

## UNIT I

**Introduction to Intellectual Property Rights, types of intellectual property, Importance of intellectual property rights, Evolution of IP acts and treaties, Agencies responsible for IPR registrations, Role and value of IP in international commerce, Issues affecting IP internationally.**

### **INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS**

Intellectual property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the Intellectual Property. The term intellectual property reflects the idea that this subject matter is the product of the mind or the intellect, and that Intellectual Property rights may be protected at law in the same way as any other form of property. Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest. Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time.

#### **Intellectual Property**

Intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property. Examples of intellectual property include an author's copyright on a book or article, a distinctive logo design representing a soft drink company and its products, unique design elements of a web site, or a patent on the process to manufacture chewing gum.

#### **Intellectual Property Rights**

Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time. Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

## Categories of Intellectual Property

One can broadly classify the various forms of IPRs into two categories:

- IPRs that stimulate inventive and creative activities (patents, utility models, industrial designs, copyright, plant breeders' rights and layout designs for integrated circuits) and
- IPRs that offer information to consumers (trademarks and geographical indications)

IPRs in both categories seek to address certain failures of private markets to provide for an efficient allocation of resources

IP is divided into two categories for ease of understanding:

1. **Industrial Property**
2. **Copyright**

**Industrial property**, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and

**Copyright**, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs

Intellectual property shall include the right relating to:

- Literary, artistic and scientific works;
- Performance of performing artists;
- Inventions in all fields of human endeavour;
- Scientific discoveries;
- Industrial designs;
- Trademarks, service marks and etc;

Protection against unfair competition

## What is a property?

Property designates those things that are commonly recognized as being the possessions

of an individual or a group. A right of ownership is associated with property that establishes the good as being "one's own thing" in relation to other individuals or groups, assuring the owner the right to dispense with the property in a manner he or she deems fit, whether to use or not use, exclude others from using, or to transfer ownership.

Properties are of two types - tangible property and intangible property i.e. one that is physically present and the other which is not in any physical form. Building, land, house, cash, jewellery are few examples of tangible properties which can be seen and felt physically. On the other hand there is a kind of valuable property that cannot be felt physically as it does not have a physical form. Intellectual property is one of the forms of intangible property which commands a material value which can also be higher than the value of a tangible asset or property.

### **TYPES OF INTELLECTUAL PROPERTY**

The different types of Intellectual Property Rights are:

- Patents
- Copyrights
- Trademarks
- Industrial designs
- Geographical indications of goods
- Trade Secrets

### **Important Species of IPR**

Out of the different types of Intellectual Property Rights the following are the most important species of IPR

#### **TRADEMARKS**

According to section 2, sub-section (1) of the Trade Marks Act 1999, "Trade Mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.

Trade mark registration is an effective and economic way of ensuring your brand is protected. Registration provides a safeguard against third party infringement and often acts as

an effective deterrent against third parties considering or contemplating infringement. Failure to protect brand may reduce its value, and could damage your business' reputation. It is also important to be attentive to the activities of your competitors. If you suspect or witness your brand being infringed it is best to take action as soon as possible. The longer the infringing activity exists, the more difficult to maintain the registered trademark and chances of trademark becoming generic.

**Genericide** is the term used to describe the death of a trademark that results from the brand name becoming the name of the object itself.

## **COPYRIGHTS**

1847 is the First Copyright law Enactment in India during British Regime. The term of copyright was for the lifetime of the author and 60 years counted from the year following the death of the author

Copyright law is designed to protect interests and balance the rights of the following stake holders

- Authors/ Creators
- Publishers/ Entrepreneurs
- Users /Audiences

Indian Copyright Act is the one of the best Copyright enactment in the world.

The Copyright Act 1911, while repealing earlier statues on the subject, was also made applicable to all the British colonies including India. In 1914, the Indian Copyright Act was enacted which modified some of the provisions of Copyright Act 1911 and added some new provisions to it to make it applicable in India. Copyright Act, 1911 was in existence in India till the new Copyright Act, 1957 was introduced in India Post Independence. In India, the Copyright Act, 1957 (as amended in 1999), the Rules made there under and the International Copyright Order, 1999 govern Copyright and neighbouring rights. This Act has been amended five times i.e 1983,1984,1992,1999 and most recently in 2012.

### **What can be protected under Copyright?**

Literary, Dramatic, Artistic, Musical, Cinematographic, Photographic and Sound Recording

works.

Literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings.

## **PATENTS**

Patent is a grant for an invention by the Government to the inventor in exchange for full disclosure of the invention. A patent is an exclusive right granted by law to applicants / assignees to make use of and exploit their inventions for a limited period of time (generally 20 years from filing). The patent holder has the legal right to exclude others from commercially exploiting his invention for the duration of this period. In return for exclusive rights, the applicant is obliged to disclose the invention to the public in a manner that enables others, skilled in the art, to replicate the invention. The patent system is designed to balance the interests of applicants / assignees (exclusive rights) and the interests of society (disclosure of invention).

### **Meaning of 'Invention' under Patent**

Law Sec.2(1)(J) - Invention" means a new product or process involving an inventive step and capable of industrial application

There are three types of patents:

**Utility patents** may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;

**Design patents** may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and

**Plant patents** may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant

## **IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS**

IPR is a significant tool in today's era. The risk of an innovation getting infringed without the knowledge of the inventor stands very high. With the increase in the importance of IP, instances of IP crimes have become the part and parcel of the digitized era sometimes even leading to failure of businesses. Companies rely on adequate protection of their patents, trademarks, and copyrights, while customers make use of IP to ensure that they purchase secure, assured goods. An IP asset is like any other physical property offering commercial benefits to businesses. In a web-based world, IP protection is much more relevant as it is comparatively simpler than ever to reproduce any specific template, logo, or functionality. Hence, strong IP laws give protection to IP and contribute to the economy of the respective state. IPR is one of the sources of security for intangible properties which are still open to the public and which can be quickly replicated by anyone.

Intellectual property rights are more important because today we are highly-connected to digital landscape. With all of the good the rise of the internet has done for the sharing of information and ideas, it has unfortunately become easier for ideas and works to be stolen, which can be damaging to both national economies and innovation.

Intellectual property protection varies from country to country, but countries that have strong IP laws recognize the important impact original works, designs, inventions, etc. have on the overall economy. Almost every country that has a dependence on international trade takes strong measures to protect their intellectual property rights.<sup>3</sup>

With the rise of intangible assets that are shared across the internet, it is easy for people to unlawfully copy and share books, music, movies, and more. Copyrights, patents, trademarks, and trade secrets and the laws around these protections are all intended to encourage innovation and creativity and are essential to the practice of IP law to help curb illegal activities.

## **EVOLUTION OF IP ACTS AND TREATIES**

The evolution of international IP acts through different treaties and the formation of World Intellectual Property Organization (WIPO) is given below in brief.

### **1883 – Paris Convention (France)**

The Paris Convention for the Protection of Industrial Property is born. This international agreement is the first major step taken to help creators ensure that their intellectual works are protected in other countries. The need for international protection of intellectual property (IP)

became evident when foreign exhibitors refused to attend the International Exhibition of Inventions in Vienna, Austria in 1873 because they were afraid their ideas would be stolen and exploited commercially in other countries. The Paris Convention covers:

- Inventions (patents)
- Trademarks
- Industrial designs

### **1886 – Berne Convention (Switzerland)**

Following a campaign by French writer Victor Hugo the Berne Convention for the Protection of Literary and Artistic Works is agreed. The aim is to give creators the right to control and receive payment for their creative works on an international level. Works protected include:

- Novels, short stories, poems, plays;
- Songs, operas, musicals, sonatas; and
- Drawings, paintings, sculptures, architectural works.

### **1891 – Madrid Agreement (Spain)**

With the adoption of the Madrid Agreement, the first international IP filing service is launched: the Madrid System for the international registration of marks. In the decades that follow, a full spectrum of international IP services will emerge under the auspices of what will later become WIPO.

### **1893 – BIRPI established**

The two secretariats set up to administer the Paris and Berne Conventions combine to form WIPO's immediate predecessor, the United International Bureaux for the Protection of Intellectual Property – best known by its French acronym, BIRPI. The organization, with a staff of seven, is based in Berne, Switzerland.

### **1970 – BIRPI becomes WIPO**

The Convention establishing the World Intellectual Property Organization (WIPO)

comes into force and BIRPI is thus transformed to become WIPO. The newly established WIPO is a member state-led, intergovernmental organization, with its headquarters in Geneva, Switzerland.

### **1974 – WIPO joins the UN**

WIPO joins the United Nations (UN) family of organizations, becoming a specialized agency of the UN. All member states of the UN are entitled, though not obliged, to become members of the specialized agencies.

### **1974 – WIPO joins the UN (193 Member Countries in UN today)**

WIPO joins the United Nations (UN) family of organizations, becoming a specialized agency of the UN. All member states of the UN are entitled, though not obliged, to become members of the specialized agencies.

### **1978 – PCT System launched**

The PCT international patent system begins operation. The PCT expands rapidly to become WIPO's largest international IP filing system today.

The **Patent Cooperation Treaty (PCT)** makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application.

