

## MODEL ANSWER PAPER ACCORDING TO KSLU PATTERN FOR THE YEAR 2019-20

### INTELLECTUAL PROPERTY RIGHTS- I

#### UNIT I

Q.1 Define Intellectual property? Explain the different types of intellectual property?

ANS. Intellectual property is the product of human mind and intellect. Intellectual property, in its literal sense, means the things which emanate from the exercise of human brain. It is the product emerging out of the intellectual labour of human being. It involves the visual expression of a mental conception, the work of both brain and hand. Broadly speaking, the term intellectual property includes, on one level, ideas, concepts, know-how and other creative abstractions, and on a second level, the literary, artistic or mechanical expressions that embody such abstractions.

Intellectual property rights are rewards provided as recognition to the creative work. These rights are an incentive for creator and inventors for conceiving and executing innovative thoughts and ideas. In the business world the one possessing intellectual property rights will have definite advantage over other competitors. In the era of globalization when the entire world is considered as a single (global) market there noticed stiffer competition from all the corners of the world in any given field. At this juncture possession of intellectual property rights would facilitate the owner a better edge in the business.

The impact of intellectual property rights has spread over every aspect of human life. It has got something in store for everyone ranging from professionals, labor,

industrialists, philosophers, ethicists, scientists, politicians, artists, lawmakers, entertainers, business entrepreneurs, economists, students and common man.

Intellectual Property is defined as a body of legal rights, economic or moral, which arise from mental and artistic creativity. These legal rights subsequently provide exclusive economic rights in such works. Almost everyone in a society is a user and potential creator of intellectual property. Its protection, through a system of national and international rules called intellectual property Rights, is necessary to provide incentives and financing for innovation and creation, which in turn lead to economic, cultural and social growth and development. The system of intellectual property also encourages the protection and dissemination of knowledge and a wide range of quality goods and services. The IPRs add value for consumers and can provide guarantee of source and quality. Broadly speaking, the human intellect that result from human ingenuity, creativity and inventiveness.

Intellectual property rights exist in different works involving intellectual or mental labor. Generally speaking any intellectual efforts having commercial value could be given protection. Intellectual efforts in the field of literature, artistic, engineering, technology, science, manufacturing, business, agriculture etc., gives rise to certain intellectual property rights. Depending upon the nature of the intellectual work and filed of application intellectual property rights have been classified into different kinds. For the instance intellectual efforts in the field of science, technology, engineering or agriculture have been categorized as patentable subject matter and offered protection under patent system. Intellectual efforts in the field of literature, music, photography, arts, and painting have been categorized as subject matter of copyrights and provided copyright protection. Therefore intellectual efforts in different fields have been offered protection under different heads.

A) Copyrights

B) Trademarks

- C) Geographical indications
- D) Industrial designs
- E) Patents
- F) Semiconductor chips and integrated circuits and
- G) Trade secrets

A) COPY RIGHTS:

It is a right guaranteed to protect intellectual efforts in the fields of literature, arts, drama, choreography, cinematography, sound recordings and computer programs. A copyright is a property that subsists in certain works in the above fields. Besides, computer programs are also considered as a form of writing (literature) in electronic form. Copyright protects intellectual property rights of authors in the above fields who put intellectual efforts or mental labor in writing a book, story, poem, script, song or in performing a show or drama, or in painting a picture or art work and so on and so forth.

The copyright registry under the act serves the purpose of registration of copyrights. Generally rights in the above fields are protected for a term of life and sixty years.

B) TRADE MARK:

Trademark is a visual or graphical representation which identifies a particular set of goods and services on which it is being applied. Business community prefers to market their products and services through certain representations, which would advertise, identify and distinguish their products and services from other products or services

in the markets. These representations may be seen in the form of a mark, symbol, name, alphabet, numerical, color or any combination of the said forms. The mark should be capable of being graphically represented, through registration in order to see that use of particular mark is confined to one particular type of goods or services.

C) Geographical indications:

Geographical indication means an indication, which identifies certain goods, as originating or manufactured from a particular locality with specific quality. An indication may be a mark or a name, figurative representation that suggests the origin of goods. To be able to get protection for the geographical indication, the quality, characteristics or reputation of the goods shall be attributable to its geographical origin. Protection for geographical indications, the quality, characteristics or reputation of the goods shall be attributable to its geographical origin. Protection for geographical indication is offered through registration, which confers an exclusive right to the owner to use the geographical indication on his goods. Generally rights under geographical indication are not conferred upon individuals. In this respect it is different from that of the other intellectual property regimes which are known for conferring individual's rights on intellectual property.

D) Design means the shape, pattern configuration of an industrial article to be able to get protection the design must appeal to the eye and must be capable of being applied to industrial products. Further the design must be capable of identifying and distinguishing the product to which it is applied from the bulk.

There are certain products in the market known by the shape or outlook. For eg FIAT cars is identified by its shape and outlook by anybody whether educated or uneducated.

E) Patents- Patent is a monopoly right conferred to the inventor who has invented a new product or process through its intellectual efforts which is capable of industrial applications. Patents is granted on the fulfillment of certain requirements such as novelty, inventive steps, industrial application and written discretions. or process on demonstration of incentive steps that is of commercial significance. The inventor needs to disclose the invention in writing form with description in order to obtain exclusive monopoly over the invention for a specific duration. Patents grant an

exclusive right for a period of 20 years to the inventor to use and exploit the invention. Except the owner no other person has the right to use the invention. However the owner can assign or license the invention to any interested person.

