

*** Unit - I ***

Introduction:-

- A wide body of federal & state laws protects creative property such as writing, music, drawings, paintings, photography & films
- Collectively this body of law is called "intellectual property" law, which includes copyright, trademark and patent laws, each applicable in various situations and each with its own set of technical rules.
- Intellectual property very broadly means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields.
- Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations and the rights of the public in access to these creations.
- The second is to promote, as a deliberate act of government policy creativity & the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

→ The laws and administrative procedures relating to intellectual property rights have their roots in Europe.

→ The Statute of Monopolies (1624) and the British Statute of Anne (1710) are seen as the origins of patent law and copy right respectively, firmly establishing the concept of intellectual property.

→ The trend of granting patents started in the 14th century. In comparison to other European countries in some matters England was technologically advanced & used to attract artisans from elsewhere, on special terms.

The first known copy rights appeared in Italy. Venice can be considered the cradle of IP system as most legal thinking in this area was done here; laws & systems were made here for the first time in the world. And other countries followed in due course patent act in India is more than 150 years old.

The inaugural one is the 1856 Act which is based on the British patent system and it has provided the patent term of 14 years followed by numerous acts and amendments. During 1950's to 1980's & many countries including India, were able to manage with out practising a strong system of IPR. Globalization driven by chemical pharmaceutical, electronic & IT industries has resulted into large investment in R&D.

This process is characterized by shortening of product cycle, time & high risk of reverse engineering by competitors.

Industries came to realize that trade secrets were not adequate to guard a technology.

It was difficult to reap the benefits of innovations unless uniform laws & rules of patents, trade marks, copy right, etc, existed.

That is how IPR became an important constituent of the world trade organization (WTO).

India joined the world trade organization in 1995 & became a signatory to the agreements on trade related intellectual property rights (TRIPS).

Since then, much has been talked about intellectual property rights, domestic innovation, knowledge diffusion, international trade & technology transfers.

In fact patent system in India is an age old concept a lesser known fact is that the history of patent law in India starts from 1856.

The first legislation in India relating to patent was enacted almost 160 years ago which was called as the Act VI of 1856.

The objective of this legislation was to encourage inventions of new and useful manufactures and to induce inventors to disclose secret of their inventions.

Definition:-

Intellectual property refers to Creation of mind i.e., inventions, industrial designs for article, literary & artistic work, symbol etc., used in commerce

Intellectual property refers to the creations of the human minds for which exclusive rights are recognised.

Innovators, articles & business owners are granted certain exclusive rights to a variety of intangible assets for a specified duration.

For example:-

→ Business owners are granted exclusive rights on the use of their trade marks & geographical indications which were established by them;

→ Creative articles are granted copy rights on musical literary, dramatic & artistic works for their creations while.

→ Innovators are granted protection for their patents industrial designs trade secrets, confidential information and layout designs of integrated circuits for their innovations.

IP is an intangible asset to a company. It gives business partners and financial institutions the confidence to invest in or collaborate with the organisation.

In addition to protecting their creation, business owners can maximise the value of their IPs in many ways.

They can franchise, license out or transact their IP.

Generally speaking "intellectual property" is probably best thought of the mind that are given the legal rights often associated with real or personal property.

The rights that are obtained by the creator are a function of statutory law.

(i.e, Law created by the legislature) These statutes may be federal or state law, or in some instance both federal and state law govern various aspect of a single

type of intellectual property.

The term intellectual property itself is now commonly used to refer to the bundle of rights conferred by each of the following fields of law:

- (1) patent law
- (2) copy right law
- (3) Trade Secret law
- (4) The right of publicity
- (5) Trademark & unfair

competition law. Some people confuse these areas of actual property law, and although there may be similarities among these kinds of intellectual property protection, they are different & serve different purpose.

Intellectual property *
Intellectual property is the area of law that deal with protecting the rights of those who create original works.

It covers everything from original plays and novels to inventions and company identification marks.

The purpose of intellectual property laws are to encourage new technologies artistic expression and inventions while promoting economic growth. When individuals know that their creative work will be protected and that they can benefit from their labor, they are more likely to continue to produce things that create jobs develop new technology, make processes more efficient and create beauty in the world around us.

(1) Copy rights:-

Copy rights protect the expressive arts. They give owners exclusive rights to reproduce their work, publicly display or perform their work, and create derivative works.

Additionally, owners are given economic rights to financially benefit from their work and prohibit others from doing so without ~~so~~ their permission. It is important to realize that copy rights do not protect ideas.

patents protect an invention from being used by others for a certain period of time. These are three different types of patents.

Utility patents:- These patents protect inventions that have a specific function, including things like chemicals, machines & technology.

Design patents:- These patents protect the unique way a manufactured object appears.

Plant patents:- These patents protect plants that are asexually reproduced, including hybrids.
ex:- A chocolate bar may have patents concerning its method of manufacture, copy right may protect the text printed on the packaging.

Trademarks:-

Trademarks protect the names & identifying marks of product & companies. The purpose of trademarks is to make it easy for consumers to distinguish competitors from each other.

Industrial design:- An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article or of two-dimensional features such as patterns, lines or colors.

Innovations & Inventions of Trade related

Intellectual property:-

It is ten years since India amended the Indian Patents Act, 1970 to bring its law in line with the Agreement on trade related aspects of Intellectual property Rights.

The most important of these amendments related to the introduction of product patents for 20 years, including for pharmaceutical products.

Significant safeguards were built into the legislation. These included debarment of ever greening patents a process by which the patent holder seeks to extend the life of patents by some minor tinkering with the products.

The amended legislation also expanded the scope of compulsory licensing and introduced for the first time post grant opposition to patents.

(provisions relating to pregrant opposition were retained)

The legislation raised the bar for what constitutes an invention & what cannot be patented in India.

