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IP for Social Media Influencers and Content Creators

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"Does anyone despise entertainment?" The media hasn't ever failed to amuse us. It plays a crucial part in our lives, from entertaining us with films to providing our brains with up-to-date information on current events. Through media, we may learn about what is going on in another area of the world from where we are. In this internet age, we may access any information or view movies on our phones from anywhere and at any time. Because the media is such a vast field that plays such an essential part in our lives, it needs some form of safeguard for the work of its personnel. Intellectual property can provide such protection to media. Intellectual property is applied in a variety of sectors. Social media has brought the globe so close that no one can fathom their lives without the internet platforms." However, social media can be both a blessing and a curse. The content given by social media is exposed to the people, and if it had not been about raising knowledge of Intellectual Property Laws, the content shared would have been vulnerable to exploitation by many. However, social media influencers have the right not only to register but also to protect their intellectual property rights under copyright and trademark laws. In this article, we are going to see how IP's role is important in protecting the works of media.

Keywords: *intellectual property, media, content.*

INTRODUCTION

The emergence of Social Media in today's world has really been tremendous, given the fact that there were times when we communicate externally only via postal mail. It refers to users'

activities, practices, and behaviours occurring through media via sharing information, knowledge, and opinions. These technologies are internet-based and they facilitate creativity, information sharing, and collaboration among users indeed, social media puts great emphasis on sharing, participating, and collaborating processes and activities. Social media, social networks, and social communities provide a new form of collaboration and communication for users.¹ Everyone nowadays is on some type of social media. Teenagers on Instagram Reels, Snapchat, influencers and small companies on Instagram and Facebook, or professionals on LinkedIn - when it comes to maximizing connections in any industry, social media is the first option that comes to mind. One of the big things about these social media platforms is that they are not only focussing on entertainment but also nowadays are transforming themselves into business platforms through content creation and social media influencing. A lot of people are selling, and promoting products on these platforms and so it becomes very so obvious that laws would come into application. Some of the laws that include are Competition laws, advertising rules, and regulations. The most important category of law that comes up with the topic of social media is Intellectual Property Rights. This article talks about IP Rights and how it is relevant and important for social media influencers and content creators.

WHY DO WE NEED IP RIGHTS

The social media landscape has changed vastly in the last few years, especially the most in the pandemic years. Some people have also made it their full-time employment to create content and do entertainment business through social media. The question that arises here is how does IP come into all of this and do we really need it? To get into the depth of the topic, intellectual property is in many ways directly related to the works of content creators and social media influencers. This field involves creators and artists of all kinds who constantly explore and create content of all varieties to keep their audience engaged and entertained. The creators are constantly pushing boundaries in the industry and developing things the world has never seen and sharing their views and interests as well as their lifestyles with people, contributing to making an impact in society and influencing people in ways their audience has never seen

¹ Prayank Khandelwal & Amandeep Kaur, 'Protect it, before you post it' (*Mondaq*, 1 December 2021) <<https://www.mondaq.com/india/social-media/1136590/protect-it-before-you-post-it>> accessed 24 July 2022

before. But along these lines, the loophole that comes is that the creators and influencers are so involved and committed to the creative works that they often forget to value their work in the market and forget to assess the value of their work in the industry and how to protect and also monetize it. Consider yourself an entrepreneur or a start-up company with a fantastic concept, product, or service. You have worked hard to establish what you are passionate about, and you anticipate your business to flourish successfully. Your progress and growth are halted in an instant, and all you have fought for is exploited. Are you secure? When it comes to securing their legal rights and safeguarding their creative output, tattoo artists, graphic designers, artist enterprises, graffiti artists, and the creative industry as a whole always encounter significant complications. Do you find this to be relatable enough? It usually can be pretty tragic when someone else uses the original work, without giving any recognition and credits and without the consent of the creator of the work, and takes all the profits, meanwhile, the original creators fail to get the financial as well as the platform value of their creative work. These creative ideas are the assets of the content creators and influencers and entrepreneurs are often overlooked and they fail to protect their work. The point of Intellectual Property rights is that when someone creates something using their own skills and art and their creativity, IP gives them the privilege to monetise it, have their leverage over it, and give it value in this world. The importance of Intellectual Property rights doesn't exist on its own, the value of Intellectual property rights comes from what the person is willing to do with them. For instance, when a content creator comes with something completely new and innovative that no one has ever heard of before and decides to copyright it, or trademark it, it does not imply that no one can further use their content on their platforms, in fact, it simply means that the value is in the hands of the original creator of the work, that is, whether they wish to exclude people from using their work, they have the access to exercise their right that they get through copyright, trademark, etc. IP rights give the original creators the power to strategize the usage of their work in the market. Another reason why IP is needed and is important is that it encourages innovation. It takes a lot of work and effort to come up with creative and genuine ideas which can be unique and useful or to create a brand. IP simply ensures the original makers of the content that once they finish creating a thing, they will have the ability to protect it and

