



Copyright and Software Programs

Intellectual Property Rights
Roll No. 11, Organic

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TRUE COPY**

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Introduction

1.1 | What is Copyright?

Beginning in January 1958, the Copyright Act of 1957 (the "Act") went into effect. Since then, the Act has been altered five times: in 1983, 1984, 1992, 1994, 1999, and 2012. The most significant of these is the Copyright (Amendment) Act, 2012. The WIPO Copyright Treaty ("WCT") and WIPO Performances and Phonograms Treaty ("WPPT"), which were both signed in 1996, are the main reasons for the amendments to the Copyright Act of 1957.



Figure 1.1: Copyright (<https://laws.com/uploads/cms/20110808/4e404783b9ba4.jpg>)

Additional reasons include protecting the music and film industries and addressing their concerns, addressing the needs of the physically disabled, incidental changes, removing operational facilities, and enforcement of rights. Extension of copyright protection in the digital sphere, including penalties for evading technological safeguards and rights management data, liability of internet

service providers, and the introduction of statutory licences for cover versions and broadcasting organisations, are some of the significant changes made to the Copyright Act in 2012. Additionally, the right to receive royalties for authors and music composers as well as exclusive economic and moral rights to their works are ensured.

1.2 | What is Software Copyright?

The most popular approach for securing software is copyright. A programmer immediately owns the copyright to whatever programmes they create; this ownership lasts for 70 years after the author's passing. You will receive a brief introduction to software copyright and its fundamentals in this article. Although facts, concepts, systems, and operational procedures are not protected by copyright, their expression is. Though you are free to express your concepts in writing or art, the idea itself is not protected by a copyright. Instead, it safeguards finished works of art or writing that are physical, fixed forms of expression that are reproducible. Because they were not considered to be fixed, physical objects until 1974, computer programmes historically were not covered by copyright laws. Nonetheless, the Copyright Act of 1983 gave computer programmes the same copyright status as literary works and expanded the scope of traditional copyright law to encompass machine-readable software. There are a number of unique challenges that occur with software copyright, despite the fact that many of the same legal principles and regulations apply.



Figure 1.2: Software Copyright
(<https://www.engineering.com/portals/0/BlogFiles/DesignerEdge/copyright.jpg>)

1.2.1 | Software Copyright Issues: an IP Puzzle

We are still unsure about what software copyright actually means. It is a legal right to control who may copy and distribute software, as well as the right to pursue legal action against anyone who

makes unlawful use of the software. Software copyright difficulties are not shared by other forms of intellectual property, such as books, music, or photos, hence it still isn't considered to be a distinct category of IP. The majority of software, for instance, incorporates additional forms of media including text, pictures, and sounds. It was designed to be flexible as well. Pieces of source code can be borrowed from other sources or used in new contexts, and updates and new versions are frequently released. Depending on the copyright software licencing, this form of adaptation, such as translating the code into another programming language, may constitute infringement. Nonetheless, the majority of all, some degree of copying the code into computer memory is a typical component of how software works. Software creators now face distinct copyright problems.

1.3 | Enforcing Software Copyright

Any programme you create comes with automatic ownership of the copyright. Once the coding is complete, there is nothing left for you to do to claim ownership. Enforcing your legal rights over the software you created is another story, though. Your software or application must have a Software IP Protection policy in place if you want to enforce copyright and stop unauthorised copying and usage of it. Safeguarding your intellectual property (IP) involves balancing the need to prevent unauthorised access to and usage of your software with the need to maintain accessibility, particularly if you're trying to sell your software and run a business. By distributing your software to users under a software licence, you can enforce copyright. This indicates that when a user installs, uses, or buys your product, they are obligated to accept the terms of the software licence you have established.



Figure 1.3: Enforcing Copyright
(<http://2.bp.blogspot.com/-Cju8mvqT1YI/VRBSyg7yRNI/AAAAAAAAAnU/tMs8O3TQU/s1600/copyright-symbol.png>)

Sadly, if all you do is kindly request that end users abide by the terms of the software licence, the likelihood is that you are essentially distributing your software product for free. As a result, you must have a method for enforcing licence compliance. Licensing for software is one such approach.

The essential premise is that while the software creator retains ownership rights, end users have simple access to the software product. In reality, software licensing enables the creator to monetise the software product by restricting access so that only those who have paid and secured a legitimate licence can use the programme. Since 10Duke is an expert in software licensing, check out our product area if you're seeking for a strong software licensing solution to increase revenue. Please feel free to browse our many guides on this website, which cover software licensing and other related subjects.

1.4 | Software Copyright Infringement



Figure 1.4: Software Copyright Infringement (<https://www.picpedia.org/highway-signs/images/copyright-infringement.jpg>)

It is frequently hard to avoid copying certain code when running a computer programme since the programme must typically be automatically copied into the machine's memory in order for the software to run. Furthermore oddly, when it comes to software, copyright is violated both when a direct copy of the original work is taken and when modified versions of the original are created. As a result, it is also considered a violation of software copyright law if the code (source code or compiled code) is rewritten or otherwise transformed into another computer language. This is because it is a "derivative" work, and a suitable licence is required to achieve this. Copyright violations in software can potentially occur without even obtaining a copy of the source code. For instance, creating the same functionality in a new programme by "inspiring" it from an original computer programme. The copyright in the original programme may occasionally be violated, even though none of the original code is actually utilised. Unlike other artistic works, software copies are sold with particular terms attached to clarify what constitutes permitted usage. Software copyright is a complex and developing area of the law.

1.4.1 | How to Detect Software Copyright Infringement?

To stop unauthorised copies of their programme, software creators and owners of proprietary software most frequently utilise software copyright. The owner of the copyright is often the person who created the work, a publisher, or another company to which the copyright has been delegated. When

works protected by copyright law are used without permission, copyright holders frequently adopt legal and technological means to prevent and punish copyright infringement, also known as piracy. To make the assertion of copyright clear, a copyright notice should be added to the headers of all source code files, help files, user manuals, and/or "about this software" pages. This is especially important for works like software and web applications where the source code is primarily where copyright exists. It can be challenging to demonstrate true copying when there isn't line-by-line direct code copying. By mixing duplicate code or programme elements with the actual code, one can attempt to make copying more difficult to spot. Even if they are not exact line-for-line copies, the presence of redundant programme elements in an alleged copy can lead to a very strong inference that copying has taken place. The release of source code should be handled with extreme caution by independent software companies. Your software copyright has not been violated if someone can independently develop from scratch what you have produced by simply viewing your source code, provided that the code is materially different. Under the restrictions of "fair use," as well as code breaking and reverse engineering, the modification of your copyrighted software for personal use may also be approved if a "legitimate reason" can be given. Nonetheless, given the financial loss that results from violating the copyrights of the software's creators, any unauthorised use of the software is eventually considered to be theft or piracy.

1.4.2 | Remedies for Infringement Of Copyright Software

- Temporary and permanent injunctions.
- Impounding and destruction of all infringing copies, including masters.
- Actual monetary damages plus the infringers' profits.
- Statutory damages.
- Court costs and reasonable attorneys' fees.

1.4.3 | Preventing Piracy and Fighting Infringement

Examples of software copyright infringement range from customers generating additional copies so they may work from home computers to pirates changing the software and disseminating it to the general public. While having copyright protection can help with some of these issues, there are other ways to prevent them as well as ways to detect and prosecute violators.

- Customer Service: The majority of unlawful software usage can be stopped by making it simple to purchase your programme, renew subscriptions, and update accounts. Pricing structures and package offerings that take into account both the spending habits of your clients and how they use your product can have an impact. The majority of consumers are content to pay for the services they really use; they just don't want to be hassled into paying for several copies or features they won't ever use.



