

# Intellectual Property Rights and Its Protection in Cyberspace and media laws

Author -Tripti Bhushan,Assistant Professor, Department of law, kalinga University,Raipur

& Co-author-Yash Arora,Law student(LLB 3 Year) ,Kalinga University,Raipur

## ABSTRACT

*The advent of data Technology (IT) and computers have created a replacement world within the cyberspace giving rise to varied legal challenges and sometimes solutions. Intellectual Properties (IP) like copyrights, trademarks, designs, layout AND circuit designs within the current digital environment, are interwoven with the electronic technology. The changed environment demands more affirmative protective laws to protect new inventions and creations and also to save lots of the important owners from economic losses. The protection of digital content under the Copyright Act against intended and unintended infringements and violations, may be a burning issue today. Various theories like no-faulty liability, contributory liability, and shark repellent theory are being applied to guard property Rights (IPR) within the digital media . The Indian media and broadcasting industry has grown by leaps and bounds in the past three decades. Access to the latest technology and information has increased exponentially in the internet age, sparking creativity among the public who are now generating and sharing original works in significant volumes. Issues regarding the creativity and originality of content generated by artificial intelligence are even being grappled with! This presents the media and broadcasting industry with numerous challenges regarding the protection of intellectual property.*

## Introduction:

The present age is the age of 'automation' where man is shifting his maximum burden on machines to urge work done. the pc Technology helps this human civilization to such a greater extend that life without computers seem to be impossible! Speaking with examples, railway reservations, aircraft transportations, bio-matrix attendance in offices, Examination result cards, Traffic signals, Telephonic communications, Banking transactions, all are now carried out with the help of computer machines and each data and knowledge has acquired electronic shape and capable to move through the optic fibers. Today, voice files, song files, photographs, currencies, news items, clips, bio-data's, letters, so on and so forth are capable of being transferred, distributed, circulated and stored in electronic form. Thus present generation is greatly depends upon the pc technology for the easy mechanism and effective operations operated in electric format through computers .However, the facilities of computer technology have not come out without drawbacks. Though it makes the life so speedy and fast, but hurled under the eclipse of threat from the deadliest type of criminality termed as 'Cyber-crime'. The Cyber-crime can halt any railway where it is, it may misguide the planes on its flight by misguiding with wrong signals, it's going to cause any important military data to fall within the hands of foreign countries, and it may halt e-media and every system can collapse within a fraction of seconds. Therefore, it's necessary to look at the deadliest sort of criminality of this millennium, conceptually termed as 'Cyber crime'.

## 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. Thesethings are creations of the human mind and hence called Intellectual PropertyThe IT Act,2000 has addressed the misuse of technology in form of cyber crimes. It has howeverfailed to discuss Intellectual Property issues and its protection. Likewise, the Indian TrademarkAct, 1999 and Copyright Act, 1957 are also silent on issues arising out of online Trademark andCopyright infringement. Though computer programmes are protected under the Copyright Actbut it does not

provide remedies for online software piracy. Cyber squatting is also notpunishable directly under the IT Act.

### **Copyright and cyber law:**

Copyright may be a legal term describing rights given to creators for his or her literary and artistic works. The sorts of works covered by copyright include: literary works like novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works like paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Copyright subsists during a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright subsists within the work and creator is that the owner of the work. Creators often sell the rights to their works to individuals or companies best ready to market the works reciprocally for payment. These payments are often made hooked in to the particular use of the work, and are then mentioned as royalties. These economic rights have a deadline, (other than photographs) is for all times of author plus sixty years after creator's death.

### **Online Copyright violation-**

#### **Caching-**

One of the essential copyright issues within 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 may be done only with the proper holder's permission. The proper of reproduction presents certain fundamental problems over the web. This is often due to the essential nature of internet transmission. Reproduction takes place at every stage of transmission. Temporary copying (known as caching) is an important part of the transmission process through internet without

which messages cannot travel through the networks and reach their destinations. Within the Indian Law, reproduction has got to be during 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 straightforward. Consequently, the control of infringement of copyright has very difficult and sometimes impossible. Books, videos, films, music are often copied with none difficulty and thousands of copies can be made up of it and distributed. Taking content from one site, modifying it or simply reproducing has been made possible by digital technology. This has posed new challenges for the normal 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 electronic database has been defined within the Information Technology Act 2000 for the primary time. Section 43 of the I.T. Act 2000 provides for compensation to the aggrieved party up to at least one Crore rupees from an individual who violates the copyright and cyberspace norms. Also Section 66 of I.T. Act 2000 provides for penal liabilities in such a case.

#### **Copyright Issues in Cyberspace-**

The object of the copyright is to encourage authors, composers, directors to create original works by way of providing them the exclusive right to breed, publish the works for the advantage of the people. When the limited right i.e. term of copyright is over, the works belong to the general public domain and anyone may reproduce them without permission. The copyright subsists in original literary, dramatic, musical, artistic, cinematographic film, sound recording and program also. Today, copyright serves a spread of industries including production and distribution of books, magazines and newspaper, media of entertainment that's dramatic and musical works for performances, publication of musical works and cinema, broadcasting etc. etc. copyrights being property travel from country to country more easily and quickly than other forms of property. Technological progress has made copying of copyright material easy and straightforward.

