



CHAPTER

3(D)

Intellectual Property Law

Learning Outcomes

Students will be able to:

- Explain the nature and meaning of Intellectual Property
- Explain the meaning of Intellectual Property Rights
- Explain the importance of international conventions on Intellectual Property Rights
- Recall the historical perspective of Intellectual Property
- Analyse the importance of different types of Intellectual Property Rights and its importance in the commercial world
- Appreciate the rights granted to the holder of intellectual property rights

I. Meaning of Intellectual Property

Intellectual property is an intangible property that comes into existence through human intellect. It refers to the creation of the mind or products of human intellect such as inventions, designs, artistic work, names, symbols, images etc.

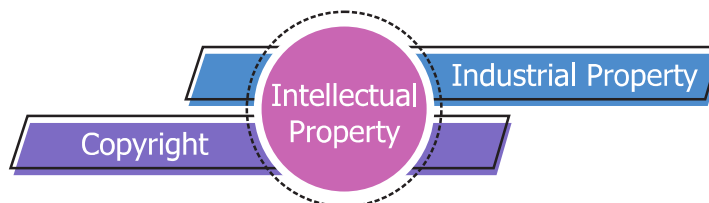
II. Intellectual Property Rights

The term “Intellectual Property Rights” (IPR) refers to the bundle of rights conferred by law on a creator/owner of intellectual property. These rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

They seek to protect the interests of the creators by rewarding their mental labour and allowing them to retain property rights over their creations. The creators/ inventors are thus allowed to benefit from their creations.

The main reason for granting these rights is to encourage inventions and creations that promote social, economic, scientific and cultural development of society.

Intellectual property is divided into two categories:





1. **Industrial property** - this includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and
2. **Copyright** - this 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.

III. What are the international obligations that have shaped Indian IPR?

Treaty	Year	Principles and Objectives
The Paris Convention for the Protection of Industrial Properties	The Paris Convention was adopted on <i>20 March, 1883</i> in Paris and was enforced on <i>7 July, 1884</i> .	<p>1. National Treatment</p> <p>In the context of legal protection for industrial property, the principle of National Treatment requires each member country of the Paris Convention to provide equal legal protection for the inventions of nationals from other member countries, as it would for its own nationals.</p> <p>2. Framework of Priority</p> <p>The Paris Convention also upholds the principle of “priority framework,” allowing an inventor to protect their invention simultaneously in various countries.</p>
The Berne Convention for the Protection of Literary and Artistic Works	The Berne Convention was adopted on <i>9 September, 1886</i> and came into force on <i>4 December, 1887</i> . The Berne Convention was originally signed in 1886 at Berne in Switzerland.	<p>1. National Treatment</p> <p>Stipulated that any work originating in a contracting state, including works of authors who are nationals of that state or works first published in that state, should receive the same legal protection in every other contracting state as the latter state grants to its own nationals.</p> <p>2. Automatic Protection</p> <p>Mandated that legal protection should not be subject to compliance with any formalities.</p> <p>3. Independence of Protection</p> <p>decreed that legal protection should be independent of the existence of protection in the country of origin of the work.</p>
The Universal Copyright Convention (UCC)	Established in the year 1952.	<p>1. National Treatment</p> <p>The UCC adheres to the principle of national treatment rather than automatic protection, which implies that contracting countries are not obligated to provide foreign works with automatic protection if the national requirements are not met.</p>

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		<p>2. The term of the Work</p> <p>Under the UCC, original literary, artistic, and scientific works are eligible for protection. To provide reasonable notice of the copyright claim, a copyright notice should accompany the work. The UCC stipulates that protection for a work lasts for the duration of the author's lifetime and an additional 25 years following the author's death.</p> <p>3. Minimum Rights</p> <p>As per the UCC's provisions, the contracting countries must provide a specific set of "minimum rights" to the lawful owner of the work, provided they do not create any conflict with the "spirit" of the convention.</p>
World Intellectual Property Organisation (WIPO)	The WIPO Convention, which is the primary instrument of the World Intellectual Property Organisation, was signed on July 14, 1967, in Stockholm. It came into effect in 1970 and was subsequently amended in 1979. In 1974, the WIPO became one of the specialized agencies of the United Nations (UN) system.	<p>The WIPO had two primary objectives, which were:</p> <ol style="list-style-type: none"> 1. To promote the legal protection of intellectual property worldwide. 2. To facilitate administrative cooperation between the intellectual property unions created by treaties administered by the WIPO.