### **TRIPS Agreement**

India along with other emerging nations graced a signatory to the **Treaty of TRIPS of the World Trade Organisation (WTO)** in 1995 with a matter that agreement will allow free flow of trade, investment and eliminate the restrictions enduring in the norm of Intellectual Property.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO Members. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO).



The TRIPS Agreement aims for the transfer of technology and requires developed country members to provide incentives for their companies to promote the transfer of technology to least-developed countries in order to enable them to create a sound and viable technological base

## **AGENCIES RESPONSIBLE FOR IPR REGISTRATIONS**

### **(a) National IPR Agencies:**

**The office of the Controller General of Patents, Designs and trademarks (CGPDTM)**, a subordinate Office under **The Department for Promotion of Industry and Internal Trade (DPIIT)**, carries out statutory functions related to grant of Patents and registration of Trademarks, Designs and Geographical Indications. The registration of copyrights is administered by the Registrar of Copyright Office, working under the CGPDTM. It functions out of offices situated in Delhi, Kolkata, Mumbai, Chennai and Ahmadabad, while the Central IP Training Academy is at Nagpur.

The appropriate office of the patent office shall be the head office of the patent office or the branch office as the case may be within whose territorial limits. Residence of applicant or Domicile; or their place of business; or the place where the invention actually originated.

The CGPDTM supervises the functioning of the following IP offices:

- i. The Patent Offices (including the Design Wing) at Chennai, Delhi, Kolkata & Mumbai.
- ii. The Patent Information System (PIS) and Rajiv Gandhi National Institute of Intellectual Property Management (RGNIPM) at Nagpur.
- iii. The Trade marks Registry at Ahmadabad, Chennai, Delhi, Kolkata & Mumbai.
  - i. The Geographical Indications Registry (GIR) at Chennai.
  - ii. The Copyright Office at Delhi.
  - iii. The Semiconductor Integrated Circuits Layout-Design Registry at Delhi.

<b>Office</b>	<b>Territorial Jurisdiction</b>
<b>Patent Office Branch, Chennai</b>	<b>The States of Telangana, Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territories of Pondicherry and Lakshadweep</b>

<b>Patent Office Branch, Mumbai</b>	<b>The States of Maharashtra, Gujarat, Madhya Pradesh, Goa and Chhattisgarh and the Union Territories of Daman and Diu &amp; Dadra and Nagar Haveli.</b>
<b>Patent Office Branch, New Delhi</b>	<b>The States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttar Pradesh, Uttaranchal, Delhi and the Union Territory of Chandigarh.</b>
<b>Patent Office, Kolkata</b>	<b>The rest of India</b>

### **Intellectual Property Appellate Board (IPAB):**

Intellectual Property Appellate Board (IPAB) has been established in the year 2003, under Section 84 of the Trade Marks Act, 1999. The Board hears appeals against the decision of Controller of Patents (under the Patents Act, 1970), Registrar of Trade Marks (under the Trade Marks Act, 1999) and Geographical Indication cases (under the Geographical Indication & Protection Act, 1999). The Copyright Board and Plant Varieties Protection Appellate Tribunal function under the ambit of IPAB in accordance with their respective Acts and Rules.

### **(b) International IPR Agencies:**

**There are a number of International organizations and agencies that promote the use and protection of intellectual property**  
**International Trademark Association (INTA)**

INTA is a not-for-profit international association composed chiefly of trademark owners and practitioners. It is a global association. Trademark owners and professionals dedicated in supporting trademarks and related IP in order to protect consumers and to promote fair and effective commerce. More than 4000 (Present 6500 member) companies and law firms more than 150 (Present 190 countries) countries belong to INTA, together with others interested in promoting trademarks. INTA members have collectively contributed almost US \$ 12 trillion to global GDP annually. INTA undertakes advocacy work throughout the world to advance trademarks and offers educational programs and informational and legal resources of global interest. Its head quarter in New York City, INTA also has offices in Brussels, Shanghai and Washington DC and representative in Geneva and Mumbai. This association was founded in 1878 by 17 merchants and manufacturers who saw a need for an organization. The INTA is formed to protect and promote the rights of trademark owners, to secure useful legislation (the

process of making laws), and to give aid and encouragement to all efforts for the advancement and observance of trademark rights.

### **World Intellectual Property Organization (WIPO)**

WIPO was founded in 1883 and is specialized agency of the United Nations whose purposes are to promote intellectual property throughout the world and to administer 23 treaties(Present 26 treaties) dealing with intellectual property. WIPO is one of the 17 specialized agencies of the United Nations. It was created in 1967, to encourage creative activity, to promote the protection of Intellectual Property throughout the world. Around 193 nations are members of WIPO. Its headquarters in Geneva, Switzerland, current Director General of WIPO is Francis Gurry took charge on October 1, 2008.

### **THE ROLE AND VALUE OF IP IN INTERNATIONAL COMMERCE**

**Intellectual property** rights (IP rights) are not inherently valuable. Their **value** is the strategic advantage gained by excluding others from using the **intellectual property**. To be valuable, your exclusionary rights should be strategically aligned with your business objectives.

The recognition of intellectual property rights is an important key to converting creativity into a marketable product with positive cash flow. Creativity is essential to economic growth. Consumer sales depend on attractive, efficient, safe, innovative, and dependable products and services, and these qualities are built on intellectual property. The IP rights of a business are among its most valuable assets. The protection of those IP rights can promote creativity, distinguish a business and its products or services, and increase its profitability and endurance.

To understand the role of IP rights in practical terms, you must first appreciate the purpose of IP laws. Although IP laws will differ in detail from country to country, they have the same basic purpose, which is also reflected in international and regional agreements. In broad terms, exclusive rights in intellectual property are usually granted pursuant to laws that are intended to do the following:

- Define the monopolistic rights, namely, exclusive ownership rights that belong to the holder of the IP and are transferable to another holder in certain situations.
- Define the limitations on the monopoly, such as by restricting the application of exclusive rights to an invention, presentation, or specific goods only, by making exceptions to exclusive use for permitted acts (e.g., authorizing single copies for

educational purposes), and by setting terms of duration.

- Define the remedies for violation of IP rights.

In other words, IP laws create affirmative rights, but not an absolute defensive shield against infringement. They give the owner of the IP the right to stop other persons from using the IP in a manner that is not permitted by the law. Unless the IP owner takes affirmative action, an infringement of IP rights may continue unchecked by any other authority. This concept is extremely significant: mere registration of IP rights is not alone sufficient to protect those rights against unauthorized use. If you are going to spend the money and labor to register your IP claim, you must be also willing to spend the money and labor to enforce your claim.

Your IP can be one of your most useful and most used business tools. If you own patents, copyrights, designs, or similar IP, you will realize value from utilizing them in your own exclusive manufacture or production. If you own marks, you will use them to distinguish your business and your products or services, to grow its customer base, and to promote its goodwill and reputation. If you own trade secrets, specialized mailing lists, secret recipes or processes, and similar IP, your business can provide distinctively unique services in contrast to your competition.

### **ISSUES AFFECTING IP INTERNATIONALLY**

The major IP Issue Areas to be considered in International Trade are as follows

- IP Rights are Territorial
- Secure Freedom to Operate
- Respect Deadlines
- Early Disclosure
- Working with Partners
- Choosing an Appropriate Trademark

#### **IP Rights are Territorial**

It is important to keep in mind that IP rights are only valid in the country or region in which they have been granted. Therefore, applying for such rights in other countries is important if there is an intention to go international. However, note copyright is automatically available through the provisions of the Berne Convention, famous marks have automatic protection, trade secrets are by their nature confidential.

IP Rights can be obtained Internationally as follows

### **National Route**

Apply in each country, pay fees, translation into national languages

### **International Route( PCT)**

The Patent Cooperation Treaty (PCT) is an international patent law treaty, concluded in 1970. It provides a **unified procedure for filing patent applications** to protect inventions in each of its contracting states. A patent application filed under the PCT is called an international application, or PCT application. In this the filing of an international application is done from the applicant's national Office

### **Freedom to Operate (FTO)**

Analyzing FTO is to evaluate whether you are in any way infringing the patents, designs or trademarks of others. Such a evaluation is usually done by conducting a search in patent, trademark and design databases for patent applications, granted patents, registered trademarks or designs As patents, trademarks and designs are granted to particular territories an FTO search may reveal that the particular IP in question is not protected in the territory of interest. Reason for conducting searches: are

- Same or confusingly similar trademark may already exist in the export market
- Technology not patented in one country may be patented elsewhere

### **Respect Deadlines**

Priority Period -Once an application for a patent or design right has been made domestically (priority date) an international application has to be made within the “priority period.” The international application will benefit from the priority date. A filing after the priority period has lapsed would mean you can’t benefit from the earlier priority date and novelty will be lost.

Patents: 12 months

Designs: 6 months

### **Risks of Early Disclosure**

Patents and designs are required to be novel to merit protection. If a product needs to be disclosed, it should be done in a Non-disclosure Agreement. If not, the novelty could be lost and an application for registration be rejected. This is particularly important in disclosing products that embody inventions and/or designs to potential partners before protection has been obtained.



## UNIT - II

Copyrights: Fundamentals of copyright law, originality of material, right of reproduction, right to perform the work publicly, copy right ownership issues, notice of copyright.