### **Trademark Law & Domain Names Issues in Cyberspace:**

Definition of Trademark- “a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours”.

#### **Functions of a Trademark:**

A trademark serves the purpose of identifying the source of origin of goods. Trademark perform the following four functions

- i. It identifies the product and its origin.
- ii. It guarantees its quality.
- iii. It advertises the product
- iv. It creates an image of the product in the minds of the public, particularly consumers or the prospective consumers of such goods.

Examples of trademark- Lee, Skoda, Colgate, Pepsi, Brooke Bond, Sony etc.

#### **Various sorts of Infringement of Trademark through Cyberspace**

##### **A. Cybersquatting**

Various sorts of domain names disputes come for consideration before the courts everywhere world. one among the most serious sorts of disputes has been about ‘Cybersquatting’ which involves the utilization of a website name by an individual with neither registration nor any inherent rights to the name. Trademarks and domain names being similar, are exploited by some people that 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 often referred to as ‘cybersquatting’ which means some person sitting on the property of another person. The practice of ‘cybersquatting’ is abusive whereby one entity registers a website name that has 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 typically famous so as to either block the legitimate user registering its most wanted name or hoping to sell the names for profit within the market. Such a trend of cybersquatting has led the courts to think about the relationship between trademarks and domain names. To file a complaint to stop cybersquatting, the complainant will need to prove the dishonest intention, lack of legitimate rights and interests and similarity of domain name with the trademark

##### **B. Reverse name hijacking:**

It is also referred to as reverse cybersquatting. It happen when a trademark owner tries to secure a website name by making false cybersquatting claims against a website name’s rightful owner through action . Sometimes, domain names owner has got to transfer ownership of the domain name to the trademark owners to avoid legal action and dear expenses, particularly when the domain names belong to the smaller organisations or individual who aren't economically sound to fight the case. Reverse domain name hijacking is most ordinarily done by larger corporations and famous wealthy individuals.

##### **C. Meta tags**

Meta tag is a component of sites that's also referred to as Meta elements. Meta tags provide information about page descriptions, key words and other relevant data. Originally, Meta tags were utilized in search engines to define what the page was about when the web was within the early stages, Meta tags were wont to help the place web pages within the correct categories. Nowadays, people began abusing Meta tags to create false page rankings for web pages that were poorly constructed. Meta tags are often categorised into title, description and keywords.

### **Broadcasting rights, internet streaming and statutory licensing:**

Section 37 of the Copyright Act grants a special right – known as the ‘broadcast reproduction right’ – to broadcasting organisations, independent of the copyright that rests with the creator or owner of the work which is being broadcast. The term of the right is 25 years. In *Asia Industrial Technologies v Ambience Space Sellers* in 1997, the Bombay High Court held that this right is available to broadcasting organisations, even if they are situated outside India, so long as the broadcast is available in India for viewing.

The right entitles a broadcaster to prevent others from engaging in the following with respect to the broadcast of a programme or a substantial part thereof: re-broadcasting; disseminating a broadcast without authorisation in exchange for payment; and making unauthorised sound or visual recordings of the broadcast or reproducing, selling or renting such recordings.

The Copyright Act does not define a ‘broadcasting organisation’, although ‘broadcasting’ is defined as ‘communication to the public’:

by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or by wire.

Section 31D of the Copyright Act enables broadcasting organisations to request the Intellectual Property Appellate Board – a specialised tribunal for IP rights matters – to fix statutory royalties for literary and musical works, as well as sound recordings. The organisation must pay royalties to the owner of the copyright at the rate fixed by the board. The provision uses the terms ‘radio broadcast’ and ‘television broadcasting’. Section 31D was introduced to the statute in 2013, by which time the legislature was well aware of the Internet as a means of content sharing.

### **Celebrity and personality rights:**

Celebrity and personality rights are not governed by legislation in India but through evolved jurisprudence. In a 2018 landmark judgment, the Supreme Court of India upheld the ‘right to privacy’ as a fundamental right guaranteed under the Constitution of India (*Puttaswamy v Union of India*), recognising personality rights as a facet of the right to privacy. It declared that all persons have a right “to exercise control over his/her own life and image as portrayed to the world and to control commercial use of his/her identity” and “to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes without his/her consent”.

Over the years, many celebrities, including film stars, artists, politicians and sports personalities, have secured injunctions against the unauthorised use of their names or pictures for commercial purposes. However, courts will not interfere with the honest and bona fide use of one’s own name in business, notwithstanding the identity of such a name with that of a celebrity. The Delhi High Court judgment in *Gautam Gambhir v DAP* (2017) is instructive on this point.

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