

INTELLECTUAL PROPERTY RIGHTS

GENESIS, BENEFITS, IMPORTANCE

COLLOQUIUM AT
THE NATIONAL JUDICIAL ACADEMY,
BHOPAL

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INTELLECTUAL PROPERTY IN DAILY LIFE



Trademarks
Designs
Trade Secrets
Trade dress



Copyrights-
Authors
Photographers



INTELLECTUAL PROPERTY IN DAILY LIFE



**SEMICONDUCTOR
CHIPS**

BRANDS



DESIGNS



**PATENTS IN
TECHNOLOGY**



App Store



Google play

**COPYRIGHTS IN
'APPS'**

INTELLECTUAL PROPERTY IN DAILY LIFE



DESIGNS
TRADEMARKS
COPYRIGHTS
GEOGRAPHICAL
INDICATIONS



Calvin Klein



INTELLECTUAL PROPERTY IN DAILY LIFE

Nestlé



TATA TEA

Jaago RE!

Amul

NESCAFÉ

MOTHER DAIRY



TRADEMARKS, COPYRIGHTS,
TRADE DRESS

DESIGNS
TRADE SECRETS



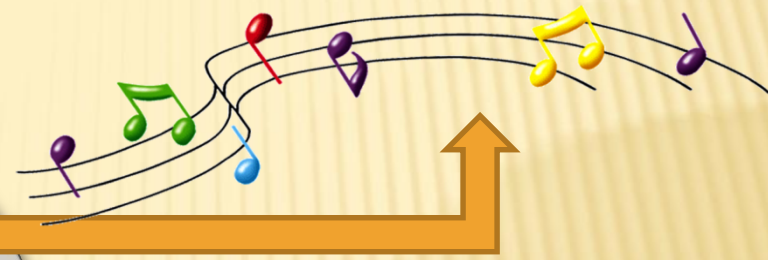
COPY-RIGHTS
IN
RECIPES



PLANT VARIETIES,
GEOGRAPHICAL INDICATIONS



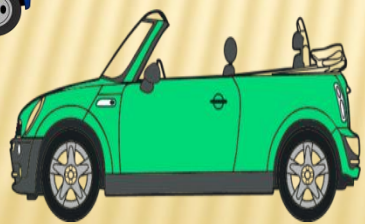
INTELLECTUAL PROPERTY IN DAILY LIFE



**COPYRIGHTS IN MUSICAL WORK
FM RADIO-COMPULSORY
LICENSING**



DESIGNS



**PATENTS IN
TECHNOLOGY**



**TRADEMARKS,
COPYRIGHTS IN
ARTISTIC WORK**



INTELLECTUAL PROPERTY IN DAILY LIFE



TRADEMARKS

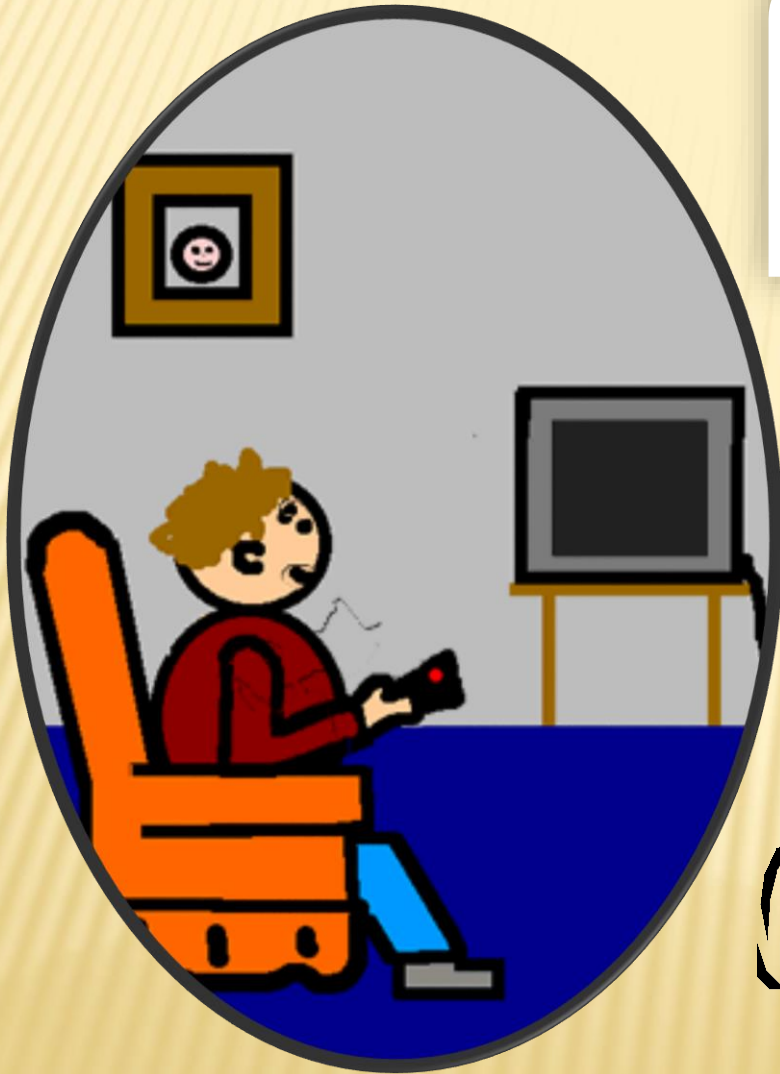


TRADE DRESS



COPYRIGHTS IN
SOFTWARES

INTELLECTUAL PROPERTY IN DAILY LIFE

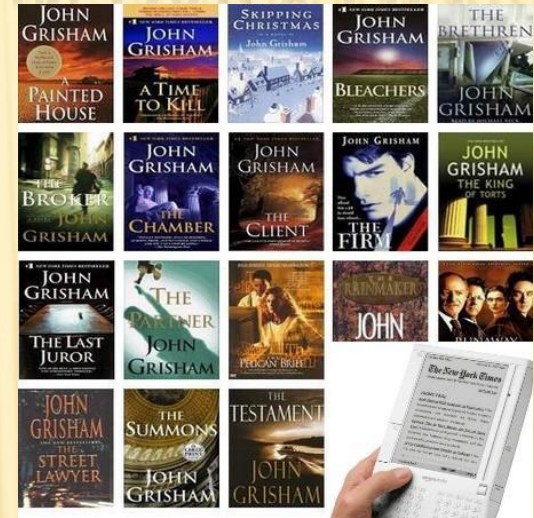


BROADCASTING RIGHTS

COPYRIGHTS



INTELLECTUAL PROPERTY IN DAILY LIFE



COPYRIGHTS IN BOOKS



GENESIS OF INTELLECTUAL PROPERTY RIGHTS

Statute of Monopolies:

British law, passed in 1623, that abolished the government-sponsored dominance by guilds of particular industries and vested the creator of intellectual property with the rights thereto.

Exclusive Jurisdiction:

A federal court has exclusive jurisdiction over a case when federal courts may hear the case but state courts may not.

Contract Law:

The series of statutory laws, case law and common law that governs the enforceability of agreements and promises between people.

Mutual Assent:

