



Role of Intellectual Property Right in Cyberspace

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ABSTRACT:

Intellectual property rights are the exclusive rights given to a person for his creation of mind. There are number of rights granted to the author to protect his specific type of work such as Copyright, Patent, Trademark, Geographical Indications and many others. However, with the growth in digital era, the creation of the author has appeared to be in a vulnerable position where without the knowledge of the author, his work is being infringed. The aim of this research paper is to bring light on the issues related to the intellectual property rights with reference to the growth of cyberspace in the new digital world and suggestions to overcome these issues.

KEY WORDS- Intellectual Property Rights; Cyberspace; Vulnerability in cyberspace; Cyber squatting; Linking; Inlining; Framing

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I. INTRODUCTION

Intellectual Property Rights are the exclusive intangible rights given to a person for his creation of mind for a definite period. It includes Copyright, Patent, Trademark, Geographical Indication, and Trade Secrets.¹ With the advent of the internet network, there is a boost in terms of growth and equivalent threat to intellectual property rights due to its vulnerability in Cyber world.

Cyberspace refers to the virtual arena, or, an electronic world, which is used to form a global network to facilitate online communication. It however, allows a user to share the information, interact with the world, contribute to ideas, engage in discussions on the social platforms, conduct business, and many other activities.² It is an interconnection between the virtual worlds. Technology, now-a-days has become a medium wherein creators share their ideas and works which is a perk in itself, but there's also a flaw attached to it i.e., this interconnection is also a source of altering and distorting the original work of the author for the personal gain.

It is relatively easy in the physical world to protect Copyright, Patent, Trademark etc., because of the effecting barriers that prevent the act of those who try to violate those barriers. This enabled the owner of Intellectual Property Right to freely share its creation and ideas to the world on a large platform without any fear that their creation would be misused by any other individual. But is it possible in the virtual world also? With the rise in the internet world, copying has become so easy but at the same time, tracing the infringer so difficult. Cyberspace being the non-physical domain allows every individual to access the data and share the information without acknowledging that such information can be a violation to Intellectual Property Right.

Cyber laws and Intellectual Property Right cannot be disconnected with each other as in today's era, content being in digital form needs protection. At the time of enactment of IPR laws, cyber issues were not given much importance but with the rise of digital media, there lies a need to protect the unauthorized use of the creations, development, artistic work of the author so that the author can reap the benefits of his own creation.

¹ Intellectual Property Rights and Protection of Traditional Knowledge: a general Indian Perspective on <https://www.scconline.com/blog/post/tag/intellectual-property-rights/> (Last accessed: September 27, 2020)

² <https://www.techopedia.com/definition/2493/cyberspace> (Last accessed: September 29, 2020)

INTELLECTUAL PROPERTY RIGHTS PROVIDED TO A PERSON AND THEIR BENEFITS DUE TO CYBERSPACE

Intellectual Property Rights are those rights that protect the creation of mind such as inventions, literary and artistic works, designs and symbols, name and images used in commerce. Through Trademark, Copyright and Patent protection, it enables the author to earn the recognition or financial benefit from the invention or their artistic work they have created³. Intellectual Property is a result of human intellect and the significance of it can be traced back to the Roman times where stamps on animal or brick-makers were used for the purpose of identification and recognition.⁴

The term Intellectual Property Right primarily reflects the idea that a particular product covered under it, is the creation of mind or intellect and that intellectual property rights may be protected in the same way as any other rights are protected in India.

There are various rights provided under the Intellectual Property rights which are as follows:

COPYRIGHT

Copyright is the legal right given to protect the creator's literary and artistic works. Works covered under it are books, music, paintings, sculpture, films, computer programs and databases, advertisements, maps and technical drawings.⁵

Duplication or copying of the work, communication or broadcasting done without any authorization constitutes the violation of Copyright rules and regulation and is regarded as Copyright Infringement under Copyright Act, 1957.

PATENT

Patent is granted for any new invention. It is the legal monopoly given to the inventor for its own invention for a limited period of time. Patent is granted for a product as well as for a process. The regulatory framework under which patented work is protected is the Indian Patents Act, 1970 and Patent Rules, 2003.

The three essential requirements for a product to be patented are that, firstly, it should be novel. It should not already be published or in use or part of the existing knowledge. Secondly, it's Non-Obviousness. Invention or the product that is required to be patented should not be obvious or perceived by any other person. And thirdly, it should be useful or capable of industrial application.