Patents: Foundation of patent law, patent searching process, Basic Criteria of Patentability

Industrial Designs: Kind of protection provided in Industrial design

---

### **Introduction:**

In ancient days creative persons like artists, musicians and writers made, composed or wrote their works for fame and recognition rather than to earn a living, thus, the question of copyright never arose. The importance of copyright was recognized only after the invention of printing press which enabled the reproduction of books in large quantity practicable.

### **Copyright –Definition:**

**Copyright is a right of use given by the law to the creator of literary, dramatic, musical, artistic work , software etc for a limited period of time**

In India all the law related to copyright is regulated by the copyright Act 1957. Its latest amendment was brought in 2012

A copyright is an exclusionary right. It conveys to its owner the right to prevent others from copying, selling, performing, displaying, or making derivative versions of a work of authorship.

### **Exclusive copyright rights**

The entire bundle of rights that a copyright owner is exclusively entitled to exercise under the copyright laws. These rights consists of:

- the right to reproduce (copy) the work
- the right to prepare derivative works
- the right to distribute copies of the work
- the right to perform the work, and
- the right to display the work.

**COPYRIGHT ACT, 1957:** Copyright Act refers to laws that regulate the use of the work of a creator, such as an artist or author.

This includes copying, distributing, altering and displaying creative, literary and other types of work. Unless otherwise stated in a contract, the author or creator of a work retains the copyright.

Copyright does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information.

**NEED FOR COPYRIGHT:**

- It gives you the exclusive right to reproduce or copy the work or change its form.
- Registration informs the world that you own the work
- If you succeed in an infringement suit, you are entitled to money damages.

**Indian perspective on Copyright Protection :**

The Copyright Act, 1957 provides copyright protection in India. It confers copyright protection in the following two forms:

- (a) Economic rights of the author
- (b) Moral Rights of the author (i) Right of Paternity (ii) Right of Integrity

**TERM OF COPYRIGHT:** It varies according to the nature of work - 60 years, in India.

- Literary, dramatic, musical or artistic work (other than a photograph), when published during the lifetime of the author, copyright subsists during the lifetime of the author, plus 60 years.
- In the case of photographs, cinematograph films and sound recordings; the term is 60 years from the date of publication.
- When the first owner of copyright is the government or a public undertaking, the term of copyright is 60 years from the date of publication.

**The Fundamentals of Copyright**

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation



and translation of the work. It means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever (Kartar Singh Giani v. Ladha Singh & Others AIR 1934 Lah 777). Section 14 of the Act defines the term Copyright as to mean the exclusive right to do or authorise the doing of the following acts in respect of a work or any substantial part thereof, namely

In the case of literary, dramatic or musical work (except computer programme):

- (i) reproducing the work in any material form which includes storing of it in any medium by electronic means;
- (ii) issuing copies of the work to the public which are not already in circulation;
- (iii) performing the work in public or communicating it to the public;
- (iv) making any cinematograph film or sound recording in respect of the work; making any translation or adaptation of the work. Further any of the above mentioned acts in relation to work can be done in the case of translation or adaptation of the work.

In the case of a computer programme:

- (i) to do any of the acts specified in respect of a literary, dramatic or musical work; and
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme. However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

In the case of an artistic work:

- (i) reproducing the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- (ii) communicating the work to the public;
- (iii) issuing copies of work to the public which are not already in existence;
- (iv) including work in any cinematograph film; making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.

In the case of cinematograph film and sound recording:

- (i) making a copy of the film including a photograph of any image or making any other sound recording embodying it;
- (ii) selling or giving on hire or offer for sale or hire any copy of the film/sound recording even if such copy has been sold or given on hire on earlier occasions; and
- (iii) communicating the film/sound recording to the public.

In the case of a sound recording:

- (i) To make any other sound recording embodying it •
- (ii) To sell or give on hire, or offer for sale or hire, any copy of the sound recording
- (iii) To communicate the sound recording to the public

### **ORIGINALITY OF MATERIAL**

There are three basic requirements for copyright ability:

- A work must be original
- A work must be fixed in a tangible form of expression; and
- A work must be a work of authorship

To be eligible for copyright protection, material must be original, meaning that it must have been independently created and must possess a modicum of creativity. The requirement of originality should not be confused with novelty, worthiness, or aesthetic appeal. The requirement is rather that the material must be an independent product of the author and not merely some copy or minimal variation of an existing work. A work can be original even if it is strikingly similar or identical to that of another. The Copyright Act only requires originality, meaning independent creation by the author.

Originality does not signify novelty; a work may be original even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying.

To illustrate, assume that two poets, each ignorant of the other, compose identical poems. Neither work is novel, yet both are original, and, hence, copyrightable. “Originality” thus

### **Fixation of Material:**

The Copyright Act protects works of authorship that are “fixed in any tangible medium of expression.” A work is “fixed” when it is embodied in a copy or phonorecord and is sufficiently

permanent or stable to permit it to be perceived, reproduced, or communicated for a period of more than transitory duration.

There are thus two categories of tangible expression in which works can be fixed: “copies” and “phonorecords.”

- A copy is a material object from which a work can be perceived, reproduced, or communicated, either directly by human perception or with the help of a machine.
- A phonorecord is a material object in which sounds are fixed and from which the sounds can be perceived, reproduced, or communicated either directly by human perception or with the help of a machine.

**Works of Authorship:** (17 U.S.C§102)

- The copyright act provides that copyright protection subsists [support oneself] in original works of authorship fixed in any tangible medium of expression, now known or hereafter developed, from which they can be perceived, reproduced or otherwise communicated either directly or with the aid of a machine.
- 17 U.S.C. § 102. Section 102 then lists eight categories of protectable works. The list is preceded by the phrase that works of authorship “include” those categories, demonstrating that the listed categories are not the only types of works that can be protected, but are illustrative only.

The eight enumerated categories are as follows:

1. Literary works,
2. Musical works (including accompanying words)
3. Dramatic works (including accompanying music)
4. Pantomimes and choreographic works
5. Pictorial, graphic, and sculptural works
6. Motion pictures and other audiovisual works
7. Sound recordings
8. Architectural works

### **Rights of Reproduction:**

The most fundamental of the rights granted to copyright owners is the right to reproduce the work

- A violation of the copyright act occurs whether or not the violator profits by the reproduction
- Only the owner has the right to reproduce the work
- Secretly taping a concert, taking pictures at a performance, or recording all violate the owner's right to reproduce
- The suggestion of congress, in 1978 a group of authors, publishers and users established a not-for-profit entity called Copyright Clearance Center [CCC]
- CCC grants licenses to academic, government and corporate users to copy and distribute the works
- It collects royalty fees, which are distributed to the authors
- Companies that photocopy articles from journals and magazines often enter into licensing arrangements with the CCC so they can make copies.

### **Rights to prepare Derivative works:**

- Section 106 of the copyright Act provides that the owner of a copyright has the exclusive right to prepare derivative works based upon the copyrighted work
- This right is often referred to as the right to adapt the original work

**Definition:**

- “A derivative work is broadly defined as a work based upon one or more preexisting works, such as a translation, dramatization, fictionalized motion pictures version, abridgment condensation or any other form in which a work maybe recast, transformed, or adapted.
- a work consisting of editorial revisions, annotations, elaborations, or other

New material represents original work of authorship

modifications is also a derivative work

**Rights of distribution and the first sale doctrine:**

- Section 106 (3) of the copyright act provides that the owner of a copyright has the exclusive right to distribute copies or phonorecords of the work to the public by sale or other transfer of ownership
- A violation of the distribution right can arise solely from the act of distribution itself
- The distributor did not make an unlawful copy or the copy being distributed was unauthorized
- Thus, blockbuster videos to recanbeliableforviolatinganowner’srighttodistribute
- Oncetheauthorhaspartedwithownershipofcopyrightedmaterial,thenewownerofalawfullymadecopycantreattheobjectashisorher own
- The new owner the right to lend the book or movie to a friend, resell the work at a garage sale,orevendestroyit.
- Thefirstsaledoctrinedoesnotapplytoorlimittheauthor’sexclusive rightstopreparederivative works or rights of public performance and
- Without permission of authorship the goods are not permitted to imported into the U.S.

**Rights to perform the work publicly**

- Section 106 [5] of the Copyright Act provided that in the case of all copyrighted works other than sound recording & works of architecture, the copyright owner has the exclusive right to display the work publicly.

- Adisplayis“public”underthesamecircumstancesinwhichaperformanceis“public”.

### **Copyright Ownership Issues [17U.S.C. §201(a)]:**

- Copyright in a work protected under the copyright activists [provide with power and authority] in the author or authors of the work

Ownership of a physical object is separate and distinct from ownership of the copyright embodied in the material object

- Issues about ownership arise when more than one person creates a work
- Unless copyright has been explicitly conveyed with those physical articles, the original authors generally retain all other rights associated with the works.

### **Joint Works[intent to create a unitary whole]**

- A joint work is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitarywhole.
- One copyright exists in the created works
- Joint authors are those who “mastermind” or “supermind” the creative effort.

