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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

NAVIGATING INTELLECTUAL PROPERTY RIGHTS IN CYBER SPACE

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ABSTRACT

In the ocean of cyberspace, intellectual property rights are the compass that guides innovation while ensuring that creators reap the benefits of their digital endeavours. Intellectual property rights (IPR) being the fuel to the current economic development has remarkable importance in the digital era. It is an extended form of the legal rights available to individuals which protects their intellectual creations. Intellectual Property Rights in cyberspace represent a critical and emerging area of legal and technological discourse. As digital technologies advance, traditional IPR frameworks face significant challenges in protecting creations and innovations within the virtual realm. Due to this cyber security for intellectual property has become important. It is the need of the hour to develop innovative legal and technological strategies to safeguard intellectual property while fostering creativity and innovation in the digital realm. In the digital era it necessary to safeguard IPR in order to promote creative growth and encourage fair competition.

This research paper underlines the concept of intellectual property rights in cyberspace. Various categories of copyright and trademark infringements in cyberspace have been discussed in detail. The discussion also covers emerging technologies, such as blockchain and artificial intelligence, and their potential to transform IPR management. Protections available under national and international legal framework are examined. By exploring recent legal developments and case studies, the research aims to provide a comprehensive overview of current challenges and potential solutions in the realm of IPR within cyberspace. The paper concludes with suggestions to strengthen the protection of intellectual property rights in cyberspace.

KEYWORDS: Intellectual property rights, legal framework, cyber-crime, cyberspace, cybersecurity.

INTRODUCTION

The Intellectual Property rights are awarded for any creation of mind. It gives right to the owner to protect their original work from being used or copied by another person. “*Anything that is worth copying is evidently worth protecting*”¹. Some notable protections are patent, copyright, trademark, geographical indications and designs. Cyber space is a platform where a series of computers are connected through a network to facilitate communication between them. With the advancement in technology and rapid growth of digitalisation, cyber space is easily accessible as internet seems to be used by all. Due to this, cyber space has been used for marketing, trading and business. Which ultimately paves a way for the infringement of intellectual property rights. In navigating the vast expanse of the internet, issues such as online piracy, unauthorised use of digital content and rapid dissemination of intellectual property have emerged. It can be concluded that cyber law and intellectual property rights are two sides of the same coin. The infringements over the cyber space occurs when there is unlicensed use of service marks, domain names, images, trademarks and other intellectual creations by way of illegal methods. The important issue in the cyber realm is that there is no adequate legal framework to address the intellectual property issues in the cyber space.

LITERATURE REVIEW

- 1) **David Satola and Henry L. July**, in “*Towards a Dynamic Approach to Enhancing International cooperation and collaboration in Cyber Security Framework*” have discussed that both the government and private sector around the world are concerned about cyber security. Cyber threat can be in the form of cyberattack, but can also be in result of “mistakes” or even natural disasters. In the framework of cyber security there must be a specific approach to the particular problem.²
- 2) The authors have concluded that there are too many violations of intellectual property rights, as the world is emerging with technological developments. An IP owner has to be aware of his rights even in the cyber space. Going cyber-friendly is no longer an option. This is the need of the hour, especially from the point of view of business, crime and intellectual property rights that protect copyright.³

¹ Observed by Justice Paterson in *University of London v. University of Tutorial Process Ltd.*, 1916 (2) Ch 601.

² The MW. Mitchell law journal.

³ Dr. Nituja Singh, Mr. Sandeep Suman and Mr. Sahil, “A Basic Outline of IPR Laws With Cyber Law: An Indian Perspective”, “*Journal of Positive School Psychology*”, 2022, Vol. 6, No. 6, 4406-4412.

- 3) The article introduces the fact that India is the second highest cybercrime country in Asia according to International World Statistics. The authors had penned out what constitutes the meaning of various categories of cybercrimes and the lack of awareness among the public. In addition, the article discussed in detail the types of cybercrimes, which include email fraud, phishing, identity theft, domain name lifting, online fraud, etc. The authors also discussed current trends, cyber laws in India, punitive damages and methods of prevention.⁴

RESEARCH OBJECTIVE

The primary objective of the research is to delve into the intellectual property rights and issues in cyber space. The research is based on authentic information, which has been summarised, standardised and studied. The main objective of this paper is to understand:

- 1) What are the intellectual property rights disputes in cyber space?
- 2) What are the laws governing intellectual property in cyber space?
- 3) How to protect intellectual property rights in cyber space?

