

CYBER LAWS



Chapter Objectives

After reading this chapter, you will understand :

- Meaning, importance and advantages of cyber laws in India
- IT Act 2000, its highlights, advantages and limitations
- Intellectual Property Rights (IPR) and IP law
- Copyright Act
- Patent law
- Software license rights, registration and offenses
- Semiconductor IC layout Design Act, 2000

9.1 CYBER LAWS IN INDIA

What is Cyber Law?

Cyber law is a generic term which denotes all aspects, issues and the legal consequences on the Internet, the World Wide Web and cyber space. It comprises of many legal fields including intellectual property, privacy, freedom of expression and jurisdiction. In short, cyber law is an attempt to apply laws designed for the physical world on the human activity on the Internet.

Need for Cyber Law in India

India is the 12th nation in the world that has cyber laws. When Internet was developed no body would have thought that it would transform itself into an information and communication revolution and that laws would be required to check its misuse for criminal activities. Today, there are many disturbing things happening in cyber space. Due to the anonymous nature of the Internet, it is possible to engage into a variety of criminal activities. People with intelligence have been grossly misusing this aspect of the internet for criminal activities in cyber space. They are constantly evolving newer means to avoid getting caught and cover up their tracks. Hence, there is need for Cyber laws in India.

Importance of Cyber Laws

Cyber law is important because it touches almost all aspects of businesses and activities on the Internet, the World Wide Web and other space. Initially it may seem that cyber laws is a very technical field and that it does not have any bearing to most activities in cyber space. However, the actual truth is that every action and reaction in cyber space has some legal and cyber legal perspective.

The nature of Internet is changing. This new medium of information is being seen as the ultimate medium ever evolved in human history. Every activity in cyberspace can and will have a cyber legal perspective. From the time we register our Domain Name, to the time we set up our web site, to the time we promote our web site, to the time when we send and receive e-mails, to the time we conduct electronic commerce (e-commerce) transactions on the said site, at every point of time, there are various cyber law issues involved.

Transacting on the Internet has wide legal implications as it alters the conventional methods of doing business. To build enduring relationships with online customers, the legal issues of e-transactions need to be addressed from the onset. Due to the above reasons it is important that we know and understand various cyber laws.

Scope of Cyber Laws

Cyber laws are indicative of the entire spectrum of legal regulations devised for governing of the security of stored information that is transmitted over the Internet. The Information Technology Act, 2000 (IT Act, 2000) is the primary source of cyber laws in India. It aims to provide the legal infrastructure for e-commerce in India. These laws have a major impact for e-business and for the new economy in India. The various perspectives of IT Act, 2000 are explained in the next article.

There is a general misunderstanding that the entire Indian cyber law is encapsulated in the IT Act, 2000. Note that cyber law in India consists of various laws, each of which operates independently and also interplays with one another. For example, with the growing e-commerce, domain names are serving as trade names, trademarks and brands. Hence knowledge of trademarks law assumes significance for the IT community. Similarly Copyright Act, Patent Law and Intellectual Property Rights also interplay with various provisions of IT Act and come under the purview of cyber laws. We will be discussing these later on in this chapter.

9.2 IT ACT OF INDIA, 2000

In May 2000, both the houses of the Indian Parliament passed the Information Technology Bill. The Bill received the assent of the President in August 2000 and came to be known as the Information Technology Act, 2000. Cyber laws are contained in the IT Act, 2000. The Act was later amended in 2008.

An Overview of IT Act, 2000

- (1) This Act aims to provide the legal infrastructure for e-commerce in India. The cyber laws have a major impact for e-businesses and the new economy in India. The e-commerce industry carries out its business via transactions and communications done through electronic records. Thus, it becomes essential

that such transactions be made legal. Keeping this point in consideration, the IT Act 2000 empowers the Government departments to accept filing, creating and retention of official documents in the digital format.

(2) The Information Technology Act, 2000 also aims to provide the legal framework to all electronic records and other activities carried out by electronic means. The Act states that unless otherwise agreed, an acceptance of contract may be expressed by electronic means of communication and the same shall have legal validity and enforceability.

