

PART I
INTELLECTUAL PROPERTY
NATURE AND SCOPE

Intellectual property

"Intellectual property" is an intellectual work, produced by the intellect of human brain. For example, literary work produced by the authors, musical work produced by the musicians, inventions invented by the inventors, coining of trade marks used in the course of business or trade, design of industrial products, etc. are intellectual properties as they are created by the human intellect. Computer programming is also an intellectual property as it is also the creation of human intellect. The person who creates an intellectual piece of work owns it like any other tangible property like land or movable goods. "Intellectual property" like tangible property is owned by its owner to the exclusion of all others. The owner of intellectual property has exclusive rights over his intellectual property. No one can make use of intellectual property without the consent of the owner of the intellectual property. For example, no one can copy literary, musical piece of work, work an invention or apply a design to an industrial product without the consent of the author, musician, or the inventor, as the case may be, who has created this piece of creative work. Similarly, no one can make use of the trade marks without the consent of its proprietor. However, the owner of intellectual property may assign intellectual property itself or any interest in the intellectual property in the favour of any other person in consideration of monetary gain. For example, an author may assign the copyright in his literary work in the favour of any other person in consideration of lump sum amount of royalty. Similarly, a musician may assign a composition composed by him to any other person in consideration of monetary gain. Similarly, an inventor may assign his invention or grant a licence to work his invention in the favour of any other person in consideration of commercial gain to him.

Thus, a person enjoys exclusive rights with respect to his intellectual property which he has created by the intellect of his brain.

Intellectual property law

The exclusive rights which a person enjoys with respect to his intellectual property are his 'intellectual property rights' (hereinafter referred to as IPRs). The law that protects the 'intellectual property rights' is known as 'intellectual property law'. For example, copyright law protects the copyright of authors, musicians, etc. with respect to literary or musical work, etc. The law of patents protects the inventions of the inventors. The law of trade marks protects the trade marks used in the course of trade by the traders or businessmen for their

goods or services.

According to agreement on Trade Related Intellectual Property Rights (TRIPs), agreement between the members of the World Trade Organisation (WTO) intellectual property law includes law relating to :

- (i) Copyright and related rights;
- (ii) Trade marks, trade names and service marks;
- (iii) Geographical indications;
- (iv) Industrial Designs;
- (v) Patents;
- (vi) Layout Designs of Integrated Circuits;
- (vii) Undisclosed Information.

INTELLECTUAL PROPERTY LAW AT INTERNATIONAL LEVEL

Law relating to intellectual property may be divided under the following two heads :—

- I. Intellectual property law relating to industrial property; and
- II. Intellectual property law relating to copyright.

I. Intellectual property law relating to industrial property

The significance of intellectual property right in the international trade had been realised as early as in the 19th century, as in 1883, an international convention on the protection of industrial property was convened in Paris with the efforts of inventors and industrialists. Originally, the Paris Convention was signed by representatives of eleven countries, on March 20, 1883 which became effective on 7th March, 1884. This Convention known as "Paris Industrial Property Convention, 1883" took within its fold the Patents, Trade Marks, Designs but did not deal with the Copyrights. The first international convention on copyright was the Berne Convention of 1886.

PARIS CONVENTION

The Convention known as "Paris Industrial Property Convention, 1883" took within its fold the Patents, Trade Marks, Designs, etc.

Article 1(1) of the Paris Convention provides as follows :

"The countries to which this Convention applies constitute a Union for the protection of industrial property.

The protection of industrial property has its object patents, utility models, industrial designs, trade marks, service marks, trade names, indication of source or origin and the repression of unfair competition."

The Member States of Paris Convention guaranteed the nationals of each Member State the same treatment as was given to their own nationals. The Paris Convention was revised a number of times. It was revised in 1900 in Brussels, in 1911 in Hague, in 1925 in Washington, in 1934 in London, in 1958 in Lisbon, and in the last in 1967 in Stockholm.

India deposited its instrument of accession to the Paris Convention for the protection of industrial property on 7th September, 1998, and became a member of the Paris Convention with effect from 7th December, 1998.

IMPORTANT FEATURES OF PARIS CONVENTION

The important features of the "Paris Industrial Property Convention, 1883" are as follows :—

1. Protection of industrial property

The Paris Convention aims at protecting the intellectual property relating to industrial property. For example, the Paris Convention took within its fold the Patents, Trade Marks, Designs.

Article 1(1) of the Paris Convention provides as follows :

"The countries to which this Convention applies constitute a Union for the protection of industrial property."

The protection of industrial property has its object patents, utility models, industrial designs, trade marks, service marks, trade names, indication of source or origin and the repression of unfair competition.

2. Protection of the intellectual property rights of the nationals of the member States

The Paris Convention is the first attempt towards achieving uniformity in the intellectual property law concerning different nations, so that intellectual property rights of the national of one nation are protected in other nation also without encroaching upon the domestic law of the other nation. The Paris Convention provides for the nationals of each member State of the Convention the same treatment in others as was given to their own nationals with respect to their intellectual property right.

Article 2 of the Paris Convention reads as follows :—

"Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their right, provided that the conditions and formalities imposed upon nationals are complied with."

Article 5 of the Paris Convention provides as follows, "Industrial designs shall be protected in all countries of the Union."

Article 6quinquies of the Paris Convention provides for the protection of duly registered trade mark in one country of the Union in the other countries of the Union. Similarly, Article 8 of the Paris Convention provides as follows :

"A trade name shall be protected in all countries of the Union without the obligation of filing or registration, whether or not it forms a part of the trade mark."

