**XI. Legal Issues 2 hours**

**On-Line Contract Law,**

With recent technological advancement, there is an immense change in the standard of living of people. Thus, communication is no more restricted within its geographical limits and information is transferred much widely and quickly than ever before. Electronic commerce has made its way and many problems are removed through the use of e- commerce which flow as a traditional data. Electronic commerce is a means of the transaction of business electronically and is associated with the buying and selling of information, products and services over computerized communication networks. Though, it is a much broader term encompassing not only Electronic Data Interchange but also other forms of communications such as Electronic Mail and Electronic Bulletin Board.

With the emergence and steady growth of e–commerce, there is a quick elevation in the use of e-contracts. But the concept of e-contract is still not unclouded, it faces lot of challenges. The law of contract in India gives a statutory recognition to the common contractual rule. The Indian Contract Act, 1872 does not lay down the rights and duties which the law will enforce but it deals with the limiting principles, subject to which parties may create right and duties for themselves.

**WHAT IS AN ONLINE CONTRACT?**

With the advance use of internet and electronic commerce, online contracts have assumed importance mainly in terms of reach and multiplicity. Online contract or an electronic contract is an agreement modelled, signed and executed electronically, usually over internet. An Online contract is conceptually very similar and is drafted in the same manner in which a traditional paper-based contract is drafted. In case of an online contract, the seller who intends to sell their products, present their products, prices and terms for buying such products to the prospective buyers. In turn, the buyers who are interested in buying the products either consider or click on the ‘I Agree’ or ‘Click to Agree’ option for indicating the acceptance of the terms presented by the seller or they can sign electronically. Electronic signatures can be done in different ways like typing the name of the signer’s in the specific signature space, copying and pasting the scanned version of the signature or clicking an option meant for that purpose. Once the terms are accepted and the payment is made, the transaction can be completed. The communication is basically made between two computers through servers. The online contract is brought to the scenario to help people in the way of formulating and implementing policies of commercial contracts within business directed over internet. Online Contract is modelled for the sale, purchase and supply of products and services to both consumers and business associates.

Online can be categorized into three types mainly i.e. browse or web wrap contracts, shrink wrap contracts and clickwrap contracts. Other kinds of online contracts include employment contract, contractor agreement, consultant agreement, Sale re-sale and distributor agreements, non-disclosure agreements, software development and licensing agreements, source code escrow agreements. Though these online contracts are witnessed in our everyday life, most of us are not aware of the legal complexities connected to it; the use of online contract faces many technical and legal challenges.

**TYPES OF ONLINE CONTRACT**

Online contracts can be of three types mainly i.e. shrink-wrap agreements, click or web-wrap agreements and browse-wrap agreements. In our everyday life, we usually witness these types of online contracts. Other types of online contracts include employment contract, contractor agreement, consultant agreement, Sale re-sale and distributor agreements, non-disclosure agreements, software development and licensing agreements, source code escrow agreements.

* **Shrink-wrap agreements** are usually the licensed agreement applicable in case of software products buying. In case of shrink-wrap agreements, with opening of the packaging of the software product, the terms and conditions to access such software product are enforced upon the person who buys it. Shrink-wrap agreements are simply those which are accepted by user at the time of installation of software from a CD-ROM, for example, Nokia pc-suite. Sometimes additional terms can be observed only after loading the product on the computer and then if the buyer does not agree to those additional terms, then he has an option of returning the software product. As soon as the purchaser tears the packaging or the cover for accessing the software product, shrink-wrap agreement gives protection by indemnifying the manufacturer of the product for any copyright or intellectual property rights violation. Though, in India, there is no stable judicial decision or precedent on the validity of shrink-wrap agreements.
* **Click- wrap agreements** are web based agreements which require the assent or consent of the user by way of clicking “I Agree’ or “I Accept” or “Ok” button on the dialog box. In click –wrap agreements, the user basically have to agree to the terms and conditions for usage of the particular software. Users who disagree to the terms and conditions will not be able to use or buy the product upon cancellation or rejection. A person witnesses web-wrap agreements almost regularly. The terms and conditions for usage are exposed to the users prior to acceptance. For agreement of an online shopping site etc.
* An agreement made intended to be binding on two or more parties by the use of website can be called a browse wrap agreement. In case of browse wrap agreement a regular user of a particular website deemed to accept the terms of use and other policies of the website for continuous use.

