



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Cyberspace and IPR Issues

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Received 10 February 2023; Accepted 01 March 2023; Published 04 March 2023

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*Computers and data technology (IT) have ushered in a brand-new universe in the cyber world that has given rise to several legal issues and occasional remedies. In the present internet era, copyrighted works and other types of Intellectual Property (IP) including trademarks, designs, copyrights, and layouts, are intertwined with both electronic technologies. More assertive protection laws are required in light of the current climate to safeguard fresh ideas and works of art as well as safeguard the true owners against financial harm. To safeguard Intellectual Property Rights (IPR) in electronic content, many concepts have been employed such as no responsibility, vicarious liability, and fair dealing principle. One of the crimes with the highest global growth is cybercrime. Whereas the Act has indeed been effective in establishing the foundation of legislation in the Cyber Law Environment and addressing certain significant questions about technological exploitation, it has several significant gaps that haven't been addressed, such as difficulties with intellectual property rights. IPs are described as information in just about any format that has an economic value. IPRs are a combination of ideas, innovations, and works; examples include designs, patents, copyrights, and trademarks. These items are referred to as intellectual property since they are works of human creativity. While IP violation is among the most difficult issues on the internet, the IT Act, of 2000 does not speak of it at all. Additionally, copyrights and domain name infringement do happen online, but neither the Trademark Act nor the 1999 Copyright Act, of 1957 address this problem directly. As a result, there is no system in place to make sure that web addresses are protected online which leads to IP issues. It is now necessary to adopt specific regulations to safeguard copyrights and other IPs online. This article clarifies several problems with IP rights protection in electronic or digital material.*

**Keywords:** *cybercrime, cyber law, intellectual property, web addresses, ip issues, intellectual property rights.*

## INTRODUCTION

The term "**intellectual property**" (IP) means human invention. It alludes to the idea's creator's ownership of thinking, creation, or idea. It grants the author of any original idea or distinctive production-specific rights, making it illegal to replicate or recreate duplicate, that material without such individual's consent. It falls under property law. It may be used for commercial activities by those involved in the arts, such as writers, musicians, and inventors. The word "intellectual property" refers to a wide variety of security measures.

Several systems are linked together by computing networks to form the virtual environment known as a cyber world where interactions may be established among devices. With the advancement of IT, everyone may now access the digital world. This reality sparked the growth of the internet as e-commerce, putting additional pressure on IP. Cybercrimes today include not just robbery, cyber harassment, and identity fraud but also infringements on the patents and copyrights of different companies. Since online material requires to be safeguarded, it is impossible to distinguish IPR from cyber regulations.<sup>1</sup>

While the Information Technology Act has indeed been effective at legislating virtual space, it has fallen short in protecting among the most serious constitutional privileges that result from human intellect, namely, copyrighted works (IP), which also refers to data and knowledge that have been conveyed in an intangible or tangible way and comprise patents, copyrights, integrated circuits, trademarks, and geographical indications. The insufficiency of the present law system & IP violation are the two greatest difficult internet issues that are inclusive of the Trademark Act, 1999, Copyright Act 1957 and IT Act). The IT Act, of 2000 has 3 main goals:

- To conform with and carry out the UN's invitation for homogeneity in the national legislation of the global community so that paper-centered exchanges can be replaced with online transfers, interaction, and collection;

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<sup>1</sup> Dr. Farooq Ahmad, *Cyber Law in India* (Allahabad Law Agency 2017)

- To enable online transactions via extremely easy transmitting storage and data of massive amounts of data available on the web; and
- To make state management more effective. The IT Act was designed to make online shopping secure, but it hasn't dealt with issues like copyrights, cybersquatting, patents, and website domain violation.

Another question of jurisdiction and enforceability should be whether, in the context of the global web, an Indian court can give directives that have the effect of worldwide injunctions, immediate worldwide banning, immediate additions, substitutions, or removals of web addresses, patents, trademarks, etc<sup>2</sup>.

