



REVIEW ARTICLE

COMMERCIALIZATION OF INTELLECTUAL PROPERTY IN CHANGING SCENARIO

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The intellectual property rights (IPR) provides legal protection to intellectual property and have considerable value in economy. Various forms of IPR include patents, trademarks, copyrights, exclusive marketing rights and compulsory licensing. After the advent of printing and multimedia technology for storage and communication, the concept of copyright has changed and become more complex and important. IPR also provides opportunities to be successful where there is chance to exploit or disseminate intellectual property rights using new technologies. There has been necessary legal amendments time to time in various IPR forms. However, intellectual property related contract should be interpreted in a restrictive way. Present article highlights some of the significant aspects involved in commercialization of intellectual property in current scenario.

Key words: Intellectual property rights, Copyright, Infringement, Contract, IPR.

INTRODUCTION

The intellectual property rights cover almost all walks of life such as agriculture, biotechnology, industries and library sciences (Tiwari *et al* 2011; Saha and Bhattacharya, 2011) while the copyright mainly relates to authors, publishers, librarians etc. IPR and copyright cover printed matter, patents, industrial design, trademarks, trade secrets etc. (Figure 1).



Fig. 1. Different forms of IPR

'IPR' is the creation of human mind. Potential efforts of human beings lead to intellectual outcomes, which in turn have considerable value in economy (Ram and Burman, 2004). Right

associated with intellectual property which gives legal protection is referred to as IPR. The copyright is an old concept. Librarians and information scientists are deeply concerned with copyright issue as it has direct impact on their work and services such as acquisition, storage, and dissemination of information.

Cyber law is the law governing computers, internet technology and intellectual property also. It does not need stating that new communication systems and digital technology have made dramatic changes in our life styles. In today's highly digitalized world almost everyone is affected. A revolution is being witnessed in the way people are transacting. Almost all transactions in shares are in demat form (Pai, 2010). Almost all companies extensively depend upon their computer networks preserving their data in electronic form, consumers are using credit cards for shopping. Most people are using e-mails, cell phones and SMS messages for communication. Businesses and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of the traditional paper documents.

Digital signatures and e-contracts are fast replacing conventional methods of transacting business. With wide spread use of computers, industry has seen a quantum leap in quality, quantity and speed. There is modernization of life style. However, the technology is still developing and unfolding a computer software program designed for a specific job, such as word processing, accounts spread sheets etc (Mani, 2012). After introducing e-filing, the Supreme Court is ready to add another feature to its techno-savvy profile. Now, the judgments and orders uplinked on the Supreme Court website would bear digital signatures, enabling litigants and lawyers to use a downloaded judgment as citations while arguing their cases. The courts in India have admitted tape records as a relevant item of evidence as early for decision as reported decision earlier.

The Internet and portable digital technologies such as cell phones have brought people together from around the globe and have provided an avenue for information to flow freely. From those engaged in commerce to those with an interest in the latest sports to grandparents wishing to stay in touch with distant grand children, recent advances have provided a wonderful benefit and specific guidelines regarding the admissibility of a tape recorded statement (Singh, 1986).

Contributory liability in e-commerce

When a person or party contributes to or induces an infringement activity carried out by another, it is contributory liability. There have been arguments in the past pertaining to the liability of a service provider in the infringement of copyright, as it is they who connect users to the Internet. While a segment proposes that service providers be the inspectors or supervisors of information flow on the Internet, another group suggests that a service provider be held accountable for negligence in cases where the provider was aware of infringement of copyright. However, the standards for liability of a service provider can be fixed only when the role, position, authority and limitations of a service provider are clearly understood. Contributory liability in *Trademark Counterfeiting* in the context of intellectual property is governed by the Supreme Court decision *Inwood Labs. v. Ives Labs.* (456 U.S. 844, 1982), which involved the sale of generic versions of a prescription drug using the trademark of the original drug. While the pharmacists and not the

pharmaceutical companies allegedly used the trademark in question to sell the generic drug, Ives Laboratories, the trademark owner, argued that the generic drug makers were jointly liable for infringement because they had manufactured the generic drug to resemble the brand-name drug, allowing the pharmacists to pass off the generic drug off as the real thing. The Supreme Court held that the generic drug manufacturers could be liable for contributory infringement if they had either (1) intentionally induced the pharmacists to infringe or (2) supplied these goods when they knew or had reason to know the pharmacists would use them to engage in trademark infringement. The Supreme Court upheld the District Court's findings that Ives Laboratories had not met either standard.

