

INDIAN PERSPECTIVE ON CYBER LAW AND IPR ISSUES

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ABSTRACT

The Model Law on Electronic Commerce on International Trade Law was adopted by the General Assembly of the United Nations (UNCITRAL) on January 30, 1997, and this resolution led to the creation of the Information Technology Act of 2000. One of the crimes with the fastest global growth is cybercrime. The Act addresses certain urgent concerns about technological misuse and has been successful in laying out the framework for rules in the cyberspace; nonetheless, there are other significant gaps that have not been addressed, such as those related to intellectual property. Knowledge or information with an economic value is referred to as intellectual property. Intellectual property rights, which include copyright, patent, trademark, and design, are a combination of ideas, innovations, and creations. Since these are products of the human mind, they are referred to as intellectual property. The Information

Technology Act of 2000 has no mention of intellectual property protection, despite the fact that intellectual property infringement is one of the most difficult issues in cyberspace. Internet users can violate their domain names and copyright, yet the Trade Mark Act of 1999 and the Copy Right Act of 1957 say nothing about this. As a result, we lack the enforcement tools necessary to guarantee domain name protection online. It is now necessary for us to pass specific laws to safeguard intellectual property online.

Keywords - Cyber law, Copyright infringement, Domain names, Cybersquatting, IPR issues & challenges involved.

INTRODUCTION

The benefits of computers and the internet are widely acknowledged, and they are ingrained in both contemporary business and commerce and society at large. Modern businesses greatly benefit from the usage of computers and the internet, and without these tools, society would not be able to run efficiently. However, using computers and the internet has led to a number of inevitable computer and internet misuses. This has been made feasible in particular by the fact that computer use has no geographical restrictions and can originate from any country. These days, e-commerce is highly common, particularly in the business world. The benefits and potential for global exposure of doing business via e-commerce or the World Wide Web can quickly reach web users worldwide. However, this has made room for cybercrime to flourish.¹

Cybercrime is defined as using a computer to commit a crime or to become the target of one. The Indian parliament passed the

Information Technology Act to combat cybercrimes, giving electronic records and digital signatures legal standing. A legislative foundation for enabling and protecting electronic transactions through the medium is provided by the Act. Its foundation is the model law on e-commerce that UNCITRAL (United Nations Commission on International Trade Law) adopted, which promotes a move away from a paper-based system and toward one based on computers.²

However, there is nowhere in the IT Act, 2000 to address intellectual property challenges. Intellectual property includes works of art such as integrated circuits, patents, trademarks, copyrights, and geographical indications. The author of this work has brought attention to a number of significant topics, such as domain name disputes and online copyright infringement.

Key features of the 2000 Information Technology Act

There are thirteen chapters and ninety-four sections in the Act. Digital signatures, electronic governance, attribution, acknowledgment, and dispatch of electronic records, security of digital signatures and electronic records, regulation of certifying authorities, subscriber duties to digital signature certificates, cyber regulation appellate tribunal, offences and network service provider liabilities are all covered in the chapters. The Indian Evidence Statute, Reserve Bank of India Act, Indian Penal Code, and Bankers' Books Evidence Act are among the four schedules of the act that specify the necessary revisions.³

This Act has three objects, those are

I. In order to facilitate the harmonisation of the laws governing

alternatives to paper-based methods of communication and information storage, all states are called upon by the UN to give model law favourable consideration when they enact or revise their laws. This call must be answered and put into effect.

- II. To give legal recognition to business transactions involving electronic data interchange and other electronic communication methods—often referred to as e-commerce—that utilise alternatives to paper-based information storage and communication techniques.
- III. To make it easier for papers to be electronically filed with government agencies in order to encourage the effective delivery of government services through the use of trustworthy electronic records.⁴

Regretfully, the IT Act does not address cybersquatting—that is, stealing domain names from their rightful owners—regulating the operations of cybercafés, taxing e-commerce transactions, hosting net pornography on websites of foreign origin, spamming—that is, the practise of sending unsolicited commercial emails that violates an individual's online privacy—crimes committed by websites of foreign origin, the unenforceability of laws pertaining to e-governance and jurisdiction in cyberspace, stamp duty of e-contracts, cyberstalking, credit card frauds, cyberdefamation, etc.

Types and Significance of Intellectual Property Rights

The Byzantine Empire, when monopolies were given, is where the idea of intellectual property originated. For example, in Greece, chefs were granted a one-year monopoly to capitalise on their recipes. Anyone who created a machine or procedure to speed up the

production of silk was granted exclusive privileges by a statutory legislation passed by the Senate of Venice. As a result, after intellectual property was completely foreign to the nomad society, a new period of intellectual property rights protection was granted for all new ideas. One of the categories of intellectual property is copyright. We must understand the idea of intellectual property and its significance before delving into the specifics of copyright and associated challenges in cyberspace. To return home is to step into a space created and brimming with human ingenuity & inventiveness. Everything in our lives, including our carpets and couches, washing machines, refrigerators, and phones, as well as our novels, paintings, and family photos, is a creation of human creativity. Since these are products of the human mind, they are referred to as intellectual property. These days, businesses also use the internet for instructional purposes.

