of the plaintiff.
4. **Wide Scope:**
 - Passing-off can apply to a variety of identifiers, including:
 - Trademarks
 - Trade dress (packaging or appearance)
 - Business names
 - Product design or get-up

Leading Indian Cases on Passing-Off

1. **Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd. (2001):**
 - The Supreme Court emphasized the importance of avoiding confusion in cases involving medicinal products due to public health concerns.
 - The Court laid down principles for determining deceptive similarity.
2. **Honda Motors Co. Ltd. v. Charanjit Singh (2003):**
 - The defendant used the name "Honda" for their business unrelated to automobiles.
 - The Court held that goodwill associated with a name like "Honda" could extend beyond the specific product and protected the plaintiff's goodwill.
3. **Laxmikant V. Patel v. Chetanbhat Shah (2002):**
 - The Supreme Court observed that passing-off protects a trader's goodwill against misrepresentation that could harm their business.

Justification and Appreciation of Passing-Off

The law of passing-off is justified for the following reasons:

1. **Protection of Goodwill:**
 - It ensures that traders can benefit exclusively from the goodwill and reputation they have built over time.
2. **Consumer Protection:**
 - Passing-off prevents consumers from being misled or deceived, thereby ensuring fair trade practices.
3. **Encourages Fair Competition:**
 - The doctrine upholds the principle of fair competition by preventing dishonest practices that could harm competitors.
4. **Flexibility of Common Law:**
 - Passing-off is flexible and can adapt to changing commercial practices, such as online trading or domain name disputes.

Conclusion: The law of passing-off is an integral part of intellectual property law, providing comprehensive protection to businesses and consumers alike. By ensuring that no one can exploit the

reputation of another, it fosters an environment of trust and fair competition in the marketplace. While it has its challenges, the doctrine continues to evolve, addressing new issues like digital misrepresentation and domain name squatting. Its balance between commercial integrity and consumer protection underscores its enduring relevance in modern commerce.

Distinguish Infringement of Trademark with Passing off with suitable case law.

Or

What amounts to infringement of Trademark? How does it differ from Passing-off.

Trademark infringement and passing-off are two separate remedies available under intellectual property law for protecting trademarks. While both address unauthorized use or misrepresentation, they are distinct in their legal foundation, scope, and application. Below is a detailed comparison:

1. Legal Basis

- **Trademark Infringement:**
 - Governed by the **Trade Marks Act, 1999**, primarily under **Sections 29 and 30**.
 - It deals with the **violation of a registered trademark**.
 - The plaintiff must prove unauthorized use of their registered trademark or a deceptively similar mark.
- **Passing-Off:**
 - A common law tort aimed at protecting the goodwill and reputation of a business.
 - Applicable even if the trademark is **unregistered**.
 - The focus is on preventing misrepresentation that causes confusion among the public.

2. Nature of Protection

- **Trademark Infringement:**
 - Protects the **exclusive statutory rights** conferred upon the owner of a registered trademark.
 - The action is based solely on the registration of the trademark.
- **Passing-Off:**
 - Protects the **goodwill** and reputation associated with the business or product.
 - Does not require trademark registration and is broader in scope.

3. Essentials for Action

Trademark Infringement:

1. **Registration:** The trademark must be registered under the Trade Marks Act, 1999.
2. **Similarity:** Unauthorized use of an identical or deceptively similar mark.
3. **Confusion:** Likelihood of confusion among consumers.
4. **Statutory Remedy:** Action can be brought solely based on the registered trademark.

Passing-Off:

1. **Goodwill:** The plaintiff must establish goodwill in the business or product.
2. **Misrepresentation:** Defendant must have made a false representation leading to consumer confusion.
3. **Damage:** Proof of actual or potential damage to the plaintiff's goodwill.
4. **Common Law Remedy:** Action is independent of trademark registration.

4. Nature of Misrepresentation

- **Trademark Infringement:**
 - Involves **unauthorized use** of a registered trademark, even if the defendant does not intend to deceive.
 - The intention of the defendant is irrelevant if infringement is proven.
- **Passing-Off:**
 - Relates to **misrepresentation** that deceives the public into believing the defendant's goods or services are associated with the plaintiff.
 - The focus is on the **intention** to deceive or create confusion.

5. Remedies Available

- **Trademark Infringement:**
 - Injunction, damages, and account of profits.
 - Destruction or seizure of infringing goods.
 - Statutory remedy under the Trade Marks Act.
- **Passing-Off:**
 - Injunction, damages, and account of profits.
 - A broader remedy that can extend beyond trademark violations to business names, trade dress, etc.

6. Scope of Protection

- **Trademark Infringement:**
 - Restricted to the protection of **registered trademarks**.
 - Limited to the use of the trademark for goods or services in the same or related classes.
- **Passing-Off:**
 - Broader in scope; protects unregistered trademarks, trade dress, and goodwill.
 - Not limited to goods or services in the same class; applies wherever goodwill is affected.

Case Laws

Trademark Infringement:

1. **Amritdhara Pharmacy v. Satya Deo Gupta (1963):**
 - The Supreme Court held that the use of the trademark "Lakshmandhara" infringed on the plaintiff's registered trademark "Amritdhara."
 - The Court emphasized the likelihood of confusion due to phonetic similarity.
2. **P.M. Diesels Ltd. v. Thukral Mechanical Works (1988):**

- o Unauthorized use of a registered trademark was held to constitute infringement.

Passing-Off:

1. Reckitt & Colman Products Ltd. v. Borden Inc. (1990):

- o Known as the "Jif Lemon" case, it established the classical trinity of goodwill, misrepresentation, and damage.
- o The plaintiff succeeded in proving that the defendant's lemon-shaped bottle misled consumers.

2. Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd. (2001):

- o The Supreme Court laid down the test for deceptive similarity, particularly emphasizing the need for greater vigilance in cases involving medicinal products.

