

Ipr Violations in Social Media

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Abstract—The intellectual property rights (IPR) are intangible in nature and gives exclusive rights to inventor or creator for their valuable invention or creation. In present scenario of social media, it is important to protect IPR contents across the world. The present paper highlights various terms of IPR such as patents, trademarks, industrial designs, geographic indications, copyright, business, commerce, cyberspace, social media etc. with their corresponding rules, regulations, their need and role especially pertaining to Indian context is discussed in brief.

Index Terms—Intellectual property rights, WIPO, patents, trademarks, copyright and related rights, cyberspace, commerce, Information Technology, social media

I. INTRODUCTION

The important feature of the property is that the owner of the property may use his property as he wishes and that nobody else can use his property without his authorisation. The property can be divided into following categories as: Movable, Immovable and Intellectual Property. Intellectual property relates to the creations of human intellect and human mind. Intellectual Property can be broadly divided into:

1. Copyrights
2. Trademarks
3. Patents
4. Trade secrets
5. Industrial Designs
6. Geographical Indications
7. Plant Variety Rights

Whereas social media refers to the means of interactions among people in which they create, share and exchange information and ideas in virtual communities and networks.

Intellectual property violations are quite rampant on social media. People unknowingly violate intellectual property laws without realizing the actual impact on the creator. It can be as simple as a post re-share, or sharing someone's work as their own and not giving

them credit. While social media platforms possess advanced copyright detection systems to monitor content for potential copyright violations, the main issue lies in the way social media companies interpret and define what constitutes copyright infringement.

Upon conducting a thorough review of the privacy policies and terms of use documents presented by social media platforms, one can observe that the majority of these service providers disclaim any responsibility for intellectual property theft and maintain a certain level of ambiguity concerning this matter. The increasing trend of infringement of Intellectual Property is significantly impacting social media content creators in several ways as: Loss of revenue, Discouragement of creativity, Risk of legal action, Unfair competition etc.

II. PROTECTION OF INTELLECTUAL PROPERTY

It is clear from the above that protection of data in cyberspace accompanies myriad issues, but the common point of interpretation segregating the levels for copyright infringement may be based on 'intent'. Dishonest intentions ought to lead to reading the legal and regulatory provisions in more stringent forms to derive the capability to disallow any of the copyright infringements seemingly permissible or at the least sitting over the fence on the superficial. Rampant violations of copyright rights on the internet affecting a larger mass, call for sharper legal protections. The responsibility is not restricted to the lawmakers or the law enforcement systems, but also to the copyright owners and software companies. Copyright notices and displays of licenses and warnings with limited permissions on the websites by the copyright owners need to be ensured. Blanket prohibitions may no longer serve the purpose, as technology is rapidly evolving and copyright may not seem to be affected if judged cursorily, especially where control over serious indirect violations are the emerging possibilities.

There are abundant theories about protecting intellectual property rights, but the common thread of all such opinions is the necessity to guard, recompense, and kindle innovation in the creative works and initiatives of the innovator. Regulatory framework and legal interpretation are essential keys to safeguard creators from the malpractices prevalent in the disguise of internet freedom. The harmonization of international law and positive domestic laws is essential to bolstering intellectual property rights in cyberspace, which is essentially and practically without borders.

III. INTERNATIONAL LAW GOVERNING INTELLECTUAL PROPERTY IN CYBERSPACE

Berne Convention (1886) protects the rights in Literary and Artistic Works, excluding daily news or press information. Special provisions are provided for developing countries. Rome Convention (1961), extended copyright protection to authors of creative works and owners of physical indicators of intellectual property, for the first time. It allows domestic implementation enacted by member countries, where the dispute is subject to the International Court of Justice for remedy unless arbitration. TRIPS(1994) is a multilateral agreement on intellectual property that covers copyrights and related rights in the widest range. WPT (1996) is for the protection of the copyright of authors in their literary and artistic works in international law. WPTT (1996) is for the protection of the rights of performers and producers in international law. UDRP (1999) is for the resolution of disputes on registration and use of internet domain names.

The international treaties have a long way to tread before they are capable of protecting intellectual property rights on the ground and within the nations. Until practical realization of the best practices of the treaties into domestic law takes a front seat, the standardization of protection in the intellectual property rights domain would remain a distant dream, miles away from reality.

IV. APPLICABLE LAWS IN INDIA

In India, Section 51 (a) (ii) Copyrights Act, 1957 is very clear that exclusive rights are vested in the copyright owner and anything to the contrary

constitutes copyright infringement thereof. This legal provision, in the absence of any express provision for determining the liability of internet service provider, may be interpreted to come under the purview of expression 'any place' and 'permits for profit' where ISPs allow server facilities to stockpile user data at their business locations and make available for broadcast for making profit through charging for services and advertisements. But such interpretation faces difficulty to gain ground by way of added ingredients of 'knowledge' and 'due diligence' to be fulfilled before the ISP can be held to have abetted infringement of copyright.