The above provisions served Indian consumers well by keeping the price of some important drugs dealings with critical illnesses such as cancer under check.

upheld by the highest courts. The industry has by & large been lobbied with their governments to force India to dilute the provisions. Inventions are the concentrated expressions of new technological knowledge and innovation is the process of introduction and use of such inventions and knowledge in the production and on the market.

Experience has shown that while good inventions are the result of specific technological knowledge, experience and imagination depend mainly on the entrepreneurial and marketing qualities and experience.

Innovators are granted protection for their patents, industrial designs, trade secrets, confidential information and layout designs of integrated circuits for their innovations.

The subject matter of a patent is an invention and invention can be either a product, a process or a product by process.

TRIPS can be viewed as condoning hidden trade restrictions imposed on the world by the technologically advanced economies to perpetuate cultural imperialism.

Prices of goods that carry IP rights invariably enjoy astronomical margins of profit over production cost.

In India the intellectual property rights pertaining to trademarks and patents are controlled by the Controller General of Patents Designs and Trademarks, Department of industrial policy and promotion, Ministry of commerce & industry. Copyrights are handled by the copyright office, Copyright societies, Government of India. Based on the type of intellectual property right to be registered application must be made to the concerned authorities in the prescribed form.

The department of industrial policy & promotion under the Ministry of commerce & industry is responsible for intellectual property rights relating to patents, designs, Trade marks & geographical indication of goods and oversees the initiatives relating to their promotion and protection.

These include the authority of policy & its implementation through the office of the Controller general of patents, Designs and trademarks.

It promotes awareness regarding protection of the intellectual property rights inherent in industrial property in conformance with the world intellectual property organization (WIPO) and apex industry organization apert from similar initiatives involving regional industry associations.

It also provides inputs on various issues relating to the agreement on trade related aspects of intellectual property (TRIPS) related to World Trade Organization in these fields.

The department undertakes technical cooperation programmes with the World Intellectual Property Organization (WIPO) Geneva for the modernisation and up gradation of intellectual property administration relating to patents, designs, trade marks and geographical indications and the organisation of human resource development & awareness generation activities in the country.

The major initiatives by the department this year include modernisation of IP infrastructure and establishment of new integrated offices in Delhi, Kolkata, Chennai and Mumbai.

A programme costing Rs. 153 crore has been implemented in the 10th five year plan. The programme focused on infrastructure development, computerisation, human resource development, training & awareness.

Further modernisation of IP offices to provide additional human resources, higher level of computerisation to support online processing, strengthening of data base & novelty search facilities, awareness generation activities, accession to international treaties, conventions is being taken up in 11th five year plan.

Patent infringement is the commission of a prohibited act with respect to a patented invention without permission from the patent holder. Permission may typically be granted in the form of a license.

The definition of patent infringement may vary by jurisdiction but it typically includes using or selling the patented invention.

In many countries, a use is deemed to be commercial to have a commercial purpose. to constitute patent infringement.

The scope of the patented invention or the extent of protection (1) is defined in the claims of granted patent.

In other words, the terms of the claims inform the public of what is not allowed without the permission of the patent holder.

Patents are territorial and infringement is only possible in a country where a patent is in force.

Example:- If a patent is granted in the United States then any one in the United States is prohibited from making, using, selling or importing the patented item while people in other countries may be free to exploit the patented invention in their country.

The scope of protection may vary from country to country to country, because the patent is examined or in some countries not substantively examined by the patent office in each country or region and may be subject to different patentability requirements.

An intellectual property infringement is the infringement or violation of an intellectual property right. There are several types of intellectual property rights, such as copy rights, patents and trade marks. Therefore an intellectual property infringement may for instance be a

- * copy right infringement
- * patent infringement
- * trademark infringement.

- (a) Fictitious entry
- (b) Trap street
- (c) Counter marking.



Techniques to detect intellectual property infringement include.

A new trend is developing in a number of countries which have added a new type of right to the bundle of rights listed in article 28. That new trend refers to the right of patent owners to oppose the registration by regulatory authorities of products that infringe upon their patents. Regulatory agencies, therefore are under the obligation of requesting information about the eventual existence of conflicting patents rights before registering or granting marketing approval to any product.

This is a sort of administrative enforcement of patent rights, not only because it is enforced ex-officio by the government agencies in question, but also because it creates a direct obstacle against the administrative act of registering infringing products, regardless of their being subsequently commercialised or not.

This is a measure that goes beyond article 28 and that has the natural consequence of making it more difficult for generic products to enter the market.

At the same time, even though the measure does not necessarily prevent generic competitors from submitting the request for marketing approval before the patent

express a matter that is consistent with the permitted exceptions to right conferred under article 30. The administrative enforcement of patents not only expands patent rights under Article 28, but it also curtails rights of WTO members under article 30.

The major inconvenience of the administrative enforcement of patents by regulatory agencies is that it reverses the burden of proof, because it is the obligation of the registration applicant to convince the authorities that its product does not infringe upon any patent rights. Such a measure of course has the benefit of increasing the rights of patents owners, but at the same time, because it discourages the early registration of generic products, which delays their entry into the market, generates an additional barrier against competition with off patent pharmaceutical products.

Linking registration procedures to patents gives a certain level of enforceability to patents even when they are under administrative or court challenge because no marketing approval can be granted while a related and possibly infringed upon patent is in force.

Intellectual property rights enable the right holder to prevent others from engaging in certain activities related to the subject matter of the rights so as to gain competitive advantage.

The scope of each of these rights varies as per the national statutes in different countries.

It also follows that the rights be accompanied by a set of responsibilities & duties to be performed by the right holder.

IPR may be considered as a contract between the right holder and the society in which

protection through statutory rights is granted to the innovator for his creations so that the creator is benefited and economically compensated.

Simultaneously makes it obligatory on the right holder to exploit the creation for public good.

This includes making the creation available to public

so as to promote human creativity, fair competition and ensuring market accessibility.