The presence of an offer and an acceptance in the case of a contract. Mutual assent is a necessary element for most contracts to be enforceable

Consideration:

The contract law doctrine which dictates that both sides of an agreement must suffer or agree to suffer a legal detriment for a contract to be enforceable (i.e., both sides must agree to give something up).

Misappropriation:

The tort that applies when one party wrongfully uses information gathered by, or belonging to, another person for his or her own commercial purposes.

GENESIS OF INTELLECTUAL PROPERTY RIGHTS

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graph TD; A[1883: Paris Convention For The Protection Of Industrial Property] --> B[1886: Berne Convention For The Protection Of Literary And Artistic Works]; B --> C[1891 - Madrid Agreement]; C --> D[1893-Bureaux For The Protection Of Intellectual Property]; D --> E[1925- Hague Agreement Concerning the International Deposit of Industrial Designs]; E --> F[1967-World Intellectual Property Rights Organization (WIPO)]; F --> G[1970-Patent Cooperation Treaty]; G --> H[1974-WIPO joins the United Nations]; H --> I[1995-Agreement on Trade Related Aspects of Intellectual Property Rights];
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1883: Paris Convention For The Protection Of Industrial Property

1886: Berne Convention For The Protection Of Literary And Artistic Works

1891 - Madrid Agreement

1893-Bureaux For The Protection Of Intellectual Property

1925- Hague Agreement Concerning the International Deposit of Industrial Designs

1967-World Intellectual Property Rights Organization (WIPO)

1970-Patent Cooperation Treaty

1974-WIPO joins the United Nations

1995-Agreement on Trade Related Aspects of Intellectual Property Rights

1883:PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

- FIRST STEP TO ENSURE PROTECTION OF INTELLECTUAL WORKS OF PEOPLE
- COVERED PATENTS, TRADEMARKS AND INDUSTRIAL DESIGNS
- REALISED THE NEED FOR INTERNATIONAL PROTECTION OF IP