Though these online contracts have become common in our daily, there are no precise judicial precedents on the validity and enforceability of shrink-wrap and click-wrap agreements. Other countries have dealt with these online agreements such as courts in the United States have held that as far as the general principles of contract are not violated, both shrink-wrap agreements and click- wrap agreements are enforceable.

**ESSENTIAL ELEMENTS OF ONLINE CONTRACT**

The essential elements of online contract is discussed below:

* **Offer** – Just like paper made or conventional contract, one of the most essential elements of online contract is the requirement of an offer to be made. There must be a lawful proposal or offer made by one party known as the proposer and it is the starting point of a contract. By browsing and choosing the goods and services available on the website of the seller, the consumer makes an offer to purchase such in relation with the invitation to offer made by the seller. A proposal must be distinguished from the invitation to offer or treat and must be made with an intention to create legal relationship. An offer or proposal is revocable and can be withdrawn at any time before it is accepted because once it is accepted by the other party, it becomes a promise.
* **Acceptance** – When a proposal or offer is made is accepted by the person to whom the offer is made, it becomes a promise. The acceptance of the proposal must be unconditional and absolute and must be communicated to the proposer or the offeror. In case of an online contract, offer and acceptance can be made through e-mails or by filing requisite form provided in the website. They may also need to take an online agreement by clicking on ‘I Agree’ or ‘I Accept’ for availing the services offered.
* **Intention to create legal relationship** – If there is no intention of creating legal relationship on the part of the parties to contract, there is no contract between them. It is an essential element of valid contract that parties to the contract must have intention to create legal relationships. The intention of the parties is to be considered by the Court in each case and must be ascertained from the terms of the agreement and surrounding consequences. Agreement of social or domestic nature do not create legal relationship, hence they are not contracts and are not enforceable by law. In the case of arrangements regulating social relations, it follows as a matter of course that parties do not intend legal consequences to follow. For example, an invitation for marriage to a friend or family through e- mails or fax or through any means of telecommunication is not a contract.
* **There must be a lawful object** – Parties to the agreement must contract for a legal object. A contract is only enforceable by law only when it is made for a lawful purpose. It must not defeat any provision of law and must not be fraudulent in nature. Thus a contract on a website designed for the purpose of selling illegal substances online is a void contract. If an agreement is made to cause injury to any person or his property, such agreement is not lawful and therefore to be considered as void. If any competent Court regards any agreement as opposed to public policy, it is a void contract.
* **There must be a legal or lawful consideration** – Consideration is one of most important element of a contract. The basic rule is that when a party to a contract promises to perform his promise he must get something in return for the performance of his promise. Consideration is something of some value in the eyes of law. It may be of some benefit, right, interest or profit given to the party as inducement of promise. An act constituting consideration must be moved at the desire of the promisor and must be legal, real and not imaginary. Promises that are physically impossible to perform cannot have real consideration. For eg. an online site that offers purchase of land in moon.
* **Capacity of parties** – Parties to a contract must be capable of entering into a contract. He must attain the age of majority and must be of sound mind. He must not be disqualified from contracting by any law for the time being in force. In our country an agreement where either party is a minor has no significance. It is considered as void ab-initio. As per Section 12 of the Indian Contract Act, 1872, any person who is in a position to judge and safeguard his own interest is of sound mind and capable enough to enter into a contract. When a person is declared insolvent by any competent Court, he cannot enter into a contract relating to his property. In the old age foundation case of **Mohori** **Bibee vs. Dharmodas Ghose**, it was held by the Privy Council that an agreement by a minor is void.
* **There must be free and unaffected consent** – Consent which is defined under Section 13 of the Indian Contract Act, 1872 is an essential requirement of a contract. It is basically the meeting of minds of the parties. When both agree upon the same thing in the same manner, they are said to consent. In case consent is caused by coercion, it is voidable at the option of the party whose consent was so caused. Coercion includes physical compulsion, threat, and violence. Consent has to be free and genuine and not induced by misrepresentation, undue influence i.e a case where one person is in a position to dominate the will of another. But in case of online contract there is a narrow scope of physical communication between the website and the customer availing their service, they just give consent by clicking the option that ensures free and genuine consent.
* **Possibility of performance** – The terms and conditions of agreement must be certain and not vague and must also be such as are capable of performance. An agreement to do an act impossible in itself cannot be enforced as per section 29 of the Indian Contract Act, 1872. It is the general rule that the promisors of the contract to perform the promise but there other persons also who may perform under certain circumstances such as an agent if appointed by the promisor for this purpose, legal representative in case of death of a promisor. The time, place and manner of the performance of contract are fixed generally at the desire and conveniences of the parties. Various rules regarding the time and place of contract are laid down under section 46 to 50 and section 55. When the time is the essence of contract, a promisor is expected to perform his promise with the stipulated time period and if he fails to do so, the contract becomes voidable at the option of the promisee.