Regulatory provisions in the International agreements dealing with IPR are aimed at creating and maintaining

competitive open markets with freedom to operate by appropriate protection of Intellectual property rights. Such provisions are introduced with the hope of catalysing the evolution of openly legitimate contestable markets with transparent & justifiable regulations, coupled with appropriate incentives for fair and dynamic competition.

The agreements therefore build in features to avoid the concentration and abuse of market power, resulting from such exclusive IPR's that may tend to exclude potential competitors or put others to unfair disadvantages.

It also stipulated measures for the purpose of achieving enhanced social goals.

This calls for well balanced national competition policies that complement their IPR laws.

The subject needs to be examined in the context of

"Interdependent Economies" & "National frames of References" and a holistic appreciation of the dynamic linkage between them.

Importance of Liability Issues *
Intellectual property rights are likely to produce or use
may intangible assets. Such as computer programmes,
literary or artistic works, data bases valuable raw
data algorithms, industrial designs etc. The intellectual
property legal framework is thus crucial for rights in
order to on the one hand, secure its own investment
and on the other, to avoid the infringement of
intellectual property of others.

As regards protection of valuable intangible assets
generated by an intellectual system, one needs to consider
traditional IP protection, such as patents and copy
right.

Additionally, the legal framework for the protection
of business confidential information and trade secrets
is important.

Intellectual property rights are regulated at the
the international and national levels.

The European Union has adopted a number of legislative
acts relating to the IP.

European law complies with the obligations imposed
by international law, but at the same time
harmonises IP further and often provides for a
higher standard of protection than international.

conventions, in particular in the field of copy right

In the area of the copy right protection, harmonisation at EU level is provided mostly by Council directive on the harmonisation of certain aspects of copy right and related rights in the information society directive on the legal protection of databases and directive on the legal protection of computer programs. Copy rights grants an exclusive to control reproduction and communication to public of literary and artistic works, as far as they are original and fixed in some material form.

In the context of ebbits the copy right may provide protection in respect of ebbits soft ware

Structure of database, other literary works.

No formalities are required for copy right protection

Copy right last for the limited period of time therefore the legal frame work is composed of regulations arising from both national and international laws (the most relevant act being the council of Europe european patent convention of 1973.

* Unit-2 *

Copy right protection:-

Copy right is about the right copy. It is based on the notion that people, who create or produce creative work, have a right to decide how the fruits of their talent skill and labour should be reproduced. It thus provides the economic foundation for sustaining & fostering creativity.

Without this protection, nobody would be encouraged to be creative. In the case of India, the law on copy right protection is contained in the Indian Copy right Act 1957.

Earlier, the principle of Copyright was relevant mainly for the publishing business, film industry and music industry. How ever much has happened in India since the last 20 years, which has made the concept of copy right relevant for all firstly, the publishing, music, cinema and television industry has vastly expanded.

Secondly, copy right law has found new application in protecting the value created in the information technology industry computer software and material put on the internet. Thirdly in conjunction with trade mark protection, copy right has become an important means of protecting goods & services from passing off.

Let us first develop a broad understanding of the Organisation of the Copyright Act, 1957. The Act lists the wide areas of expressions, for example, art, literature, music and film, which can be copyrighted. The Copyrighting is in favour of the author or creator of the work. A Copyright arises the moment a person creates a work.

In addition, the act provides for the mechanism required for registering work with the government for extending protection.

What can be Copyrighted :-

Copyright is available for a very wide range of expressions which include literary, dramatic, musical and artistic work.

A detailed listing would be as follows:

I. Literary Work :-

Literary works include novels, books, articles, in newspapers, magazines and journals, lyrics for songs and and instructional manuals.

The act was amended in 1995, as a part of the commitment under the GATT, to add that literary work would include 'computer programmes, tables and compilations including databases'. Section 2 defines a "computer programme" as a set of 'instructions expressed in words, codes, schemes or in any other form, including machine-readable medium, capable of causing a computer to be expressed in a tangible form.

As a first principle the person whose creation has created the work should be the owner. Towards this, the Act introduces the concept of the 'author'. However, if an author has produced a work for a consideration one would be inclined to concede that the ownership in such work should be given to the person who has paid for it. Towards this, the Act introduces the concept 'employer' and 'commissioned work'.

Copy right protection:-

Section 17 recognises the author to be the owner of the work. An employer has the ownership in a work produced by an author, under a "contract of service or apprenticeship". The arrangement has minor nuances if the employer is a newspaper or periodical.

Further, if a person commissions another to take a photograph, draw a painting, make a portrait or a film, the person commissioning, becomes the owner of the copy right in the work.

In the case of a musical work, it is the composer who is the author. An amendment to the Act has vested the ownership of a computer related work in the one who pays for performance of a particular task or achieve a particular result. Thus the scope definition of the term 'computer programme' is broad ex:- dramatic work, musical work, artistic work, film, record.

- As the law is applicable to ~~non~~ and Indian citizens only,
- a copy right arises in the following cases:
- (1) The work is first published in India.
 - (2) The work is first published outside India, but the author is a citizen of India.
 - (3) In case of unpublished work, the author is at the date of making the work, a citizen of India or domiciled in India.
 - (4) In case of an architectural work of art, the work is located in India.

Rights of owner:-

- A Copyright is essentially, a right to prohibit the copying of a work.
- There can be various modalities through which a creative work can be appropriated, depending on the nature of the work.
- The Act lists certain activities which can be done in relation to the different categories of copy righted work. These activities are:
- ① To reproduce the work in any material form, including its storing in an electronic medium.
 - ② To publish the work.
 - ③ To perform the work in public.
 - ④ To make any cinematographic film or a record in respect of the copy righted work.
 - ⑤ To make any translation or adaptation of the work.
- The Act grants the following exclusive rights to the owner of a copy right in a cinematograph film:-

Enjoyment of every property is subject to some individual initiatives. If ownership is granted to recognise individual initiatives, restraint is imposed in the interest of larger social good. Copyright protection provides no exception to this principle.