Figure 1.5: Software Piracy

(<https://thumbs.dreamstime.com/b/software-piracy-rubber-stamp-grunge-design-dust-scratches-effects-can-be-easily-removed-clean-crisp-look-color-87826464.jpg>)

- **Keep the Code Secret:** Making ensuring your staff is familiar with some fundamental guidelines is the first step. Restrict who has access to the code and provide an explanation of confidentiality procedures to those individuals. Making sure that all of your data is encrypted is the more technical element of this so that even if it escapes, it cannot be accessed.
- **Redundant Code:** Some businesses add minor, pointless components to their programming. The duplicated code makes it simple to demonstrate that a copyright violation occurred if someone is stealing your code.

1.5 | Copyright Protection of Computer Software

There were lengthy debates on whether computer software should be protected by the patent system, the copyright system, or a sui generis system in the 1970s and 1980s. Following these arguments, it became widely acknowledged that software-related ideas and apparatus should be protected by patents, whereas computer programmes should be covered by copyright. Several sorts of protection are offered under the laws of copyright and patent. In contrast to a patent, which is an exclusive right granted for an invention a product or a process that offers a new technical way of doing something or solves a problem copyright protection only applies to expressions and does not cover ideas, procedures, methods of operation, or mathematical concepts as such. In nations that have ratified the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention), copyright protection does not require the fulfilment of any formalities, such as registration or deposit of copies. After passing a government agency's assessment process, a patent is typically awarded. Most

nations have adopted copyright laws for software, and these laws are standardised by international agreements. Yet, some nations have welcomed the patentability of computer software, while others have implemented policies that recognise inventions aided by computer software. Internationally, the law relating to the patentability of software is still not standardised.



Figure 1.6: Copyright Protection
(<https://thumbs.dreamstime.com/z/copyright-protection-concept-d-render-d-illustration-copyright-protection-symbol-concept-technology-background-132430188.jpg>)

1.5.1 | Copyright Protection: a Force for Antipiracy

You don't want competitors using your code as their own. Making a profit is necessary because you invested time and effort in it. If you are performing the work for other people, you will find it much more difficult to compete.

Yet, when it comes to copyright problems with software, concern is shared by both plagiarism and software piracy. Software piracy can range from users using your product after their subscription has ended to hackers peddling and disseminating fake versions. These are all instances of software copyright violation, regardless of media. There are several hazards associated with this kind of software copyright violation for developers.

First of all, revenue lost due to unlicensed software copies. Yet aside from the potential lost, these might also cost you money. You might be supporting versions of your software that have never been paid for. Versions that are old or counterfeit might not meet your requirements of quality and might harm the reputation of your brands. Piracy can, in the worst situations, result in serious data security breaches.

There are several actions you can take, but your software copyright is the legal foundation for all of them. The force of copyright protection works against piracy. That is what enables you to prosecute instances of software copyright infringement. Before publishing your software, registering your copyright will make it easier to seek bigger damages, which will discourage piracy.



Figure 1.7: Software Copyright Protection
(<https://www.mmviplaw.com/wp-content/uploads/2019/08/copyright-protection.jpg>)

1.5.2 | The Technology

The scope of copyright protection in software in general extends to :

- screen displays
- preparatory design material
- object code, subject code
- information stored on computer media.
- Data base
- Computer output
- Programming language.

The aforementioned examples cover a wide range of content that is subject to protection while the programme is being developed, and after the software is complete, the code itself is protected by copyright. Computer and computer programme definitions can both be found in the copyright statute. By just reading both definitions, it is possible to claim that they generally cover various types of software as long as it is presented in a machine-readable format. Computer programmes are helpful for giving the computer instructions on how to carry out a particular task. The programming languages used to create these projects. The programmer can choose from a wide variety of programming languages to create software or applications. The terms "source code" and "object code" are both related to programming. Source code is a collection of computer instructions written in a language that can be read by humans, whereas Object code is the result of translating Source code using a compiler or an assembler into a series of statements that can be read by machines. To put it simply, source code is created by a person or programmer and is in text form. Moreover, object code

is produced by the compiler as an output and takes the form of binary numbers in machine-readable formats.

As an illustration, consider software that is written in the source code of a language that can be read, such C++ or Java. Also, once the source code has been decompiled into machine language with the aid of a computer, the resulting software is referred to as object code.

1.6 | Softwares Copyrightable Under The Indian Copy Right Act

Software is the set of instructions that tells a computer how to operate. Software is a very delicate construct for its author. Software construction involves risk at every level. The possibility of the creation being taken, compromised, or leaked exists. Once such a catastrophe occurs, the creation is in jeopardy. The consequences of software being stolen, hacked, or leaked might result in a creator losing money, an idea, or even their entire company model. After being taken, it could quickly be duplicated ten times, and the work would no longer be original.



Figure 1.8: Software Copyrightable
(https://miro.medium.com/v2/resize:fit:2356/1*g0yPSUeX6ysiFRm7OmSpw.png)

Imagine, however, if you could prevent the aforementioned by giving your invention proper protection, and in exchange for your straightforward effort, you could enjoy unbroken branding and market popularity forever. Is "Legal Protection" in India really that strict, or are there methods to get around it? Does software need to be protected using both legal and technological means? Let's look closer in order to gain a better idea.

1.6.1 | Understanding the law pertaining Copy Right

Creators of musical, dramatic, artistic, and literary works as well as those who make sound recordings and motion pictures are granted the legal privilege known as copyright. In actuality, it is a collection of rights that includes, among other things, the rights to the work's adaptation, translation, and public communication.

Under Amendment Act No. 38 of 1994, "the computer programmes, tables and compilations comprising computer [database]" were included in the definition of literary work in the Copy Right Act. All rules governing general literary works became rules governing computer programmes as a result of this incorporation.

When an original literary, theatrical, musical, or creative work is produced in India, the author is immediately awarded a copy right. To register the work with the copyright registrar is still a good idea. This is done because the copyright office seal is definitive admissible evidence in all courts of law, and the party in dispute is not obliged to provide additional evidence or the original contents. "Registration of Copyright to be prima facie proof of particulars entered therein," reads Section 48 of the Copyright Act.

An original literary work must be published for the first time in India for a copyright to exist there. If it is published outside of India, the author must have been an Indian citizen on the publication date. And for unpublished works, the author must have been an Indian citizen or have had a place of residence in India at the time the work was created. India is a signatory to a number of treaties and conventions, which has to be understood. The Berne Convention, the Phonogram Convention, the World Trade Organization, and the Universal Copyright Convention are all signed by India. In accordance with these conventions, a literary work with a copyright of foreign origin will also have a copyright in India if the conditions set forth in sections 40 to 43 are met; however, the duration of the protection accorded a work in India will not exceed the duration of the protection accorded by the country of origin. The International Copy Right Order of 1999, which India ratified in accordance with the aforementioned accords, governs such circumstances.

"Communication to the public" is defined by the Copy Right Act as making any work or performance available for the public to view, hear, or otherwise enjoy directly or by way of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen at random, regardless of whether any member of the public actually sees, hears, or otherwise enjoys the work or performance so made available. You might be asking if it's mandatory for you to disclose your programming and code in the public as the software's architect. Uncomplicated "no" is the response. Software code and programming, unlike books, automatically lose all protection if they are published. Since the distribution of software for public usage can be considered "communication to the public," all software developers will benefit from this protection and strength.

1.6.2 | Software covered under the copyright protection law:

- Both the source code and the object code of software are protected as "literary works," according to Article 10 of the TRIPS Agreement. The protection is implied to include both source code and object code, as stated in Article 4 of the International Intellectual Property Organization, the Copy Right Treaty of 1996, and the Copy Right Act of 1956. At first, source code was the only part of software that was covered by copy rights; object code was not. Nevertheless, this practise is slowly changing globally. Now, using an assembler, a component of the computer, an object code is created from source code. So, it is appropriate to think of the object code as a modification or reproduction of the source code. The machine code will be protected as an

adaptation because the copyright for the source code is in place.



