



## INTELLECTUAL PROPERTY RIGHTS ISSUES IN CYBERSPACE- INDIAN PERSPECTIVE

**Shashya Mishra**

*Assistant Professor, Amity Law School, Amity University Lucknow Campus*

### INTRODUCTION

We are living in the age of information and technology (ICT). ICT tools are used commonly in our day-to-day life to share and grasp knowledge from all around the world because it enhances the modes of communication. A person sitting in any corner of the world can interact with anyone just sitting comfortably at his place. Further comes the term Cyberspace which is an immaterial sphere of information, which appears due to technical and social environments interconnection, i.e. the environment of information and communication technologies ICT enabling us to transform, store, use and interchange information (to communicate). Cyberspace includes technical (hardware), programme (software) computer equipment. of network is the Internet, with the modern voice communication possibilities (conference, videoconference), text (e-mails), visual (skype) and other integrable social and technical interface tools. To handle the issues arising in the cyberspace Information Technology Act 2000 was legislated. The act has been made to curb cybercrime. In the cyberspace the issues related to infringement of intellectual property right is very common in India. This research work revolves around the nexus between cyberspace and issues related to intellectual property rights.

### MEANING OF INTELLECTUAL PROPERTY RIGHT

Intellectual property Right (IPR) is a term used for various legal entitlements which attach to specific types of knowledge, concepts, or other intangible asset in their expressed form. The word intellectual property suggests the idea that the subject matter is the result of the mind or the understanding and that Intellectual Property rights may be protected at law in the same way as some other form of property.<sup>1</sup> Inventors, artists, scientists and businesses

put a lot of time, money, energy and thought into developing their innovations and creations. To encourage them to do that, they need the chance to make a fair return on their investment. That means giving them rights to protect their intellectual property. Intellectual property refers to creativity done with the help of intellect. This creativity by mind includes discoveries, any sort of scholarly and arty works Intellectual property rights also includes representations, characters, and icons used in market or in business. The rights related to Intellectual property are similar to any other rights of property. IPR allow the author, or holder of a patent, trademark, or copyright to gain profit from his or her own design or venture. The rights related to intellectual property is mentioned under Article 27 of the Universal Declaration of Human Rights. This human rights document establishes the right to benefit from the protection of moral and material interests resulting from authorship of any scientific, literary, or artistic production. Intellectual property is divided into two categories-Industrial Property includes patents for any kind of creations, emblems, manufacturing designs and topographical indications. Copyright includes scholarly works such as work of fiction, verses and performances, videos, melodic works, imaginative works such as sketches, portraits, snapshots and statues, and architectural designs.<sup>2</sup>

### International Instruments – IPR

Although protection of intellectual property is entrenched in the law and as such is the entitlement

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[https://www.researchgate.net/publication/328161728\\_INTELLECTUAL\\_PROPERTY\\_RIGHTS\\_IPR#:~:text=and%20Pharmaceutical%20Sciences,%EF%82%B7%20Intellectual%20property%20rights%20\(IPR\)%20can%20be%20defined%20as%20the,a%20certa in%20period%20of%20time.](https://www.researchgate.net/publication/328161728_INTELLECTUAL_PROPERTY_RIGHTS_IPR#:~:text=and%20Pharmaceutical%20Sciences,%EF%82%B7%20Intellectual%20property%20rights%20(IPR)%20can%20be%20defined%20as%20the,a%20certa in%20period%20of%20time.)

<sup>2</sup> World Intellectual Property Organization, What is Intellectual Property?  
[https://www.zis.gov.rs/upload/documents/pdf\\_en/pdf/What%20is%20IP\\_WIPO.pdf](https://www.zis.gov.rs/upload/documents/pdf_en/pdf/What%20is%20IP_WIPO.pdf)

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<sup>1</sup> Savale; Sagar Kishor, Savale; Varsha Kishor (2018) Intellectual Property Rights (IPR) World Journal Of Pharmacy And Pharmaceutical Sciences, Volume 5,



of domestic jurisdictions, global collaboration in this area, through multiparty agreements and standards, has a prolonged practice dating back to the nineteenth century. Earlier to TRIPS effectively all international contracts and conventions dealing with IPRs were governed by WIPO, which is a United Nations agency. A keystone of this system is the 1883 Paris Convention for the Protection of Industrial Property, the most contemporary substantive version being the 1967 Stockholm revision. This agreement offers that each nation state gives to the citizens of other nations the similar patent rights accessible to its own citizens (the principle of 'national treatment'). It also permits for a right of priority, such that upon filing in a member nation an inventor can, within one year, seek protection in other countries with the original filing date applying.