F) Integrated circuits- Electronic components are up of electronic circuits. The circuits inside any electronic device are called electronic circuits, which perform specific functions. The electronic circuits when integrated from electronic chips, they are also called semiconductor chips. The designs of integrated circuits is and semiconductor chips is called as topography or layout design, which involves intellectual creativity and efforts. Integrated circuits are defined to mean a product having transistors and other circuitry elements, which is inseparably formed inside the semiconductor material designed to perform an electronic function.

The efforts in designing and expressed in any manner in semiconducted chips have been given protection under the law.

G) Trade secrets- It is any information or knowledge that is commercially viable and generally not known. It could be a formula, computer

programme, process, method device, technique pricing information, customer list and other information that has been kept secret. They arise certain ingredients of trade secrets such as: the information shall be kept confidential and away from public, the information should involve certain intellectual efforts, the person who processes such information must treat such information as confidential and should have taken all possible measures to keep it secret and the information should have certain commercial value. Indeed trades are protected as per common law principals such as: prevention of unjust enrichment and fiduciary duty.

Efforts are been made to protect intellectual property since 19 century when patents, trade marks, and designs were considered as intellectual property. Later with the inclusion of copyrights and other rights to the list of parents, trade marks

And a design to represent the nomenclature intellectual property was coined. Since Paris convention till the TRIPS agreement they adapted various international agreements to protect different intellectual property rights.

Q. Discuss the concept of patenting of software and copyright protection of software programmes.

Ans . Patent is granted to any invention which involves inventive step, and has industrial application.

The computer programmes are protected by grant of copyright.

The international trend is tilting towards recognising more sophisticated computer programmes as inventions entitled to patent protection.

## **INDIAN SCENARIO**

The Indian Patents Act 1970 does not recognize patent protection for the computer programmes.the only mechanism of protection for computer programmes and computer

data is under Section 2(o) of the Copyright Act 1957, which recognises computer programmes and computer data as creative work entitled to copyright protection.

## UNITED KINGDOM SCENARIO

**The Indian law is based on British law.** Section 1(2) of the U.K. PATENTS ACT of 1977 provides that a computer programme is not a patentable invention. Under the English system in certain cases only, the computer programme can be patented along with the computer.

In the case of **IBM Corporation's application**, it was held a computer programmed to carry out a system to produce a required result is an apparatus modified or programmed to operate in a new way, which can be protected by a patent.

In the case of **BOROUGH'S Corporation Application**, a favourable opinion towards conferring patent for computer programme was expressed. It was held that a computer programmed to carry out a system to produce the required result is an apparatus modified. In this case a computer programme capable of controlling computers and directing, modified or programmed to operate in a new way' can be protected by a patent.

Q1 b) Explain what is Patent, What are the essentials of patentable invention and which inventions are not patentable under Indian Patent Act.

Ans. The invention must be a patentable subject matter. Patentable subject matter includes any process, machine, article, manufacture or composition of any matter. The term inventions very wide and can include any computer hardware and software. An invention as a patentable subject-matter must satisfy following 3 conditions: 1) Novelty (newness) 2) Inventive steps (Non-obviousness) and

3) Usefulness (industrially applicable).

The following inventions are not patentable under Indian patent system, they are:

- 1) An invention which is frivolous or which claims anything obviously contrary to well established rule of national law.
- 2) An invention is primarily or intended use is to commercial exploitation of which could be contrary to public order.
- 3) The mere discovery of scientific principle.
- 4) The mere discovery of any new property or new use for a known substance or the mere use of known process, unless such known process results in a new product or employs at least one new reactant.
- 5) A substance obtained by a mere admixture.
- 6) The mere arrangement or re arrangement of known devices.
- 7) A method of agriculture or horticulture.
- 8) Any process of medical, surgical, curative, prophylactic (diagnostic, therapeutic)
- 9) Plants and animals in whole, biological process for production or propagation of plants and animals.
- 10) A mathematical or business method or a computer program me 11)  
A literary dramatic musical or artistic work.
- 12) A mere scheme of 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.
- 16) An invention relating to autonomic energy prejudicial to defense of India.

Q1 a) Explain the exceptions and limitations on exclusive rights of the patentee.

The act confers certain exclusive rights on the patentee. There are certain limitations on the rights granted to the patentee under the act. They are: 1) Use of invention for the purpose of the govt .

- 2) Compulsory licenses.
- 3) Revocation of non-working of patents.
- 4) Invention of defense purpose.
- 5) Limitation on resorted patents.

1) Use of invention for the purpose of the govt:

Sec 100 of the act deals with the power of the central govt to use inventions for the purpose of the govt. It provides that at any time after an application for a patent has been filed at the patent office or a patent has been granted ,the central govt and any person authorized in writing by the central govt can use the invention for the purpose of the govt. Where an invention has been duly recorded in document or tested or tried before the priority date of a relevant claim of the complete specification by the govt or any person authorized in writing by the govt or a govt undertaking otherwise than in consequence of the communication of the invention directly or indirectly by the patentee or by a person from whom he derives title ,any use of invention by the central govt for the purpose of the govt may be made free of any royalty or other remuneration to the patentee.

2) Compulsory licensing:

A patent is a monopoly right granted to a person to work his invention. Where the reasonable requirement of the public with respect to the patented invention have not been satisfied, or the patented invention is

not available to the public at a reasonable affordable price, or the patented invention is not worked in the territory of India, at any time after the expiration of 3 yrs from the date of the grant of a patent, any person can make an application to the controller for the grant of compulsory license on patent. Where the controller is satisfied that a prima facie case has been made out for making of an order, he may grant compulsory license on patents.

