

# UNIT 5

## INDUSTRIAL DESIGNS

### Introduction

When consumers decide to buy an article choosing from an array of competing goods they are influenced in their choice not only by the utility aspect of the goods but also significantly by the aesthetic aspect – the visual appeal of the article. Design imparts the visual appeal to an object and it serves to differentiate it from other products in the same category. For the purpose of this chapter the term design is the same as industrial design. An industrial design is the ornamental or aesthetic aspect of an article which is generally mass-produced and useful. It may consist of three-dimensional features such as shape or surface or two-dimensional features such as patterns, line or colours (or their combination) applied on an article by any industrial process or means which in the finished article are judged solely by the eyes; it does not include any mode or principle of construction. If a design cannot be applied to an article, it would fall under artistic works and more appropriately form the subject matter of copyright. Some designs may qualify for protection as trademark.

The object of Design registration is to see that the creator of a profitable design should be rewarded by the exclusive use of it seeking to reconcile it with the other objective of removing impediments to the free use of available designs. In India, the law of design protection was contained in the Designs Act, 1911, which has now been repealed by the Designs Act, 2000 referred to as the Act in the following text.

### What is an Industrial Design?

In everyday language, an Industrial Design generally refers to a product's overall form and function. An armchair is said to have a "good industrial design" when it is comfortable to sit in and we like the way it looks. For businesses, designing a product generally implies developing the product's functional and aesthetic features taking into consideration issues such as the product's marketability, the costs of manufacturing or the ease of transport, storage, repair and disposal.

From an intellectual property law perspective, however, an industrial design refers only to the ornamental or aesthetic aspects of a product. In other words, it refers only to the appearance

of an armchair. Although the design of a product may have technical or functional features, industrial design, as a category of intellectual property law, refers only to the aesthetic nature of a finished product, and is distinct from any technical or functional aspects.

Industrial design is relevant to a wide variety of products of industry, fashion and handicrafts from technical and medical instruments to watches, jewellery, and other luxury items; from household products, toys, furniture and electrical appliances to cars and architectural structures; From textile designs to sports equipment. Industrial design is also important in relation to packaging, containers and “get-up” of products.

As a general rule, an industrial design consists of: three-dimensional features, such as the shape of a product, two-dimensional features, such as ornamentation, patterns, lines or color of a product; or a combination of one or more such features.

### **Creative Designs in Business**

Enterprises often devote a significant amount of time and resources to enhancing the design appeal of their products. New and original designs are often created to:

- 1. Customize products to appeal to specific market segments:** small modifications to the design of some products (e.g. a watch) may make them suitable for different age groups, cultures or social groups. While the main function of a watch remains the same, children and adults generally have very different tastes in design.
- 2. Create a new niche market:** in a competitive marketplace, many companies seek to create a niche market by introducing creative designs for their new products to differentiate them from those of their competitors. This could be the case for ordinary items such as locks, shoes, cups and saucers to potentially expensive items such as jewellery, computers or cars.
- 3. Strengthen brands:** creative designs are often also combined with distinctive trademarks to enhance the distinctiveness of a company's brand(s). Many companies have successfully created or redefined their brand image through a strong focus on product design.

### **Why protect industrial designs?**

An industrial design adds value to a product. It makes a product attractive and appealing to customers, and may even be its unique selling point. So protecting valuable designs should be

a crucial part of the business strategy of any designer or manufacturer.

By protecting an industrial design through its registration at the national or regional intellectual property office, the owner obtains the exclusive right to prevent its unauthorized copying or imitation by others. This makes business sense as it improves the competitiveness of a business and often brings in additional revenue in one or more of the following ways:

- By registering a design you are able to prevent it from being copied and imitated by competitors, and thereby strengthen your competitive position.
- Registering a valuable design contributes to obtaining a fair return on investment made in creating and marketing the relevant product, and thereby improves your profits.
- Industrial designs are business assets that can increase the commercial value of a company and its products. The more successful a design, the higher is its value to the company.
- A protected design may also be licensed (or sold) to others for a fee. By licensing it, you may be able to enter markets that you are otherwise unable to serve.
- Registration of industrial designs encourages fair competition and honest trade practices, which, in turn, promote the production of a diverse range of aesthetically attractive products.

### **Procedure for obtaining Design Protection**

Obtaining design protection involves several steps, which may vary slightly depending on the country or region you're applying in. However, here's a general procedure for obtaining design protection:

1. **Research and Preliminary Assessment:** Before filing for design protection, it's important to research existing designs to ensure that your design is unique and not already protected by someone else's intellectual property rights. You can conduct searches through patent offices' databases or hire a professional search firm to perform a comprehensive search.
2. **Identify the Jurisdiction:** Determine the jurisdiction(s) where you want to obtain design protection. This could be a single country, a regional office (like the European Union Intellectual Property Office), or an international application under the Hague System.
3. **Prepare Application Documents:** Prepare the necessary documents for your design application. This typically includes drawings or illustrations of the design, a description

explaining the design's features and functionality, and any other required forms or paperwork specific to the jurisdiction.

4. **File the Application:** Submit your application for design protection to the appropriate intellectual property office. Pay the required filing fees, and ensure that all necessary documents are included and filled out correctly.
5. **Examination:** After filing, the intellectual property office will examine your application to ensure that it meets the legal requirements for design protection. This examination may include assessing the novelty and originality of your design.
6. **Publication:** Once your application has been accepted, it will usually be published in a public database or journal. This publication notifies the public of your design and allows third parties to oppose the application if they believe it infringes on their own rights.
7. **Opposition Period (if applicable):** In some jurisdictions, there may be a period after publication during which third parties can oppose your design application. If no oppositions are filed or if any oppositions are successfully resolved in your favor, your design will proceed to registration.
8. **Registration:** If your application passes examination and any opposition period, your design will be registered, and you'll receive a certificate of registration. This certificate serves as evidence of your design rights and can be used to enforce them against infringers.
9. **Maintenance and Renewal:** Design protection is typically granted for a limited period, after which it must be renewed to remain in force. Make sure to keep track of renewal deadlines and pay any required renewal fees to maintain your design rights.
10. **Enforcement:** If someone infringes on your design rights, you have the option to enforce them through legal action. This may involve sending cease-and-desist letters, negotiating licensing agreements, or pursuing litigation in court.

### **Revocation Infringement and Remedies of Industrial Designs**

#### **1. Revocation:**

Revocation of industrial designs refers to the legal process of cancelling or invalidating the registration of an industrial design. This can occur for various reasons, including:

- **Lack of Novelty or Originality:** If the industrial design is not new or lacks originality compared to prior designs.
- **Lack of Individual Character:** If the design does not possess an individual character, meaning it's not distinguishable from existing designs to an informed user.

- **Non-Compliance:** Failure to comply with formal requirements or procedures during the application process.
- **Invalidity Claims:** Third parties may file invalidity claims challenging the validity of the registered design based on prior rights or other legal grounds.

Revocation proceedings may be initiated by the industrial property office or by third parties, such as competitors or interested parties.

## 2. Infringement:

Infringement of industrial designs occurs when someone uses, manufactures, sells, imports, or distributes products incorporating the protected design without authorization from the rights holder. Signs of infringement may include:

- Unauthorized reproduction or imitation of the protected design.
- Commercial use of products that incorporate the protected design without permission.
- Importation of products that infringe on the design rights.

Infringement of industrial designs violates the exclusive rights granted to the rights holder and can result in legal action.

## 3. Remedies:

When infringement of industrial designs occurs, rights holders have several remedies available to them to enforce their rights and seek redress:

- **Cease and Desist Letters:** Sending a formal notice demanding that the infringer stop using the design and possibly compensate for damages.
- **Negotiation:** Attempting to resolve the dispute through negotiation, potentially through licensing agreements or other arrangements.
- **Injunctions:** Seeking court orders to stop the infringing activities immediately.
- **Damages or Compensation:** Seeking monetary damages to compensate for financial losses resulting from the infringement.
- **Destruction or Seizure of Infringing Goods:** Obtaining court orders for the destruction or seizure of goods that infringe on the design rights.
- **Legal Proceedings:** Initiating legal action in court to enforce rights, obtain remedies, and seek appropriate relief.

The availability and procedures for remedies may vary depending on the jurisdiction and the applicable laws governing industrial designs. It's advisable for rights holders to seek legal advice from professionals with expertise in intellectual property law to determine the most appropriate course of action in cases of infringement.

## Case Studies

### 1. **iPhone Design by Apple:**

Apple's iPhone is a quintessential example of iconic industrial design. The sleek and minimalist design, characterized by a minimalist form factor, smooth edges, and a large touchscreen display, revolutionized the smartphone industry. Apple's design patents for various aspects of the iPhone's design have been fiercely protected and have led to numerous legal battles with competitors over alleged design infringement.

### 2. **Alessi Juicy Salif Citrus Juicer:**

Designed by Philippe Starck for Alessi in 1990, the Juicy Salif citrus juicer is an iconic piece of industrial design. Its unconventional and sculptural form, resembling a space-age insect, challenges traditional notions of kitchen appliance design. Despite its controversial functionality (some argue it's not the most efficient juicer), the Juicy Salif has become a design icon and is part of the permanent collection of the Museum of Modern Art (MoMA) in New York.

### 3. **Vespa Scooter:**

The Vespa scooter, designed by Corradino D'Ascanio and first manufactured by Piaggio in 1946, is an enduring symbol of Italian industrial design. With its timeless and elegant design characterized by a streamlined body, single-piece steel frame, and distinctive front fairing, the Vespa revolutionized urban transportation and became a cultural icon. The design's success has led to numerous iterations and variations over the years while maintaining its iconic aesthetic.