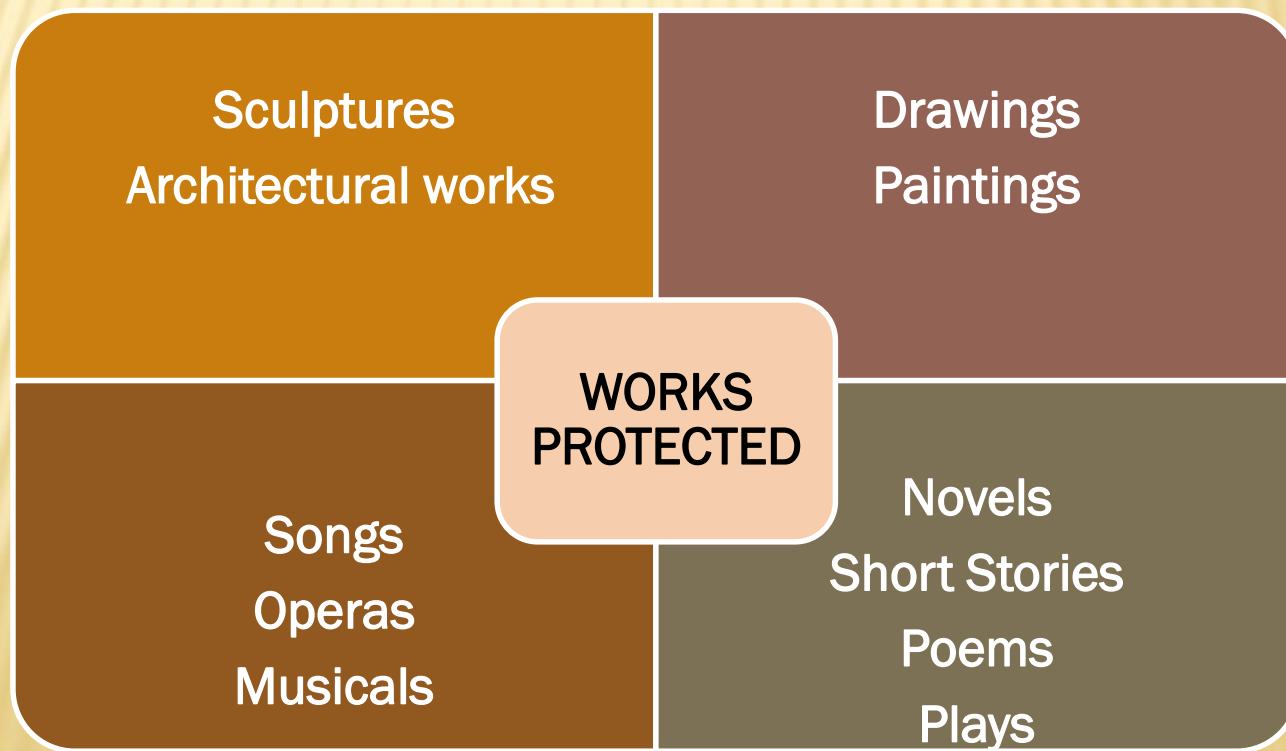


REALISING THE NEED FOR PROTECTION

***EXHIBITORS FROM OTHER COUNTRIES
REFUSED TO ATTEND INTERNATIONAL
EXHIBITIONS ON INVENTIONS IN
VIENNA AS THEY WERE AFRAID THEIR
IDEAS MIGHT BE STOLEN***

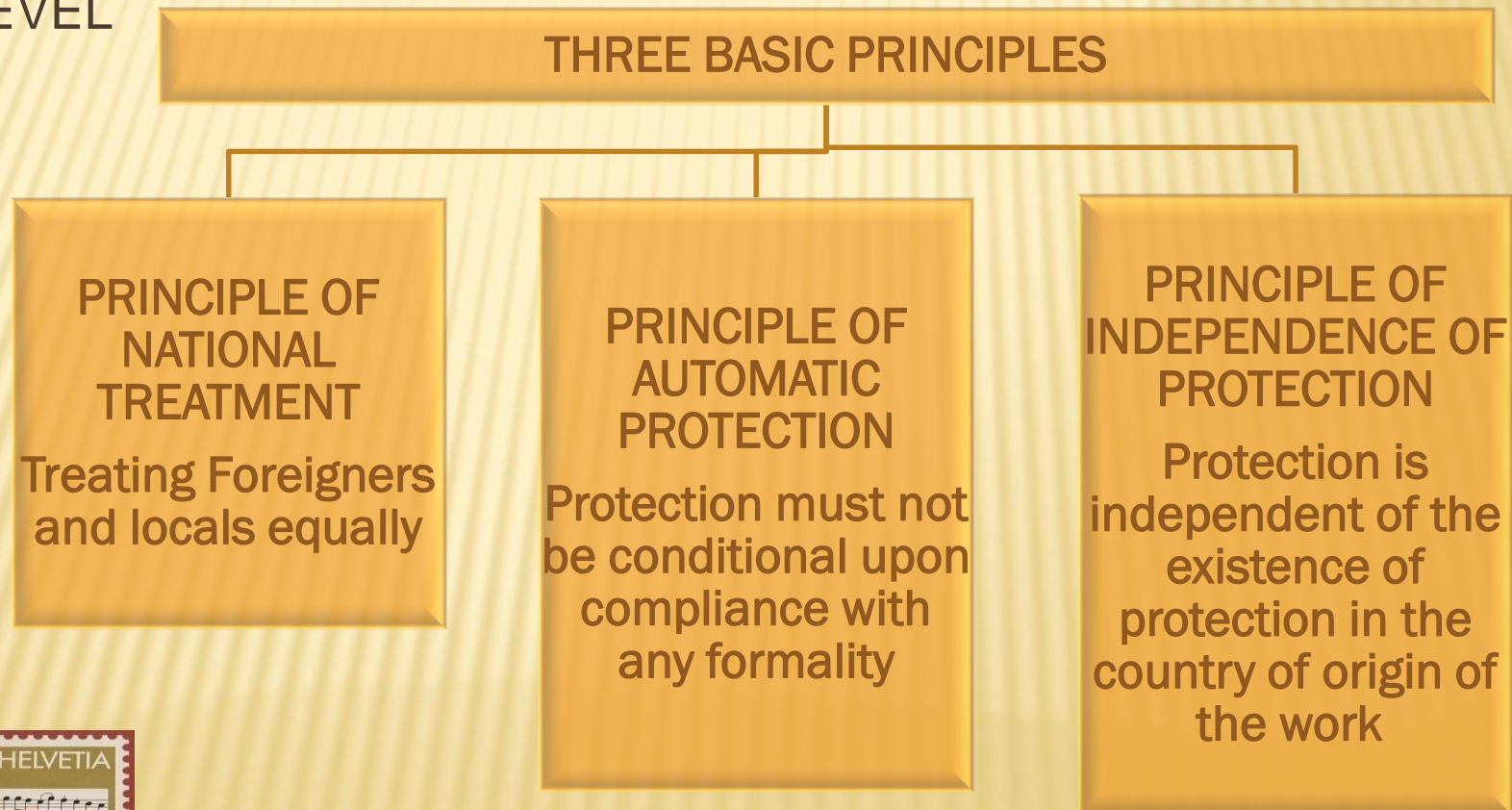
1886: BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

- AGREED AFTER A CAMPAIGN BY FRENCH WRITER VICTOR HUGO AND HIS ASSOCIATION LITTÉRAIRE ET ARTISTIQUE INTERNATIONALE
- DEALS WITH PROTECTION OF WORKS AND RIGHTS OF THE AUTHORS



1886: BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

- AIM - GIVE CREATORS THE RIGHT TO CONTROL AND RECEIVE PAYMENT FOR THEIR CREATIVE WORKS ON AN INTERNATIONAL LEVEL



1886: BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

Right to Translate

Moral Rights

Right to Perform in Public

❖ General rule is that protection must be granted until the expiration of the 50th year after the author's death

Right to Broadcast

Right to Recite

Right to Use Work as a Basis for Audiovisual Work

Right to make Adaptations & Arrangements

❖ LIMITATIONS AND EXCEPTIONS ON ECONOMIC RIGHTS:

Right to make Reproductions

Right to Communicate to the Public

- Reproduction in Special Cases
- Use of Works by way of Illustrations for Teaching Purposes
- Use of Works for Reporting Current Events
- Ephemeral recordings for Broadcasting

1891 – MADRID AGREEMENT

- One stop solution for registering and managing marks worldwide
- File one application, in one language, and pay one set of fees to protect a mark in the territories of up to 98 members
- Manage a portfolio of marks through one centralized system.