### **Ownership Rights in Joint Works**

- If individual are authors of a joint work, each owns an equal undivided interest in the copyright as a tenant in common, [each has the right to use the work, prepare derivative works, display it without seeking the other coauthor’s permission].
- If profits arise out of such use, an accounting must be made so, that each author shares in the benefits or proceeds.
- The death of a coauthor, his or her rights pass to heirs who then own the rights in common with the other coauthor.

## Copyright Registration

- A work is “created” when it is fixed in a copy or phonorecord for the firsttime.
- Although not required to provide copyright protection for a work, registration of copyright with the Copyright Office in expensive, easy and provides several advantages, chiefly, that registration is a condition precedent for bringing an infringement suit for works of US origin.
- To register a work, the applicant must sent the following three elements to the Copyright Office: a properly completed application form, a filing fee, and a deposit of the work being registered.
- Registration may be made at any time within the life of the copyright

## THEAPPLICATIONFORCOPYRIGHTREGISTRATION

- The following persons are entitled to submit an application for registration of copyright:
- the author (either the person who actually created the work or, if the work is one made for hire, the employer or commissioning party)
- the copyright claimant (either the author or a person or organization that has obtained ownership of all of the rights under the copyright originally belonging to the author, such as a transferee)
- the owner of exclusive right, such as the transferee of any of the exclusive rights of copyright ownership (for example, one who prepares a movie based on an earlier book may file an application for the newly created derivative work, the movie); and
- the duly authorized agent of the author, claimant, or owner of exclusive rights (such as an attorney, trustee, or any one authorized to act on behalf of suchparties)

## Application Forms

- The Copyright Office provides forms for application for copyright registration.
- Each form is one 8½ by 11” (inches) sheet, printed front and back.
- An applicant may use photocopies of forms
- The Copyright Office receives more than 6,00,000 applications each year, each application must use a similar format to ease the burden of examination.
- The type of form used is dictated by the type of work that is the subject of copyright.

**For example:** One form is used for literary works, while another is used for sound recording. Following are the forms used for copyright application.

- **Form TX** (Literary works, essays, poetry, textbooks, reference works, catalogs, advertising copy, compilations of information, and computer programs)
- **Form PA** (Pantomimes, choreographic works, operas, motion pictures and other audio visual works, musical compositions and songs.)
- **Form VA** (Puzzles, greeting cards, jewelry designs, maps, original prints, photographs, posters, sculptures, drawings, architectural plans and blueprints.)
- **Form SR** (Sound recording)
- **Form SE** (periodicals, news papers magazines, newsletter, annuals and Journals.Etc.)

## Notice of copyright

- Since March 1, 1989 (the date of adherence by the United States to the Berne Convention), use of a **notice of copyright** (usually the symbol © together with the year of first publication and copyright owner’s name) is no longer mandatory, although it is recommended and offers some advantages.
- Works published before January 1, 1978, are governed by the 1909 copyright Act.
- Under that act, if a work was published under the copyright owner’s authority without a proper notice of copyright, all copyright protection for that work was permanently lost in the United States.
- With regard to works published between January 1, 1978, and March 1, 1989, omission of a notice was generally excused if the notice was omitted from a smaller



number of copies, registration was made within five years of publication, and a reasonable effort was made to add the notice after discovery of its omission.

### **International Copyright Law**

- Developments in technology create new industries and opportunities for reproduction and dissemination of works of authorship.
- A number of new issues have arisen relating to the growth of electronic publishing, distribution, and viewing of copyrighted works.
- Along with new and expanded markets for works comes the ever-increasing challenge of protecting works from piracy or infringement.
- Copyright protection for computer programs
- Copyright protection for Automated Databases
- Copyright in the Electronic Age
- The Digital Millennium Copyright Act

### **PATENTS**

A patent is a government granted right for a fixed time period to exclude others from making, selling, using, and importing an invention, product, process or design, or improvements on such items. These exclusive, monopoly rights are powerful, and in return the inventor is required to describe the invention in writing. The end result is simply a written description, accompanied by diagrams and drawings, that explains the invention. The public benefits because anyone can read the details of the invention and improve upon it. Importantly, the patent not only allows the public to gain an understanding of the invention, but also defines its limits. Once the patent term expires (generally 20 years from the application filing date), the technology covered by the patent becomes a part of the public domain and is essentially free to use by the public.

### **Types of Patents**

Generally, there are three main types of patents: utility patents, design patents and plant patents.

1) Utility Patent – When most people think of patents, they are referring mainly to utility patents. A utility patent is a patent that covers inventions, whether it's an innovative software process, a new product that is distinct from prior art, or an improvement to a car engine. A

utility patent can be granted for any new, useful, and non-obvious process or product.

2) Design Patent – A design patent covers a new and original ornamental design of a product. In other words, a design patent protects the look of a product. Examples of products protected by design patents include jewelry and watches, electronic devices, computer icons, and beverage containers. A design patent consists of numerous drawings that show a product from various angles and contains very little written description, if any.

3) Plant Patents - Plant patents were first created by the Patent Act of 1930, which had been proposed by Luther Burbank to protect new species of asexually reproduced plants, mostly flowers. These are different than the utility patents granted to bioengineered plants used in agriculture. The United States was the first country in the world to grant plant patents, and even today many countries continue to deny protection for plants. Indeed, even some signatories to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) administered by the World Trade Organization (WTO) reserve the right to deny patents for plants.

To be patentable, plants must be cultivated rather than found in the wild, and plant patents are granted only to protect a new, distinct, and non-obvious variety of asexually reproduced plant—i.e., those grown not with seeds but by grafting, budding, or cutting. A plant need not be useful to qualify for a patent, but it must be distinctive in its color, habit, soil, flavor, productivity, form, or other aspects.

## **FOUNDATION FOR PATENT LAW**

The main motive behind patent was to encourage scientific research, new technology and industrial progress. Patent law grants a monopoly to the inventor to use their patented product and allow the use of the same to someone with prior permission against certain consideration.

Patent confers the right to manufacture, use, offer for sale, sell or import the invention for the prescribed period to the inventor. In short, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. Patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent. It protects against infringement of the patent i.e. if someone tries to replicate the invention or invents against an existing patent the original inventor can enforce their right against such duplicate product

### **Patent search in India**

There is no cost for doing a patent search in India. A patent search can be done through the Patent database of India available at: <http://ipindiaservices.gov.in/publicsearch>.

Depending on the status of a patent application, a patent search can be done under two

publication types: published or granted. The user can choose the desired publication type by clicking on the checkbox. The user can view many categories like

- Application Date
- Title
- Abstract
- Complete Specification
- Application Number
- Patent Number
- Applicant Number
- Patent Number
- Applicant number
- Applicant Name
- Inventor Name
- Inventor Country
- Inventor Address
- Filing office
- PCT Application Number
- PCT Publication number

The entire category has a drop down box from which the user has access to change the category. There is a search box next to every category where the user can enter the keyword of the patent that he wants to view. By entering a query in more than one box, the applicant can run very precise patent searches. Once the required keywords are entered in the respective boxes, there is a captcha code the user has to clear.

### **Patent Information**

Once the code is entered, there are a number of relevant patent results for the patent search query that the user has entered. On selecting an application, the document opens with the Application Number, Title, Application Date and Status. The user can get further details about the patent by clicking on the Application Number, Title, Application Date and Status. Through patent search, the applicant can find the following information about the patent:

- Invention title

- Publication Number
- Publication Date
- Publication Type
- Application Number
- Application Filing Date
- Priority Number
- Priority Country
- Priority Date
- Field of Invention

Classification

Inventor Name, Address, Country, Nationality

Applicant Name, Address, Country, Nationality

When each column is selected, the patent application's details about that section can be known by the user. When a user selects application number details like Invention Title, Publication number, date, type, etc. There are separate columns that give the user the inventor's and the applicant's Name, Address, Country, and Nationality.

### **Patent Status**

There is an Abstract column which has a summary of the patent application that the user can view. Under this, there is a complete specification that gives the details about the specification if the user has mentioned any. At the end, there is an option through which the user can view the application status. When it is opened, the user can get the application details.

### **Basic Criteria for Patentability**

An invention is patentable subject matter if it meets the following criteria –

- i. It should be novel.
- ii. It should have inventive step or it must be non-obvious

- iii. It should be capable of Industrial application.
- iv. It should not attract the provisions of section 3 and 4 of the Patents Act 1970.

An invention may satisfy the condition of novelty, inventiveness and usefulness but it may not qualify for a patent under the following situations:

- 1) An invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- 2) An invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human , animal or plant life or health or to the environment;
- 3) The mere discovery of scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;



4) The mere discovery of a new form of a known substance which does not result in enhancement of the known efficacy of that substance or 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;

Explanation: For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regards to efficacy;

5) A substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;

6) The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;

7) A method of agriculture or horticulture;

8) Any process for medicinal, surgical, curative, prophylactic (diagnostic, therapeutic) or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products;

9) Plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;

10) A mathematical or business method or a computer program per se or algorithms;

11) Literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;

12) A mere scheme or rule or method of performing mental act or method of playing game;

13) A presentation of information;

14) Topography of integrated circuits;

15) An invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components;

## INDUSTRIAL DESIGNS

Among the different kinds of intellectual property rights (IPR), one of the most important ones is industrial design. Companies go enormous lengths to protect industrial design because it gives them a competitive edge in the market and a lot of energy and resources goes into developing them. If competitors are allowed to copy the industrial design without the owner's consent, there would be little incentive to develop new ways of improving things. It will act as a dampener to innovation.

