

Intellectual Property Rights and Cyber Space

Lakhpat Singh

Librarian, Maharaja Agrasen College, Jagadhri

Balesh Kumar

Librarian, Sanatan Dharma College, Ambala Cantt

ABSTRACT

This paper highlights the issues related to Intellectual Property Rights (IPR) in modern era of cyber space. Presently, legal system and framework are inadequate to address all the aspects of Information Technology. In India, the existing intellectual property regime that deals with the protection of computer software is the Indian Copyright Act, 1957. Information Technology Act 2000 is also silent on the Intellectual Property protection while Infringement of IPR is one of the most challenging areas in cyberspace. Copyright and Domain names violations do occur on the Internet but Copyright Act 1957 & Trade Mark Act 1999 are silent on that which specifically deals with the issue. Hence, we lack the enforcement machinery to ensure the protection of domain names on net. Time has come where we must enact special legislation for the protection of Intellectual property in cyberspace

Introduction

In the present era of Internet and social media the people are so much busy and lost in the virtual world that they are losing their connection with the real world. They are fond of sharing personal information on the social media very frequently and even don't bother sharing of their delicate information online without taking into consideration that what might be the aftermath of the data being uploaded by them. Some people take advantage of such information and take it as a means to generate money. Hence the issue of intellectual property rights (IPRs) comes into the foray of Cyber Space.

When intellectual property laws were first drafted, computer technology

Intellectual Property Rights : Emerging Issues and Challenges

did not exist. At that time, it was not foreseen that it would be necessary to protect information stored by digital means, nor was it foreseen that information would become such a sought after commodity. The Internet, Software, Business methods for e-commerce applications & electronic databases are relatively new territories where innovators have created an environment in which information exists in plentiful quantities and available to many people.

Intellectual property rights are the rights granted to the creators of Intellectual property, and include trademarks, copyright, patents, industrial design rights, and in some jurisdictions trade secrets. Artistic works including music and literature, as well as discoveries, inventions, words, phrases, symbols, and designs can all be protected as intellectual property. Likewise Cyber Space is a term which is being derived from a Science-Fiction movie by Mr. Fred Roderick in the year 1920, and the term actually describes the virtual world which is something apart from the real world. So in order to curb all these activities the government has to take some appropriate measures and our Legislature as well as our Judiciary needs to amend some policies to prevent those culprits from breaking the law.

Cyber security denotes the technologies and procedures intended to safeguard computer networks and data from unlawful admittance of weaknesses and attacks transported through the internet by cyber delinquents. Data protection and privacy laws aim to achieve a fair balance between the piracy rights of an individual and the interests of data controllers such as Banks, Hospitals, Electronic mail Service providers etc.

What distinguishes digital media from conventional media are six characteristics that will make it difficult for existing categories of intellectual property law to adjust to the protection of works in digital form. They are:

1. The ease with which works in digital form can be replicated,
2. The ease with which they can be transmitted,
3. The ease with which they can be modified and manipulated,
4. The equivalence of works in digital form,
5. The compactness of works in digital form, and
6. The capacity they have for creating new methods of searching digital space and linking works together.

Intellectual Property Rights

Intellectual property is property which arises from human intellect. It is product of human creation. Every person born in the world owns the intellect by birth and has natural right to use it for his or her personal growth and benefits. The intellect belongs to person and hence considered his or her personal property. Intellectual Property Rights are

Intellectual Property Rights : Emerging Issues and Challenges

legal rights, which result from intellectual activity in industrial, scientific, literary and artistic fields. These rights safeguard creators and other producers of intellectual goods & services by granting them certain time-limited rights to control their uses. Protected IP rights like other property can be a matter of trade, which can be owned, sold or bought. These are intangible and non exhausted consumption.

Types of Intellectual Property Rights:

- (a) Patents.
- (b) Trademarks.
- (c) Copyrights and Related Rights.
- (d) Geographical Indications.
- (e) Industrial Designs.
- (f) Trade Secrets.
- (g) Layout Design for Integrated Circuits.
- (h) Protection of New Plant Variety.

(a) Patents

A patent is a form of right granted by the government to an inventor, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, which may be a product or a process and generally has to fulfil three main requirements: it has to be new, not obvious and there needs to be an industrial applicability.

Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and the invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others.