1893-BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY

The Secretariats for the Paris and Berne Convention together formed BIRPI to coordinate and allocate the necessary responsibilities to appropriately enact the Berne Convention's legislation and international copyright law.

1970-WORLD INTELLECTUAL PROPERTY ORGANIZATION

- BIRPI transformed to become a member state-led, inter-governmental organization known as the World Intellectual Property Rights Organization (WIPO)
- WIPO joined the United Nations in 1974 and became a specialized agency of the UN
- WIPO is now the global forum for intellectual property services, policy, information and cooperation
- All members of the UN are entitled to become members of WIPO

TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS AGREEMENT)

- Came into effect on 1 January, 1995
- Most comprehensive multilateral agreement on intellectual property
- It covers: Copyrights, Trademarks, Geographical Indications, Industrial Designs, Patents, Plant Varieties, Layout Designs of Integrated Circuits, Undisclosed Information like Trade Secrets.

TRIPS

Trade **Related** **Intellectual** Property **Rights**

INTELLECTUAL PROPERTY RIGHTS IN INDIA



BENEFITS & IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS

- INDIA HAS ALWAYS BEEN AN INNOVATIVE SOCIETY – BUT LACKS AWARENESS REGARDING THE IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS
- IP STIMULATES CREATIVITY AND INNOVATION
- IP RIGHTS ARE MARKETABLE FINANCIAL ASSETS AND AN ECONOMIC TOOL
- IP PROMOTES ADVANCEMENT IN SCIENCE AND TECHNOLOGY, ARTS, BIODIVERSITY, ETC.
- IP PROVIDES COMPETITIVE ADVANTAGE IN COMMERCIAL ACTIVITIES BY PREVENTING UNAUTHORIZED EXPLOITATION BY THIRD PARTIES

India's Pride Mangalyaan!



BENEFITS & IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS

- IP PROTECTION PROVIDES A GUARANTEE WITH RESPECT TO THE SAFETY AND QUALITY OF GOODS
- IT ENABLES TECHNOLOGY TRANSFER – LICENSING, ASSIGNMENT
- IP IS AN INTANGIBLE ASSET THAT HELPS SMEs GET FINANCING – LOANS, INVESTMENTS etc.

Application	2002-2003	2013-2014	2014-2015	2015-2016 (up to Dec 2015)
PATENT	11,466	42,950	42,763	35,447
DESIGN	3,124	8,533	9,327	8,035
TRADEMARK	94,120	2,00,005	2,10,501	2,07,923
GI	-	75	47	15
TOTAL	1,08,710	2,51,563	2,62,638	2,51,420

**Annual Report
2015-2016: Govt.
of India, Ministry
of Commerce &
Industry, Dept. of
Industrial Policy
& Promotion**



TRADEMARKS

- ❖ Trademarks are distinctive marks of authenticity that distinguish goods and services of a particular merchant from others
- ❖ Trademarks act like a trust mark and reminds the customer of the satisfaction from the previous purchase
- ❖ It is an assurance of quality
- ❖ It creates an emotional appeal to products/services – building a valuable brand
- ❖ Unauthorized parties can use a mark and damage the reputation and businesses
- ❖ Registering Trademarks protects businesses appropriately against competition – by registering a TM one builds a barrier to entry around one's brand



TRADEMARKS – RECENT DEVELOPMENTS

- ❖ 500 Pending opposition/rectification matters referred to mediation and conciliation with the consent of parties (February 2016)
- ❖ 100 new Trademark examiners have been appointed
- ❖ India joined the Madrid Protocol for the International Registration of Marks (July 2013)
- ❖ The Trademarks office has recruited 203 new Trademark Agents (15th March 2016)
- ❖ Indian Trademarks Office initiated E-Registration Certificates whereby the entire process of generation and dispatch of registration certificates will be automated

TRADEMARKS – RECENT DEVELOPMENTS

- S. Syed Mohideen v. P. Sulochana Bai, 2016 (66) PTC 1 (SC)
Passing off right is a broader remedy than that of infringement.
- Intellectual Property Attorneys Association v. The Controller General of Patents, Designs and Trade Marks,
W.P.(C) 3067/2016 & CM APPLs. 12987-12988/2016
The Delhi High Court stayed the orders of abandonment passed by the Respondent on or after 20th March 2016 and directed the Respondents not to treat any trademark application as abandoned without proper notice being given to the effected party under the Trademarks Act
- Cartier International Ag & Others v. Gaurav Bhatia, 2016(65)PTC168(Del)
Court took a strict stand against piracy & counterfeiting and ordered for exemplary damages of Rs 1 crore (approximately USD 147,000) in favour of the Plaintiff.
- ITC Limited v. Britannia Industries Limited , 2016(68)PTC11(Del)
Britannia restrained from violating rights of ITC in packaging/trade dress of 'Sunfeast Farmlite Digestive-All Good' biscuits by allegedly using a deceptively and confusingly similar trade dress for 'Nutri Choice Digestive Zero' biscuits.
- Data Infosys v. Infosys Technologies , 2016(65)PTC209(Del)
Prior permission of the Court in a pending infringement suit is not necessary for filing a rectification petition before the Intellectual Property Appellate Board.