So naturally, industrial design intellectual property rights are critical for a modern economy. According to the World Intellectual Property Rights Organization (WIPO), it is a composition of lines and colors or any three-dimensional form, which leaves a unique impression on a product. They maintain the essence of the ornamental or aesthetic aspect of a useful article, which usually appeals to sight and touch senses, and can be reproduced in significant quantities. Industrial design protection applies to several products, including packaging, lighting, jewelry, electronic goods, textiles and even logos.



The pre-requisites for a design to qualify for protection are as follows:

- It should be novel and original
- It should be applicable to a functional article
- It should be visible on a finished article
- It should be non-obvious
- There should be no prior publication or disclosure of the design.

### **Advantages of industrial design protection**

There are many benefits of IPR in industrial design. It would be wise to understand them –

**Monetary gain:** The biggest benefit would be the financial gain that would accrue to the owner of the design right. As we mentioned earlier, companies spend a lot of resources to gain an edge over competitors, and good design can help them make a lot of money.

**Unique selling proposition:** In a competitive market, companies can get an edge by having a product that looks and feels different/unique. Often consumers make purchase decisions based on the appearance. Industrial design protection enables companies to protect their USP and set their product distinctly apart.

**Selling designs:** If a company cannot profit directly from the design developed, they can sell it to third parties and make a profit from its design capabilities.

**Image:** Design protection helps build a positive image of a company. Industrial designs are considered critical business assets and can even increase the share price of a company that, in turn, helps sell their products.

The law offers high-level protection for IPR in industrial design. However, infringement of design rights is quite common in India more often than not because of weak enforcement. As competition heightens, the temptation to steal designs is stronger. Hence, it is crucial for the authorities to be more stringent in enforcing design rights. Companies, for their part, should be vigilant about their rights and take proactive measures to protect them

























KADAPA



### UNIT-III

Parties to IP Rights: Ownership:-

There are three primary scenarios for the ownership of intellectual property rights: (1) the university owns the intellectual property; (2) the sponsor owns the intellectual property; and (3) the university and sponsor jointly own the intellectual property. As a matter of policy, universities generally require faculty

Intellectual property arising from industry-sponsored university research should not take the form of trade secrets as this form prohibits publication or presentation of research results.

Trade secrets require a level of guardianship that universities are not set up to provide.

Especially a state institution that must comply with a Freedom of Information Act.

Companies from some industrial sectors take the position that the sponsor has a right to own the intellectual property since it has paid for the research.

#### **Authorized User:**

Authorizing New Device based on IP Address, with Laravel Middleware

I recently saw few of the e-commerce & payment gateway sites using device authorization system based on IP address, browser etc. I was also working on a same for my client's web app recently so wanted to share a detailed post with the community people.

In this blog post, I will go in detail to cover following stuff.

- Allow the user to enter login credentials, if the login credentials are valid, also verify if the user's device is authorized with the current IP address assigned to the user's device.
- If the user's device is not authorized to access the protected pages, like the dashboard, the application will send an email to the recently logged in user's email to ask for authorizing the device before proceeding.
- After sending the email, the page will redirect to wait for email authorization, and that will keep refreshing on certain time interval to check if the user is authorized, so it can redirect to the dashboard.

- If the user is not active and did not authorize the device within next 15 min after email is sent, it will log out the user as a reason for a timeout with a certain message.

### **Licensee:**

The word license simply means permission – one person grants permission to another to do something. A license agreement is a formal, preferably written, document recording the circumstances under which a promise shall be legally binding on the person making it. There are at least two essential parties: the licensor, the party who owns the IP and is agreeing to let it be used, and the licensee, the party who receives rights to use the IP in exchange for payment. Therefore, a license agreement is a partnership between an IP owner (licensor) and another who is authorized to use such rights (licensee) under certain conditions, usually for a monetary compensation in the form of a flat fee or running royalty that is often a percentage or share of the revenues gained from use of the invention. Simply put, a license grants the licensee rights in property without transferring ownership of the property. page 2 6. For a license of IP to be effective, four basic conditions must be met: the licensor must have ownership of relevant IP or authority from the owner to grant a license; the IP must be protected by law or at least eligible for protection; the license must specify what rights with respect to IP it grants to the licensee; and the payment or other economic or IP assets to be given in exchange for the license must be clearly stated. 7. There are many different types of IP licenses such as technology licenses, publishing and entertainment licenses, and trademark and merchandising licenses. ADVANTAGES OF LICENSING FOR THE LICENSOR 8. Many companies have a portfolio of patents, utility models, proprietary know-how

### **What is a Patent Attorney:**

A patent attorney is a lawyer with expertise in intellectual property law pertaining to securing and protecting an inventor's property rights. Patent attorneys have passed a federal exam referred to as the "patent bar exam" that grants them a license to represent clients before the United States Patent and Trademark Office (USPTO). They have also passed the state bar exam that all attorneys must pass. Patents are granted to inventors of unique useful and no obvious inventions. Other countries may have different certifications or qualifications for patent attorneys or have patent processes that may require no more than an individual with general legal credentials.

#### **4 steps to finalize a requirements document**

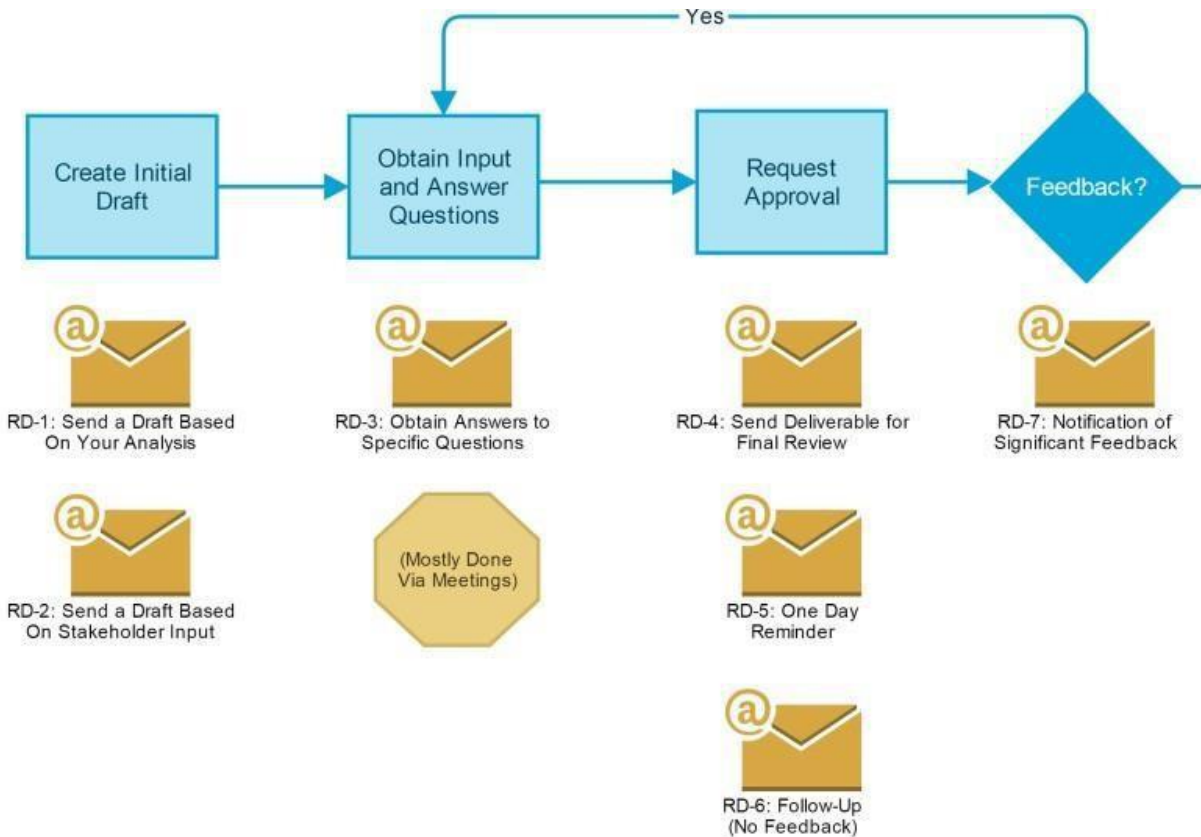
One of the things that I wish I'd known when I started out as a business analyst was I would need to take deliberate steps to ensure my stakeholders truly got what they wanted and needed out of the requirements.

As requirements *authors* and *analyzers*, it's really easy to get so wrapped up in the process that you take on more *ownership* than is prudent. However, when stakeholders do not buy into the requirements, you can expect change requests late in the development cycle and a longer process to put the solution to use.

By methodically seeking feedback at each stage of the requirements process and using email correctly as part of this process, you'll get critical input on your documentation and ensure your stakeholders embrace the upcoming changes to their processes.

(This is the third installment of a 4-part series going into a little more detail on the things I would have liked to have known before I started my business analyst career.)

Here's a quick visual map you can use to remember what pieces of communication to consider sending on a project when it comes to the 4 steps to finalize a requirements document.



