

Module 5: Law Relating to Intellectual Property

1. Introduction to Intellectual Property (IP)

Meaning of Intellectual Property

Intellectual Property (IP) refers to creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images used in commerce. IP laws protect the rights of creators and inventors, enabling them to benefit from their work or investment.

Main Forms of IP

Form	Description	Protection Duration
Copyright	Literary, artistic, musical, and dramatic works	Author's life + 60 years
Trademarks	Signs, logos, words that distinguish goods/services	10 years (renewable)
Patents	New inventions, products, and processes	20 years from filing
Designs	Aesthetic features of articles (shape, pattern)	10 years (extendable)
Trade Secrets	Confidential business information (formulas, methods)	As long as secrecy maintained

2. Copyright in India

Historical Evolution

- The Copyright Act, 1957, is the primary law protecting creators in India, periodically amended to address new challenges, especially those relating to technology and the internet.
- The Act was substantially amended in 1994, 1999, and 2012 to keep pace with digital advancements and international treaties.

Meaning and Scope

- Copyright grants exclusive rights to creators for original literary (including computer programs), dramatic, musical, and artistic works.
- It does **not** cover ideas, facts, or procedures, only the expression of ideas.

Computer Programs

- Protected as literary works since the 1994 amendment, allowing owners to control reproduction, adaptation, and distribution.

Ownership and Assignment

- The original creator is the first owner, except when created in course of employment (then employer owns unless agreed otherwise).
- Copyrights can be assigned or licensed, wholly or partly, through written agreements specifying duration and territory.

Criteria of Infringement

- Unauthorized use, reproduction, adaptation, or distribution constitutes infringement.
- Substantial similarity (not verbatim copying alone) and commercial exploitation are key factors in legal cases.

Piracy on the Internet

- Infringement includes unauthorized downloads, uploads, file sharing, streaming, and use of copyright-protected materials online.

Remedies and Procedures

- **Civil remedies:** Injunctions, damages, delivery up of infringing copies.
- **Criminal remedies:** Fines and imprisonment for willful infringement.
- **Administrative remedies:** Customs action against import/export of pirated works.
- The 2012 amendment introduced measures against internet piracy and protection for digital rights management.

3. Law Relating to Patents in India

Concept & Historical Perspective

- Patents protect inventions that are novel, involve an inventive step, and are capable of industrial application.
- The Patents Act, 1970 (amended in 1999, 2002, 2005), brought Indian patent law in line with TRIPS Agreement (WTO), broadening the scope to pharmaceutical and agricultural products.

Patentable Inventions

- Must be new, non-obvious, and useful.
- Certain subjects are excluded, such as discoveries, scientific theories, computer programs "per se", and methods of agriculture or business.

Biotechnology Products

- Patentable if they meet criteria of novelty, inventive step, and industrial applicability.
- India restricts patents on plants, animals, and essentially biological processes.

Computer Programs

- Not patentable "per se"; however, inventions with technical application or improvement may qualify if claimed with hardware or as part of a technical process.

Patent Process

1. **Application:** Filed with the Indian Patent Office.
2. **Examination:** Scrutiny for compliance, novelty, and inventive step.
3. **Publication:** Application is published after 18 months, unless an early publication is requested.
4. **Opposition:** Pre- and post-grant opposition possible on grounds such as lack of novelty or obviousness.
5. **Grant (Sealing) of Patent:** After examination and resolution of opposition, patent is sealed and granted.

Patent Cooperation Treaty (PCT)

- India is a signatory; PCT offers a single international patent filing route, streamlining applications in multiple countries.

Grounds for Opposition

- Prior publication, lack of inventive step, non-patentable subject, insufficient disclosure, false declaration of inventorship, among others.

Rights and Obligations of Patentee

Rights:

- Exclusive to make, use, sell, or import the patented invention.
- License, assign, or transfer these rights.

Obligations:

- Work the invention in India within a stipulated period.

- Submit periodic working statements.
- Pay renewal fees.

Duration and Law/Policy Considerations

- Patents are valid for 20 years from the date of filing, subject to timely payment of renewal fees.
- Policy aims to balance incentivizing innovation with ensuring public access, especially in pharmaceuticals and essential goods.

Infringement and Remedies

- Unauthorized making, using, offering for sale, selling, or importing a patented product or process is infringement.
- **Remedies:**
 - Civil: Injunction, damages, account of profits.
 - Criminal: Penalties for false claims of patent rights.
 - Administrative: Border enforcement to prevent import of infringing goods.

4. Summary Table: Key Points

Topic	Key Aspects
Forms of IP	Copyright, Trademarks, Patents, Designs, Trade Secrets
Copyright Act	Covers literary works, including computer programs; assigns exclusive rights; infringement includes piracy
Patents Act	Protects inventions, including biotechnology (with limitations); process involves application, examination, opposition
Patent Rights	Exclusive commercial rights, with public policy exceptions (e.g., compulsory licensing)
Remedies	Civil, criminal, and administrative mechanisms for both copyright and patent infringement

Note:

This overview provides a foundation. For complex issues (such as compulsory licensing, parallel import, and international enforcement), consult the respective statutes, amendments, and relevant case law or seek expert legal guidance.