3. "Priority right" of filing applications for patents, utility models, trade marks, industrial designs in the other countries of the Union

According to Article 4 of the Paris Convention, "Any person who has filed an application for a patent, or for the registration of utility model, or of an industrial design, or of a trade mark, in one of the countries of the Union, shall enjoy, for the purpose of filing in the other countries, a right of priority during the period of twelve months for the patent and utility models, and six months

for industrial designs and trade marks."

4. Protection against unfair competition

Clause (1) of Article 10 bis of the Paris Convention reads as follows :—

"The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition."

Clause (1) of Article 10 bis of the Paris Convention provides that "any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition."

5. Assembly and executive committee of Assembly

The countries to which the Paris Convention applies constitute a Union for the protection of industrial property. This Union has an Assembly of those countries which are bound by Articles 13 to 17 of the Convention. The Government of each country which is a member of Assembly is represented by one delegate who may be assisted by alternate delegate, advisors, and experts. The Assembly deals with all matters concerning the maintenance and development of the Union and the implementation of this Convention.

According to Article 14 of the Paris Convention, the Assembly has an Executive Committee. The Executive Committee consists of countries elected by the Assembly from among the member countries of the Assembly. The Government of each country which is a member of the Assembly is represented by one delegate who may be assisted by alternate delegate, advisors and experts.

6. Membership to the Convention

According to Article 21 of the Paris Convention, "any country outside the Union may accede to this Act and thereby become a member of the Union. Instruments of accession shall be deposited with the Director-General."

According to Article 25 of the Paris Convention, "It is understood that at the time a country deposits its instrument of ratification or accession, it will be in a position under its domestic law to give effect to the provisions of this Convention."

7. Denunciation by member state

Article 26 of the Paris Convention provides that "any country may denounce this Act by notification addressed to the Director-General. Such denunciation shall constitute denunciation of all earlier Acts and shall effect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union."

Denunciation by member country takes effect one year after the day on which the Director-General has received the notification.

II. Intellectual property law relating to copyright

Two important conventions relating to intellectual property law in respect of copyright are :

(i) Berne Convention, 1886; and

(ii) Universal Copyright Convention, 1952 as revised in 1971

(i) BERNE CONVENTION, 1886

The Berne Convention is the first international convention which was

convened in 1886 in Switzerland with the main objective to protect the literary and artistic work. The Berne Convention came into force on 5th December, 1887 and was revised several times. It was revised at Berlin in 1908; at Rome in 1928; at Brussels in 1948; at Stockholm in 1967; and in Paris in 1971.

The Berne Convention consists of 38 Articles. According to Article 35 of the Berne Convention, "the Berne Convention shall remain in force without limitation as to time."

Works protected

Article 2 of the Berne Convention provides for the works which are protected under the Convention. The works protected under the Convention are as follows :—

- (i) "Literary and artistic work";
- (ii) Possible requirement of fixation;
- (iii) Derivative works;
- (iv) Official texts;
- (v) Collections;
- (vi) Obligation to protect beneficiaries of protection;
- (vii) Works of applied art and industrial designs;
- (viii) News

The Berne Convention protects the works of the authors not only in the country of their origin but also in the countries of the Union.

Article 5(1) of the Berne Convention provides as follows :—

"Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by the Convention."

Article 9 of the Convention provides that authors of literary and artistic works protected by the Berne Convention have exclusive right to authorising the reproduction of these works, in any manner or form.

Term of protection

According to Article 7 of the Berne Convention, the term of protection granted to the literary and artistic work by this Convention is during the lifetime of the author and of fifty years after his death.

(ii) UNIVERSAL COPYRIGHT CONVENTION, 1952 AS REVISED IN 1971

Universal Copyright Convention, 1952 (hereinafter referred to as UCC, 1952) was signed at Geneva on 6th September, 1952. The UCC, 1952, that came into force in 1952 was revised at Paris in 1971 and is administered by UNESCO which is a specialised agency of United Nations.

The objective of UCC, 1952 as revised in 1971 (hereinafter referred to as 1971 Convention) is to ensure in all countries copyright protection of literary, scientific and artistic works. As the **preamble** of the UCC, 1952 Convention as revised in 1971 reads as follows :—

"The Contracting States moved by the desire to ensure in all countries copyright protection of literary, scientific and artistic works,

Convinced that a system of copyright protection appropriate to all

nations of the world and expressed in a universal convention, additional to, and without impairing international system already in force, will ensure respect for the rights of individual and encourage the development of literature, the science and the arts,

Persuaded that such a universal copyright system will facilitate a wider dissemination of works of the human minds and increase international understanding.

Have resolved to revise the Universal Copyright Convention, 1952."

Works protected

Article 1 of the revised UCC, 1952 as revised in 1971 provides as follows :—

"Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works and paintings, engravings and sculpture."

Thus, according to Article 1 of the 1971 Convention, the works protected under the 1971 Convention are as follows :—

- (i) literary;
- (ii) scientific;
- (iii) artistic works, including writings;
- (iv) musical;
- (v) dramatic and cinematographic works;
- (vi) paintings;
- (vii) engravings; and
- (viii) sculpture.

UCC, 1952 as revised in 1971 consists of 20 Articles. The 1971 Convention does not abrogate multilateral or bilateral conventions or arrangements in effect between two or more contracting states of the 1971 Convention. However, in the event of any difference between the provisions of such existing conventions or arrangements and the provisions of 1971 convention, the provisions of this 1971 convention prevail.

Article XVII of the 1971 Convention provides that 1971 Convention shall not in anyway affect the provisions of the Bern Convention for the protection of Literary and Artistic works or membership in the Union created by that Convention.

WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO)

(Note : For the complete text of the WIPO Convention, see the Annexure at the end of this book)

The World Intellectual Property Organization (WIPO) was created by the "convention" establishing the World Intellectual Property Organisation popularly known as "WIPO Convention". WIPO Convention was formally signed at Stockholm on July 14, 1967, and came into force in 1970. WIPO was created with the objective "to encourage creative activity, and to promote the protection of intellectual property throughout the world through cooperation among States." Wipo became the specialised agency of United Nations in 1974. The

headquarter of WIPO is situated in Geneva, Switzerland. WIPO has succeeded to the "United International Bureau for the Protection of Intellectual Property." "United International Bureau for the Protection of Intellectual Property" that preceded WIPO was set up in 1893 to administer the "Berne Convention for the protection of literary and artistic works, 1886" and "Paris Convention for the protection of industrial property, 1883". At present, WIPO administers 24 international treaties relating to intellectual property.

International treaties administered by WIPO

Following are the 24 international treaties relating to intellectual property which are administered by WIPO.

- (i) Berne Convention
- (ii) Brussels Convention
- (iii) Budapest Treaty
- (iv) Film Register Treaty
- (v) Hague Agreement
- (vi) Lisbon Agreement
- (vii) Locarno Agreement
- (viii) Madrid Agreement
- (ix) Madrid Agreement (Marks)
- (x) Madrid Protocol Nairobi Treaty
- (xi) Nairobi Treaty
- (xii) Nice Agreement
- (xiii) Paris Convention
- (xiv) Patent Law Treaty
- (xv) PCT
- (xvi) Phonograms Convention
- (xvii) Rome Convention
- (xviii) Singapore Treaty on the Law of Trade Marks
- (xix) Strasbourg Agreement
- (xx) Trademark Law Treaty
- (xxi) Vienna Agreement
- (xxii) Washington Treaty
- (xxiii) WCT
- (xxiv) WPPT

Secretariat

The Secretariat of WIPO is called "International Bureau" which is directed by the Director General of WIPO assisted by two or more Deputy Directors General. The General Assembly, the Conference and the Coordination Committee are three organs of WIPO.

The General Assembly of WIPO consists of the States party to this Convention which are members of any of the Unions. Whereas Article 2(vii) of WIPO Convention defines Union as follows :

"Union" shall mean the Paris Union and Agreement established in relation

the Intergovernmental Committee (IGC) on Access to Genetic Resources, Traditional Knowledge and Folklore, and the Working Group on reform of the Patent Cooperation Treaty are the examples of such committees of WIPO. WIPO enjoys on the territory of each Member State, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the organisation's objectives and for its functions.

Any member state of WIPO may denounce this convention by notification addressed to the Director General of WIPO. Denunciation takes effect six months after the day on which the Director General has received notification.

OBJECTIVE AND ROLE OF WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO)

OBJECTIVE

The main objectives of WIPO are :

- (i) to encourage creative activity, and to promote the protection of intellectual property throughout the world, through cooperation among States and, where appropriate, in collaboration with any other international organization;
- (ii) to modernize and render more efficient the administration of the Unions established in the fields of the protection of industrial property and the protection of literary and artistic works, while fully respecting the independence of each of the Unions;
- (iii) to contribute to better understanding and co-operation among States for their mutual benefit on the basis of respect for their sovereignty and equality;
- (iv) to ensure administrative cooperation among the Unions.

The objectives of WIPO have been enshrined in the **preamble** as well as under **Article 3** of the WIPO convention.

The **Preamble** of WIPO convention that sets out the objectives with which WIPO was created reads as follows :—

"The Contracting Parties,

Desiring to contribute to better understanding and co-operation among States for their mutual benefit on the basis of respect for their sovereignty and equality,

Desiring in order to encourage creative activity, to promote the protection of intellectual property throughout the world,

Desiring to modernize and render more efficient the administration of the Unions established in the fields of the protection of industrial property and the protection of literary and artistic works, while fully respecting the independence of each of the Unions,

Agree as follows :....."

Whereas **Article 3** of the WIPO convention that specifically lays down the objective of WIPO reads as follows :—

Article 3 : Objectives of the Organization

The objectives of the Organization are :

- (i) to promote the protection of intellectual property throughout the

world through cooperation among States and where appropriate, in collaboration with any other international organization,

- (ii) to ensure administrative cooperation among the Unions.

The inventions and other creative works that are produced by the human intellect which enrich the human life need respect and protection, no matter which country the inventor or the creator belongs to. Whereas WIPO is committed to safeguard the rights of the innovators and creators over their inventions and creations throughout the world through the cooperation among the states. WIPO aims to achieve cooperation among the states by paving the ways for the development of intellectual property law in different states in harmony with one another.

ROLE of WIPO

Article 4 of the WIPO convention specifically defines the role of WIPO by laying down the function to be performed by WIPO so that it may achieve its objective as described in Article 3 of the WIPO convention.

To attain its objectives to encourage creative activities and promote the protection of intellectual property throughout the world, as described in **Article 3** of the WIPO convention, according to **Article 4** of the "WIPO convention", **WIPO** through its appropriate organs, and subject to the competence of each of the Unions performs the following functions :—

- (i) To promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislation in this field;
- (ii) To perform the administrative tasks of the Paris Union, the Special Unions established in relation with that Union, and the Berne Union;
- (iii) To encourage the conclusion of international agreements designed to promote the protection of intellectual property;
- (iv) To offer its cooperation to States requesting legal—technical assistance in the field of intellectual property;
- (v) To assemble and disseminate information concerning the protection of intellectual property, carry out and *promote studies in this field, and publish the results of such studies*;
- (vi) To maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in this field and the publication of the data concerning the registrations; and
- (vii) To take all other appropriate action;
- (viii) In order to attain the objectives to encourage creative activity and to promote the protection of intellectual property throughout the world, through cooperation among States as described in Article 3, of the WIPO convention, through its appropriate organs, and subject to the competence of each of the Unions, WIPO may agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property.