RESEARCH METHODOLOGY

The research is based on **Doctrinal research method**. Documentary and rational methodologies are used in the research. The paper uses information from both primary and secondary sources. The primary data was gathered from statutes, reports, and other judicial decisions in terms of original sources. Data from the secondary sources was obtained from books, journals, articles, newspapers, magazines, blogs, and the internet.

THE INTELLECTUAL PROPERTY RIGHTS ISSUES IN CYBERSPACE

The major issues related to infringement of intellectual property rights can be categorised in following ways-

- Trademark Infringement
- Copyright Infringement

⁴ Shubham Kumar et al, Present scenario of cybercrime in INDIA and its preventions, 6 no. 4 International Journal of Scientific & Engineering Research, 1971 (2015).

TRADEMARK INFRINGEMENT

1) DOMAIN NAME DISPUTE

Every information on the web has IP address of the server as well as the address where the information is located on the server. This is called Uniform Resource Locator. One can access the information on web by typing the URL. The domain name is device to easily remember the IP address, for example the IP address of Yahoo is 66.94.230.35 and the domain name is yahoo.com. The apex court in *Satyam Infoway case*⁵ held that a domain name has characteristics of trademark and the suit to protect it is maintainable. aids in distinguishing trade or service to the internet users. The dispute arises when a person uses the trade name of another as domain name.

At present the domain names are protected and managed under ICANN⁶. The ICANN has provided a procedure called UDRP⁷ to resolve domain name disputes and it has framed 'Rules for Uniform Domain Name Dispute Resolution Policy'.

As a relief against the unauthorised use of domain name the plaintiff can:

- Institute a suit for passing off and damages.
- File for injunction where the defendant has obtained an identical or deceptively similar domain name.⁸

"Googlenetbiz.com" was the website in question in *Google Inc. v. Mr. Racha Ravinder*.⁹ Google claimed that the defendant's website bore an exact resemblance to the globally registered Trademark "Google". It was contended that the respondent violated the trademark since their website is identical to the global trademark "Google," and that they registered it with the intention of confusing website users. The panel upheld the complainant's views and ordered the site to be transferred to Google Inc.

1) METATAG AND KEY WORD DISPUTE

⁵ JT 2004 (5) SC 541.

⁶ The Internet Corporation for Assigned Names and Numbers.

⁷ Uniform Domain Name Dispute Resolution Policy.

⁸ Times Internet Ltd. V Belize Whois Service Ltd., 2011 (45) PTC 96 (Del).

⁹ WIPO D2009-1454 (October 28,2009).

Information on the internet is accessed with the help of search engines. When a user types a keyword into the search engine, a list of hyperlinks to the relevant Web pages appear. To find out search its database and return with relevant information search engines make use of metatags. Metatags are specific lines of code knitted in web pages that are used by search engines.¹⁰ These are HTML¹¹ tags which includes page's title, description and keywords. They form part of the HTML code, which generates the web page and are hidden from normal view of the user but are read by search engines. Legal complication arises when a person uses trademarks of others as a metatag to associate oneself with them then this may result in a trademark violation.¹² *In Amway India Enterprises Pvt. Ltd. v. IMG Technologies Pvt. Ltd.*¹³ the court held since the third-party e-commerce platforms had used the plaintiff's trademark "AMWAY" for improving their own sales, it is considered use of a mark in meta tags. Repeatedly the Indian courts have stated that even though the Meta Tags may not be visible to end users it does constitute infringement of trademark. Meta Tags are harmful and causes unfair advantage to the distinctive character of a right holder.

2) **CYBER SQUATTING & TYPO SQUATTING**

Cyber-squatting is a kind of Domain name dispute which involves registering the web sites with famous names to obtain profit. It is illegal due to the bad-faith of the squatter. Domain squatting can also be considered as a form of trademark infringement.

Types of Cyber Squatting:

Typo-squatting: It is a practice of using a minor variation of registered domain names to divert users to a fraudulent website if they type a domain name incorrectly.

Identity Theft: Identity theft can also occur with the help of cybersquatting because a company's digital identity can be stolen to create a similar URL. When a user goes to that company's website, they may be diverted to the fake website.

Reverse Cybersquatting: Reverse domain name hijacking, also known as reverse cybersquatting, is the opposite of cybersquatting. It is a process of making false claims that a person owns a trademark and taking steps to legitimise the domain name. For example, a URL called

¹⁰ People Interactive (I) Pvt. Ltd. v. Gaurav Jerry; MIPR 2014 (3), 101.

¹¹ Hyper Text Markup Language. HTML is the standard markup language for creating Web pages.

¹² Ibid.