### 4. **Swatch Watch:**

Introduced in the 1980s by the Swatch Group, the Swatch watch is a prime example of innovative industrial design in the watchmaking industry. With its colorful and affordable plastic casing, minimalist design, and Swiss precision engineering, the Swatch watch challenged traditional notions of watch design and democratized access to stylish timepieces. Its success revitalized the Swiss watch industry and established Swatch as a global brand.

### 5. **Oxo Good Grips Kitchen Tools:**

Designed by Smart Design LLC for Oxo International, the Oxo Good Grips line of kitchen tools exemplifies user-centered industrial design. Featuring ergonomic handles, intuitive controls, and durable materials, Oxo Good Grips products are designed to be comfortable and easy to use for people with a wide range of abilities. The design's focus on usability and accessibility has made it a favorite among consumers and has won numerous design awards.

# COPYRIGHT

## WHAT IS COPYRIGHT?

When a person creates a literary, musical or artistic work, he or she is the owner of that work and is free to decide on its use. That person (called the “creator” or the “author” or “owner of rights”) can control the destiny of the work. Since, by law, the work is protected by copyright from the moment it comes into being, there is no formality to be complied with, such as registration or deposit, as a condition precedent for that protection. Mere ideas in themselves are not protected, only the way in which they are expressed is protected.

Copyright is the right given by law to the creators of literary, dramatic, musical and a variety of other works. It ordinarily means the creator alone has the right to make copies of his or her works or alternatively, prevents all others from making such copies. The basic idea behind such protection is the premise that innovations require incentives. Copyright recognises this need and gives it a legal sanction. Moreover, commercial exploitation of copyright yields income to the creators and thus making pecuniary rewards to individual’s creativity

### **1. NATURE AND SCOPE.**

Copyright is the legal protection extended to the owner of the rights in an original work that he has created. It comprises two main sets of rights: the economic rights and the moral rights.

The economic rights are the rights of reproduction, broadcasting, public performance, adaptation, translation, public recitation, public display, distribution, and so on. The moral rights include the author's right to object to any distortion, mutilation or other modification of his work that might be prejudicial to his honour or reputation.

Both sets of rights belong to the creator who can exercise them. The exercise of rights means that he can use the work himself, can give permission to someone else to use the work or can prohibit someone else from using the work. The general principle is that copyright protected works cannot be used without the authorization of the owner of rights. Limited exceptions to this rule, however, are contained in national copyright laws. In principle, the term of

protection is the creator's lifetime and a minimum of 50 years after his death.

These legal aspects are specified in international conventions to which most countries are now party. On their accession, member States should have national legislation that are in line with the international standards.

At the international level, the economic and moral rights are conferred by the Berne Convention for the Protection of Literary and Artistic Works, commonly known as the "Berne Convention". This Convention, which was adopted in 1886, has been revised several times to take into account the impact of new technology on the level of protection that it provides. It is administered by the World Intellectual Property Organization (WIPO), one of the specialized agencies of the United Nations system.

## **COPYRIGHT IN INDIA**

The copyright in India has travelled a long way since it was introduced during the British rule. The first law on copyright was enacted in the year 1847 by the then Governor General of India. When Copyright Act of 1911 came into existence in England, it became automatically applicable to India, India being an integral part of British Raj. This Act was in force in the country until after independence when a new Copyright Act (the Act of 1957) came into effect in 1958. Thereafter the Act has undergone many amendments. The latest in the series is the 2003 Amendment, which came into force in May 2004.

The Indian Copyright Act confers copyright on (i) original literary, dramatic, musical and artistic works, (ii) cinematographic films and (iii) sound recordings. The word 'original' means that it should not be copied from other works or alternatively it should be the outcome of independent efforts. The Act empowers copyright holder(s) to do or authorise doing a number of activities. The important among these are:

- a) to reproduce the work,
- b) to publish the work,
- c) to perform the work in public or communicate it to the public,
- d) to produce, reproduce, perform or publish any translation of the work,
- e) to make any cinematographic film or a record in respect of the work,
- f) to make any adaptation of the work,
- g) to do, in relation to a translation or an adaptation of the work, any of the acts specified to the work in sub clauses to (a) to (f).



The above-mentioned rights are 'exclusive' in the sense that the creator (or right holder) alone has the right to enjoy these to the exclusion of others. The author by virtue of his creation becomes the 'owner' of the copyright in the work. However, there can be exceptions to this as in the following two cases: -

1. The creator may be employed by someone and having been employed to create a work, the rights belongs to the creator(s), the employer and
2. The creator may transfer his copyright by a document in writing to another person. This is known as assignment.

The grant of copyright is a limited monopoly. It is limited in the 'scope' of the rights granted and in terms of 'time'. Subject to these limitations, copyright is a monopoly ownership. In India, copyright on a literary work is provided for the lifetime of the author plus sixty years after his death. In case of joint authorship, the sixty years period is calculated from the beginning of the calendar year following the year in which the last (surviving) author dies. Copyright with respect to photographs, cinematographic works and sound recordings spans for 60 years after its first publication. In order to strike a balance between the society's need for access to knowledge and the need to reward creators, limited uses of copyright protected works are permitted without author's consent. These are called 'fair use' of copyright. Section 52 of Indian Copyright Act permits certain activities which do not amount to infringement. Important in this 'exception list' are reproduction of literary, dramatic, musical or artistic works for educational purposes, e.g. research, review etc., and reporting in newspapers, magazines, periodicals, etc.

The Copyright Act of India provides right holders dual legal machinery for enforcing their rights. The enforcement is possible through **(1) The Copyright Board and (2) The courts.**

**Legal remedies** include imprisonment and/or monetary fines - depending upon the gravity of the crime. Sometimes remedies also include seizure, forfeiture and destruction of infringing copies and the plates used for making such copies. The 1984 amendment has made copyright infringement a cognizable and non-bailable offence. Under the provisions of the Act any person who knowingly infringes or abets the infringement of copyright is considered as an offender and is punishable with a minimum of six months imprisonment which may extend to

three years and a fine between fifty thousand and two lakh rupees.

The 1994 Amendment has incorporated a special penal provision against deliberate using of infringing computer software. The punishment provided for this act is imprisonment for a term of seven days to a maximum of three years and a fine between fifty thousand and two lakh rupees. In case the infringing copy of the computer software is used not for pecuniary gain or it is used in the course of trade or business, the imprisonment can be relaxed and fine can be maximum of fifty thousand rupees.

Beside amending the Copyright Act, the Indian Government has taken a few more steps in strengthening the enforcement in the country. A Copyright Enforcement Advisory Council has been set up for advising the Government on measures for improving the copyright enforcement. Training programmes and seminars are arranged for police personnel. Necessary legislation was made for bringing video shops, cable operators under regulation. State governments are encouraged to set up IPR cells for exclusively dealing with copyright and other IPR violations. In spite of all these, enforcement of IPR violations, particularly copyright violations have not been strong enough in the country and piracy prevails in all types of copyright works notably musical works, video films and softwares

## **PROTECTION OF RELATED RIGHTS**

Whereas the rights provided by copyright apply to authors, “related rights”, also known as “neighbouring rights” concern other categories of owners of rights, namely, performers, the producers of phonograms and broadcasting organizations.

Related rights are the rights that belong to the performers, the producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcasts respectively.

Related rights differ from copyright in that they belong to owners regarded as intermediaries in the production, recording or diffusion of works. The link with copyright is due to the fact that the three categories of related rights owners are auxiliaries in the intellectual creation process since they lend their assistance to authors in the communication of the latter's works to the public. A musician performs a musical work written by a composer; an actor performs a role in a play written by a playwright; producers of phonograms -- or more commonly "the record industry" -- record and produce songs and music written by authors and composers,

played by musicians or sung by performers; broadcasting organizations broadcast works and phonograms through their broadcasting stations.

At the international level, related rights are conferred by the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, better known as the "Rome Convention". This Convention was adopted in 1961 and has not been revised since. It is jointly administered by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Labour Organization (ILO) and WIPO.

The 1994 Agreement on Trade Related Aspects of Intellectual Property Rights (or TRIPS Agreement), which is administered by the World Trade Organization (WTO), incorporates or refers to this international protection.

There are still other international treaties that concern copyright and related rights protection; further information may be obtained on them by visiting the WIPO's Web site ([www.wipo.int](http://www.wipo.int)).

## **2. RIGHTS CONFERRED BY COPYRIGHT**

The original creators of works protected by copyright, and their heirs, have certain basic rights. They hold the exclusive right to use or authorize others to use the work on agreed terms.

The creator of a work can prohibit or authorize:

- Its reproduction in various forms, such as printed publication or sound recording;
- Its public performance, as in a play or musical work;
- Recordings of it, for example, in the form of compact discs, cassettes or videotapes;
- Its broadcasting, by radio, cable or satellite;
- Its translation into other languages, or
- Its adaptation, such as a novel into a screenplay.

Many creative works protected by copyright require mass distribution, communication and financial investment for their dissemination (for example, publications, sound recordings and films); hence, 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, according to the relevant treaties; it is 50 years after the creator's death. National law may establish longer time-limits. This limit enables both creators and their heirs to benefit financially for a reasonable period of time. Copyright protection also includes moral rights, which involve the right to claim authorship of a work, and the right to oppose— changes to it that could harm the creator's reputation. The creator or the owner—can of the enforce copyrights in administrative work and in the courts, by inspection of premises— for evidence of production or possession of illegally made “**pirated**” —goods related to protected works. The owner may obtain court orders to stop such activities, as well as seek damages for loss of financial rewards and recognition.