At present, WIPO administers 24 international treaties relating to intellectual property. [The list of these 24 treaties has been given at the beginning of this topic in this book]

Legal and technical assistance to nations.—To protect and promote intellectual property throughout the world, WIPO has entered into an agreement with the World Trade Organisation (WTO). With this agreement, **International Bureau** of WIPO and the **Secretariat** of the WTO cooperate with each other to provide legal and technical assistance to the developing countries and least developed countries, in the development of not only the intellectual properties but their intellectual property laws as well. For this WIPO in cooperation with WTO has been developing strategies to encourage domestic creative activities in the developing and least developed nations by assisting them to have an access to foreign scientific and technological knowledge, and the use of literary and artistic works of foreign origin within the statutory limits of the intellectual property laws of these foreign states, *i.e.*, without violating the rights of the inventors and creators of the foreign origin.

While assisting the developing nations and least developed in developing intellectual properties and Intellectual Property laws, WIPO takes into consideration the needs and capacities of these nations so that the assistance provided by WIPO is in consonance with their national objectives and development interests. WIPO also provides technical assistance programmes in response to specific requests from individual countries also. Such technical assistance programmes are managed with the assistance provided by the local experts to the staff of WIPO in the regional bureaus of WIPO. WIPO has initiated programmes in the developing states and in the least developed countries with a view to build up an infrastructure within the legal framework of states to protect the intellectual property rights. In fact, developing states have been seeking the advise of WIPO in enacting the intellectual property laws and strategies not only to protect, but to secure the best economic value of their intellectual properties. WIPO has not only been advising the states on intellectual property laws but the owners and users of intellectual properties also as promotion of intellectual property rights promote the society, culture as well as economy of any state.

In May, 2008 WIPO offered **Development Plan for Ghana**, which is a comprehensive and coherent approach to establish a robust IP framework in Ghana. Similarly, WIPO has launched a **pilot programme** in September, 2008 with the cooperation from a developed state like U.S.A. to assist **indigenous Massai community** from Laikipia, Kenya for the protection of "copyright to performance" to indigenous Massai community. This pilot programme is a collaboration among WIPO and the American Folklife Centre (AFC) at the Library of Congress in Washington D.C. and the Centre for Documentary studies (CDS) at Duke University in North Carolina. This pilot project has been launched upon a request received by WIPO directly from Massai community.

International registration.—International registration services for the protection of intellectual properties is another important function performed by WIPO. This service provided by WIPO protects the intellectual properties which may be patents, trade marks or designs of the applicant in multiple countries by filing a single application. WIPO maintains classification system, which are used for registering intellectual properties and intellectual properties and facilitates searches in intellectual property databases and registers.

Arbitration and Mediation Centre.—WIPO Arbitration and Mediation Centre was established in 1994 and is based in Geneva, Switzerland. This centre

offers Alternative Dispute Resolution (ADR) options for the resolution of international commercial disputes between private parties. The procedure offered by this Centre for the settlement of cross border disputes involving intellectual properties are fair procedures as they have been evolved by the experts in cross border dispute settlement.

Trade Related Intellectual Property Rights (TRIPs)

World Trade Organisation (WTO) that came into force on 1st January, 1995 is an inter-governmental organisation of the world. The member states of WTO are the parties to the Trade Related Intellectual Property Rights agreement (TRIPs agreement). India being a member of WTO is a signatory of TRIPs agreement.

TRIPs agreement

(Note.—For the complete text of the TRIPs agreement, see ANNEXURE 1 at the end of this book)

The TRIPs agreement is a significant international instrument to date on Intellectual Property Rights (IPRs). TRIPs agreement relates intellectual property rights with the international trade.

TRIPs constitutes Annexure IC of the Marrakesh Agreement. Marrakesh Agreement establishing World Trade Organisation (WTO) was concluded on April 15, 1994, and came into force on January 1, 1995. According to Article 11.2 of the WTO, TRIPs agreement binds all the members of WTO. TRIPs agreement consists of 73 articles and is divided into seven parts.

Part I of the TRIPs agreement provides for the general provisions and basic principles of the agreement.

Part II of the TRIPs agreement provides for the standards concerning the availability, scope and use of the following intellectual property rights :

1. Copyright and related Rights
2. Trade marks
3. Geographical Indications
4. Industrial Designs
5. Patents
6. Layout-Designs (Topographies) of Integrated Circuits
7. Protection of Undisclosed information
8. Control of Anti-Compensation Practices in Contractual Licences.

Part III of the TRIPs agreement provides for the enforcement of intellectual property rights. This part includes general obligations of the member states and Civil and Administrative Procedure and Remedies for the enforcement of intellectual property rights.

Part IV of the TRIPs agreement provides for the acquisition and maintenance of intellectual property rights and related *Inter Parties* procedures.

Part V of the TRIPs agreement provides for the dispute prevention and settlement amongst the member states.

Part VI of the TRIPs agreement provides for the transitional agreements.

Part VII of the TRIPs agreement provides for the institutional arrangements and final provisions.

Significance of TRIPs agreement lies in the fact that this is an agreement between nations which are at different levels of economic development, i.e., it involves developed as well as developing nations.