Figure 1.9: Software Copyright Protection

(<https://corpbiz.io/learning/wp-content/uploads/2020/09/Copyright-Protection-for-Computer-Programs.jpg>)

- Both an operating system programme and an application programme are included in this definition. Windows and Mac OS are considered operating systems, whereas programmes like Microsoft Word, Opera, and Music Player are considered applications. A computer does not distinguish between operating programmes and application programmes when trying to achieve a certain outcome. The computer is instructed to do something by the programme. Since the only thing that a copy right protects are the instructions, it is irrelevant which type of software receives more copyright protection than the other; both types can be registered for protection.
- The collection of input and output formats that a computer uses is also protected by copyright.

An Overview of Indian Software Copyright

The Copyright Law in India protects computer software's Intellectual Property Rights (IPR). As a result, the provisions of the Indian Copyright Act 1957 provide protection for computer programme copyright.



Figure 2.1: Software Copyright in India (<https://i0.wp.com/patentbusinesslawyer.com/wp-content/uploads/2020/04/Software-Copyright-in-India.png?resize=768>)

According to the Copyright Act's definition, computer programmes are literary works. A "computer programme" is a collection of statements or instructions that can be utilised directly or indirectly in a computer to produce a particular outcome. Copying the structure and design of computer programmes is forbidden by copyright laws. A computer software may violate intellectual property rights even if no code was copied because the images, sounds, and appearance of the programme

may be protected as an audiovisual work.

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2.1 | End-User Licensing Agreements (EULA).

An agreement between the licensor and the buyer of the right to use software is known as a software licence agreement. Many form contracts are only available in digital form, and they are only shown to users as click-throughs that they must "accept" before continuing. These documents could be contracts of adhesion since the user might not be made aware of the agreement until after they have already paid for the software. These papers frequently refer to themselves as end-user licencing agreements (EULA).

2.2 | Source Code and Object Code

Although copyright is created when the source code is written, it is actually the object code—which contains the actual commands that the computer follows when the programme is run—that is typically covered by copyright. Even though millions of copies of the programme are distributed as object code, the source code is typically never made public and is therefore kept as a trade secret.

The program's source code included details that made it simpler for programmers to create or comprehend the code. In spite of the fact that source code and object code are separate, it is nevertheless helpful to hold onto the idea that they are simply various versions of the same copyrighted work. The Copyright Office considers object code and source code to be equal for registration purposes.

2.3 | International Copyright

The restrictions on copyright also apply to works produced or distributed abroad. Due to duties under international treaties, signatory governments have committed to providing citizens of other member nations with the same level of copyright protection as they do for their own residents.

Some of these conventions which protect the Copyright work are as follow:

- **Berne Convention** : Any country that ratifies the Berne Convention, 1886 agreement must ensure that authors from other signatory nations have access to the same copyright protections as those that are available to its own citizens. Additionally, it mandates that signatory countries enact copyright laws that adhere to a set of uniform standards, particularly in regards to copy-



Figure 2.2: International Copyright (<https://ingeniumbooks.com/wp-content/uploads/2018/04/Facts-about-International-Copyright.png>)

right durations, the types of works that are protected, and authors' moral rights, as well as the abolition of prerequisites for registrations, deposits, and the attachment of copyright notices.

- Universal Copyright Convention : As a replacement for the Berne Convention, it was created by the UN in Geneva in 1952. The UCC (Universal Copyright Convention) was significantly less prescriptive about the copyright rules that its member states had to enact. In 1972, the United States ratified the Universal Copyright Convention.
- International Copyright Order : The International Copyright Order, 1958 was passed by the Indian government, and it states that any work first published in a nation that is a signatory to the Berne Convention or the Universal Copyright Convention will be treated the same as if it were first published in India. In India, copyright registration is not required, although it does provide the author with better protection in situations where copyright is violated.

2.4 | Registration Procedures for Filing Copyright

Three fundamental components make up a copyright registration application: a filled-out application form, a nonrefundable filing fee, and a nonrefundable deposit, which is a copy or copies of the work being registered and "deposited" with the Copyright Office.

Regardless of how long it takes for the application to be processed and the certificate of registration to be mailed, a copyright registration begins to take effect on the day the Copyright Office receives all necessary components in acceptable form. The volume of paperwork the office receives and the style of application affect how long it takes to process applications.

Option for registering copyright software :

- Online Registration



Figure 2.3: Registration of Software Copyright (https://vakilsearch.com/advice/wp-content/uploads/2020/05/Software-Copyright-Registration_Legalizing_Your_Software_1.jpg)

- Registration with Fill-In Form CO (copyright office)
- Registration with Paper Forms

2.4.1 | Requirements for Registration Of Copyright Software

Computer Programs without Trade Secrets:

- Provide one copy of the first 25 and last 25 pages of the program's source code, which are visible without the aid of a machine or device, along with the page or equivalent unit carrying the copyright notice, whether the computer programme is published or unpublished.
- Provide a copy of the whole source code that can be seen visually for programmes that are no longer than 50 pages.
- If a candidate cannot or will not deposit source code, he or she must declare in writing that the work as submitted in object code comprises authorship that is protected by copyright. Since it hasn't established the existence of authorship subject to a copyright, the Office will then register the work under its rule of doubt.
- It is customary to ship the full CD-ROM package, along with a complete copy of any associated operating software and user manual, to the Copyright Office when a computer programme is incorporated in a CD-ROM. A printout of the program's first 25 and last 25 pages of source code should be included with the deposit if registration for the computer software is desired.

2.4.2 | Advantages of Registration Of Copyright

- Registration establishes a public record of the copyright claim.



Figure 2.4: Advantages of Copyright Protection (<https://swaritadvisors.com/blog/wp-content/uploads/2021/05/What-Are-The-Responsibilities-of-Software-Copyright.jpg>)

- Before an infringement suit may be filed in court, registration is necessary for works of U. S. origin where as in India it is not required.
- If made before or within five years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate.
- If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.
- Registration allows the owner of the copyright to record the registration with the U. S. Customs Service for protection against the importation of infringing copies.

2.5 | Understanding Copyright Software Licensing

Even when you've taken precautions to prevent theft, you still want people to use and distribute your software. Copyright software licencing can help with it. The process of licencing ensures that copyright laws are not broken when your software is used. Public domain software is an exception. A software developer has the option of totally removing all copyright protection from their work.

Open-source or privately produced unlicensed software should not be confused with public domain. Despite having software copyrights, some categories may nonetheless be freely usable. They might have limitations on how the code can be altered, credited, or used, depending on the specific sort of open-source licence.

But most of the time, when we discuss copyright software licences, we're talking about paid licencing and proprietary software. There are many different licencing models based on the number

of users, short-term subscriptions, consumption, and other factors for these software copyright examples. The copyright is automatically granted if you sell your software. But, you will still need to deal with software copyright issues, such as how to licence it and where to mark the copyright. Your business model, how the software is utilised, the level of security required, and other factors all play a role in this choice.

2.5.1 | How to Get a Software Copyright

Software developers face more complex copyright difficulties than they might first think. The straightforward part is that released software is automatically copyrighted, at least in the US. Putting the emblem on your software makes copying it against the law. Nevertheless, unless you've put in the effort to register the copyright, you won't be able to bring legal action against anyone.

Anywhere in the world, the copyright registration procedure operates differently. For instance, in the US, only one form is required. The majority of the information that is needed is simple: the name and author of the software, when it was published, who will be the owner of the copyright, and who to contact.

You'll be asked to describe what exactly the copyright comprises and to indicate the components that have been licenced from other sources because software frequently incorporates audio files, graphics, or text from other sources. You'll then need to select a category. While software is technically written in letters and numbers, it is typically registered as a literary work. But, if you feel that graphics or animation make up the majority of your product, you can alternatively select visual arts or even performing arts.

2.6 | Computer Programs Containing Trade Secrets

- First 25 and last 25 pages of source code with portions containing trade secrets blocked out; or
- First 10 and last 10 pages of source code alone, with no blocked out portions; or
- First 25 and last 25 pages of object code plus any 10 or more consecutive pages of source code, with no blocked-out portions; or
- For programs 50 pages or less in length, entire source code with trade secret portions blocked out.