Illustrative Comparison

Aspect	Trademark Infringement	Passing-Off
Legal Basis	Statutory (Trade Marks Act, 1999)	Common law
Registration Required	Yes	No
Primary Focus	Violation of statutory rights	Protection of goodwill
Proof of Use	Unauthorized use of a registered trademark	Misrepresentation leading to confusion
Scope	Limited to registered trademarks	Broader, includes unregistered trademarks
Case Example	Amritdhara Pharmacy v. Satya Deo Gupta	Cadila Healthcare Ltd. v. Cadila Pharma

Conclusion: While both trademark infringement and passing-off aim to prevent unfair competition and protect the rights of trademark owners, they differ significantly in their legal foundation and application. **Trademark infringement** provides a statutory remedy for registered trademarks, while **passing-off** offers broader protection under common law, ensuring that goodwill and reputation are safeguarded even in the absence of trademark registration. Both doctrines complement each other, creating a robust framework for intellectual property protection.

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Discuss in detail the provisions of Paris Convention 1883.

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Analyse the provisions of the Paris Convention and its impact on protection of industrial property in India.

The **Paris Convention for the Protection of Industrial Property** was adopted in 1883 and is one of the oldest international treaties aimed at protecting industrial property across member countries. Industrial property includes patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications, and the repression of unfair competition. India is a member of the Paris Convention, having joined in 1998. The provisions of the Convention have had a significant influence on the protection of industrial property in India, particularly with the enactment of the **Patents Act, 1970**, the **Trade Marks Act, 1999**, and the **Copyright Act, 1957**, among other statutes.

Key Provisions of the Paris Convention

1. National Treatment (Article 2):

- This provision ensures that nationals of any member country are granted the same industrial property protection in all other member countries as that country's nationals.
- It prevents discrimination between foreign and local applicants for patents, trademarks, and other industrial property.

2. Right of Priority (Article 4):

- This is one of the most significant provisions of the Paris Convention, providing a **priority period of 12 months for patents and 6 months for trademarks and industrial designs**.
- If a person files for industrial property protection in one member country, they can claim the same filing date in other member countries if they apply within this priority period.

3. Protection of Patents (Article 4bis):

- It ensures that patents granted in one member country are respected in all other member countries. This means that a patent granted in India is also recognized by other member countries, subject to their national laws.
- The Paris Convention ensures that industrial property rights, once granted, will have protection across jurisdictions.

4. Exhibition Priority (Article 11):

- If a product is displayed at an international exhibition in any member country, the applicant can claim priority for the exhibition display date. The priority claim will be valid for 6 months from the exhibition date, applicable to patents, designs, and trademarks.

5. Unfair Competition (Article 10bis):

- The Convention encourages member countries to provide protection against unfair competition, such as misleading advertising, false claims of origin, or any unfair practices that may harm the industrial or commercial interests of others.

6. Optional Provisions:

- The Paris Convention allows each country to decide whether to extend its protection to **utility models, industrial designs, and service marks**. This is left to the discretion of the member countries.

Conclusion: The Paris Convention has had a profound impact on the protection of industrial property in India. Its provisions, especially those concerning national treatment, priority rights, and the protection against unfair competition, have been incorporated into Indian law, fostering an environment conducive to innovation, international trade, and the protection of intellectual property. By aligning with the

Convention, India has established itself as a reliable and competitive player in the global industrial property landscape, encouraging both domestic and foreign investments in industrial property. The harmonization of Indian laws with international standards under the Paris Convention has been a significant factor in strengthening India's intellectual property protection framework.

Discuss the rights of the Authors and copyright Owners.

The **Copyright Act, 1957** is the primary legislation governing copyright law in India. It defines the rights of authors and copyright owners, who are given exclusive rights to their works. The Act, as amended by the **Copyright (Amendment) Act, 2012**, grants various rights to the authors and copyright owners to control the use and reproduction of their creative works.

1. Types of Works Protected by Copyright

Under **Section 13** of the Copyright Act, 1957, copyright protection is available to a wide range of works, provided they are original and fixed in a tangible medium of expression. These works include:

- Literary works (books, articles, poems)
- Musical works (compositions)
- Artistic works (paintings, sculptures, drawings)
- Cinematographic films
- Sound recordings
- Computer programs
- Architectural works
- Dramatic works
- Choreographic works

2. Rights of Authors and Copyright Owners

Copyright law provides authors and copyright owners with both **economic rights** and **moral rights**. These rights are exclusive, meaning only the author or copyright owner, or those authorized by them, can exercise these rights.

Economic Rights (Section 14 of the Copyright Act)

Economic rights refer to the rights of the copyright owner to control the use of the work in various ways that can generate economic benefit. These include the following:

1. **Reproduction Right:**

- Under **Section 14(a)**, the copyright owner has the exclusive right to reproduce the work in any material form, including the right to make copies of the work by printing, copying, or digital reproduction.
- This right applies to literary, dramatic, musical, and artistic works.

2. **Right of Performance:**

- The copyright owner has the exclusive right to perform the work in public or to communicate the work to the public.

- For example, authors of dramatic works or composers of music have the exclusive right to perform their work in a theater or concert hall (Section 14(c)).
- 3. Right to Make Adaptations:**
 - The copyright owner has the right to make adaptations or transformations of the work. This includes the right to translate, adapt, arrange, or dramatize the work (Section 14(b)).
 - For example, the author of a novel has the exclusive right to adapt that novel into a film.
- 4. Distribution Right:**
 - The right to distribute copies of the work to the public by sale or any other form of transfer of ownership is granted to the copyright owner (Section 14(d)).
 - This right applies to works like books, films, or sound recordings.
- 5. Right of Communication to the Public:**
 - Under **Section 14(e)**, the copyright owner has the exclusive right to communicate the work to the public by means of broadcasting, telecasting, or other electronic means.
 - This includes the right to stream music or films online.
- 6. Right of Rental:**
 - The right to rent copies of the work (for example, renting out films or music recordings) is granted under **Section 14(f)**.
- 7. Right to Commercial Exploitation:**
 - The copyright owner has the right to commercially exploit the work in any manner they choose. This can involve licensing, merchandising, and other commercial activities.