IV. Brief Historical Perspective

With the establishment of the World Trade Organization (WTO), the importance and role of intellectual property protection was crystallized in the Trade-Related Intellectual Property Systems (TRIPS) Agreement. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) treaty in 1994.

The TRIPS Agreement came into effect on 1 January 1995 and is the most comprehensive multilateral agreement on intellectual property. It encompasses all forms of intellectual property and aims at harmonizing and strengthening standards of protection and providing effective enforcement of intellectual property rights at both national and international levels.

India being signatory to the TRIPS Agreement has passed several legislations for the protection of intellectual property rights to meet the international obligations. Some of these legislations are listed below:

Trade Mark Act, 1999, Designs Act, 2000, Copyright Act, 1957 (as amended), Patents Act, 1970 (as amended), Geographical Indications of Goods (Registration and Protection) Act, 1999, Protection of Plant Varieties and Farmers' Rights Act, 2001.

The history of Patent law dates back to 1911. Around this time the Indian Patents and Designs Act, 1911 was enacted. The present act governing patents law in India, the Patents Act, 1970 came into force in 1972. It amended and consolidated the existing law relating to Patents in India. The Act, went through an amendment in 2005 to be compliant with the TRIPS agreement and is now known as the



Patents (Amendments) Act, 2005. Through this amendment product patent was extended to all fields of technology including food, drugs, chemicals, and micro-organisms.

V. Copyright

What is 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. It is a bundle of rights including, rights of reproduction, communication to the public, adaptation and translation of the work. This protection is automatic (upon creation of the work) and does not depend on registration.

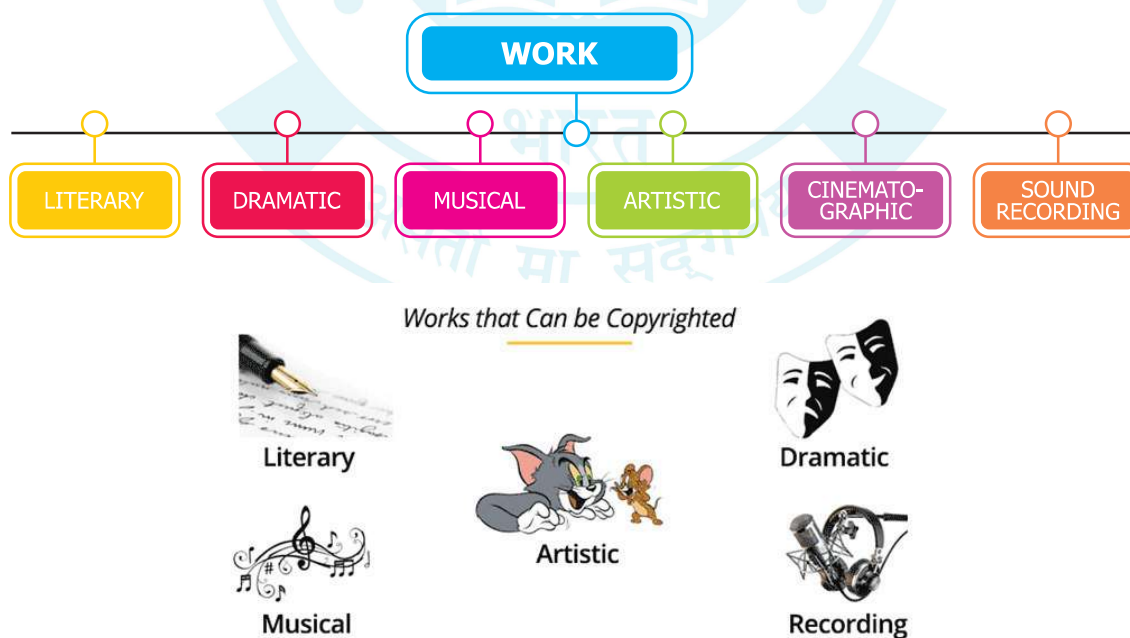
What is the scope of protection in the Copyright Act, 1957?