**VALIDITY OF ONLINE CONTRACT**

The Information Technology Act, 2000 provides various procedural, administrative guidelines and regulates the provisions relating to all kinds of electronic transactions. These include computer data protection, authentication of documents by way of digital or electronic signature. Though electronic contracts have been given recognition by the IT Act, 2000, but majority feels it less secured to get into any kind of online contracts as there are no concrete judicial precedents for the validity and enforceability of online contracts in India.  In case of browse wrap contracts, we usually accept the terms and conditions of the contract by clicking the button that indicates ‘ I Agree’ and in case of  shrink wrap contract or purchase of a software product, assent is given by the consumer or the purchaser with tearing of the wrapper and using it. Many have the tendency of not reading the terms and conditions carefully before agreeing to such. But these actions should be taken consciously and carefully only after reading the terms of the contract properly as it leads to a valid contract and the terms can be strictly enforced against them.

However courts in other countries such as US, have dealt with validity and enforceability of contracts such as shrink wrap and click wrap contracts. It was held in the famous case of **ProCD. Inc. versus Zeidenburg** “that the very fact that purchaser after reading the terms of the license featured outside the wrap license opens the cover coupled with the fact that he accepts the whole terms of the license that appears on the screen by a key stroke, constitutes an acceptance of the terms by conduct.” Thus it is confirmed that shrink wrap agreements are valid contracts and are enforceable against the purchaser of the software. But the enforceability of the shrink wrap agreement is extended as far as the general principles of contract are not violated. The validity of click wrap agreement was first considered when the Court for northern district of California upheld in the famous case of Hotmail Corporation that “the defendant is bound by the terms of the license as he clicked on the box containing “I agree” thereby indicating his assent to be bound” **[Hotmail Corporation v. Van $ Money Pie Inc, et al].**

It was also held by the Appellate Division of Superior Court of New Jersey, that by clicking the “I Agree” option given in the dialogue box the plaintiff has entered into a valid and binding contract and can be made liable for the terms and conditions laid down in the contract. Click wrap agreements are thus valid and enforceable in US as long as the offer and acceptance rule is taken into consideration.

In the year 2015, an initiative known as ‘Digital India’ was launched by Narendra D. Modi, the present Prime Minister of India. This campaign was launched to ensure that government services available to the citizens of our country in any electronic way which will lead to the improvement of online infrastructure and internet connectivity in our country. The initiative of Digital India aims to connect rural areas with high speed internet networks and consists of three components such as the creation of digital infrastructure, Delivery of services digitally and digital literacy. Its main object is to make our country digitally empowered in the field of technology.