2.6.1 | Revised Computer Programs

- If the revisions are present in the first 25 and last 25 pages, any one of the four options above, as appropriate; or
- If the revisions are not present in the first 25 and the last 25 pages:
 - a) 20 pages of source code containing the revisions with no blocked out portions; or
 - b) any 50 pages of source code containing the revisions with some portions blocked out.

- Whenever Portions Of Code Are Blocked Out, The Following Requirements Must Be Met: The viewable area must contain a sizeable chunk of the original computer code, and the blocked-out portions must be correspondingly smaller than the content still there.

2.6.2 | Effective Date of Registration

The Copyright Office must receive all necessary components in good condition before a copyright registration can go into effect. The amount of material the Copyright Office receives will determine how long it takes to process an application.

2.7 | Copyright Software Litigation

The only court with jurisdiction to hear software litigation is that court. For copyright issues in the US, only federal courts have jurisdiction. Wherever the defendant is located or the infringement is taking place is where the complaint for software copyright infringement should be filed. When the three years have passed since the action arose under the statute of limitations for civil copyright claims, no complaints will be taken into consideration.

For the right to utilise the copyright, the complainant or plaintiff must be the owner of the rights or an exclusive licensee. The copyright holder, the person who developed the work, or the assignee of the real owner must grant such an exclusive licence. And only if all of the aforementioned requirements—Registration, Submissions, etc.—are met can the legal action be started.



Figure 2.5: Copyright Litigation

(<https://abovethelaw.com/wp-content/uploads/2018/11/copyright-gavel-1104x1104.jpg>)

Case Study

3.1 | Apple vs Microsoft

Who created the graphical user interface is where the conflict between these two tech titans began (GUI) It's not unexpected that Apple wanted to prohibit Windows from becoming a significant operating system because the firm in charge of the interface of the next major operating system will have the power to establish the norms for application development. It seems that despite Microsoft's involvement in the creation of the Macintosh, Jean-Louis Gasse, who had succeeded Steve Jobs at the time, forbade Microsoft from using their software. Bill Gates persisted nonetheless, choosing to add its own capabilities to early Macintosh prototypes.



Figure 3.1: Apple VS Microsoft (<https://mmsgear.net/wp-content/uploads/2019/07/Microsoft-Vs.-Apple-2000x990.jpg>)

Gasse was furious when he noticed the software. He ultimately decided to licence the Mac's visual displays because he didn't want to risk a legal dispute. Gasse, who had only agreed to have their software used for Windows 1.0 and not later versions, thought it was a breach of contract when Windows 2.0 turned out to be nearly identical to Windows 1.0. Thus, Apple unexpectedly sued Microsoft in 1988. 189 challenged visual displays in Apple's case were infringing on its copyright.

This resulted in a six-year conflict. In 1989, the court decided that the preexisting licence applied to 179 of the 189 challenged exhibits. In addition, the other ten were not infringing on Apple's copyright because of the merger theory, which restricts the range of copyright protection by separating an idea from its expression.

The copyright lawsuit was decided in Microsofts favour on August 24, 1993.

3.2 | Muthoot Finance Limited vs. Shalini Kalra Ors.

A non-banking financial firm called Muthoot Finance Limited, the plaintiff in this case, offered commercial and personal loans in exchange for a deposit of gold jewellery. In order to operate this business, the Plaintiff was required to maintain proprietary and confidential data about its sizable customer base in the form of a database. This data amounted to a "literary work" as defined by Section 2(o) of the Copyright Act, 1957, and Plaintiff's trade secrets that should not be revealed to any outside party. The Plaintiff had employed the Defendants Nos. 1 through 4 in the past. Each of them had properly executed a Declaration of Fidelity and a Non-Disclosure Agreement at the time they began working together. These documents were included in the appointment letter. The main claim in the plaint was that Defendant Nos. 1 and 4 had unlawfully and unauthorised downloaded, extracted, copied, and later transmitted the confidential information of the Plaintiff's clients to Defendant Nos. 2 and 3, as well as staff members of Defendant No. 5, a business providing comparable services to the Plaintiff.



Figure 3.2: Muthoot Finance VS Shalini Kalra Ors.
(https://cdn.siasat.com/wp-content/uploads/2020/02/Muthoot_Finance.jpg)

As a result, the Plaintiff's clientele began to gravitate towards Defendant No. 5. Ultimately, after being fired by the Plaintiff, defendants 1 and 3 joined defendant 5's workforce. Infuriated by this, the plaintiff complained to the Joint Commissioner of Police, Crime Branch, New Delhi, about Defendants Nos. 1 to 5. Nonetheless, there were comparable incidents of sensitive information

leakage at numerous other Plaintiff offices, which cost the Plaintiff a loss of about 9 crore rupees. As a result, the Plaintiff filed a FIR at PS Special Offenses and Cyber Crime once more in accordance with the pertinent IPC and IT Act sections. Additionally, the present complaint claimed that Defendant No. 5 was stealing the Plaintiff's clients and staff by using the data that the Defendants had gained unlawfully.

In order to prevent the Defendants and anyone else acting on their behalf or through them from using or disclosing any of the Plaintiff's confidential information, using or violating any of the Plaintiff's copyrights or other intellectual property rights, directly or indirectly luring or canvassing any of the Plaintiff's customers, forcing any of the Plaintiff's employees to resign, or otherwise provoking the Plaintiff, the Plaintiff moved this court for a decree of permanent injunction. The plaintiff further requested interest at the rate of 18 percent per year up until the date of payment in addition to damages of Rs. 2,00,01,000 payable to the plaintiff jointly and severally by Defendants 1 to 5. The Defendants were served with summonses by the Court in this case, and they were given the chance to submit a written statement (if any). In addition, with regard to the IA filed by the Plaintiff, the court issued an interim injunction prohibiting the Defendants from using any proprietary content of any kind, including copyright and other intellectual property rights of the Plaintiff Company, as well as from disclosing or using any confidential information, trade secrets, or other information, pertaining to the business and operations of the Plaintiff Company.

3.3 | Dassault System Solidworks Corporation Anr. vs. Spartan Engineering Industries Pvt. Ltd. Anr.

The Delhi High Court has addressed the problem of software copyright infringement in this case. A French business, Plaintiff No. 1, created the "Solidworks" programme. The modelling and creation of things with this software is much easier in a three-dimensional setting. Plaintiff No.2 is a sister company that Plaintiff No. 1 established to handle all of its business with "Solidworks" in India.



Figure 3.3: Dassault System Solidwork Corporation
(<https://www.lavilladeschefs.com/wp-content/uploads/2016/06/Logo-Dassault-systemes-1.jpg>)

The software was created by their workers as work-for-hire, according to Plaintiffs No. 1 and No. 2, who claim ownership of the copyright therein. According to the Plaintiffs, the software programme and its user guides qualify as literary works under the Copyright Act of 1957 (Act) and are thus protected by copyright. Since India and the US are both signatories to the Berne Convention, Universal Copyright Convention, and TRIPS Agreement of the World Trade Organization, the software is entitled to protection in India under Section 40 of the Copyright Act.



Figure 3.4: Spartan Engineering Industries Pvt. Ltd.
(<https://www.ktpws.org.uk/Portals/19/Images/spartan-logo.jpg>)

The Plaintiffs claim that in May 2018, they learned that the Defendants were using pirated and illegal copies of the "Solidworks" software programme for commercial purposes without paying the appropriate licence cost. The Plaintiffs further argued that from August 2020, there had been an upsurge in such unauthorised software use and that attempts to come to a peaceful conclusion were useless because the Defendants denied any infringement.

Following this, the Plaintiffs petitioned the court for an injunction because using their software programme in any manner that was illegal or pirated would constitute copyright infringement under Section 51 of the Copyright Act. The Act's Section 63B, which makes it illegal to intentionally employ a pirated computer programme, was also cited by the plaintiffs. In addition, the Plaintiffs claimed that the Defendants' violation of the End User License Agreement resulted in both contractual and intellectual property infringement.