OBJECTIVES AND BASIC PRINCIPLES OF TRIPs

Objectives of TRIPs.—Objectives of TRIPs have been laid down in the preamble and under Article 7 of Part I of the TRIPs agreement. Accordingly, the **OBJECTIVES OF TRIPs are** :—

- (i) to reduce distortions and impediments to international trade;
- (ii) to take into account the need to promote effective and adequate protection of intellectual property rights;
- (iii) to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;
- (iv) to protect and enforce intellectual property right so that it contributes to the promotion of technological innovation and to the transfer and dissemination of technology;
- (v) to establish a mutually supportive relationship between the WIPO and the World Trade Organisation (WTO) as well as other relevant international organization.

(i) **To reduce distortions and impediments to international trade.**—To achieve this objective the TRIPs agreement recognizes the need for new rules and discipline concerning the applicability of basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions. It also recognizes the provision of adequate standard and principles concerning the availability, scope and use of trade-related intellectual property rights. This agreement also emphasizes the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through **multilateral procedures.**

(ii) **To promote effective and adequate protection of intellectual property rights.**—To achieve this objective, the members of TRIPs agreement recognize the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account difference in national legal system. It recognizes that intellectual property rights are private rights **Article 41 of TRIPs** agreement provides that "procedure concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays. Decisions on merits of a case shall be preferably in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay."

Article 67 of the TRIPs agreement provides that "in order to facilitate the implementation of this agreement, the developed country Members shall provide, on request, and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse and shall include support regarding the establishment of reinforcement of domestic offices and agencies relevant to these matters including the training personnel."

property rights."

7. **Protection and enforcement of intellectual property laws to the mutual advantage of producers and users of intellectual property.**—According to Article 7 of the TRIPs agreement, the objective of TRIPs agreement is to protect and enforce intellectual property right so that it contributes to the promotion of technological innovation and to the transfer and dissemination of technology,

- (a) to the mutual advantage of producers and users of technological knowledge;
- (b) in the manner conducive to social and economic welfare; and
- (c) to a balance of rights and obligations.

8. **Protection of public health, nutrition and public interest.**—According to Article 8 of Part 1 of the TRIPs agreement, Members of TRIPs agreement may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

Role of Intellectual property law in the economic development

Intellectual property law has been developed to protect the intellectual property. As has already been explained, intellectual property is the creation of the intellect of human brain. Literary works, music compositions, inventions, creation of designs, coining of trade marks, etc. are the examples of intellectual property created by the intellect of human brain.

Intellectual property has immense economic value when it is put into practice and has the capability of effecting the market also. Industrial revolution in the human history is one such example. Machines invented by the intellect of human brain caused the mass production of the goods in short period of time and created a situation where supply exceeded the demand for the goods. Such situation effected the economies of the nations where the industrial revolution took place. As a matter of fact, economic development of any nation is directly related to its industrial development whereas industrial development itself depends upon the inventions invented by the intellect of human brain. Inventions as intellectual properties are protected by the Intellectual Property Law. Protection of intellectual property rights under the Intellectual Property Law encourage the persons with the creative mind to create intellectual property in the form of literary works, inventions, coining of trade marks, industrial designs, etc., and disclose it to the public for the benefit of the society.

The intellectual property law confers upon the creator of intellectual property an exclusive right with respect to his intellectual property for a specified period. This exclusive right of the creator over his intellectual property includes his right to assign his intellectual property, or without assigning his intellectual property itself, transfer any interest in his intellectual property in the favour of any other person in consideration of monetary gain.

To prevent the unauthorised use of the intellectual property without the consent of the owner, the intellectual property law provides for the remedies in the form of : (i) injunctions, (ii) damages, and (iii) accounts of profits in the favour of the owner of intellectual property against those who make an

unauthorised use of his intellectual property right without his permission. Such provisions under the intellectual property law protect the commercial interest of a person in his intellectual property.

Protection of commercial interest of the owners of the intellectual property law encourages the inventors, authors, musicians, creators of designs of industrial products, etc. to disclose their creations to the public without any fear of the infringement of their creations by others. Protection of intellectual property right of the inventors over their inventions by intellectual property law not only protects the economic interest of the inventors but also the economic interest of the nation to which these owners of intellectual properties belong.

By protecting the economic interest of the owner of the intellectual property, intellectual property law encourages the inventors to invent new inventions, create new designs for industrial products, which are crucial to the economic development of any nation.

Intellectual property law has become more important in the recent past due to an unprecedented development in the field of science and technology, particularly in the field of information technology. In the age of satellites and internet, any development that takes place in one corner of the world gets communicated to the other corner in no time. This gives rise to enormous possibility of unauthorised working of inventions or piracy of industrial designs, infringement or passing off the trade marks, etc. at the international level. In such situation rights of a person with respect to his intellectual property require more protection by stringent intellectual property law because unauthorised working of inventions or piracy of industrial designs affects adversely not only the individual commercial interest of the owner of the intellectual property, but also affects the economy of a nation to which the owner of intellectual property belongs.

But stringent intellectual property law to protect the interest of the owners of the intellectual property does not mean grant of perpetual exclusive rights to the owner of the intellectual property in total disregard of the public interest.

TRIPs agreement aims at balancing the interests of various stakeholders, including innovators, producers and consumers in a manner that enhances "social and economic welfare." Article 7 of the TRIPs agreement provides as follows :—

"The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and user of technological knowledge and in a manner conducive to a social and economic welfare and to a balance of rights and obligations."