¹³ 260 (2019) DLT 690.

lawforall.com. is created. Someone can start a business, name it Law for all, and claim that their business name is cybersquatted.

COPYRIGHT INFRINGEMENT

1) LINKING

Linking is process of directing a user from one website to another location on the internet by clicking or touching a text, hyperlink, image on the current page. More specifically when the hyperlink directs the user to the home page, it is called linking and if it is to the sub-pages inside a home page it is called deep linking. This leads the user to believe that the two websites are linked under the same domain name. Linking is the crux of the world wide web. But it has its repercussions because it may undermine the rights of the owner of the page it is linked to.

*In Shetland Times, Ltd. v. Dr. Jonathan Wills and Another*¹⁴, the plaintiff operated a Web site which contained in the printed version of its newspaper. The defendants also owned a Web site to provide news reporting service. Defendants reproduced a number of plaintiff's headlines and it was hyperlinked to their website due to this the reader gained access to internal pages in the plaintiff's site. The court issued an interim injunction against the defendants.

2) INLINE LINKING

It is a process of creating a new web page by summoning audio/image/picture/video from other websites. It is also called as hot link or remote linking. The problem arises when the image or file is trademarks or copyrighted, because it becomes illegal to use them without the authorisation from the owner.

*In Kelly vs. Arriba Soft Corp*¹⁵ the plaintiff's photographs were unauthorisedly incorporated into the database of the defendant's visual search engine. The photos were converted into thumbnails and any user of the defendant's site could access the images for free of cost. The defendant was sued for infringement of copyright. The defendants took the defence of fair use as they did not advertise or commercially exploit the photos and the website operated in the nature of a visual

¹⁴ 1997 FSR 604.

¹⁵ 235 F. 3d 18 (1st Circuit 2000).

search engine. The visual search engines usually provide a thumbnail index. The Courts accepted the defence and stated that a transformation of copyright work for an entirely different use, shall not be considered as infringement. The courts through a series of judgements have differentiated between 'copying' and 'importing'. In *Nunez vs. Caribbean International News Corp*¹⁷, a photograph which was planned to be used for a modelling portfolio was used in a News article and the Court held that using a photograph for a modelling section in a news article was not infringement as there was transformation of purpose.

3) FRAMING

Framing is a tool used by websites into separate windows: each window is displayed in a separate portion of the webpage and has the capacity to display an individual web page. The websites bring in contents from another independent website into its own frame. The user can view another site's content within a small area of the initial site, without actually leaving it. Framing can be distinguished from linking in such a way that framing allows the entire site to be viewed on the initial site and the latter allows only the image or audio or video to be viewed.

Framing can be highlighted in the case of *Washington Post Co v Total News Inc.*¹⁶ In this instance, the defendant created a website that combined information from more than 1200 news sources. On the defendant's website, the plaintiff's news column was located on the left side, whereas Totalnews.com was displayed at the top. Upon clicking the news link, the plaintiff's webpage was displayed. Thus, the plaintiff claimed that there had been online copyright infringement. However, after the defendant consented to stop using framing tactics, the parties came to an out-of-court settlement. Framing may result in copyright or trademark infringement.

4) PEER TO PEER FILE SHARING

The peer-to-peer file sharing enables to copy or share a file from another computer on the internet. In P2P file sharing, it is a requirement that the files should be indexed. There are different kinds of indexing system namely- centralised indexing system, decentralised indexing system and super node system.

¹⁶ No. 97 Civ 1190 (PKL) (SDNY 1997)

The Napster case:¹⁷

Napster developed a peer-to-peer file sharing platform called MusicShare. It was used to facilitate the transmission of MP3 files among users. The users of the platform can copy and transfer MP3 music files from their own or others' computers. Napster was sued by AM music, Sony Entertainment for copyright infringement. The District Court found Napster guilty. On Appeal, the U.S. Court of Appeals affirmed that Napster violated the right of reproduction and distribution and agreed with the District Court's conclusion that Napster knowingly encourages and assists copyright infringement on its platform.

5) SOFTWARE PIRACY

Although a computer programme cannot be patented the contents of software can be copyrighted. Software piracy refers to the unauthorised use of a licensed software. It is the act of making unauthorized copies of computer software that are not safeguarded by the Copyright Act of 1957.

There are three types of software piracy:

Soft lifting: Soft lifting refers to the act of sharing a computer programme with an unauthorized person without a license agreement to use it.

Duplicating: Also known as software counterfeiting. It means selling duplicate copies of software by imitating and unauthorised copying. This includes providing the CDs, and manuals.

Renting: when the copy of software is rented to someone without the permission of copyright-holder, there is a violation of license agreement of software.

