

DEMANDING SITUATIONS FOR THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN ELECTRONIC FORM

SADHANA TRIVEDI¹, GARGI SENGAR²

ABSTRACT

The virtual age and the worldwide economy are now strongly related. due to the fact Nineties, the facts technology have accounted for a big percentage of funding and made a sizeable contribution to financial boom, supported through an intellectual belongings device that has furnished powerful safety for digital technology in the new economic system. organizations, people and governments have all profited from the advantages added with the aid of the ever-increasing and broadening use of the internet. The explosion of the internet, and the growth in .com enterprises, has profoundly shaken the financial global and has generated new industrial fashions; they have also affected the felony international by way of posing new issues, inter alia, in terms of the protection of intellectual assets on the net.

One of the key traits of the 21st century global economy is that expertise and intangibles have become more and more critical both as manufacturing factors and as consumption goods. it's far, therefore, hardly ever pretty that intellectual belongings rights (IPRs) have turn out to be a controversial issue. groups undergo greater investments in research and improvement (R&D) and design that allows you to generate and bring to the marketplace new services and products. that is at the root of the traditional anxiety among innovators and imitators, a tension that for lengthy happened often in the countryside scene and that now has taken a worldwide size. The boom in global change and overseas direct funding, related to the rise of latest actual and potential markets, has in truth improved the propensity of groups to search for earnings associated with their innovations and intangibles also at the worldwide

¹ Associate Professor, Faculty Of Juridical Science, Rama University, Kanpur

² Ll.m Student, Faculty Of Juridical Science, Rama University, Kanpur.

level. The generation of know-how is some distance from being geographically uniformly distributed.

KEYWORDS: E-Type, Copyright Etc

INTRODUCTION

The edition of intellectual property regimes to the new economy is needed not most effective to boost incentives to innovate, but also to adequately defend rights embedded in new technologies. New technology may make contributions to facilitating the supply of intellectual property services. As an instance of these tendencies, the current chapter provides works at the interface of intellectual assets and the brand new financial system undertaken in the international alternate business enterprise (WTO) and the sector intellectual assets agency (WIPO). It also notes that traits taking place in other organizations may have an effect on intellectual assets regimes, and net organisation for Assigned Names and Numbers (ICANN). As technology evolve, so must the protection of intellectual belongings rights. The virtual revolution and the emergence of a new economy have generated a continuous strain for the variation of intellectual property regimes to the brand new desires of rights-holders. This bankruptcy goals to offer with an outline of worldwide and country wide legal trends or projects, which might be precipitated by way of technological changes and relate to intellectual assets³.

THE CONCEPT OF INTELLECTUAL PROPERTY

The term ‘Intellectual Property Rights’ can be understood more particularly by breaking it into two parts; Intellectual refers to the mind, more specifically to the efforts of the mind. This part emancipates the present area of law is concerned with the realm of human creations, novelty and inventiveness. Broadly, Intellectual Property law can be divided into three parts; the first part, protection of Industrial Property, encompasses Patens for inventions and protection of Confidential

³ Philippe Cullet, Intellectual Property and Sustainable Development, Lexis Nexis Butterworths, 2005, p.10.

Information. Secondly, comes the protection for form and appearance, through Copyright, Design and Moral Rights. Thirdly, the law includes the protection for image and reputation, through the tort of passing off and Trade Mark registration. Therefore, it relates to that sort of property which a person creates through an application of his mind, rather than preexisting property that someone acquires. The word 'property' that describes intellectual property, like other form of property, consists of bundle of rights¹⁸ in the hands of the owner. The owner of intellectual property can, therefore, deal with it in much the same manner that the owner of real property can deal with it i.e. it can be transferred in whole or in part, exploited for commercial purpose and subject to exclusive use by owner as well. Intellectual property rights are in essence negative rights. Thus, it is possible to create value in that property if others are interested in acquiring the product or innovation.

DIGITAL ENVIRONMENT AND RIGHTS OF PERFORMERS: PROSPECTIVE CHALLENGES

It should be mentioned that while such audiovisual performances are protected by national laws, and also by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, no multilateral treaty covers the rights of performers in authorized audiovisual fixations of their performances.⁴¹ The issue is gaining importance because it is expected that audiovisual performances will be used in an increasing measure on the Internet, through film and music videos for example, as available bandwidth increases. Moreover, digital technologies permit the unauthorized manipulation and distortion of performers' images and voices (e.g., morphing). WIPO has organized various Diplomatic Conferences on the issue and is still looking for a way forward by maintaining dialogues and negotiations with member states. In India, section 38 of the Act deals with the performers rights and clearly states that unauthorized copy or reproductions of sound or visual recording or broadcast of the said performance amounts to infringement of the performer's right. However, it is still debatable as to how effective the said provisions are in the context of digital environment. Via the

copyright content providers and distributors can supply their material to a global audience, including via;

- (i) webcasting and
- (ii) Digital film and television online. Essentially it amounts to broadcasting over the Internet.

