

IP RIGHTS AND DIGITIZED CONTENT

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Abstract

This paper lays the groundwork with a brief introduction to the issues relating to Intellectual Property in the digital world and a special reference to its impact on the society. It also focuses on its recent trends

Intellectual Property are the products of the mind. They originate from human creativity and innovation. They are indeed intangible property and have high significance in today's highly competitive global business scenario. This paper throws a glance at the Intellectual Property issues relating to digitized content and what tools of IP are employed in protecting the digital information.

The advent of computers and information technology has truly revolutionized the way data is accessed. Information is digitized and made available on the Internet. Though Data accessibility is made simple the negative aspect of digitized information is that content owners have no control over the subsequent dissemination of their work and issues pertaining to Copyright protection and intellectual property rights become significant in an online environment. For that reason, IP rights management has become more concerned in the digital world.

Keywords: Intellectual Property rights; Internet; WCT; WPPT; Open Source Software.

IP and the Internet:

We are all familiar with the internet and the worldwide web; websites and WebPages. Websites form an integral part of the internet. As soon as a Website is created it automatically gets Copyright protection. Internet users liberally copy and download WebPages and other content from Internet. This in reality infringes upon its Copyrights. To an extent such use is competent under the doctrine of fair use. But it violates the owner's copyrights. One could note the Copyright statement on WebPages that opines the terms and usages of the WebPages regarding its content. A solution to this issue would be to make use of Internet Archives to get back outdated web pages. But internet users are not aware of such practices.

The Indian Copyright Act, 1957 lucidly describes about content stored in electronic format. In the case of literary, dramatic or musical work, not being a computer program vide Sec.14(1)(a)(i) the owner of a copyright has the exclusive right to authorise reproduction of the work in any material form including the storing of it in any medium by electronic means. The Copyright Act, amended in 1994, protects databases as 'literary works'. This includes computer programmes, tables and compilations, and computer databases. Added to that, the Copyright Amendment Bill 2010 proposes to contain amendments, in the context of digital technology to cover "storing of copyrights material by electronic means" ..

The catchphrase in today's business arena is 'E-Commerce wherein most of our business activities go online. In fact, it is the new business variant. It has become irresistible because of its wide global reach. *This new trend of Internet is gaining pace and rapidly developing in the recent days. In fact, it is the aura of business arena.*

Nevertheless its major concerns are:

- Security
- Jurisdiction and Liability
- IP rights management issues.

The most complicated thing to determine is *'the place of business* in an E Commerce situation. Is it the place where the seller is domiciled or the place where the buyer made the purchase? Where was the contract concluded? Cyberspace is limitless. Thus it becomes difficult to determine the 'ordinary course of business transaction. While the jurisdiction of a nation's legal system has boundaries. Consequently legal rules get more complex.

The main issue with crimes committed over the internet is that it is tricky to determine where the crime was committed. For example, if a website hosted in United States contains matter on obscenity prohibited in India but allowed in the United States, a question arises as to whether, if any person accesses the site here, the person hosting the website is committing a crime in India.

This problem may be resolved in the light of the UNCITRAL model law as it deals with where a data message is deemed to be received. Under the UNCITRAL model law, the website is deemed to be viewed in the place where the viewer is located. Therefore, if an interpretation as per the UNCITRAL model law is adopted, the person who hosts a website containing material which is prohibited in India, he can be guilty thereof. This is implicit in the preamble and Sec.2 of the IPC.

IP rights and Websites:

As we see many components club to form a Website. And ownership rights of a Website may be vested in diverse persons. For example, one may own rights in text and content; others may own copyright in photographs, graphics and images; and yet another person may own copyright in the design of the website.

Different tools of Intellectual property are used to protect a Website. Let's have a glimpse at it:

Patents, the most dominant of all IP tools is made use of to protect E-Commerce websites and other search engines. Copyright is used to protect **Software**, including the text-based HTML code; the Website design, Creative website **content**, such as written material, photographs, graphics, music and videos, may also be protected by copyright. Under the Copyright regime Databases are also well- protected. Business names, logos, product names, domain names and other signs posted on the website could be protected as **trademarks**. Computer-generated **graphic symbols, screen displays, graphic user interfaces (GUIs)** and even **web pages** may be protected under the industrial design law.