3) Revocation for non-working of patents:

Sec 85 of the act vests a residuary power in the controller to revoke a patent in the event of patented invention not being worked to an adequate extent in the territory of India or reasonable requirements of the public with respect to patented invention is not available to the public at a reasonable affordable price notwithstanding the compulsory licensing provision, etc such a provision will also have the indirect effect of inducing patentees to impart to insufficient details as to knowhow for working inventions. The section lays down the time limit for the disposal of the application for the revocation of the patents.

4) Use of invention for defense purpose:

The inventions for defense purpose as subject to certain secrecy provision. Under the provision of the act it gives for securing the inventions for defense purposes which are the subject matter of applications for patents, in the interest of security kept secret. Any secrecy orders passed by the controller in respect of such inventions are to be notified to the central govt and are to be periodically reviewed.

Through applications which are subject to secrecy directions may precede up to the stage of grant of patents, they may not be published and no patent shall be granted. If an invention is relevant for defense purpose or atomic energy, the controller does not grant permit without the prior consent of the central govt.

6) Limitation on restored patents :

When a patent is resorted, certain limitations are imposed on the rights of the patentees. The controller may impose for the protection or compensation of person who may have begun to avail them of or have taken steps by contract or otherwise to avail themselves of the patented invention between the dates on which the patent ceased to have effect and the date of the publication of the application for restoration of patent. In case of the infringement of the patent between the date on which the patent ceased to have effect and the date of publication of the application for restoration of the patent, a patentee loses his right to sue for such a infringement.

Q1 b) An invention made by an employee of the firm in the laboratory of the firm ,putting hard efforts can his employer register the invention in his name.

Inventor is a person who has actually invented or created some invention, an employee who has made an invention is actually the true and first inventor and is entitled to the patent, but in case of employment the question arises who is initially entitled to a patent, this largely depends on the contractile relationship express or implied, between the employer and the employee make the invention as part of employment contract, the employer may own the invention and have the right to patentee. The employer takes the invention of the employee in two circumstances:

- 1) When made either in the course of the employee's normal or is specially assigned duties, provided that the invention might be reasonably be expected from carrying them out, where the employee was appointed

to use his skill and inventive ingenuity, to solve a technical problem where he was employed to invent.

- 2) When the employee has a special obligation to further the interests of the employer's undertaking because of the nature of his duties and the particular responsibilities arising from the nature of his duties, that is to say, where the employee occupied a senior managerial position and owned a general duty of fidelity of his employees. In these two conditions the employer is entitled for the grant of the patent for an invention made by his employee. And in all other cases the employee has the initial rights in his own invention.

## UNIT II

Q2 a) Explain the actual and relative grounds for refusal for registration of the trade mark.

The application could be refused by the trade mark registry on various grounds. These grounds have been classified into two categories namely absolute grounds and relative grounds for refusal of registration. Sec 9 of the act talks about absolute grounds for refusal of registration, there are few grounds which are considered as absolute grounds for registration. They are as follows:

- 1) Marks devoid of distinctive character.
- 2) Marks indicating nature.
- 3) Marks common to trade.
- 4) Generic marks, customary marks used commonly in trade.
- 5) Marks of such a nature to deceive the public.

- 6) Marks likely to hurt the religious sentiments.
- 7) Marks containing obscene or scandalous material.
- 8) Marks prohibited under the Names and Emblems Act.

1) Marks devoid of distinctive character:

Marks devoid of distinctive character can't be registered since those marks can't distinguish the goods and services. Sec 9(a) of the act states that if a mark is not capable of distinguishing the goods and services it is absolute ground for refusal of registration.

In *British Sugar V/S James Robertson* in this case the court while discussing the absolute grounds for refusal of registration of trade marks the court happened to discuss the issue of what is distinctive character which a mark must possess and devoid of the same makes it ineligible for registration. The court analyzing the scope of distinctive character of trade mark took the view that, a mark to be distinctive of a person's goods and services must be generally incapable of application to the goods of any one else. It must be incapable of application in fair and honest application on other goods or services. Further, if people who are familiar to such marks are not regarding it as something which provides an indication as to the nature of goods and services with reference to which it is used, such mark cannot be said to have distinctive character.

2) Marks indicating nature and characteristic of goods and services.

A mark which indicates the kind, quality, quantity, function, value, purpose, geographical origin cannot be registered. Sec 9 (1)(b) of the act talks about this ground.

In *ITC Ltd V/S Registrar of trade marks*.

The court while discussing the grounds of indication of nature and characteristics of goods and services by the trade marks it was held that the names of major industrial area or city would not be registered as a trade

mark. But certain geographical names can be used as trade mark provided that such name should never occur to any trader in such goods to use. It is Rarest of the rare case when registration is allowed. In general, a mark which tends to indicate or describe the nature and characteristics' of goods and services which it is representing or which it is purporting to represent cannot be registered as a valid Trade Mark.

- 3) Marks common to trade: Marks common to trade such as, generic marks, customary marks used commonly in the trade cannot be registered as trademarks. Sec 9(1) of the act talks of the marks which are common to trade. On these marks no one can enjoy monopoly in exclusion of others. Anybody can use these marks without claiming proprietorship or ownership over the marks. These are the marks which are part of general trade and commerce and have become well-known in general to everybody associated with trade and commerce.
- 4) Marks of such nature to deceive the public, such marks are not registered as trade mark. Sec 9(2) (a) of the act speaks about this ground on which application for the trade mark could be rejected. If the usage of a particular mark is going to deceive the public with reference to its origin and the owner should be registered. On the same lines, if the mark is going to deceive the public in terms of the goods it is associated with and in terms of quality representing such marks are generally not registered.
- 5) Marks likely to hurt religious sentiments: India being a multi religious country with number of cultures and traditions, there is a need to have religious and communal harmony. If any trader intends to use a mark which is against the interests or sentiments of any religion or community such marks shall not be registered. Use of marks tend to hurt religious sentiments shall not be encouraged. With this intention Sec 9(2)(b) of the act categories states that marks which are likely to hurt religious sentiments cannot be registered.
- 6) Marks containing obscene or scandalous materials: Marks should not be anything which is objectionable to the moral standards of the society.