### **Are ideas, methods or concepts protected by copyright?**

Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such. This principle has been confirmed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO).

### **How are rights related to copyright?**

A field of rights related to copyright has rapidly developed over the last 50 years. These related rights grew up around copyrighted works, and provide similar, although often more limited and of shorter duration, rights to:

- performing artists (such as actors and musicians) in their performances;
- Producers of sound recordings (for example, cassette recordings and compact discs) in their recordings;
- broadcasting organizations in their radio and television programs.

### **3. Copy right protection.**

Copyright and its related rights are essential to human creativity, by giving creators incentives in the form of recognition and fair economic rewards. Under this system of rights, creators are assured that their works can be disseminated without fear of unauthorized copying or piracy. This in turn helps increase access to and enhances the enjoyment of culture, knowledge, and entertainment all over the world.

### **When does Copyright Protection begin, and what is required?**

Copyright protection begins when any of the above described work is actually created and fixed in a tangible form.

For example, my brother is a musician and he lives in the United States. When he writes new lyrics, he prints them out on paper, signs his name at the bottom with the Copyright © symbol to show that he is the author, places it in an envelope and mails it to himself without opening it. His copyright begins at the moment he puts his idea in a tangible form by printing the lyrics out on paper. He creates proof when he mails it to himself - the postmark establishes the date of creation. He then registers his copyright with the U.S. Copyright Office which is a requirement under the US law in order to sue for monetary damages should a violation of his copyright arise. However, if somebody copies and redistributes his lyrics without permission before his copyright is registered, he still has the right to assert a copyright claim as the true author.

The above applies to digital art and graphics. Open a gif, jpg or png file that you created and look at the properties. It states the date that you saved it to your hard drive as the date of creation. If somebody copies a graphic from your web site I assure you that the date of creation on your copy of the file is earlier than the copy taken off your web site. If that still doesn't feel like enough proof for you, save everything to a floppy disk and mail it to yourself via certified mail. Keep the envelope sealed, wrap it in protective plastic and put it in a safe place.

Somebody once asked if it was “illegal” to place the copyright © symbol next to your name if you have not registered your copyright. Unless you have stolen the work from somebody else and you are not the true owner of the work, it is not illegal to place the copyright © symbol next to your name - it is your right to do so.

The proper way to place a copyright notice is as follows: Copyright © (first date of creation) (name of owner). Like this: Copyright © 2003 John Smith.

## **WHEN DOES COPYRIGHT PROTECTION END, OR EXPIRE?**

If a copyright statement reads, “© Copyright 1998, 1999 John Smith.” does that mean that John Smith's copyright expired in 1999? The dates that you see in a copyright statement do not refer to the dates—that the owner's material will expire and become public domain they actually refer to the dates that the material was created.

When you see several dates in a copyright statement, it simply means that certain things were

created in one year and modified later. It could also mean that new things were created and added in a later year. It most definitely does not refer to the date that a copyright will expire. Expiration of a copyright actually takes place much later, and this period of validity begins from the date that you see in the copyright statement. The Berne Convention establishes a general and minimum period that lasts the life of the author and fifty years after his (or her) death. Cinematographic works and photographic works have a minimum period of protection of 50 and 25 years upon the date of creation, respectively. This applies to any country that has signed the Berne Convention, and these are just the minimum periods of protection. A member country is entitled to establish greater periods of protection, but never less than what has been established by the Berne Convention.

So, what does all this mean? This means that if a copyright statement reads, "© Copyright 1998, 1999 John Smith" and John Smith is from a country that has signed the Berne Convention, he created his works in 1998 and 1999, and his copyright is not going to expire until at least fifty years after he dies (this period may be greater - remember that member countries may establish longer periods of protection through their national laws).

I have actually seen copyright statements with future dates, such as "© Copyright 2006, 2007 John Smith", most likely because the copyright holder thought that they could establish an expiration date for the copyright. This is incorrect unless John Smith travelled to the future and created the work in question. These types of copyright statements also mislead others to believe that dates in a copyright statement refer to the date a copyright expires, when the date should really refer to its year of creation.

### **The Famous © Symbol**

Why does it say Copyright © 1998-2003 WhatisCopyright.org at the bottom of this webpage? Those are the dates that I created and/or modified the layout, text, graphics and other material displayed on this web site and saved it to my hard drive. That entitles me to claim copyright. Only I, as the author and creator of this work, am entitled to use, reproduce and distribute this material unless someone else who wishes to use it obtains my prior written permission to use it as well, and only in the manner that I previously approve. What does this mean? That nobody may access my web site and copy my layout, text or graphics until I provide a written document that states, "Yes, you can use my work, but only in the manner that I deem appropriate." This especially goes for those who want to use my material for lucrative purposes/economic benefits.

Would you let someone sell letters you've written for publication in a magazine without your permission, and particularly without you getting some of the profit? Anybody who uses copies or distributes my material in any manner, for commercial or personal purposes, without my written permission, would be committing an infringement of my copyright. If I, at any moment, detect a violation of my copyright by another individual or entity, I am entitled to make a claim. It doesn't matter if you are a novice or if you "don't know any better". As a principle of law states: "Ignorance of the law does not make one exempt from compliance thereof."

## **COMPUTER SOFTWARE AND IPR**

### **Protection of computer software under copyright**

During the 1970s and the first half of the 1980s, intensive international discussions regarding the protection of computer software took place, mainly aiming at resolving the question of whether such protection should be under copyright or patent law, or possibly under a sui generis system of protection.

A Committee of Experts convened jointly by WIPO and UNESCO marked a decisive breakthrough in the choice of copyright as the appropriate form of protection of computer programmes, which can be assimilated to literary works. Soon afterwards, several countries passed legislation clarifying that computer programmes were considered works subject to copyright protection, and since then it has been generally accepted worldwide that copyright protection should be applied rather than a sui generis approach.

There are important reasons for choosing copyright protection. First of all, computer programmes are basically writings, and, under Article 2(1) of the Berne

Convention, the purpose for which writings are created is irrelevant from the viewpoint of their qualifying as literary works, if they are original intellectual creations.

Computer programmes in object code form share the copyright status of other literary and artistic works stored in computer systems in machine-readable form. While they are unintelligible for us in object code, they can be retrieved – “decompiled” – into source code form where they are intelligible. It is generally recognized that all categories of works are protected against storage in digital form, because such storage is a reproduction. In this

respect it does not matter that, for example, a musical work cannot be perceived directly from a CD, but only after a “decompilation” has taken place in a CD-player. Recompilation of computer programme means reproduction and adaptation (“translation”) of computer programmes into a form in which the coding and structure of the programme can be examined and analyzed.

## **AUTHORSHIP ISSUES IN WORKS USED OR MADE BY COMPUTER**

The data processed by a computer, or the data that results from such processing, may well be protected as literary and artistic works. This gives rise to some important questions in relation to the copyright protection of such works, such as:

- If the information processed by a computer is expressed in a work protected by copyright, is the use of such work by the computer under the control of copyright-owner of the work?
- Where a computer has been used to process information in such a way as to produce a work of a kind normally protected by copyright (for example, the processing of statistics so as to produce them in tabulated form designed to serve a particular purpose, or the use of a “synthesizer” to produce music) who is to be regarded as the “author,” and hence the copyright-owner, of the resulting literary or musical work?

Both internationally and nationally, there has been a very large measure of agreement on the answers, and the general consensus is recorded in the Report of the Second Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works, convened by WIPO and UNESCO in Paris in June 1982. The major conclusions recorded in the report and the recommendations may be summarized in the

Following way:

- The input of a protected work into a computer system includes the reproduction of the work on a machine-readable material support, and also the fixation of the work in the memory of the computer system; both these acts (i.e. reproduction and fixation) are governed by the Article 9(1) of the Berne Convention;



- The output of a protected work from a computer system should be protected under copyright law, irrespective of the form of the output, for example, as a hardcopy printout, a fixation in machine-readable form, a transmission from the database of one system into the memory of another system (with or without an intermediary fixation), or by making the work available to the public by audio or visual images presented on a screen;
- In amending or modifying national legislation to take account of computer use of protected works, care should be taken to ensure that authors' moral rights should continue to be exercisable in relation to computer use, and that the exemption and limitations on the copyright owner's right of control, which computer technology might render desirable, do not exceed the limits on such exemptions permitted by the Conventions; and
- Non-voluntary licenses in relation to the computer use of protected works should only be adopted when voluntary licensing is impracticable, and should, in any case, be in accordance with the convention principles; and where a non-voluntary license is adopted by a national law, its effect should be confined to the territory of the country of that law.

In many countries the existing law appears to be regarded as implementing these general conclusions, but in some countries there have been specific amendments to the copyright law to put the matter beyond doubt.

The general view which emerged from these studies is that no matter how sophisticated a computer may be, it is only a tool, and the author of a work produced by the aid of a computer is the person who conceived the product and who gave the programmer and the technician the instructions necessary to produce it. Neither the programmer who designed the programme needed to operate the computer for the purpose of producing that work, nor the technician who operated the computer when carrying out the task, would be regarded as the author or a joint author; however, where the work of the programmer amounted to collaboration with the originating creative person to such an extent that the programmer contributed creatively in settling the form of the final product, he might be

regarded as a co-author.

## **Patenting of computer software**

Computers powerful enough to run complex software have existed since the 1950s. Software related inventions, initially, received a chilly reception at the patent offices around the world when patent applications directed to computer related inventions were first filed. They were of the view that, by statute, patents can only be granted to processes, machines, articles of manufacture, and compositions of matter. In particular patents cannot be granted to scientific truths or mathematical expressions. The idea that the computer programmes solved mathematical problems and are thus mere equations has long held them to be non-patentable. This means that most of the fundamental techniques of software engineering have never been patented as the countries started to issue software patents only around 1980's. Some countries have now enacted laws that have made it possible to patent computer software related technologies—theUSbeing the foremost.