PART II

THE COPYRIGHT ACT, 1957

CHAPTER I

INTRODUCTION

COPYRIGHT

'Copyright' is an 'exclusive right' exercised over a work produced by the intellectual labour of a person. As in *Sulmanglam R. Jayalakshmi v. Meta Musical*,¹ the Madras High Court held that "the right which a person acquires in his literary or artistic work which is the result of his intellectual labour is called his "copyright"."

'Copyright' is not restricted to literary or artistic work. 'Copyright' applies to different other kinds of works also like dramatic, musical, cinematographic film, computer programme, work of architecture and sound recording and any other work which is produced by the intellectual labour of a person. In other words, different kinds of works which are the results of intellectual labour of a person fall within the purview of the "copyright". As the subject-matter of copyright is the work produced by the intellectual labour of a person, therefore, the right to "copyright" is a right to "intellectual property of a person."

The 'exclusive right' to copyright exercised by a person includes his right to assign the copyright either wholly or partially in the favour of any other person. The owner of the copyright may also grant any interest in the copyright by licence in the favour of any other person. The 'exclusive right' to copyright also entitles the owner of the copyright to restrain any person from doing any unauthorised act with respect to the work in which his copyright subsists. As in *Bharat Law House, Messrs v. M/s Wadhwa Co. Ltd.*,² it was observed that "Copyright is the exclusive right to do and to authorise others to do and restrain others from doing certain acts in relation to a literary work". "Exclusive right" to copyright in a work also includes the right to reproduce the work. As in *Penguin Books Ltd. v. M/s India Book Distributors*,³ the Delhi High Court observed that "anything with respect to the intellectual work in its most elementary form means exclusive right to multiply copies of a book."

Copyright Law

Copyright law has been developed to give legal protection to 'copyright'. Right to "copyright" has become a statutory right under the Copyright Law.

1. AIR 2000 Mad. 454.

2. AIR 1988 Del. 68.

3. AIR 1985 Del. 29.

Copyright Law prevents the reproduction, sale or any other act with respect to a work if it is done without the consent of the owner of the copyright in that work because any act done with respect to a work in which a copyright subsists without the authority of the owner of such copyright is deemed to be an infringement of the copyright.

'Copyright Law' provides for the civil as well as 'criminal' remedies against the infringement of copyright. 'Copyright Law' provides for civil remedies in the form of injunctions, damages or accounts against the infringement of copyright. Similarly, Copyright Law provides for the punishments in the form of imprisonments and fines as a criminal remedy for the offence of infringement of the copyright. As in **Associated Electronics v. M/s. Sharp Tools**,¹ the Karnataka High Court observed as follows :

"The Copyright Law is in essence concerned with the negative right of preventing the copying of physical material, existing in the field of literature and art. Its object is to protect the writer and artist from the unlawful reproduction of his material."

Similarly, in **Sulmanglam R. Jayalakshmi v. Meta Musical**,² the Madras High Court observed that "the primary function of copyright law is to protect the fruits of a man's work, labour, skill or test from annexation by the other people."

Copyright Law protects copyright of a person in a work produced by his intellectual labour irrespective of his status. Thus, a saint who has renounced the world has copyright in the work produced by his intellectual labour like any other person. As in **Sulmanglam R. Jayalakshmi v. Meta Musical**,³ the Madras High Court observed as follows :

"The Law of copyright has to protect a man's copyright irrespective of his status as a family man or saint. Merely because a person has renounced the world, he cannot be compelled to renounce his copyright too."

Thus, if a saint writes certain lyrics in the praise of God, he has copyright over those lyrics under the Copyright Law.

Objectives of Copyright Law

The Copyright Law achieves the following objectives :

1. Protection of individual commercial interest in an intellectual work.

2. Protection of social interest.

1. Protection of individual commercial interest

No person other than the owner of the copyright can do anything with respect to the work in which the copyright subsists. However, the Copyright Law permits the owner of the copyright to assign the copyright either wholly or partially to any other person. The Copyright Law also permits the owner of the copyright to grant any interest in the copyright by granting licence in the favour of any other person. The owner may assign the copyright or grant licence

in the favour of any other person in consideration of monetary gain. Thus, copyright law not only protects the creative genius of human mind, but also entitles a person to earn monetary gain from a work produced by his intellectual labour. As in *Garware Plastics and Polyster Ltd., Bombay v. M/s. Telelink*,¹ the Bombay High Court observed as follows :

"The Copyright Act is meant to protect the owner of the copyright against unauthorised performance of his work, thereby entitling him monetary gain from his intellectual property."

Similarly, in *Sulmanglam R. Jayalakshmi v. Meta Musical*,² the Madras High Court observed that "the primary function of the Copyright Law is to protect the fruits of a man's work, labour, skill from annexation by other people."

Lord Atkinson in *Macmillan & Co. Ltd. v. K & J.*,³ quotes Lord Halsbury as follows :

"I shall very much regret if I were compelled to come to the conclusion that the state of law permitted one man to make the profit and to appropriate to himself what has been produced by labour, skill and capital of another."

Whereas Lord Atkinson in *Macmillan & Co. Ltd. v. K. & J.*,⁴ explains the basis of Copyright Law as follows :

"The moral basis on which the principle of the protective provisions of Copyright Act rests is the Eighth Commandant—
i.e., "Thou shall not steal".