Therefore while choosing a mark one should keep in mind the society standards which prohibits use indication or any representation which is obvious or scandalous. Under section 9(2) obscenity, scandalous and indecency is an absolute ground for rejecting the application for a trade mark.

7) Mark prohibited under the Names and Emblems Act :

The names and emblems act of India prohibits certain names, marks and indications from being used for commercial purpose. These marks and names are the property of the nation and hence are prohibited from being used as trade mark .Under sec9 (2)(d) prohibition under the Names and the Emblems Act is an absolute ground for rejecting trade mark application. Apart from absolute grounds for refusal of application for registration of marks there are certain other grounds on the basis of which application for trademark can be refused. These other grounds are called relative grounds; these are dealt under Sec 11 of the act. According to provision of law, these grounds need to be established before rejecting the application .However,absolute grounds provides prima facie reason to reject the application without any further evidence of proof .But relative grounds does not provide prime facie reason for rejecting the application but for the reasons which on proof could form a valid ground for rejecting the application. Under Sec11 a mark shall not be registered if:

- 1) It is identical ,or similar to an existing trade mark
- 2) There is any likelihood of confusion on the part of public.
- 3) There is any likekyhood of wrongful association with the earlier mark.

Q2 b) Write a note on Deceptive Similarity:

A Mark shall deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause

confusion .It is presumed that a mark which nearly resembles cannot indicate the proper source or origin or quality .It confuses or deceives the consumer with regard to their choice of goods or services. Choosing or using deceptive similar mark amounts to unfair competition .Persons using a deceptively similar mark can be challenged under unfair competition law .Deceptive similarity is a good ground for:

- 1) Opposing the registration of trade mark.
- 2) Challenging the validity of trade mark.
- 3) Questioning the proprietorship over a trade mark.
- 4) The revocation of registered trade mark.
- 5) Defending in infringement action or passing off action. In principle, application for the registration of deceptively similar marks can be registered; the onus is on the application to prove that his mark is not deceptive.

This concept was explained in National Sewing Thread V/S James Chadwick.

It was viewed that the law on trade mark does not provide registration of marks which are deceptive ,identical or similar to any existing marks .If the mark claimed is similar or identical to any mark which is already registered on any mark already claimed on any mark already claimed in a pending application before the trade mark registry such marks cannot be registered .Similarly if the mark claimed is deceptively similar or identical to a mark which is continuously being used by any trader which has become familiar to the consumer ,registration for such mark could be rejected by the registry .In such cases onus rests fairly upon the applicant to prove that the claimed mark is not deceptively similar to any registered mark or a mark in continuous use.

Q2 a) What is infringement of trade mark? Explain the remedies available for infringement.

A registered trade mark is infringed by a person who not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with or similar to the registered trade mark and is used in relation to goods or services which are not similar to those for which the trade mark is registered and the registered trade mark is registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to the distinctive character or repute of the registered trademark.

A registered trade mark is infringed by the person if he uses such registered trade mark as his name or part of his trade name or name of his business concern or part of the name or business concern dealing in goods or services in respect of the trade mark is registered. A person uses a registered trade mark if he;

- 1) Affixes it to goods or the packaging of the goods or
- 2) Offers or expose goods for sale, puts them on the market or stocks them for those purposes under the registered trade mark or offers or supplies services under trade mark.
- 3) Imports or exports goods under the mark.
- 4) Uses the registered trade marks on business papers of the advertising.

In the year 2012 in INFOSIS technology limited V/S Addinath Infosys pvt ltd, INFOSYS is the registered trade mark or service mark of the plaintiff co. In this case the plaintiff n account of continuous extensive and substantial use of the mark INFOSYS by its two decades combined with the excellent service offered by it under the aforesaid name this mark has become distinctive in the eyes of the customers not only in India but also in other countries as well. The software developed by the plaintiff are excellent quality and acclaimed all over the world.

The defendant company is engaged in the business of web site developed and is offered web design and management and provides computer training courses affiliated to Aptech computer education .It is alleged that the business of the defendant relates to computer related products or services and is directly relatable to plaintiffs business. The defendant has been using the expression INFOSYS as part of its corporate name .The website of the company also uses the expression INFOSYS as a part of domain name.

The plaintiff sought an injunction restraining the defendant from using the mark INFOSYS as part of their corporate or trade name . The plaintiff also sought the injunction restraining from the defendant from passing off they goods and services as those of the plaintiff by using the name of INFOSYS and damages.

