

## Role of IPR in cyber space

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### Abstract

This paper is an attempt to portray IPR in the realms of Cyber Space. In India, the existing intellectual property regime that deals with the protection of computer software is the Indian Copyright Act, 1957. At present, legal system and framework are inadequate to address all the aspects of Information Technology (IT). And other walks of the life style, law has to learn the changes. Do grey areas exist in the legal system? are billion dollar questions to the software industry and should evolve on a continuous process. Convergence Law in India aims to promote, facilitate and develop in an orderly manner the carriage and content of communications including broadcasting, telecommunications and multimedia.

Information Technology Act 2000 does not mention a single word about Intellectual Property protection while Infringement of IPR is one of the most challenging area in cyberspace. As well as Copyright and Domain names violations do occur on the internet but Copy Right Act 1957 & Trade Mark Act 1999 are silent on that which specifically deals with the issue. Therefore we have no enforcement machinery to ensure the protection of domain names on net. Time has come where we must enact special legislation for the protection of Intellectual property in cyberspace.

**Keywords:** IPR, IT, cyber space, copy right act (1957), trade mark act (1999)

### 1. Introduction

People nowadays are so much engaged in their virtual world rather than knowing what the actual motive of the virtual world is and share their delicate information online without thinking twice that what might be the aftermath of the data being uploaded by them and some people take advantage of such uploads and take it as a means to generate money. Hence the issue of I.P.R comes into the foray of Cyber Space. Now these questions might pop out from most of us that what exactly is I.P.R? So, I.P.R is nothing but Intellectual Property Rights, Intellectual property (IP) refers to creations of the intellect/rational for which a monopoly is assigned to designated owners by law.

Intellectual property rights (IPRs) are the rights granted to the creators of IP, and include trademarks, copyright, patents, industrial design rights, and in some jurisdictions trade secrets. Artistic works including music and literature, as well as discoveries, inventions, words, phrases, symbols, and designs can all be protected as intellectual property. Likewise Cyber Space is a term which is being derived from a Science-Fiction movie by Mr. Fred Roderick in the year 1920, and the term actually describes the virtual world which is something apart from the real world.

And today this term is widely being used to describe the attachment that people have towards the internet services or can be simply put into the words of "Socialisation" or "Social Media", As of today the world has been facing a lot of surge in the Cyber Crime due to the only factor of Globalisation and in India it can be related to the government's L.P.G Policy (Liberalisation, Privatisation And Globalisation). Some of the recent incidents in Cyber Crime are as follows:

Cyber Bullying, Cyber Stalking, Spamming, Ransom ware

and various other Malware Attacks.

Although these terms do not have anything in relation to I.P.R, basic thing which needs to be focussed is on violation of an individual's private right in the virtual world by any means and what remedy that victim might receive, and till now the I.T Act, 2000 or Information Technology Act, 2000 has been followed down all these years and as the time has drastically changed from where it all began, accordingly the act needs to go many further changes in order to adapt to the present case scenario and to applied further in any cases arising and to fix all the prevailing loop holes in the act.

So in order to curb all these activities the government has to take some appropriate measures and our Legislature as well as our Judiciary needs to amend some policies to prevent those culprits from breaking the law.

Cyber security denotes the technologies and procedures intended to safeguard computer networks and data from unlawful admittance of weaknesses and attacks transported through the internet by cyber delinquents.

Intellectual property refers to creations of the human mind, for example; a story, a song, a painting, a design, a program etc. The facets of intellectual property that relates to cyberspace are covered by cyber law namely

- Copyright Law
- Trademark Law
- Semiconductor Law
- Patent Law

Data protection and privacy laws aim to achieve a fair balance between the piracy rights of an individual and the interests of data controllers such as Banks, Hospitals, Electronic mail Service providers etc.

The Indian Penal Code (I.P.C) (as amended by I.T Act)

penalizes several cyber-crimes. These include forgery of electronic records, cyber frauds, destroying electronic evidence etc. Digital evidence is to be collected and proven in the Court of Law as per the provisions of the Indian Evidence Act (as amended by the I.T. Act 2000).

## **2. Colligation of IPR and Cyber Space**

The main focus of the paper is to enlighten not only the academicians but also the non tech savvy laymen to have first-hand information about the internet, cyberspace and their linkage with Intellectual Property Rights especially copyright. Internet is one such a major scourge, which has captured the physical market place and has converted into virtual market place. Therefore, it is the duty of I.P.R owners to invalidate and reduce such malafide acts of criminals by taking proactive measures.

It is of utmost importance to know more about copyright with regard to computer programs / software, computer database and various other works in cyberspace. Copyright is the key issue in the intellectual property rights in digital era.

