

Internet, Electronic Commerce and Intellectual Property



The profound use of the Internet has affected the legal world in so far as the protection of intellectual property (IP) asset is concerned. IP has assumed similar importance in electronic commerce as it has in the offline commercial sphere, albeit with different aspects to be addressed.

The development of the World Wide Web in the early 90s has led to the evolution of the Internet from a mere technological infrastructure to a network linking people and ultimately to the forerunner of information and the digital age, which now plays a major role in the global economy. What initially started as a scientific and academic network has unleashed an era of electronic commerce with its easy access and multifunctional character. The increase in .com enterprises has led to the inception of new commercial mod-

els and business dynamics, whereby organisations are developing ways to exploit the Internet as a marketing and commercial tool. E-commerce has opened up avenues to increase revenues by engaging new clientele and by minimising staff expenses. A recent survey conducted by the Boston Consultancy Group reveals that India's total online retailing which constituted 0.9% of its total retailing industry in 2010 is expected to grow to 4.5% by 2016. User interest and participation are the main drivers that are leading India's Internet industry to ₹10.8 tril-

lion by 2016 which is about 5.6% of the country's Gross Domestic Product (GDP).

This profound use of the Internet has also affected the legal world in so far as the protection of intellectual property (IP) asset is concerned. IP has assumed similar importance in electronic commerce as it has in the offline commercial sphere, albeit with different aspects to be addressed. This article discusses challenges to IP law and e-commerce practices that raise trademark, patent and copyright policy questions in light

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of the role played by the Internet in the world economy and intellectual property system.

Copyright and Related Rights

The balance that a copyright system seeks to strike, that is safeguarding the rights of owners and public interest use, is the real challenge in the digital era. The creative content spanning the Internet and information constituting the subject matter of e-commerce are indeed protected by copyright. The rapid digitization and unauthorised copying, reproduction and distribution of their work has caused the right owners to bear significant losses. With the improvement in compression technology and expansion of bandwidth, even sharing of larger files has become very easy. Linking, framing, peer-to-peer file sharing has all led to rampant digital piracy. It is reported that the total number of users logged onto

major P2P networks at any one time is approximately 10 million, sharing over 10,000,000 GB (10 Petabytes) worth of data.¹ It is difficult regulating those P2P systems that are not using centralised servers but enable the user's computer to act as a search engine for processing each request and downloads.

The circumstances under which an Online Service Provider (OSP) should be held accountable for infringing activities initiated by the subscribers is another issue which needs to be addressed. Different jurisdictions have dealt with the issue either through legislative provisions or judicial pronouncements. In India, though the Copyright Act does not address the liabilities of online intermediaries, in so far as copyright infringement is concerned, the Information Technology (Amendment) Act, 2008, though directly not addressing any IPR issues, makes a provision that would have an impact on the IPR in e-commerce and

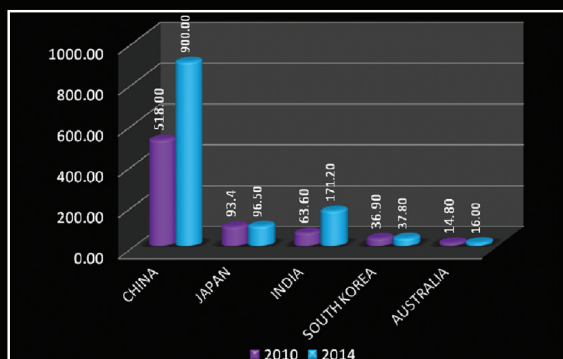
digital environment. It also tends to clarify the scope of immunities available to intermediaries.

The copyright owners may themselves use technological protection measures such as encryption and watermarking to safeguard their rights. Also under "Digital Rights Management (DRM)", IT tools can be employed to facilitate the right holder to exploit their proprietary rights. The DRM systems aim to enforce certain usage rules in respect of content protected by intellectual property such as the terms and price under which a person is entitled to use work. Industry experts are also of the opinion that in the coming days, copyright holders will rely more on licensing and contracts, together with copyright law to manage their IP assets.