The court held that the use of expression INFOSYS by the defendant while it related services constitutes infringement within the meaning of sec 29(2) of the Trade Mark Act 1999. Further the court stated that Sec 29(5) of the ,provides that a registered trade mark as his trade name or part of his trade name ,or name of his business concern or part of the name of the business concern dealing with goods or services in respect to which the trademark is registered .Therefore by using the word INFOSYS which is the registered trademark of the plaintiff as the key feature of its corporate name defendant has clearly infringed the registered trade mark of the plaintiff as the key feature of its corporate name defendant has clearly infringed the registered trade mark of the plaintiff .The defendant is restrained from using expression INFOSYS or any other expression which is identical or is deceptively similar to the trade mark of INFOSYS as a part of its corporate name for providing of the services in which the plaintiff is engaged. Sec 29 of the act states the provision of the infringement of registered trade mark ,when a registered trade mark is used by the person who is not the registered proprietor or a person using by way of permitted use in course of trade ,a mark which is identical with or which is deceptively similar to the mark in relation to goods or services in respect of which the trade mark is

registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark ,it constitutes infringement.

Q2 b) write a note on passing off:

No man is entitled to represent his goods or business as being the goods or business of another .A trader is not permitted to use any mark, device or other means whereby although he does not make any false representation to a direct purchaser of his goods, he enables such a purchaser to make false representation to the ultimate purchaser of the goods. False representation of the goods or using unfair means to obtain business gains is not permitted .Passing the goods and services by falsely representing them as goods and services of some reputed business man or trade is known as passing off .The individual who does pass off the goods with false indication or representation intends to encash the reputation,name fame of the establishment trader and gain advantage of the consumer base.

The elements of passing off are been observed by Lord Diplock in Ervin Warnick V/S Town end and sons limited:

In this case it was stated that passing off must consists of the following :

- 1) Misrepresentation.
- 2) It must have been made by the trader in the course of trade.
- 3) To the consumer or to the prospective consumer.
- 4) Which has caused some confusion or deceptions in the minds f the customers?
- 5) Resulting in some injury or loss to the goodwill or the reputation of the trader.
- 6) Making the trader to suffer some damage to his business.

### UNIT III

Q3 a) Define cyber crime .Explain different categories of cyber crimes.

The term 'cyber crime' is a misnomer .This term is nowhere defined in any statute passed or enacted by the parliament .The concept of cyber crime is not radically different from the concept of conventional crime .Both include conduct whether act or commission ,which cause breach of rule of law and counterbalanced by the sanction of the state . Cyber crime is the latest and perhaps the most complicated problem in the cyber world." Cyber crime may be said to be those species, of which genus is the conventional crime, and where those species, of which genus is the conventional crime, and where either the computer is an object or subject of conduct constituting crime" "any criminal activity that uses a computer either as an instrumentality, target or a means of perpetuating further crimes comes within the ambit of cyber crime.

A generalized definition of cyber crime may be "unlawful acts wherein the computer is either a tool or a target or both." The computer may be used as a tool in the following kind of activity financial crimes sale of illegal articles ,pornography ,online gambling ,intellectual property crimes ,e-mail spoofing ,forgery, cyber defamation, cyber stalking .The computer may however be target for unlawful acts in the following cases, unauthorized access to computers ,computer system ,computer networks , theft of information contained in electronic form ,e-mail bombing ,data handling, salami attack. Logic bombs, Trojan attacks, internet time thefts, web jacking, theft of computer system, physically damaging the computer system.

Reasons for cyber crimes:

The reason for vulnerability of computer may be said to be. 1)  
Capacity to store data in comparatively small space.

- 2) Easy to access.
- 3) Complex.
- 4) Negligence.
- 5) Less of evidence.

The cyber crimes are committed by different modes they are:

- 1) Unauthorized access to computer systems or networks or hacking.
- 2) Theft of information contained in electronic form.
- 3) Email bombing.
- 4) Data diddling.
- 5) Salami attacks.
- 6) Denial of service attack.
- 7) Virus or worm attacks.
- 8) Logic bombs.
- 9) Trojan attacks.
- 10) Internet net time theft.
- 11) Web jacking

The subject of cyber crime is broadly classified into three groups,  
they are:

- 1) Against individuals.

The nature of crimes committed against this group arises: a) Harassment via email. b) Cyber- stalking. c) Dissemination of obscene material.

d) Deformation.

e) Unauthorized control or access over computer system.

f) Indecent exposure.

g) Email spoofing.

h) Cheating and fraud.

2) Against Organization at large:

a) Unauthorized control or access over computer system.

b) Procession of unauthorized information.

c) Cyber terrorism against the govt organization.

d) Distribution of pirated software.

3) Against society at larger

a) Pornography.

b) Polluting the youth through indecent exposure.

c) Trafficking.

d) Financial crimes.

e) Sale of illegal articles.

f) gambling.

g) Forgery.

Q3 b) write short notes on E- commerce.

E- Commerce is referred to as electronic commerce, means buying and selling products and services over internet and the world wide web E –commerce refers to all forms of commercial transaction involving both organizations and individuals that are based upon the electronic processing and transmission of data into text ,sound And visual images. IT also refers to the effects that the electronic exchange of commercial information may have on the institutions and process that support and govern commercial activities.

E-commerce transactions are generally of following type.

- 1) Business to business: If two business organizations conduct commercial transactions with each other using the internet then such transactions are termed as business to business transactions.
- 2) Business to customer: A business to customer transaction involves a business entity on one side and an individual customer on the other hand e.g. [www.fediff.com](http://www.fediff.com), this provides facilities to the customers to buy goods from the website, is a very good example for e-commerce, this site itself services the purpose of a shop.
- 3) Customer to customer: A customer to customer transaction involves two or more customer with the business entity mealy providing a web based interface to facilitate the customer to customer. Eg [www.ebay.com](http://www.ebay.com) is a website, anyone can buy and sell and exchange goods and articles using this website.

Q3 a) Define digital signature, explain the powers and functions of the controller of certifying authorities under the act.