In India, the law relating to copyright is governed by the Copyright Act, 1957. To get the protection of copyright a work must be original. Mere ideas, knowledge or concepts are not copyrightable. Having said that, copyright protects the original expression of information and ideas. Copyright can be claimed by either the creator or the person who has inherited the rights of ownership from the original creator or an agent who is allowed to act on behalf of the creator.

WORK

What is a work?

All subject matters protected by copyright are called protected **works**. Section 2(y) of the Act defines 'work'. It includes the following:





When is a work protected by Copyright?

A work is protected by copyright when:

1. It falls within the category of 'work' under the Act;
2. The work must be recorded/ fixed in material form (tangible form); and
3. The work must be original.

REGISTRATION OF COPYRIGHT

Is it necessary to register a work to claim copyright?

No. Acquisition of copyright is automatic and it does not require any formality. However, certificate of registration of copyright and the entries made therein serve as prima facie evidence in a court of law with reference to dispute relating to ownership of copyright.

What is the procedure for registration of a work under the Copyright Act, 1957?

Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring copyright. However, facilities exist for having the work registered in the Register of Copyrights.

TERM OF COPYRIGHT

Is copyright protected in perpetuity?

No. It is protected for a limited period of time.

What is the term of protection of copyright?

The general rule is that copyright lasts for 60 years. In the case of original literary, dramatic, musical and artistic works the 60-year period is counted from the year following the death of the author. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organisations, the 60-year period is counted from the date of publication.

RIGHTS OF THE OWNER OF A COPYRIGHT

Economic rights – This allows the rights' owner to derive financial reward from the use of their works by others. Within this category are other rights such as:

1. **Right to reproduce the work** - Reproduction is an act of copying from the previously finished works or giving it a differential form by adding, editing or modifying the same. Such right shall exclusively be exercised by the owner of the work and shall not be infringed by any other person since the act of reproduction of the work may economically make benefits to its owner.
2. **Right to distribute in market** - the owner of the copyrighted work also has a right to distribute in the market and make money out of it. The act of distribution may be in the form of sale, lending for free or for a consideration, rental, or free distribution by the way of gift.
3. **Right to communication to the public** - It means letting or making the product/work available to the public by way of broadcasting, simulcasting or webcasting.



4. **Right of adaptation** - Conversion, alteration, transcription or rearranging a copyrighted work means and includes the right of adaptation.
5. **Right to translate** - The owner of the copyrighted work has a right to translate his work to any other languages.

Moral rights - A moral right would stand a step ahead of an economic right. Moral rights are personal ties between an author and their work. They afford control over the creation and protect against modification or alteration, preserving the work's integrity. It includes the following:

1. **Right of paternity** - The right of an owner of copyright to claim and prevent others to claim the ownership of his copyrighted work is said to be a right of paternity.
2. **Right of integrity** - The right of the owner of the copyright to protect the reputation of his own work from exploitation is the right of integrity.
3. **Right to retraction** - Retraction is an act of taking back the previous assertion made.

Case discussion: Amarnath Sehgal v. Union of India, 117 (2005) DLT 717

Amarnath Sehgal, a renowned sculptor, was commissioned to create a mural for the Indian Government at Vigyan Bhavan. He spent 5 years creating the work and it was displayed in 1962. Without notification or consent, the Government of India removed the mural during renovations and stored it, causing some damage. Amarnath sued the Government for violating his moral rights by mistreating his work.

The Hon'ble Delhi High Court stated that moral rights, which define the essence of an author's work, cannot be taken away from the author, even if the work is sold. Destroying or altering the work was deemed a violation of the author's moral rights.

Why is this protection required in modern society?

Copyright is required in modern society to provide legal protection for creators of original works, such as literature, music, software, and art. This protection helps to ensure that creators are fairly compensated for their work and that their work is not used or copied without permission. Copyright also promotes creativity and innovation by giving creators the exclusive right to control the use and distribution of their works.