The act makes provisions for permitting several activities. These provisions are very detailed. The listing below is only with reference to literary work, which has been included here to bring out the purpose and nature of the exceptions.

- ① A fair dealing with a literary, dramatic, musical, or artistic work for the purposes of private use, research, criticism (or) review.
- ② A fair dealing with a literary, dramatic, musical, or artistic work for the purpose of reporting current events in a newspaper, magazine or similar periodical, or broadcast or in a cinematograph film or by photographs.
- ③ Reproduction of work for the purposes of the State or functioning of law example, judicial proceedings or legislative proceeding.
- ④ Reading or recitation in public of any discernable extract from a published literary or dramatic work.
- ⑤ Publication of short passages of literary, dramatic, musical or artistic work for educational purposes.
- ⑥ The reproduction of a literary, dramatic or musical or artistic work by a teacher or pupil, in the course of instruction.

provision of copy rights protection *
copyright protection is available only for a limited number of years.

On one hand, the creator should enjoy the fruit of his creativity, while on the other hand, society as a whole, should benefit from the creation of new ideas and expressions. Balancing the two claims, the law allows copy right protection for a limited number of years. The duration of protection is as follows.

In the case of literary, dramatic, musical or artistic work when published during the life time of the author, copy rights subsists first during the life time of the author. In addition, it subsists for the next sixty years from the death of the author. In the case of joint authors, the sixty years period is to be counted after the death of the author who dies last:-

In the case of literary, dramatic, musical or artistic work which is anonymous or pseudonymous, copy right is for sixty years from the date of publication.

The copy right for a photograph & film is for a period of sixty years from the year of its publication.

Broadcast Cast Reproduction Rights :-

The act was amended in 1995 as a part of the country's commitment to the GATT to introduce special rights for broadcasting organisations, called the broadcast reproduction rights.

Some of the important rights are as follows :-

No person can re-broadcast a broadcast for example if a television channel is showing a cricket match, no other broadcast, with out license from the owner, can record or take the feed and broadcast it.

No person can make a recording of a broadcast other than for private use for teaching & research.

No person is to sell or hire a broadcast without a license from the owner.

For example a person cannot record a broadcast on the CD and sell or hire the CD or he cannot charge others to view a broadcast.

The only exception to the above rule is the use of excerpts of a broadcast in the reporting of current events or for review, teaching and research. The central government can extend the above protection to foreign broadcasters whether broadcasting from India or abroad.

Registration of Copy right

A person becomes the owner of a creative work as soon as he produces it. He does not have to register it to become the owner. However, the act provides a mechanism for a registration of the work. Registration is useful if a dispute arises in a relation to an infringement of a copy right.

A certificate of registration becomes crucial prima-facie evidence before a court in the ownership of the material and other facts recorded.

For registration, the office of the Registrar of Copy rights has been created. The register of copy rights is maintained in the copy right office of the Department of Education. The register contains the following six parts.

Part I:- Literary work other than computer programmes, tables & compilations including computer data-bases and dramatic works.

Part II:- Musical works.

Part III:- Artistic works.

Part IV:- Cinematograph films

Part V:- Sound recordings

Part VI:- Computer programmes, tables and compilations, including computer data bases.

The act brings several other persons in its fold, in addition to a person copying or reproducing a work. A person knowing that a copy right is being infringed, permits for profit the use of a place for communication of the copy righted work, the public also violates the act. Thus the owner of a hall who lets out his place for the viewing of a CD which is pirated, knowing the CD to be pirated, also infringes the act. Any person who commercially deals in by selling, hiring or importing, any work which is an infringement of a copy right is also a violator of the law. Thus all persons selling pirated videos, CDs and tapes are covered by the law.

The act provides for civil as well as criminal liability. A copy right owner can initiate a civil suit against a person infringing a copy right in a district court within whose jurisdiction the copy right owner resides or carries on his business where the cause of action arose. The court can stop the infringer from continuing the infringement and award the gains made from the infringement, as well as damages. Further all infringing copies & plates used for the production of copies become the property of the owner of the copy right.

* Commenting on the last amendments in the Copyright Act

As the Court noted :-

The object of amending the Copyright Act by amendment 65 of 1984 was to prevent piracy which became a global problem due to rapid advances in technology. The legislature intended to prevent piracy and punish the pirates, protecting, Copyright. The law, therefore, came to be amended by introducing section 52-A there after, the piracy of cinematograph films and of sound recordings could be satisfactorily prevented. Moreover, the object of the pirate is to make quick money and avoid payment of legitimate taxes and royalties. Uncertified films are being exhibited on a large scale. Rushing growth of video parlours has sprung up all over the country exhibiting such films recorded on video tapes by charging admission fee from the visitors. Therefore, apart from increasing the penalty of punishment under law it also provides the declaration on the offence of infringement of video films to display certain information on the recorded video films and containers thereof.

the point that whether the police should go around trying to find the copy right owner or proceed without him, the Court noted:

It is unnecessary for the prosecution to track on and trace out the owner of the copy right, to come and adduce evidence of infringement of the copy right - The absence thereof does not constitute a lack of an essential element on infringement of the copy right. If the particulars on

video films etc., as mandated under section 52-A do not find place, it would be held to be an infringement of a copy right.

The copy right act in india, has always been well organised ever since its inception. It has been amended a few times

to make it stronger. An amendment in 1984 equipped the law to deal with piracy in video tapes and music.

Another amendment of the act in 1955 further updated the law and fulfilled the country's commitment under the

GATT, which required a specific mention of a "computer programme" as a "literary work" & making other special

provisions on infringement of copy right in computer programmes

Another addition was in the area of the rights of broadcast

casters, which was aimed at protecting their programme from misappropriation.