Information Technology Rules 2011 and sec 79 IT Act, 2000 grant conditional safe harbour from liability of the online intermediaries, though keeping it open for interpretation on their liability under any other civil or criminal Act. IT Act 2000 makes an intermediary non-labile for any third-party content hosted on its site. The 2011 Guidelines provide a diligence framework to be followed by intermediaries to avail the exemption granted in Section 79 IT Act, 2000. This makes it important for proactive judicial interpretation depending on the facts of each case.

In Super Cassettes Industries Ltd. V Myspace Inc. & Anr. the Hon'ble Court held the intermediary liable for allowing viewing and sharing images over the intellectual property ownership of Super Cassettes. The case pronounced judicial activism by granting precedence to the Indian Copyright Act, 1957 over the safe havens of IT Act, 2000, through reading sec 81 of IT Act in conjunction with and over sec79 of IT Act. It is clear that a Napster-like network in India would fall within the ambit of this Section whereby it would be held liable for encroaching upon the exclusive copyright rights of the intellectual property rights owner through communication or facilitation of communication to the public.

V. JURISDICTION OF INTELLECTUAL PROPERTY ISSUES IN CYBERSPACE

Cross-border disputes against private parties and hybrid infringements are an emerging concern, as the globe shrinks into cyberspace with no borders. Courts face a constant dilemma of which cases come under the purview of their jurisdiction for prescription, adjudication, and enforcement. The objective aspect of territorial jurisdiction is crucial to this. A sovereign

has the power to adopt a criminal law that may be applicable to offences that effectuate within its borders even though the offensive act was committed outside its borders. The courts may assume jurisdiction for prosecuting a cyber offender based on universal jurisdiction, where the offensive acts are known universally by international law.

Out of the variety of theories and legal concepts that have evolved in the recent past to address this major impediment of the jurisdiction of courts to try infringements of intellectual property in the open world of cyberspace, the most noteworthy of which are the Minimum Contacts Test, the Effects Test, and the Sliding Scale Test or 'Zippo Test'. These are theories derived from US Courts. The Minimum contacts test is applicable in circumstances where one or both parties are from outside the court's territorial jurisdiction whereby there is an element of contact with the state where the court is located. The Effects test is applicable where the consequence of the injury is felt at the particular state where the court is located. The Sliding Test determines personal jurisdiction through non-resident interactivities and the exchange of commercial information over the internet of non-resident online operators.

Section 75 of IT Act applies to offences committed outside India if the conduct constituted an offence involving a computer, computer system, or computer network located in India. Section 4 of IPC extends its jurisdiction to offences committed in any place outside India targeting a computer resource located in India. Indian courts have the legal tools to adjudicate against the infringers of intellectual property in the cyber domain, and judicial activism followed with effective jurisprudence would come much to the rescue of the intellectual property owners.

The IT Act has been efficient in regulating cyberspace, but it has failed to preserve one of the most significant legal properties arising from human intellect, namely, Intellectual Property. The IT Act was enacted to make e-commerce secure, but it has so far failed to acknowledge cybersquatting, copyright, trademark, as well as domain violation in cyberspace.

The other problem of power and implementation would be if, in this international cyberspace, an Indian court can issue global injunctions, direct global blockage, or direct modifications, substitutions, or removals of domains, trademarks, and so on on a worldwide platform.

Because the internet is a freeway of information, one of the primary problems concerning cyberspace is the violation of copyright, trademark, domains, and other types of intellectual property. The fundamental issue is an absence of an adequate legal framework, as there is little understanding about copyright infringements, trademark difficulties, and other IP rights infringement occurring in the cyber realm.

VI. COPYRIGHT VIOLATION IN THE CYBER WORLD

The purpose of copyrights is to safeguard the creativity of authors, actors, creators, and others who produce literature, dramatic, films, soundscapes, pictures, visuals, as well as other types of literary and creative audio and video creations. The primary legislative goal behind the passage of the copyright legislation was to reassure, motivate, & encourage authors, composers, theatre actors, and filmmakers to develop works of authorship. Thus the restricted right to replicate copies (for digital and other forms), build infringing copy out of the authentic creations, display the creations in the general populace, also make interpretations and modifications. Due to the web, it is relatively easy to produce duplicates by applying software, transcribing (using Translation), altering (using software such as Adobe), and infringing other rights stated within section 14 of Copyright Act by using freely available digital resources.

VII. VIOLATION OF TRADEMARKS AND DOMAINS IN CYBERSPACE

A trademark is described as a mark that can be displayed in a graphical fashion just so the goods or services incorporated into that mark are easily recognisable and distinct in the perspective of the individual looking at that mark. Additionally, a trademark works perfectly for consumers, clients, collaborators, and operators to communicate effectively, locate, and acquire the products and services linked with the trademark.