Emphasising the importance of Copyright Law in protecting the commercial interest of an 'artist' or an 'author' in his work, Hon'ble Justice V. R. Krishna Iyer in *Indian Performing Rights Society Ltd. v. Eastern India Motion Pictures Association*,⁵ observed as follows :

"The creative intelligence of man is displayed in multifarious ways of aesthetic expression but it often happens that economic system so operates that the priceless divinity which we call artistic or literary creativity in man is exploited and masters, whose works are valuable are victims of pitfalling payment. World opinion in defence of human rights to intellectual property led to international conventions and municipal laws, commission codes and organisations calculated to protect works of art. India responded to this universal need by enacting the Copyright Act, 1957."

2. Protection of social interest

Copyright Law not only protects the commercial interest of a person in the work produced by his intellectual labour, but also protects the interest of the society because art and literature are the essential constituents of culture of any society. Maturity and excellence in the art and literature means maturity and excellence in the culture. Thus, by protecting the copyright of the authors and artists in their artistic or literary work, the copyright law protects the culture of the society. As the Delhi High Court in *Penguin Books Ltd., England v. Indian*

1. AIR 1989 Bom. 33.

2. AIR 2000 Mad 454.

3. AIR 1924 PC 75, at page 81.

4. *Ibid.*

5. AIR 1977 SC 1443.

Book Distributors,¹ observed as follows :

"Copyright is a property right and throughout the world, it has been regarded as a form of property working for special protection in the ultimate public interest."

Similarly, in *Smt. Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd.*,² the Delhi High Court highlighted the social interest served by the Copyright Law as follows :

"The hallmark of any culture is excellence of arts and literature. Quality of creative genius of artists and authors determine the maturity and vitality of any culture. Art needs healthy environment and adequate protection. The protection which law offers is thus not the protection of the artist or author alone. Enrichment of culture is of vital interest to each society. Copyright Law protects this social interest."

Copyright Law in India

Copyright law existed in India even prior to its independence. The Copyright Law in India can be traced to Indian Copyright Act, 1847. The Indian Copyright Act, 1847 was enacted during East India Company's regime. Later the Imperial Copyright Act, 1911, of United Kingdom was extended to India as part of His Majesty's dominion. Then in 1914, Indian legislature passed the Indian Copyright Act of 1914. To this Act was annexed the modified version of the Imperial Copyright Act, 1911 for its application in India. Thus, prior to its independence, the copyright law applicable in India consisted of Indian Copyright Act, 1914 and the Imperial Copyright Act, 1911 of United Kingdom as modified in its application to India by the Indian Copyright Act, 1914.

The Copyright Act, 1957³

After Independence, the Indian Parliament enacted the Copyright Law, 1957 to be applicable in India. The Copyright Law, 1957 of India repealed the Indian Copyright Act, 1914, and the Copyright Act of 1911 passed by the Parliament of United Kingdom as modified in its application to India by the Indian Copyright Act, 1914.

The Copyright Act, 1957 came into force on 21.1.1958 and extends to the whole of India. Sec. 1 of the Copyright Act, 1957 reads as follows :

1. **Short title, extent and commencement.**—(1) This Act may be called the Copyright Act, 1957.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Important features of the Copyright Act, 1957

Following are the important features of the Copyright Act, 1957.

1. Different works in which copyright subsists

The Copyright Act, 1957, specifies and defines different kinds of works in which copyright subsists. These different kinds of works include literary,

1. AIR 1985 Del. 68.

2. AIR 1987 Del. 13.

dramatic, musical, artistic, cinematographic film, computer programme, work of architecture and sound recording.

2. **Different meanings of copyright with respect to different kinds of work**
 Sec. 14 of the Copyright Act, 1957, gives different meanings to different kinds of works in which copyright subsists.

3. **Authorities and Registration of copyright**

The Copyright Act, 1957, provides for the authorities like, Copyright Office, Registrar of Copyrights and Copyright Board for the purpose of the registration of the copyright. However, registration of copyright is not compulsory under the Copyright Act, 1957.

4. **Ownership and assignment of copyright**

The Copyright Act, 1957, provides for that who is the 'first owner' of the copyright. Sec. 17 of the Copyright Act, 1957, provides that under certain circumstances, persons other than the 'author' of the work may become the 'first owner' of the copyright. Sec. 18 of the Copyright Act also provides that the owner of the copyright in a work may assign the copyright wholly or partially in the favour of any other person.

5. **Licences relating to copyright**

The Copyright Act, 1957, provides that licence relating to copyright in a work may be granted in the favour of any other person by the owner of the copyright. The Act also provides for the compulsory licence in Indian works withheld from public and in unpublished work. Such compulsory licence is granted by the Registrar of the Copyrights on the direction of the Copyright Board.

6. **Term of Copyright**

The Copyright Act, 1957, provides for the term during which copyright in a work subsists. Term of copyright in published literary, dramatic, musical and artistic work subsists during the lifetime of the author of such work and for sixty years following the year of the death of the author. Whereas in case of photographs, cinematograph films, work of sound recording, the copyright subsists for sixty years following the year of publication of these works.

7. **Copyright Society**

The Copyright Act, 1957, provides for the registration of copyright society. A copyright society registered under sec. 33(3) of the Copyright Act is permitted to carry on the business of issuing or granting licences in respect of any work in which copyright subsists.

8. **Rights of Broadcasting Organisation and of Performers**

According to sec. 37 of the Copyright Act, 1957, every broadcasting organisation shall have a special right to be known as "broadcast reproduction right" in respect of its broadcasts. Similarly, sec. 38 of the Copyright Act provides that where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance.

9. Infringement of copyright

Sec. 51 of the Copyright Act, 1957, provides for the acts which are deemed to be the infringements of copyright in a work. On the other hand, sec. 52 of the Copyright Act provides for the acts which are not deemed to constitute an infringement of copyright in a work.