Introduction to patent Law :-

The concept of patent in Great Britain originated from the royal prerogative to grant in India, patent is granted for inventions under the legislation. The first patent act was enacted granting exclusive patents for a period of 14 years to inventors of new manufacture. The act was in 1859. After further enactments in 1873, 1883 and 1888, patents & design act, 1911 was this act of 1911 was amended several times between the period from 1911 to 1970.

In 1957 a committee of Justice N. Raja Gopala Ayyangar & Dr. S. Venkateswarian was constituted & the patent law. Radical changes in patent law were suggested by report submitted in 1959 which is known as ayyangar's report.

Based on the report the patent act 1970 was enacted & rules were published in 1971. The act came into force from 20.4.1972 except for a few provisions which came into force from 1.4.1978.

It is a signatory to the agreement for the establishment of the world trade organisation including payment on trade related aspects of intellectual property rights. For the purpose of reduction of impediments to international trade and & promotion of effective & adequate protection of intellectual rights amendments to patents Act 1970 became necessary.

The inclusion of medicine & drug in the list of essential products was to protect public health & to make medicines available for everyone in the field of medicine. It is a challenge to determine which drug can cure a disease through research & clinical tests. Once this is done, the composition of the drug was determined and then it became relatively easier to work out a different process of making the same product. The Indian industry thus could examine a drug, find out its chemical composition and find a different process for making the product. This came to be called "reverse engineering" of a medicine. permitting only process patenting of drugs, made it possible for the pharmaceutical industry in India to rapidly develop and to make available, a wide variety of medicines, at reasonable prices.

For this very reason the Indian state had not allowed product patents & for the same reason the pharmaceuticals industry in the developed world was aggrieved with the Indian law.

From their point of view, they spent large amounts of money on research on a particular disease, on product development & clinical tests, before a medicine could become commercially successful. This investment of theirs was not protected as the Indian pharmaceuticals industry was freely using the results of their investment.

The patent act 1970 has made an distinction between a product patent and a process patent. The definition of an invention is a new product of process involving an inventive step and capable of industrial application. Thus an invention can be of either a process or of a product.

At times only the product is of value & relevance. Thus in the case of a watch, cycle, car or television it is the product which is the invention. Similarly a new antibiotic is a product invention, which has valuable therapeutic properties.

Thus a patent could be claimed on such a product. However, in the case of antibiotics, which essentially are chemical substances, they are prepared through a chemical process without the invention of the process, the antibiotics cannot be made. Thus, in the case of chemical substances the process of making the substance is in itself, an invention as a result, in the case of chemical substances, the process of making the substance is in itself, an invention as a result, in the case of medicines and chemicals, one would have a product patent as well as a process patent. The Indian law had not permitted product patents to be given in the case of certain products. Section 5 provides as follows:-

"Inventions" are the subject matter of patents. In India, the Patents Act 1970, deals with the patenting of inventions. The broad arrangement is as follows: a person claiming to be the inventor applies to the Controller of Patents, for patent rights. The Controller checks the claim with respect to novelty & usefulness of the idea and other requirements of the law. If the application is successful, the person gets a patent right for a certain number of years. During this period, no one can use the invention without an authorisation from the person.

The theme of patents has been one of the most debated themes in the past decade, in relation to the GATT and WTO. GATT required its member states to bring about several changes in their patents laws by December 31, 2004. India has made all the required changes through amendments and ordinances. Thus, we have a patent law which is very different from the one we had in the early 1990's still, we will explore this area by first understanding what the original law was and then by studying the changes that were required to be made under the GATT. This will help us in understanding the organisation of the existing law in a better way.

Working of the Patents Act :-

www.FirstRanker.com

www.FirstRanker.com

Under the patent act 1970 government of India has created the office of the Controller of Patents.

The head office is at Kolkata & there are branch offices at Mumbai, Delhi & ~~Chennai~~ Chennai. An application for the grant of a patent can be made by an inventor or any other person to whom the inventor has given the right.

For example, a scientist working for a research and development laboratory, may have assigned his rights in his inventions, to his employer. In such a case, the employer will make the patent application.

Procedure on receipt of application:- A patent is a monopoly right on the use of an invention. Not all inventions can be patented.

The act stipulates the conditions under which a patent is to be granted. The application is referred by the Controller to the examiner.

The examiner checks whether the application complies with the requirements of the act. He also checks if the invention has already been published or claimed by some other person.

The examiner searches among the existing list of patent holders, in a register maintained in the patent office, to check whether the patent right is held by another person.

The patent office, after the examination of the application, communicates its objections, the Controller refuses to grant a patent to the application. If the application is successful in removing the objections

The person in whose favour a patent is granted is called a patentee. He can deal with the patent right like any other property.

He can sell it to another person. He can grant a license to use the patented property to others. He can also assign such property to another person.

The patent holder has the exclusive right to make, use, exercise, sell or distribute the invention in India. Any use without license or other authorisation from the patent holder is an infringement. The patent holder can move that court to restrain the violator & claim damages. Examination of the facts, the courts have gone over those questions on several occasions. The supreme court, in a case noted.

What can be patented:-

We now come to the important question of what intervention and what can be patented. An invention has been defined as a product or process involving an inventive step and capable of industrial application to amplify, an "inventive step" has been defined as an "invention & not obvious to a person skilled in the art". This for an idea to qualify as an invention not obvious to a person skilled in the art. This for an idea to qualify as an invention, the three requisites of novelty or inventiveness, non-obviousness & usefulness should be fulfilled. This requirement has been reiterated negatively by section 3, by mentioning the inventions.

follows:

- ① An invention which is found to be obvious or which claims anything obviously contrary to well established natural laws;
 - ② The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;
 - ③ The mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus, unless such known process results in a new product or employs at least one new reactant;
 - ④ A substance obtained by a mere admixture or duplication of known devices each functioning independently of one another in a known way;
 - ⑤ The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- While deciding disputes on novelty, non-obviousness and usefulness, novelty can be the hardest to settle on. An inventor does not produce an invention from nowhere. Every person works only with the existing ideas, material machines and substances, thus for example, it is electricity that is used to create a heater. A heater is the basis upon which the idea of an oven is based.