Under the T.R.I.P.S (Trade Related aspects of Intellectual Property Rights) agreement, computer programs now qualify for copyright protection just as any other literary work as well as other forms of Intellectual Property Rights protection.

### **Copyright**

It is the exclusive and assignable legal right given to originator for a fixed number of years to print, publish, perform, and film or material.

“It is a legal device that gives the creator of a literary artistic, musical or other creative work, the sole right to publish and sell that work.”

### **Cyberspace**

“It is domains characterized by the use of electronics and the electromagnetic spectrum to store, modify and exchange data via networked systems and associated physical infrastructures. In effect, cyberspace can be thought of as the interconnection of human beings through computers and telecommunication without regard to physical geography.”

With the onset of modern technology, more importantly the internet, copyright protection assumed greater significance. Now a days, copyright law has been incorporated and put into usage to protect internet items. It protects original work or work that is fixed in a tangible medium i.e.; it is written, typed or recorded. In fact, the internet was introduced in 1960 and “WWW” in 1990’s; which clearly established the fact that copyright which a manual operation was hitherto got transformed into electromagnetic operation.

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

Cyberspace is a virtual world, which technically exists only in computer memory, but it is interactive and pulsing with life.

The advantage in cyberspace is that one can meet and talk to new people, read, publish research, hear music, watch video, look at art, purchase and sell things, access to the government documents, send e-mails, download software and receive technical support.

One-way cyberspace is a living organism enabled to frequent changes to suit the demands of the public. Now a days, people are so accustomed to the cyberspace that it has become a part of our daily life and are more dependent on it even for a slightest need for example to book a movie ticket, they go online, so is the importance of cyber space.

## **3. IPR Violation in Cyber Space**

### **Relation between Internet and Copyright**

So far international copyright law was based upon the Berne Convention for the protection of literary and artistic works and the T.R.I.P.S (Trade Related aspects of Intellectual Property Right) of 1995. Since 1974, the international copyright instruments have been managed by a special United Nations Agency by name W.I.P.O (World Intellectual Property Organisation).

W.I.P.O’s objective as per the treaty is to promote the protection of intellectual property throughout the World through cooperation among the states and where appropriate, in collaboration with other international organizations. Currently W.I.P.O consists of 180 member states. W.I.P.O administers six copyright treaties and aims at “homogenizing national intellectual property protections with an ultimate eye towards the creation of a unified, cohesive body worldwide international law.”

### **The T.R.I.P.S (Trade Related Aspects of Intellectual Property Rights) Agreement**

The General Agreement on Tariffs and Trade (G.A.T.T) has also addressed copyright issues, in parallel to W.I.P.O. The goal of G.A.T.T is to promote the reduction of tariff barriers to the international movement of goods. In 1994, the Uruguay round of G.A.T.T produced T.R.I.P.S. The same round also instituted the W.T.O (World Trade Organisation). The T.R.I.P.S Agreement adopts portions of the Berne, Rome and Paris Conventions in enunciating norms for intellectual property laws.

### **W.I.P.O (World Intellectual Property Organisation)**

W.I.P.O is an organization of the United Nations (U.N). W.I.P.O’s activities are of four kinds:-

Registration, promotion of inter-governmental cooperation in the administration of intellectual property rights, specialized programme activities and lastly dispute resolution facilities. In 1996, member countries found it necessary to form a treaty to deal with the protection of copyright evolvement of new technology.

### **Copyrights problem**

The internet poses two basic challenges for I.P.R administrator. What to administer? And How to administer? One of the basic copyright issues in the internet is determining the border between private and public use. The Indian Copyright Act, 1957 (amended in 1994, 2012) also makes a distinction between reproduction for public use and can be

done only with the right holder's permission, whereas the law allows a fair dealing for the purpose of private use, research, criticism or review.

The right of reproduction presents certain fundamental problems over the internet. This is because of the basic nature of internet transmission. Reproduction takes place at every stage of transmission. Temporary copying (known as caching) is an essential part of the transmission process through internet without which messages cannot travel through the networks and reach their destinations. In the Indian Law, reproduction has to be in a material form but includes "storing of it in any medium by electronic means." Case laws need to make it amply clear about the temporary and permanent reproduction, that takes place in the internet communications.

#### **W.I.P.O and Digital Copyrights**

The Copyright Treaty 1996 and Performances and Phonograms Treaty 1996 are the two major international legal instruments relating to cyberspace created under the auspices of W.I.P.O. A close analysis of W.I.P.O Copyrights Treaty would reveal the scope and limitations of protection related to digital copyrights.

W.I.P.O Copyright Treaty addresses these specific rights namely the rights of distribution, rental and communication to the public. The Treaty also interestingly addresses the issue of Rights Management Information (R.M.I) which is relevant to the popular Digital Rights Management (D.R.M).