`Digital signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance provision, i.e. sec 3 of IT Act.

The legal recognition to electronic records and digital signature is contained under sec 3 of this act; this sec also provides the conditions subject to which an electronic record may be authenticated by means of affixing digital signature. The digital signature is created in two distinctive steps.

- 1) The electronic message is converted into a message digest by using a mathematical device known as " hash function" which digitally freezes the electronic record thus ensuring the integrity of the content of the intended communication contained in the electronic record. Any tampering with the electronic record will immediately invalidate the digital signature.
- 2) The identity of the person affixing the digital signature is authenticated through the use of private keys which attach itself to the message digest which can be verified by anybody who has the public key corresponding to such private key. This will enable anybody to verify whether the electronic record is retained or has been tampered with since it was so fixed with digital signature .It also enables a person who has a public key to identify the originator of the message.

Provisions relating to powers and functions of controller of certifying authorities of the act are laid down under sec 18 and sec19 of the act.

The central govt in notification in official gazette, appoint a controller of certifying authorities for the purpose of the act, also by the same or subsequent notification appoint such other number Deputy Controllers and Assistant Controllers, other employees as it deem fit.

The Controller shall discharge his function under this act subject to the general control and directions of the Central Govt. The Deputy Controller and Assistant Controller shall perform the functions assigned to them by the controller under the general superintendence and control of the controller .Information Technology act 2000.

Section 18 lays down the functions which the controller may perform in respect of activities of certifying Authorities .As per IT Amended Act 2008.

The controller may perform all or any of the following functions namely.

- 1) Exercising supervision over the activities of the certifying authorities.
- 2) Certifying public keys of the Certifying Authorities.
- 3) Laying down the standards to be maintained by certifying authorities.
- 4) Specifying the qualification and experience which employees of the Certifying Authorities should possess.
- 5) Specifying the conditions subject to which the Certifying Authorities shall conduct the business.
- 6) Specifying the content of written, printed or visual material and advertisements that may be distributed or used in respect of a E-signature certificate and the public key.
- 7) Specifying the form and content of electronic signature Certificate and the key.
- 8) Specifying the form and the manner in which accounts shall be maintained by the certifying authorities.

- 9) Specifying the terms and conditions subject to which the auditors may be appointed and the remuneration to be paid to them.
- 10) Facilitating the establishment of any electronic system by the Certifying Authority either solely or jointly with other Certifying Authorities and regulation of such systems.
- 11) Specifying the manner in which the Certifying Authorities shall conduct their dealings with the subscribers.
- 12) Resolving conflict of interests between the Certifying Authorities and the subscribers.
- 13) Laying down the duties of the Certifying Authorities.
- 14) Maintaining a data base containing the disclosure record of every Certifying Authority containing such particulars as may be specified by the regulations, which shall be accessible to public.

Sec 19 of the act provides with the powers of the controller. The Controller may exercise his powers with the previous approval of the central govt.

Powers of the Controller as according to the act:

- 1) The Controller has the power to grant recognition to foreign Certifying Authorities subject to such conditions and restrictions as may be imposed by the regulations.
- 2) Where the certifying Authority is recognized under Sub-sec (1), and the Electronic signature Certificate issued by such certifying authority shall be valid for the purpose of the act.

- 3) The controller if he is satisfied that any Certifying Authority has contravened any of the conditions and restrictions subject to which it was granted recognition under subsec(1) he may for reason to be recorded in writing by notification in official gazette. Revoke such recognition.
- 4) Power to grant or issue Digital signature .Further, the controller after considering the application may either grant or reject the application after giving reasonable opportunity of being heard.

The Controller or any officer authorized by him shall exercise like powers which are conferred on the income tax authorities ,and shall exercise such powers ,subject to such limitations laid down under the act.

Q3 b) write short notes on E-Contract:

E- Contract or electronic contracts are not paper base but based on electronic form, and they are born out of the need of the day. Earlier it was an apprehension amongst the legislatures to recognize this modern technology but now many countries have enacted laws in India E-contract is governed by IT Act.

The basic requirements of E-Contract are;

- 1) An offer needs to be made.
- 2) The offer needs to be accepted.
- 3) There has to be lawful consideration.
- 4) There has to have an intention to create legal relations.
- 5) The parties must be competent to contract.
- 6) There must be a free and genuine consent.
- 7) The object of the contract must be lawful.

8) There must be certainty and possibility of performing of the contract.

## UNIT IV

Q4 a) Explain the procedure to be followed for registration of geographical indication.

An application for registration of geographical indication should be made in writing to the registrar in such a form and in such a manner and accompanied by such fee as may be prescribed for the registration of geographical indication.

The act provides that in any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods can apply in writing to the registrar for the registrations of the geographical indication.

The application of the geographical indication must contain:

- 1) The origination of the geographical indication , from the country ,locality ,country or region .It should specify the quality ,reputation ,characteristic ,its inherent natural or human factors ,and the production ,processing or preparation of which takes place in such territory ,region or locality .
- 2) The case of goods to which the geographical indication shall apply.
- 3) The geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured.

- 4) The particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figures elements or both.
- 5) A statement containing such particulars of the producers of the concerned goods, if any proposed to be initially registered with the registration of geographical indication and all other particulars as may be prescribed.

A single application may be made for registration of a geographical indication for different class of goods and fee payable different in respect of each such class of goods.