[Click here](#) to download this visual map in PDF format and save it for future use. You also might want to check out our [Email Communication Templates](#) for copy-and-paste email templates covering each of the scenarios discussed here.

Now, let's take a closer look at how we can get the input we need on a requirements document.

### Step 1 – Create an Initial Draft

To create a first draft, the business analyst may do independent research or meet with stakeholders to seek their high-level input.

Either way, the *first* draft is not the *final* draft – ever. Yet it is sensible to send an early draft out for review, as this can help get questions answered and move the requirements process along.

The important thing when sending out an early draft for review is to emphasize that this is indeed a working draft and that stakeholder input is still required. Highlighting specific questions you have and identifying next steps can help manage stakeholder expectations.

### Step 2 – Obtain Input and Answer Questions

Once the first draft is complete, you'll need to obtain additional input and get questions answered. Most often, you'll conduct a requirements walk-through.

On occasion, it may be more efficient to receive answers to key questions via email. In this case, send an email with the specific questions you have and attach the draft copy of your deliverable for more background information.

### **Step 3 – Send a Deliverable for Final Review**

Once a requirements document has been reviewed and key questions resolved, you will have a document that's ready for final review and approval. Email is a great way to manage this kind of task.

Simply attach the document to your email, explain what's expected of your stakeholders, communicate a deadline by which you need their feedback or approval, and hit send.

Since stakeholders are busy, plan to remind them *before the deadline*. Including a description of how their approval helps move the project forward can help them carve out time for this task.

### **Step 4 – Finalize Deliverable**

Once you go through the above steps, sometimes multiple times, you'll have your approved document. This is a step to communicate (and celebrate)!

Send the final deliverable out to anyone who needs to know about the final document, including those involved in implementing and testing against the specification.

#### **use rights.**

**intellectual property rights.** A **right** that is had by a person or by a company to have exclusive **rights** to **use** its own plans, ideas, or other intangible assets without the worry of competition, at least for a specific period of time. These **rights** can include copyrights, patents, trademarks, and trade secrets.



## UNIT-IV

### **NEW DEVELOPMENT IN TRADE MARKS LAW:**

#### **The Internet:**

Trademark owners throughout the world are struggling with new issues presented by increased electronic communication, primarily that occurring through the Internet.

The Internet derives from a network set up in the 1970s by the Department of Defense to connect military and research sites that could continue to communicate even in the event of nuclear attack. In the 1980s, the National Science Foundation expanded on the system, and its first significant users were government agencies and universities.

In the early 1990s, however, it became apparent that the system could provide a global communication network, allowing people from all over the world to talk with each other; send written messages, pictures, and text to each other; and establish web pages to advertise their wares and provide information to their customers.

#### **Assignment of Domain Names:**

A company's presence on the internet begins with its address or domain name not only serves as a locator for a company but also functions as a designation of origin and a symbol of goodwill--- a trademark.

There are two portions to a domain name: the generic top-level domain, which is the portion of the name to the right of a period (such as .gov or .com) and the secondary level domain, which is the portion of the name to the left of a period (such as "kraft" in Kraft.com").

Disputes frequently arise between owners of registered mark and owners of domain names whose domain names similar or identical to the registered marks.

#### **Internet Corporation for Assigned Names and Numbers [ICANN]:**

To help resolve the problems in the domain names registration and use process

The government created the ICANN

It is a non-profit corporation

It is governed by a board of directors elected in part by various members of the Internet community.

ICANN are authorized to register domain names ending with .com, .org and .net

Registrations usually last one year, at which time they can be removed or will expire.

Registration requires a representation that the person seeking to register the name is not doing so for an unlawful purpose and does not know of any infringement

ICANN recently added seven new top-level domains, including .biz and .info

#### **PROTECTING A DOMAIN NAME:**

People register well-known marks as domain names to prey on consumer confusion by misusing the domain name to divert customers from the legitimate mark owner's site. This practice is commonly called cybersquatting.

There are three approaches for against cybersquatter:

An action can be brought under the Federal Trademark dilution Act  
A civil suit can be instituted under the recent Anticybersquatting consumer protection Act,  
An arbitration proceeding can be instituted through ICANN's disputes resolutions process  
Cybersquatter and the dilution doctrine: Federal trademark dilution Act (15 U.S.C § 1125 (C))  
Cyber quarters and Anti cyber squatting consumer protection Act (15 U.S.C § 1125 (d)) [ACPA:  
Anti cyber squatting consumer Protection Act]

To prevail in a civil action under ACPA, a plaintiff must prove three things:  
The plaintiff's mark is a distinctive or famous mark deserving of protection  
The alleged cyber squatter's infringing domain name is identical to or confusingly similar to the plaintiff mark  
The cyber squatter registered the domain name in bad faith  
Resolving Disputes through the Uniform Domain Name Dispute Resolution Policy: [UDRP] 1999  
The allegedly wrongful domain name is identical or confusingly similar to the complainant's trademark;  
The domain name registrant has no legitimate interest in the domain name and  
The domain name is being used in bad faith

#### **NEW DEVELOPMENT IN COPYRIGHT LAW:**

While acknowledging that clothing is a useful article and thus not subject to copyright protection, a New York Federal court ruled that lace design, copyrighted as writing and incorporated into wedding dresses, were protectable and enjoined another maker of wedding dresses from making or marketing copies. Similarly, detailed embroideries or some other two dimensional drawing or graphic work affixed to a portion of a garment may be copyrightable.

A federal court in California recently held that while type fonts themselves are not protectable under copyright law, a software program that generated and created the typefaces was protectable.  
→ As soon as Stephen King sold his book *Riding the Bullet* exclusively in an Internet format, an individual cracked the copyright protection software and posted free copies of the book on the Internet. The publishers responded by adopting stronger encryption technology. Similarly, in 2000, Mr. King suspended online publication of a serial novel because too many individuals were downloading the work without paying it.

In late 1997 President Clinton signed into law the No Electronic Theft [NET] Act [amending 18 U.S.C §2319] to enhance criminal penalties for copyright infringement, even if the infringer does not profit from the transaction. The act also extends the statutes of limitations for criminal copyright infringement from three to five years, and allows law enforcement officers to use federal copyright law against online copyright violation, thereby extending the same copyright protection to the Internet that is provided to other media.

In September 1999, the Clinton administration relaxed government restrictions on the export of encryption products and simultaneously introduced new legislation to give law enforcement agencies greater authority to combat the use of computers by terrorists and criminals and to create a new code cracking unit within the FBI [Foreign Bureau of Investigation] .

In mid-2000, president Clinton signed the Electronic Signatures in Global and National Commerce Act, making digital execution, called e-signatures, as legally binding as their paper

counterparts.

In 2000, federal prosecutors in Chicago indicted seventeen people who called themselves “Pirates with Attitude” for pirating thousands of software programs. The case was brought under the NET Act. Some of the individuals were former employees of Intel and Microsoft.

The copyright office has recommended that congress amend section 110 of the copyright Act to grant educators the right to transmit copyrighted works for distance learning if certain conditions are met.

### **NEW DEVELOPMENT IN PATENT LAW:**

The patent Act has proven remarkably flexible in accommodating changes and development in technology. Thus advisement in technology generally has not necessitated changes in the stately governing patent protection.

Business method and software patent:

Many of the cutting-edge issues in patent law related to patents for computer software. For several years, the conventional wisdom has been that unless a computer program had significant commercial value and application patent protection was often counterproductive or ineffective in that the PTO often took two years to issue a patent, roughly the same time it took for the software program to become absolute.

### **Biotechnology patent:**

Medicines, Science, agricultural and pharmacology present the other cutting-edge issues in patent law. Research into genes may hold the key to curing disease throughout the world. Agricultural research may hold the key to providing sufficient food for the world’s ever- increasing population. The development of strains of plants and crops that are resistant to brought and disease has also led to an increasing number of patents issued, and attendant litigation.

In the field of “a biotech”.

American Investors Protection Act of 1999 [AIPA]:

The AIPA was signed into law in 1999 and represents the most significant changes to patent law in twenty years. Although some of the provisions of AIPA have been discussed earlier, its key subtitles are as follows:

Inventors’ Right Act of 1999

The First Inventor Defence Act of 1999

The patent term guarantee act of 1999

The domestic publication of Foreign filed patent application act of 1999

The optional Inter parts re-examination procedure Act of 1999

### **Introduction of International Patent protection:**

The rights granted by a U.S Patent extend only throughout the U.S and have no effect in a foreign country. Therefore, an inventor who desires patent protection in other countries must apply for a patent in each of the other countries or in regional patent office.

The Paris convention (already it is in previous units)

The European patent organization

Agreement on Trade-Related Aspects of IPR (already it is in previous units)

The patent Law Treaty

Foreign Filing Licenses

Applications for United States Patents by Foreign applicants

The European patent organization:

The European Patent Organization (EPO) was founded in 1973 to provide a uniform patent system in Europe. A European patent can be obtained by filing a single application with the EPO headquartered in Munich (or its sub branches in The Hague or Berlin or with the national offices in the contracting nations). Once granted, the patent is valid in any of the EPO countries designated in the application and has the same force as patent granted in any one of the contracting nations.