With the wide spread expansion and globalization of technology**,**existence of online contract has become regular in our life right from buying daily groceries from the market to withdrawing money from an ATM. Electronic contracts by use of technology is much cost effective and delay can be instantly removed in comparison to traditional paper based contracts. There is less chance of committing errors as it is much automated. It provides an opportunity to the seller to reach millions of consumers irrespective of distance and most importantly without the involvement of middlemen or any brokers**.**

The Indian Contract Act, 1872 provides a basic contractual rule that a contract is valid if it is made by competent parties out of their free consent for a lawful object and consideration. There is no specific way of communicating offer and acceptance; it can be done verbally, in writing or even by conduct. Thus oral contracts are as valid as written contracts; the only condition is they should posses all the essentials of a valid contract. It was held in the case of **Bhagwandas Goverdhandas Kedia*v.*Girdharilal Parshottamdas**, “that ordinarily, it is the acceptance of offer and intimidation of that acceptance which results in a contract. This intimation must be by some external manifestation which the law regards as sufficient. Hence, even in the absence of any specific legislation validating e-contracts cannot be challenged because they are as much valid as a traditional contract is.”

An online contract is simply a communication between two parties in regard to transfer of goods/services. And as per Indian Evidence Act any e- mail communication and other communication made electronically is recognized as valid evidence in a Court of law. By considering the points, it can be concluded that the contract that follows the communication is valid too and Indian law thus recognizes the validity of online contracts.

The citizens of India are encouraging the concept of Digital India, but there are no definite legislations relating to the transactions done over computerized communication networks. Several laws such as The Indian Contract Act, 1872, Information Technology Act, 2000, Indian Copyright Act, 1957 and the Consumer Protection Act, 1986 to some extent are working and acting on resolving issues that arise relating to the formation and validation of online contracts. The Information Technology Act, 2000 is the Act that governs the transactions conducted over internet and explains the considerable mode of acceptance of the offer and provides the rules for revocation of offer and acceptance in a vague or indefinite manner. Hence, a separate law for regulating contracts based on electronic devices is highly recommended.

**EVIDENTIARY VALUE OF ONLINE CONTRACT**

In a country like India, where the literacy rate is not so high, the concept of ‘Digital India’ is a far reach. People still feel insecure to do online based transactions mainly because the terms and conditions of such contracts are not transparent. Another major issue is the nature of the law governing the electronic contracts. Even if the IT Act, 2000 has legalized electronic contracts, there are no definite provisions mentioned in the Act.

Documents are mainly registered for conservation of evidence, assurance of title and to protect oneself from fraud. The evidentiary value of electronic contracts has been given recognition and can be understood in the light of various sections of Indian Evidence Act. Sec 65B of the Indian Evidence Act deals with the admissibility of electronic records. As per Sec 65B of the Indian Evidence Act any information contained in an electronic record produced by the computer in printed, stored or copied form shall deemed to be a document and it can be admissible as an evidence in any proceeding without further proof of the original subject to following conditions are satisfied such as the computer from where it was produced was in regular use by a person having lawful control over the system at the time of producing it, during the ordinary course of activities the information was fed into the system on a regular basis, the output computer was in a proper operating condition and have not affected the accuracy of the data entered.

Section 85A, 85B, 88A, 90A and 85C of the Indian Evidence Act deal with the presumptions as to electronic records. Sec 85A has been inserted later to confirm the validity of electronic contracts. It says that any electronic record in the form of electronic agreement is concluded and gets recognition the moment a digital signature is affixed to such record. The presumption of electronic record is valid only in case of five years old record and electronic messages that fall within the range of Section 85B, Section 88A and Section 90A of Indian Evidence Act.