Intellectual property right and cyberspace

One of the first issues to arise in relation to IPR due to cyberspace was with respect to domain names. A domain name is your identity in the electronic world, akin to a trademark and makes you and your products known to both the existing and potential customers. A domain name is a corporate identifier. It represents not only your name and address but also your goodwill. The problem began when unrelated parties started registering domain names of famous brand like McDonalds and MTV. Prima facie the main purpose was to get a free ride on the reputation of this well-established brand. The right brand owners had to fight and in some cases pay up to get back domain names. Indian companies have also faced their share of domain name disputes. In one case, a Tata group company, Titan Industries, registered the trademark 'tanishq'. A cyber squatter hijacked the domain name tanishq.com. The Delhi High Court granted an injunction in favour of Titan Industries. The Delhi High Court (IFLR, 2001) passed an interim order in domain name for <yahooindia.com>. The Court held that the cases fell under the doctrine of passing off and not trademark infringement. Relying upon this doctrine, it noted that due to the nature of Internet use, the defendant's appropriation of the plaintiff's mark as a domain name was valid ground to bring such an action. Further, considering the vastness of the Internet and availability to the general public, disclaimer cannot adequately remedy such appropriation. The Court acknowledged that even though the word "yahoo" was a dictionary word, it has achieved distinctiveness and is associated with

the plaintiff company and hence is entitled to maximum protection. As a result, the Court granted an interim injunction restraining the defendants from dealing in service or goods on the Internet or otherwise under the trademark / domain name <yahooindia.com>, or any other trademark / domain name that is identical to or deceptively similar to the plaintiff's trademark "yahoo", till the disposal of the suit (nasscom.in). Intellectual property has gained importance in this digital environment as, increasingly, business assets are reflected in intellectual as opposed to physical property. The value of many online companies, for example, may be found in their vast databases of customer information, which may be the subject of intellectual property protection. This migration of intellectual property into the Internet can be seen with respect to each species of rights. In the field of copyright, vast numbers of works of literature, film and art, and notably computer programs, have already transferred to the digital environment. Software, protected as a form of intellectual property by copyright law, underlies the operation of all digital technologies. Systems software, including utilities and operating systems, enable our computers to operate, while utilities software provides us with the programs that make the digital networks so useful (Ancona, 2003). In the past several years, the World Wide Web has seen two significant changes: (1) its popularity and use have exploded, and (2) it has become a place of substantial commercial activity. These two characteristics have made the Web a place of increasing legal turmoil. Certain practices by authors of Websites and pages have been attacked as violative of others' intellectual property rights or other entitlements. These practices, are briefly summarize in this section, these practices comprises "linking," "framing," "meta tag" use, and "caching". "Linking" allows a website user to visit another location on the Internet. Other problems arise when one site contains links to copyrighted materials contained in another site against the wishes of the copyright owner. Though the person who provides the link may not be making copies himself or herself, some courts have recently found the link provider partially responsible for ensuing copyright infringement (nasscom.in). The term "Intellectual Property" has come to be internationally recognised as covering patents, industrial designs, copy rights, trade marks, knowhow and confidential information.

Intellectual property of whatsoever species in the nature of intangible incorporate property. The contribution of intellectual property to the economic and cultural development of Country is substantial.

Commercial exploitation of intellectual property

The commercial exploitation of different kinds of intellectual property is made in different ways. The intellectual property rights are enforced by an action against the infringement of those rights before a district court or High Court. The growing of patent monopoly in consideration of the disclosure of the inventions enables competitors in the field of manufacture new products or improved product effect improvement in the process of manufacture. The enormous technological development of transport and communication has resulted in globalization of trade and commerce. This has its impact of intellectual property which is becoming international in character. The international character of intellectual property is recognized in various international conventions for the protection of such property. India is member of both the Berne convention and universal copy right convention. As technology in all field of human activities are developing exceptionally the field of intellectual property is also expending the correspondingly. The software technology in particular outlining the process which leads to the production of software is useful in dealing with programmers. The software design process is a matter of defining the functions of the programme at increasing levels of specificity. The highest level is analysis of the problem which defines the general functions to be carried out and they occur in which they are performed. The final process is to produce the documentation which the user will need to operate the programme. In an effort to address efficiently the infringement in these circumstances, U.S. copyright owners have turned to doctrines of secondary liability to hold the facilitators of these networks liable for the infringement. These companies, such as the old Napster, Aimster, Grokster, Morpheus, and Kazaa, provided software and services to users, and earn advertising dollars based on the size of the audience the infringing activity attracts. Secondary liability doctrines have long been part of the U.S. common law of copyright. They provide an effective means of enforcement by placing liability on those who are benefiting