COPYRIGHT PROTECTION TO SOFTWARE

The software industry is one of the fastest growing industries since the last quarter of a century. It is a low-cost, intellect-intensive industry, with low barriers to entry. They are commercialized separately from the computer hardware. While incorporated in a floppy disc, hard disc of a computer or a CD-ROM, the item referred to as software is the series of commands that operates the computer. Though the floppy disc, the CD-ROM and the hard disc are each tangible commodities, which could be bought and sold, the software embedded in these media are intangible and fall into a very different category. However, due to its nature, software cannot be treated on the same footing as other traditional goods. When an item of software is sold, the owner of the software does not complete a sale in the traditional sense. Instead, he assigns or licenses some of his rights in the software in favour of the purchaser. The rights assigned would be very specific in their scope, indicating clearly to the purchaser the actions that he/she is permitted to perform in relation to the software.

Because software may be copied effectively at no cost, some means of restricting the free copying and redistribution of software work is necessary to preserve an investment in a software product through an appropriate system. Copyright is the most common means to protect computer programmes because writing of a code is similar to any type of literary work, while the criterion for the grant of copyright protection is significantly less stringent; the protection available through copyright is significantly less. Computer programmes are susceptible to copyright infringement and modern technology facilitates not only piracy of computer programmes, but also easy copying of the entire programme code. Inventions in computer hardware,

equipment, functional components, devices, etc. are generally protected through patents, in which case the general criteria of patentability are being applied, viz., novelty, nonobviousness and usefulness. However, protection of computer software, which is normally a mathematical formula or algorithm, falls in a separate category. There are important reasons for choosing copyright protection for computer software. Copyright protects the expression (form) of an idea and not the idea itself. It cannot be used to protect a procedure, process, and system, method of operation, concept, principle or discovery. The words 'schemes or in any other form' would seem to indicate that the source code and object code of a computer programme are entitled to copyright protection. The source code and object code reflect the author's creativity in devising and choosing the specific programme instructions, arranging the order of commands, etc., and represent author's individual approach towards using the computer's capabilities to accomplish the subject task Under the Copyright Act, 1957, it does not differentiate between source code and object code and they are covered under the Act as the literal elements of computer programme. In addition, copyright law also protects the appropriate non-literal elements of computer programmes, i.e., their overall structure or organization.

1.1 THE SECTOR EXTENSIVE NET, DIGITIZATION AND MIGRATION OF INTELLECTUAL PROPERTY ON INTERNET

In the early Nineteen Nineties, the term internet turned into more and more used to explain the growing community that depended on the NSFNET backbone and more and more, regional extensions of the network had been being constructed via for-income firms. In 1995, NSF introduced that it would withdraw help for the net's spine community. business vendors stepped in to soak up the slack, and the regulations at the net's business use were eventually withdrawn. during the Nineteen Eighties and early Nineteen Nineties the internet enjoyed consistent, sustained growth. In 1989, Tim Berners-Lee of the european organisation for Nuclear studies (CERN) wrote a proposal for organising a international hypertext machine with the recommended name of MESH. It laboured its way from thought to demonstrable prototype to

complete fledged machine over the next numerous years. however the lid was in the end blown off the relatively complacent evolution of the net whilst, in the mid-1990s, the sector huge net became available to millions, way to the improvement of user friendly web browsers, starting with Mosaic.¹⁶ The Mosaic Communications Corp. (now Netscape), created in March 1994, become staffed with the aid of the original group of developers from the college of Illinois. At that factor, all the previous soul-looking approximately the right makes use of of the net and discretion concerning its commercialization have become moot troubles as the prevailing walls installation through instructional and government efforts were flattened through the incoming stampede of interests from every sector⁴.