#### **Copyright and Cyberspace**

Copyright protection gives the author of work a certain "bundle of rights", including the exclusive right to reproduce the work in copies, to prepare derivative works based on the copyright work and to perform or display the work publicly.

#### **Public Performance and Display Rights**

The right that does get affected is that of display. Display of the work is also done by making copies, which are then retailed or lent out. This also falls under the right to display, which the holder of the copyright has.

#### **Distribution Rights**

Copyright Law grants the holder of the copyright the exclusive right to distribute copies of the work to the public by sale or by the transfer of the ownership.

#### **Caching (Mirroring)**

It is a violation on the internet. Caching may be local caching and proxy caching. In addition, proxy caching may give rise to infringement of the right of public distribution, public policy, public performance and digital performance.

### **4. Legal Aspects Involved**

#### **Electronic Copyright Management System (E.C.M.S)**

The copyright owners have an option to make use of the technology protection measures. E.C.M.S is indeed a legal framework to protect against third parties circumventing these systems.

Technology protection measures may be classified as follows:

- Access control measures and copy control measures. Examples of access control measures include passwords,

encryption and set top boxes. E.C.M.S is used to enable the copyright owners to track, manage or prevent copying of their work, such as digital watermarking system.

This system allows the copyright owner to track and identify unauthorized copies made by the original work.

#### **Legal Aspects of Electronic Copyright Management System**

The following are the two important legal aspects:-

##### **(a) D.M.C.A (Digital Millennium Copyright Act 1998)**

This Act (D.M.C.A) provides firstly, that no person shall circumvent a technological protection measure that effectively controls access to a work protected under the Act. The Second part prohibits trafficking in devices or services for circumventing technology measures that control access. The third part prohibits trafficking in devices or services for circumventing technology measures that protect the rights of a copyright owner.

##### **(B) E.U.C.D (Europe Union Copyright Directive)**

The main focus was on the preparatory activities, because the real danger for Intellectual Property Rights will not be a single act of circumvention by individuals but preparatory activities to produce devices or offer services to circumvent.

#### **Protection of Database in India**

The Indian Copyright Act 1957 protects "Databases" as "Literary Works" under Section 13(1)

- a. Of the Act which says that copyright shall subsist throughout India in original literary, dramatic, musical and artistic works. The term computer Database has been defined in the Information Technology Act 2000 for the first time. Section 43 of the I.T. Act 2000 provides for compensation to the aggrieved party up to one Crore rupees from a person who violates the copyright and cyberspace norms. Also Section 66 of I.T.Act 2000 provides for penal liabilities in such a case.

#### **Internet Protection in India**

The internet challenge for the protection of internet is the protection of intellectual property. It is still unclear as to how copyright law governs or will govern these materials (literary works, pictures and other creative works) as they appear on the internet. Section 79 of the I.T. Act 2000 provides for the liability of I.S.P's "Network Service Providers not to be liable in certain case."

Section 79 of the I.T.Act exempts I.S.P's from liability for third party information.

#### **Indian Cyber Jurisdiction**

Though it is in the nascent stage as of now, Jurisprudential development would become essential in the near future; as the internet and e-commerce shall shrink borders and merge geographical and territorial restrictions on jurisdiction. There are two dimensions to deal with.

1. Manner in which foreign courts assume jurisdiction over the internet and relative issues.
2. The consequences of decree passed by a foreign court.

## 5. Suggestion and Conclusion

The detailed study in the aforesaid chapters needs to culminate with the following

### Suggestion

1. T.R.I.P.S Agreement, wherein computer programs qualify for copyright protection, needs to be adopted and implemented in letter and spirit by all the developed countries.
2. Copyright, matters most in the computer software industry to off the shelf business applications sector in developing countries which presents two main problems that have to be closely monitored so that the copyright owners across the World will be protected.
  - a. Stronger protection and enforcement could mean a more limited diffusion of technologies.  
Eg: governments and donor organisations should review their software procurement policies.
  - b. National copyright laws need to be drafted appropriately.
3. Serious and sincere efforts are made for procurement of computer software. Since software license fees affect the total cost of an I.T system.

It would be sensible if the governments and donor organisations should certainly consider supporting programmes to raise awareness about low cost options, including open source software, in developing countries.

### Conclusion

There is an immense need for the Indian society to be made aware about the necessity of copyright protection in all fronts to prevent any unauthorized use and pilferage of the system. The analysis of copyright in cyberspace reveals a mixed result of new opportunities and threats. Such threats often outweigh the opportunities offered by the cyberspace and necessity arises for increasing regulations of cyberspace to protect copyrights.

And further Lack of internationally agreed principles relating to copyrights in cyberspace gives ample room for divergent domestic standards. Therefore these things are to be kept in mind for further strengthening the Indian Cyber Legislations in relation to the Intellectual property rights.

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