However, many people are worried about this situation. They are of the view that as many ideas of computer programming are being patented, it becomes impossible to write software without infringing on patents thus they live under permanent threat of being blackmailed by holders of large patent portfolios.

Another dimension to the problem is that, there is a striking difference of opinion among different countries about which type of software related inventions should be patented. While the United States has opened the doors for patents of business methods and mathematical algorithms (as long as they have a useful application) other countries are divided. It has thus become imperative to have a closer look at Patent laws of different countries.

The normal prerequisite for copyright protection, that a work must be original, is well suited to be applied to computer programmes. Although most programmes consist of sub-routine elements which often in themselves would hardly qualify as original works, the combination of such elements and the structuring of the programmes – with the exception of a few very simple programmes – make them sufficiently creative. Ideas and abstract methods for solving problems (the so-called “algorithms”) are not protected under copyright, which limits the protection to the expression of such ideas and algorithms, but this is actually a desirable

consequence of copyright protection, i.e. an appropriate protection is offered without creating unreasonable obstacles to independent creation of such programmes.

The piracy in computer software simply means copying and distribution of computer programmes without the copyright holder's permission. The software industry, generally, consists of creation and distribution of computer programmes. Creation of computer programme is similar to writing a novel or other literary works and it requires intellectual skill and training in software programming. Though a software can be written by individual programmer, most of the major softwares are the outcome of group efforts, where medium to large sized teams spend months or even years to write a complete programme.

Distribution of computer programmes in most of the developed countries occurs through a two-tiered system of wholesalers and dealers, similar to that of many other industries. The software publishers make a substantial amount of their shipments to a small number of distributors in any given country, who maintain well-stocked warehouses and can respond quickly to orders from hundreds or thousands of individual retail dealers or resellers. The dealers market and provide the software products directly to end-users of computers. The end users can be individuals, commercial enterprises, educational institutions and government establishments. Sometimes, software publishers also deal directly with a small number of the larger dealers or resellers in an individual country. Licensing is a common practice in software industries. The publisher of a software generally authorises its end users through the mechanism of the shrink-wrap license contained in the package.

Like other copyright based industries, the software industry also faces several forms of piracy. In fact, piracy in software is more than in others because it is relatively easy to copy a software in computers especially in PCs and for all practical purposes the pirated version looks and performs in an identical manner as the original. The five principal types of software piracy involve:

1. Counterfeiters
2. Resellers
3. Mail order houses
4. Bulletin boards and
5. End-user piracy.

Counterfeiters are relatively new phenomenon in the software industry and most flagrant software counterfeiters producedisks, documentation and packaging that look very similar to those of the software publisher. Reseller piracy occurs in the software distribution channel, when distributors or dealers either make copies of software onto floppy disks, or the internal storage device or the "hard disk" of computers that they are selling, without authorisation from the software publisher. Mail-order piracy consists of the unauthorised copying of software onto diskettes, CDs, or other media and distribution of such software by post. Bulletin board pirates engage in unauthorised reproduction and distribution of software via telecommunication. Typically, this involves an individual computer user who has installed a number of software programmes on his computer, and who allows other users to connect to his computer through the telephone line via modem and copy the programmes onto discs. The pirate in most cases has copied the programme onto his own computer without authorisation of the copyright holder's consent is also a copyright violation. End-user piracy takes place when a user copying software onto hard disks of more computers than the number authorised by the publisher. This form of piracy perhaps takes place on a wider scale than other forms because end-users often make substantial copies of the softwares possessed by them and then distribute or exchange the same. Though this harms the interests of right holders, end users definitely gain out of it because this leads to obvious economic advantages for them.

Identifying pirated software is not an easy task. This is primarily for two reasons. First, as mentioned earlier there is hardly any difference between original software and pirated software, once it is copied onto hardware. Second, detection of piracy requires access to software or hardware or both, which may not be feasible in many cases. However, there are some ways through which an unauthorised copy of software can be identified. Many a time publishers supply softwares in packaged form which contain software on diskettes with printed labels giving manufacturer's name, full product name, version number, trade mark and copyright notices. Besides these, the packages also typically, contain professionally printed documentation, a keyboard template, end user license and registration cards and other printed materials pursuant to a standard bill of materials that would apply to all packages of that particular product. In such cases, the most simple pirated copies may be spotted easily on "black-disks", which do not contain manufacture's label but rather type written, hand-written

or crudely printed labels indicating the programmes contained on the diskettes. In case of installed software it is more difficult to identify a pirated copy. Once a computer is searched, the programmes copied onto it can be found and identified. Then users can be asked to produce the proof of original possession (e.g. original packages, documentation, purchase record, license cards etc.) of such programmes. If users fail to do so, there is a prima facie case of infringement. In some cases even test purchases can be made to secure evidence of piracy.

The extent of software piracy and losses due to such piracy cannot be given in exact quantitative terms though it is believed that piracy in this sector is widespread. In Europe alone the software industries lose an estimated US\$ 6 billion a year. In fact, Europe holds the dubious distinction of accounting for about 50 per cent of worldwide losses from software piracy, more than any other region. Asia comes at number two. According to a study of Software Publishers Association, a US based body, losses due to piracy of personal computer business application softwares nearly equalled revenues earned by the global software industry. In 1996, piracy cost the software industry US\$ 11.2 billion, a 16 per cent decrease over the estimated losses of US\$ 13.3 billion in 1995. The country-specific data show that in 1996 Vietnam and Indonesia had the highest piracy rate of 99 per cent and 97 per cent respectively, followed by China (96%), Russia (91%), Thailand (80%) etc. In India software piracy is costing the IT industry quite dear. According to a survey conducted jointly by Business Software Alliance (BSA) and NASSCOM in May 1996, total losses due to software piracy in India stood at a staggering figure of about Rs. 500 crores (US \$ 151.3 million) showing about 60 per cent piracy rate in India.

## **5. TRANSFER OF COPY RIGHTS.**

Copyright transfer refers to the process by which the owner of a copyright, typically the creator of a creative work, transfers their exclusive rights to another individual or entity while the copyright is still in its validity period. For every copyrighted work, the individual author or original owner possesses the capability to transfer their ownership rights to another party. This process, known as the assignment of copyright, allows the original creator to delegate these rights to third parties. A Copyright Transfer Document is an essential legal document

that provides artists and creators with the necessary protection for their original work. It ensures they retain ownership of their creations while allowing others to use them in specific ways.

Copyright assignment in India involves a written agreement between the copyright holder (assignor) and the party acquiring the rights (copyright assignee). This copyright assignment agreement can cover the complete or partial transfer of copyright, specifying the duration of the assignment.

Copyright Transfer is often done through legal agreements, such as licensing or assignment contracts, and allows the transferee to use the copyrighted work in specified ways while the original copyright owner may receive compensation or other benefits in return.

#### **Difference between licensing and assignment of copyright –**

The assignment involves the transfer of ownership and a bundle of rights associated with the copyrighted work, while licensing allows the owner to grant permissions to another person while retaining ownership of the copyright.

## **6. RIGHTS OF BROADCASTING ORGANIZATIONS AND PERFORMERS RIGHTS**

### **BROADCASTER'S RIGHTS: AN INTRODUCTION**

#### **Historical Setting**

As already noted above, the right of broadcasters protected under the copyright regime has been provided under a set of neighbouring rights being associated with the original version of copyright protection wherein only literary or artistic work were protected. As Cornish explains, Broadcasting opened great opportunity of relying performances to truly mass audience and thus emerged a set of rights which were exclusive to these broadcasters.

Thus, initially, the copyright issues were resolved by adopting a two fold method, holding broadcasting as an act of infringement and thus requiring broadcasters to seek copyright licenses, and by making the act of broadcasting as an activity which itself attracted copyright and thus requiring licenses for re-transmission purposes.

#### **Nature of Broadcast rights**

Thus, under the law of copyright a broadcast is treated at par with an original literary or dramatic work and is in itself amenable to copyright. This does not however, affect the

copyright vested in the work which is the subject matter of broadcast. Therefore it is the contents of the communication made that are protected under the Copyright regime. For illustration, some artists perform stage a drama in the theatre and consent to a live broadcast of the same. Now the performance on their part is itself a subject matter of protection under the copyright regime (under 'Performer's Right'). Here the sole protection that is offered for the broadcaster is the inability on the part of any other to legally broadcast the same or a substantial part of the broadcast so made, unless consented to by the original broadcaster. This also brings us privy to the issue whether anyone can make a broadcast of anything? Acknowledging the generally accepted limitation imposed on account of public policy, morality etc. one would find that broadcaster has to be doubly careful. He has to make sure that the object to be broadcasted is not protected under copyright regime for the 'right to communicate the work' to public is often included as a right vested in the copyright owner in various jurisdictions. <sup>8</sup> Thus in such cases the broadcast can be made only with the licence or the consent of the copyright owner of the object to be broadcasted. This also brings us the proposition that the broadcast reproduction rights do not affect the copyright in the literary, dramatic or musical work which has been broadcasted.

Thus the original copyright vested in the work does not merge with the broadcaster's right to reproduce the broadcast. It still remains a separately protected right under Copyright regime. At the cost of repetition, therefore, one must note that unlike copyright the broadcaster's right are not based upon a creative contribution to a work. They are rather based on the protection of the broadcaster's investment, and is obtained simply by broadcasting the work to the public. The broadcaster's right is an therefore only an additional intellectual property right that applies over an above a copyright, if the work is protected under copyright, and it also applies to works that would be in the public domain under copyright laws.