Industrial property and copyright are the two categories into which intellectual property falls. Patents, trademarks, geographical indications, designs, and semiconductor layout design are all included under industrial property. However, copyright also protects sound recordings, theatrical, artistic, musical, and cinematographic works of art. The Patents Act of 1970, the Trade Marks Act of 1999, the Geographical Indications of Goods (Registration and Protection) Act of 1999, the Design Act of 2000, the Semiconductor Integrated Circuits Layout-Design Act of 2000, and the Copyright Act of 1957 are the main laws governing intellectual property in India.

Copyright Concerns in Online Environments

By granting them the sole right to reproduce and disseminate their

works for public benefit, copyright laws aim to incentivize writers, musicians, and filmmakers to create original works. After the restricted right, or copyright term, expires, the works enter the public domain and can be copied by everyone without permission. Original works of literature, drama, music, art, cinematography, sound recording, and computer programmes are all protected by copyright.⁵

These days, copyright benefits a wide range of sectors, such as publishing musical and dramatic compositions for performances, broadcasting, and the creation and distribution of books, periodicals, and newspapers. As intellectual property, copyrights are more swiftly and easily transferred across nations than other types of property. Thanks to advancements in technology, copyright content can now be easily and simply copied. As a result, preventing copyright infringement is extremely challenging and frequently impossible. Books, audio cassettes, video cassettes of movies, or computer programmes can easily be transported from one nation to another and copied in large quantities for distribution. Worldwide, the practise of recording radio and television shows at home without permission has become widespread.⁶

Copyright Violations in Cyberspace

Digital technology has made it easy to copy content from one website, alter it, or simply reproduce it on another, which has created significant difficulties for the conventional understanding of individual rights and protection. Publishing may be accessed by anybody with a PC (Personal Computer) and a modem. A few mouse clicks will download, upload, save, transform, or create a derivative work. Given that it includes text, pictures, audio, and even video, a

web page is comparable to a book, magazine, or multimedia CD-ROM in that it is protected by copyright. The owner of a work has the sole authority to permit its reproduction, distribution, and preparation of derivative works under copyright law.⁷

Copyright law and computer software

A "collection of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of enabling a computer to accomplish a particular task or achieve a particular result" is referred to as a computer programme in section 2(ffc) of the Copyright Act. According to the Copyright Act, "computer programme" refers to computer software.⁸

The Copyright Act provides copyright protection for this computer software as well. The Copyright Act includes computer programmes in its definition of literary work. The right to grant software licences is one of the many rights that belong to the owner of the computer software. There are several kinds of software licences.

Cyberspace Trademark Law and Domain Name Concerns

"A mark capable of being represented graphically and which is capable of differentiating the goods or services of one person from those of others," according to the definition of a trademark, is everything from the shape of an item to its packaging to the colour combination of it.⁹

The function of a trademark is to identify the country of origin of goods. Trademarks serve the four purposes listed below.

- I. It gives the product's name and place of origin.
- II. It makes a quality assurance.
- III. It promotes the item.¹⁰

It shapes the public's perception of the product, especially that of current or potential buyers of such things. Trademark examples include Sony, Pepsi, Colgate, Pepsi, Lee, and Skoda.

Conflict between Domain Names and Trademarks

The purpose of the 1999 Trademark Act was to prevent the use of false marks and to modify and unify the laws pertaining to trademarks for goods and services. Trademark owners who want to use their marks as domain names, however, have discovered that unapproved parties have recognised these names, frequently in an effort to wilfully infringe upon the rights of the original trademark owner. Since domain names are actually registered on a "first come, first serve basis," this frequently results in what are known as "abusive registrations," or the registration of a domain name containing a trademark by an individual or business over which they have no legal claim or interest.