(3) The Act also puts forward the proposal for setting up the legal framework essential for the authentication and origin of electronic records/communications through digital signature. These have been also awarded the status of being legal and valid means that can form strong basis for launching litigation in a court of law. It invites the corporate companies in the business of being Certifying Authorities for issuing secure Digital Signatures Certificates.

(4) The Act legalizes the e-mail and gives it the status of being valid form of carrying out communication in India. This implies the e-mails can be duly produced and approved in a court of law. Thus, they can be regarded as substantial document to carry out legal proceedings.

(5) The Act now allows Government to issue notification on the web thus heralding e-governance.

(6) It eases the task of companies of the filing any form, application or document by laying down the guidelines to be submitted at any appropriate office, authority, body or agency owned or controlled by the Government. This will help in saving costs, time and manpower for the corporates.

(7) The Act also provides statutory remedy to the corporates in case the crime against the accused for breaking into their computer systems or network and damaging and copying the data is proven. The remedy provided by the Act is in the form of monetary damages, not exceeding Rs. 1 crore (\$ 200,000).

(8) Also, the law sets up the Territorial Jurisdiction of the Adjudicating Officers for cyber crimes and the Cyber Regulations Appellate Tribunal.

(9) The law has also laid guidelines for providing Internet Services on a license on a non-exclusive basis.

9.3 PROVISIONS IN IT ACT, 2000

Various highlights of the IT Act, 2000 are :

- Chapter-I of the Act deals with important definitions and meanings of the terms used in the regulation.
- Chapter-II of the Act specifically stipulates that any subscriber may authenticate an electronic record by affixing his digital signature. It further states that any person can verify an electronic record by use of a public key of the subscriber.

which may have major effect on the growth of e-commerce in India. It leads to make the banking and financial sectors irresolute in their stands.

- (3) The Act empowers the Deputy Superintendent of Police to look up into the investigations and filling of charge sheet when any case related to cyber law is called. This approach is likely to result in misuse in the context of Corporate India as companies have public offices which would come within the ambit of "public place" under the Act. As a result, companies will not be able to escape potential harassment at the hands of the DSP.
- (4) Internet is a borderless medium. It spreads to every corner of the world where life is possible and hence is the cyber criminal. Then how come is it possible to feel relaxed and secured once this law is enforced in the nation? The Act initially was supposed to apply to crimes committed all over the world, but nobody knows how can this be achieved in practice. How to enforce it all over the world at the same time?
- (5) The IT Act is silent on filming anyone's personal actions in public and then distributing it electronically. It holds ISPs (Internet Service Providers) responsible for third party data and information, unless contravention is committed without their knowledge or unless the ISP has undertaken due diligence to prevent the contravention.

9.5 INTELLECTUAL PROPERTY RIGHTS (IPR)

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

Types/Tools of IPRs

- (1) Patents.
 - (2) Trademarks.
 - (3) Copyrights and related rights.
 - (4) Geographical Indications.
 - (5) Industrial designs.
 - (6) Trade secrets.
 - (7) Layout design for integrated circuits.
 - (8) Protection of new plant variety.
- (1) **Patent :** A patent is an exclusive right granted for an invention. It can be a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. Patent provides protection for the invention to the owner of the patent. The protection is granted for a limited period, i.e., 20 years. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's

consent. A patent owner has the right to decide who may or may not use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention which becomes available to commercial exploitation by others. All patent owners are obliged, in return for patent protection, to publicly disclose information on their invention in order to enrich the total body of technical knowledge in the world.

- (2) **Trademarks :** A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise. It may be one or a combination of words, letters and numerals. They may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. It helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs. Registration of trademark is *prima facie* proof of its ownership giving statutory right to the proprietor. Trademark rights may be held in perpetuity. The initial term of registration is for 10 years. Thereafter it may be renewed from time to time.

- (3) **Copyrights and related rights :** Copyright is a legal term describing rights given to creators for their literary and artistic works. The kinds of works covered by copyright include : literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Copyright subsists in a work by virtue of creation. Hence, it is not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work and creator is the owner of the work. 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 (other than photographs). It is for life of author plus sixty years after creator's death.

- (4) **Geographical indications (GI) :** GI are signs used on goods that have specific geographical origin and possess qualities or a reputation that are due to that place of origin. Agricultural products typically have qualities that derive from their place of production and are influenced by specific factors, such as climate and soil. They may also highlight specific qualities.

product, which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions. A geographical indication points to a specific place or region of production that determines the characteristic qualities of the product that originates therein. It is important that the product derives its qualities and reputation from that place. Place of origin may be a village or town, a region or a country.