We now move to an important aspect of the patent law in India, while documenting its patent law, was aware that most of the inventions were emerging from the developed country. It was alive to the concern that a company could get a patent right to in India and yet, not produce the product or give license to anyone, to produce it in India. India thus would have to choose other than to import the product. Consequently, India's industrial development would be impeded, in addition to the draining of the foreign exchange through the same mechanism, the patent holder could curtail the availability of the product & control its price so as to earn huge profits.

The only means of preventing this was through provisions relating to a compulsory licensing of the invention for production. An entire chapter on the patents act 1970, had been devoted to this. The patent holder was given a three year period to put the invention into use. After three years, any person could make an application to the controller of patents for a compulsory licensing of the patent. This could be done if the applicant could show that he provided the guidelines for deciding on when reasonable requirements of the public are deemed not satisfied.

- The provisions on compulsory licensing were a subject matter for TRIPS. The patent act 1970 was amended in 2002, so as to almost entirely rewrite the chapter the concept of "Principles of right" has been taken away with this the special provision for the licensing of patents on food, medicine and drugs is also gone. after these changes the chapter has been titled as "Working of patents", compulsory licences & revocation. While the notion of compulsory licensing has not been done away with, the provisions have been significantly qualified, making very difficult to follow compulsory licensing.
- The other thrust areas of AART have been the creation of appellate bodies for the review & efficient disposal of dispute which would also act as an adequate deterrent for any violation of patent rights.
- The patent act has a chapter on "International arrangements". It makes provisions for the government having the right to notify a country to be a convention country. This gives the same status to a person of the country as a citizen of India. The inventor can, thus through legal representatives get a patent sealed in India. TRIPS require the further strengthening of the provisions, which has been done through an amendment in 2002.

* Introduction to trademark:-

A trade mark is anything that is used or intended to be used to identify the goods of one manufacturer from the goods of others.

It is a brand name trade marks are important business tools because they allow companies to establish their products reputation without having to worry that an inferior product will diminish their reputation or profit by deceiving the consumer.

Trademarks include words, names, symbols & logos any thing that distinctly identifies your company can be a trade mark, provided that it is for goods.

A service mark is very similar to a trademark except that it is used to distinguish services in the stream of commerce. Like a trade mark, a service mark can include

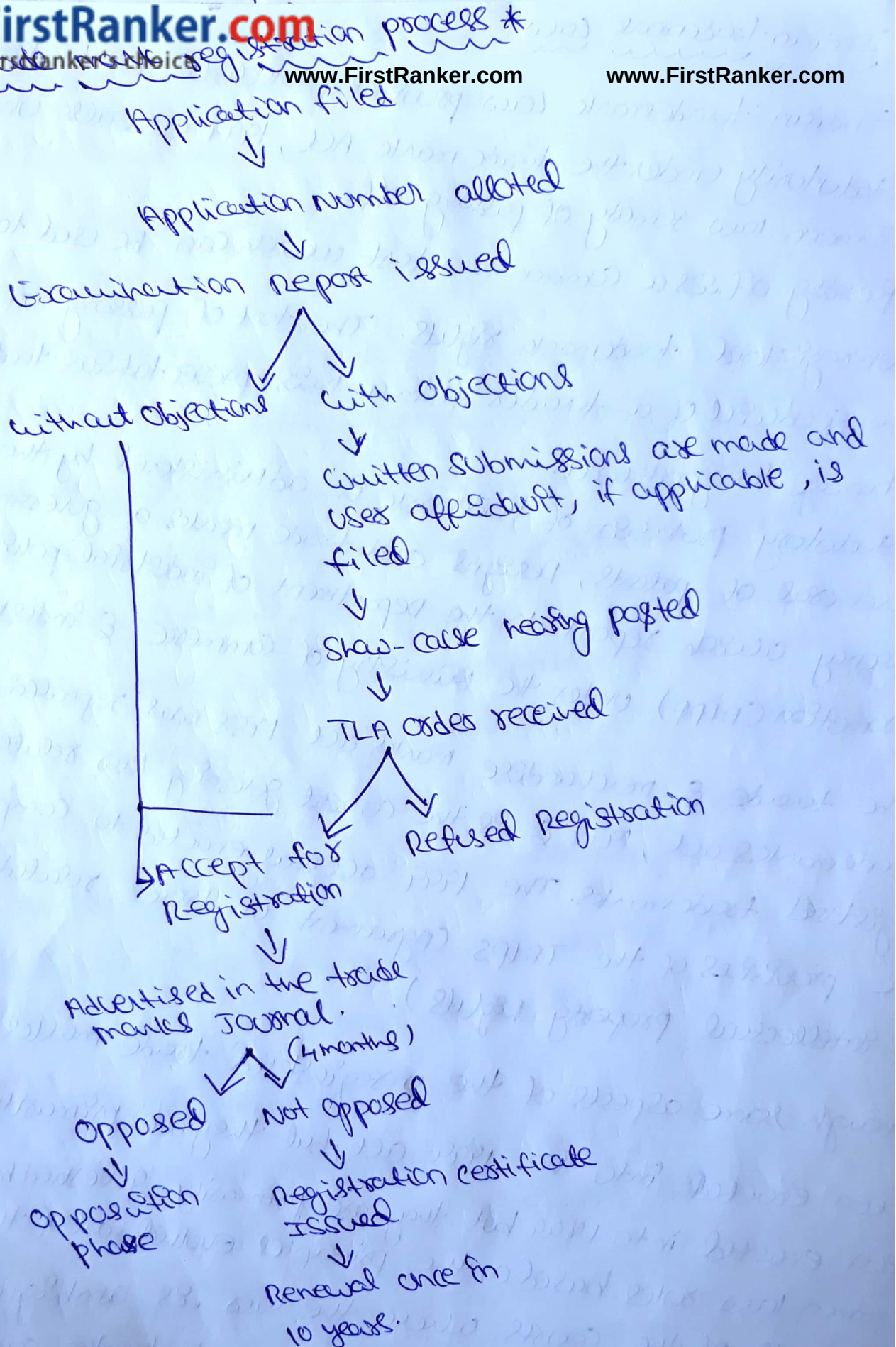
words, names, symbols & logos typically, trademarks appear on the actual product or its packaging. service marks appear mostly in advertising for the services. In this education center, when we use the term "trademark", we generally mean both trademarks and service marks.