### **What is a broadcast?**

A careful analysis of the above situation would also reveal that the fact whether a particular broadcast is protected under the copyright regime is contingent upon its being covered within the meaning of the 'broadcast' as defined under the statute. This is on account of the fact that the medium of transmission must be covered within the meaning of 'broadcast' as assigned in

the enactment for purposes of it being amenable to protection. Thus irrespective of the fact that a particular mode of transmission may be scientifically or technologically be defended as a broadcast, it shall not be protected unless the medium is so covered under the statute. Therefore the Australian Federal Court ruled that communication of a work by a private individual to another party through mobile phone was not an instant of broadcast.

## **BROADCASTER'S RIGHT IN INDIA**

### **Statutory Ambit**

Protection to broadcasts was not envisaged under the original state of affairs under the Copyright Act of 1957. However with an amendment in 1994, Section 37 of the Act was substituted with the new section providing for broadcasting reproduction rights. The amended section conceives of a methodology wherein the broadcaster is given the right to reproduce the broadcast made already. Thus the broadcasting organisation is conferred with 'Broadcasting Reproduction Rights' wherein the organisation is conferred with a series of rights in respect to the broadcast made namely,

1. reproducing the broadcast;
2. causing the broadcast to be heard or seen by the public on payment of any charges;
3. making any sound recording or visual recording of the broadcast;
4. making any reproduction or such sound recording or visual recording where the initial recording was unauthorized;
5. selling or hiring or offering for sale or hire to the public any such sound or visual recording.

Following the operation of Section 37, the performance of any act as under (a) to (e) shall require a licence of the broadcasting organisation or else the act shall be treated to be a violation of copyright. However exceptions to the same have been provided in Section 39 of the Act. These exceptions can be broadly categorised as;

1. for private use,
2. for purposes of bona fide training or research,
3. for reporting of current events (here it is to be noted that only excerpts of such broadcast are allowed to be used under this exception), and



4. general exceptions as provided under Section 52 of the Act.

Further, Section 39A extends the general provisions under the Act to broadcasting rights. Thus one shall note that in many aspects broadcast reproduction rights are treated at par with copyright. However the enunciation of the broadcast rights have not been so widely reverberated in India as has been abroad. Nevertheless there are some judicial decisions wherein the existing position of law is brought forth.

Judicial Dictum

**(a) Super Cassettes Industries Ltd. v. Entertainment Network (India) Ltd.**

Facts : The Appellant, a music company, challenged the direction of the Copyright Board directing the Registrar of Copyrights to grant a compulsory licence to the Respondent, a leading FM (Radio Mirchi) broadcaster, to broadcast the songs the copyright in which was owned by the Appellants when in a legal battle the Respondents had accepted that there was a violation on their part in broadcasting the songs. Decision : (i) Since the respondent has not obtained any authorization or licence to broadcast the songs from the appellant, it was an infringer and granting compulsory licences under Section 31 to such infringers would be like putting premium on their defaults which would also encourage others to first infringe and where infringement was discovered, apply for a compulsory licence. Therefore such could not be allowed. (ii) Since Section 31(1) employs the term 'may', it is not mandatory for the Board to grant licence to each and every applicant. Thus a licence can be granted or denied on valid grounds. However Section 31 envisages that the decision to grant or refuse a licence should be made after holding sufficient inquiry. (iii) While making an order under Section 31(1) the Board has to maintain a delicate balance between private rights of the copyright vis-à-vis public interest.

**(b) Video Master v. Nishi Productions**

Facts : The Plaintiff claimed that the sole and exclusive video copyrights in a cinematographic film [Bees Saal Baad] were assigned to it under an agreement by the producer of the film i.e. the Defendant. It alleged that the Defendant had entered into an agreement with another distributor whereby a copy of the film was given to them, which in turn was used to make cassettes which were to be used for satellite TV transmission. Thus a violation of the copyright of the Plaintiff

was alleged. **Decision** : (i) Copyrights in Cable TV rights and satellite broadcasting rights are two different rights under the Copyright Act, which can exist in different persons without infringing copyright of each other. (ii) By receiving satellite signals on dish antenna owned/maintained by Cable TV operator or private party and by relaying signals through media of Cable to the viewers, there was no violation of the exclusive video copyright of the Plaintiff.

### **(c) Garware Plastics and Polysters Ltd. v. Telelink**

**Facts** : The Plaintiffs claimed that that were the owners of a copyright in respect of a cinematographic film who had assigned the right of broadcasting their films to Government of India or Doordarshan but retained in themselves the right to telecast films by cable television. They claimed that the Defendants, cable operators, by showing the film on their cable television had violated their copyright in the film. Therefore the issue before the High Court was whether by showing video films over Cable television network to various subscribers the defendants were broadcasting video films to the public and thereby infringing the copyright of the plaintiffs.

**Decision** : (1) Whether a communication is to the public or whether it is a private communication depends essentially on the persons receiving the communication. If they can be characterized as the public or a portion of the public, the communication is to the public. In the case laid down that showing a film on a cable television network was a broadcast of the film to the members of public. (2) The viewers of a Cable network or those who receive such broadcast through a dish antenna to which their television sets are connected, are either residents of

Apartments in a building which has such a network or they may be residents of a locality which is covered by this facility. A number of houses - both private homes and public places - may avail of this facility. As the viewers are not members of one family or their guests and do not have any homogeneity, they are the members of public. (3) Therefore communication of a film by cable television is a broadcast of the film and therefore the defendants were violating the copyright in the film.

Thus one would find that the elaboration of the Broadcaster's rights, despite their statutory incorporation for more than a decade as of now, has been minimal in the Indian context.

### **PERFORMERS' RIGHTS**

Performers engage more in recreative and artistic activities than broadcasters, producers of phonograms, etc. There was reluctance, for quite a long time, to give performers an equivalent property right. It was believed on one hand, that giving copyright to all the performers in a play, a film or an orchestra would lead to unnecessary complications. On the other hand, some right to stop illegal appropriation of performances has long been considered necessary to cover, in particular, surreptitious recording of the performance itself. In other words, a law was needed which protects the rights of performers, such as actors in stage plays, musicians, dancers etc. from being televised later through a covert recording. Such a broadcasting strikes at the very root of the object of the Copyright Act which aims at encouraging creative pursuits.

Over the last three decades, the “bootlegging” or surreptitious recording, as Cornish describes it, of performances by pop stars and others has grown considerably; and parts of music industry had become particularly alarmed. The lack of some kind of right to performance was a blemish in the copyright law which has now been remedied in India with the 1994 amendment to the Copyright Act, 1957.

The Copyright (Amendment) Act, 1994 has conferred certain special rights to singers and other performers in India.<sup>1</sup> A performer includes an actor, singer, musician, dancer, acrobat, juggler, snake charmer, a person delivering lecture, or any other person who makes a lecture.<sup>2</sup> “Performance” in relation to a performer’s right means any visual or acoustic presentation made live by one or more performers.<sup>3</sup>

**The performer has the exclusive right to do the following:**

- a) To make a sound or visual recording of the performance.
- b) To reproduce a sound or visual recording of the performance.
- c) To broadcast the performance.
- d) To communicate the performance to the public other than through broadcast.

Section 38 of the Act lays down the rights of the performer. According to it, if any person during the continuance of a performer’s right without the consent of the performer does any of the following acts in respect of the performance or substantial part thereof, he will be deemed to have infringed performer’s rights:

- a) Makes a sound recording or visual recording of the performance, or

b) Reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was--

i) made without the performer's consent; or

ii) made for the purposes different from those for which the performer gave his consent; or

iii) made for purposes different from those referred to in section 39 or from a sound recording or visual recording which was made in accordance with section 39; or

c) broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with section 39, or is a re-broadcast by the same broadcasting organisation of an earlier broadcast which did not infringe the performer's right; or

d) Communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or visual recording or a broadcast.

When a performer has authorized the incorporation of his performance in a cinematograph film, the performer loses the right to complain of infringement of the performance as the entire rights stand assigned to the producer of the film as an outcome of such authorization.

## **7. EXCEPTIONS TO COPYRIGHT**

Exceptions to copyright are specific circumstances or uses of copyrighted material that are allowed without permission from the copyright holder. These exceptions vary from country to country but can include fair use/fair dealing, educational use, library and archive use, personal use, and more.

### **EXCEPTIONS TO INFRINGEMENT OF PERFORMER'S RIGHTS**

Section 39 broadly lays down the acts which do not constitute infringement of a performer's right as the following:

- a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or

- b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or
- c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under Section 52. These acts are:
  - i. the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;
  - ii. The reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;
  - iii. the reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force;
  - iv. the performance, in the course of the activities of an educational institution, of a literary, dramatic, or musical work by the staff and students of the institution, or of a cinematography film or a record, if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording. 7

Therefore, mentioned acts can be done only with the sound or video recording of the performance. Accordingly, the making of a sound or video recording for the aforesaid reasons cannot also be an encroachment on the rights of performers.

Where copyright subsists in respect of any work or performance that has been broadcast, a license to reproduce such broadcast will require the consent of the owner of rights of performer, as the case may be, or both of them.