Software infringement is a significant issue that deserves to be dealt with quickly, the court stated in granting the injunction. The Court granted the Plaintiffs an ex-parte ad interim injunction prohibiting the Defendants from using, reproducing, and distributing any pirated, unlicensed, or unauthorised software programmes that belong to the Plaintiffs. The injunction also prohibits the Defendants from formatting their computer systems and/or erasing any data related to aiding third parties in violating the Plaintiffs' copyright.

3.4 | Lotus vs Borland: A Case Study in Software Copyright

A significant issue on software copyright was heard by the Supreme Court in 1996. For using the names and organisational hierarchy of the menu commands from Lotus's well-known spreadsheet product, 1-2-3, and included them in Borland's rival Quattro Pro software, Lotus Development Corporation had filed a lawsuit against the company. In *Lotus v. Borland*, the Supreme Court did not establish a legally enforceable precedent, though. Due to a 4-4 tie created by one justice's recusal, the First Circuit's ruling that the names and hierarchical structure of the menu commands in Lotus 1-2-3 were not protected by the First Amendment was upheld by the Supreme Court without dissent.

Similar issues around software copyright are still open over 20 years later. *Oracle v. Google*, a well-known case involving copyright in software, was rejected for reconsideration by the Supreme Court in late June 2015. *Oracle v. Google* "clearly implicates the unresolved subject in *Lotus*," according to Google's petition for certiorari to the Supreme Court, and its result will have a "enormous" impact on innovation in the computer industry. In the current dispute over digital intellectual property, which has gone on for decades without a final conclusion by the Supreme Court, *Lotus v. Borland* is a crucial piece of backdrop. The case can be studied to get practical experience in legal theory, litigation tactics, policymaking, and commercial strategy.



Figure 3.5: Lotus vs Borland: A Case Study in Software Copyright (<https://www.quimbee.com/cases/lotus-development-corp-v-borland-international>)

This case study contextualises *Lotus v. Borland* in order to examine the legal, ethical, and practical concerns that the case raised. Internal government documents that were made available to the public during Justice Elena Kagan's confirmation hearings are studied by students to get insight into the rarely publicised discussions that influence the official government position on ongoing litigation. This case study asks students to consider the impact of *Lotus v. Borland* on the modern software ecosystem by giving significant legal and historical information.

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Name : - Salim Akbar Shaikh

Subject : - IPR PROJECT

Class : - MSc Chem Part - 2

Roll No. : - 02

Year 2022-2023

Role of Patent Agent in Patent System

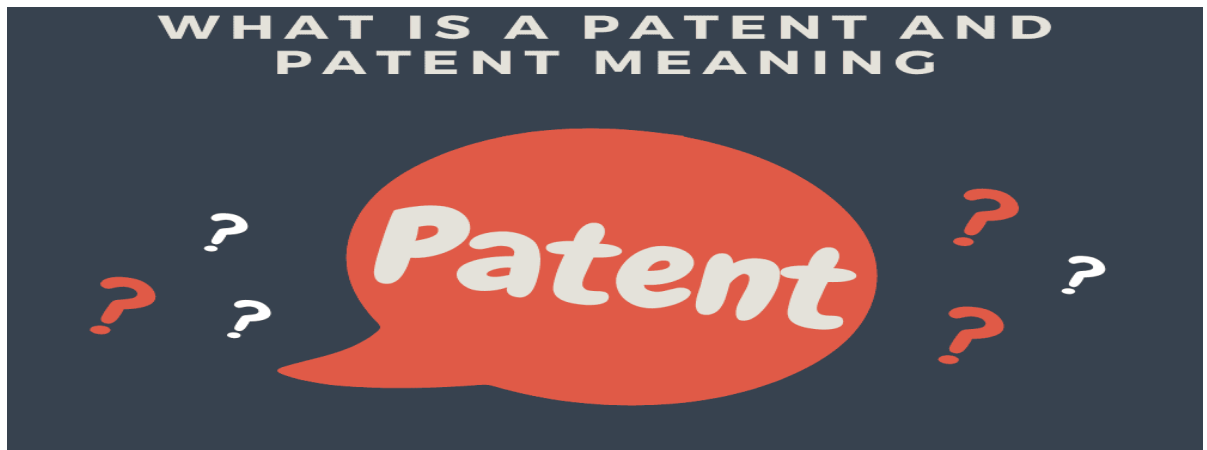
&



**Certified as
TRUE COPY**

A handwritten signature in blue ink, appearing to be 'S. Shaikh', written over the printed name of the Principal.

Principal
Ramniranjan Jhunjhunwala College,
Ghatkopar (W), Mumbai-400086.



- A patent is an exclusive right granted to the patentee of an invention that is a novel product or process involving an inventive step and capable of industrial application.
- In other words, Patent is a techno-legal document. Which is granted to an invention which is Extremely different from pastly invented things , who has an inventive step and industrially applicable.
- Patent is granted with an exclusive right by the government of a country as a reward for the contributions made by the innovators.
- Patent may be called as an agreement between the inventor and the government for a limited period of time, usually 20 years in most of the countries. A patent is a territorial right given to an inventor. Patent is not protected to a jurisdiction where it is not filed. The exclusive rights granted to a patent include manufacturing, selling, offering to sell, importing, licensing etc.
- For a time period of 20 years, only patentee is allowed to exploit the patented invention. Any third person performing any of the above will commit an act of infringement.

For example,

The Internal Combustion Engine

In today's day and age, it is impossible to imagine how we would we function without cars, buses, and trains. These vehicles operate through an internal combustion engine. The first internal combustion engine was patented in 1823 by Samuel Brown and used to pump water. Nikolaus Otto patented the compressed-charge four-stroke engine in 1876, and the two-stroke engine was patented by Karl Benz in 1879. A definite boon for movement!

What is meant by patent agent?

A Patent agent is a person registered with Indian Patent Office whose name is entered in the patent agent register after being declared qualified in the patent agent examination conducted by the patent office and who is entitled—

(a) to practice before the Controller.

HOW TO BECOME PATENT AGENT IN INDIA?
SIMPLE STEPS TO BECOME PATENT AGENTS

Salim

ELIGIBILITY
Indian citizen who has completed the age of 21 years;
A degree in science, engineering or technology from any university;

APPLICATION
Candidates need to apply an application through online ;
Supply documents for age proof, education and photo;
Submit application with documents & prescribed fees;

EXAMINATION
Written test comprises of two papers-I and II;
The paper I based the Indian Patent Act and Rules, and
Paper II is based on case studies;
A viva-voce for oral interview;

REGISTRATION
Qualified patents agent can make an online application to register as patent agent along with prescribed fees;
Controller enters the name in the Register of Patent Agents and will issue a certificate.

(b) to prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller under this Act.



Eligibility of Patent agent

(In India)

A person shall be qualified to have his name entered in the register of patent agents if he fulfills the following conditions, namely—

(a) he is a citizen of India.

(b) he has completed the age of 21 years.

(c) he has obtained a degree in science, engineering or technology from any university established under law for the time being in force in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf,

and, in addition,—

i) has passed the qualifying examination prescribed for the purpose.

ii) has, for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the Controller under [section 73](#) or both, but ceased to hold any such capacity.

Eligibility of Patent Agent (In Other Developing Countries)

- In developed countries, qualification and registration as a Patent Agent is frequently reserved for persons (lawyers and non-lawyers) who hold scientific and technical qualifications have undergone the prescribed period of articles to a registered Patent Agent and passed the prescribed qualifying examinations in the law and practice of patents.
- In developing countries, national legislation may, in addition to allowing persons who are non-lawyers to qualify and register as Patent Agents, grant lawyers registered to practise in their jurisdiction the privilege of practicing as Patent Agents.
- Despite differing qualifications and functions, the practice of Patent Agents is strictly regulated in most jurisdictions.

FOR EXAMPLE : -

- In **Zimbabwe** the Patent Act [Chapter 26:03] provides that any person who is ordinarily resident in Zimbabwe may apply for registration as a Patent Agent provided he or she : -

(a) has served such period of articles as may be prescribed and has passed the prescribed qualifying examinations.