Indian trademark law provides protection to trademarks statutorily under the trade mark Act, 1999 and also under the common law remedy of passing off. Passing off is a common law tort which can be used to enforce unregistered trademark rights. The tort of passing off protects the goodwill of a trader from a misrepresentation that causes damage to good will.

Statutory protection of trademark is administered by the controller general of patents, designs and trade marks a government agency which reports to the department of industrial policy & promotion (DIPP) under the Ministry of Commerce & Industry.

The trade & merchandise marks act 1958 was repealed by the trademarks act, 1999 & is the current governing law related to registered trademarks. The 1999 act was enacted to comply with the provisions of the TRIPS (Agreement on trade related aspects of intellectual property rights).

Though some aspects of the unregistered trade marks have been enacted into the 1999 act, but they are primarily governed by common law rules based on the principles evolved out of the judgements of the courts. Where the law is ambiguous the principles evolved and interpretation made by the courts in England have been applied in India taking into consideration the context of our legal procedure, law and realities of India.



- (b) Acceptance of application (Sec 18)
- (c) Withdrawal of acceptance (Sec 19)
- (d) Advertisement of application (Sec 20)
- (e) Opposition to registration (Sec 21)
- (f) Registration (Sec 23)

Trade mark maintenance :-

- ① Renewal
- ② Cautionary notice
- ③ Tax
- ④ Affidavit of use
- ⑤ Proof renewal of basic registration

Transfer of rights :-

- (1) Assignments
- (2) Licences
- (3) Security Interests

Inter parties proceedings :-

- (1) Trade mark opposition
- (2) Trade mark cancellation
- (3) Trade mark interference proceeding
- (4) Trade mark concurrent use proceeding.

* Remedies for Intellectual *

(i) civil remedies.

(ii) criminal proceedings

(iii) Administrative Remedies

* International trade mark law :-

The main principle of international trade mark law and an extremely fruitful principle is the following trade mark law has no locally confined, locally divisible legal existence so that a locally confined, locally divisible legal existence so that a locally confined, locally divisible legal existence as with property lying in different countries, or as with intangible property rights which manifest themselves economically in locally separated portfolios quite different is the law of trade marks trademarks law, as the law of personality is like all laws of personality bound in its validity & manifestation within no local limits, since in theory the individual can assert the right of an individual for all his actions, not only for those taking place within a particular legal region. The spiritual strength of the person is not locally limited and the right to recognition is therefore a right which should not be tied to boundaries.

Introduction to trade secrets :-

→ In today's world almost every person knows that intellectual property is and protection of intellectual property has become a matter of paramount importance for every person involved with intellectual property.

→ patents, trademarks & copy rights have been the most popular forms of intellectual property till now but there are more forms of intellectual property which are gaining importance in the past few decades, designs and geo-graphical indications being the most popular of them.

A still new form of intellectual property which has gained recognition in the past two decades is trade secrets.

What is trade secret?

North American free trade agreement defines a trade secret as 'information having commercial value, which is not in the public domain, and for which reasonable steps have been taken to maintain its secrecy'.

The trade related aspects of intellectual property rights lay down three essential conditions which are to be fulfilled by any information before it can be considered undisclosed information (trade secret) they are.

For many technology based companies, state trade secret law has become the preferred form of intellectual property protection, even for inventions that might otherwise be eligible for patent protection. Although there is no universally accepted definition of a trade secret, the list of possible items can extend to almost any device or information, including formulas, databases, method of operation, or materials used by a business and provides the owner with a competitive advantage over others who do not know or use the trade secret provided that the trade secret is maintained in secret by owner.

The length of trade secret is protection is not determinate and may extend for as long as each of the essential elements (i.e, use, value, secrecy) continue to exist.

Unlike the patent law trade secret law, trade secret law does not create a legal monopoly in favour of the trade secret owner. Instead, the trade secret provided owner only has a cause of action against by party who wrongfully appropriates the trade secret as well as a cause of action against persons who utilize any illegal or unethical methods to acquire the secret information.

Employee Confidentiality Agreement
The employee confidentiality agreement is for use where a company engages an individual to provide services and requires a confidentiality or non-disclosure undertaking from the individual not to disclose or make use of any information he/she receives except in relation to the service being provided.

It mainly focus on

- * Non disclosure of confidential information
- * Invention
- * Conflict of interest
- * enforcement
- * a general clause covering termination, governing law and the scope of the agreement.

Every organisation need this document if they engage an individual to provide services to their company and want to guard against the individual disclosing information about their business. It is designed for use by business operating in India.

This confidentiality agreement is a short agreement designed for use when a company or business wants to hire or take on some one to provide services but before doing so requires that individual to sign a document undertaking that he/she will keep

all information obtained in the course of the work.

Secret and not disclose it to any third party.

The document starts with a reference to the individual Employee states at the company and then defines Confidential information as all information and documents disclosed to him/her. The agreement should be signed before the individual starts working with the company.