Every application for the registration of geographical indication is filed in the office of geographical indication registry within whose territorial limits, the territory of the country or the region or locality in the country to which the geographical indication relates is situated. Where such territory region or locality as the case may be, is not situated in India, the application shall be filled in the office of geographical indication registry within whose territorial limits the place mentioned in the address of the service in India as disclosed in the application is situated. All applications filed for registration are examined by the registrar. After examination of such applications the registrar may refuse or accept the application. Where after the acceptance of an application for registration of a geographical indication but before its registration the registrar may after hearing the applicant if he so desires withdraw the acceptance and proceed as if the application had not been accepted.

When an application for registration of geographical indication has been accepted whether absolutely or subject to conditions or limitations, the registrar advertises the application in such a manner as may be prescribed. Where after an advertisement of an application, an error in the application has been corrected or application has been permitted to be amended, the registrar may in his discretion cause the application to be advertised again or instead of causing the application to be notified the correction made in the application.

Any person may within three months from the date of advertisement or readvertisement of an application for registration give notice in writing in the prescribed manner to the registrar, of opposition to the registration. The registrar after hearing the parties and considering the evidence decides whether and subject to what conditions or limitations, if any, the registrar is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

When an application for registration of a geographical indication has been accepted and either the application has not been opposed and the time for notice of opposition has expired or the application has been opposed and the opposition has been decided in favour of the applicant the registrar registers the paid geographical indication and the authorized users, if any, mentioned in the application. The date of making the application shall be deemed to be the date of registration.

When the geographical indication is registered, the registrar issues to each of the applicant and the authorized user, if registered with the geographical indication sealed with the seal of the geographical indication registry.

When the registration of the geographical indication is not completed within twelve months from the date of the application by reason of default on the part of the applicant the registrar may, after giving notice to the applicant treat the application as abandoned unless it is completed within the time specified in the notice.

The registrar may amend the registrar or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

Q4 b) Explain the difference between Geographical indication and Trade mark.

A Trade mark is a sign affiliated with or used by the manufacturer or an enterprise to distinguish his goods and services from those of others .It implies certain human creativity .It gives its owners the right to exclude other from using that trade mark.

A geographical indication is also a sign which indicates to the consumers the quality, reputation and other characteristic of the goods coming from a definite area i.e., the place of origin .It may be used by all producers who make their products in the place designated by the geographical indication and whose products share specified qualities.

A trade mark often consists of a fanciful name or device .The name used as a geographical indication is pre –determined by the name of the place of origin.

There is no originality or invention or discovery involved and the geographical indication may depend on traditional Knowledge for the product development or on the talent of the craftsmen .The development of geographical indications is a time –tested process. The product it takes decades or centuries .The geographical indication creates a positive impression of the product quality, the environmental virtue and human skill of the area.

Q 4 a) Explain the protection available for geographical indications?

A geographical indication is assigned used on goods that have a specific geographical origin and possess essential qualities that are due to that place of origin. It is an indication used to identify agricultural, nature or manufactured goods from a definite territory which have a special quality or characteristic or reputation based upon the climatic or production characteristic unique to the location. A geographical indication conveys consumer that a product is produced in a certain place and has certain characteristic that are due to that place of production. For example, no produces of whisky can call it scotch, unless it has been produced in Scotland.

Examples of geographical indications from India include DARJEELING tea, BASMATI rice, KANCHIPURAM silk sari, ALPHONSO Mango and KOHHLAPARI

slippers. Other examples of geographical indication include Tuscany olive oil in Italy, Roquefort cheese in France, and IDAHO potatoes in the United States.

Protection under this Act is accorded to geographical indications whether or not they are registered.

Notwithstanding subsection (1), geographical indications which although literally true as to the territory, region or locality in which the goods originate, falsely represent to the public that the goods originate in another territory are not protected by this Act.

For the purposes of this section, registration of a geographical indication under part II raises the presumption that the geographical indication is a geographical indication within the meaning of section 2.

Subject to section 3(2), in the case of homonymous geographical indications for wines, protection shall be accorded to each indication.

The Director shall, in cases of permitted concurrent use of homonymous geographical indications, determine the practical conditions under which such indications will be differentiated from each other.

For the purposes of subsection (2) the Director shall have regard to the need to ensure equitable treatment of the producers concerned; and to ensure that consumer are not misled.

Geographical indications exclusion from protection, the following shall not be protected as geographical indications. Indications that do not correspond to the definition in section 2©; indication that offend public order or morality; geographical indications that are not or cease to be protected in their country of origin, or that have fallen into disuse in that country.

Q4 b) Write short note on prohibition of registration of certain Geographical indication.

Geographical indication is a name or a sign used on certain products which corresponds to a specific geographical location or origin e.g. a town, region, or a country. The use of geographical indication may act as a certification that the product processes certain qualities, is made according to traditional methods, or enjoys a certain reputation, due to its geographical origin.

Sec 9 of the act enlist certain geographical indications which are prohibited from registration.

- 1) The use of which would be likely to deceive or cause confusion.
- 2) The use of which would be contrary to any law for the time being in force.
- 3) Which comprises or contains scandalous or obscene matter ,
- 4) Which comprises or contains any matters likely to hurt the religious susceptibilities of any class or section of citizens of India
- 5) Which would otherwise be disentitled to protection in a court?
- 6) Which are to be generic names or indications of goods and are therefore not or ceased to be protected in their country?
- 7) Which although literally true as to the territory ,region or locality in which the goods originate ,but falsely represents to the persons that the goods originate in other territory ,region or locality.

#### UNIT V

Q5 a) Explain the features of Paris Convention.