Copyright plays a role in stopping plagiarism by providing legal protection for original works and giving the creators exclusive rights to control the use and distribution of their work. This protection helps to ensure that creators are fairly compensated for their work and that their work is not used or copied without permission. When someone is found to have plagiarized, they can be held liable for copyright infringement, which can result in legal action, fines, and other consequences. However, it is important to note that not all instances of plagiarism are necessarily copyright infringement, as copyright law only applies to original works that are fixed in a tangible form.

Case discussion: Eastern Book Company & Others V. D.B. Modak & Another, AIR 2008 SC 809

The extent of originality necessary to obtain copyright protection was the subject of inquiry. The Eastern Book Company brought a case to court against the defendants, Spectrum Business Support Ltd and Regent Datatech Pvt Ltd, for alleged infringement. The plaintiff, a renowned publisher, alleged that the aforementioned defendants had infringed its work, a publication of supreme court orders and judgments, known as SCC, in a substantial manner. The defendants, in turn, argued that there is a minimal level of creativity involved in such work, thus it is not eligible for copyright protection. Therefore, the respondent argues that the petitioner cannot bring legal proceedings based on copyright protection. The Supreme Court held that "the inputs put in the original text by the appellants in (i) segregating the existing paragraphs in the original text by breaking them into separate

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paragraphs; (ii) adding internal paragraph numbering within a judgment after providing uniform paragraph numbering to the multiple judgments; and (iii) indicating in the judgment the Judges who have dissented or concurred by introducing the phrases like concurring, 'partly concurring', 'partly dissenting', 'dissenting', 'supplementing', 'majority expressing no opinion', etc., have to be viewed in a different light. The task of paragraph numbering and internal referencing requires skill and judgment in great measure. The editor who inserts para numbering must know how legal argumentation and legal discourse is conducted and how a judgment of a court of law must read.... In these inputs put in by the appellants in the judgments reported in SCC, the appellants have a copyright and nobody is permitted to utilize the same."

VI. Patent

What is a Patent?

A patent is a legal document which is issued by the government to the inventor. The patent grants an inventor absolute and exclusive ownership right over the invention, the freedom to use and sell the invention for a stipulated time period. It is a statutory right for an invention granted for a limited period of time to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent.

What is the term of a patent in the Indian system?

The term of every patent granted in India is 20 years from the date of filing of application.

Which Act governs the patent system in India?

The patent system in India is governed by the Patents Act, 1970 (No.39 of 1970) as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003.

What can be patented?

Before getting an idea patented, the inventor must ensure its patentability. There are three requirements which are required to be fulfilled for an idea to qualify as a patentable matter:

- Novelty** – the invention must contain one or more unique and new elements;
- Non-obviousness** - Simple or obvious changes to an existing invention cannot be called an invention. The invention must be a notable change in the field. The particular feature must add to existing technical knowledge that is, in terms of uniqueness and commercial viability; and
- Industrial application** - The invention must have some utility. The invention is patentable if it is capable of commercialization.

The purpose of patent law is to encourage scientific research, new technology, and industrial progress.

Here are a few interesting patents granted in India

Memory cells, semiconductor devices, and methods of fabrication - This is a remarkable achievement by Gurtej Sandhu. His numerous inventions in the field of semiconductor devices and fabrication methods demonstrate his expertise and creativity in this area. He has filed over 1170 patent applications and is known as the Indian owning the highest number of patents. His recognition as one of the most prolific inventors in the world is a testament to his contributions to the field of semiconductor technology and his impact on the industry.



Susant's breathing sensor apparatus - This is an interesting invention and highlights the potential of technology to improve the lives of people with disabilities. The Breathing Sensor Apparatus is a unique solution that allows people with disabilities to perform tasks independently, using only their breath. The successful pilot testing and commercialization of the device demonstrate the potential for this technology to have a real impact on people's lives. The collaboration between Susant Pattnaik and the National Innovation Foundation is also noteworthy, as it highlights the importance of partnerships between inventors and organizations in bringing innovative ideas to market.

These patents showcase India's innovation and creativity in a variety of fields and demonstrate the importance of intellectual property protection in promoting and rewarding innovation.

VII. Trademark

What is a trademark?