(b) has passed the prescribed qualifying examinations and produces proof

that he is a member in good standing of The Chartered Institute of Patent Agents incorporated by Royal Charter on the 11th August, 1891.

(c) produces proof that he holds a qualification recognized by the Minister as being equivalent to the qualifications required for the purposes of paragraph (a) or (b)”

- Where a person meets the requirements for registration in Zimbabwe as a Patent Agent, the Registrar of Patents will, on submission of the prescribed application and fee, register such person as a Patent Agent provided such person is of good moral character and reputation.
- In common with regulations governing the practice of Patent Agents the world over, a person who meets the necessary legal and technical qualifications may still be refused recognition and registration as a Patent Agent if, amongst other things he or she : -
 1. has been adjudged insolvent under any enactment in force in Zimbabwe or has made an assignment to or composition with his creditors; or has, after being convicted in Zimbabwe or elsewhere of the crime of theft,
 2. fraud, forgery or uttering a forged document or perjury, been sentenced to serve a term of imprisonment without the option of a fine, whether such sentence is suspended or not, and has not received a free pardon.
 3. has been guilty of conduct discreditable to a patent agent.

4. has been guilty of a breach of any regulations prescribing the conduct of patent agents.

- In Zimbabwe legal practitioners who are not registered Patent Agents are entitled to practice as Patent Agents.

Role of Patent Agent In Patent System

- The primary role of a Patent Agent is to help a client secure legal protection for his or her invention by filing a patent application and prosecuting the same to registration. Such registration may be in the client's country of residence or principal place of business or abroad.
- Patent Agents act as legal representative on behalf of a client in connection with any matter or proceeding before national or regional Patent Offices and may draw and sign all documents and make all communications between a client and the Patent Office and may represent a client at all attendances before the Patent Office.
- In order to represent his or her client in a competent manner, a Patent Agent must have the ability to understand a client's invention and its technical aspects. Expertise in the field of the client's invention is an added advantage in that it assists a Patent Agent better understand the invention and draft a technically sound patent application. In order to fully understand the invention, the Patent Agent may require multiple attendances on the client.
- The first stage is for the Patent Agent to take instructions concerning the nature

and field of the invention and ensure that he or she understands the invention as portrayed in any sketches or technical drawings provided by the client.

The Patent Agent must also establish : -

1. what the client believes is new about his or her invention.
2. how the invention differs from prior art.
3. what advantage the invention has.
4. what problems the invention is intended to address.
5. who are the originators of the invention.
6. the legal basis of the client's entitlement to a patent for the invention.

- The next stage is to determine whether the invention meets the criteria of patentability and if so whether it is something for which legal protection can be obtained in the territory in which the client wishes to secure legal protection.
- Unless the client is very knowledgeable about the field of his or her invention, it may be necessary to carry out patent searches to determine the novelty of the invention.
- The Patent Agent must possess sufficient legal, scientific and technical skill to be able to review and advise client of the merit of any objections raised by the Patent Office, submit oral or written responses to the Patent Office that overcome the objections or amend the patent application so as to allow the application to proceed to grant.
- A Patent Agent is especially required to prosecute his or her client's patent application with due diligence as a lackadaisical approach may prejudice the client and may even result in the loss of priority rights or the lapsing of the

patent application.

- A Patent Agent who is registered to practice as a legal practitioner in Zimbabwe







is able to represent his or her clients in all matters and procedures relating to

patent law and practice as well as provide legal services in all fields of law

including advising clients on : -

1. licensing of intellectual property rights (IPRs).
2. assignment and transfer of IPRs.
3. hypothecation of IPRs, inheritance of IPRs.
4. ownership of employee inventions.
5. Rights of co-owners of IPRs.
6. Customs remedies for infringement of IPRs.
7. Criminal remedies for infringement of IPRs.
8. Civil actions for infringement and enforcement of IPR.

A) The Certificate of Patent.

क्रमांक : Sl. No.:	055	15347
 सत्यमेव जयते		
 INTELLECTUAL PROPERTY INDIA PATENTS DESIGNS TRADE MARKS GEOGRAPHICAL INDICATIONS		
भारत सरकार GOVERNMENT OF INDIA पेटेंट कार्यालय THE PATENT OFFICE पेटेंट प्रमाणपत्र Patent Certificate <i>(Rule 74 of Patents Rules)</i>		
 THE PATENT OFFICE		
Patent No.	:	382179
Application No.	:	8492/IRCNP/2015
Date of Filing	:	23-11-2015
Patentee	:	1. Dr Alok Mishra 2. Kamlesh Singh
<p>It is hereby certified that a patent has been granted to the patentee for an invention entitled ARTIFICIAL INTELLIGENCE BASED SELF-MONITORING AND ROOTING FOR CORE INITIALIZING SYSTEM ANALYSIS IN COMMUNICATION CONTROL UNIT FOR 6R ARTICULATED ROBOT as disclosed in the above mentioned application for the term of 20 years from the <u>23 day of NOVEMBER 2015</u>, in accordance with the provisions of the Patent Act,1970.</p>		
		
 Controller of Patents		
 Controller General of Patent, Design & Trade marks		
Date of Grant: 20/05/2016		
<p>Note.-The fees for renewal of this patent, if it is to be maintained, will fall / has fallen due on 23 day of NOVEMBER 2017 and on the same day in every year thereafter.</p>		

B) Certificate of Patent Agent.



Deceptive Similarity Under Trademark

- Kajal Kumari
- Msc Chem 2
- Roll no 4
- Year 2022-2023
- IPR Project



Key Points

- Abstract
- Introduction
- History of Trademark Law in India
- Deceptive Similarity Under Trademark
- Case Study

Abstract

- ❖ It is of paramount importance for every business venture to develop its own brand value.
- ❖ Thus trademark plays a pivotal role in the formation of such identity and helps in revenue generation.
- ❖ It is to be noted, that where a trademark furthers a prospect of a successful trade, it also becomes highly vulnerable to being misused or infringed.
- ❖ One such mode of infringement is by way of creating a trademark which is “deceptively similar” to the pre-existing trademark in order to confuse the consumers and in cash the goodwill of the already established trademark.
- ❖ This not only puts a question to the reputation of the original trademark holder but also results in economic loss.

Introduction

- Intellectual Property Rights allows people to assert ownership rights on the outcomes of their creativity and innovative activity in the same way that they can own physical property.
- **Trademark** is one of the areas of intellectual property and its purpose is to protect the mark of the product or that of a service.
- A **trademark** is a distinctive sign or indicator used by an individual, business organization, or other legal entity to identify for consumers that the products or services on or with which the trademark appears originate from a unique source, designated for a specific market and to distinguish its products or services from those of other entities.
- The essential function of a trademark is to exclusively identify the commercial source or origin of products or services, so a trademark, properly called, indicates source or serves as a badge of origin
- Trademarks provide their owners with the legal right to prevent others from using a confusingly similar mark.

History of Trademark law in India

- **1877** — first demand for introducing a trademark legislation in India was made by the Bombay Mill Owners' Association to the then Government of Bombay.
- **1879** — Though a Bill was introduced in the Imperial Legislative Council, there was no outcome of the process
- However the law governing trademarks found statutory recognition in the Indian Penal Code, 1860 (wherein counterfeiting and falsifying a trade mark were made punishable) and the Specific Relief Act, 1877 (which provided for restraint of use of trade marks by grant of Injunction).
- **1940** — India borrowed the British Trademark Act, 1938 and prepared the Act on the subject as Trademark Act of 1940 and introduced for the first time a machinery for registration and statutory protection for trademarks in India.