The 1979 Patent Cooperation Treaty (PCT) is meant to enable filing for patent protection for the similar innovation in member countries by providing consolidated filing and standardized application practices. In relation with patents, WIPO also governs the 1977 Budapest Treaty, which regulates the deposit of microbes or bioengineering products as required for patent filing. The Berne Convention for the Protection of Literary and Artistic Works of the year 1886 (its last main revision was in 1971) is the main global treaty that relates to acts covered by copyrights. Parties are required to provide foreign authors the same rights available to their own nationals, including the right of implementation and to create a minimum copyright term (the life of the author plus 50 years).

The 1961 Rome Convention gives copyrights safeguard to sound recording, performers of music, and radio and television broadcasts. Trademarks are guarded by numerous worldwide pacts, including the Paris Convention, which assure national treatment as well as protection of well-known marks worldwide.<sup>3</sup> In the cyberspace domain name disputes are very common due to the extensive use of technology. For resolving the domain name disputes Uniform Domain Name Dispute Resolution Policy (UDRP) came into existence. The main objective of UDRP is to form a uniform legislative policy for resolving disputes in context to domain name.

### **Protection of Intellectual Property – Indian Regime**

In India legislations are drafted by the Parliament in the post-independence era. India is a signatory to the Berne Convention on copyright The

Copyright Act, 1957 is one of the oldest existing intellectual property rights act. It has been amended quite a few times to align with global trade and commerce. The act relates to person creativity to, it protects the right of literary, artistic, musical works and sound recordings and cinematograph films. Internet piracy of films, music, games and software is an issue in India, as is unauthorised copying of physical books. India's Patents Act of 1970, 2003 Patent Rules and the 2016 Patent Amendment Rules set out the law concerning patents. India's trademark laws consist of the 1999 Trade Marks Act and the Trade Marks Rules of 2002 and 2017.<sup>4</sup>

### **Cyberspace and Intellectual Property**

Cyberspace is a gap or a gap connection stuck between the cybernetic world and real world and describes the flow of digital data in the world. Cyberspace is the non-physical domain where numerous computers are connected through computer networks to establish communication between them. With the expansion of technology, cyberspace has come within reach of every individual. This fact led to the emergence of cyberspace as a business platform and hence increases pressure on Intellectual Property. Nowadays, cybercrimes do not solely limit themselves to fraud, cyberbullying, identity thefts but also an infringement of copyrights and trademarks of various businesses and other organizations. Online content needs to be protected and hence Intellectual Property Rights and Cyber laws cannot be separated. In cyberspace, sometimes one person makes a profit by using another person's creation without the owner's consent. This is a violation of privacy, and it is protected by IPR.<sup>5</sup>

### **ICANN Domain Name Dispute Resolution Policy**

The WIPO recognised the cyber domain name dispute resolution system for domain name disputes commonly referred to as the ICANN Policy. This process is not only quicker but more cost effective. The WIPO'S policy related to domain name dispute was adopted by ICANN on 24th October, 1999. The UDRP Policy is used by Registrars to decide disputes concerning .com, .net, .org domains and by certain Registrars of countries specific top level domains. The ICANN'S authorized service provider conducts a mandatory administration proceeding when it receives a complaint for domain name infringement

<sup>3</sup> Moschini ; GianCarlo Intellectual Property Rights and the World Trade Organization: Retrospect and Prospects available at [https://www.card.iastate.edu/faculty/profiles/giancarlo\\_moschini/moschini-trips-preprint-oct-04.pdf](https://www.card.iastate.edu/faculty/profiles/giancarlo_moschini/moschini-trips-preprint-oct-04.pdf)

<sup>4</sup> Intellectual property rights in India, Intellectual Property Office available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627956/IP-Rights-in-India.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627956/IP-Rights-in-India.pdf)

<sup>5</sup> Intellectual Property in Cyberspace (2021) <https://www.geeksforgeeks.org/intellectual-property-in-cyberspace/>



where a domain is identical or deceptively similar to the complainant's name trademark and the defendant has no genuine entitlement and the domain name is enumerated in evil beliefs.<sup>6</sup>

### Issues Related to Intellectual Property Right and Cyberspace

In cyberspace, sometimes information is shared by a person, who is not the owner of the same, or the information which is private. Hence, privacy is violated, and one makes profit on another person's creation. Such rights are protected under intellectual property rights. The major issues related to infringement of intellectual property rights can be categorised in following ways-

- Copyright Infringement
- Trademark Infringement

#### A) Copyright Infringement-

Copyright infringement means the use of works protected by copyright law in any way, without permission of the copyright owner. The Copyright Act<sup>7</sup>, includes computer programs as a subject matter of copyright protection. Such a program comes under the literary work and such computer software owners are protected under copyright law. Such software can be reproduced a number of times and can be displayed in the internet, and are also sold, transferred, updated, etc. But no other person than the owner or any other authorized by him can use such copyrighted work for commercial reasons. The computer software comes under the Copyright Law. Section 2(o) of Copyright Act, 1957 Computer program, creative data from computers are eligible for copyright, but business methods are not allowed. Napster case<sup>8</sup> Napster was sued by A&M Records Inc. for sharing P2P files (media files), from one's computer to some other person who uses Napster. The music companies took USD 100000 for each such copyrighted song downloaded through Napster. A final settlement was made where Napster had to pay some future profit to other parties. (A&M Records Inc. v. Napster Inc.)<sup>9</sup>