COPYRIGHTS

Copyright protection gives an exclusive right to do or authorize to do certain acts with respect to the following works:

Literary



Musical

Artistic



**Cinematographic
Film**

Sound Recording

Dramatic

Computer Program

COPYRIGHTS

- Copyright benefits the author – prevents unlawful reproduction or exploitation by others
- It is the protection or reward of the efforts of the author – need not be meritorious or creative
- It encourages people to create original work by rewarding exclusive rights
- Protection is only given to Expression and not Ideas
- Protection is Automatic

Examples of copyright:

- books, brochures and newspapers
- theatrical works
- oral presentations
- choreographic works
- music (with or without words)
- drawings, paintings, buildings and sculptures
- designs
- photographic works
- computer programs

copyright

['kopi , rait]

1. the exclusive right to make copies, license, and otherwise exploit a literary, musical, or artistic work, whether printed, audio, video, etc.



COPYRIGHTS-RECENT DEVELOPMENTS

- ❑ Transferred from Ministry of Human Resource Development (MHRD) to Department of Industrial Policy and Promotion (DIPP)

- ✘ Department of Electronics and Information Technology v. Star India Private Ltd., 2016 SCC OnLine Del 4160

The Delhi High Court ordered the blocking of 73 websites and directed the Department of Electronics and Information Technology to assist in the enforcement of the orders passed on online piracy issues.

- ✘ The Chancellor, Masters & Scholars of University of Oxford and Ors. v. Rameshwari Photocopy Services and Ors., 235(2016)DLT409

Fair use-A single Judge of the Delhi high Court dismissed the infringement suit filed by a consortium of international publishers against a photocopy shop located in Delhi University, accusing them of selling “course-packs” that are compilations of text-books and other course materials for “commercial gain”. The division bench restored the suit without granting an injunction.

PATENTS

NEW

INVENTIVE
STEP

INDUSTRIAL
APPLICATION

- Exclusive right granted for an invention – product or process
- Such product/process provides a new way of doing something or provides a new technical solution to a problem
- Patent Application must contain all technical information regarding invention
- Territorial Rights – generally, exclusive right only applicable in the country/region where patent filed or granted
- Term of Patent: Generally, 20 years from the date of filing application

PATENTS – RECENT DEVELOPMENTS

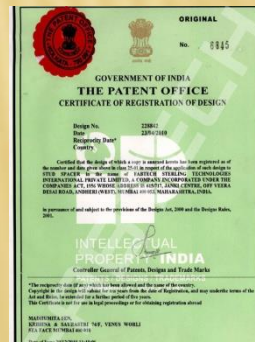
- Patent Amendment Rules, 2016
- 458 new Patent Examiners appointed
- E-filing portal
- Reduction in time for filing response from 12 months to 6 months
- Expedited patent examination – on request

Annual Report 2015-2016: Govt. of India, Ministry of Commerce & Industry, Dept. of Industrial Policy & Promotion

Year	2002-2003	2013-2014	2014-2015	2015-16 Up to Dec.2015
Filed	11,466	42,950	42,763	35,447
Examined	9,538	18,306	22,631	13,012
Granted	1,379	4,225	5,978	4,481

PATENTS – RECENT DEVELOPMENTS

- According to the Rules, an applicant may claim refund of 90% of fees paid for request for examination/expedited examination, by filing a request for withdrawal of an application before the issuance of First Examination Report.
- Benefits for start-ups – conducive business environment & promoting patent initiative
- Hearings may now be held through video conferencing or audio-visual communication
- Reduction in time period for filing response to FER-6 months



DESIGNS



- ✘ Features of shape, configuration, pattern, ornament, composition – lines or colours
- ✘ Applied to any article- two dimensional, three dimensional – by industrial process
- ✘ Judged solely by the eye
- ✘ Registered proprietor – exclusive right to apply the design to article in the class in which the design is registered – can sue for infringement
- ✘ Right to License or sell as legal property – for consideration/royalty
- ✘ Artistic works u/s 2(c) of Copyright Act, 1957 – cant be registered as Designs

DESIGNS – RECENT DEVELOPMENTS

YEAR	2002-2003	2013-2014	2014-2015	2015-2016 Up to Dec. 2015
FILED	3,124	8,533	9,327	8,035
EXAMINED	3,124	7,281	7,459	5,589
REGISTERED	2,364	7,178	7,147	5,972

**Annual Report 2015-2016: Govt. of India,
Ministry of Commerce & Industry, Dept. of
Industrial Policy & Promotion**

❖ *Videocon Industries Ltd vs. Whirlpool of India Ltd., 2014 (60) PTC 155 (Bom)*
A design that is to be registered is to be applied to any finished article that may be judged solely by the eye. Use of either registered design or a fraudulent or obvious imitation thereof by Defendant amounts to an act of piracy and/or infringement.

DESIGNS – RECENT DEVELOPMENTS

- ❖ *Dart Industries Inc. & Ors. v. Technoplast & Ors.*, 2016(67)PTC457(Del)
The court held that action for passing off is a common law right, independent of the Designs Act. However, for a passing off action, it must be proved that the general public associates the shape, trade dress etc. with the plaintiff alone. Unless a work of art is capable of design protection and has been registered as a design, or should have been registered as a design, the copyright in the underlying artistic work subsists independently of design rights.
- ✘ *Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd.*, 230(2016)DLT109
If Designs are not registered under Designs Act, 2000, it would lose copyright after produced over 50 times. In other words, once a drawing, a sketch or a design was used for creation of dresses, then, once dresses cross 50 numbers, no copyright could subsist in drawing and sketch under Copyright Act because of language of Section 15(2) of Copyright Act.