A 'Mark' is a distinguishing symbol which any person can use to exert public attention or to create some kind of impression in the minds of the people. Trademark is a brand entity which has a capability to distinguish one's goods and services from another person's goods and services. Trademark includes word, design, logo, shape of goods, their packaging and combination of colours. Trademark rights in India are statutorily protected by the Trademark Act, 1999.

What is the function of a trademark?

- It identifies the goods or services and its origin.
- It guarantees its unchanged quality.
- It advertises the goods or services.
- It creates an image for the goods or services.

Who benefits from a trademark?

The Registered Proprietor of a trademark can create, establish and protect the goodwill of his products or services, he can stop other traders from unlawfully using his trademark, sue for damages and secure destruction of infringing goods and or labels.

Trade name

A trade name is the official name under which a company operates and is also known as a "doing business as" name or assumed name. On the other hand, a trademark is the name, symbol, logo, slogan or sound that a business uses to market its products and services. It is a unique identifier that helps consumers differentiate the products and services of one company from those of another. Both trade names and trademarks are important elements of a company's brand and play a crucial role in building and protecting the company's reputation and identity.

The difference between a trade name and a trademark

A trade name does not provide brand name protection on its own, but registering it is an important step in protecting the name. On the other hand, a trademark provides protection for a brand name and helps to distinguish a company's products and services from those of others. In many cases, a company's trade name becomes its trademark, such as the example of Google. Registering a trademark offers additional protection and helps to secure the brand's identity.

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Trade secret

Trade secrets can include a wide range of confidential information that is important for the success and survival of a business. This information can be in the form of strategies, designs, client databases, formulas, programs, or any other confidential information that must be kept secret to maintain the competitive advantage of the business. As per a landmark decision by the Delhi High Court of **Burlington Home Shopping Pvt. vs Rajnish Chibber (1995 (35) DRJ 335)** in 1995, a trade secret is defined as any information with commercial value, which is not available in the public domain and the disclosure of which would cause significant harm to the owner. The Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement from the same year defines trade secrets as information which is kept secret, has a commercial value and the owner of the information takes reasonable steps to keep it secret.

There is no specific legislation that provides protection for trade secrets, but they can be protected under various provisions of different statutes, such as Section 272 of the Contract Act, 1872. Indian courts have also recognized trade secret protection based on equity principles and common law remedies for breach of confidence and breach of contract. To ensure the protection of trade secrets, it is important for businesses to include restrictive clauses in their service contracts. This helps to secure the confidentiality of the firm's trade secrets and prevent unauthorized disclosure.



VIII. Geographical Indication

What is a Geographical Indication?

A geographical indication (GI) is a legal designation that identifies a product as originating from a specific region or geographical location and having certain qualities, characteristics, or reputation that are unique to that place. GI protects the product's authenticity and quality and helps consumers identify the product's origin and reputation. It is a name or sign used on certain products which corresponds to a geographic origin of the product. The relationship between objects and place becomes so well known that any reference to that place is reminiscent of goods originating there and vice versa. The Geographical Indications of Goods (Registration and Protection) Act, 1999 provides for registration and better protection of geographical indications relating to goods in India.



Examples-

Product

Phulkari Handicraft
Warli Painting
Malabar Robusta Coffee
Darjeeling Tea
Pochampally Ikkat

Geographical Origin

Punjab, Haryana, Rajasthan.
Maharashtra, Gujarat, Daman & Diu
Kerala & Karnataka
West Bengal
Telangana

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Geographical Origin

Geographical origin refers to the specific place or region where a product or item originates from. This can include the location where raw materials are sourced, where production takes place, or where a particular process or technique is used to create the product. Geographical origin can have a significant impact on the quality, reputation, and cultural identity of a product and is often used as a way of distinguishing and promoting products with unique characteristics and qualities. In some cases, geographical origin is also protected by intellectual property laws, such as geographical indications.

IX. Designs

What is a Design?

Design intellectual property refers to original and unique creations of the mind that can be used commercially. The Designs Act, 2000 is the law relating to the protection of designs in India. The law help creators earn recognition and financial benefits for their products, and also help prevent others from using their creations without permission.

A design right protects the original and aesthetically unique appearance of a manufactured item, as long as it is new and not obvious. This type of protection only covers the ornamental aspects and does not extend to the functional or structural elements. Any design invented by a person shall be protected by Designs. Shape, colour, line, pattern, etc. are covered under Designs.