Confidential aspects of the website such as confidential graphics, source code, object code, algorithms, data flow charts, logic flow charts, user manuals, data structures, and database contents can be protected by trade secret law.

Generally the job of Website creation is outsourced. That being the case, that particular Web developer will own the Copyright and other IP rights pertaining to that Website unless otherwise agreed upon. Sometime later if that Website is to be appended, then as per the Copyright laws authorization need to be taken from the Web designer.

Computer Software and IP protection:-

The three major mechanisms that offer to protect software are trade secrets, copyrights, and patents.

Computer programs are protected under **Copyright** as literal expressions. However if it contains technical description, then it could be afforded **Patent** protection. Further source code/object code of that Software is protected as **Trademarks**. Thus it could be understood that various IP tools are employed in granting protection to Computer Software.

On the whole we could say that Patents offer a stronger protection for softwares. For the reason that Copyright protects only the specific code of a computer program from being copied and does not protect the ideas or methodologies set in the specific program. This distinction between patent protection and copyright is vital to the developers of software inventions. An owner of a patent may prevent all others from making, using, or selling the patented invention. More patents are being issued in areas such as expert systems, compiling

functions, operating system techniques, editing functions and business software as well. Thus for those software which has immense commercial value Patent protection is highly desirable.

Internationally anti-circumvention laws and digital rights management laws prevail in curbing copyright infringement as far as digital rights are concerned.

TRIPS, WCT, WPPT: International treaties

Copyright law provides protection for literary and artistic works, giving creators the ability to control certain uses of their works. The law of related rights provides similar protection for the creative contributions of parties involved in presenting works to the public, such as performers, phonogram producers and broadcasters. Copyright and related rights are provided by national laws. International treaties link various national laws and require the countries that join the treaties to grant certain rights specified on a non discriminatory basis.

Two treaties were concluded in 1996 at the World Intellectual Property Organization (**WIPO**) in Geneva.

- **WIPO Copyright Treaty (WCT)** deals with protection for authors of literary and artistic works, such as writings and computer programs; original databases; musical works; audiovisual works; works of fine art and photographs. The other, the WIPO Performances and Phonograms Treaty
- (**WPPT**) protects certain “related rights” - these are rights of performers and producers of phonograms. The purpose of the two treaties is to update and supplement the major existing WIPO treaties on copyright and related rights, namely the Berne Convention for the Protection of Literary and Artistic Works (**the Berne Convention**) and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (**the Rome Convention**), primarily in order to respond to developments in technology and in the marketplace. Since the Berne and Rome Conventions were adopted or lastly revised more than a quarter century ago, new types of works, new markets, and new methods of use and dissemination have evolved. Among other things, both the WCT and the WPPT address the challenges posed by today’s digital technologies, in particular the dissemination of protected material over digital networks such as the Internet.

For this reason, they have sometimes been referred to as the “**Internet treaties.**”

Open source software movement.

Nowadays there is an inclination towards Open source software movement.

The ‘open source’ movement in the software industry has adopted a different stance towards asserting intellectual property rights in software, which are traditionally proprietary and protected by copyright law, and in some jurisdictions patent law. Open source refers to the development of software which is publicly available in source code form, in conformity with the certification standard issued by the Open Source Initiative (OSI). The software, although usually copyright protected, is distributed free of licensing restrictions and thus encourages users to run, modify, copy and distribute the software freely, so long as certain conditions are met, including that the program’s source code remains publicly available and the holder of the source code license does not collect royalties.

Conclusion:-

A sound knowledge of IP rights is significant in today’s business scenario. As a concluding note it could rightly be said that,

“A business edifice rests on the citadels of strong IP protection”.

IP rights could make or break a business in today’s highly competitive global business world.

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