

# INTELLECTUAL PROPERTY RIGHTS (IPR) LECTURE NOTES

## MODULE - IV

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### NEW DEVELOPMENT IN TRADEMARK LAW

Trademark Law is the set of Laws and legal regulations that are set up to protect Trademarks and Consumers.

Unauthorised use of Trademark is punishable under Trademark Law.

ROLE OF INTERNET: As the trade and commerce grew up, businesses marketed their products in a unique way i.e. through Trademarks. With the wide spread access to INTERNET, the E-Commerce and Business Entities flourished many fold.

However a Company cannot enter Cyber Space without Identity and accordingly (DNS) Domain Name System was introduced as Domain Name — An Internet Resource Name or A Unique Name that identifies a Website.

Then came a clash between Trademark and Domain Name. Though Trademark & Domain Name seem apparently similar, but actually not so.

Each Website has a Domain Name that serves as an Address, which is used to access Websites. Some Domain Names are preceded by www as Prefix, but some omitted it. But suffix of — .com / .net / .org was universal.

Sometimes well-known Trademarks are used as Domain Name by hoaxers/cheaters/fraudsters to deceive customers — This is called "CYBER SQUATTING". This resulted in complications. Lot of Cyber frauds/ Crimes came to light. Courts have protected Trademark Owners as against "Cyber Squatters".

1. The first Lawsuit brought under ACPA - Anti CyberSquatting Consumer Protection Act ~~is~~ was filed by Hollywood Actor BRAD PITT against two Domain Name Holders. Mr Pitt won the suit.

### INTERNET RESOURCES:

1. WIPO

2. ICANN

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3. Information on First Amendment

World Intellectual Property Organisation offering information and statistics to proceed under UDRP - Uniform Domain Name Dispute Resolution Policy.

- Internet Corporation for Assigned Names and Numbers - offering information about Domain Name Registration and the full text of UDRP

<http://www.ochillingeffects.com>  
@ Site Devoted exclusively to examine issues relating to Trademark use and the First Amendment and offering sample cease and desist letters and general information about issues such as deep linking and the use of metatags

### RECENT DEVELOPMENT IN TRADEMARK LAW IN INDIA

1. Trademark Law brought at par with international practices
2. India Replaced the Trade and Merchandise Marks Act, 1958 with Trade Marks Act, 1999, commitment under TRIPS Agreement.
3. Again there is Trademarks (Amendments) Rule, 2014

Ⓢ Cybersquatting - is also known as domain squatting  
Illegal use of an internet domain name in bad faith and intent to earn profit from the goodwill of a Trademark, belonging to someone else.  
US Federal Law - Anti CyberSquatting Consumer Protection Act (1999)

# INTELLECTUAL PROPERTY RIGHTS (IPR)

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Lecture Notes  
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### NEW DEVELOPMENT IN COPYRIGHT LAW:

"Copyright is the right to copy a work, specifically a property right in an original work of authorship (including a literary, musical, dramatic or other work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform and display the work".

The Author under Copyright is the creator of the original expression in a work. The author is the owner of Copyright.

In case of Literary, dramatic, musical or artistic work, the name of the author or publisher, which appears in copies of the work, is presumed to be the author of the work.

The purpose of Copyright Laws is to find a balance between encouraging and protecting the exclusive rights of author and inventors and to ensure members of public to have access to the works of author. Copyright Laws legally protect author's works.

COPYRIGHT LAW IN INDIA: In India Copyright Act, 1957, which is amended in May, 2012, the Copyright Amendment Act, 2012 is applicable for copyright works. It is in compliance with WIPO (World Intellectual Property Organisation), "Internet Treaties" - the WIPO's WCT (World Copyright Treaty) and World Performances and Phonograms Treaty (WPPT).

AREA OF COVERAGE AND VALIDITY: It protects Original Literary, Dramatic, Musical and Artistic works and Cinematograph films and Sound Recordings from Unauthorized users. Validity of Copyright depends on several factors. As a general rule, for works created after 1.1.1978

Copyright protection lasts for the lifetime of the Author plus Additional 70 years.