GEOGRAPHICAL INDICATION

- ✘ GI registration provides legal protection to goods in national and international markets
- ✘ Prevents unauthorized use of the GI and gives the right to sue for infringement
- ✘ Legal protection promotes exports and provides financial benefits
- ✘ Term: 10 years – can be renewed



DARJEELING TEA – GI

...the champagne of teas

- ❖ 87 Tea Estates – more than 1 lakh workers – 8 to 9 million kgs produced every year – 70% exported
- ❖ Well-known for flavour and quality – recognition all over the world
 - ❖ Quality, reputation and characteristics – attributable to Geographic Origin – cannot be replicated anywhere else



1986 – Darjeeling logo created and registered in various countries including UK, USA, Canada

1999 – Darjeeling certified TM Protection Scheme

2004 – Registered as GI

Various Legal victories due to Registration as GI

KASHMIR PASHMINA

Known all over the world for its soft, strong, light texture & excellent insulation

Handwoven Pashmina Shawls of Kashmir – accredited with GI mark in 2008

Mark imprinted in the form of a label – assurance of testing and quality

Done to restore the Handicrafts industry in Kashmir and the economic prosperity of artisans



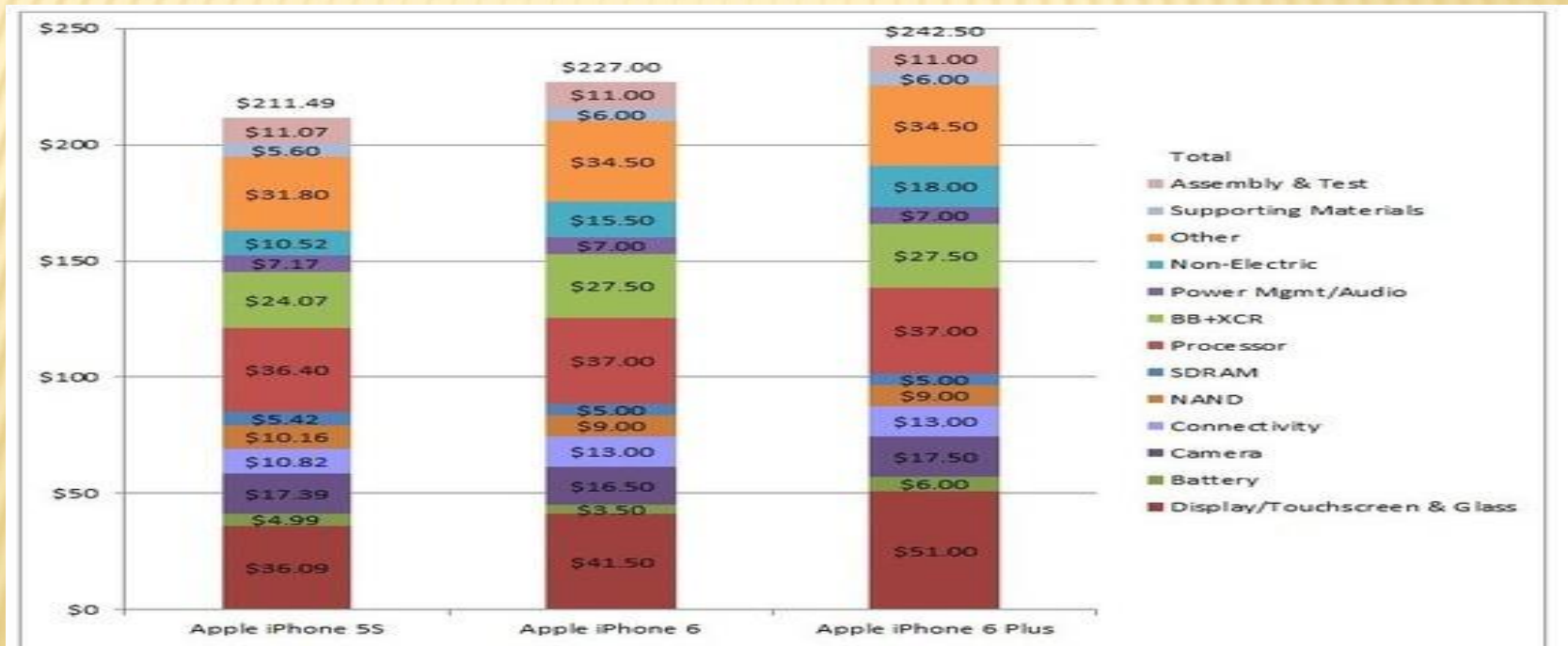
PLANT VARIETIES AND FARMERS RIGHTS

- ✘ Act - Authority set up to promote new varieties of plants and protecting the same - along with the rights of the farmers/breeders
- ✘ Term: For trees and vines - 18 years, For other crops - 15 years, For extant varieties - 15 years
- ✘ Infringement of any right under the PV Act attracts both Civil and Criminal action
- ✘ Infringement: producing, selling, importing, exporting any variety without the permission of the owner or using of a denomination which is similar to a registered denomination-likely to confuse
- ✘ National Gene Fund, Benefit Sharing



IP'S ROLE IN APPLE'S SUCCESS STORY

- ✘ Average cost of manufacturing (iPhone 6 plus, 16GB) = Rs. 17,000 – does not include other costs like R&D, marketing
- ✘ Market Price = Rs. 62,000 (approx.)



IP'S ROLE IN APPLE'S SUCCESS STORY

- ✘ **Owning an iPhone – status symbol – people take loans, buy on EMIs**
- ✘ **Apart from the features, it is Apple's brand value that one pays for**
- ✘ **Apple makes a 300% profit (approx.) on each iPhone 6 plus**
- ✘ **All phones are manufactured in China by Foxconn**
- ✘ **Apple's innovation is embodied in its Intellectual Property, including Patents, Trademarks, and Copyrights**



IP'S ROLE IN LEGO'S SUCCESS STORY!



- ✘ In the last 10 years, Lego has grown into nothing less than the Apple of toys!
- ✘ In 2015, Lego surged ahead of rival Mattel to become the biggest toy manufacturer in the world, reporting first-half profits of \$273 million on revenue of \$2.03 billion
- ✘ LEGO has sought to protect its valuable bricks using a variety of intellectual property.

