

Copyright, Patent & Trademark

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The world we live in is driven by innovation. The research and development projects are going global. Talking of India and its tryst with innovation, KPMG Survey (2018) honored India as the 3rd largest tech innovation leader in the world. This presents a reality regarding the significance of intellectual property and its contribution in promotion and growth of innovation and research projects around the world.

The Intellectual Property Law has been the fastest growing legal field in recent years. It is pretty obvious that without having the assurance of security regarding one's innovation, creative works or a brand, it is unlikely that companies or individuals will be willing to give their time, effort and money into such projects. Hence, strong Intellectual Property Laws and growth in innovation work in tandem.

The domain of intellectual property is vast. But it's essential to have a good understanding of the most common rights that are offered through IP protection — most commonly applied for are:

- **TRADEMARK**

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- **COPYRIGHT**
- **PATENT**

It is observed that people get confused between the different types of available IP rights. This article will help you gain some clarity on these terms through a comparative analysis. We start off with understanding the difference between Copyright, Patent and Trademark.



Protect originally created content and artwork through Copyright Registration

Copyright is an exclusive right that protects original works of authorship; covering both unpublished and published works including literary, dramatic, musical, artistic works, cinematographed film and sound recordings. It gives the copyright holder the right to reproduce, license, to distribute copies or phonorecords of the copyrighted work. It also means that one can display the copyrighted work publicly or perform the copyrighted work publicly. In the case of works made for hire, the employer and not the employee is considered to be the author i.e. a situation where a graphic designer is employed to prepare and design products for a company and he/she does this work within the scope of their employment, the copyright over the graphical illustrations or designs would be the company's property.

The right subsists with the owner from the moment the work is created in a fixed form. It protects mainly the form of expression and is not much focused on just content. For example: If a movie is made by adopting a story from a book, both the creators i.e. the author of the book and the person who makes the movie, both will have the exclusive rights for their individual works. Copyrights rule the

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entertainment industry all around the world, creating a space for artists to explore their talents and earn from them.

Under the copyright law, works that are not fixed in a tangible form of expression like a choreographic work that is not recorded or noted in any form, names, listing of ingredients, procedures, concepts, ideas etc. are not eligible for protection under the copyright law. In addition to that, works consisting commonly available information to all and devoid of any original authorship, like calendar's, height/weight charts that can be retrieved from public documents or other common sources etc. are also not protected.

Copyright registration is not mandatory for protection. Regardless of that, registration is encouraged due to the many inducements that it offers. This includes prima facie evidence of authorship, a legal formality intended to make a public record of the basic facts of a particular copyright etc. Generally, the protection provided under the copyright law is for the lifetime of the author or creator and an additional sixty years after his/her death. After which the copyright comes under the public domain and anyone can use it without any restrictions.

Secure your logo and brand identity through Trademark Registration

A trademark is a word, group of words, symbol or combination of these that distinguishes the products of one competitor from the products of other competitors in the marketplace. It has to be unique, distinct, and capable of being represented graphically. Also, should be capable of distinguishing the goods or services of one person from those of others a brand can be registered under the trademark law.

It protects and helps in the creation of the brand which is eminently important to a company's growth. The first thing that a consumer recognizes is the brand through its distinct identity i.e. its name. The finest example to back this up is the fashion industry. It has opened new avenues in the way marketing is done and acts as a tool to earn and make huge profits. Hence keeping the name's exclusiveness and uniqueness secured is the primary objective of a company, which is exactly what trademark protection does. Trademark registration secures the brand

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owners from unfair competitors, such as counterfeiters from copying and using similar names/logos to market their inferior or different products or services. Thus, it encourages fair competition and makes it easier for consumers to make informed decisions while buying goods/services from a particular company or a brand.