It is an exclusive right given to a particular community hence the benefits of its registration is shared by all members of the community. Recently the GIs of goods like Chanderi Sarees, Kullu Shawls, Wet Grinders etc. have been registered. Keeping in view the large diversity of traditional products spread all over the country, the registration under GI will be very important in future growth of the tribes/communities/skilled artisans associated in developing such products.

- (5) **Industrial designs :** Industrial designs refer to creative activity which result in the ornamental or formal appearance of a product and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS (Trade Related Intellectual Property Rights) Agreement, minimum standards of protection of industrial designs have been provided for.

9.6 INTELLECTUAL PROPERTY LAW

The present is the age of knowledge and information technology in which intellectual capital plays an important role. Therefore, intellectual properties and rights associated with it have become precious commodity. There is need to protect these rights through legal laws.

The importance of IPR and their protection is acknowledged the world over as essential to business. In tune with the world scenario, India too has recognized the value of IP. The recognition has been consistently upheld by legislations, courts and the industry. India is now a signatory to various IP treaties and conventions. This has helped India become consistent with the world's approaches and attitudes towards IP protection. India has already taken steps to comply with its obligations under TRIPS and the Indian IP law regime is almost at par with the regimes of many developed nations.

There are well established statutory, administrative and judicial frameworks for safeguarding IPRs in India. India has complied with its obligations under the Agreement on Trade Related Intellectual Property Rights ("TRIPS") by enacting the necessary statutes and amending the existing statutes. Trademarks have been afforded protection in India in the past by the Indian courts. Computer databases and software programs have been protected under the copyright laws in India. As a result software companies have successfully fought piracy through judicial intervention. Although trade secrets and know-how are not protected by any specific statutory law in India, they are protected under the common law. The courts, under the doctrine of breach of confidentiality, have granted protection to trade secrets.

In India, we have the following laws related to IP :

- The Trade and Merchandise Marks Act, 1958 ("TM Act, 1958") has been replaced by the Trade Marks Act, 1999.
- The Copyright Act, 1957 has been amended to protect computer programs as "literary work".
- The Patent Act, 1970 has been amended by the Amendment Acts of 1999 and 2002 and 2005.
- The Designs Act of 1911 has been completely replaced by the Designs Act of 2000.
- The following laws have been enacted to protect newly recognized species of intellectual property in India;
 - The Geographical Indications of Goods (Registration and protection) Act, 1999;
 - The Semiconductor Integrated Circuits Layout Design Act, 2000;
 - The Protection of Plants and Varieties and Farmers Rights Act, 2001; and
 - The Biological Diversity Act, 2002.

We will be discussing copyright Act, Patent law, Software License and Semiconductor Law in detail only.

9.7 COPYRIGHT ACT

Copyright is the set of exclusive right granted to the author or creator of an original work, including the right to copy, distribute and adapt the work. These rights can be licensed, transferred and/or assigned. Copyright lasts for a certain time period after which the work is said to enter the public domain. Copyright applies to a wide range of works that are substantive and fixed in a medium. Some jurisdictions also recognize "moral rights" of the creator of a work, such as the right to be credited for the work. For a copyright to apply to a work, it must be an original idea that is put to use. The idea alone cannot be protected by copyright. It is the physical use of that idea, such as an illustration or a written novel that is covered under copyright law.

As a copyright holder, one has the exclusive right to reproduce or make copies of a creative work. We can also distribute or sell copies; make a derivative work (for example, turn a novel into a movie); and perform or display the work publicly.

Copyrightable material also includes creative works, including literature, art and music. It can be copyrighted if they are original and have been put in tangible form. A copyright is a form of protection by the law to authors of "original works of authorship." This includes literary, dramatic, musical, artistic and certain other intellectual works. This protection is available to both published and unpublished works. Copyrighted work prevent others from copying, performing or otherwise using the work without the author's consent.

Copyright has been internationally standardized, lasting between fifty to hundred years from the author's death, or a shorter period for anonymous or corporate

authorship. Generally, copyright is enforced as a civil matter, though some jurisdictions do apply criminal sanctions.