TRADEMARK

A Trademark is a sign or symbol which distinguishes one product from the other. The significance of it can be traced back to the ancient times when artisans used to put marks on its product to differentiate it from the other artisan's product. It allows a consumer to easily identify a particular goods or service that a company provides from that of other products.⁶

GEOGRAPHICAL INDICATION

It primarily identifies the source of the product. It seeks out the place or a region from where the product gains its identity. For e.g., Banarasi Saree. In order to constitute a product as Geographical Indication the sign on the product must identify the originating place of the product.

TRADE SECRET

Trade Secrets are those rights given on confidential information which may be sold or licensed. This is a very typical form of protection because if such information is used in any unauthorized manner it can help a business to gain a competitive advantage thereby having serious violation of lawful competition in the market.

³ <https://www.wipo.int/about-ip/en/> (Last accessed: September 27, 2020)

⁴ Article on Intellectual Property Rights written by Lexorbis on : <https://www.mondaq.com/india/trademark/901982/intellectual-property-rights> (Last accessed: September 30, 2020)

⁵ <https://www.wipo.int/about-ip/en/>(Last accessed: September 27, 2020)

⁶ Article on "The Different Types of IP Protection and Why are They Important" on <https://www.inquartik.com/inq-intellectual-property-rights/> (Last accessed: September 30, 2020)

Cyber World is the new domain where we can interact with the world and remove all the physical barriers. Even in the pandemic time, cyberspace helped every individual to gain knowledge through the data available online. In today's time everything is going digital and the content created by a person wants it to publish online so that he can gain global recognition and not just few people will acknowledge the creation of the author.

VULNERABILITY OF INTELLECTUAL PROPERTY RIGHTS IN CYBERSPACE

As we are moving ahead towards the Internet age, there is a spike in contents being published and going digital and everyone can access that. There is no bar in accessing the information unless it violates the cyber law and because of this, many unauthorized users are gaining access to the information that will likely be distorted or copied.

There are so many International Legal regimes that have been enacted such as Berne Convention 1886, Rome Convention, 1961, and WIPO Copyright Treaty, that time and again emphasizes the need for protection of IPR issues at international as well as at national levels. As much as IPR being in the digital world is important for today's era, the need to protect and prevent from the vulnerability of cyberspace is also a primary concern which cannot be overlooked.

Due to the advancement in technology, e-commerce business is growing day by day and so is the responsibility of companies and organizations to protect the intellectual property rights that are published online. It encourages the author to distribute and share information and data and for that published work, the creator gets the incentive for that. But with the growing popularity in the field of E-commerce, there is a downside trend when it concerns the protection of Intellectual Property.

These are the following methods that can be seen, which are responsible for becoming a threat to Intellectual Property Rights:

CYBERSQUATTING

It is the practice of registering, selling or using the domain name with the intent of profiting from the goodwill of someone else trademark.⁷ Basically, in this a person uses the domain of a registered trademark with the malicious intent of earning profit or defrauding the customers and gains profit from the same. It has become one of the methods to deceive the people and infringement of trademark rights in the world of cyberspace.

An example of Cyber squatting can be seen in the case of *Yahoo! Inc v. Akash Arora & Anr*,⁸ in which the defendants were using the name of "Yahoo" under the domain name of "Yahooindia.com" for providing internet services. The petitioner in this case is the owner of Yahoo and has the registered domain name as "yahoo.in" for providing services in India. The Court in this case held that, since the domain name "yahooindia.com" is deceptively similar and could be mistaken from the domain name of "yahoo.in", this matter is to be treated as passing off and further Court restrained the defendant from using the domain name "yahooindia.com" and relief is given to the Petitioner.

LINKING

It is one of the methods for Infringement of Copyright. When a website allows the user to visit another site on the internet without leaving the earlier website it is known as linking. The action of containing links to copyrighted materials on another website against the knowledge of the owner will result in copyright infringement.⁹ By virtue of these sections, reproducing any copyrighted work, issuing copies of the work to the public or communicating the work to the public could amount to Copyright Violation.

Linking method is so elementary in nature that many of the users believe that restriction of linking is violation of freedom of speech and freely travel in cyberspace.