The owner of a registered trademark is granted the exclusive right to prevent all third parties from using the owner's trademark without his/her permission. This holds true when both are dealing with the similar or identical goods or services and there is a possibility that such use would result in a likelihood of confusion. The registration also gives owner the authority to allow the third party to use the same in return for a payment. Trademark protection in India is perpetual, subject to renewal of the registration after every 10 years. The application for renewal can be filed six months before the expiry of the validity period of the trademark.

Innovations and Inventions are protected through Patent Registration

The patent is one of the most important intellectual property rights that act as a stimulus for people to invent. They not only aid the inventor to make money but also the country in which the patented invention is made. Giving the country a boost in the growth and development front. It is basically giving the inventor a monopoly grant through which the inventor monitors and controls the availability of the invention to the public. One can do so based on its demand or by deciding the price of the patented product and make money through it. Being a property right it can be gifted, inherited, assigned, sold or licensed.

An invention needs to be novel, non-obvious and most importantly it needs to have some sort of utility. It cannot be a mere model or an idea. The patent owner holds the exclusive right for 20 years from the date of registration. Unlike copyright, registration is a must and without it, no rights regarding the intellectual property can be claimed, unless it proves itself as a prior art and claim rights through passing off.

The inventor is usually the owner of the patent but not when it is made during the course of his employment as

part of his/her job then the employee or the organization in which the individual is working becomes the original owner.

Copyright vs Trademark vs Patent

CATEGORIES	COPYRIGHT	TRADEMARK	PATENT
Governed Under	The Copyright Act, 1957	Trade Marks Act, 1999	The Patents Act, 1970
Types of Protection & Works	Protection of original creative expressions like literary works, artistic works, dramatic works etc.	Protection of unique name that makes a brand distinct from other. Can include name, slogans, logo, shape, colour etc.	Protection of inventions that are novel, original and has industrial utility.
Validity and Reach	Valid for life time of the author + 60 years after his/her death. Protection available in most of the countries in the world.	Validity for 10 years can be made perpetual by renewing the trademark every 10 years. Territorial in nature to claim rights should be applied to each country individually.	Validity for 20 years starting from the day the application is first made. It is also a territorial right and therefore it is effective only within the territory of India. Separate patents required to be filed for each country where protection is required.
Secures	Copyright secures Creative or intellectual creations.	Trademarks secure the branding under which products and services are sold.	Patent secures inventions that are useful for the world and has some use. E.g. New invention in pharmaceutical industry.
Right comes into Existence	Exclusive rights over the copyright are created the moment the authorship creates the work.	Once the trademark gets registered the applicant of the mark can claim complete right over the said mark.	Patent registration takes about 2-3 years in all. But the owner can stop anyone else from claiming right over a particular patent the moment he applies for provisional patent.

		Registration usually takes 12-18 months.	
Provisional Application Requirement	No provisional application required.	<u>Trademark registration</u> does not include provisional application, but it requires a trademark search.	A provisional application gets you 12 months of time to file a complete specification, and a priority date claim.
Symbolic Representation	No symbolic representation to show registration.	Used when registration is in process: ™ Used when registration is complete: ®	No symbolic representation to show registration.

Conclusion

Over the years a sharp rise is observed in awareness of intellectual property laws amongst the people. Almost every business touches IP rights and requires its protection as it safeguards the valuable assets of a company/business. From the company's brand name, any invention it has made, to the website it owns; Patent, trademark and copyright not only secure the rights, but they also prove as an incentive for better creative expression and are a major stimulus for inspiring people to invest into research and development of projects worldwide. Intellectual property is a wealth-creating machine giving an individual/company a legitimate ownership with an image of a trustworthy organization. Every business house today relies on intellectual property rights, spending millions of dollars to secure their intellectual properties.

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Kahini Jhaveri is an IP specialist at LegalWiz.in, with a keen interest in content creation. She holds a B.A. LLB honours from Institute of Law, Nirma University, Ahmedabad. Kahini specializes in Intellectual Properties, specifically Trademark Law.

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