**REMEDIES FOR BREACH OF ONLINE CONTRACT**

There is no specific rule in case of breach of online contract but the rules regarding remedies for breach of contract can be followed as provided in The Indian Contract Act. A valid contract gives rise to co- relative rights and obligations and they are enforceable in the court of law when infringed on breach of contract. The Contract Act mainly talks about two remedies for the breach of contract such as Damages and Quantum Merit. But few other remedies are also available as provided in the Specific Relief Act such as specific performance of contract and injunction restraining the other party from making a breach of contract.

Sec 73 and Sec 74 of the Indian Contract Act, 1872 deals with the rules regarding the remedy of damages on breach of contract. The person whose rights are infringed by the breach of contract may bring an action for damages or compensation in terms of monetary value for the loss suffered by the party. There are two main aspects to be considered when any action of damages i.e remoteness of damage and measure of damage. Sec 73 to 75 provides rules regarding the assessment of damages based on the famous case **Hadley vs. Baxendale**. According to the rules laid down in this case, there can be damages which naturally arose on the usual course of things from such breach of contract and can be called ordinary damages and secondly, damages for loss arose from special circumstances i.e special damages. There are also other kinds of damages mentioned in the Act such as nominal damage, pre- contract expenditure, compensation for mental agony and liquidated damages. Nominal damages are those substantial damages awarded by the Court in recognition of right of the aggrieved party in cases where the party has not suffered any monetary loss on the breach of contract. Whereas, pre- contract expenditure may be recovered as damages if such is within the knowledge of the parties. Liquidated damages are those pre-determined damages decided by the parties at the time of formation of the contract i.e amount of compensation payable in the event of breach of such contract.

When a person has done some work under a contract and the other party repudiates the contract or at the occurrence of an event that makes further performance of the contract impossible, the party who has performed his work can claim remuneration for the work already done. And under such circumstances the party can file suit upon quantum merit and claim for the value of work he has done.

**CONCLUSION**

An online contract is designed and enacted with an aim to provide security to online transactions. It is formed to check frauds to promote and build confidence in genuine online transactions and to give a legal status to the concept of digital signature. Online contract is a much efficient concept in the interest of time and money in comparison to the traditional method of paper and writing contract. But to keep a pace with the fast advancement of the technology, a separate legislation in regard to electronic or online contract has to be enacted in India.

**Consumer Transaction**

Consumer transaction means a transaction in which an individual incurs an obligation primarily for personal, family or household purposes, a security interest secures the obligation and the collateral is held or acquired primarily for personal, family or household purposes. Consumer transaction includes consumer goods transactions.

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* 1. an individual incurs an obligation primarily for personal, family, or household purposes,
  2. a security interest secures the obligation, and
  3. the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

**Background**

If you have ever purchased an ice cream cone, rented a movie or taken a taxi across town, then you’ve completed a consumer transaction. An act like buying a lottery ticket might not actually net any kind of reward, but it still falls in the same category. These transactions are an integral part of an economy. People need products and services, and businesses do their part to fill consumer needs.

**Definition**

According to U.S. Legal Definitions, a consumer transaction is defined as “a sale, lease, assignment, award by chance,or other disposition of an item of personal property.” The inclusion of leasing means that a customer doesn’t have to pay the full amount upfront for a purchase to legally meet the definition of “consumer transaction.” Additionally, he does not even need to directly purchase a product. As an example, when a person buys a raffle ticket it is considered by law to be a consumer transaction, whether or not he actually wins a prize.

**Function**

Consumer transactions serve the purpose of providing people with the products and services they need or want. These financial interactions are vital for keeping companies in business and providing jobs to people who, in turn, become consumers themselves. They are also essential for a healthy economy, which impacts local governments and political parties. State and local sales taxes rely on citizens purchasing goods and services. The funds drawn from these transactions are used to help provide for municipal services, such as law enforcement and education.