A domain is just an ISP (Internet Service Protocol). It acts as an address for a certain website. In simpler terms, a domain name consists of digits like 425.236.856 that, like a cellphone number, maybe dialled to gain accessibility to the website that the user wishes to visit. The internet's ease and the introduction

of the letter-number monitoring system have substituted the need to record and memorise numbers with just entering phrases like “*www.google.co.in* “, “*www.yahoo.com* “, “*www.gmail.com* “, and so on. As a result, such IP addresses are the domains that make the material on the web freely reachable.

The Trademark Bill was originally created with the intention of registering, protecting, and preventing fraud in the use of products and services. Most trademark holders have traditionally preferred to purchase domain names that are similar to their trademarks. As a consequence, there are domains generated that include a trademark rights. However, the domain name’s holder still has no legal right, claim, or real power over the official title of the trademark it is bearing.

1. Cybersquatting: An Internet Corporation for Assigned Names and Numbers (ICANN) assigns domains upon a first-come, first-served basis. There have been numerous cases where domain names had the same name as a legitimate trademark owned by a third party. If trademarks and domain names are identical, domain name owners may be considering selling these domain names on the open market to gain or risk compromising the brand.
2. Reverse domain name hijacking: Reverse cybersquatting is generally carried out by affluent companies and organisations, or the victims are often smaller businesses and people who lack the financial resources to battle the enterprises.
3. Meta tags: A meta tag is analogous to a short label on a shirt, T-shirt, or other accessories clothing products; when someone looks at that tag, they can learn a lot about the product’s quality and brand. Meta tags are being exploited to create fake rankings and misuse trademark and domain names associated with genuine owners’ trademarks online.

VIII. PATENT VIOLATION IN CYBERSPACE

Practical application of computer related innovation is patentable. Though softwares, per se, are not patentable, specific software products that have a useful practical application are patentable, like software used in devices like pacemakers. Utilities of invention must be within the technological arts. A computer program is eligible for patenting if it makes

technical contribution to the known art. If a program can make a system work more fast or efficiently, then it is eligible for patenting. Only a claim having a practical application in the technological arts is statutory and hence patentable.

Recently, you would have heard that a 3D printer was used to print the spare parts of a firearm, and after it was assembled and used to threaten a mass shootout in a school in the USA. This happened because the blueprint of the gun was available online and was used for 3D Printing. Whenever a patent is granted its details are available on patent offices websites online which can be easily accessed by IP rights violators to misuse them. Both Design and Utility patents can be violated due to easy internet access among the masses and easy access to technologies like 3D Printing. We can deploy the data on which a patent is granted on a blockchain to trace the identity of people who have accessed the patent data in case of violations.

IX. CONCLUSION

The research states that it is crucial to be aware of the impact of intellectual property violations on social media. It's essential to track your content distribution and reach and take action as soon as possible if you notice any discrepancies. By respecting the intellectual property rights of others and protecting your own work, you can create a more equitable and respectful online environment for content creators and users alike. There has to be certain specific laws for the protection of the Intellectual Property rights in social media.

In India, the law does not yet provide for the punishment of cybersquatting. Every other domain name that ends with .in suffix in India is registered with the National-Internet-Exchange-Of-India (NIXI), that is an autonomous institution. Because the IT Act of 2000 falls short on the issue of digital piracy, and the copyright act and other IP-related legislation fail to accurately describe a court’s international injunction-granting authority, a new domain name registration and jurisdiction-related regulation should be passed to provide legal recourse for domain names, copyright violation, and other IP-related issues of operating exploitative and bad faith operations on the online platform.

With the emerging trend of modernization of technology, it is crucial to have a meaningful legal discourse on the intellectual property issues that are set to barrage the cyber world. Solutions are critical to the present discourse. Traditional regulations revolving around intellectual property protection are not enough to be applied in cyberspace – more is vital, for reasons of the typical challenges faced by the realm of cyberspace.

Border control measures, in the context of global trade and international market and e-commerce, are necessary to be granted a safe environment for import and export free from infringing intellectual property endeavours. Technological protection measures are crucial to the protection of copyright content in the digital environment by way of encryption, cryptography, digital signatures, and digital watermarks. Protection of rights management information to help identify the work, its author, its owner, the numbers or codes involved to represent such works, is imperative. Solutions cannot be restricted to the legal indulgence of regulations and enforcement thereof but stretch itself to encompass the proactiveness of the copyright owners, their successors, software companies, and last but not the least: the perceptions of common people of ‘fairness’ and ‘equity. Social engineering originates from people, and the solutions to ban such manipulations would best come from the same “people”.