

INTELLECTUAL PROPERTY RIGHTS AND CYBER LAW

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Interface of IPR and Cyber law-

Intellectual property means knowledge or information in any form which has a commercial value and Intellectual property rights can be defined as a mix of ideas, inventions and creations i.e. Copyright, Patent, Trademark, Design are some of the types of Intellectual Properties. These things are creations of the human mind and hence called Intellectual Property

The IT Act,2000 has addressed the misuse of technology in form of cyber crimes. It has however failed to discuss Intellectual Property issues and its protection. Likewise, the Indian Trademark Act, 1999 and Copyright Act, 1957 are also silent on issues arising out of online Trademark and Copyright infringement. Though computer programmes are protected under the Copyright Act but it does not provide remedies for online software piracy. Cyber squatting is also not punishable directly under the IT Act.

Copyright and cyber law-

Copyright is a legal term describing rights given to creators for their literary and artistic works. The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Copyright subsists in a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work and creator is the owner of the work. Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties. These economic rights have a time limit, (other than photographs) is for life of author plus sixty years after creator's death.

Online Copyright violation-

Caching

One of the basic copyright issues in the internet is determining the border between private and public use. The Indian Copyright Act, 1957 makes a distinction between reproduction for public use and can be done only with the right holder's permission. The right of reproduction presents certain fundamental problems over the internet. This is because of the basic nature of internet transmission. Reproduction takes place at every stage of transmission. Temporary copying (known as caching) is an essential part of the transmission process through internet without which messages cannot travel through the networks and reach their destinations. In the Indian Law, reproduction has to be in a material form but includes "storing of it in any medium by electronic means" making caching also violative of copyright.

Plagiarism

Technological progress has made copying of copyright material easy and simple. Consequently, the control of copyright infringement has very difficult and often impossible. Books, videos, films, music can be copied without any difficulty and thousands of copies can be made from it and distributed. Taking content from one site, modifying it or just reproducing has been made possible by digital technology. This has posed new challenges for the traditional interpretation of individual rights and protection under the Copyright Act.

Protection of Database

The Indian Copyright Act 1957 protects "Databases" as "Literary Works" under Section 13(1) a. Of the Act which says that copyright shall subsist throughout India in original literary, dramatic, musical and artistic works. The term computer Database has been defined in the Information Technology Act 2000 for the first time. Section 43 of the I.T. Act 2000 provides for compensation to the aggrieved party up to one Crore rupees from a person who violates the copyright and cyberspace norms. Also Section 66 of I.T. Act 2000 provides for penal liabilities in such a case.

Protection of computer software

According to section 2(ffc) of the Copyright Act, a computer programme is a "set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium,

capable of causing a computer to perform a particular task or achieve a particular results". Computer software is "computer programme" within the meaning of the Copyright Act.

Under the T.R.I.P.S (Trade Related aspects of Intellectual Property Rights) agreement, computer programs now qualify for copyright protection just as any other literary work as well as other forms of Intellectual Property Rights protection

These computer software are also subject matter of copyright protection under the Copyright Act. Computer programmes are included in the definition of literary work under the Copyright Act. Owner of the computer software possesses with various right including the right to grant software licenses. Software licenses can be of various types such as freeware license, open source license, demoware etc.

Software copyright owner has the right to reproduce and make any number of copies of his work as he likes. Secondly, he may display his software on the internet which would amount to display to the public. He is also vested with the rights of selling, renting, transferring, updating, modifying his software copyrighted work. No person can use such copyrighted work for his own benefit without prior permission of the owner. Nevertheless if any person exploits the copyrighted work for any commercial purpose or to cause any monetary loss to the owner, then it will amount to infringement of copyright.

Even though the software copyright owner enjoys many exclusive rights yet they are not absolute and are subject to certain limitations and exceptions in order to protect and safeguard the public interest particularly of the users of the software.

In certain circumstances, the use of the copyrighted work is allowed even without the permission of its author in some socially desirable circumstances such as literary, dramatic, musical or artistic work for the purpose of private use, including research, criticism or review, in order to utilize the computer program for the purpose for which was supplied or to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilize the computer program for the purpose for which it was supplied

Trademark and cyber law –

Trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise. It may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. It helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs. Registration of trademark is prima facie proof of its ownership giving statutory right to the proprietor. Trademark rights may be held in perpetuity. The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

Domain name- a domain name is the linguistic counterpart Internet Protocol address.

Domain Name Dispute and Trademark law-

Cybersquatting

Various types of domain names disputes come for consideration before the courts all over world. One of the most serious kinds of disputes has been about ‘Cybersquatting’ which involves the use of a domain name by a person with neither registration nor any inherent rights to the name. Trademarks and domain names being similar, have been exploited by some people who register trademarks of others as domain names and sell those domain names back to the trademarks owners or third parties at a high profit. This is known as ‘cybersquatting’ which means some person sitting on the property of another person. The practice of ‘cybersquatting’ is abusive whereby one entity registers a domain name that includes the name or the trademarks of another. This practice shows the importance of the role played by domain names in establishing online identity. This practice is usually famous in order to either block the legitimate user registering its most sought after domain name or hoping to sell the names for profit in the market. Such a trend of cybersquatting has led the courts to consider the relationship between trademarks and domain names. To file a complaint to prevent cybersquatting, the complainant will have to prove the

dishonest intention, lack of legitimate rights and interests and similarity of domain name with the trademark.

Reverse domain name hijacking

It is also known as reverse cybersquatting. It happens when a trademark owner tries to secure a domain name by making false cybersquatting claims against a domain name's rightful owner through legal action. Sometimes, domain names owner has to transfer ownership of the domain name to the trademark owners to avoid legal action and costly expenses, particularly when the domain names belong to the smaller organisations or individual who are not economically sound to fight the case. Reverse domain name hijacking is most commonly done by larger corporations and famous wealthy individuals.

Meta tags

Meta tag is an element of web pages that is also known as Meta elements. Meta tags provide information about page descriptions, key words and other relevant data. Originally, Meta tags were used in search engines to define what the page was about when the internet was in the early stages, Meta tags were used to help the place web pages in the correct categories. Nowadays, people abuse Meta tags to build false page rankings for web pages that were poorly constructed. Meta tags can be categorized into title, description and keywords.