

Intellectual Property and Its Protection through Cyber Laws: Indian Perspective

CS Yogesh Sharma^{1*} Prof. (Dr.) R. K. Gupta²

¹ Assistant Professor of Law, Maharaja Agrasen University, Baddi, Solan, Himachal Pradesh

² Vice Chancellor, Maharaja Agrasen University, Baddi, Himachal Pradesh

Abstract – Property can be broadly classified into tangible property and intangible property. Tangible property can be in the form of land, where house, building, factory, furniture etc. Intangible property is something which is not visible but is recognised by law as a property. One such type of property which is recognised by law is called intellectual property. This property arises from the creation of the mind of a person and its value can be in millions of rupees. A category of law which protects the rights of the possessor of intangible products of ingenuity or innovation is called intellectual property. Special rights are provided to definite owners of artistic work, literary work, symbols, designs and technical inventions. A collective name given to these rights is called Intellectual property rights and the property protected under these rights is called intellectual property.

Intellectual properties such as copyright, trademark, design and circuit design are interwoven with electronic technology and therefore more affirmative protective laws are required to protect inventions. In today's globalised world it is essential to save the real owners of intellectual property from theft and economic losses. The real owners must not only have knowledge of their intellectual property rights and cyber laws but also be aware of conflict of law and international law. Though the laws have been incorporated by the Government, it is the duty of the owners of intellectual property rights to invalidate and reduce mala fide acts of criminals by taking proactive measures. This paper explicates various issues associated with the protection of intellectual property through cyber laws in India.

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INTRODUCTION

The Governments of almost all the countries of the world recognise creation of human intelligence in the form of inventions and creations as Intellectual Property. The constitutions of these countries are committed to protect intellectual creations from theft, copying and being misused by providing exclusive rights to the creators. On the basis of the type of invention/ creation, the Governments provide patent, copyright, trademark etc. rights to creators.

The use of Information Communication and Technology has lengthened the reach of each user to universal information access. With the help of intellectual property resources, the details of any invention/ creation can be accessed globally within minutes, another feature named as prior art search, can help in finding whether the information is in existence. If the information is available on internet, it means it will fall in the category of prior art and cannot be protected under any IP rights. The most exploited intellectual property rights according to narratives is the copyright law. With advancement in typing and printing, all the works can now be digitalised. Once the work of art, literature, music is digitalised, it can easily

be copied, amalgamated, manipulated, and altered to generate a variety of new works.

Web based software and intellectual property management tools have been developed to do analysis within fraction of seconds. As a result cybersquatting, trademark infringement and piracy in the form of copyright infringement have increased. With the initiation of Information Communication and Technology (ICT), the balance between the intellectual property possessors and its exploiter is greatly in favour of exploiter. Some of the reasons for this imbalance are:-

- a) Intellectual works in digital form can easily be replicated
- b) Intellectual works in digital form can easily be transmitted
- c) Intellectual works in digital form can easily be manipulated and modified

- d) Intellectual works in digital form are very compact and can be carried anywhere in CD, Pen drive etc.

COPYRIGHT PROTECTION FOR COMPUTER PROGRAMS

Copyright is a term used to describe a legal right given to the creator over a literary and artistic work. It is given to the creator of music, painting, sculpture, film, database, advertisement, technical drawing, maps, books, computer programs etc. The creator has an elite right to make replicas or copies of the work, demonstrate or present their work in public, make translations and adjustments of their work.

The WIPO definition of copyright clearly says that a computer program is covered under the copyright law just like any literary work. When a computer program is written on a paper, the copyright will definitely subsist. The question that arose was whether the computer program in magnetic or electric form is also covered under this law? While the computer program in a magnetic or electronic structure is replication or modification of the innovative program therefore copyright subsists. The same decisions were held in English case *Sega Enterprises Vs Richards* and Australian case *Apple Computer Inc Vs Computer Edge Pvt Ltd*. In 1994 an amendment was made in Indian Copyright Act in form of section 2(o) in which computer programs in any form were expressly protected. In the past few years the World Wide Web has not only gained popularity but has also become a place of commercial activity and increasing legal turmoil.

LINKING AND FRAMING AS TOOLS OF INFRINGING COPYRIGHT

Linking is a technique which allows a website user to visit another website by simply clicking on the live word. Hence with the help of linking a anyone is capable of viewing contents of other websites without toggling to that website. The problem arises when one website links to copyrighted material contained in another website. The person providing the link may not be making copies himself but others can easily make copies from the material causing losses to the copyright owner.