from the infringement and are in a position to control or restrain it. These doctrines may play a much more important role in copyright in the future, as more and more technological developments permit companies to take advantage of individuals' infringing activity. The various cases brought against such companies suggest the courts may be having trouble finding the appropriate standard for secondary liability in the digital age. In the United States, the prospect of secondary liability for copyright infringement traditionally was an important safeguard that discouraged businesses from using copyrighted works as a "draw" for customers without permission. This prospect of liability, however, had to be balanced by the courts with freedom to engage in largely unrelated areas of commerce. The U.S. Supreme Court addressed these issues more than 20 years ago in the case of *Sony Corp. of America v. Universal Studios, Inc.* Ever since then, this case has guided the courts in the proper application of the doctrine of contributory infringement. Sony involved the sale of the Betamax videocassette recorder, which purchasers used to "time-shift," that is, to record broadcast television programming for viewing at a later time. The Court found no contributory liability, saying that there would be no such liability as long as a product was capable of "commercially significant" or "substantial non-infringing uses." Since the Court found that the predominant use of the Betamax was non-infringing, it did not need to further clarify what it meant by "substantial non-infringing uses." However, the Court did acknowledge that copyright owners are entitled to effective, not "merely symbolic," copyright protection (Field, 2006).

Need of the hour

There is a need for bringing in suitable amendments in the existing laws in our country to facilitate e-commerce. This will enable the conclusion of contracts and the creation of rights and obligations through the electronic medium. Computer crime as distinguished in each case by the role played by the computer may be having encompassing a vast range of activities which may have most tenuous connection with a computer may be identified in their working three common trends. These encompass the topic;- "Computer fraud; damage to data or programmes; and theft of the information. The computer might (a) serve as victim of crime (b) constitute the environment within which a crime

is committed (c) provide the means by which a crime is committed (d) symbolically by used to intimidate, deceive or defraud victims. Thus, it was resolved to promulgate 'The Information Technology Act', 2000 to achieve the above objectives (Dimitrov, 2007).

CONCLUSION AND SUGGESTIONS

Cyber law refers to the group of legal issues arising with the use of communication technologies that create cyberspace or the internet. These issues include intellectual property (primarily copyright and trademark), privacy, free speech and the appropriate exercise of jurisdiction and authority over the transactions and communications in cyber space. Cyber law or internet law has developed in the ongoing effort to apply current law and legal principles to activities on the internet. The information technology is a double edge sword which can be use for destructive as well as constructive work. For instance, a malicious intention forwarded in the form of hacking, data theft, virus attack (Dalal, private defence in cyberspace), etc. can bring only destructive results unless and until these methods have been used for checking the authenticity, safety and security of the technological device which has been primarily believed upon and trusted on providing a security to a particular organization:

- Strict punishment and fine for unethical commercialization of IPR
- Illegal contents from the sites should be removed
- No misuse of trademarks, copyrights, patents
- Special education and awareness regarding cyber law and Intellectual Property Rights
- Special provision regarding the control of hacking, virus attack, data theft which cause great loss to the secret projects and documents
- E-commerce systems, search engines or other technical Internet tools may be protected by patents or utility models
- Software, including the text-based HTML code used in websites, can be protected by copyright and/or patents, depending on the national law
- Your website design is likely to be protected by copyright
- Creative website content, such as written material, photographs, graphics, music and videos, may be protected by copyright
- Databases can be protected by copyright or by *sui generis* database laws

- Business names, logos, product names, domain names and other signs posted on your website may be protected as trademarks
- Computer-generated graphic symbols, screen displays, graphic user interfaces (GUIs) and even web pages may be protected by industrial design law
- Hidden aspects of your website (such as confidential graphics, source code, object code, algorithms, programs or other technical descriptions, data flow charts, logic flow charts, user manuals, data structures, and

database contents) can be protected by trade secret law, as long as they are not disclosed to the public and you have taken reasonable steps to keep them secret (Intellectual Property and E-commerce).

Strictly speaking, this is not a method of 'setting aside a contract', but as a practical matter this is a method by which creators may be able to avoid certain obligations. Such attempts are perhaps most likely to be successful where there is an attempt to exploit or disseminate intellectual property rights using new technologies.

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