capitalise on it and gain recognition in the market and the business industry. Intellectual property also benefits small businesses that emerge through social media platforms like Instagram, Facebook, etc. Intellectual property protects small businesses. In particular, it is very much visible that small businesses put a ton of time, money, and effort into creating their work, so if they create something and get a patent, the major corporations won't be able to come along and simply take away that small business in their name, instead, the major corporation will have to purchase the right to use their invention. Hence, intellectual property rights can facilitate and grow small businesses. It also helps to establish brand trust and awareness as it takes a lot of time in developing content and advertising their invention and getting the audience on board with their work, this result creates a relationship of trust between the public and the creators.

HOW CAN CONTENT CREATORS AND SOCIAL MEDIA INFLUENCERS ACQUIRE PROTECTION UNDER IPR?

Social media influencers sign agreements with different brands to create original content for those brands in order to promote their products. The agreement made between the influencer and the brand they are endorsing usually determines who has the right to such content. The brand/business shall own the right to all forms of content developed for marketing unless otherwise specified in the agreement. The original creator, i.e., the Influencer, owns the right to their work if there is no such clause in the agreement. That is one of the reasons a service level agreement must be created by a specialist.²At the most fundamental level, maintaining your content's originality and enhancing your competitive edge requires protecting your intellectual property with copyrights, trademarks, and trade secrets. However, more crucially, copyrights, trademarks, and trade secrets give rise to fresh profitable ventures that expand your company. Trade secrets, trademarks, and copyrights alter your work so that it can be used commercially. Once you have obtained the rights to your material, you may sell, transfer or grant licences to others just like you would with any other type of property. Through licencing, content creators can agree on a lucrative royalty that can take the form of a set fee or a portion of the revenue

² Diksha Shastri, 'Intellectual Property Rights for Social Media Influencers' (*Legal Wiz*, 7 March 2022) <<https://www.legalwiz.in/blog/intellectual-property-rights-for-social-media-influencers>> accessed 24 July 2022

the client makes from the content³. The outcome is that content producers develop a steady passive income that expands and supports their business over time. The question that pops up in our mind is how is the IPR law going to be applicable and what type of IP protection does a particular content require? When developing and sharing content, keep in mind that you may have the same concept as someone else when it comes to developing anything. When it comes to intellectual property, it is essential to understand acknowledgement and ask for permission. The term "Content Creator" refers to an expert who provides information to an audience via digital media. This includes blogging, writing news, making films, publishing on social media, and even composing emails. Video editors, multimedia artists, influencers, and even celebrities may all be content makers. The process of creating content, however, entails more than just sharing a design on Instagram to attract followers. It is a professional activity that needs both originality and analytical skills in order to determine what set of content to deliver.⁴

The different types of intellectual properties that every social media influencer and the content creator must be aware of are:

- Patent
- Trademark
- Copyright
- Trade Secrets

PATENTS: Patents serve as a method of securing the ownership of inventions by granting exclusive rights to a body, such as the government. These rights provide the artist with the option to forbid unauthorised reproduction, distribution, and sale of their work, protecting their intellectual property. As per the World Intellectual Property Organization (WIPO), "Patents protect the interests of inventors whose technologies are truly ground-

³ 'Social Media and Intellectual Property: When Sharing Might Not Be Caring' (*Stephenson Law*, 9 February 2022) <<https://www.stephenson.law/blog/social-media-and-intellectual-property-when-sharing-might-not-be-caring>> accessed 24 July 2022

⁴ Erika Lenkert, 'What Is a Content Creator and How To Become One' (*Adobe Express*, 12 September 2020) <<https://www.adobe.com/express/learn/blog/content-creator>> accessed 24 July 2022

breaking and commercially successful by ensuring that an inventor can control the commercial use of their invention.” In Simple terms, the concept or technology is still being distributed to enable the same kind of engagement, although with the restriction of exclusivity for a specified duration. For an agency to award you these rights, you must provide detailed information about the creation, such as the invention's technical needs and return on investment, through a patent application.