The Copyright Act, 1957 ("Copyright Act"), supported by the Copyright Rules, 1958 ("Copyright Rules"), is the governing law for copyright protection in India. Substantial amendments were carried out to the Copyright Act, in early 2012 ("Amendment"). The amendments make Indian copyright law compliant with the Internet Treaties, WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT). The amendments grant performers's rights to performers. While introducing technological protection measures, the law ensures that fair use survives in the digital era by providing special fair use provisions. The amendments have gone beyond the limited mandate of WCT and WPPT and made many author friendly amendments to streamline business practices, special provisions for disabled, amendments facilitating access to works and other amendments to streamline copyright administration.

Copyright Registration

Under Indian law, registration is not a pre-requisite for acquiring a copyright in a work. A copyright in a work is created when the work is created and given a material form, provided it is original. The Copyright Act provides for a copyright registration procedure. However, unlike the U.S. law, the Indian law registration does not confer any special rights or privileges with respect to the registered copyrighted work. The Register of Copyright acts as *prima facie* evidence of the particulars entered therein. Thus, registration only raises a presumption that the person in the Register is the actual author, owner or right holder. The presumption is not conclusive.

Rights Provided by Copyright

A copyright grants protection to the creator and his representatives for the works and prevents such works from being copied or reproduced without his consent. The creator of a work can prohibit or authorize anyone to :

- (1) reproduce the work in any form, such as print, sound, video, etc;
- (2) use the work for a public performance, such as a play or a musical work;
- (3) make copies/recordings of the work, such as via compact discs, cassettes, etc.;
- (4) broadcast it in various forms; or
- (5) translate the same to other languages;

Infringement of a Copyright

A copyright is infringed (violated) if a person without an appropriate license does anything that the owner of the copyright has an exclusive right to do. The Copyright Act provides for both civil and criminal remedies for copyright infringement.

There are four main forms of remedies in the event that copyright infringement takes place :

- (1) An injunction to stop the production of further copies.
- (2) A demand that all copies are surrendered to the copyright owner or damaged.
- (3) Damages for losses suffered by the copyright owner.
- (4) An account of profits made by the infringer.

9.8 PATENT LAW

A patent can be defined as a grant of exclusive rights to an inventor over his invention for a limited period of time. The exclusive rights conferred include the right to make, use, exercise, sell or distribute the invention in India. The term of a patent is twenty years, after the expiry of which, the invention would fall into the public domain.

Basically, a patent is a legal monopoly, which is granted for a limited time by a country to the inventor of an invention. Merely having a patent does not give the owner the rights to use or exploit the patented invention. That right may still be affected by other laws such as health and safety regulation or the food and drugs regulation or even by other patents. In the eyes of the law, the patent is a property right and it can be given away, inherited, sold, licensed and can even be abandoned. As it is conferred by the Government, the Government in certain cases even after grant can revoke it.

A patent gives an inventor the right for a limited period to stop others from making, using, selling or importing an invention without the permission of the inventor. That is why patent is called a "negative right".

- Patents are generally concerned with functional and technical aspects of products and processes and must fulfill specific conditions to be granted.
- Most patents are for incremental improvements in known technology-evolution rather than revolution. The technology does not have to be complex.
- Patent rights are territorial; an Indian patent does not give rights outside of India.

Patent rights last for up to 20 years in India and in most countries outside India.

- Depending on where we wish our patent to be in effect, we must apply to the appropriate body. In India, this is the Indian Patent Office. There are various Patent Offices around the world. Alternatively, a Patent Agent can apply on our behalf.

Patent law is a specific area of law that encompasses the legal regulation, jurisprudence, and enforcement of specific intellectual property rights known as *patent rights*. A patent is a Government issued right granted to individuals or groups that protects their original inventions from being made, used, or sold by others without their permission for a set period of time. While patents can be legally obtained without the use of an attorney, an attorney who specializes in patent law can help ensure that their client's patent is enforceable by law. Patent law pertains to intellectual property, which is like any other property in that it can be legally sold, exchanged, traded, or abandoned. The finer points of patent law are frequently amended as technology changes. This is another reason why an attorney specializing in patent law is of significant use to those seeking a patent.