COPYRIGHT LAW IN USA: Copyright Law in US is based on the Copyright Act, 1976, a Federal Statute, applicable to whole of United States of America (50 States), that came into effect from 01-01-1978.

TYPES OF WORKS PROTECTED:

1. Literary Works
2. Musical Works
3. Dramatic Works
4. Pantomimes and Choreographic works, Ballets, Modern dance, Jazz dance and Mime Works
5. Pictorial, graphic and Sculptural works
6. Motion Pictures and other Audio Visual Works
7. Sound recordings
8. Architectural Works

COPYRIGHT PROTECTION: Copyright protection generally lasts for 70 years after the death of the author. If the work is for "Work for Hire", copyright persists for 120 years after Creation or 95 years after Publication, whichever is earlier.

United States Copyright Law was last amended/revised vide Copyright Act, 1976, codified in Title 17 of the United States Code.

- International Copyrights are enforced through International Agreements
1. Berne Convention for the Protection of Literary and Artistic Works (Berne Convention)
  2. Universal Copyright Convention (UCC)  
Member countries may claim protection.

REMEDY FOR COPYRIGHT VIOLATIONS IN INDIA - Copyright owners can take legal action against any person or entity that violates the Copyright of a work. - can file Civil Suit or Criminal Prosecution. 1. Criminal Prosecution, it's Cognizable offence (Police can arrest without warrant with or without Court permission), where Minimum Imprisonment of 6 Months with Fine of ₹ 50000/-

# INTELLECTUAL PROPERTY RIGHTS (IPR)

## MODULE - IV

LECTURE NOTES

### NEW DEVELOPMENT IN PATENT LAW

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A Patent is a Govt-granted Property Right on an Invention allowing the Patent Holder (Individual or Company) to exclude others from making, using, selling or importing the Invention for a fixed period of time i.e. 20 Years.

#### 3 Types of Patent

1. Utility Patent - A utility Patent is the most common type covering any Process, Machine, Article of manufacture or composition of matter or any new and useful. Validity 20 years
2. Design Patent - A Design Patent covers any new, original and ornamental design for an article of manufacture. Lasts for 14 years
3. Plant Patent - A Plant Patent covers new variety of asexually produced plant. Lasts for 20 years

#### PATENT LAW OF USA:

Patents Law of United States of America is governed by Patent Act (35 U.S Code) and authorized by U.S Constitution in Article One Section 8 Clause 8. It is operated by the USPTO - United States Patent and Trademark Office.

- In order to obtain protection under U.S Law, the following requirements are to be fulfilled:
1. Applying for Utility Patent
  2. Provisional Patent Application
  3. Examination of Patent Application in the Patent office
  4. Patent Issuance
  - 5.

# PATENT LAW & REGULATIONS IN INDIA:

## History of Indian Patent System:

- 1856 - The Act VI of 1856 on Protection of Inventions based on British Patent Law 1852
- 1859 - The Act modified as act XV Patent Monopolies called exclusive Privileges (making, selling and using in India) --- validity 14 year from date of filing
- 1872 - The Patents & Design Protection Act
- 1883 - The Protection of Invention Act
- 1888 - Consolidated as the Inventions & Design Act
- 1911 - The Indian Patents & Design Act
- 1999 - On March 26, 1999 Patents (Amendment) Act, 1999 came into force from 01-01-1995
- 2002 - The Patents (Amendment) Act 2002 came into force from 20th May 2003
- 2005 - The Patents (Amendment) Act 2005 Effective from 1st January, 2005.

Under the provisions of Section 159 of the Patent Act, 1970 the Central Govt is empowered to make rules for implementing the act and regulating patent administration

## INTERNATIONAL PATENT LAW:

EPC - The European Patent Convention is an international treaty between European countries

EPO - European Patent Organization

PCT - The Patent Cooperation Treaty

Paris Convention, 1883

WIPO | PCT - The Patent Cooperation Treaty

PLT - The Patent Law Treaty was adopted in 2000 with the aim of harmonizing and streamlining formal procedures with respect to national and regional patent applications and patents