COPYRIGHT: Copyright is used to protect literary and creative works such as books, documents, visual creations such as photographs, paintings, and media productions such as films and music tracks. Copyright safeguards intellectual property by granting the creator the rights to their creation's production, sale, and duplication.⁵ One example is an author's exclusive dissemination of research papers or a content creator's necessity to acknowledge an art product such as a font type. It is frequently used while defending and seeking permission to exploit inventions (for example, using a track by a famous musician). So, whether it's your original reel, a musical work, a Video on youtube, a painting you uploaded, or a write-up you wrote as a social media influencer, everything is copyright protected. Even a tweet is secured as a literary work under copyright! All original works are protected by copyright. Copyright is granted to a fresh and unique work as soon as it is developed. However, it is always advisable to submit an application for copyright registration to get official documentation of ownership.

TRADEMARK: Trademarks are used to protect symbols like names, logos, signs, and slogans. They generally cover brands. Trademarks, like patents, safeguard intellectual property by granting the brand and creator exclusive rights to the creation's replication, distribution, and sale. In today's market, a distinct brand identity is essential in all commercial sectors. Influencers that make a lot of money from internet marketing must also protect and defend their own brand identification. The easiest method to accomplish this is to register a trademark. Trademarks encompass Instagram handles, YouTube channels, and user names on numerous social media sites.

⁵ John Guzman, 'IP Basics: Why Content Creators Must Know How to Protect Their Hard Work' (*Illustrados*, 16 June 2021) <<https://illustrados.co/the-value-of-ip-why-it-is-important-that-content-creators-must-protect-their-work/>> accessed 24 July 2022

The process of registering a trademark is identical to that of registering a patent. While patents frequently cover inventions, trademarks frequently cover brands.

TRADE SECRETS: Trade secrets, unlike other types of IP, do not need to be registered in order to be protected. You can discuss with or seek the assistance of the court to prevent someone from violating your trade secret. Trade secrets include secret techniques and other knowledge that provides an individual or a business with a competitive advantage. A trade secret's concrete examples include an organization's programs, devices, patterns, strategic plans, and methods. Another example of a trade secret is Coca-secret Cola's recipe. These things are frequently protected by non-disclosure agreements. Trade secrets are created to preserve the company's competitiveness as well as business procedures. If they are not safeguarded, outside entities might step in and jeopardize the company's assets.⁶

OTHER HELPFUL METHODS

You are familiar with the agreements you read when you join up for a social media account on Twitter, Facebook, or Instagram. When you sign up for them, you basically provide the platform owners with permission to handle your data. Read them carefully to better understand your intellectual property rights. Informing people that you own the copyright to the content you're publishing will help keep it secure on the platform you're utilizing.

- Encourage others to seek permission. Add the copyright sign, your name, and the creation date.
- Add digital watermarks to your media, such as your signature or logo. These may be accomplished using editing software such as photoshop for photos.
- Use lesser resolutions for your picture posts to restrict image editing options. This prevents third parties from providing superior derivative work.
- Take note of the content's publication date and time. These specifics are required to prove copyright infringement.

⁶ *Ibid*

CONCLUSION

Unlike industries that operate offline, anybody may readily and freely access original content that is available online. This may be seen as both a blessing and a misfortune for contemporary creators. But when your work starts to "trend," it gets harder to keep track of how, when, and where it is being copied or republished. This might simply appear harmless at first, but I am sure no one wants others to profit from their original efforts. Therefore, registering your original material under various intellectual property rights is the best approach to safeguard it. Do not undervalue intellectual property. Knowing, appreciating, and practising it will protect your creations from being copied or misappropriated by others.