Trademarks and Domain Names

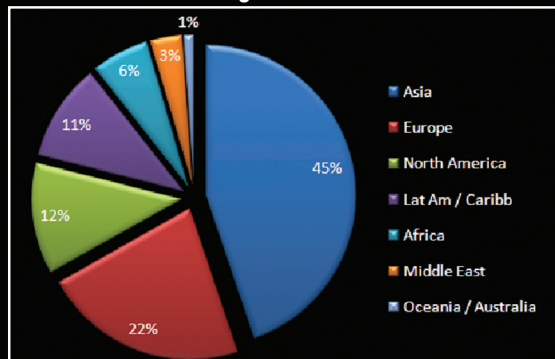
Trademarks are of considerable importance in e-commerce and are of

Internet Users in Select Countries in Asia-Pacific in 2010 & Predicted Growth in 2014



Source: eMarketer, Feb 2010

Internet Users in the World: Distribution by World Regions - 2011



Source: Internet World Stats - www.internetworldstats.com/stats.htm

¹Source: CacheLogic.com; ² Internet Domain Names and Trademarks, World Intellectual Property Organization.



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similar significance in the online world as in the physical world. The brand plays a crucial role in e-business, more so because the consumer is deprived of face-to-face interaction in the virtual market. The challenges that a trademark owner faces in the online environment include unauthorised deep linking, meta-tagging, banner advertising, framing, search engine marketing abuse, SEO manipulation, pop-up advertisement, mouse trapping, etc. The offences result in diversion of traffic to competing business, exploitation of right holders' brand for generation of advertising revenues and counterfeit, and grey market sales. These issues are alleviated by the territorial nature of trademark law and the global nature of the Internet.

Companies around the globe are coming up with innovative solutions to baffle trademark abuse on the Internet. One such approach is linking from common websites, such that a list of multiple trademarks is included on one website which further directs customers to relevant trademark sites. For example, disc.com offers access to Distributor Information Systems Corporation of Farmington, Connecticut as well as Dynamic Information Systems Corporation of Boulder, Colorado. This approach allows the companies to reconcile the limitation of registering only one disc.com domain name in cyberspace with the ability for separate businesses to own the same trademark in two separate geographic locations in the physical world. Disc.com states: "In the spirit of Internet cooperation, these two companies known as DISC

are sharing this intermediate home page. Please choose the company of interest."

Hiring the services of enforcement firms also pays dividend as these firms monitor trademarks and warn the right holders if such marks are registered that negatively affects his business. Technical measures such as use of Internet keywords, blocking access by Internet users located in a particular country, or by refusing to deliver goods or services to customers located in a particular territory may also alleviate trademark misuse on the Internet. For domain name disputes, such as typosquatting and cybersquatting the proceedings are initiated where country code top level domain (ccTLD) is registered. The Uniform Domain Name Dispute Resolution Policy adopted by ICANN offers an expedited administrative proceeding for trademark holders to contest "abusive registrations of domain names". In India the same is provided by IN Dispute Resolution Policy (INDRP) formulated by the .IN Registry.

Electronic Business and Patents

The innate technological nature and infrastructure of e-commerce relying on computer technologies, both hardware and software, highlights the prominence and significance of patent system in e-business. Undeniably the rapid technological growth in this arena is the outcome of incentives, provided by the patents to the researchers and innovators. The business intelli-

gentsia is however divided on the patenting of business methods. While the proponents of the system believe that patenting leads to knowledge sharing and offers distinctive advantage to businesses, the same practice is suspected to adversely affect competition. It is contended that companies may exploit the system to obtain patents for business methods that are not new and already exist in non-cyberspace. Nevertheless, patents have been granted to inventions pertaining to financial services, electronic sales and advertising methods and business methods, including business methods consisting of processes to be performed on the Internet, and telephone exchange and billing methods.

Management of Intellectual Property

Internet indisputably has emerged as a key to successful commercial ventures. It has become indispensable for companies to manage intellectual property assets including patents, trademarks and copyright in this dynamic environment. Before drafting business plans for e-businesses, an entity must conduct an IP Audit to clearly identify its IP assets relevant to e-commerce. The trademark and domain name should be chosen properly to avoid any potential cybersquatting and use of words that are restricted and prohibited. The online contents of the concerned company should be clearly identified with a copyright notice and policies should be framed against illegal copying of other's content or software. Relevant IP rights notices, and trademark and copyright disclaimers should also be inserted to restrict infringement. E-commerce can only attain its true potential in a global environment if issues like these are aptly acknowledged and addressed.



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