

# IPRs and the Modern Tech – A Constant Tussle

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## I. PREFACE

When intellectual property laws were first drafted, computer technology did not exist. At that time, it was not foreseen that it would be necessary to protect information stored by digital means, nor was it foreseen that information would become such a sought after commodity<sup>2</sup>. With the developing technology, changes in intellectual property rights were needed to cope up with the advancement in technology. In reference with both IPR and the Digital World, we would do a comparative study on both the areas and the problems which have emerged with the revolutionary boom today.

## II. INTRODUCTION

The contemporary world has International laws, sanctions, treaties which govern laws between nations. These laws prevailed before the contemporary era but with the modern advancements, come laws which affect every private individual, through which our livelihoods get affected. With the advancement of technology new challenges have arrived in our daily commute, for example if we pause to look at things around us we observe brand names with numerators i.e. Trade Marks or Copyrights.

The virtual space in which all of IT- mediated communication and actions are taking place is often referred to as ‘Cyber Space’<sup>3</sup>. Information available in cyberspace is valuable for their creators and could be saved in this virtual world in form of literary or creative works. This digital information can be easily altered and misused with the same ease as it was first created. There is a need to make digital information subject of intellectual property rights so that its use and access can be restricted.

### Overview of IPR in India

India became a member of WTO and TRIPS agreement in 1995. The following laws were enacted by India’s obligation under TRIPS agreement for the protection of IPR.

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<sup>2</sup> The Hindu, Technical know-how essential to check cybercrime, available at <http://www.thehindu.com/2005/02/06/stories/2005020603910300.htm>, visited on 4 Sept., 2019.

<sup>3</sup> ‘Cyber space’ is referred to as a mere virtual space where computer-mediated communication takes place but which may not be spatially located. Prof. Andreas Zimmermann, University of Potsdam: International Law and Cyber Space, Vol. 3, Issue 1, European Society of International Law, Available at: <http://www.esil-sedi.eu/node/481> Accessed on: 04 Sept., 2019.

- a. Copyright Act, 1957: Artistic works of creator and authors such as dramatic, artistic, literary and musical works etc. are protected under this act. Statutory period of a copyright is 60 years.
- b. Patents Act, 1970: It provides protection to the inventor from unauthorized use or sale of his invention. The statutory period of a patent is 20 years.
- c. Trademarks Act, 1999: Trademark is graphically represented mark which distinguishes the good and services of one person from others. It gives a separate identity to that product. Trademarks are valid for 10 years.

### **Infringement**

The aim of these acts is to give protection from infringement to the original content creators, so their ideas don't get stolen. Infringement causes not only loss to the original creator but also the whole economy.

The grounds constituting infringement of a computer programme are given under section 51 of Indian Evidence Act, in the case of *Syed Asifuddin and Ors. v. State of Andhra Pradesh*<sup>4</sup>. It was held that alteration of a computer programme would prima facie amount to infringement thus punishable under Section 63 of Indian Evidence Act.

## **III. IPR ACTS IN RELATION TO THE DIGITAL WORLD**

### **International Copyrights:**

The first international treaty which officially talked about copyright in relation to computer programmes was 'TRIPS Agreement' in 1994 which gave protection to literary works under Article 2 of 'Berne Convention', followed by 'WIPO Copyright Treaty' in 1996.

## **IV. INDIAN COPYRIGHT LAW IN RELATION TO COMPUTER PROGRAMS**

With adoption of TRIPS agreement in 1994, the Berne Convention was extended to computer programs and databases which resulted in many amendments in Indian Copyright Act, 1994. The provisions which were amended during this period were as follows:

1. Literary work: The definition of literary work was amended under Sec. 2(o) of Copyright Act to include computer programmes and databases.

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<sup>4</sup> 2005 Cri LJ 4314.

2. Author of a computer programme: The definition of an author in relation to any literary dramatic, musical or artistic work is given under Sec. 2(d) of Copyright Act.
3. Exclusive right of an Author: The author of a computer programme has the same exclusive rights which are provided to an author of a literary work (the right to reproduce, publish, perform the work, etc.) which are provided under Section 14(b) of Copyright Act.