### **INTELLECTUAL PROPERTY AUDITS:**

Many companies believe that copyright extends only to important literary works and therefore fail to secure protection for their marketing brochures or other written materials. Similarly, companies often fail to implement measures to ensure valuable trade secrets maintain their protect ability. Because clients are often unaware of the great potential and value of this property, law firms often offer their clients an intellectual property audit to uncover a company's protectable intellectual property. The IP audit is analogous to the accounting audit most companies conduct on an annual basis to review their financial status.

Another type of IP investigation is usually conducted when a company acquires another entity. At that time, a thorough investigation should be conducted of the intellectual property of the target company to ensure the acquiring company will obtain the benefits of what it is paying for and will not inherit infringement suits and other problems stemming from the targets' failure to protect its IP. This type of IP investigation is generally called a due diligence review inasmuch as the acquiring company and its counsel have an obligation to duly and diligently investigate the target's assets.

Conducting the Audit:

The first step in the audit should be a face-to-face meeting of the legal team and company managers.

The legal team should make a brief presentation on what Intellectual Property is, why it is important to the company, and why and how the audit will be conducted.

Managers will be more likely to cooperate if they fully understand the importance of the audit.

Obtaining this kind of "buying" from the client managers and employees will speed the audit and reduce costs.

Moreover, education about the importance of intellectual property helps ensure that managers consider ways to further protect a company's valuable assets and remain alert to possible infringements of the company's Intellectual capital or infringements by the computer of other's right.

Finally, having, outside counsel involved in the process will ensure that communications related to the audit are protected by the attorney-client privilege

Once the company's managers have been advised of the need for the audit, the legal team should provide a work-sheet or questionnaire to the company specifying the type of information that the firm is looking for so that company files can be reviewed and materials assembled for inspection by the firm and its representatives.

## UNIT-V

### **Cyber Law:**

Cyber law is the area of law that deals with the Internet's relationship to technological and electronic elements, including computers, software, hardware and information systems (IS).

Cyber law is also known as Cyber Law or Internet Law.

Cyber laws prevent or reduce large scale damage from cybercriminal activities by protecting information access, privacy, communications, intellectual property (IP) and freedom of speech related to the use of the Internet, websites, email, computers, cell phones, software and hardware, such as data storage devices.

The increase in Internet traffic has led to a higher proportion of legal issues worldwide. Because cyber laws vary by jurisdiction and country, enforcement is challenging, and restitution ranges from fines to imprisonment.

### **Cyber Law of India: Introduction**

In Simple way we can say that cyber crime is unlawful acts wherein the computer is either a tool or a target or both

**Cyber crimes can involve criminal activities that are traditional in nature, such as theft, fraud, forgery, defamation and mischief, all of which are subject to the Indian Penal Code. The abuse of computers has also given birth to a gamut of new age crimes that are addressed by the Information Technology Act, 2000.**

### **Information Technology Act**

India's **Information Technology Act, 2000 or IT Act**, is a subject of contention and controversy. As it is amended, it contains some of the most stringent privacy requirements in the world and has the unfortunate impact of holding intermediaries liable for illegal content. The **Information Technology Act, 2000** (also known as **ITA-2000**, or the **IT Act**) is an Act of the Indian Parliament (No 21 of 2000) notified on 17 October 2000. It is the primary law in India dealing with cybercrime and electronic commerce. It is based on the *United Nations Model Law on Electronic Commerce 1996* (UNCITRAL Model) recommended by the General Assembly of United Nations by a resolution dated 30 January 1997.

## **Provisions of IT Act 2000**

The IT Act of 2000 passed in a budget session of parliament and signed by President K.R. Narayanan in 2000. It underwent further finalization by India's Minister of Information Technology, Pramod Mahajan.

The original act addressed electronic documents, e-signatures, and authentication of those records. It also enacted penalties for security breach offenses including damaging computer systems or committing cyber terrorism. Regulating authorities received power to monitor these situations and draft rules as situations arose.

The IT Act underwent changes as Internet technology grew. In 2008, additions expanded the definition of “**communication device**” to include mobile devices and placed owners of given IP addresses responsible for distributed and accessed content.

Privacy was addressed in 2011 when stringent requirements for collecting personal information came into effect.

The most **controversial change** in this act involves section 66A. It makes “offensive messages” illegal and holds the owners of servers responsible for the content.

That means if an IP address with pornographic images is traced to your servers, you can be held liable for it even if you did not authorize its access.

Penalties range from imprisonment of three years to life and fines. Offenses that occur in a corporate setting can result in further administrative penalties and bureaucratic monitoring that can prove burdensome to doing business.

**Requirements of IT Act 2000**



**The IT Act 2000 applies to companies that do business in India.** This includes entities registered in India, outsource there, and maintain servers within the country's borders.

The act covers all activity involving online exchanges and electronic documents.

If your only connection with India is having customers there, **you are not held to the IT Act.**

The only way that can occur is if you run a service or sell a product and also maintain servers there.

For example, Instagram is popular in India with many people participating in that social media app. However, Instagram is a U.S. company and does not need policies complying with the IT Act.

However, Snapdeal, an online shopping source in India, is an Indian company that conducts transactions in India. It is held to the stipulations in the IT Act 2 — and that is addressed in its Privacy Policy page.

### **Cyber Crime:**

**Cybercrime**, or **computer-oriented crime**, is the crime that involves a computer and a network.<sup>[1]</sup> The computer may have been used in the commission of a crime, or it may be the target.<sup>[2]</sup> Cybercrimes can be defined as: "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 networks such as Internet (networks including but not limited to Chat rooms, emails, notice boards and groups) and mobile phones (Bluetooth/SMS/MMS)".<sup>[3]</sup> Cybercrime may threaten a person or a nation's security and financial health.<sup>[4]</sup> Issues surrounding these types of crimes have become high-profile, particularly those surrounding hacking, copyright infringement, unwarranted mass-surveillance, sextortion, child pornography, and child grooming.<sup>[3]</sup> There are also problems of privacy when confidential information is intercepted or disclosed, lawfully or otherwise. Debarati Halder and K. Jaishankar further define cybercrime



from the perspective of gender and defined 'cybercrime against women' as "Crimes targeted against women with a motive to intentionally harm the victim psychologically and physically, using modern telecommunication networks such as internet and mobilephones".<sup>[3]</sup> Internationally, both governmental and non-state actors engage in cybercrimes, including espionage, financial theft, and other cross-border crimes. Cybercrimes crossing international borders and involving the actions of at least one nation state is sometimes referred to as cyber warfare.

A report (sponsored by McAfee), published in 2014, estimated that the annual damage to the global economy was \$445 billion.<sup>[5]</sup> Approximately \$1.5 billion was lost in 2012 to online credit and debit card fraud in the US.<sup>[6]</sup> In 2018, a study by Center for Strategic and International Studies (CSIS), in partnership with McAfee, concludes that close to \$600 billion, nearly one percent of global GDP, is lost to cybercrime each year

### **Classifications Of cyber crime:**

#### **Financial fraud crimes:**

Computer Fraud is any dishonest misrepresentation of fact intended to let another to do or refrain from doing something which causes loss. In this context, the fraud will result in obtaining a benefit by:

- Altering in an unauthorized way. This requires little technical expertise and is common form of theft by employees altering the data before entry or entering false data, or by entering unauthorized instructions or using unauthorized processes;
- Altering, destroying, suppressing, or stealing output, usually to conceal unauthorized transactions. This is difficult to detect;
- Altering or deleting stored data;

Other forms of fraud may be facilitated using computer systems, including bank fraud, carding, identity theft, extortion, and theft of classified information.

A variety of internet scams, many based on phishing and social engineering, target consumers and businesses.

#### **Cyber terrorism:**

Government officials and information technology security specialists have documented a

significant increase in Internet problems and server scans since early 2001. But there is a growing concern among government agencies such as the Federal Bureau of Investigations (FBI) and the Central Intelligence Agency (CIA) that such intrusions are part of an organized effort by cyber terrorists, foreign intelligence services, or other groups to map potential security holes in critical systems.<sup>[9]</sup> A cyber terrorist is someone who intimidates or coerces a government or an organization to advance his or her political or social objectives by launching a computer-based attack against computers, networks, or the information stored on them.

Cyber terrorism in general can be defined as an act of terrorism committed through the use of cyberspace or computer resources (Parker 1983). As such, a simple propaganda piece in the Internet that there will be bomb attacks during the holidays can be considered cyber terrorism. There are also hacking activities directed towards individuals, families, organized by groups within networks, tending to cause fear among people, demonstrate power, collecting information relevant for ruining peoples' lives, robberies, blackmailing etc.

### **Cyber extortion:**

The U.S. Department of Defense (DoD) notes that the cyberspace has emerged as a national- level concern through several recent events of geostrategic significance. Among those are included, the attack on Estonia's infrastructure in 2007, allegedly by Russian hackers. "In August 2008, Russia again allegedly conducted cyber attacks, this time in a coordinated and synchronized kinetic and non-kinetic campaign against the country of Georgia. The December 2015 Ukraine power grid cyber attack has also been attributed to Russia and is considered the first successful cyber attack on a power grid. Fearing that such attacks may become the norm in future warfare among nation-states, the concept of cyberspace operations impacts and will be adapted by war fighting military commanders in the future.