The method of constructing a web page is called framing. The programmer of the web page divides the web browser window into separate areas or frames and dictates what goes in each frame. A website employing frames generally shows the name and logo of the original website on the top of the page and other information in different frames. Framing is done in such a way that the name and logo of the original website is always visible on the top and other information can be scrolled down by the user. The problem arises while the website by means of framing permits the users to view other websites in different

frames. This can straightforwardly bewilder and mislead the web surfer on the subject of the relationship between the actual site (victim) and the framing site. Framing websites can unfairly derive traffic from the actual sites (victim) legally protected work. The framing website can also take some elements from multimedia settings of a framed website and combine it with some other information to make its own elements, making it fit for the definition of adaptation to avoid legal proceedings. The rights of the creators are infringed widely by framing.

TRADE MARK AND DOMAIN NAME IN CYBER SPACE

Any name, word, symbol etc. used by the goods manufacturer or service provider to designate and distinguish his product or service from others is called a trademark. In case of goods the mark is attached on the goods or its covering while in case of services the mark is used in commercial/ hoarding referring to the services. Online sale and purchase of goods and services has bigger importance of name identification on the internet. The domain name creates an expectation as to identity, quality and content therefore it can function as a trademark. The domain name is awarded on the basis of first come first serve basis.

There have been several instances where unrelated third parties have taken domain names of well-known trademarks with the intention of re-selling them to righteous owners at desired inflated rate. There are also instances where opponents or competitors have taken domain names of a well-known trademark to cause trade losses. This practice of deliberate registration of trade name or trademark of another company or individuals in bad faith is called Cyber-squatting. In India there is no specific legislation to prevent Cyber-squatting but the provisions of Trademark Act, 1999 can be invoked to fix the liability in case of involving domain name. If a mark is used in printed or other visual representation, it cannot be doubted that the domain name corresponding to the mark is definitely used both in the electronic and visual depiction.

MISUSE OF PATENT IN CYBER SPACE

Patent is granted to a product or process of making a product if it is new, involves an inventive step and is capable of industrial use. With the advancement of computer software and networking of computers, it was argued that computer software must be secluded under the patent law as a replacement for of copyright law. Though this argument still remains an elusive concept for intellectual property lawyers because some countries recognise computer software as patentable while others countries

consider computer software as a subject matter of copyright.

The Indian law is very clear; Patents in India are not offered to computer programs either in real world or in cyberspace. Section 3(k) of the Indian Patent Act expressly excludes patenting of business methods and computer programs from the subject matter of patentability.

CYBER LAW AND INTELLECTUAL PROPERTY PROTECTION

The Information Technology Act 2000 was passed to assist and preserve electronic transactions in electronic medium. The act comprised 94 sections divided into 13 chapters covering digital signatures, e-governance, acknowledgment and dispatch of electronic records, security of electronic records, cyber regulation appellate tribunal, offences and liabilities of network service supplier etc. It was further amended in the year 2008. As a matter of fact, the breach of IPR is among the largest exigent areas of cyberspace, yet the IT Act does not expose a single word regarding protection of Intellectual property. There is no stipulation in the current or proposed Information Technology Act in India to penalize cyber-squatters, at best, the domain can be taken back. The Information technology Act lacks jurisdiction issues, cybercrimes related to IPR, cyber stalking, cyber defamation etc. Computer programmes are protected under the Copyright Act but it does not present remedies for online software piracy.

CONCLUSION

Numerous laws have been incorporated for protecting intellectual property but when it comes to protection of intellectual property under the information technology act, there is no provision which could be appeal to. Cyber laws only cover criminal as well as civil issues related to financial crimes, cyber bullying etc. Issues pertaining to intellectual property (primarily copyright and trademark), free space, suitable exercise of jurisdiction and authority over transaction and communication in cyberspace, privacy, free space etc should also be covered under cyber law.

Infringement of copyright, theft of computer programmes, use of trademark and deceptively similar domain name for online business etc must be prevented. Separate laws must be made to tackle the above mentioned issues or amendments must be made in the existing laws to solve these problems.

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Corresponding Author

CS Yogesh Sharma*

Assistant Professor Law, Maharaja Agrasen University, Baddi, Solan, Himachal Pradesh

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