Moral Rights (Section 57 of the Copyright Act)

Moral rights protect the personal and reputational interests of authors. These rights are separate from economic rights and cannot be transferred, waived, or assigned.

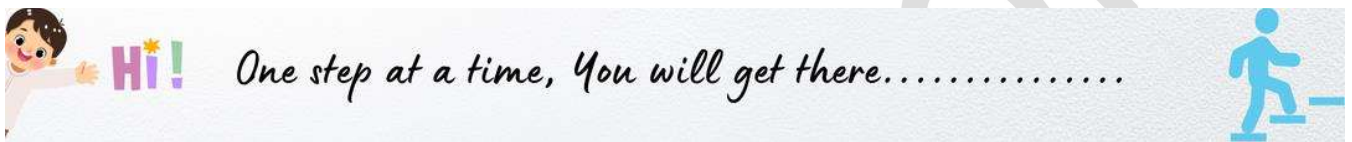
- 1. Right of Attribution:**
 - The author has the right to claim authorship of the work and to prevent any distortion, mutilation, or modification of the work that would harm the author's honor or reputation (Section 57(1)).
 - This means that the author can prevent others from using their work in a way that misrepresents their authorship or intention.
- 2. Right of Integrity:**
 - The author has the right to prevent the distortion, mutilation, or modification of the work, which would prejudice the author's honor or reputation (Section 57(2)).
 - For example, an artist can prevent their work from being altered in a way that distorts the original artistic expression.
- 3. Right of Withdrawal:**
 - Authors have the right to withdraw their work from circulation under certain conditions. However, the exercise of this right cannot deprive others of the right to exploit the work that has already been lawfully reproduced (Section 57(3)).

3. Duration of Copyright

- The duration of copyright protection varies depending on the type of work.

- **Literary, dramatic, musical, and artistic works** are protected for the lifetime of the author plus **60 years** after the author's death (Section 22).
- **Cinematographic films, sound recordings, and photographs** are protected for **60 years** from the date of publication (Section 26).
- **Anonymous or pseudonymous works** are protected for 60 years from the date of publication.

Conclusion: The rights of authors and copyright owners under Indian law, as per the **Copyright Act, 1957**, empower them to control and exploit their creative works in numerous ways, ensuring that they can derive economic benefit from their intellectual efforts. These rights also protect the integrity and reputation of the author through moral rights, which safeguard the author's personal connection to the work. The law provides a balanced framework for the protection and enforcement of these rights, enabling creators to secure recognition and reward for their creativity while fostering a dynamic environment for artistic and literary production.



What is originality in a work? Explain the statement that copyright is a bundle of rights.

Originality is one of the key requirements for a work to be eligible for copyright protection under Indian copyright law. The term **originality** refers to the idea that a work must be created independently and must not be copied from another work. The work must represent the author's own intellectual creation, though it need not be novel in the sense that it must not have been seen before. Originality is defined by the **Copyright Act, 1957**, as an essential criterion for protecting works, though it is not explicitly mentioned in the text of the Act.

Key Points on Originality in Copyright Law

1. **Independent Creation:**
 - A work is considered original if it is the product of the author's own skill, labor, and judgment. It should not be a mere reproduction or imitation of another existing work. The author must create the work independently without copying from other sources.
2. **Threshold of Originality:**
 - The level of originality required is not very high. A work must demonstrate a minimum level of originality, meaning that it should reflect the author's creative effort, even if it is based on existing ideas or themes. For example, a translation of a book or a cover version of a song can be original if the work itself involves a creative input from the author.
3. **Expressed in a Tangible Medium:**
 - The work must be fixed in a tangible medium of expression, such as paper, canvas, film, or digital format. This ensures that the work is available for reproduction or distribution and that the author's rights can be enforced.
4. **Originality in Different Types of Works:**
 - **Literary Works:** Originality in literary works such as novels, poems, articles, or essays is based on the author's unique expression of ideas.

- **Artistic Works:** For paintings, sculptures, drawings, and other artistic works, originality is found in the creator's design or depiction.
 - **Musical Works:** For music, originality exists in the composition of the melody or lyrics.
5. **Judicial Interpretation:**
- The Indian courts have consistently held that the requirement of originality is met when a work is the result of the author's independent effort, even if it is inspired by existing works or ideas. The work does not need to be innovative or novel in the traditional sense (e.g., like patents), but it must involve an element of creativity and originality in the expression.

Tests for Originality in Indian Copyright Law

In the case of **R.G. Anand v. Delux Films (1978)**, the Supreme Court of India laid down that **originality** in a work means that it should not be a mere **copy** of an existing work. The courts also use the "skill, judgment, and labor" test to determine if the work is original. If a work is produced using skill, judgment, and labor, it satisfies the requirement for originality, even if it draws inspiration from existing works.

Thus, originality in copyright law focuses primarily on the **expression of ideas** rather than the idea itself. This ensures that the author's creative expression is protected, while ideas or concepts (which are not protected by copyright) remain free for use by others.

The statement "**copyright is a bundle of rights**" refers to the fact that copyright law does not confer a single, monolithic right on the creator, but rather a collection of distinct, individual rights that can be exercised separately or together. These rights are typically divided into **economic rights** and **moral rights**, with each type of right offering different forms of control over the work.

