

IPR AND CYBER WORLD

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Abstract

Intellectual Property Rights (IPR) and Cyber Laws cannot be disconnected and digital content requires protection. That is where we step in to assist you to secure your digital content through proper IPR registration.

‘Cyberspace’ is the non-physical domain over which the communication between computers takes place through computer networks. With the growth of technology, every individual has a right to accessing cyberspace and sharing information, unless they are in conflict with cyber law. In cyberspace, sometimes information is shared by a person, who is not the owner of the same, or the information which is private. Hence, privacy is violated, and one makes a profit on another person’s creation. Such rights are protected under intellectual property rights. The types of IPR are: Patent, Copyright, Trademarks, Trade Secrets, Industrial and Layout Designs, Geographical Indications etc. When these rights are violated in cyberspace there are several remedies available for the various types of violation.

Intellectual property infringements in cyberspace comprise of any unauthorised or unlicensed use of trademarks, trade names, service marks, images, music or sound or literary matter. The unique matrix of the cyberspace has produced different categories of infringements including Hyperlinking, Deep Hyperlinking, Framing, Meta-tags, spamming and Digital Copyrights violation and similar other concepts. The Patent law provides powerful protection to the inventions & protects processes and invented devices and includes a unique form of the computer soft wares which lead to the technical effect.

Under the Patent Act, 1970 penalizes the unauthorised use of patents and provides for imprisonment for a term which may extend to 2 years or with fine or both for contravention of secrecy provisions U/S 118. Section 120, penalises unauthorised claim of patent rights and penalizes with a fine of Rupees 1 lakh.

Introduction

Industrial property deals with patents, trademarks, geographical indicators, designs and semiconductors. Copyright covers literary, dramatic, artistic and musical works, cinematographic films and sound recordings.

The concept of material possessions will be traced back to the geographic region where monopolies were granted for creations of the human mind. As an example, in Greece, a 1-year monopoly was given to cooks to take advantage of their recipes. Statutory legislation within the Senate of Venice provided exclusive privileges to those who invented any machine or process to hurry up silk making.

With the advancement and recognition of e-commerce and e-business, it's become important for companies and organizations to shield their property rights online. Nowadays cyber-crimes aren't only limited to committing fraud and identity thefts but be copyrights and trademarks infringement furthermore. There are various types of IPR related cyber-crimes that are committed so as to form money or to draw traffic to their sites. Intellectual Property Rights (IPR) and Cyber Laws cannot be disconnected and digital content requires protection. That's where we step in to help you to secure your digital content through proper IPR registration.

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The Information Technology Act 2000 is an outcome of the resolution dated 30th January 1997 of the overall Assembly of the world organisation (UNCITRAL), which adopted the Model Law on Electronic Commerce on International Trade Law. Cyber Crimes are one

among the fastest growing crimes within the world. While the Act has been successful in setting down the framework of regulations in Cyber Space and addresses some pressing concerns of misuse of technology, it suffers from some serious lacunae that haven't been discussed, i.e. belongings issues. Information Technology Act 2000 doesn't mention one word about belongings protection while Infringement of IPR is one among the foremost challenging areas in cyberspace.

As well as Copyright and Domain names violations do occur on the web but Copy Right Act 1957 & Trade Mark Act 1999 are silent thereon which specifically deals with the problem. Therefore we've no enforcement machinery to ensure the protection of domain names on the net. Time has come where we must enact special legislation for the protection of property in cyberspace.

The utility of computers and therefore the internet is well understood and after all embedded within the modern business and commerce moreover as within the society generally. The benefits of the utilization of computers and the internet are immense within the modern business and our society can't function smoothly without computers and data technology. With the unprecedented advent of Computers and therefore the Internet and growing popularity of E-commerce, the holding rights have gained tremendous significance. However, there's a downside to the present trend of increased dependence upon Internet and knowledge and communication technologies (ICT) namely the issue posed within the detection & protection of belongings infringements within the virtual space.

Further Interference

1. Copyright Infringement

Copyright protection is given to the owner of any published artistic, literary, dramatic or scientific work to exclude everyone else from using that work on his own name and thereby make the most of it.

When these copyrighted articles are unauthorized copy by anybody without the permission of the owner, this amounts to infringement of copyright. When copies are the product of commercial software which are distributed over the net and sold by a 3rd person (other than the owner), that amounts to a violation. Copying a website or blog content also amounts to a copyright violation.

2. Software Piracy

It is also covered under sections of Indian Copyright Act. This can be the illegal use of the software by copying and distributing them among organizations, groups etc. for business personal use. This piracy may be of three types: Soft lifting, Software Counterfeiting, and Uploading-Downloading.

3. Cybersquatting and Trademark Infringement

Trademarks are distinctive marks are words, pictures, sound or shape which describes the character and quality of a few certain products to the user. The lions' roar of 'Metro-Godwyn-Mayer' or the word art of 'Google' are the trademarks for these respective companies, when these marks, whether registered or unregistered, are used by another company on their product, that's called trademark infringement.

Cybersquatting is the process by which domain names are registered, sold, trafficked-in with the intention to exploit the goodwill of somebody else's trademark in bad faith. Cybersquatting may be a punishable offence.