Deep linking is one such method of the use of linking for infringement. It allows the visitor to bypass information and advertisements at the home page and set out directly to an internal page. Copyright law does not

⁷ <https://blog.ipleaders.in/ipr-issues-in-cyber-space-and-international-regimes-relating-to-iprs/> (Last accessed: September 27, 2020)

⁸ *Yahoo! Inc v. Akash Arora & Anr*, (1999 IAD Delhi 229)

⁹ Article on "IPR issues in Cyber Space and International Regimes Relating to IPRs" by Devi Rai on <https://blog.ipleaders.in/ipr-issues-in-cyber-space-and-international-regimes-relating-to-iprs/>(Last accessed: September 27, 2020)

specifically prohibits hyperlink but prevents the infringer to create a link that contributes to unauthorized copying of protected work, if the infringer has the idea that he is the unauthorized copying.¹⁰

The first ever case of “linking” is *Shetland time ltd., v. Jonathan Wills and Anr*,¹¹ where the issue was whether the Shetland news’s “deep link” to embedded pages of Shetland times’ website, through the use of Times’ web site’s news headlines, was an act of copyright infringement under British Law. The court issued preliminary injunction precluding deep link. This judgment has proved to be little significance because of extremely low evidentiary value applied by the court.

FRAMING

Framing is the practice wherein a user is allowed to view the contents of one website while it is framed by the information from another site. It can trigger a dispute under Copyright and Trademark law theories because a framed site arguably alters the appearance of the content and creates the impression that its owner endorses or voluntarily chooses to associate the framer.¹²

This can mislead the honest website users when they see a copyrighted material on such sites and perceive that such information could be correct and is not violative.

The frames generally contain either highlighted URL addresses of other Web pages that are intended to be “selected” by the framing page user or other pages within the same web site.

Framing is not legal as it can cause confusion among the consumer and also leads to violation of Trademark and Copyright laws. One such case under framing is *Ticketmaster Corp v. Microsoft Corp*.¹³ where the link from the defendant’s website to plaintiffs’ contains plaintiff’s logo and the plaintiff used to sold and marketed tickets to various entertainment events through its website on the internet.¹⁴

INLINING

In-line linking or commonly known as Inlining enables a web page to beckon different elements from diverse pages or servers to create a new web-page. In Inlining, “The composite page would consist of a series of links to other sites and servers. While browsing the composite page, the page directs the browser to get the pictures, graphics etc from the original sources.”¹⁵

In *Leslie A. Kelly v. Arriba Soft Corporation*¹⁶, a visual search engine known as ditto.com produced thumbnail images of photographs and used them to link to the original pictures. Plaintiff who is a professional photographer was upset that the search engine reproduced thumbnails of the images on his site which when clicked, produced the full-size imaged in a window on Arriba’s site. This action of the respondent was held to be in violation of copyright.

In Indian Law, *Section 14 and 51 of the Copyright Act, 1957* puts a legal obligation on the activities of Inlining. By virtue of this section, *reproducing any copyrighted work, issuing copies of the work to the public or communicating*, amounts to Copyright violation. *Section 57* of the Copyright Act also enable moral barrier on Inlining. This section allows the copyright author to claim authorship of the work. Due to Inlining the user is confused about the original source and hence may never come to know about the author.

II. CONCLUSION AND SUGGESTION

The world of Cyberspace knows no boundaries and any data updated online is vulnerable and can be distorted in any manner in the way infringer likes. Though, because of the growth of the Internet many creators got the chance to upload its data on the Internet for the world to see and it also gives boost to them because of the benefits creators received from what they have created. But such data is being distorted and infringed and the author of that data is not getting any lawful recognition for its work. Violation of Privacy Is the long-standing issue that

¹⁰ <https://www.nolo.com/legal-encyclopedia/linking-framing-inlining-30090.html> (Last accessed: September 29, 2020)

¹¹ 1997 F.S.R (Ct. O.H.) 24 October 1996

¹² <https://www.nolo.com/legal-encyclopedia/linking-framing-inlining-30090.html> (Last accessed: September 29, 2020)

¹³ Civil Action No. 97-3055DPP (28 April, 1997)

¹⁴ <https://www.mondaq.com/india/trademark/525188/legality-of-metag-ing-linking-framing>

¹⁵ Article on Lining, Inlining and Framing available on <https://www.mondaq.com/india/trademark/525188/legality-of-metag-ing-linking-framing>

¹⁶ [Case No. 00-55521], US Court of Appeals for the Ninth Circuit.

India is facing and there is a serious need to bring a substantive Law on Privacy, which protects the rights of the author and no content to distort without its permission.

Intellectual Property Rights are not very much recognized in India and have a long way to protect these rights. As now all the things are going digital there is a need to amend and bring laws as per the growing need of the society and not to rely on laws which have been made long back.

Further there should be fast track courts solely dealing in IPR issues so that ordinary Courts will not be burdened from the new cases in the already piled up cases and the aggrieved party will also get its justice on the right time.

As “Bill Gates” rightly said, *“The Internet is becoming the town square for the global village of tomorrow”*. We need to grow with the speed of growing Internet network.