History of Trademark law in India

- 1958 — Trademark Act 1940 was replaced by the Trade and Merchandise Marks Act, 1958.
- The objective of the Act was to provide for registration and better protection of trademarks and for prevention of use of fraudulent marks on merchandise
- 1999 — In order to bring the Indian trademarks law in compliance with the TRIPS Agreement the new trademark regime - the Trade Marks Act, 1999 - was introduced and enacted.
- 2003 — the Trade Marks Act, 1999 came into force on September 15, 2003
- The new law under the Trade Mark Act, 1999 brought in significant changes in incorporating not only the prescribed minimum protection standards but the existing jurisprudence

Deceptive Similarity under Trademark

- Section 2(h) of the Trade Mark Act, 1999 define Deceptively Similar as “A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to cause confusion.”
- Traditionally it was held that there can be an infringement of a trademark only when there is a likelihood of confusion as to the origin of the trademark.
- If there is no similarity of goods and services then the question of likelihood of confusion does not arise.
- It is not sufficient if one mark merely leads to a likelihood of recall of the other mark.
- Whenever two marks are identical, there is a prima facie case of infringement due to confusion. But there are situations where the marks are not identical but are nearly similar.

Deceptive Similarity under Trademark

- In those cases, the plaintiff has to establish that the mark is identical enough to cause confusion in the minds of the buyer and hence would be misleading.
- There needs to be an element of resemblance, so strong to cause a deception in the minds of the buyers.
- The ultimate judge of similarity is the consumers who would be misled into distinguishing between two marks and hence failing to compare the two.
- Deception can arise with regard to:

**Deception as to
goods**

**Deception as to
trade origin**

**Deception as to
trade connection**

Criteria for a court of law or tribunal for determining deceptive similarity



The Nature of the marks, whether the marks are word, labels or composite marks.

The degree of resemblance between the marks, phonetic or visual or similarity in idea.

The nature of goods or services in respect of which they are used as trademarks.

The similarity in the Nature, character and performance of the goods/services of the rival traders/service provider.

Class of purchases/customers who are likely to buy the goods or avail the services, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods

The mode of purchasing in the trading channels that the goods/services traverse in the course of business or placing order for the goods.

Case Study - 1

- It was held that there was striking resemblance between the two words.
- The two words are also phonetically similar.
- There is every possibility of deception and confusion being caused in the mind of the prospective buyer of the plaintiff's products.
- Injunction was made permanent.

Delhi Lakme Ltd vs. Subhash

Trading

- Plaintiff was selling cosmetic products under the registered Trademark-**Lakme**
- Defendant was using the Trademark-**Likeme** for the same class of products

Case Study - 2

- It was held that there was striking resemblance between the two logos.
- There is every possibility of deception and confusion being caused in the mind of the prospective buyer of the plaintiff's products.
- The plaintiff company has accordingly sought an injunction restraining the defendant from using the infringing logo —MHS or any other trademark identical with or deceptive similar to plaintiff's registered trademark —MDH logo.
- The plaintiff was also awarded punitive damages amounting to Rs. 1 Lakh against the defendant.

M/S Mahashian Di Hatti Ltd. MR. Raj Niwas, Proprietor of MHS Masalay

- The plaintiff company engaged in the business of manufacturing and selling spices and condiments, which are being sold under its registered logo comprising —MDH within three hexagon device on red colour background) and is registered since 31st may 1991.
- The defendant has been using the logo—MHS within hexagon device with red colour background on the carton is alleged to be similar to those being used by the plaintiff company.

THANK YOU

IPR PROJECT

Title of the Project

IPR AND CYBERCRIME

Certified as
TRUE COPY



Principal
Ramniranjan Jhunjhunwala College,
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PREPARED BY:

Ayushi Mishra

Roll no-26 Div-A

Class-Msc Part-2

INTRODUCTION

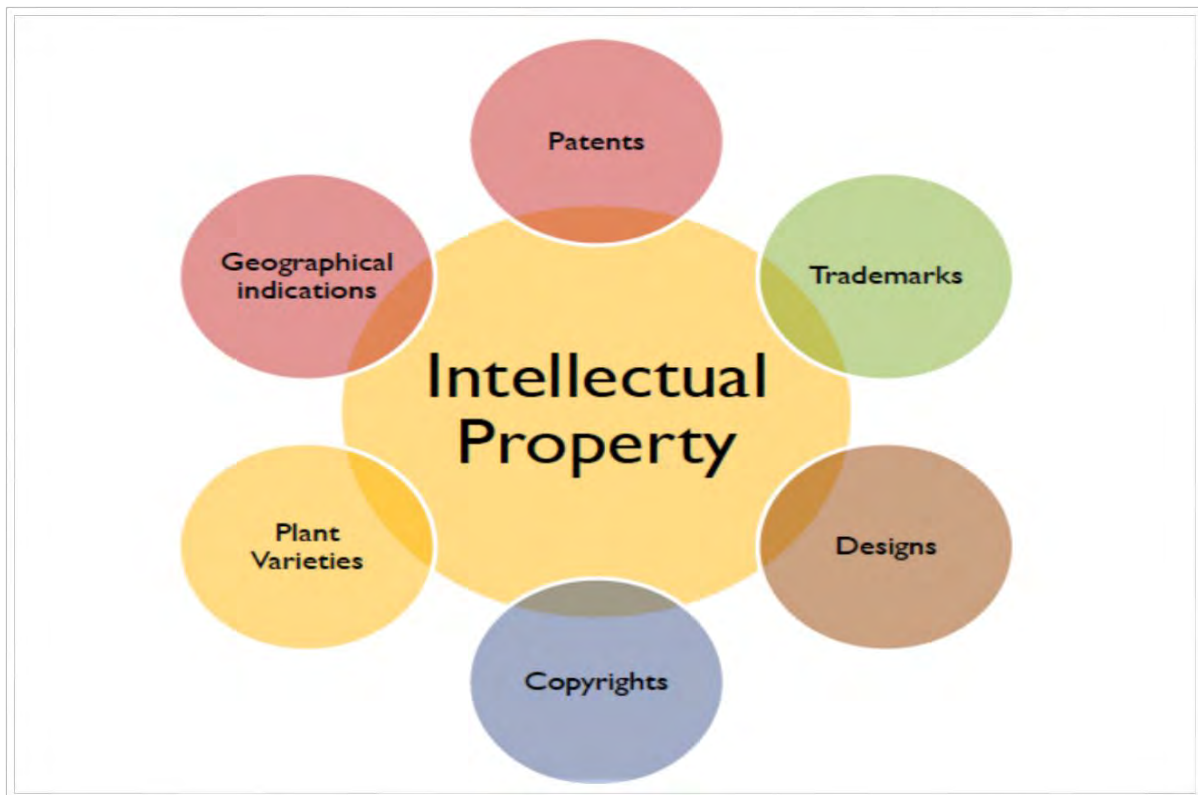
- The Intellectual Property Rights protect the original work in fields of art, literature, photography, writing, paintings, even choreography in written format, and audio, or video files.
- The IPR protects these works both in tangible and intangible form. Patent, Copyright, Trademarks, Trade Secrets, Industrial and Layout Designs, Geographical Indications are intellectual property rights for which legal remedies are available even for online infringements.
- With the technological advancements and innovations in cyber world the global markets have benefitted the copyright or patent owners. However, every good innovation has its own pitfalls as violation of IPR has become one of the major concerns because of the growth of cyber technology.
- The IPR and Cyber law go hand in hand and cannot be kept in different compartments and the online content needs to be protected.
- The ever-increasing and evolving cybercrimes are not confined to cyberstalking, frauds, cyberbullying, phishing, or spamming but are also infringement of IPR- copyright, trademark, trade secrets of businesses carried online, audios, videos, service marks by illegal practices like hyperlinking, framing, meta-tagging, and many more.

WHAT ARE INTELLECTUAL PROPERTY RIGHTS IN CYBERSPACE?

IPR can be defined as – “Intellectual property rights are the legal rights that cover the privileges given to individuals who are the owners and inventors of a work and have created something with their intellectual creativity.

Individuals related to areas such as literature, music, invention, can be granted such rights, which can then be used in the business practices by them.”