10. Remedies against the infringement of copyright

The Copyright Act, 1957, provides for the civil as well as criminal remedy against the infringement of copyright. The Copyright Act, 1957, provides for 'civil remedies' in the form of injunction, damages or accounts against the infringement of copyright. Similarly, punishment in the form of 'imprisonment' and 'fine' is provided as a criminal remedy for the offence of infringement of copyright under the Copyright Act, 1957.

DEFINITIONS

Sec. 2 of the Copyright Act, 1957, defines various "terms" for the purpose of the Copyright Act, 1957.

Sec. 2 of the Copyright Act, 1957, reads as under :

Sec. 2. Interpretation.—In this Act, unless the context otherwise requires,—

(a) "adaptation" means,—

- (i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;
- (ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;
- (iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;
- (iv) in relation to a musical work, any arrangement or transcription of the work; and
- (v) in relation to any work, any use of such work involving its re-arrangement or alteration;

(b) "work of architecture" means any building or structure having an artistic character or design, or any model for such building or structure;

(c) "artistic work" means,—

- (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
- (ii) a work of architecture; and
- (iii) any other work of artistic craftsmanship;

(d) "author" means,—

- (i) in relation to a literary or dramatic work, the author of the work;
- (ii) in relation to a musical work, the composer;

- (iii) in relation to an artistic work other than a photograph, the artist;
 - (iv) in relation to a photograph, the person taking the photograph;
 - (v) in relation to a cinematograph film or sound recording, the producer; and
 - (vi) in relation to any literary, dramatic, musical or artistic work which is computer generated, the person who causes the work to be created;
- (dd) "broadcast" means communication to the public—
- (i) by any means of wireless diffusion, whether in anyone or more of the forms of signs, sounds or visual images; or
 - (ii) by wire,

and includes a re-broadcast;

- (e) "calendar year" means the year commencing on the 1st day of January;
- (f) "cinematograph film" means any work of visual recording and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;
- (fa) "commercial rental" does not include the rental, lease or lending of a lawfully acquired copy of a computer programme, sound recording, visual recording or cinematograph film for non-profit purposes by a non-profit library or non-profit educational institution.

Explanation.—For the purposes of this clause, a "non-profit library or non-profit educational institution" means a library or educational institution which receives grants from the Government or exempted from payment of tax under the Income Tax Act, 1961 (43 of 1961);

- (ff) "communication to the public" means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

Explanation.—For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;

- (ffa) "composer", in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation;
- (ffb) "computer" includes any electronic or similar device having information processing capabilities;
- (ffc) "computer programme" means a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result;
- (ffd) "copyright society" means a society registered under sub-section (3)

- of section 33;
- (g) **"delivery"**, in relation to a lecture, includes delivery by means of any mechanical instrument or by broadcast;
 - (h) **"dramatic work"** includes any piece of recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film;
 - (hh) **"duplicating equipment"** means any mechanical contrivance or device used or intended to be used for making copies of any work;
 - (i) **"engravings"** include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs;
 - (j) **"exclusive licence"** means a licence which confers on the licensee or on the licensee and person authorised by him to the exclusion of all other persons (including the owner of the copyright) any right comprised in the copyright in a work, and "exclusive licensee" shall be construed accordingly;
 - (k) **"Government work"** means a work which is made or published by or under the direction or control of—
 - (i) the Government or any department of the Government;
 - (ii) any Legislature in India;
 - (iii) any Court, Tribunal or other judicial authority in India;
 - (l) **"Indian work"** means a literary, dramatic or musical work,—
 - (i) the author of which is a citizen of India; or
 - (ii) which is first published in India; or
 - (iii) the author of which, in the case of an unpublished work is, at the time of the making of the work, a citizen of India;
 - (m) **"infringing copy"** means,—
 - (i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;
 - (ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;
 - (iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;
 - (iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;
 - (n) **"lecture"** includes address, speech and sermon;
 - (o) **"literary work"** includes computer programmes, tables and compilations including computer databases;
 - (p) **"musical work"** means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;

- (q) "performance", in relation to performer's right, means any visual or acoustic presentation made live by one or more performers;
- (qq) "performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance :

Provided that in a cinematograph film a person whose performance is casual or incidental in nature and, in the normal course of the practice of the industry, is not acknowledged anywhere including in the credits of the film shall not be treated as a performer except for the purpose of clause (b) of Section 38-B;

- (s) "photograph" includes photo-lithograph and any work produced by any process analogous to photography but does not include any part of a cinematograph film;
- (t) "plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative duplicating equipment or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which sound recording for the acoustic presentation of the work are or are intended to be made;
- (u) "prescribed" means prescribed by rules made under this Act;
- (uu) "producer", in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;
- (x) "reprography" means the making of copies of a work, by photocopying or similar means;
- (xa) "Rights Management Information" means—
- (a) the title or other information identifying the work or performance;
 - (b) the name of the author or performer;
 - (c) the name and address of the owner of rights;
 - (d) terms and conditions regarding the use of the rights; and
 - (e) any number or code that represents the information referred to in sub-clauses (a) to (d),
- but does not include any device or procedure intended to identify the user;
- (xx) "sound recording" means a recording of sounds, from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced;
- (xxa) "visual recording" means the recording in any medium, by any method including the storing of it by any electronic means, of moving images or of the representations thereof, from which they can be perceived, reproduced or communicated by any method;
- (y) "work" means any of the following works, namely :—
- (i) a literary, dramatic, musical or artistic work;
 - (ii) a cinematograph film;
 - (iii) a sound recording;

- (z) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;
- (za) "work of sculpture" includes casts and models.
-