**ECommerce**

ECommerce is an emerging form of consumer transactions. Beginning in the late 1990s

with such pioneers as eBay and Amazon.com, the Internet became a means for consumers to conduct business with companies. By utilizing the Internet, customers are able to find virtually any type of product they need or want. These transactions can be made at any hour of the day and provide consumers with the greatest amount of convenience.

**Considerations**

There are a variety of transactions performed in any given economy. When a business sells good or services to another business--an action which is referred to as “B2B”--it differs from a consumer transaction. The major distinction is that in a business to consumer transaction--known as “B2C”--the final product is used by the consumer and not sold or used for additional processing.

When a lumber company sells wood to a carpenter for the manufacture of chairs to be sold, it is considered to be a B2B transaction. If the same carpenter buys the wood to complete a deck on his own house, then the transaction is B2C.

**Warnings**

Whereas consumers are protected under the law, it is important for customers to be aware and not fall into financial traps from scam artists. Consumers should be careful to complete their transactions with reputable businesses. Another major area for concern with regard to safety is online purchases. When a consumer completes a transaction over the Internet, a credit or debit card is commonly used. Anyone making a purchase in this manner should be sure the website uses data encryption for the transaction.

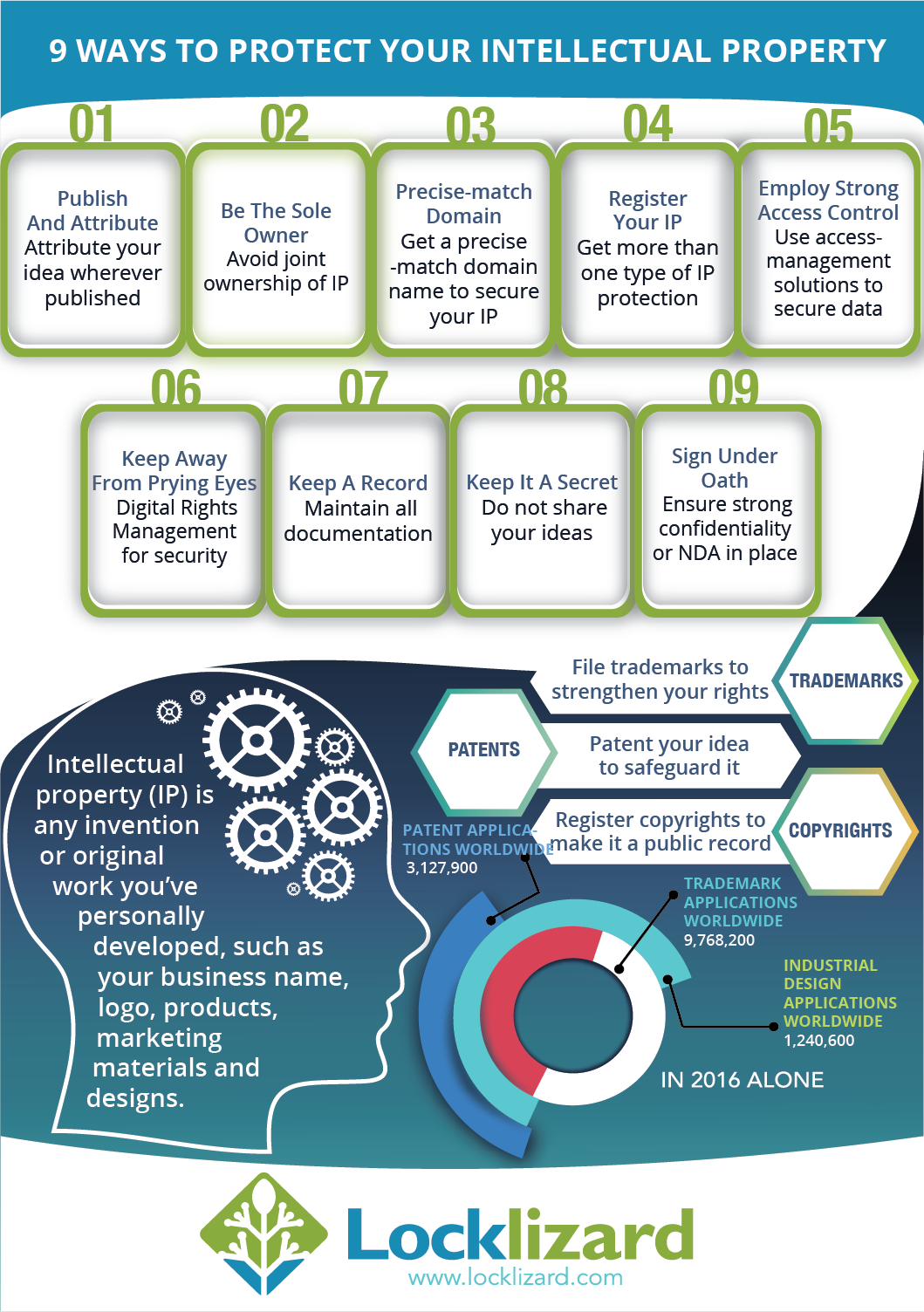
**Consumer Product Safety Commission**

Free Dictionary.com notes that the Consumer Product Safety Commission was established by the U.S. Congress in 1972 and functions to protect consumers from faulty or dangerous products. This can help provide a certain level of assurance for customers and also gives legal grounds for action against companies that provide products that are not safe.

**Digital Copyright**

**Intellectual property law is ineffective for copyright protection**

Intellectual property law may establish the rights of authors and publishers, but it is not economically effective unless you are a substantial organization. This inherently disadvantages the entrepreneur and the small business who would look to copyright to protect their interests. Just as we have special regard to the rights of consumers we may need rights for smaller businesses, as we do in other areas of law such as in Unfair Contract Terms legislation. Special powers of controlling copyright works may be appropriate for small businesses that are inappropriate for larger ones who have effective access to law to protect their interests.