Economic Rights (Section 14 of the Copyright Act, 1957)

Economic rights enable the copyright owner to control how their work is used commercially. These rights are:

1. **Reproduction Right:**
 - The right to reproduce the work in any form, including copies, prints, or digital reproductions.
2. **Right of Performance:**
 - The right to perform the work in public (for example, performing a play or a musical composition).
3. **Right of Adaptation:**
 - The right to adapt, translate, or otherwise transform the work (for instance, turning a novel into a screenplay).
4. **Right to Distribute:**
 - The right to distribute copies of the work to the public by sale, rental, or other means.
5. **Right to Broadcast:**
 - The right to communicate the work to the public via broadcasting or online streaming platforms.
6. **Rental and Lending Rights:**

- The right to lend or rent copies of certain types of works like cinematographic films, sound recordings, or computer programs.

These economic rights allow the copyright owner to control the commercial exploitation of their work, enabling them to license or assign these rights to others for monetary compensation.

Moral Rights (Section 57 of the Copyright Act, 1957)

Moral rights are distinct from economic rights and protect the **personal and reputational interests** of the author. These include:

1. **Right of Attribution:**
 - The right to claim authorship of the work and prevent others from falsely attributing the work to someone else.
2. **Right of Integrity:**
 - The right to object to any distortion, mutilation, or modification of the work that would harm the author's honor or reputation.
3. **Right of Withdrawal:**
 - The right to withdraw a work from circulation, provided it does not affect the interests of others who have already used it.

Moral rights, unlike economic rights, cannot be transferred or assigned, as they are tied to the author's personality and are meant to protect the author's relationship with their work.

Bundle of Rights Concept

The concept of a "bundle of rights" in copyright law means that the creator or copyright owner has the power to divide and transfer these rights as they see fit. The creator can exercise the full bundle of rights themselves or can assign or license individual rights to others.

For example:

- An author can transfer the **right to reproduce** their book to a publisher while retaining the **right to perform** the work in public.
- An artist can assign the **right to distribute** copies of their painting to a gallery while maintaining the **right of attribution**.

Furthermore, the copyright holder can also exploit these rights in different jurisdictions or countries, which means that the rights granted under copyright can be divided geographically as well. The bundle of rights allows for flexibility in how the work is commercially used, and the copyright owner can choose to grant exclusive or non-exclusive licenses to third parties.

Conclusion: Originality in a work refers to the independent and creative effort by the author, which is an essential requirement for copyright protection. **Copyright is a bundle of rights**, meaning that the copyright owner holds multiple distinct rights, both **economic** (reproduction, distribution, adaptation, etc.) and **moral** (attribution, integrity, etc.). These rights can be transferred, licensed, or assigned individually or collectively, providing flexibility in how a work is used and exploited.



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Define Design. Write an essay on the piracy of design and the remedies thereof.

A **design** refers to the **aesthetic aspect** of an article or object that gives it a unique and attractive appearance. In the context of intellectual property law, design refers to the **visual elements** of a product that appeal to the senses, particularly the eye. Designs include the shape, pattern, configuration, ornamentation, or composition of lines and colors applied to any article. According to the **Design Act, 2000** (India), a design is defined as:

"Design means the features of shape, configuration, pattern, ornamentation, or composition of lines or colors applied to any article, whether in two or three dimensions, which is new or original and which is intended to be judged solely by the eye."

Key Elements of a Design:

1. **Shape and Configuration:** Refers to the form or structure of an article.
2. **Pattern and Ornamentation:** Refers to decorative elements applied to a product.
3. **New and Original:** A design must be novel, i.e., it should not have been previously published or disclosed in any way.
4. **Intended for Visual Appeal:** The design should be primarily aesthetic, meant to appeal to the senses, especially sight.

The **Design Act, 2000** provides protection to the creator of a design by granting exclusive rights over the design for a limited period, ensuring that the design cannot be reproduced, imitated, or used without authorization. The Act also allows the registration of a design with the **Design Office of India**, which provides additional legal protection.

Piracy of Design: **Piracy of design** refers to the unlawful copying, reproduction, or imitation of a registered design without the permission of the design owner. It is a form of infringement where a person or entity deliberately or negligently copies or uses the design of another person for their commercial gain, leading to unfair competition and financial loss for the original creator. The unauthorized use of a design undermines the exclusive rights of the original designer and damages the commercial value of their work.

Piracy of design can occur in many industries, especially in fashion, automotive, furniture, and electronics, where designs play a crucial role in consumer appeal. **Design piracy** involves two key elements:

1. **Copying:** Reproducing the design in whole or in part.
2. **Imitation:** Creating a design that closely resembles the original but is not an exact replica, often to the point where it is difficult for consumers to distinguish between the two.

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Forms of Design Piracy:

1. **Copying and Reproduction:** This is the most straightforward form of design piracy, where an exact replica of the design is produced and sold as a new product.
2. **Counterfeit Goods:** Counterfeit products are often manufactured using pirated designs, leading to the sale of imitation goods that bear a striking resemblance to the original design.
3. **Industrial Espionage:** In some cases, companies may engage in espionage to steal a competitor's design and mass-produce it.
4. **Parallel Imports:** Designs that are registered in other countries but are reproduced and imported into India without authorization also amount to piracy.

Design piracy can have significant financial consequences for the original designer, as it leads to market confusion, loss of revenue, and a decrease in the value of their creative work.

Remedies for Piracy of Design

The **Design Act, 2000** provides several legal remedies for the protection of designs and addresses the issue of design piracy. Remedies available for the infringement of design rights can be broadly categorized into **civil remedies** and **criminal remedies**.

1. Civil Remedies

Civil remedies focus on preventing further infringement and compensating the original designer for the damages suffered due to piracy.