## **8. INFRINGEMENT OF COPY RIGHT WITH CASE STUDIES.**

**SUPER CASSETTE INDUSTRIES LTD. Vs. BATHLA CASSETTE INDUSTRIES**

## **LTD.**

In Super Cassette Industries Limited Vs. Bathla Cassette Industries Pvt. Limited, the Delhi High Court discussed in detail copyright infringement in sound recording and the concept of performers rights. The relevant extracts of the judgement are given below:

1. This is an application for interim injunction in a suit asserting rights under Section 52(1)(j) of the Copyright Act (hereinafter referred to as the Act). The plaintiff company is the manufacturer, producer and marketeer of pre-recorded audio cassettes and other records under the logo T Series. The plaintiff produced a sound recording under its banner T Series which was inter alia based on the song 'Chalo Dildar Chalo' from the film 'Pakeezah' by giving notice to the original producer Mahal Pictures under Section 52 (1) (j) & Rule 21(2) (b) of the Copyright Act. Such a recording is known in the music business as version recording and involves inter-alia the singing of a well-known song by a lesser known singer. The plaintiff gave prescribed royalty of Rs. 400 for producing 10,000 copies to the original owner. When the defendant attempted to produce a version recording of the version recording of the plaintiff by treading the path carved out by the plaintiff, the plaintiff has come to this Court for an injunction restraining the defendant from what is averred to be a copyright violation of its version recording. The dispute in the present suit inter-alia pertains to a song "Chalo Dildar Chalo" from the film 'Pakeezah', for which the original owners of the musical works were M/s Mahal Pictures Pvt. Limited. This song forms part of two audio cassettes produced by the plaintiff called Yadein Vol.I and Yadein Vol.II. The plaintiff has further averred that it has produced this song under the provisions of Section 52(1)(j) of the Copyright Act read with Rule 21 of the Copyright Rules, 1958. By the letter dated 10th June, 1986 the plaintiff claims to have paid a sum of Rs. 400/-to Mahal Pictures the original owner of the musical work 'Chalo Dildaar Chalo' for producing 10, 000 records of Chalo Dildar Chalo. The said letter dated 10th June, 1986 also stated in para (b) as under:

"(b) We do not propose to make any alteration in or omission from the work unless such alteration and omissions are necessary for the adaptation of the work to the record in question."

The audio cassettes are said to have been produced pursuant to the said letter sent under the provisions of Section 52(i)(j) of the Act and said to carry such an endorsement on the inlay

card. The defendants had offered to purchase similar rights under Section 52(1)(j) of the Act in respect of the tapes Yadein Vol. I & II produced by the plaintiff which included the song 'Chalo Dildar Chalo' from the plaintiffs and had accordingly issued a cheque for Rs. 1,000/- as 5 per cent royalty prescribed by the Copyright Board for manufacturing 400 audio cassettes to be sold at Rs. 25/- per cassette.

2. The defendants' case was that the plaintiff itself produced a copy and it was protected by the statutory protection failing which the plaintiff would have been guilty of violation of the copyright of original work under Section 51. The plaintiff can not claim to be an owner of the original work but nevertheless, the payment was made only to avoid any petty disputes.

3. On the other hand, the plaintiff's case is that in re-recording the song in question the plaintiff had to engage musicians, singers and music conductors and to create the original music track of the musical works. It was further submitted by the plaintiff that in re recording it has used sufficient independent skill and labour and has therefore, got its own legitimate and legal rights of copyright in the Record and the musical work so produced. The record produced was a substantially new arrangement and/or necessary adaptation of the existing records. The plaintiff's case was that its sound recording (version recording) would be entitled to a separate sound recording copyright and the reproduction of the same would require the licence and consent of the owner of the copyright in the version sound recording, i.e., the plaintiff. Appearing for the plaintiff, Mr. Praveen Anand advanced a plea that the defendant is not entitled to make a recording of a version recording produced by the plaintiff and the defendant is not entitled to avail of Section 52 (1) (j) qua the plaintiff's recording.

4. After exchange of correspondence between the parties, the defendant had filed a suit under Section 60 of the Copyright Act before the District Judge, Delhi in which a prayer was made for restraining by an injunction the present plaintiffs (the defendants in that suit) from continuance of any threat by the plaintiff for the alleged infringement of the copyright in respect of the titles Yadein Vol., 1 and 2 which contained the song Chalo Dildar Chalo. Both the counsel, Shri Praveen Anand for the plaintiff, and Shri Ajay Sahni for the defendant agreed that the song 'Chalo Dildar Chalo', from the film 'Pakeezah' and its incorporation in the plaintiff's Yadein-I would be the basis on which this application is to be decided.

5. It is, inter alia, averred in the plaint that by its own labour the plaintiff has invested large amounts and encouraged new young singers. The plaint therefore prayed for declaration that the plaintiff was the owner and copyright holder of Section 52(1)(j) version, i.e., Yadein I & II and it further sought a permanent injunction against the defendants from reproducing the records and musical works of the plaintiff contained in the works of the records titled Yadein Vol I & Yadein Vol II.

6. In reply to the application for injunction, the defendant has taken the plea that since the plaintiff has admitted to having their production covered under (the statutory defences enlisted in) Section 52 of the Copyright Act 1957, the same cannot be the subject matter of protection under the provisions of the Copyright Act as (the plaintiff's) sound recording is not an original work. It is further stated that the alleged re-creation of the original music track amounts to an infringement of the copyright of the original work and that if both the works sound similar then it is an infringement. The right said to be derived from section 52 of the Copyright Act pre-supposes that the derived product is an infringement under Section 51 of the Act. Further, since any creation under Section 52 of the Act cannot claim to be an original work, it is not entitled to protection. Some skill and labour is always required to make a copy of the original on behalf of the plaintiff but as long as the musical work created by the plaintiff keeps the original work as a model or guide, the work so created cannot be said to be an original work. The statutory defence conferred by Section 52 cannot be so construed as to confer on the plaintiff's copy the status of an original work. The audio cassettes being manufactured by the plaintiff are an effort to mislead the public by printing the titles as Mukesh Ki Yaaden, Lata Ki Yaaden and Rafi Ki Yaden with the photographs of these renowned singers by creating an impression that the songs are sung by such renowned singers. In fact the songs have been sung by lesser known singers. In the instant case the lyrics are identical and the tune similar. The plaintiff has not exercised any independent labour and skill in the said musical work but merely attempted to recreate the existing work in a manner which makes it sound to the uninitiated as if they were sung by the original singer. Consequently, the plaintiff is guilty of passing off their work as the original work. The plaintiff who itself has secured such rights under Section 52(i)(j) cannot be heard to complain when others follow the plaintiff's method.



7. The claim of the plaintiff for an injunction that the plaintiff is the owner and the copyright holder of rerecorded musical work and record made under Section 52 (I)(j) of the Act, is therefore not sustainable and the product of the plaintiff of which protection is sought cannot be the subject matter of independent protection under the provisions of the Copyright Act, 1957.

8. The Defendant's case is that no license having been granted by the original Copyright owner and the only claim forwarded being under Section 52(I)(j), cannot ipso facto confer a right entitling the plaintiff for independent protection for its musical works. The defendant has relied upon Section 13(3)(b) which postulates that the copyright shall not subsist in any sound recording if in making such a sound recording, copyright has been infringed. Since 10th May, 1995, not only is the copyright of the literary and musical work violated, but also that of the performer's right, statutorily recognized since the amendment of 1994.

It is, therefore, submitted by the counsel for the defendant that the performer's rights and the integrity of the musical work are clearly violated by the substitution of the principal performer by a lesser known singer and performers' rights were duly recognized by the 1994 amendment to the Act.

9. In sum and substance, the as euphemistically by the learned counsel (for the defendant), the defendant himself is a plagiarist and therefore, though claiming the protection of Section 52 (1)(j) he cannot now prevent anyone else from plagiarizing its work under Section 52(1)(j) of the Act. In other words, the plaintiff cannot use the Section 52(1)(j) means to derive benefit from a product of another person and yet ride a high moral horse when the same method is adopted by another in respect of its own product.

10. What needs to be resolved in view of the rival pleas is the nature and manner of rights which accrue to a musical work created under Section 52(1)(j), the effect of Section 13(3)(b) upon such rights and whether the plaintiff's work constitutes infringement of the original musical work. Further, in such a situation whether such work can be said to be entitled to avail of the protection under Section 52(1)(j). It is still awaited for the Court to decide whether a Section 52 (1) (j) product can be considered to be an original musical work.

## INTRODUCTION TO CYBER LAW

Cyber Law is the law governing cyber space. Cyber space is a very wide term and includes computers, networks, software, data storage devices (such as hard disks, USB disks etc), the Internet, websites, emails and even electronic devices such as cell phones, ATM machines etc.

### **Information Technology Act**

In 1996, the United Nations Commission on International Trade Law (UNCITRAL) adopted the model law on electronic commerce (E-commerce) to bring uniformity in the law in different countries. Further, the General Assembly of the United Nations recommended that all countries must consider this model law before making changes to their own laws. India became the 12th country to enable cyber law after it passed the Information Technology Act, 2000.

The Information Technology Act, 2000 provides legal recognition to the transaction done via electronic exchange of data and other electronic means of communication or electronic commerce transactions.

This also involves the use of alternatives to a paper-based method of communication and information storage to facilitate the electronic filing of documents with the Government agencies.

The Information Technology Act, 2000 – in a phrase: ‘functional equivalence’ that amends the Indian Evidence Act, 1872 and the Indian Penal Code

Understanding the role of the medium – connects traditional evidence law to the Internet, Adaptability and Enforcement of Indian law – Sections 65B inserted in the Evidence Act on the production of electronic documents

### **Objectives of the Act**

The objectives of the Act are as follows:

1. Grant legal recognition to all transactions done via electronic exchange of data or other electronic means of communication or e-commerce, in place of the earlier paper-based method of communication.
2. Give legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication

3. Facilitate the electronic filing of documents with Government agencies and also departments facilitate the electronic storage of data
5. Give legal sanction and also facilitate the electronic transfer of funds between banks and financial institutions
6. Grant legal recognition to bankers under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934, for keeping the books of accounts in electronic form.