### **Doctrine of fair use:**

- It enables certain acts to not fall under the purview of copyright infringement.<sup>5</sup> According to Sec.52 of the act ‘the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme from such copy in order to utilize the computer programme for the purpose for which it was supplied or to make backup copies as protection against loss, destruction or damage. In order to use the programme for the purpose for which it was supplied’,<sup>6</sup> would not be copyright infringement.
- Also, ‘The doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programs by a lawful possessor of a computer program is not a copyright violation if such information is not readily available’.<sup>7</sup>

### **Patenting of Software**

Article 27.1 of TRIPS Agreement directs that any software can be patented subject to conditions that it should be:

- New
- Involve an initiative step
- Capable of industrial application

**The disadvantage of copyright** is that it only protects the expression of the software, disregarding the underlined ideas which account to immense commercial value.

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<sup>5</sup> Section 52 of The Copyright Act, 1957.

<sup>6</sup> Section 52(aa) of The Copyright Act, 1957.

<sup>7</sup> Section 52(ab) of The Copyright Act, 1957.

Patents as opposed to Copyright need technical and scientific criteria to qualify for protection. Patents need to be filed in every country to seek protection while protection of copyright internationally is automatic.

### **Patenting of Computer Programmes under Indian Patent Act:**

It is unclear in India that whether patents are granted for computer programmes or not, as Indian Patent Act specifically excludes 'Computer Programmes' from the scope of the term 'inventions' under Section 3. A patent if falls under the purview of section 3 and section 4 would not be entertained.

### **'Unauthorized manufacturing and selling of a patented product'**

In the case of *Vior (International) Ltd. & Anr. v. Maxycon Health Care Private Ltd.*<sup>8</sup>, The Court held, the act of the defendants amounts to infringement of patent and copyright of the plaintiff thereof, damages for a sum of INR 10,00,000 in favour of the plaintiffs was passed.

In the case of *Bajaj Auto Limited Vs. TVS Motor Company Limited*<sup>9</sup>, Supreme Court rules that only civil suit can be filed in matters relating to Patents and speedy disposition of Patent cases to be emphasised.

## **V. TRADEMARK**

Word marks, logos, symbols, colour combination and smell collectively makes a 'Trademark' indicating the source of goods and services e.g. 'Apple Co.'. Community trade mark, Madrid system and the Trade Mark Law Treaty are some of the major Trade mark treaties.

### **Trademark Infringement**

Cybersquatting, reverse domain name hijacking, keyword infringement, use of trademark in metatag are some of new forms of trademark infringement.

A **Domain name** is a human friendly name of an Internet address<sup>10</sup> also termed as 'Unique Resource Locator' or 'URL'. Uniform domain name dispute resolution policy was established by the internet corporation which protected assigned names and numbers to resolve disputes relating to registered domain names.

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<sup>8</sup> 2018 SCC OnLine Del 8361.

<sup>9</sup> (2009) 9 SCC 797.

<sup>10</sup> What is a domain name? WIPO FAQs: Internet Domain Names, Available at: <http://www.wipo.int/amc/en/center/faq/domains.html> Assessed on 12 Sept., 2019.

*American Standard, Inc. v. Toeppen*<sup>11</sup> : Toeppen infringed the trademark 'AMERICAN STANDARD' by registering the domain name 'americanstandard.com' and was ordered to transfer it to owners of the trademarks.

*Intermatic, Inc. v. Toeppen*<sup>12</sup> : Toeppen infringed the trademark by registering the domain name 'intermatic.com'. The court held he obtained the domain name with intent to 'arbitrage' and the effect of deluding the effect of the trademark as given under FTDA.

## VI. CONCLUSIONS

Numerous numbers of issues are linked with digital information. On one hand, it is important to protect the interest of owner of the copyright, patent and trademark but on the contrary it is equally important to protect the interest of user or researchers so that they can use the work of the original owners for further use of people. In digital world, it is difficult to draw distinction between what is permissible and what is infringement. It is difficult to judge or control the fair use of copyright information. It is almost impossible for the original owner to know which person has access to his/her work. There should be Intellectual Property Rights given to the owners to encourage them for their creative work but those rights should be drafted keeping in mind that they don't create obstacles in the use of that information for better off.

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<sup>11</sup> No. 96 CV 2147, 1996 U.S. Dist. LEXIS 14451, at \*1 (C.D. Ill. Sept. 3, 1996).

<sup>12</sup> 947 F. Supp. 1227 (N.D. Ill. 1996).