### **E-commerce:**

**E-commerce** is the activity of buying or selling of products on online services or over the Internet. Electronic commerce draws on technologies such as mobile commerce, electronic funds transfer, supply chain management, Internet marketing, online transaction processing, electronic data interchange (EDI), inventory management systems, and automated data collection systems.

Modern electronic commerce typically uses the World Wide Web for at least one part of the transaction's life cycle although it may also use other technologies such as e-mail. Typical e-

commerce transactions include the purchase of online books (such as Amazon) and music purchases (music download in the form of digital distribution such as iTunes Store), and to a less extent, customized/personalized online liquor store inventory services.<sup>[1]</sup> There are three areas of e-commerce: online retailing, electric markets, and online auctions. E-commerce is supported by electronic business.<sup>[2]</sup>

E-commerce businesses may also employ some or all of the followings:

- Online shopping for retail sales direct to consumers via Web sites and mobile apps, and conversational commerce via live chat, chat bots, and voice assistants
- Providing or participating in online marketplaces, which process third-party business-to-consumer or consumer-to-consumer sales
- Business-to-business buying and selling;
- Gathering and using demographic data through web contacts and social media
- Business-to-business (B2B) electronic data interchange
- Marketing to prospective and established customers by e-mail or fax (for example, with newsletters)
- Engaging in pretail for launching new products and services
- Online financial exchanges for currency exchanges or trading purposes.

### **Data Security:**

Data security refers to the process of protecting data from unauthorized access and data corruption throughout its lifecycle. Data security includes data encryption, tokenization, and key management practices that protect data across all applications and platforms.

### **Why Data Security?**

Organizations around the globe are investing heavily in information technology (IT) cyber defense capabilities to protect their critical assets. Whether an enterprise needs to protect a brand, intellectual capital, and customer information or provide controls for critical infrastructure, the means for incident detection and response to protecting organizational interests have three common elements: people, processes, and technology.

## Data Security Solutions

Micro Focus drives leadership in **data security solutions** with over 80 patents and 51 years of expertise. With advanced data encryption, tokenization, and key management to protect data across applications, transactions, storage, and big data platforms, Micro Focus simplifies the protection of sensitive data in even the most complex use cases.

Cloud access security – Protection platform that allows you to move to the cloud securely while protecting data in cloud applications.

Data encryption – Data-centric and tokenization security solutions that protect data across enterprise, cloud, mobile and big data environments.

Hardware security module -- Hardware security module that guards financial data and meets industry security and compliance requirements.

Key management -- Solution that protects data and enables industry regulation compliance.

Enterprise Data Protection – Solution that provides an end-to-end data-centric approach to enterprise data protection.

Payments Security – Solution provides complete point-to-point encryption and tokenization for retail payment transactions, enabling PCI scope reduction.

Big Data, Hadoop and IofT data protection – Solution that protects sensitive data in the Data Lake – including Hadoop, Teradata, Micro Focus Vertica, and other Big Data platforms.

Mobile App Security - Protecting sensitive data in native mobile apps while safeguarding the data end-to-end.

Web Browser Security - Protects sensitive data captured at the browser, from the point the customer enters cardholder or personal data, and keeps it protected through the ecosystem to the trusted host destination.

Email Security – Solution that provides end-to-end encryption for email and mobile messaging, keeping Personally Identifiable Information and Personal Health Information secure and private.

### **Confidentiality:**

Confidentiality is roughly equivalent to privacy. Measures undertaken to ensure confidentiality are designed to prevent sensitive information from reaching the wrong people, while making sure that the right people can in fact get it: Access must be restricted to those authorized to view the data in question. It is common, as well, for data to be categorized according to the amount and type of damage that could be done should it fall into unintended hands. More or less stringent measures can then be implemented according to those categories.

Sometimes safeguarding data confidentiality may involve special training for that privacy to such documents. Such training would typically include security risks that could threaten this information. Training can help familiarize authorized people with risk factors and how to guard against them. Further aspects of training can include strong passwords and password-related best practices and information about social engineering methods, to prevent them from bending data-handling rules with good intentions and potentially disastrous results.

A good example of methods used to ensure confidentiality is an account number or routing number when banking online. Data encryption is a common method of ensuring confidentiality. User IDs and passwords constitute a standard procedure; two-factor authentication is becoming the norm. Other options include biometric verification and security tokens, key fobs or soft tokens. In addition, users can take precautions to minimize the number of places where the information appears and the number of times it is actually transmitted to complete a required transaction. Extra measures might be taken in the case of extremely sensitive documents, precautions such as storing only on air gapped computers, disconnected storage devices or, for highly sensitive information, in hard copy form only.

### **Information Privacy:**

**Information privacy**, also known as **data privacy** or **data protection**, is the relationship between the collection and dissemination of data, technology, the public expectation of privacy, legal and political issues surrounding them.

Privacy concerns exist wherever personally identifiable information or other sensitive

information is collected, stored, used, and finally destroyed or deleted – in digital form or otherwise. Improper or non-existent disclosure control can be the root cause for privacy issues. Data privacy issues may arise in response to information from a wide range of sources, such as:

- Healthcare records
- Criminal justice investigations and proceedings
- Financial institutions and transactions
- Biological traits, such as genetic material
- Residence and geographic records
- Privacy breach
- Location-based service and geo location
- Web surfing behavior or user preferences using persistent cookies
- Academic research

The challenge of data privacy is to use data while protecting an individual's privacy preferences and their personally identifiable information. The fields of computer security, data security, and information security design and use software, hardware, and human resources to address this issue. Since the laws and regulations related to Privacy and Data Protection are constantly changing, it is important to keep abreast of any changes in the law and to continually reassess compliance with data privacy and security regulations. Within academia, Institutional Review Boards function to assure that adequate measures are taken to ensure both the privacy and confidentiality of human subjects in research.

### **International aspects of computer and online crime:**

There is no commonly agreed single definition of “cybercrime”. It refers to illegal internet-mediated activities that often take place in global electronic networks. Cybercrime is "international" or "transnational" – there are ‘no cyber-borders between countries’. International cybercrimes often challenge the effectiveness of domestic and international law and law enforcement. Because existing laws in many countries are not tailored to deal with cybercrime, criminals increasingly conduct crimes on the Internet in order to take advantages of the less severe punishments or difficulties of being traced. No matter, in developing or developed countries, governments and industries have gradually realized the colossal threats of cybercrime on economic and political security and public interests. However, complexity in types and forms of cybercrime increases the difficulty to fight back. In this sense, fighting cybercrime calls for

international cooperation. Various organizations and governments have already made joint efforts in establishing global standards of legislation and law enforcement both on a regional and on an international scale. China–United States cooperation is one of the most striking progresses recently, because they are the top two source countries of cybercrime.

Information and communication technology (ICT) plays an important role in helping ensure interoperability and security based on global standards. General countermeasures have been adopted in cracking down cybercrime, such as legal measures in perfecting legislation and technical measures in tracking down crimes over the network, Internet content control, using public or private proxy and computer forensics, encryption and plausible deniability, etc.<sup>[21]</sup> Due to the heterogeneity of law enforcement and technical countermeasures of different countries, this article will mainly focus on legislative and regulatory initiatives of international cooperation.

### **Internet Crime**

Internet crime is any crime or illegal online activity committed on the Internet, through the Internet or using the Internet. The widespread Internet crime phenomenon encompasses multiple global levels of legislation and oversight. In the demanding and continuously changing IT field, security experts are committed to combating Internet crime through preventative technologies, such as intrusion detection networks and packet sniffers.

Internet crime is a strong branch of cybercrime. Identity theft, Internet scams and cabers talking are the primary types of Internet crime. Because Internet crimes usually engage people from various geographic areas, finding and penalizing guilty participants is complicate

Internet crimes, such as the Nigerian 419 fraud ring, are a constant threat to Internet users. The U.S. Federal Bureau of Investigation (FBI) and Federal Trade Commission (FTC) have dedicated and appointed IT and law enforcement experts charged with ending the far-reaching and damaging effects of Internet crime.

Examples of Internet crime legislation include:

- U.S. Computer Fraud and Abuse Act, Section 1030: Amended in 2001 through the U.S.

Patriot Act

- CAN SPAM Act of 2003
- Preventing Real Online Threats to Economic Creativity and Theft of IntellectualProperty Act of 2011

As the U.S. works to combat Internet crime, other countries are experiencing increased cybercriminal activity. In 2001, Web sense (an organization focused on network abuse research)reported the alarming spread of Internet crime in Canada. This global shift is under review by the Canadian government.

Types of Internet crime include:

- Cyber bullying and harassment
- Financial extortion
- Internet bomb threats
- Classified global security data theft
- Password trafficking
- Enterprise trade secret theft
- Personally data hacking
- Copyright violations, such as software piracy
- Counterfeit trademarks
- Illegal weapon trafficking
- Online child pornography
- Credit card theft and fraud
- Email phishing
- Domain name hijacking
- Virus spreading

To prevent becoming an Internet crime, online vigilance and common sense are critical. Under no circumstances should a user share personal information (like full name, address, birth date and Social Security number) to unknown recipients. Moreover, while online, a user should remain suspicious about exaggerated or unverifiable claims