### **Non-Applicability**

According to Section 1 (4) of the Information Technology Act, 2000, the Act is not applicable to the following documents:

1. Execution of Negotiable Instrument under Negotiable Instruments Act, 1881, except cheques.
2. Execution of a Power of Attorney under the Powers of Attorney Act, 1882.
3. Creation of Trust under the Indian Trust Act, 1882.
4. Execution of a Will under the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called.
5. Entering into a contract for the sale of conveyance of immovable property or any interest in such property.
6. Any such class of documents or transactions as may be notified by the Central Government in the Gazette.

### **Scope or Extent of the ACT**

It extends to the whole of India. It also applies to any offence or contravention committed outside India by any person irrespective of his nationality, provided such offence or contravention involves a computer, computer system or network located in India

### **Intermediary liability**

Duties' under the Indian Information Technology Act may be interpreted to include the management of confidential information and intellectual property

Intermediary liability occurs where governments or private litigants can hold technological intermediaries, such as ISPs and websites, liable for unlawful or harmful content created by users of those services.

Section 2 [w] of The Indian Information Technology Act, 2000 [Amended in 2008] defines 'Intermediary': Intermediary, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines,

online payment sites, online-auction sites, online-market places and cyber cafes. Intermediary Liability - Distribution of content: [a] copyright violations [music, films, and images]; [b] prohibited content [hate, racism, pornography] Case Study / Illustration: Baazee Case [Sale of the MMS Clip]

Intermediary Liability from 'Knowledge' – grievance notice should be acknowledged within 36 hours [mandatory under the Rules] and Time given to respond in full measure is maximum of 21 days under the Rule.

Intermediary Liability [Case Study]: T-Series v. MySpace [Delhi High Court]

### **Digital Signature**

According to Section 2(1) (p), digital signature means 'authentication of any electronic record using an electronic method or procedure in accordance with the provisions of Section 3'.

Further, digital signatures authenticate the source of messages like an electronic mail or a contract in electronic form.

The three important features of digital features are:

1. Authentication – They authenticate the source of messages. Since the ownership of a digital certificate is bound to a specific user, the signature shows that the user sent it.
2. Integrity – Sometimes, the sender and receiver of a message need an assurance that the message was not altered during transmission. A digital certificate provides this feature.
3. Non-Repudiation – A sender cannot deny sending a message which has a digital signature.

### **Authentication of Electronic record**

Section 3 of the Information technology Act, 2000, provides certain provisions for the authentication of electronic records. The provisions are:

- Subject to the provisions of this section, any subscriber can affix his digital signature and hence authenticate an electronic record.
- An asymmetric crypto system and hash function envelop and transform the initial electronic record into another record which affects the authentication of the record.
- Also, any person in possession of the public key can verify the electronic record.
- Further, every subscriber has a private key and a public key which are unique to him and constitute a functioning key pair.

### **Electronic Signature (Section 3A)**

Electronic Signature has been defined under Section 2(1)(ta) of the Information Technology Act, 2000. Electronic Signature means the authentication of any electronic record by a

subscriber by means of the electronic technique as specified under the Second Schedule and also includes a digital signature.

#### **Difference between Electronic Signature and Digital Signature:**

<b>S.No.</b>	<b>ELECTRONIC SIGNATURE</b>	<b>DIGITAL SIGNATURE</b>
01.	An electronic signature is a digital form of a wet link signature that is legally binding and secure.	Digital Signature is a secured signature that works with an electronic signature and relies on public key infrastructure.
02.	It can be a symbol, image, or process attached to the message or document to recognize the identity and to give consent to it.	It can be visualized as an electronic fingerprint that encrypts and identifies a person's identity.
03.	It is used for verifying a document.	It is used for securing a document.
04.	The validation of electronic signatures is not performed by any trusted certificate authorities or trust service providers.	While the validation of digital signature is performed by trusted certificate authorities or trust service providers.
05.	It is vulnerable to tampering.	While it is highly secure.
06.	Electronic signature is not usually authorized.	Digital signature is usually authorized.
07.	Electronic signatures cannot be verified.	A digital signature can be verified.
08.	Fewer security features are involved in electronic signatures.	While Digital signature is comprised of more security features.
09.	Verbal, electronic ticks, or scanned signatures are the common types of e-signatures.	Types of digital signatures include Adobe and Microsoft.
10.	It does not incorporate any coding or standards.	While digital signature comes with encryption standards.
11.	It is simple to use, but it has a lesser level of evidential value.	It is generally preferred because of more authenticity.
12.	When to use? Electronic signatures are widely used in contracts and agreements by many businesses. For example, your company may require clients to electronically sign loan applications and other financial commitments. Y	When to use? A digital signature uses a digital certificate to verify the signer's identity, making it a good, safe tool for sensitive data like financial records, HIPAA-compliant paperwork, and other private papers or contracts

#### **Information Technology Amendment Act, 2008**

1. Destroys, Deletes or Alters any Information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;
2. Steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;

3. “If any person, dishonestly, or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to two three years or with fine which may extend to five lakh rupees or with both.” [S.66]
4. S.66A - Punishment for sending offensive messages through communication service, etc
5. Shall be punishable with imprisonment for a term which may extend to three years and with fine.

## **Cybercrime**

Cyber crimes can involve criminal activities that are traditional in nature, such as theft, fraud, forgery, defamation and mischief, all of which are subject to the Indian Penal Code. The abuse of computers has also given birth to a gamut of new age crimes that are addressed by the Information Technology Act, 2000.

The expression ‘Crime’ is defined as an act, which subjects the doer to legal punishment or any offence against morality, social order or any unjust or shameful act. The “Offence” is defined in the Code of Criminal Procedure to mean as an act or omission made punishable by any law for the time being in force. Its an unlawful act wherein the computer is either a tool or a target or both. Acts that are punishable by the Information Technology Act.

## **History of Cyber Crime**

The first recorded cybercrime took place in the year 1820!

In **1820**, Joseph-Marie Jacquard, a textile manufacturer in France, produced the loom. This device allowed the repetition of a series of steps in the weaving of special fabrics. This resulted in a fear amongst Jacquard's employees that their traditional employment and livelihood were being threatened. They committed acts of sabotage to discourage Jacquard from further use of the new technology. This is the first recorded cybercrime!

### **1971**

John Draper discovers the give-away whistle in Cap'n Crunch cereal boxes reproduces a 2600Hz tone. Draper builds a ‘blue box’ that, when used with the whistle and sounded into a phone receiver, allows phreaks to make free calls. Esquire publishes "Secrets of the Little Blue Box" with instructions for making one. Wire fraud in the US escalates.

### **1972**

The InterNetworking Working Group is founded to govern the standards of the Internet. Vinton Cerf is the chairman and is known as a "Father of the Internet".

### **1973**

Teller at New York's Dime Savings Bank uses a computer to embezzle over \$2 million

### **1978**

First electronic bulletin board system (BBS) appears; becomes the primary means of communication for the electronic underground..

### **1981**

Ian Murphy, aka. "Captain Zap", becomes first felon convicted of a computer crime. Murphy broke into AT&T's computers and changed the billing clock so that people receive discounted rates during normal business hours.

### **1982**

Elk Cloner, an AppleII boot virus, is written.

### **1983**

- Movie WarGames introduces public to the phenomenon of hacking (actually war-dialing).
- US Secret Service gets jurisdiction over credit card and computer fraud.

Cyber Crime is a term used to broadly describe criminal activity in which computers or computer networks are a tool, a target, or a place of criminal activity and include everything from electronic cracking to denial of service attacks. It is also used to include traditional crimes in which computers or networks are used to enable the illicit activity.

Computer crime mainly consists of unauthorized access to computer systems data alteration, data destruction, theft of intellectual property. Cybercrime in the context of national security may involve hacking, traditional espionage, or information warfare and related activities.

Pornography, Threatening Email, Assuming someone's Identity, Sexual Harassment, Defamation, Spam and Phishing are some examples where computers are used to commit crime, whereas Viruses, Worms and Industrial Espionage, Software Piracy and Hacking are examples where computers become target of crime.

### **CATEGORIES OF CYBER CRIME:**

Cybercrimes can be basically divided into 3 major categories:

#### **1. Cyber crimes against persons :**

Cyber harassment is a distinct Cyber crime. Various kinds of harassment can and do occur in cyberspace, or through the use of cyberspace. Harassment can be sexual, racial, religious, or other.

## 2. **Cyber crimes against property :**

These crimes include computer vandalism (destruction of others' property), transmission of harmful programs, unauthorized trespassing through cyber space, unauthorized possession of computer information.

## 3. **Cybercrimes against government :**

The growth of internet has shown that the medium of Cyberspace is being used by individuals and groups to threaten the international governments as also to terrorize the citizens of a country.

### **Types of Cyber Crime**

**Technical Aspects** Technological advancements have created new possibilities for criminal activity, in particular the criminal misuse of information technologies such as

**a) Unauthorized access & Hacking:-** Access means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network.

**b) Trojan Attack:-** The program that act like something useful but do the things that are quiet damping. The programs of this kind are called as Trojans. Trojans come in two parts, a Client part and a Server part. When the victim (unknowingly) runs the server on its machine, the attacker will then use the Client to connect to the Server and start using the trojan.

**c) Virus and Worm attack:-** A program that has capability to infect other programs and make copies of itself and spread into other programs is called virus. Programs that multiply like viruses but spread from computer to computer are called as worms.