### **COPYRIGHT ISSUES IN CYBERSPACE**

By giving artists the only able to reproduce and disseminate their creations for such purposes of the general public, copyrights encourage writers, musicians, and filmmakers to generate creative outputs. These compositions become part of the general public domain once the restricted rights, or duration of copyrights, expire, and anyone could duplicate them without authorization. Unique works of literature, theatre, entertainment, artwork, cinematography, audio recordings, and software applications are all copyright protected.

Nowadays, copyrights help a wide range of enterprises, such as those that produce and distribute books, periodicals, and newspapers; those that produce theatrical and music compositions for events; those that publish musical compositions and film; those that transmit; and others. As Intellectual Property, copyrights are much more readily and swiftly transferred from one nation to the next than some other types of assets. The development of technology has streamlined and made copyrighted content simple to duplicate. Furthermore, it is challenging and sometimes impossible to prevent copyright violations. Publications, audio cassettes, videotapes of movies, and software applications may easily be transported from one nation to

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<sup>2</sup> Indu Sharma & M. Afshar Alam, 'Privacy and Freedom Issues in Cyberspace with Reference to Cyber Law' (2016) 145(3) International Journal of Computer Applications

the other, manufactured into countless copies, and disseminated. Worldwide, unlicensed personal recordings of TV and radio shows have grown commonplace.<sup>3</sup>

### WHEN COPYRIGHT IN A PUBLICATION DEEMED TO HAVE BEEN VIOLATED

Any person violates the terms of a license so conferred or any situation levied by the relevant authority underneath this Act before even obtaining a license from a copyright owner or the Registrar of Copyrights underneath this Act; or

- Takes any action for which the holder has been granted the only authority under this Act.
- Allows any location to be utilized for the government's transmission of the works for revenue even when doing so would violate the copyright;

When a person does any of the following:

- creates, distributes, rents, allows for hire, or promotes for purchase or hire;
- publishes, whether for commerce, business, or to the degree that it adversely affects the holder;
- exposes using commerce in society; or
- Brings into our country.

Copyrighted publications are deemed to have been violated in each of the aforementioned situations. To obtain compensation from the offender, the holder of the computer copyright will need to demonstrate misleading similarities, a strong case, and severe damage.<sup>4</sup>

Cyberspace copyright issues include:

**Linking** - It enables a user to access another website on the web without quitting the one he/she is now on. Tapping on a phrase or picture solely on a single website does this. The interests or rights of the website's proprietor are hurt by links. Because profits are frequently equivalent to

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<sup>3</sup> Dr. Gupta & Agarwal, *Cyber Laws* (Premier Publishing Company 2022)

<sup>4</sup> Copyright Act 1957, s 51

the number of visitors, connected sites risk losing their earnings. It can give the appearance that two associated websites are affiliated with one other and advocate the very same content.

The Shetland News' <sup>5</sup>use of the Shetland Times' website's media headlines to deeply connect to integrated sections of the Times' site was found to be a copyright violation within British law in *Shetland Times, Ltd. v Jonathan Wills and Another*<sup>6</sup>, as well as an injunction was given as a result.

- Software piracy: The Indian Copyright Act also addresses this issue. This is the deliberate usage of software applications that has been illegally copied. Software counterfeit, soft lifting, and downloading and uploading are the three different forms of infringement.
- Cybersquatting and Trademark Infringement: By "trademark," we mean a mark that can be progressively larger and may differentiate one person's products or services from those provided by others. This trademark can encompass the shape of the items, their packing, and a color scheme.

When web addresses are purchased, traded, or acquired to benefit from the reputation of another person, this practice is known as domain name disputes. It is a criminal offense.