The broad scope of the agreement is set out in clauses 1-5 inclusive and places the emphasis upon the duties of the employee as regards confidential information. These include an obligation to hand back or destroy and copies or notes concerning the information when the appointment comes to an end.

The undertaking is unlimited in time, but it does not apply to information that becomes generally available to the public.

In the final paragraph capital letters are used to highlight the importance of the acknowledgement that the employee has fully understood the terms of the agreement. The governing law and jurisdiction is India.

- Trade mark infringement
- False advertising
- Unauthorised substitution of one brand of goods for another.
- Misappropriation of trade secrets
- False representation of products or services.

Trade Secret Litigation:-

If a trade secret is disclosed in violation of a confidentiality agreement & the parties cannot resolve the dispute themselves an action for breach of contract may be brought, similar to any other breach of contract action. The plaintiff may add other causes of action as well for example for misappropriation in violation of a state trade secret law.

If no written agreement exists, the plaintiff must rely upon case law or state statutes protecting trade secrets, or both.

To protect itself against a lawsuit by another alleging trade secret violations, companies should require new employees who will have access to confidential information to acknowledge in writing that accepting employment with the new company does not violate any other agreement or violate any other obligations of confidentiality to which the employee may be subject.

ordinarily employees should be required to represent that work they perform for the employer will be original work and will not infringe any other party's rights.

If grounds for federal jurisdiction exist the action may be brought in federal court. If the action also involves copyright or patent.

It must be brought in federal court otherwise, the action will be brought in a state court.

If the action is instituted in federal court, a federal court will apply state law. In as much as there is no general federal trade secret law.

The (union trade secret act) UTSA provides that an action for misappropriation is discovered or reasonably should have been discovered.

In federal court, the action will be governed by the federal rules of civil procedure that are modeled substantially after the federal rules of civil procedure and will also govern the litigation. After the complaint is filed, the defendant will respond by filing an answer, usually denying that any breach of agreement or misappropriation has occurred and asserting various defenses.

Introduction:-

The world wide web has enabled business to move goods & services through commerce at lightning speed.

In many ways, the changes in technology & resulting changes in business practices have occurred at speeds that have not permitted the law to keep pace with them.

Although certainly some new laws govern aspects of using and operating systems in the new economy and cyberspace, body of law and precedent the same body of law and precedent that has seen business through many economic and technological revolutions remains.

This same body of law & its characteristics are again a resource for resolving the new economy's legal issues examining how the law applies to the new technology provides further evidence of the law's stability, innovations, and flexibility.

The rise of the internet and its pervasive use in business is not the first time the law has had to change to keep pace with technological revolutions. For example:- The new clarity of satellite pictures and observational techniques such as thermal

and the requirements for warrants.

The law adjusts and survives through a balancing of the interests at stake as issues arise from the use of new technologies.

Even though the law that is applied to resolve the problems of the new technologies and the new economy is often referred to as cyber law, you need to not fear that you will be required to learn a whole new body of law. There have been and will continue to be changes in the law to accommodate new ways of doing business, but there has also been and will continue to be reliance on the fundamental principles that underlie our laws and the rights they protect. When internet was developed the founding fathers of internet hardly had any inclination that internet could transform itself into an all pervading revolution which could be misused for criminal activities and which required regulation. Today there are many disturbing things happening in cyber space. Due to the anonymous nature of the

The information technology act 2008 is an act of the indian parliament notified on 17 october 2008. It is the primary law in india dealing with cyber crime and electronic commerce.

It is based on the united nations model law on the electronic commerce 1996. recommended by the general assembly of united nations by a resolution dated 30th January 1997.

The act provides legal frame work for electronic governance by giving recognition to electronic records and digital signatures.

The formation of controller of certifying authorities was directed by the act, to regulation issuing of digital signatures. It also defined cyber crime and prescribed penalties for them.

It also established a cyber appellate tribunal to resolve disputes arising from this new law.

Records Management :-

Record Management (RM) also known as records & information management or RIM, is the professional practice of managing the records of an organization throughout their life cycle.

from the time they are created to their eventual disposal. This includes identifying, classifying, storing, securing, retrieving, tracking and destroying and or permanently preserving records.

The purpose of records management is part of an organization's broader function of governance, risk and compliance and is primarily concerned with the managing the evidence of an organization's activities as well as the reduction or mitigation of risk associated with it.

Digital Signature :-

A digital signature is a mathematical scheme for demonstrating the authenticity of a digital message or document.

A valid digital signature gives a recipient reason to believe that the sender cannot deny having sent the message and that the message was not altered in transit.

Digital signatures are commonly used for software distribution, financial transactions and in other cases where it is important to detect forgery or tampering.

Cyber crime and E-commerce:-

Computer crime or cyber crime, is any crime that involves a computer and a network. The computer may have been used in the commission of a crime, or it may be the target. Offences that are committed against individuals or groups of individuals with a criminal motive to intentionally harm the reputation of the victim or cause physical or mental harm, or loss to the victim directly or indirectly, using modern telecommunication network such as Internet & mobile phones.

Such crimes may threaten a nation's security and financial health.

Issues surrounding these types of crimes have become high profile particularly those surrounding hacking, copyright infringement, child pornography and child grooming. Cybercrime from the perspective of gender and define cyber crime against women as "crimes targeted against women with a motive to intentionally harm the victim psychologically & physically using modern telecommunication networks such as internet and mobile phones".

E-commerce

E-commerce is the buying and selling of goods & services or the transmitting of funds or data over an electronic network primarily the internet. These business transactions occur either business-to-business, business to consumer, consumer to consumer or consumer to business.

The terms e-commerce and e-business are often used interchangeably.

The term e-tail is also sometimes used in reference to transactional processes around online retail.

- Data security
- Confidentiality
- Privacy
- Hacking
- Child pornography
- Denial of service attack
- Virus dissemination
- Computer vandalism.