In India, the law governing patents is the Patents Act, 1970 ("*Patents Act*"). In India's continued efforts to comply with its commitment under TRIPS, the Patents Act, 1999 has been amended thrice since 1995, by the Patents (Amendment) Act, 1999

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("First Amendment"), the Patents (Amendment) Act, 2005 ("Second Amendment")
and Patents (Amendment) Act, 2005 ("Third Amendment").

Requirements for Obtaining a Patent

Patents are granted only after the satisfaction of certain requirements which

include the patentable subject-matter, utility, novelty, obviousness and specification.

(1) **Patentable subject matter :** To be patentable, an invention should fall within the scope of patentable subject matter as defined by the patent statute. The invention must be a product or a process in order to be eligible for patent protection. An invention which is a product or process is not eligible for a patent grant, if it falls within the scope of non patentable inventions mentioned under section 3 of the Patent Act.

(2) **Industrially applicable :** A patent can be obtained only if an invention is industrially applicable. An invention is said to be industrially applicable, if it can be made and used in an industry. Novelty which the invention claimed must be novel indicating that it should be new at the time of conception. Novelty of invention must be considered in the light of prior art. Prior art means the technology that is relevant to the invention and was publicly available at the time the invention was made. It includes prior specifications, patents, printed and published literature and other materials related to the invention. An invention is not novel if it can be anticipated in the light of prior art.

(3) **Obviousness/inventive step :** An invention should also not be obvious to a person having ordinary skill in the art to which it relates. If the invention is obvious and does not have any inventive step, it is not patentable. Existence of a prior publication of the invention in any Indian specification or in any document in India or elsewhere or public use of the invention would make an invention obvious. In order to be ineligible for a patent, an invention should be obvious at the time of conception of the invention and not at the time of contention of obviousness.

(4) **Specification :** Specification is an essential part of a patent. It should consist of the subject-matter, description and at times including the drawing of the invention indicating its scope. The specification has to enable a person with ordinary skill in the art to practice and use the invention. It should also describe the best mode of performing the invention.

A patent will be granted only if it satisfies all the aforementioned requirements.

Procedure for Grant of a Patent in India

After filing the application for the grant of patent, a request for examination is required to be made for examination of the application by the Indian Patent Office. After the First Examination Report is issued, the applicant is given an opportunity to meet the objections raised in the report. The applicant has to comply with the requirements within 12 months from the issuance of the First Examination Report. If the requirements of the first examination report are not complied with within the prescribed period of 12 months, then the application is treated to have been abandoned by the applicant. After the removal of objections and compliance of requirements, the patent is granted and notified in the Patent Office Journal.

Rights Granted by Patent

A patent grants exclusive rights to the patent owner. If the grant of the patent is for a product, then the patentee has a right to prevent others from making, using, offering for sale, selling or importing the patented product in India. If the patent is for a process, then the patentee has the right to prevent others from using the process, using the product directly obtained by the process, offering for sale, selling or importing the product in India directly obtained by the process.

Infringement of Patent

Infringement of a patent is the violation of the exclusive rights of the patent holder. If any person exercises the exclusive rights of the patent holder without the patent owner's authorization then that person is liable for patent infringement.

- In the case of a product patent, the following actions would amount to infringement :
- making,
 - using,
 - offering for sale,
 - selling, or
 - importing for these purposes, the product in India without the permission of the patentee.

- In the case of a process patent, the following would amount to infringement :
- using,
 - offering for sale,
 - selling, or
 - importing for these purposes, the product obtained directly by that process in India without the permission of the patentee.

9.9 SOFTWARE LICENSE

Copyright Protection of Software

By the 1994 amendment of the Copyright Act, an inclusive definition of the term "Literary Work" was inserted to read as : "*Literary Work includes computer programmes, tables and compilations including computer databases*". The terms tables, compilations and computer database have not been defined in the Copyright Act.

Rights Conferred

The owner of a computer programme ("CP") has the exclusive right to do or authorize third parties to do the following acts : reproduction of the CP, issuing copies to public, perform/communicate it to public, to make translation or adaptation of the work, to sell or give on commercial rental or offer for sale or for commercial rental any copy of the CP. However, the commercial rental provision does not apply if the CP itself is not an essential part of the rental. Any violation of these exclusive rights amounts to an infringement.