PRODUCTION FACILITIES

1947
DENMARK



2000
CZECH REPUBLIC
(EXPANDING IN 2015)



2008
MEXICO
(EXPANDED IN 2014)



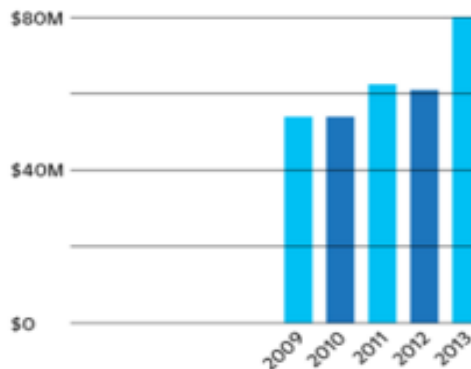
2008
HUNGARY (RELOCATED TO
NEW, BIGGER PLANT IN 2014)



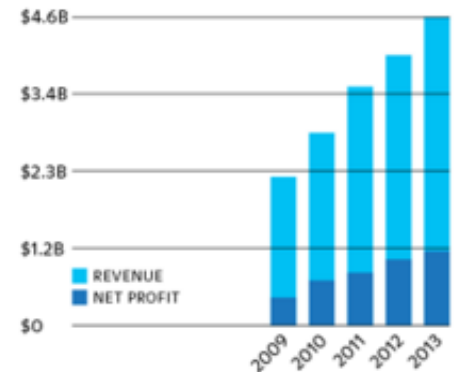
2017*
CHINA



R&D EXPENDITURES



REVENUE & NET PROFIT



SITUATION IN INDIA

- ✘ India's IPR Regime – in compliance with TRIPS
- ✘ India is a party to almost all major conventions
- ✘ On traditional matters involving TMs, Copyrights, Designs etc., jurisprudence has evolved.
- ✘ On Patents the jurisprudence new areas are emerging like Standard Essential Patents, overlapping areas like Competition, Plant Varieties etc.,
- ✘ Trade Secrets – India needs to debate if we need a statutory law;
- ✘ Traditional knowledge – India is looking at sui generis protection

SITUATION IN INDIA

- ✘ Some areas like criminal remedies –implementation needs improvement – infringement, piracy not uncommon
- ✘ Low investment in R&D
- ✘ Due to lack of knowledge – India lags behind in leveraging IPR – lead to growth of illicit trade
- ✘ IP is the most important and valuable asset for software and knowledge-intensive companies
- ✘ Large companies like Infosys, WIPRO and TCS – service based- little investment in creating & protecting their IP
- ✘ In the next decade India needs to focus on innovation in order to become more competitive in protectionist regimes.

IN THE NEWS!

THE ECONOMIC TIMES

New legislation to tighten H1B visa rule for foreign techies will hurt Indian IT companies

By PTI | Updated: Jan 20, 2017, 04.35 PM IST

Business Standard

India lags emerging world in research, imperils innovation

April 30, 2015

TECH 

Indian mobile game developers get worldwide acclaim but face domestic limitations

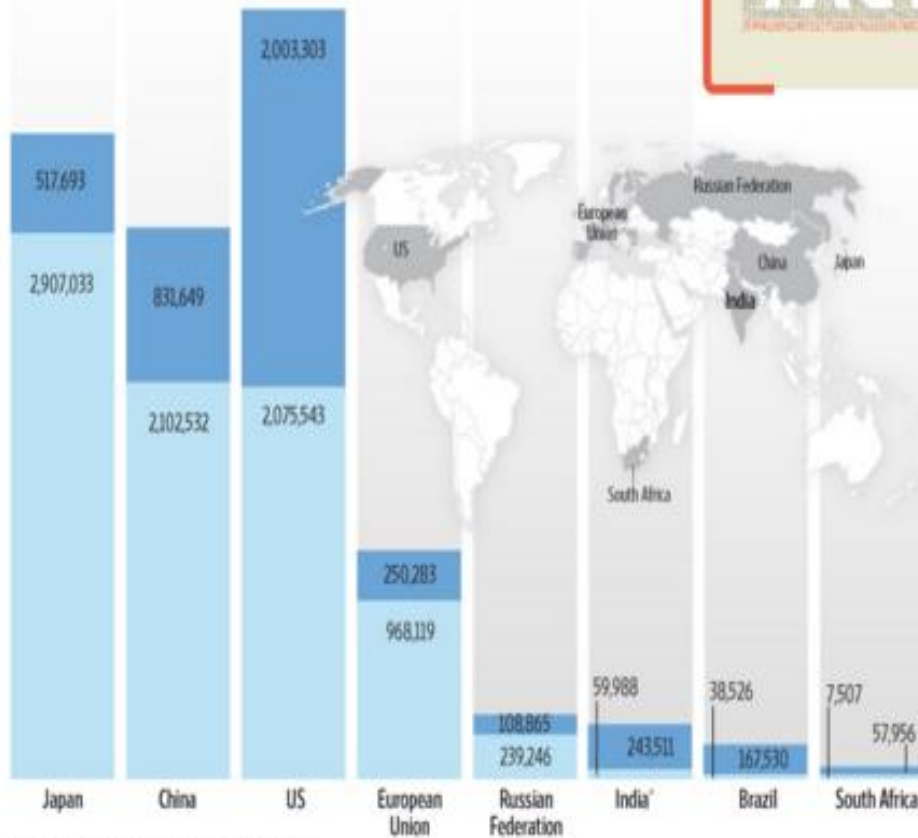
24 Jan 2017

IN THE NEWS!