(b) Trademarks

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,

Intellectual Property Rights : Emerging Issues and Challenges

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.

(c) Copyrights and Related Rights

Copyright is one of the IPR granted by the law to the creators of original works of authorship. It grants exclusive rights to the authors usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or 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. Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed

(d) Geographical Indications (GI)

GI are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. They may also highlight specific qualities of a product, which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions.

A Geographical Indication points to a specific place or region of production that determines the characteristic qualities of the product that originates therein. It is important that the product derives its qualities and reputation from that place. It is an exclusive right given to a particular community hence the benefits of its registration are shared by the all members of the community. Recently the GIs of goods like Chanderi Sarees, Kullu Shawls, Wet Grinders, etc., have been registered.

(e) Industrial Designs

Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its national legislation to provide for these minimal standards. The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and

Intellectual Property Rights : Emerging Issues and Challenges

this Act will serve its purpose well in the rapid changes in technology and international developments.

(f) Trade Secrets

It may be confidential business information that provides an enterprise a competitive edge may be considered a trade secret. Usually these are manufacturing or industrial secrets and commercial secrets.

These include sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients, and manufacturing processes. Contrary to patents, trade secrets are protected without registration.

A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. Considering the vast availability of traditional knowledge in the country the protection under this will be very crucial in reaping benefits from such type of knowledge. The trade secret, traditional knowledge are also interlinked/associated with the geographical indications.

(g) Layout Design for Integrated Circuits

The Semiconductor Integrated Circuits Layout-Design Act, 2000 provides protection to Intellectual Property Right (IPR) in the area of Semiconductor Integrated Circuit Layout Designs and for matters connected therewith or incidental thereto. The SICLD Act empowers the registered proprietor of the layout-design an inherent right to use the layout-design, commercially exploit it and obtain relief in respect of any infringement. The initial term of registration is for 10 years; thereafter it may be renewed from time to time. Department of Information Technology, Ministry of Communications and Information Technology is the administrative ministry looking after its registration and other matters.

(h) Protection of New Plant Variety

Protection of New Plant Variety act recognizes the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro biodiversity by rewarding them for their contribution and to stimulate investment for R&D for the development new plant varieties to facilitate the growth of the seed industry.

The Plant Variety Protection and Farmers Rights Act, 2001 was enacted in India to protect the new plant variety. Initially, 12 crop species have been identified for registration i.e., Rice, Wheat, Maize, Sorghum, Pearl millet, Chickpea, Green gram, Black gram, Lentil, Kidney, bean, etc. India has opted for sui generic system instead of patents for protecting new plant variety. Department Agriculture and Cooperation is the administrative ministry looking after its registration and other matters.

Cyberspace

Cyberspace is the virtual space created by interconnected computers and computer networks on the Internet. Cyberspace is a conceptual electronic space unbounded by distance or other physical limitations. William Gibson coined the term in his novel *Neuromancer* to describe an advanced virtual reality network. Cyberspace is used to store, modify and exchange data. With the onset of modern technology, more importantly the internet, copyright protection assumed greater significance. Now a day, copyright law has been incorporated and put into usage to protect internet items. It protects original work or work that is fixed in a tangible medium i.e.; it is written, typed or recorded. In fact, the internet was introduced in 1960 and “WWW” in 1990's; which clearly established the fact that copyright which a manual operation was hitherto got transformed into electromagnetic operation.

Although the current copyright laws do provide protection to copyright owners, it also has some shortcomings as to the effectiveness of copyright protection being enforced on the people. Thus the boundaries nature of internet calls for a stronger and mightier relationship in other jurisdictions and close cooperation with international organisations. It is therefore the duty of the society that needs to be educated about the necessity of copyright protection in order to check, control and also prevent any unauthorized usage.

Cyberspace is a virtual world, which technically exists only in computer memory, but it is interactive and pulsing with life. The advantage in cyberspace is that one can meet and talk to new people, read, publish research, hear music, watch video, look at art, purchase and sell things, access to the government documents, send e-mails, download software and receive technical support. One-way cyberspace is a living organism enabled to frequent changes to suit the demands of the public. Now a days, people are so accustomed to the cyberspace that it has become a part of our daily life and are more dependent on it even for a slightest need for example to book a movie ticket, they go online, so is the importance of cyber space.