Types of Intellectual Property Rights



- The cyberspace on one hand has facilitated e-commerce.
- It is best suited to have an effective intellectual property management strategy for all the e-businesses encompassing a considerable number in cyberspace connecting with friends and family, publishing the literary works, and sharing knowledge.
- But at the same time these personal data or copyrighted or patented data become vulnerable to various cyber-attacks.
- It is best suited to have an effective intellectual property management strategy for all the e-businesses encompassing a considerable number in cyberspace.
- There are various laws nationally and internally to safeguard intellectual property against cyber-threats.
- It becomes the moral duty of the owner of IPRs to take all the required protective measures to negate and reduce illegitimate virtual attacks.

INDIAN LAWS ON IPR IN CYBERSPACE

➤ **Section 51 of Copyrights Act, 1957**

is noticeably clear give exclusive rights are vested in the copyright owner and anything to the contrary constitutes copyright infringement.

- Since there is no express legislation to determine the liability of **Internet Service Provider (ISP)**, Section 51 can be interpreted to fall within the ambit with respect to the facilitation of server facilities By ISPs for stockpiling user data at their business locations and which is broadcasted for making profit through charging for services and advertisements.
- However, to interpret in such a way the other ingredients are to be fulfilled in a cumulative manner, these ingredients are 'knowledge' and 'due diligence' to hold ISP liable in abetment of infringement of copyright.

- **Information Technology (Intermediaries Guidelines) Rules 2021 and Section 79 IT Act, 2000** provide conditional safeguard from liability of the online intermediaries, but at the same time its open for interpretation under any other civil or criminal Act.
- IT Act 2000 makes an intermediary non-liaible for any third-party content hosted on its site. The 2021 Guidelines entail following of diligent approach by the intermediaries to avail protection or exemption under Section 79 IT Act, 2000.
- Therefore, it becomes crucial for initiative-taking judicial interpretation depending on the facts of each case.

INTERNATIONAL LAWS FOR PROTECTION OF IP IN CYBER WORLD

- **Berne Convention (1886)** protects the IPRs in Literary and Artistic Works and for the developing countries specialised provisions are provided.
- **Rome Convention (1961)** covers creative works of authors and owners of physical indicators of intellectual property. It permits the implementation at domestic level by member countries where the dispute falls within purview of adjudication by International Court of Justice unless resorted to arbitration.
- **TRIPS (1994)** is a multilateral agreement on intellectual property that has the widest coverage of IPRs like copyrights and related rights.

CHALLENGES FACED IN PROTECTION OF IPR IN CYBER LAW



Copyright Infringement-

Copyright protection is given to the owner of any published artistic, literary, or scientific work over his work to prohibit everyone else from exploiting that work in his name and thereby gain profit from it.

When these proprietary creations are utilized by anyone without the permission of the owner, it leads to copyright infringement. If copies of any software are made and sold on the internet without the permission of the owner or even copying the content from any online source, these all are examples of copyright infringement.

Software Piracy –

Software piracy refers to the act of stealing software that is lawfully shielded. This stealing comprises various actions like copying, spreading, altering, or trading the software. It also comes under the Indian copyright act.

An example of software piracy is downloading a replica of Microsoft Word from any website other than Microsoft to avoid paying for it as it is paid software.

Piracy can be of 3 types:

1. Soft lifting
2. Software Counterfeiting
3. Uploading-Downloading

Cybersquatting –

Cybersquatting means unauthorized registration and use of Internet domain names that are similar to any business's trademarks, service marks, or company names. For example, let us consider Xyz is a very famous company and the company hadn't created a website yet. A cybersquatter could buy xyz.com, looking to sell the domain to the company Xyz at a later date for a profit. The domain name of a famous

company can even be used to attract traffic and this traffic will help cybersquatters earn a lot of money through advertising.

When more than one individual believes that they have the right to register a specific domain name, then this can lead to a Domain Name Dispute. It arises when a registered trademark is registered by another individual or organization who is not the owner of a trademark that is registered.

✚ Trademark Issues in Cyberspace-

Trademark means a mark capable of being depicted diagrammatically and which may distinguish the products or services of one person from those of others and will embody the form of products, their packaging, and combination of colors. A registered service mark represents a service. Trademark infringement refers to the unlawful use of a trademark or service mark which can cause ambiguity, fraud, or confusion about the actual company a product or service came from. Trademark owners can take the help of the law if they believe their marks are being infringed.

Domain name and trademark infringement issues-

In the words of Hon'ble Minister of Commerce and Industry, Shri Murasoli Maran, the **Trademark Bill** was introduced for the purpose of registration, protection, and prevention of fraud when it comes to the usage and goods and services.

It has always been the policy of most trademark holders to buy domain names which are resembling their trademarks, for example, a law firm with a registered trademark of “**nippon cool**” will rather prefer a domain like www.nipponcool.com rather than a domain name with www.soodcool.com. The main problem is that the domain names are assigned by the **ICANN (Internet Corporation for Assigned Names and Numbers)** on a “stand in line” basis which leads to a situation where “predatory domain names” are assigned which are abusive towards the

registered trademarks. Therefore, there are domain names that are formed where the domain name is registered containing a registered trademark, but the owner of that domain name does not have any legal right, interest, or lawful authority over the name of the trademark it is carrying.

CASE STUDIES

Landmark judgments on trademark v/s domain name

Yahoo! Incorporated v. Akash Arora and Another

In the case of Yahoo! Incorporated v. Akash Arora and Another, Akash Arora had registered a website in the name of www.YahoolIndia.com and aggrieved by this action of Aakash Arora.

Yahoo! Filed a trademark infringement suit in the Delhi High Court, the Court ruled in Yahoo!'s favor citing that Aakash Arora had malafidely registered the domain name in his favor, to siphon off the profits from the abusive use of Yahoo!'s trademark. The court laid down that

“registration of a domain name which is infringing the rights of a lawful trademark holder does not confer an absolute right. The defendant can be liable for trademark infringement because registration of domain name does not give him ownership over that domain name.”

Tata Sons Ltd. & Anr. V. Arno Palmen

The plaintiff instituted a suit for permanent injunction in the Delhi HC for infringement of trademark because the defendant had registered a domain name by name of www.tatainfotech.in which infringes the plaintiff's trademark, the High Court ruling in favor of the plaintiff laid down that the domain name was created in bad faith to fleece money from the plaintiff because the plaintiff is a well-known company which

sells distinguished goods and services all over India. Hence, the registration of the domain name was canceled as per the orders of the High Court.

NEW IMPLEMENTATIONS

In a special petition filed in 2021, the Supreme Court of India ruled that cyber attacks and data thefts are a crime under the Information Technology Act (IT Act) of 2000 and the Indian Penal Code (IPC). Since the IPC criminal statute is over 150 years old, a more modern and renewed IT Act of 2008 is the main regulation against cybercrime as of today.

IT Rules, 2021

On February 25, 2021, the Ministry of Electronics and Information Technology introduced the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 as a replacement for IT Rules, 2011. A little over a year later, on June 6, 2022, the newly updated draft amendments were published by the Indian MeitY (Ministry of Electronics and IT) to improve the IT Act to keep up with the challenges of the ever-changing digital landscape.

IT Rules, 2021 also distinguishes between smaller and more significant social media intermediaries based on user numbers and places a much heavier burden on larger social media intermediaries concerning personal data protection.

CONCLUSION

With the growth of Cyberspace and technology advancements, copyright and trademarks are not limited to the usual intellectual property alone but have spread to intellectual property rights over the internet.

Cyberspace is becoming a hub for intellectual property rights infringement. Several practices by the cyber site operators resulted in the violation of intellectual property rights and various other rights of other website operators. It has become crucial that people are aware of the illegal usage of their websites and webpages

International conventions and treaties have provided various laws to protect infringement of IPRs online which are helping e-commerce and e-businesses to grow. However, the Information technology Act does not provide any provisions in respect of cybercrimes related to IPR, cyberstalking, cyber defamation, etc.

Also, the Indian Trademark Act, 1999 and Copyright Act, 1957 are silent on issues on online Trademark and Copyright infringement. Though computer programs are protected under the Copyright Act, 1957, it does not provide remedies for cyber piracy.

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