- **Injunction:**
 - Under **Section 22** of the Design Act, a court can issue an injunction, prohibiting the infringer from further using or selling the pirated design. This is the most common remedy sought by the aggrieved party to prevent continued infringement.
- **Damages and Account of Profits:**
 - The court may award **damages** to the original designer as compensation for the harm caused by the piracy. Alternatively, the court may order an **account of profits**, meaning that the infringer must disclose and hand over the profits earned from the sale of pirated goods.
- **Destruction of Pirated Goods:**
 - Under **Section 22** of the Design Act, the court can also order the destruction or forfeiture of the infringing articles, ensuring that the pirated goods are removed from the market.
- **Suit for Design Infringement:**
 - If a design is registered, the registered proprietor of the design can file a suit for **infringement of design** before a **District Court** having jurisdiction. In this suit, the design owner can seek remedies for infringement, including injunctive relief, damages, and delivery of the infringing articles.
- **Registration of Design:**
 - To bring a suit for infringement, the design must be registered with the **Design Office**. The registration serves as evidence of ownership and validity of the design.

Conclusion: Design piracy is a significant issue in the protection of intellectual property, particularly in industries where visual appeal is a critical factor in consumer choice. The **Design Act, 2000** provides a robust legal framework for the protection of original designs and offers multiple remedies to tackle piracy, ranging from civil injunctions and damages to criminal penalties. However, effective enforcement requires active vigilance from both designers and the legal system. Designers must take steps to register their designs and be proactive in monitoring for infringements to protect their intellectual property. By offering remedies for infringement and piracy, the legal system helps to encourage creativity and innovation while deterring illegal reproduction of designs.

Define Trademark. What are the conditions for refusal to register a trademark under the Trademarks Act, 1999.

A **trademark** is defined under Section 2(zb) of the **Trademarks Act, 1999** as any **graphical representation** that distinguishes the goods or services of one person from those of others. A trademark can be a word, name, symbol, logo, device, brand, or even a combination of these elements that serves to identify and distinguish the goods or services of one party from those of others.

A trademark serves as a source identifier for consumers, indicating the origin of goods or services, and assures them of the quality and consistency of the product or service they are purchasing. The main function of a trademark is to ensure that consumers are not misled or confused by counterfeit or similar products.

Examples of trademarks include well-known logos such as the **Nike Swoosh**, the **Coca-Cola script**, and brand names like **Apple** and **Samsung**.

Conditions for Refusal to Register a Trademark under the Trademarks Act, 1999

The **Trademarks Act, 1999** specifies various grounds on which the **Registrar of Trademarks** can refuse to register a trademark. These grounds are meant to ensure that trademarks are not registered that could potentially cause confusion, deceive the public, or violate public policy. The grounds for refusal are enumerated in **Section 9**, **Section 11**, and other related provisions of the Act.

1. Absolute Grounds for Refusal (Section 9)

Section 9 of the Trademarks Act sets out the **absolute grounds for refusal** to register a trademark. These grounds apply to all trademarks, regardless of their nature.

- **Lack of Distinctiveness:**
 - A trademark must be **distinctive** to be eligible for registration. If the mark is not capable of distinguishing the goods or services of one enterprise from another, it will be refused registration. For example, generic terms like "apple" for selling apples or "sweet" for sweeteners would not be allowed because they are too descriptive.
- **Descriptive Marks:**

- Marks that are **descriptive** of the goods or services in question are not eligible for registration. A mark cannot consist of words or terms that merely describe the kind, quality, quantity, or purpose of the product (e.g., "Cold Drink" for a beverage company).
- **Commonplace Marks:**
 - Marks that are commonly used or are devoid of any inventive or creative element (such as common shapes or colors) cannot be registered as trademarks.
- **Marks Contrary to Public Policy or Morality:**
 - A trademark can be refused registration if it is **contrary to public order, morality, or decency**. This includes marks that contain offensive language or symbols.
- **Marks That Are Generic or Common:**
 - A mark cannot be a **generic term** that represents a class of goods or services, like "Car" for a car manufacturer. Generic words or terms are not eligible for trademark protection.
- **Deceptive or Misleading Marks:**
 - Marks that are **deceptive** or could lead consumers to believe that the product or service originates from a different source will not be registered. For example, a mark "Royal Soda" for a non-carbonated drink would be misleading and deceptive.
- **Non-Graphical Representations:**
 - A trademark must be capable of being represented in a **graphical form**. This means that it should be capable of being depicted on paper or electronically, such as a logo or a word mark.

2. Relative Grounds for Refusal (Section 11)

In addition to absolute grounds, Section 11 of the Act outlines the **relative grounds for refusal**, which focus on preventing the registration of marks that could cause confusion or mislead the public because of their similarity to other registered trademarks or well-known marks.

- **Similarity to Existing Trademarks:**
 - A trademark may be refused if it is **identical** or **confusingly similar** to an already registered trademark or an earlier application. If the mark is likely to confuse the public into thinking that the goods or services are linked to the existing mark, registration will be denied. This is to protect against unfair competition and prevent consumer confusion.
- **Well-Known Trademarks:**
 - If a trademark is similar to a **well-known mark** (under the criteria established by the Act), it may be refused even if it is not registered in India, provided that the well-known trademark enjoys protection globally. This is particularly relevant in the case of famous global brands such as **Coca-Cola, Google, or Nike**, which can prevent others from using similar marks in any class of goods or services.
- **Use of Names or Signs Likely to Cause Confusion:**
 - A trademark that consists of or includes a name or a sign that is similar to another trademark used for identical or similar goods and services may be refused if it is likely to cause **confusion** or **deceptive association**.
- **Names of Geographical Locations:**
 - Trademarks that include **geographical names** (except in certain cases where the name has acquired secondary meaning or is famous) may be refused registration if they are likely to be perceived as indicating the origin of the goods or services and may cause confusion.

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- **Marks Containing Common Names:**

- Trademarks that consist of common surnames or widely used phrases may be refused if they lack distinctiveness and are not able to serve as a source identifier for the goods or services.