With the advancements in the field of information technology new systems arise to meet the requirements the situation and the system continues to evolve, sometimes by new legislation, more often by the stretching and bending of existing rules. New technology commercialized in the past two decades, most notably the advent and diffusion of digital technology and new advances in the life sciences, portend deepening interest in the intellectual property system and scrutiny, reconsideration and re-conceptualization of the theories justifying intellectual property. Even within the existing theories of intellectual property, these technologies pose significant analytical challenges as a result of the ways in which they change key factors on which existing institutional rules and structures are based - for example, the nature of personal and liberty interests of creators and users, network dimensions, transaction costs etc.

Intellectual Property Rights : Emerging Issues and Challenges

As intellectual property and technology have gained importance over the past two decades, the philosophical debates have melded with broader social and political discourse bearing upon the very foundation of modern society.

IMPACT OF THE INTERNET ON INTELLECTUAL PROPERTY

The internet has driven many changes in the intellectual property community. As a data and resource access tool, it has expanded the reach of every user localized, regional resources, to true global information access. Today the largest segment of business-to-consumer e-commerce involves intangible products that can be delivered directly over the network to the consumer's computer. While these intangible products, by their very nature, are difficult to measure, an increasing amount of the content that is being offered is subject to

Some of the positive impacts of Internet on intellectual property community are

- a) It has increased affordable access to intellectual property resources globally;
- b) It has enhanced the ability of patent prior art search;
- c) It has increased business, political and society awareness of the growing importance of all types of intellectual property;
- d) It has shortened the data access time, that is, days or weeks have been shortened to minutes or hours;
- e) There has been a geometric increase in the amount of accessible data and collections relative to intellectual property;
- f) It has provided access to an expanding number of web-based software and intellectual property management tools;
- g) It has provided a path for developing countries to catch up with world developments with regard to intellectual property data access , management etc;

Conclusion

Information and Communication Technologies gives rise to a variety of legal problems. The problems themselves are not novel in their character. But they deserve special treatment, because of the environment in which they take their birth and the nature of the machinery used in the environment and the means employed for recording the information in question. The digital dilemma is that the information technology that is making more current information available more quickly and completely also has the potential to demolish the balancing of public good and private interest that has emerged from the evolution of intellectual property law.

It is the need of the hour that the Indian society be made aware of the necessity of copyright protection in all fronts to prevent any unauthorized

Intellectual Property Rights : Emerging Issues and Challenges

use and pilferage of the system. The analysis of copyright in cyberspace reveals a mixed result of new opportunities and threats. Such threats often outweigh the opportunities offered by the cyberspace and necessity arises for increasing regulations of cyberspace to protect copyrights.

References

1. Ahuja, V. K. (2017). *Law Relating to Intellectual Property Rights*. LexisNexis.
2. Bainbridge, David (2003). *Intellectual Property*. 5th Ed., Pearson Education Ltd.
3. Balaji, C. (2017). Role of IPR in cyber space. *International Journal of Advanced Educational Research*. 2(5). 136-139.
4. Batty, M. (1997). Virtual Geography, *Futures*, 29 (4/5), 337-35
5. Bouchoux, Deborah E. (2012). *Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets*. Delmar Cengage Learning.
6. Doug, Isenbourg (2002). *The Giga Law, Guide to Internet Law*. Random House, New York.
7. Ginsburg, Jane C. (2001). Copyright and Control over New Technologies of Dissemination. *Columbia Law Review*, 101 (7), 1613-1647. Available at: https://scholarship.law.columbia.edu/faculty_scholarship/63
8. Gopalakrishnan, N.S. and Agitha, T.G. (2006). *Principles of Intellectual Property*, Eastern Book Co.
9. Kneale, J. (1999). The Virtual Realities of Technology and Fiction: Reading William Gibson's Cyberspace, in M. Crang, et al (eds.), *Virtual Geographies: Bodies, Space and Relations*, (pp. 205-221), Routledge, London.
10. Shah, Sunil N. (2016). *IPR and Cyber Laws*, Himalaya Publishing House, New Delhi.
11. <http://dlc.dlib.indiana.edu>
12. <http://laws.findlaw.com>. Visited January 2020
13. <http://www.icann.org/udrp/udrp.htm>, visited January 2020
14. <http://www.ielrc.org>
15. <https://www.yourdictionary.com>