## **THE DOMAIN NAME AND TRADEMARK INFRINGEMENT**

According to the Trademark Act, of 1999, a trademark is defined as a sign that may be represented graphically for the products or services it identifies to be immediately identifiable and distinctive from the standpoint of the person viewing the sign<sup>7</sup>. Section 11 of the Trademark Act of 1999 currently goes into extensive length about the process and justifications for registering. The primary purpose and relevance of the trademarks and their licensing are to create resources, maintain a market presence, and add a dash of uniqueness to the individuality of the business. Furthermore, a trademark makes it simple for customers, partners, and owners

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<sup>5</sup> Vijay Pal Dalmia, 'Copyright Law In India- Everything You Must Know' (*Mondaq*, 14 December 2017) <<https://www.mondaq.com/india/copyright/655852/copyright-law-in-india-everything-you-must-know>> accessed 02 February 2023

<sup>6</sup> *Ibid*

<sup>7</sup> Trademark Act 1999, s 2(1)(zb)

to coordinate communications, find the associated merchandise and services, and purchase them.

## DOMAIN NAME

A website address is, to put it very succinctly, the language equivalent of what we refer to as an IP address. An address, which is similar to a mobile number, is present on every laptop. One must call the friend's contact if they wish to talk by phone. Similarly, to visit a webpage, he must put in its IP address. However, a mechanism where a name is linked to the relevant amount or source IP has developed because it is extremely hard for someone to memorize a whole number like 222.152.227.345.78. Now, all one needs to write is [www.nike.com](http://www.nike.com) rather than 222.152.227.345.78.<sup>8</sup>

## THE PARADOX OF DOMAIN NAMES VERSUS TRADEMARKS

The initial purpose of the Trademark Bill was to protect, register, and stop fraud in the use of products and services. The majority of brand owners frequently opt to buy web addresses that seem to be identical to existing trademarks; for instance, a law firm that has a trademark for "Pool" will select "[www.pool.com](http://www.pool.com)" over "[www.lawcunt.com](http://www.lawcunt.com)." The fundamental problem is that the Internet Corporation for Assigned Names and Numbers (ICANN)<sup>9</sup> issues web addresses on a "first come, first serve" basis, leading to "hostile web addresses" that are disrespectful to trademark registration. As a result, domains have been created that carry trademark protection. The owner of the web address does not, nevertheless, have any genuine authority or legal claim over the trademark's official title.

**1. Cybersquatting:** Domains are allocated on a first-come, first-serve first-served basis by the Internet Corporation for Assigned Names and Numbers (ICANN). There have been several

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<sup>8</sup> Dr. B.L. Wadhwa, *Law relating to Intellectual Property* (Universal Law Publishing Company 2009)

<sup>9</sup> Peter Loshin, 'What is ICANN (Internet Corporation for Assigned Names and Numbers)?' (*TechTarget*, November 2021) <<https://www.techtarget.com/whatis/definition/ICANN-Internet-Corporation-for-Assigned-Names-and-Numbers#:~:text=What%20is%20ICANN%3F%20ICANN%20%28Internet%20Corporation%20for%20Assigned,%28DNS%29%20management%20and%20root%20server%20system%20management%20functions.>>> accessed 03 February 2023

instances when domain names were identical to 3rd thirsty registered trademarks. If a trademark, as well as web addresses, are the same, the holder of the web address could be contemplating selling it on the public market to earn money or run the risk of damaging the business.<sup>10</sup>

**2. Reverse web address hijacking:** The domain holder can give over management of the site to the trademark holder out of fear of expensive legal fees and litigation. Reverse cybersquatting is typically committed by wealthy businesses and firms, or the sufferers are frequently smaller companies and individuals who do not have the available funds to fight the company.<sup>11</sup>

**3. Meta tags:** A Meta tag is comparable to brief labeling on shirts, or other apparel accessories; by looking at that tag, a person might discover a lot about the identity and quality of the item. To help search results organize the placement of online pages in response to consumer queries, Meta tags were developed. Online, trademarks and domain names connected to legitimate owners' trademarks are now being misused and false results are being produced using Meta tags.