3. Other Grounds for Refusal

- **Names of States, Government Symbols, or Emblems:**

- Trademarks that include the name of a state, a national or international flag, emblem, or symbol of a government or an official authority are typically not registrable under **Section 3 of the Trademarks Act, 1999** unless there is specific authorization for their use.

- **Trademarks Containing False or Misleading Information:**

- A trademark that includes false or misleading information about the quality, origin, or characteristics of the goods or services may be refused registration. For example, "Made in India" on goods manufactured in another country may be refused due to the misleading nature of the claim.

Conclusion: The **Trademarks Act, 1999** lays down several conditions under which a trademark may be refused registration. These include both **absolute grounds** (such as lack of distinctiveness, descriptiveness, and immoral or deceptive content) and **relative grounds** (such as similarity to existing marks or well-known marks). By providing these conditions for refusal, the Act ensures that only trademarks that are distinctive, non-deceptive, and capable of identifying the origin of goods and services are allowed to be registered. This promotes fair competition and protects consumers from confusion and misleading marketing practices.

What act constitute Trademark Infringement? What are the exceptions to the Trademark Infringement?

Trademark infringement occurs when a person uses a **trademark** that is identical or deceptively similar to a **registered trademark** without the authorization of the **trademark owner**. Infringement of a trademark can occur in a variety of forms, such as using the same or a confusingly similar mark for goods or services that are identical or related. Under the **Trademarks Act, 1999**, trademark infringement is addressed primarily in **Section 29**.

Acts Constituting Trademark Infringement:

1. **Use of Identical or Similar Marks:**

- If a person uses a **mark that is identical or deceptively similar** to a registered trademark, it constitutes an infringement. The use can be in relation to identical or similar goods or services.
- For instance, if a company uses a logo similar to the **Nike Swoosh** for clothing, it would be considered infringement if it leads to confusion among consumers.

2. **Sale of Goods with Infringing Marks:**

- **Selling or distributing goods** under a mark that is identical or similar to a registered trademark also constitutes infringement. For example, selling clothing with a counterfeit

brand name like "Adidas" would be an act of infringement if it deceives the consumers into thinking the goods are from the original brand.

3. **Use of the Mark in Trade or Commerce:**

- Even the **use of a trademark in the course of trade** (such as advertising, marketing, or online sales) without permission can lead to an infringement. The use should be in a way that could confuse or deceive the public about the origin of the goods or services.

4. **Unauthorized Use of Well-Known Trademarks:**

- The **use of a trademark** identical or confusingly similar to a **well-known trademark** (as defined under Section 2(zg) of the Act) in relation to goods or services that are **not similar** but could cause dilution of the distinctiveness of the well-known trademark is considered an infringement. Even if the goods or services are different, if it harms the reputation of the well-known mark, it would amount to infringement.

5. **Counterfeiting:**

- The act of **counterfeiting** involves producing goods that are identical to a registered trademark, typically of inferior quality, and selling them under the original brand's name. This is one of the most blatant forms of trademark infringement and can lead to both **civil** and **criminal** penalties.

6. **Infringement through Domain Names:**

- **Domain name squatting** or using a domain name that is identical or similar to a registered trademark can constitute infringement. If a website uses a domain like **"nikeclothing.com"** without permission, this would lead to confusion and constitute trademark infringement.

7. **Infringement through Metatags or Keywords:**

- The unauthorized use of a registered trademark in **metatags**, **keywords**, or in search engine advertising that leads to the infringement of the trademark owner's rights can also be an infringement. This is often seen when someone uses the name of a popular trademark to attract traffic to their website.

Exceptions to Trademark Infringement

While the **Trademarks Act, 1999** provides strong protection to trademark owners, there are certain **exceptions** where the use of a trademark may not be considered infringement. These exceptions are based on specific conditions that allow certain uses of a trademark without violating the rights of the trademark holder.

1. **Honest and Descriptive Use (Section 30(2)(a)):**

- **Use of the mark for descriptive purposes:** A person may use a registered trademark to describe the **goods or services** they offer, provided that the use is made in good faith and does not deceive or mislead the public. For example, if a person sells a product that is **made of leather** and uses the term **"leather"** alongside the mark (e.g., "leather shoes"), this use may be allowed as a descriptive use.
- However, the use must be **honest**, **non-deceptive**, and in relation to the characteristics of the product itself.

2. **Use of Personal Names (Section 30(2)(b)):**

- **Personal names:** If a person uses their **own name** in relation to their business or services, it does not automatically constitute an infringement, provided the use is not **misleading** or confusing.
- For example, if someone named "**John Smith**" uses the name "**John Smith Shoes**" in the footwear industry, it is not likely to constitute infringement, even if "Smith" is a common surname, unless it causes confusion.

3. Non-commercial Use (Section 30(3)):

- If the trademark is used **non-commercially**, such as in personal or private contexts where no **trade or commerce** is involved, it will not be treated as infringement. For example, using a trademark in a private blog post without any intent to profit from it would likely not amount to infringement.

4. Parallel Importation:

- **Parallel imports** occur when goods bearing a registered trademark are imported into India without the authorization of the trademark holder. The Act allows **parallel imports** of goods that have been **genuinely sold in foreign markets** (outside India) by the trademark holder or with the trademark holder's consent.
- However, the goods must be **genuine** and the use of the mark cannot be misleading. The trademark owner may still challenge the importation if it leads to deception or confusion.

5. Fair Use:

- Under the **fair use doctrine**, a person may use another's trademark for **comparative advertising**, **news reporting**, or **criticism** without infringing the mark. Such use must not be **misleading** or **confusing** and must be **fair** in nature, with no intent to deceive or take advantage of the registered trademark's reputation.
- For example, a company that advertises "**X-brand shoes are cheaper than Nike shoes**" in a **comparison advertisement** is likely protected under fair use, provided the advertisement is truthful and non-deceptive.