Copyright Issues in Cyberspace

The object of the copyright is to encourage authors, composers, directors to create original works by way of providing them with the prerogative to breed, publish the works for the good thing about the people. When the limited right i.e. term of copyright is over, the works belong to the general public domain and anyone may reproduce them without permission. The copyright subsists in original literary, dramatic, musical, artistic, cinematographic film, recording and programs further.

Today, copyright serves a range of industries including production and distribution of books, magazines and newspapers, media of entertainment that's dramatic and musical works for performances, the publication of musical works and cinema, broadcasting etc. etc. copyrights being material possession travel from country to country more easily and quickly than different kinds of property.

Technological progress has made copying of copyright material easy and straightforward. Consequently, the control of infringement is very difficult and infrequently impossible.

Books, recorded tapes or video cassettes of films or computer programmes may be taken from one country to another with no difficulty and thousands of copies can be made up of it and distributed. Unauthorised home taping of radio and tv programmes has become rampant everywhere the planet.

Loopholes under the IT, Trademark and Copyright Act:

There is no provision within the current or proposed Information Technology Act in India to punish cyber-squatters, at best, the domain is taken back. Though there's no legal compensation under the IT Act, IN registry has taken proactive steps to grant compensation to victim companies to discourage squatters from further stealing domains. Most squatters, however, operate under the guise of obscure names.

Under NIXI (National Internet Exchange of India), the in Registry functions as an autonomous body with primary responsibility for maintaining the. IN cc-TLD (country code top-level domain) and ensuring its operational stability, reliability, and security. It'll implement the varied elements of the new policy begun by the Government of India and its Ministry of Communications and data Technology, Department of data Technology. The knowledge technology Act lack somewhere in respect to jurisdiction issues, cybercrimes associated with IPR, cyberstalking, cyber defamation etc. etc. Likewise, the Indian Trademark Act, 1999 and Copyright Act, 1957 are silent on issues arising out of online Trademark and infringement of copyright. Though computer programmes are protected under the Copyright Act it doesn't provide remedies for online software piracy.

International Conventions associated with IPR and Cyber Space

1. Berne Convention

The Berne Convention, 1886, deals with the protection of works and therefore the rights of their authors. It provides creators (authors, musicians, poets, painters etc.) with the ways to regulate how their works are used, by whom the works are used, and terms of such usage.

It contains a variety of provisions determining the minimum protection that's to be granted and certain special provisions available to developing countries that want to use them.

It's supported three basic principles and therefore the three basic principles are the following:

a. Principle of National Treatment- Works originating in one amongst the Contracting States must lean the identical protection in each of the Contracting States because the protection latter grants to the works of its own nationals. “Work originating” means works of the author who could be a national of that individual State or works first published therein State.

b. Principle of Automatic Protection- Protection must not be conditional upon compliance with the formalities.

c. Principle of Independence of Protection- Protection is independent of the existence of protection within the country of origin of the work.

2. Rome Convention

The Rome Convention, 1961 secures protection in performances for performers (actors, singers, musicians, dancers and people who perform literary or artistic works), in phonograms for producers of phonograms and broadcasts for broadcasting organizations.

3. WIPO Copyright Treaty

The WIPO Copyright Treaty reemphasizes that copyright protection extends only to expressions and to not underlying ideas, procedures or related methods of operation or mathematical concept. It provides that the relevant provisions of the Berne Convention associated with reproduction and also the exceptions apply within the digital environment and also the use of works in digital form. Article 4 of the treaty guarantees the protection of computer programs as literary works altogether modes and types of expression. Article 5 of the treaty recognizes that everyone's style of compilations of knowledge or other material, by reason of the choice or arrangement of their contents constitute intellectual creations and thereby are protected.

Conclusion

Cyberspace is becoming a hub for belongings rights infringement of assorted e-businesses. Certain practices by information processing system operators have resulted in the violation of property rights or other entitlements of other websites operators.

Hence, it's become important that individuals are attentive to the illegal usage of their websites and pages. With the advancement of Cyberspace, copyright and trademarks aren't

limited to the traditional belongings but have extended to the property over the web. There are various guidelines provided by international conventions and treaties to shield IPRs online which are helping e-commerce and e-businesses to expand with no harm to them.

Registration of the impugned name in favour of the defendant.¹⁵ Loopholes under the IT, Trademark and Copyright Act there's no provision within the current or proposed Information Technology Act in India to punish cyber-squatters, at best, the domain will be taken back. Though there's no legal compensation under the IT Act, IN registry has taken proactive steps to grant compensation to victim companies to discourage squatters from further stealing domains. Most squatters, however, operate under the guise of obscure names.

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On the opposite hand, there's an urgent need for the strict laws during this field, in order that these crimes associated with IPR may be avoided in future. The new name dispute law should be intended to offer trademark and repair mark owner's legal remedies against defendants who obtain domain names ``in bad faith'' that are identical or confusingly almost like a trademark. It should act as a very important weapon for trademark holders in protecting their holdings within the online world. In u. s., they need special legislation for prevention of cybersquatting i.e. "U.S. Anti-cybersquatting Consumer Protection Act, 1999" which protects the interest of householders of both registered and unregistered trademarks against the use of their marks within domain names and Bharati Law Review, April – June 2016 179 also safeguards living persons against the use of their personal name under certain circumstances.

So it's time for India to enact such appropriate legislation which can protect the rights of copyright, trademark owners.



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