Different Types of Trademark Violations in Cyberspace

- **Cybersquatting**

Numerous domain name disputes are brought before courts worldwide for consideration. Concerning "Cybersquatting," which is the use of a domain name by an individual who is neither registered nor has any inherent rights to the name, this has been one of the most significant types of disputes. Because trademarks and domain names are identical, some people have taken advantage of this by registering other people's trademarks as domain names, which they then sell back to the trademark owners or other third parties for a large profit. The term "cybersquatting" refers to this practise of someone sitting on another person's property. Abuse occurs when someone registers a

domain name that contains the name or trademarks of another, a practise known as "cybersquatting. "This approach demonstrates how crucial domain names are to creating an online brand. This is a well-known tactic that is typically used to either prevent a legal user from registering the most sought-after domain name or to try and benefit from the sale of the names. The courts have been forced to examine the connection between trademarks and domain names due to the cybersquatting trend. The complainant must demonstrate the dishonest intent, lack of legal rights and interests, and resemblance of the domain name to the trademark in order to successfully file a case to stop cybersquatting.¹¹

- **Reverse domain name hijacking**

Another name for it is reverse cybersquatting. It occurs when a trademark holder tries to get a domain name by suing the legitimate owner of the domain name in bogus cybersquatting accusations. In certain cases, especially when the domain names belong to smaller organisations or individuals who lack the financial wherewithal to defend the case, the owner of the domain name must transfer ownership of the name to the owners of the trademark in order to avoid legal action and expensive costs. Reverse domain name hijacking is primarily carried out by well-known, affluent people and larger corporations.

- **Meta tags**

One element of web pages that goes by the name "Meta element" is the meta tag. Meta tags include details on key terms, descriptions of pages, and other pertinent information. When the internet first started, meta tags were used by search engines to specify the purpose

of a page and to assist in placing web pages in the appropriate categories. These days, people have started misusing Meta tags to create fictitious page rankings for badly designed websites. The three types of meta tags are title, description, and keywords.

IT, Trademark, and Copyright Act loopholes

The current or proposed Information Technology Act in India does not have any provisions that would penalise cyber-squatters; at most, the domain can be reclaimed. Despite the IT Act's lack of legal compensation. In an effort to discourage squatters from taking domains in the future, IN registration has taken aggressive measures to compensate affected companies. However, the majority of squatters go by mysterious names. Through the National Internet Exchange of India, or NIXI, the. The IN Registry is a separate entity that is primarily in charge of upholding the. IN the country code top-level domain (cc-TLD) and guaranteeing its dependability, security, and stability throughout operation. The new policy, which was outlined by the Indian government's Ministry of Communications and Information Technology and Department of Information Technology, will be implemented in its entirety.

Regarding jurisdictional concerns, cybercrimes involving intellectual property rights, cyberstalking, cyberdefamation, etc., there is a gap in the Information Technology Act. Similarly, there is no mention of difficulties related to online trademark and copyright infringement in the Indian Trademark Act of 1999 and the Copyright Act of 1957. Although the Copyright Act protects computer programmes, it offers no recourse for online software infringement.

Conclusion

Since someone invests their time and talents into creating intellectual property, it should be preserved at all costs as one of their most precious assets. On the other hand, stringent legislation in this area is desperately needed in order to prevent future IPR-related crimes. The goal of the new domain name dispute law should be to provide owners of trademarks and service marks with legal recourse against defendants who purchase domain names that are confusingly close to or identical to their trademarks "in bad faith." It ought to serve as a crucial tool for trademark owners to defend their intellectual property online. The "U.S. Anti-Cybersquatting Consumer Protection Act, 1999" is a special piece of legislation that was passed in the United States to prevent cybersquatting. It protects living people from having their personal name used in certain situations and the interests of owners of both registered and unregistered trademarks against their marks being used within domain names. Therefore, it is imperative that India pass appropriate legislation to safeguard copyright and trademark owners' rights.

The Indian courts are headed in the right direction, but they must ensure that the underlying purpose of these petitions is not undermined or mishandled in the interim. In *The Indian Performing Right versus Mr. Badal Dhar Chowdhary* CS(OS)1014/2004, the Delhi High Court held that those special directives may not be issued while the parties were operating in their natural locale under the provisions of the CPC. The court expressed in its entirety that "unclear order can be a manhandle of the procedure of the court and such ambiguous and general order of expectant nature can never be

allowed." The application of John Doe orders is another major problem. To prevent misuse, the extent of such requests should be clearly stated. Utilizing John Doe agreements in India has given IP rights holders more awareness and security, however the question remains as to how these demands would actually be fulfilled. Implementing John Doe orders can include a variety of strategies, such as setting up Commissioners for investigation and seizure and creating new regulations to limit copyright infringement.

Recommendation

India's cybersecurity industry is still in its infancy. Now is the ideal moment to pay attention to concerns related to digital security. Developing mindfulness at the local level, in places like schools, where students can be taught how the Internet works and what risks there are, is anything but difficult. Firewalls should be installed on all corporate PCs, home PCs, and digital cafés. Through their specialised organisations or entryways, clients should be instructed not to interfere with unapproved systems. Strong language should be used to convey the dangers, and the effects should be highlighted. In order to advance the process, cybersecurity awareness should be taught in schools and universities. Legislators must create strong legislation to permit cybersecurity and promote appropriate mindfulness by announcing the same through radio, television, and online advertisements.

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