6. Use of Registered Trademarks by Authorized Licensees:

- If a third party has been **authorized** by the trademark owner to use the mark under a **licensing agreement**, their use does not constitute infringement. Licensees may use the trademark as per the terms of the agreement, and the trademark owner cannot claim infringement.

Conclusion: Trademark infringement occurs when a person uses a mark that is identical or deceptively similar to a registered trademark without the trademark owner's authorization. It can involve a wide range of activities, including unauthorized sale, counterfeit production, domain name use, and misleading advertising. However, certain **exceptions** under the **Trademarks Act, 1999** allow for lawful use of a trademark in specific circumstances, such as honest descriptive use, personal names, non-commercial use, parallel imports, fair use, and licensed use. These exceptions balance the protection of trademark owners with the promotion of fair competition and innovation.



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What are the salient features of TRIPs Agreement?

Or

What is TRIPs Agreement? What are its salient features?

The **TRIPS Agreement** (Agreement on Trade-Related Aspects of Intellectual Property Rights) is an international legal agreement established under the **World Trade Organization (WTO)** that sets minimum standards for the regulation of various forms of intellectual property (IP) rights, including **copyright, patents, trademarks, geographical indications, industrial designs, trade secrets, and layout-designs of integrated circuits**. The TRIPS Agreement was negotiated and adopted during the **Uruguay Round of Trade Negotiations (1986–1994)** and entered into force on **January 1, 1995**, as part of the establishment of the WTO.

The TRIPS Agreement aims to harmonize the protection of intellectual property across all WTO members, ensuring that **IP protection standards** are consistent and enforceable globally. This helps to promote fair competition, the transfer of technology, and economic development by protecting creators and innovators' rights.

Salient Features of the TRIPS Agreement: The TRIPS Agreement is a comprehensive and complex document with various provisions covering different types of intellectual property. The key features of the TRIPS Agreement include:

1. Minimum Standards of Protection: TRIPS sets out **minimum standards of protection** for intellectual property across the following areas:

- **Patents (Part II, Articles 27–34):** The Agreement mandates the **patentability** of inventions, including processes and products in all fields of technology, with specific exceptions (e.g., for public health). It requires **patents** to be available for at least **20 years** from the filing date.
- **Trademarks (Part II, Articles 15–21):** The TRIPS Agreement requires the protection of **distinctive** trademarks for at least 7 years, with renewals possible indefinitely. It also includes provisions related to the **registration** and **enforcement** of trademarks.
- **Copyright (Part II, Articles 9–14):** TRIPS requires protection for **literary, artistic, and scientific works** for a minimum of **50 years** (for most works). It also includes protection for related rights such as **performers' rights, producers of phonograms, and broadcasting organizations**.
- **Geographical Indications (Part II, Articles 22–24):** TRIPS mandates the protection of geographical indications (GIs) that identify goods as originating from a specific region, where a given quality, reputation, or other characteristic is essentially due to the place of origin.

- **Industrial Designs (Part II, Article 25):** TRIPS requires protection for industrial designs, ensuring that they are new and original, and granting protection for at least **10 years**.
- **Trade Secrets (Part II, Article 39):** The agreement mandates the protection of **undisclosed information** (trade secrets) that has commercial value and is protected through reasonable steps to maintain its confidentiality.

2. National Treatment and Most-Favored-Nation Principle: The **National Treatment** principle (Article 3) requires each member of the WTO to treat nationals of other members no less favorably than its own nationals concerning the protection of intellectual property rights. Essentially, if a country offers more favorable treatment to its own citizens in intellectual property matters, it must extend the same benefits to citizens of other WTO member countries.

The **Most-Favored-Nation (MFN)** principle (Article 4) ensures that WTO members extend the same benefits of intellectual property protection to all other members, not discriminating based on their nationality.

3. Enforcement of Rights: The TRIPS Agreement includes detailed provisions for the **enforcement of intellectual property rights** to ensure that IP holders can effectively protect their rights. These provisions include:

- **Civil and Criminal Procedures:** Articles 41–61 outline the processes for enforcing IP rights through national courts, providing remedies such as **injunctions, damages, and seizure of counterfeit goods**.
- **Border Measures:** TRIPS allows for the enforcement of IP rights at the borders through **customs authorities** to prevent the import or export of counterfeit goods (Article 51–60).
- **Alternative Dispute Resolution:** The Agreement encourages the use of **alternative dispute resolution** mechanisms like arbitration and mediation to resolve IP disputes.

4. Exceptions and Flexibilities: The TRIPS Agreement allows certain **flexibilities** and **exceptions** to accommodate the needs of developing countries and countries with public health concerns:

- **Compulsory Licensing (Article 31):** TRIPS allows for the issuance of **compulsory licenses** under specific conditions, allowing third parties to use patented inventions without the consent of the patent holder, especially in cases of public health emergencies.
- **Parallel Imports:** The Agreement permits **parallel imports**, where goods bearing a trademark can be imported and sold without the consent of the trademark holder, provided they are not counterfeit.
- **Limited Exceptions (Article 30):** The TRIPS Agreement allows for certain exceptions to patent rights, such as for **research and experimental use**.
- **Public Health Concerns:** The **Doha Declaration (2001)** reaffirmed the right of WTO members to implement **public health policies**, particularly to promote access to medicines by issuing **compulsory licenses** for pharmaceuticals in case of emergency situations like pandemics.