### **d) E-mail related crimes:-**

- Email spoofing : Email spoofing refers to email that appears to have been originated from one source when it was actually sent from another source. Please Read
- Email Spamming: spamming refers to sending email to thousands and thousands of users - similar to a chain letter. Sending malicious codes through email. E-mails are used to send viruses, Trojans etc through emails as an attachment or by sending a link of website which on visiting downloads malicious code.
- Email bombing: E-mail "bombing" is characterized by abusers repeatedly sending an identical email message to a particular address. Making of false, derogatory statement(s) in private or public about a person's business practices, character, financial status, morals, or reputation. Oral defamation is a slander whereas printed or published defamation is a libel.



- Email frauds: Email fraud is the intentional deception made for personal gain or to damage another individual through email.

**e) Internet Relay Chat (IRC) related crimes:-**

Three main ways to attack IRC are: Denial of service attacks, clone attacks, and flood attacks.

Denial of Service attacks:- Flooding a computer resource with more requests than it can handle. This causes the resource to crash thereby denying access of service to authorized users

**f) Sale of illegal articles**

This would include sale of narcotics, weapons and wildlife etc., by posting information on websites, auction websites, and bulletin boards or simply by using email communication.

**g) Online gambling**

There are millions of websites; all hosted on servers abroad, that offer online gambling. In fact, it is believed that many of these websites are actually fronts for money laundering.

**NEED FOR CYBER LAWS**

Laws are necessary in all segments of society, and e-commerce is no exception. Those in the online world should recognize that copyright, patent, and trademark laws protect much of the material found on the Internet.

All Internet users, including minors, need to be assured of their privacy and the safety of their personal information online. In today's highly digitalized world, almost everyone is affected by cyber law.

Almost all companies extensively depend upon their computer networks and keep their valuable data in electronic form. Government forms including income tax returns, company law forms etc are now filled in electronic form.

Consumers are increasingly using credit cards for shopping.

Most people are using email, cell phones and SMS messages for communication.

Even in "non-cyber crime" cases, important evidence is found in computers / cell phones e.g. in cases of divorce, murder, kidnapping, tax evasion, organized crime, terrorist operations, counterfeit currency etc.

Cyber crime cases such as online banking frauds, online share trading fraud, source code theft, credit card fraud, tax evasion, virus attacks, cyber sabotage, phishing attacks, email hijacking, denial of service, hacking, pornography etc are becoming common.

Cyberspace is an intangible dimension that is impossible to govern and regulate using conventional law.

Cyberspace has complete disrespect for jurisdictional boundaries.

Cyberspace handles gigantic traffic volumes every second.

Cyberspace is absolutely open to participation by all.

Cyberspace offers enormous potential for anonymity to its members. Electronic information has become the main object of cybercrime. It is characterized by extreme mobility, which exceeds by far the mobility of persons, goods or other services. A software source code worth cores of rupees or a movie can be pirated across the globe within hours of their release. Theft of corporeal information (e.g. Books, papers, CD, ROMs, floppy disks) is easily covered by traditional penal provisions.

### **Cyber Laws in India**

Under The Information Technology Act, 2000 The primary source of cyber law in India is the Information Technology Act, 2000 (IT Act) which came into force on 17 October 2000. The primary purpose of the Act is to provide legal recognition to electronic commerce and to facilitate filing of electronic records with the Government. The IT Act also penalizes various cyber crimes and provides strict punishments (imprisonment terms upto 10 years and compensation up to Rs 1 crore).

### **Cybercrime and e-commerce**

Indian e-commerce portals are shown in figure



### **REPORTING COUNTERFEIT ITEMS ON INDIAN E-COMMERCE SITES: PRACTICE AND PROCEDURE FOR RIGHTS HOLDERS**

Collection of Evidence: From ‘Screenshots’ to placing an order acts as evidence for an enforcement action. A screenshot of a key Web page is like taking a photograph of the image as it appears on the monitor. It can be admitted as evidence under Indian law. This

testimony typically must answer the following questions: [a] What was actually on the Web site? [b]

Does the exhibit or testimony accurately reflect it? [c] If so, is it attributable to the owner of the site?

Notice under Section 79 [Information Technology Act] and the Intermediary Guidelines: The Indian E-Commerce Site could be liable if it does not have a written policy in compliance with the Intermediary Guidelines or has not appointed a Grievance Officer

Responses from the E-Commerce Site include [a] take-down of infringing articles; [b] details of the activities of the illegal seller/infringer. If no response or unsatisfactory response – a legal action can be filed in a court in India

### **ELECTRONIC EVIDENCE – CASE LAW**

Amitabh Bagchi v. Ena Bagchi (AIR 2005 Cal 11) Video Conferencing and ‘Digital Evidence’ allowed

Dharambir v. Central Bureau of Investigation (148 (2008) DLT 289) – a hard disk once used becomes an electronic record – a computer output – must be produced in its entirety in court

State (NCT of Delhi) v. Navjot Sandhu (AIR 2005 SC 3820) Cross Examination of a competent witness sufficient to prove the authenticity of an electronic document

Bodala Murali Krishna v. Smt. Bodala Prathima (2007 (2) ALD 72) – the amendments recognise electronic records and digital signatures as ‘admissible evidence’

**CYBERSQUATTING IN INDIA: THE YAHOO! CASE [YAHOO! INC. V. AKASH ARORA & ANR.; 78 (1999) DLT 285]:** The High Court of Delhi for the first time observed the direct link between trademarks and domain names. The Respondent registered – www.yahooindia.com which was held to be an infringement of the Yahoo! trademark

Domain Names entitled to protection under Indian trademark law despite no direct provision in the Trade Marks Act, 1999 - reiterated by the Hon’ble Supreme Court of India on domain names [Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.; (2004) 6 SCC 145].

In addition to domain name infringement, the Court observed that the similarities in ‘look and feel’ and content were violations of copyright – in addition to trademark violation

### **INDRP as a model for INDIA**

Modeled on the UDRP/eUDRP, INDRP is a quick and effective procedural mechanism. Dispute Resolution is within 60 days from the Notification of Commencement of Proceedings. The insertion of the provision on ‘damages’ raises an enforceability question. The INDRP [unlike the eUDRP] is not entirely online. Paper filings still accepted.

## **METATAGS' AND TRADEMARKS:**

A meta tag is an HTML [hypertext markup language] code embedded on a Web page that is used by the website owner to identify the site content. Meta tags are powerful tools because they have a direct effect on the frequency with which many search engines will find a website.

The main concern with regard to Metatags is the use of a third-party trademark in one's metatags. Often website owners will embed third-party trademarks in meta tag data to attract Internet traffic to their own website, diverting it from the trademark owner's website

### **Data security, Confidentiality and Privacy**

The terms privacy, confidentiality and security have a lot in common as they apply to modern-day information technology, but they also have their own meanings and their own significant roles in their application to data maintenance and data management.

First, the issue of privacy is one that often applies to a consumer's right to safeguard his or her information from any other parties. It involves the protection of vulnerable data such as Facebook data, customer response data and other kinds of demographic data or personal data from being freely disseminated over the Internet or sold to third parties. In general, privacy is the individual's right to keep his or her data to himself or herself.

Confidentiality is a similar idea, but with a slightly different component. IT professionals often talk about confidentiality in terms of a supplier or service provider and its customers. Confidentiality agreements are often applied to situations where someone trusted with personal data must safeguard this data from being released. Alternately, some may define confidentiality as issues about the data that gets collected, where privacy issues have to do, again, with the core principle of an individual not being recorded or monitored.

Security is a different term that's applied to enterprise or government systems. Security may include the idea of customer privacy, but the two are not synonymous. Likewise, security may provide for confidentiality, but that is not its overall goal. The overall goal of most security systems is to protect an enterprise or agency, which may or may not house a lot of vulnerable customer or client data. Sometimes, the objectives for privacy and security are the same. In other cases, security may not automatically provide for privacy concerns. One example is where a business or government agency may be able to keep its data safe from outside attackers, but where employees may be able to view consumer information. Another scenario might involve situations where a company doesn't face any liability by releasing customer data, and so chooses to do so. Here, the company's security is not jeopardized, but the consumer's privacy is violated. New contracts between businesses and federal agencies

are also good examples of how IT issues cut through the different layers between privacy, confidentiality and security.

### **International aspects of computer and online crime**

As against the lone legislation ITA and ITAA in India, in many other nations globally, there are many legislations governing e-commerce and cyber crimes going into all the facets of cyber crimes. Data Communication, storage, child pornography, electronic records and data privacy have all been addressed in separate Acts and Rules giving thrust in the particular area focused in the Act.

In the US, they have the Health Insurance Portability and Accountability Act popularly known as HIPAA which inter alia, regulates all health and insurance related records, their upkeep and maintenance and the issues of privacy and confidentiality involved in such records. Companies dealing with US firms ensure HIPAA compliance insofar as the data relating to such corporate are handled by them. The Sarbanes-Oxley Act (SOX) signed into law in 2002 and named after its authors Senator Paul Sarbanes and Representative Paul Oxley, mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures, and combat corporate and accounting fraud. Besides, there are a number of laws in the US both at the federal level and at different states level like the Cable Communications Policy Act, Children's Internet Protection Act, Children's Online Privacy Protection Act etc. In the UK, the Data Protection Act and the Privacy and Electronic Communications Regulations etc are all regulatory legislations already existing in the area of information security and cyber-crime prevention, besides cybercrime law passed recently in August 2011. Similarly, we have cybercrime legislations and other rules and regulations in other nations.