India lags in overall patent filings

Total patent applications from 2005 to 2012

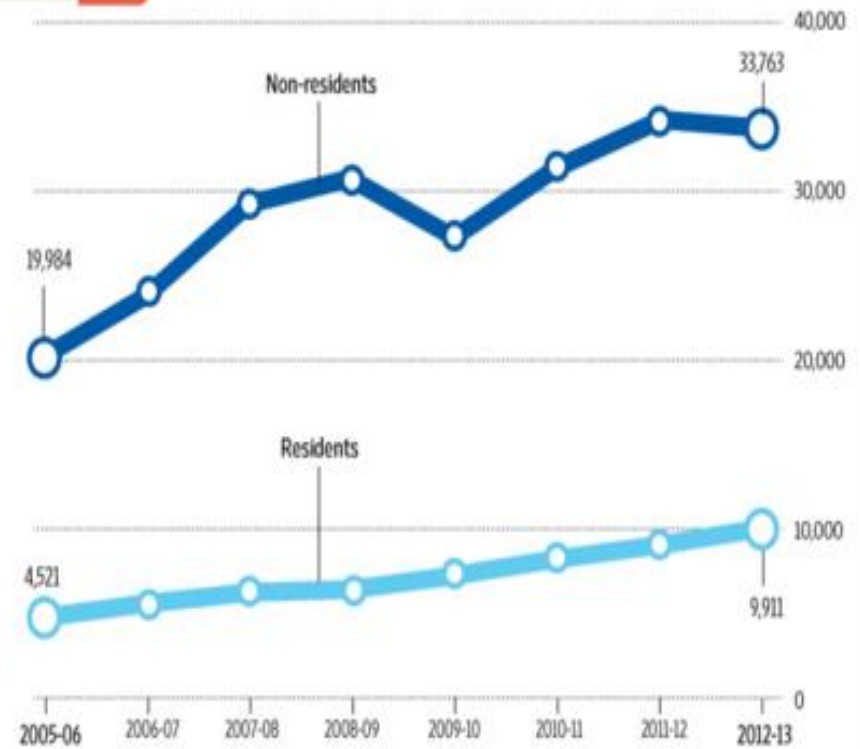
Residents Non-residents



*Data for India is for financial years from 2005-06 to 2012-13

PLAIN
FACTS

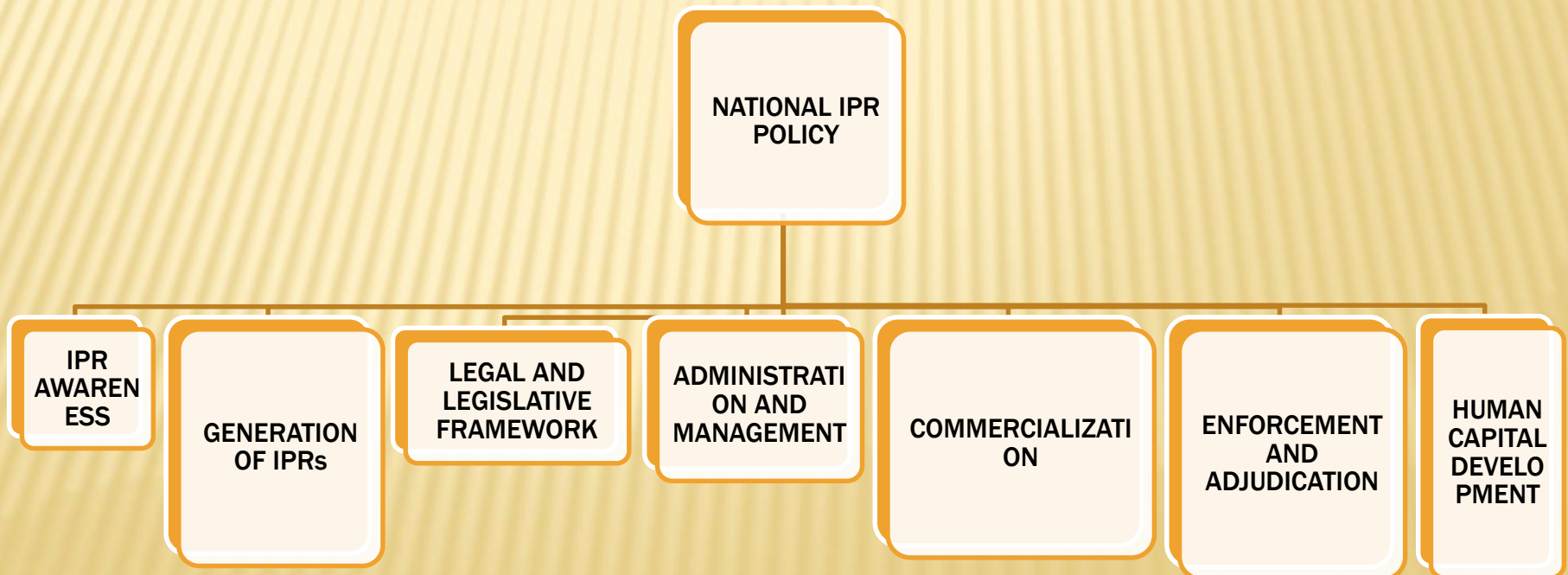
Number of patent applications by foreigners in India is much higher



Source: Live Mint, Nov 24 2014

NATIONAL IPR POLICY – A STEP IN THE RIGHT DIRECTION

- ✘ May, 2016 – India’s first IPR Policy released
- ✘ Aim: instil importance of IPR in every sector
- ✘ Seeks to promote and develop the field of IP to ensure commercialization and expansion



The background features a stylized illustration of human heads in profile, facing each other. The heads are filled with various mechanical gears and a glowing lightbulb, symbolizing thought, technology, and innovation. The color palette includes shades of blue, red, and yellow. A central orange rectangle contains the text 'THANK YOU'.

**THANK
YOU**