5. Transitional Provisions for Developing Countries: The TRIPS Agreement provides **transition periods** for developing and least-developed countries to comply with its provisions:

- **Developing Countries:** These countries were given **5 years** from the date of entry into force of the agreement to comply with the full provisions of TRIPS (i.e., until **2000**). However, they were allowed to delay the implementation of some of the provisions regarding patents and other rights.
- **Least-Developed Countries (LDCs):** These countries were initially given a **10-year transition period**, and their compliance deadline was extended multiple times. LDCs do not need to implement patent protection for pharmaceuticals until **2021** (with further extensions possible based on WTO decisions).

6. Dispute Resolution Mechanism: The TRIPS Agreement incorporates its provisions into the **WTO Dispute Settlement Understanding (DSU)**, allowing member countries to **challenge** any violations of the agreement in the **WTO's Dispute Settlement Body**. This mechanism provides a structured process to resolve IP disputes between countries.

7. Technology Transfer: The TRIPS Agreement encourages the **transfer of technology** from developed countries to developing countries to promote economic growth and the development of knowledge and innovation. It emphasizes the importance of encouraging **research and development (R&D)** in developing nations and facilitating access to affordable technology.

Conclusion: The **TRIPS Agreement** plays a pivotal role in ensuring the protection of intellectual property rights on a global scale, creating a balance between the interests of rights holders and public policy objectives. By setting **minimum standards of protection**, it fosters international trade and innovation while recognizing the diverse development levels of WTO members and offering **flexibilities** for public interest concerns, particularly in the areas of **health** and **technology access**. It has been instrumental in strengthening intellectual property systems worldwide and aligning national laws with international standards.



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PART-C

Note: There is no standard solution for any type of problem in Part C, as law students we have different perspectives and interpretation so we need to focus on the Draft, Section, Articles to support your discussion.

Anyways we will upload sample solutions for these problems on our website for your reference

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'A' is registered proprietor of Trade Mark M. Seal. 'B' adopted and used mark 'SM-SEAL' with all essential characters of trademark 'M-SEAL'. Can 'B' be restrained from using the mark? Decide.

Mr. 'X' invented an antivirus software namely 'Quick heal' to provide protection to the computer system. He has applied for patent protection for his invention. Advise him.

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'X' a proprietor of a registered Trademark brings a suit against 'Z' for infringement after 15 years of such infringement. Is there any irregularity in the suit? Comment.

Mr. 'A' has posted in his website the works of six well known Indian Novelists without their permission. The novelists initiated a suit for infringement of copyright against Mr. 'A' under information Technology Act, 2000. Discuss the relevant provisions.

'A' wants to obtain patent for a pharmaceutical invention in the form of a new product. Explain the position in the years 1994 and 2019.

"M" is well known photographer, He shot the pictures of Sunrise. Can he claim copyright in those pictures?

A tribal group of people want to protect intellectual property in one of their herbal products used for many decades. Advise them as to the proper form of IPR protection available in the given case.

A company registered a design for a Glucose biscuit sold by it. A rival company used a similar design for its range of Glucose biscuits without any registration of such design. Advise the first company on its rights.

Mr. 'A' wants to start the business of marketing tea powder under the trademark 'BEST'. He wants to register the trademark 'BEST' for his tea business. Will he be successful?

"LOVELY" hypermarket in Hyderabad city kept a big TV screen in the parking area and allowed their customers and the passers by the road to watch the final match of IPL Cricket series. TV99 broadcaster, having purchased the telecast rights from the IPL organizers wants to proceed against Hypermarket for infringement of its IP right. Will the TV99 broadcaster will be successful in its attempt under relevant IP law?

Mr. Prakash Raj created a new software which enables the air-conditioning system automatically adjust room temperatures basing on the fluctuations in the external temperatures. Because of this users need not frequently use the remote and change the temperatures basing on external conditions. Mr. Prakash Raj wants to obtain some IP protection for the software. Advise him.

Mr. 'X' has been in the business of stationary items designed a paper weight in the shape of Charminar and registered the design under the Designs Act, 2000. Seeing the success of the design, Mr. 'Y' a bag manufacturer started manufacturing and selling similar Charminar shaped School Bags. Mr. 'X' wants to file a suit against Mr. 'Y' for copying his Charminar design for bags. Will he be successful. Advise.

'A' Pharmaceutical company which has been selling drug called 'D' invented a beta crystalline form of the drug. The said drug in the new form (bet crystalline) has 30% more solubility in the blood of the patient than its older form. A company wanted to patent its drug in the new form. Will the company succeed?

Tirumala Tirupati Devasthanam (TTD) has been granted Geographical Indication Right (GI Tag) to 'TIRUPATI' laddu. Mr. 'X' a retired employee of TTD Ptu (Kitchen) started manufacturing and

selling laddus of the same quality in Tirupati town by name 'BALAJI' Laddu. TTD wants to initiate an action against X under IP Law. Advise TTD.

'A' a trader has been manufacturing and marketing dusters by with a trademark (not registered) 'SWAN' from 2006. Over a period of time sales of his product has increased significantly. In the year 2012, 'B' another trader got 'SWAN' trademark for duster registered and started selling the dusters with that trademark. A wants to initiate Passing Off action against B. Will he succeed?

'P' computer programmer created a new computer programme. He intends to protect his programme under IP Law. Advise him the nature of IP Right that can be granted to the programme.

'A' has invented a process of making agricultural land more fertile and capable of yield higher produce. He wants to obtain patent for his invention. Will he succeed?

'X' company has coined and been using the phrase "Believe in the Best" as a business slogan. 'A' a story writer has used this phrase "Believe in the Best" number of times as the hero of the story always believes in the best. X Company filed a copyright infringement suit against A. Will the company succeed?

'X', an author assigned his novel to 'X' a publishing company. X Company published the book showing Y as an author of the novel. Aggrieved by the action of the publisher, A wants to obtain a remedy under IP Law. Advise him.

'P' a scientist invented a new variety of rice which is pest resistant. He wants to claim protection under Intellectual Property Law. Advise him.