<sup>6</sup> Aggarwal; Gunish(2018) Intellectual Property Rights And The Internet World, International Journal of Law Management & Humanities Volume 1, Issue 2 available at <https://www.ijlmh.com/wpcontent/uploads/2019/03/Intellectual-Property-Rights-And-The-Internet-World.pdf>

<sup>7</sup> Section 2(ffc) of copyright Act

<sup>8</sup> 2000 WL 573136, 1 (N.D. Cal 2000)

<sup>9</sup> Chandel; Suryansh Singh, INTELLECTUAL PROPERTY ISSUES IN CYBERSPACE, Lex Research Hub Journal On Law And Multidisciplinary Issues available at <https://journal.lexresearchhub.com/wp-content/uploads/2020/07/vol1-issue4-46.pdf>

Issues related to copyright infringement are as follows-

#### a) Uploading & Downloading –

If an individual uploads copyrighted content devoid of permission is infringement of copyright. Unlawfully downloading music, films, video games have bad quality and it entice punishment under Copyright Act in India. The individual who uploads copied content is liable for the offence even if he has not received any monetary benefit. In the issue of uploading responsibility arises when up loader use his ingenuity for to update, modify or change copyrighted content.

#### b) Linking

Linking means a facility to access third party website only by click on location on linking site and without input any location information or search engine.<sup>7</sup> Links usually appear as highlighted, underlined, prominent text or picture.

Linking is two types

- **Surface linking:** It is a situation where the home page of site is linked, is called as Surface linking.
- **Deep linking:** Situation where web link bypasses the home page & goes straight to an internal page within linked site is called as deep linking.

#### B) Trademark Infringement

On the internet a trademark has assumed several forms including domain name, which means, a name of a website used to denote an internet protocol address and is an easy way to remember a complex numerical value. Domain names are therefore easily remembered and often coined to reflect the trademark of an organisation. According to section 135 of Trademark Act, 1999, legal remedies for suits for infringement of registered trademark or passing off includes injunction, damages or account of profits or delivery up of infringing goods or destruction of infringing goods

#### Cybersquatting

Cybersquatting means an illegal act whereby a person intentionally books a domain name deceptively similar to trademarks of its rightful owner and later offers the owner the domain name for purchase at a hefty amount. There have been many such cases decided by the World Intellectual Property Organization wherein its administrative panel ordered the object the subject domain names to be transferred to the rightful owners in accordance with Uniform Domain Name Dispute Resolution Policy.



The first case related to cyber-squatting was *Yahoo Inc. v. Aakash Arora and Anr*<sup>10</sup>, where the litigant propelled a site about indistinguishable from the offended party's prestigious site and furthermore offered comparative types of assistance. Here the court decided for trademark privileges of U.S. based Yahoo. Inc (the Plaintiff) and against the litigant, that had enlisted itself as YahooIndia.com. The Court held, "A domain name registrant doesn't get legal option to use that specific space name just in light of the fact that he has enrolled the space name, he could even now be at risk for trademark encroachment."

**Marks & Spenser's case** It was held that 'any person who deliberately registers the name, brand-name or trade-mark of another commercial organization, would face opposition and would be liable to passing-off. In such instances, the court will assume that the public will be deceived where the name solely consists of the name or trade name of another enterprise.

A Domain name serves the same purpose online, which a trademark serves in the offline business transactions. It helps the customers identify the source of goods/services provided by the owner of such goods and services. Therefore, Domain names are of utmost importance in online businesses. They are important because promotion of business and building up of customer base online and offline by way of advertising on the web. It is also helpful in the establishment of the credibility of the website and the business on the internet. Moreover, it provides easy access to customers and prospective customers.

## CONCLUSION

In the current structure of governance there is a lot of inclination towards E-commerce or E-governance. For regulating the system of E-governance in India Information Technology Act 2000 was enacted. In the IT Act provisions are present related to cybercrime in the society as well as in organisation. But when we talk about IPR there are loopholes in IT Act 2000. The Act does not provide any specific remedies related to infringement of copyright and trademark in cyberspace. IT Act 2000 is inefficient in respect of issues, related to IPR, cyber stalking, cyber defamation etc. etc. Similarly, legislations related to protection of IPR like the Indian Trademark Act, 1999 and Copyright Act, 1957 are also not able to handle arising out of online Trademark and Copyright infringement. However computer programmes are covered under the Copyright Act, but it does not make available remedies for online software piracy.

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<sup>10</sup> 1999 ARB. L. R. 620