**Copyright and intellectual property rights (IPR)**

Copyright and intellectual property rights (IPR) have been established and extended over many hundreds of years. Although initially developed to give a publisher control over the right to publish (copy) a work, they were extended to give rights to authors, painters, photographers, film producers and software writers (amongst many others).

Naturally, copyright protection was introduced as civil law because it was dealing with economic rights of one party against another. Criminal law was not appropriate, and, therefore, the state would not act on behalf of the copyright owner who had to take action themselves.

At the time that these laws were formed it might be argued that the only people who could create rights were those who were educated, and therefore rich.

**Development of copyright protection**

As education became commonplace for everyone (in many countries there is a legal obligation to ensure that children go to school) so the ability to create copyright works became something that (almost) anyone in the world could do.

At the same time there were debates about the wisdom of creating a system that would allow people absolute control over the copying and use of their works. Researchers and scientists could prevent anyone from checking or challenging their work. Political writers could ensure that what they wrote could only be seen by the faithful and never subject to proper criticism.

This may not seem to have much to do with stopping people from copying music tracks or DVD productions, but they were seen as significant problems that the legislators wanted to address. At the bottom of their thinking was the idea that nobody should be able to create a monopoly on knowledge. Just imagine if it was illegal to write about what was in a newspaper or quote a passage from a book or a film because copyright law prevented you from doing that.

Also, you could not have public libraries, schools and universities would not be able to provide books in support of some of their courses. Even teaching people about copyright works could itself be illegal.

**Intellectual Property Law & counterbalance**

But the problem is that to use copyright laws, for the small trader, the individual author or musician, is that you need to be able to afford litigation. This is because you have to wait for someone to break your copyright, and then sue them for the damage caused to you.

Let us take some practical examples.

You are selling something on a computer auction site and you create a very good photograph of it and some nice text that really helps sell it and make it attractive to the purchaser. You have maybe a dozen of these to sell.