## KEY RULINGS REGARDING DOMAIN NAMES V TRADEMARKS

### 1. Arno Palmen and Others v Tata Sons Ltd. & Anr. 563/2005, (Delhi High Court)

The Delhi HC received a lawsuit for trademark infringement seeking a permanent injunction from the claimant. The accused violated the complainant's trademark when it registered the web address "www.tatainfotech.in." The High Court upheld the complainant's claim that the web address was registered in bad faith to defraud the client of cash since the complainant is an established business that provides distinctive services and products throughout India. The domain name was canceled as a consequence of the decisions made by the High Court.<sup>12</sup>

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<sup>10</sup> Harish Chander, *Cyber Laws and IT Protection*, PHI learning Private Ltd. Publication, New Delhi, 2012, last accessed on 3<sup>rd</sup> February.

<sup>11</sup> Ananyaa Banerjee & Sanjana Kala, 'Reverse Domain Hijacking- Care-Full Who You Pick!' (*Mondaq*, 15 May 2020) <<https://www.mondaq.com/india/trademark/934040/reverse-domain-hijacking-care-full-who-you-pick>> accessed 03 February 2023

<sup>12</sup> *Tata Sons Ltd. & Anr v Arno Palmen & Anr* CS (OS) No 563/2005

## 2. **Yahoo Incorporated v Akash Arora and Anr.**

In the particular instance of *Yahoo! Incorporated v Akash Arora and Others*, Akash Arora enrolled a webpage with the web address "www.YahooIndia.com." Yahoo!, who was offended by this intervention of Aakash Arora, filed a trademark infringement lawsuit in the Delhi HC. The Court ruled in Yahoo's favor citing that he had malafidely enrolled the web address in his favor, to siphon off the earnings from the court ruling that "just registering a web address that breaches the rights of an authorized trademark owner does not grant an inherent right. Because registering a web address does not provide the accused the control of that web address, he may be held accountable for the violation."<sup>13</sup>

### RECOMMENDATIONS

The legal framework for penalizing cybersquatting is still absent in India. The National-Internet-Exchange-Of-India (NIXI), an autonomous organization, is in charge of registering any web address with the IN extension in India. At most, a court with jurisdiction may order that the web address be recaptured. To provide legal options against web addresses, intellectual property theft, and other IP-related matters of engaging in exploitative and breach of contract internet activities, new website domain registration and legal authority-associated laws should be passed. The IT Act of 2000 falls short in terms of internet piracy, and the Copyright Act and other Internet protocol-associated laws have failed to define exactly the worldwide injunctive relief granting power of courts. When it comes to jurisdictional difficulties, computer crimes involving IPR, cyber stalking, cyber defamation, etc., the IT Act, of 2000 falls short in various respects. The Copyright Act, of 1957 and Trademark Act, of 1999 are similarly quiet on matters relating to online Trademark and Copyright infringement. Although the Copyright Law protects computer software, it does not offer any remedies for digitally pirated software.

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<sup>13</sup> *Yahoo! Inc. v Akash Arora & Anr* (1999) PTC (19) 201 (Delhi)



## CONCLUSION

Infringement of intellectual property rights is increasingly occurring in the cyber world. The owners of other websites' intellectual property-related rights and numerous other rights were violated as a result of different actions taken by cyber site administrators. Consumers must now be mindful of the unauthorized use of their web pages and sites. Copyright and trademark are no longer restricted to traditional intellectual property solely due to the expansion of the internet and technological breakthroughs; they now include IPR on the internet. International treaties and agreements give a variety of regulations and standards to safeguard digital IPR violation that is assisting e-businesses and e-commerce is growing.

Considering intellectual property is one of a person's most precious assets and is produced with their talents and labor, it must be preserved at all costs. On the contrary hand, tough legislation in this area is desperately needed to stop future crimes involving intellectual property. The purpose of the proposed legislation on website domain disputes should be to provide trademarks and services mark owners with legal recourse against offenders who acquire web addresses "in breach of trust" that are either similar to or misleadingly close to a brand. For owners looking to safeguard their intellectual property internet, it should be a crucial tool.