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This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**WHITE BLACK LEGAL: THE LAW JOURNAL**



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**SCHOOL OF LAW**

**INTELLECTUAL PROPERTY LAW**

**TOPIC:**

**IPR AND CYBER SPACE**



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## **IPR AND CYBER SPACE**

### **ABSTRACT**

The advancement in e-commerce and e-business has led to an important concern to the companies and organization's to protect their intellectual property rights online. Nowadays, cybercrimes do not only confine itself to fraud, cyber bullying, identity thefts but also infringement of copyrights and trademarks of various businesses and other organizations.<sup>1</sup>

Intellectual Property Rights (IPR) and Cyber Laws cannot be separated, and online content must be protected.

Cyberspace is the non-physical domain over which the communication between computers takes place through computer networks. With the growth of technology every individual has a right of accessing cyberspace and sharing information.

In cyberspace, sometimes private information is shared by a person who is not the owner. Hence, privacy is violated. One makes profit from another person's creation. Those rights are protected under IPR.

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 cybercrimes. 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 programmers are protected under the Copyright Act but it does not provide remedies for online software piracy. Cybersquatting is also not punishable directly under the IT Act.

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<sup>1</sup> Manupatra Bharati Law Review, April – June 2016

## **INTRODUCTION**

Patent, Copyright, Trademarks, Trade Secrets, Industrial and Layout Designs, Geographical Indications etc. are intellectual property rights. When these rights are violated in cyberspace there are various remedies in law.

### **Copyright Infringement:**

Copyright protection is given to the owner of any published artistic, literary, dramatic, or scientific work over his work to exclude everyone else from using that work on his own name and thereby gain profit from it.

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.

When these copyrights are used by anybody without the permission of the owner, it amounts to infringement of such copyright. When copies are made of software which is distributed on the internet and sold by any person other than owner, it amounts to copyright infringement. Copying from website or content from the blog also amounts to a copyright violation<sup>2</sup>.

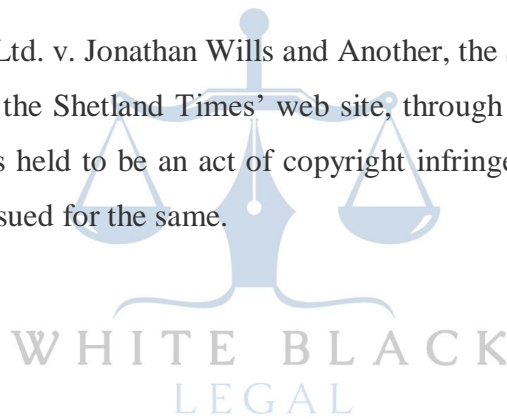
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<sup>2</sup> 1997 F.S.R. (Ct. Sess. O.H.), 24 October 1996

### **Copyright Issues in Cyber Space:**

1. Linking: It allows the user of the website to go to another website on the Internet without leaving that website that he is using. It is done by clicking on a word or image in one web page. Linking damages the rights or interests of the owner of the webpage.
  - Linked sites can lose their income as revenues are often equal to the number of persons who visit their page
  - It may create the impression that the two linked sites endorse the same and are linked to each other.

2. In *Shetland Times, Ltd. v. Jonathan Wills and Another*, the Shetland News's deep link to embedded pages of the Shetland Times' web site, through the use of Times' web site's news headlines, was held to be an act of copyright infringement under British law and an injunction was issued for the same.



### **3. Software Piracy:**

It is also covered under Indian Copyright Act. This is knowingly making use on a Computer of an infringing copy of a computer program.

4. Piracy can be of 3 types:
  - Soft lifting
  - Software Counterfeiting
  - Uploading-Downloading.

### **5. Cybersquatting And Trademark Infringement:**

Trademark means a mark capable of being represented graphically and which can distinguish the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors.



Cybersquatting is done when domain names are registered, sold or trafficked-in with the intention to make profit from the goodwill of someone else. It is a punishable.

### **Trademark Issues in Cyber Space<sup>3</sup>**

A domain name dispute arises when more than one individual believe that they have the right to register a specific domain name. It arises when a registered trademark is registered by another individual or organization who is not the owner of trademark that is registered. All domain name registrars must follow the ICANN's policy. Cybersquatting is a type of domain name dispute.

Yahoo! Inc v. Akash Arora & Anr , the defendants were using yahooindia.com for providing internet services.

The petitioner was the owner of the trademark Yahoo! and had registered its domain name with different countries like yahoo.in for India. Hence, the domain name yahooindia.com could be mistaken as an extension of Yahoo!. The Court treated the matter as passing off and granted an injunction restraining the defendant from using the domain name yahooindia.com.

### **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 reproductions 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.

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<sup>3</sup> SEC 63B Copyrights Act

### **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 "Data bases" 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

This computer software is 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 happen 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 organization’s 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.

Meta tagging is a technique in which a word is inserted in the keywords field of the site to increase the chances of a search engine returning the site, even though the site may have nothing to do with the word which was inserted. Infringement of trademark occurs when companies include their own websites meta tags containing the names or descriptions of other companies.

Oppedahl & Larson v. Advanced Concepts, the law firm of Oppedahl & Larson, owner of the domain name, filed a trademark infringement action against three companies and the corresponding ISPs after discovering that the companies inserted the words Oppedahl and Larson in the keywords field of their web pages in order to draw traffic to their sites.

The UDRP Administrative Procedure is only available for disputes related to abusive registration of a domain name. For a domain name registration to be abusive, certain conditions are needed to be fulfilled.

The conditions are:

- The domain name registered by the domain name registrant is identical or confusingly like a trademark or service mark in which the complainant (the person or entity bringing the complaint) has rights; and
- the domain name registrant has no rights or legitimate interests in respect of the domain name in question; and
- The registered domain name is being used in bad faith.<sup>4</sup>

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<sup>4</sup> Uniform Domain-Name Dispute-Resolution Policy (UDRP)

### **Conclusion**

*Cyber space is becoming a core area for intellectual property rights infringement. Various practices by the cyber site operators resulted in violation of intellectual property rights and various other rights of other websites operators. It has become crucial that people are aware of the unlawful usage of their websites and webpages.*

*With the growth of Cyber space and technology advancements, copyright and trademarks are not limited to the conventional intellectual property alone but has extended to intellectual property rights over the internet.*

*There are various rules and guidelines provided by international conventions and treaties to protect infringement of IPRs online which are helping e-commerce and e-businesses to expand. The Information technology Act does not provide provisions in respect of jurisdiction issues, cybercrimes related to IPR, cyber stalking, cyber defamation etc.*

*The Indian Trademark Act, 1999 and Copyright Act, 1957 are also silent on issues on online Trademark and Copyright infringement. Though computer programmes are protected under the Copyright Act, 1957, it does not provide remedies for cyber piracy.<sup>5</sup>*

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<sup>5</sup> [www.mondaq.com/india/copyright/655852/copyright-law-in-india-everything-you-must-know](http://www.mondaq.com/india/copyright/655852/copyright-law-in-india-everything-you-must-know)