Earlier the concept of intellectual property was not there and the property what is called today as intellectual property was known and called as industrial property .Further the concept of industrial property was not broad enough to include all the different types of intellectual property rights that exists today .Notably copyright was not forming part of the concept of

industrial property. At present but adding copyright any other alleged rights to the earlier existed industrial property the concept of intellectual property was evolved or renaming of industrial property as intellectual property has taken place.

The Paris convention was intended to apply to industrial property in broad sense including patents, trade mark, trade names, industrial designs and geographical indications.

The Parties Convention also intended to regulate unfair competition in the spear of commerce and industry through prohibiting unauthorized use confidential information.

The convention provides for the reciprocity of treatment of intellectual property including trademark and establishes the principle of priority.

It postulate for National treatment of the parties by the member states with respect to conferment, protection and enforcement of rights. The member states shall treat the applicant claiming patent, trademark or any other industrial property protected under the convention without discrimination on the basis of the country of origin or work. In the since the applicant belonging to any state shall be treated by every state at par with the applicant from within the country.

That shall be no discrimination between applicant from within the state or from outside the state. Foreign applicants shall be treated as if they are local applicants.

The convention speaks about industrial property protection .The convention considers patents, trademark, designs etc as the industrial property since these properties are mostly associated with industries and their business .The later conventions consider patents, trademark, designed, as intellectual property rights on the basis of the labor that gives rise to property rights.

The Paris convention doesn't make any difference between the property made through physical labour and the property made through mental labor.

The convention of differentiate between physical labor and mental lab our. The convention said to be one among those initial agreements which have been adopted for the protection of the property. The convention has been amended at least seven times since its adoption in 1883 .The recent TRIPS agreement accords great significance to the price convention of industrial property.

Q5 b) Write short notes on Madrid agreement.

The Madrid agreement and protocol together form a special union called Madrid Union, which has got recognition under Paris convention. The agreement concerning international registration of trademarks was adopted in the year 1891 at Madrid. The agreement on international registration of trademarks intends to facilitate international registration of trademarks. The member countries to the Madrid agreement facilitate international filing of application for protecting the trademarks. The countries where the protection for the mark is sought for could be mentioned in the application. The member states to the agreement form the special union for the international registration of marks. An applicant from a member state may secure protection for the trademark in all the member states of the agreement or parties to the special union. It is facilitated through filing marks registered in a member state with International Bureau of Intellectual Property established under the agreement. The international application are made through the national office which have granted protection along with the details of type of mark, goods applied on, dates of filing of the application and registration numbers of application and registration along with the information on the country of origin of such mark. The agreement was revised and registration along with the information on the country of origin of such mark. The agreement was revised and amended from time to time; it was amended latest in 1979.

Q.5 (a) Explain the feature of Patent co-operation treaty?

Patent Co-operation Treaty (the PCT) entered into force on January 24, 1978, and became operational on June 1, 1978.

The PCT is an agreement for international co-operation in the fields of patents. It is a treaty for realization and co-operation with regard to the filing, searching and examination of patent application and the dissemination of the technical information contained in the patent applications for each country for which patent protection is sought with the exception is filed has to carry out a formal examination of every application filed with it. Where patent office's examine patent applications as to substance, each office has to make a search to determine the state of art in the technical field of the invention and has to carry out an examination as to patentability.

The principal objective of the PCT is, by simplification leading to more effectiveness and economy, to improve on in the interest of the users of the patent system and the Office which have responsibility for administering it the previously established means of applying in several countries for patent protection for inventions. Further, to achieve its objective, the PCT:

- (1) Establishes an international system which enables the filing, with a single Patent Office (the "receiving Office"), of a single application (the "international application") in one language having effect in each of the countries party to the PCT which the application names ("designates") in his application;
- (2) Provides for the formal examination of the international application by a single Patent Office, the receiving Office;
- (3) Subjects each international application to an international search which results in a report citing the relevant prior art (mainly published patent documents relating to previous inventions) which may have to be taken into account in deciding whether the invention is patentable;

- (4) Provides for centralized international publication of international applications with the related international search reports, as well as their communication to the designate Offices;
- (5) Provides an option for an international preliminary examination of the international application, which gives the application and subsequently the offices that have to decide whether or not to grant a patent, a report containing an opinion as to whether the claimed invention meets certain international criteria for patentability.

Furthermore, the main objectives of the PCT are to facilitate and accelerate access by industry and other interested sectors to technical information related to inventions and to assist developing countries in gaining access to technology.

Q.5 (b) Explain the functions of WIPO (World Intellectual property organization)?

The WIPO was formally created by the Convention Establishing the World Intellectual Property Organization signed at Stockholm, Sweden on July 14, 1967 and entered into force on April 27, 1970. The agreement marked a transition for WIPO from the mandate it inherited in 1967 from BIRPI, to promote the protection of intellectual property promoting transfer of technology and economic development.

Functions of WIPO:

In order to attain objectives, the organization through its appropriate organs, and subject to the competence of each of the Unions:

- (i) Promotes the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonies national legislation in this field;
- (ii) Performs the administrative tasks of the Paris Union, the Special

Union established in relation with that union, and the Berne Union;

- (iii) May agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property;
- (iv) Encourage the conclusion of international agreements designed to promote the protection of intellectual property;
- (v) Offers its co-operation to States requesting legal-technical assistance in the field of intellectual property;
- (vi) Assembles and disseminates information concerning the protection of intellectual property, carries out and promotes studies in this field, and published the results of such studies;
- (vii) Maintains services facilitating the international protection of the intellectual property and where appropriate, provides for registration in this field and the publication of the data concerning the registrations; and
- (viii) Takes all other appropriate action.