A design may not be eligible for registration if it lacks individual character, is considered offensive, or if its appearance is solely dictated by its function. These criteria are used to assess the registrability of a design and ensure that it meets the necessary standards for protection under intellectual property law.

Example - Design of the wrapper of a biscuit or chocolate, design of a car, design of the shape of a cold drink bottle, etc.

X. Conclusion

Intellectual property rights (IPR) are exclusive rights to individuals for a limited time period, allowing them to exploit income from cultural expressions and inventions. Proponents of IPR provide three commonly accepted reasons for society to grant such privileges.

When someone creates a new product, it takes a lot of time, money, and effort. It's only natural for the inventor or organization to want to own exclusive rights to the invention, so that others can't benefit from it without permission.

It encourages creativity and innovation by granting economic benefits to the creator



UNIT I

It promotes economic growth through competition and protection of rights.

These rights are necessary to protect the global intellectual property rights in today's world. The management of intellectual property (IP) and intellectual property rights (IPR) is a complex task that requires a combination of functions and strategies, aligned with both national laws and international agreements. It can no longer be solely approached from a national perspective.

UNIT II

Forms of IPR can vary and require varying approaches, including specialized knowledge in areas such as science, engineering, medicine, law, finance, marketing, and economics.

The handling and management of these forms of IPR involve different strategies and require consideration of their social, economic, technical, and political impacts.

UNIT III

The rapid pace of technological advancement, globalization, and intense competition have made it necessary to protect innovations through IPRs like patents, trademarks, copyrights, and trade secrets. Despite these measures, infringement of intellectual property rights still occurs. The government has laws in place to prevent such violations and is taking action to enforce them.

Exercises

Based on your understanding, answer the following questions:

UNIT IV

1. What is meant by Intellectual Property? Why does intellectual property need to be promoted and protected?

2. Discuss the concept of National Treatment and its evolution through the various international Conventions on Intellectual Property Rights.

3. Describe Copyright and the works protected under copyright act.

UNIT V

4. You are an author who has written a novel in Hindi. The novel has become immensely popular and now podcasters, serial producers and Youtubers are trying to adapt the story to be telecast on various forms of media. There are some authors who also want to translate your novel into English. Discuss how you will negotiate in this situation given that you have certain economic rights as a copyright owner.

UNIT VI

5. There was a recent tiff between the States of Odisha and West Bengal over the origin of the ever-popular sweet dish- 'Rasgulla'. Both states argued that the 'Rasgulla' had been invented in their respective states. However, the Registrar of the Chennai GI office gave the GI tag to the Banglar Rasogulla of West Bengal. This caused a rift between the states as both were competing to get the GI tag for rasgulla for their respective states. In light of the above case discuss:

a) What rights does a geographical Indication provide? How would Orissa be adversely affected by the order of the Chennai GI office?

b) For which types of products can GI tags be used?

UNIT VII

6. Valganciclovir hydrochloride is a medicine that is stable when stored as a solid-state under normal conditions. The applicant tried to make a liquid form of the medicine, but it was unstable for the required shelf life. Therefore, they focused on a powder form that could be mixed with water to make a liquid form. The powder form was very similar to the solid form and their patent claim was rejected. Discuss why the patent claim was rejected in view of the essential ingredients of a successful patent claim.

UNIT VIII



Activity based questions:

1. When we eat a burger from a renowned chain or drink a bottle of branded cola, we're consuming IP. From trade secrets like the Coca cola's original recipe to registered designs like Nike's tick mark, IP protects products, ideas and experiences that we consume everyday.

Inorder to show students that IP is all around us , the students can conduct an IP treasure hunt. The teacher will set a timer and have students look around the class room for brand names, trademarks, registered designs or patents. If they read a book, watched a video or listened to a song today, even then they have interacted with IP. Award a prize to the student with the most surprising discovery or the highest number of discoveries.

2. You are setting a new cold drink manufacturing company with new and innovative machineries and recipes. You plan to use your knowledge of IPR to safeguard your new company from old bigshot companies as well as new budding companies. Describe in details, what all rights you will register and how you will benefit out of it.

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