INTERNATIONAL PROTECTION FOR INTELLECTUAL PROPERTY

RIGHTS IN CYBERSPACE

The following are the international instruments which provides protection for Intellectual properties rights:

- i. Berne Convention (1886),
- ii. Madrid Agreement Concerning the International Registration of Trademarks (1891),

¹⁷ A&M Records, Inc. v. Napster, Inc; 239 F.3d 1004 (9th Cir. 2001).

- iii. Hague Agreement Concerning the Registration of International Designs (1925),
- iv. Rome Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961),
- v. Patent Cooperation Treaty (1970)
- vi. Agreement on the Trade-Related Aspects of Intellectual Property Rights (1994)
- vii. World Intellectual Property Organization Copyright Treaty (1996), World Intellectual Property Organization Performances and Phonograms Treaty (1996).

Uniform Domain Name Dispute Resolution Policy (1999):

Since the domain disputes are very common in cyberspace, a Uniform Domain Name Dispute Resolution Policy was put into place. It is applicable to the existing Top Level Domain Names. This policy is incorporated in all the agreements between the Registrar and person who obtained domain names. It provides relief for abusive registration and use of identical or deceptively similar domain names. When a complaint is received, the dispute is referred to a service provider. Any person aggrieved with their decision can move the court of law.

ICANN Domain Name Dispute Resolution Policy:

The ICANN Policy was recognised by the WIPO for cyber domain name dispute resolution. This method is more economical as well as faster. ICANN accepted the WIPO policy pertaining to domain name disputes on October 24, 1999. Registrars use the UDRP Policy to resolve disputes pertaining to .com, .net, and .org domains. When the ICANN's approved service provider receives a complaint alleging domain name infringement, it must initiate administrative proceeding if the domain name is identical or confusingly similar to the complainant's trademark. The defendant does not have legal claim to the domain name.¹⁸

PROTECTION FOR INTELLECTUAL PROPERTY RIGHTS IN CYBERSPACE IN INDIA

In India, Intellectual property rights in cyberspace is protected through the following

¹⁸ Aggarwal Gunish, (2018) "Intellectual Property Rights And The Internet World", International Journal of Law Management & Humanities Volume 1, Issue 2 available at (<https://www.ijlmh.com/wpcontent/uploads/2019/03/Intellectual-Property-Rights-And-The-InternetWorld.pdf>), last visited 20/01/2024.

legislations which are as follows

- i. Copyrights Act, 1957
- ii. Information Technology Act, 2000
- iii. Trademarks Act, 1999

These laws address issues related to online copyright infringement, data protection, digital signature and trademarks in digital domain. The Information Technology Act, 2000 was passed to support and preserve electronic transactions in electronic media. The law has 94 sections divided into 13 chapters covering topics such as digital signatures, e-government, recognition and transmission of electronic records, security of electronic records, cyber regulatory appellate courts, and liability of network service providers. It has been constructed. Although Intellectual property rights infringement is one of the most pressing areas in cyberspace, the IT Act does not provide any remedy. In India there is no provision in the Information Technology Act to penalize cyber squatters or domain hijackers. Possibly we can get the registered domain back. The said Act does not contain any provision regarding cybercrimes related to intellectual property rights and jurisdictional issues. Although computer programs are protected by copyright law, no remedies are provided for online software piracy. Biometric signature, watermarks, smart cards, and credit card transaction are not provided for in the IT Act. In India, Section 51 (a) (ii) Copyrights Act, 1957 specifically states that exclusive rights are vested in the copyright owner and unauthorised use will constitute infringement.

The Ministry of Communication and Information Technology and the Government of India have implemented new policies to deter cybersquatting, and the .IN registry has taken steps to compensate companies that have been the victims of such actions. As an autonomous body, .IN Registry has also taken proactive measures to ensure operational stability, security, and reliability in cyberspace.

CONCLUSION

With the emergence of internet and excessive use of electronic device and survey's showing the preferences of online shopping by Indian consumers, an express and clear law protecting IPR is need of the hour. Numerous laws have been enacted to protect intellectual property but when it

comes to protecting IPR in cyberspace, Indian legislations have a long way ahead. Key areas like exercise of jurisdiction, copyright and trademark issues authority over transaction and communication have to be brought under the purview of cybersecurity laws. Though it is difficult to protect the IPR in cyber space, it must be met to protect the interest and advancement of e-information and e-commerce regime. To navigate the complexities of cyberspace effectively, a continuous awareness of legal updates and technological shifts is imperative, ensuring that intellectual property remains safe and secure in dynamic digital regime.

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