The first sale goes brilliantly and you are already for the second when you notice that another seller has come in, is using your photograph and text, but selling the same item at half the price.

What do you do? You can try and get the auction site to take-down the other person’s advert, but they’re hardly that interested. You could try suing them, but the costs of starting a court action are in the thousands, and the most you’re likely to get back is hundreds because you have suffered little economic harm. But you’re mad as hell that someone can do that to you and there’s not a lot you can do about it.

Or you are a trainer specializing in management development and you have invested a lot of effort into a really good presentation and notes to go with your course. You give a few courses, and then find out that someone else is advertising the course and the material they are showing looks very similar if not identical to yours. But what are you going to do? Can you go on their course and take copies of their materials and then, if they are substantially similar to yours prosecute them? How much will it cost you, and how much can you get back?

**Defending the small digital copyright owner**

Probably the most difficult situation is where you have had to make your IPR publicly accessible. (The same goes for rock bands that perform live, DVDs that can be copied by pointing a camera at the screen whilst they are playing, and so on). There’s nothing much that you can do to defend against these situations no matter what you might want. The big film producers have trouble with this one, and if they can’t solve it you will be hard pressed.

Much easier is the situation where you do not have to make your work publicly accessible. This is the situation where you are selling a newsletter, magazine, training materials, course notes, books and so on.

Since the work is not publicly accessible you can impose controls over how it can be used and who can look at it (or print it or manipulate it and so on). This is much more powerful a situation, because you can limit who can see the work you can also limit their ability to copy it. (Do remember that you cannot stop people taking photographs of every single screen and then printing the photographs and scanning them to get back to text, but it is a big task to do something like that, so someone has to be really serious to want to steal your work and there must be good enough money in it that a legal action might work because the image is not going to be high quality.)

And that is where document DRM products such as Locklizard Safeguard are useful for digital copyright protection. They allow you to control all the way down to individual lengths of use or the ability to print. You can supplement and improve on the controls that PDF files have by integrating a licensing system over the top of existing controls.

**Digital copyright & legality of controls**

Now there are some potential problems with moving to what is effectively pay per view controls.

The law in most countries defines something called fair use, which means that people may see a work without charge for a number of purposes. A rights holder cannot refuse these rights any more than they can deny the right to free speech. So every small publisher faces the potential problem that they must allow anyone to have sufficient access to their work for legally permitted purposes.

This type of right was created to prevent monopoly of information, which the press barons or the film industry might otherwise create. (We also don’t want to get into a debate about the reasonableness of the film industry having a copyright of 100 years on the materials they produce.) But perhaps it is not appropriate when considering the small enterprise that requires specific protection?

Today we might need to think about a tiered system of digital copyright protection, where stronger controls are allowed in exchange for the fact that the copyright owner is not able to use the available law as an effective deterrent to copyright theft. The Internet has, on the one hand, made it far more possible for IPR creators to publish and sell their work, but on the other exposed them to far greater risk of having their IPR stolen as a result.

DRM companies such as Locklizard have developed licensing control systems for digital copyright protection that prevent printing documents, inhibit the use of print screen, and prevent anyone who is not authorized from seeing document content. Whilst this might not meet the requirements of fair use, it is the only effective way of protecting the ownership of the information. Because if the recipient is able to copy an electronic document then the genie is well and truly out of the bottle and no amount of ‘encouraging’ people not to do that will have any effect.

A compromize might be achieved by using licensing to allow anyone a single read only of a work without charge, but it would face some serious weaknesses. In the case of analyst reports their real value is the first time they are read. The same goes for training materials. They lose their sale value as soon as they are used, so perhaps they should be considered in a different way from traditional publishing of books and magazines.

Certainly achieving a balance between the rights of the copyright owner and the provisions of public policy such as fair use need to be debated with the very much broader range of people publishing electronic documents, and not just the big players, the libraries and the lawyers.

**Taxation**