1.2 THE INTELLECTUAL ASSETS AND INFORMATION AGE: SHIFTING PARADIGMS IN CYBER SPACE

The IPRs gadget has dramatically modified in recent times. As a recent take a look at notes: “the on-going shift closer to a worldwide, expertise-primarily based economy has resulted within the regulation and economics of intellectual assets rights converting extra inside the final five years than inside the remaining centuries. under the original patent machine, society’s gain was the advent of a brand new art or era in usa. via the overdue eighteenth century, but, a first-rate change in the economic role of patents befell, moving the emphasis from the creation of finished merchandise into trade to the advent of new and useful records. The “primary gain changed into seen as the technological knowhow in the back of the inventor’s patent. The beneficiaries in this view have been now not simply the general public at huge, however rather others skilled inside the technical arts who ought to research something from the patentee’s invention.³⁶ intellectual assets regimes aren't best a device for the promoting and protection of innovation and new technology; they can also use new technologies, inclusive of the internet, with the intention to facilitate and enhance the rendering of intellectual belongings offerings, inclusive of rights’ control or exchange of

⁴ Lionel Bentley, Brad Sherman, Intellectual Property Law, Oxford University Press, New York, 2009, p.1.

applicable records. The WIPO has as a consequence moved towards the usage of digital systems to enhance and make its services greater green. several initiatives can be invoked. First, in March 1998, the WIPO member States authorized the status quo of a software to put in force a global statistics community for intellectual belongings places of work. This program - referred to as WIPO internet - is specifically meant to promote international co-operation via facilitating the virtual alternate of intellectual assets information between intellectual belongings places of work of its member States. functions of WIPO net also consist of: the digital submitting of programs for the registration of patents, emblems and commercial designs; the digital alternate of administrative facts beneath the worldwide protection structures administered by WIPO; the online dissemination of intellectual assets data culminating inside the development of a global-huge digital library. In doing so, WIPO internet strives to promote the modern improvement and alertness of global requirements and recommendations; and beautify the global use of strategic statistics for extra powerful protection and enforcement of intellectual property rights⁵.

1.3 COPY RIGHTS IN E-FORM

Copyright regulation protects expressions of ideas instead of the thoughts themselves. Copyright refers to a package deal of exclusive rights vested inside the owner of copyright. there's a near courting between intellectual property and the net, each in phrases of the technical infrastructure of the community and the products which might be traded on it. This migration of intellectual property onto the internet can be visible with recognize to every species of rights. within the area of copyright, good sized numbers of works of literature, film and artwork, and notably computer packages, have already transferred to the virtual environment. The content material this is distributed thru the internet, both lawfully or unlawfully, consists of software program, textual content, song and movies, products which are at the heart of the copyright system. software, protected as a shape of intellectual assets by way of patent and copyright law, underlies the operation of all virtual technology. structures

⁵ Ibid

software, including utilities and operating structures, enable our computers to function, even as utilities software program provides us with the applications that make the virtual networks so useful.⁴⁶ lots software program is included via intellectual belongings law, and its robbery is endemic. Textual works inclusive of books and newspapers are ideally suited to digitization and, although on line publishing of famous literature has had a combined reception with a public conversant in paper and ink, there may be proof of a growing call for for e-books. there has been actual fulfillment in the online availability of technological know-how, era and medical guides, wherein the demand for charge-based totally research has supported the e-publishing enterprise. online newspaper publishing is also prolific, although a lot of those to begin with unfastened websites are actually in search of to introduce subscription access. net logs or journals, that permits people to make their views available to the public without the need for intermediation by massive publishing houses or vendors.⁶

1.4 COPYRIGHT ISSUES AT THE INTERNET

The invention of the printing press, phonograms, radio and television broadcasting, cable and satellite transmission, videocassette recorders, compact disc (CD) and virtual flexible disc (DVD) era and, now, the net, has affected both the shape and the substance of intellectual belongings rights. Ever adaptable, intellectual belongings has now migrated to the net and is being modified to fit the web environment in various methods. It must be states that intellectual belongings has gained significance on this virtual environment as, increasingly more, enterprise assets are contemplated in intellectual in place of physical belongings. The price of many on line organizations, as an example, can be observed in their substantial databases of purchaser records, which can be the situation of intellectual belongings protection. within the realm of copyright too massive numbers of works of literature, film and artwork, and significantly pc packages, have already transferred to the digital surroundings.

⁶ Roger Schechter, John Thomas, Intellectual Property: the Law of Copyrights, Patents and Trademarks, West Group Washington, 2003, p.7 (stating the monopoly was granted in 1557).

software, covered as a form of intellectual property with the aid of patent and copyright regulation, underlies the operation of all virtual technologies. systems software, such as utilities and working systems, enable our computers to perform, at the same time as utilities software program presents us with the applications that make the virtual networks so useful. more and more, numerous newshounds, aspiring writers eminent social figures, academics, actors have engaged in on line publishing to publish 'blogs', net logs or journals, that allow individuals to make their perspectives available to the public without the need for intermediation through massive publishing homes or distributors. similarly inside the discipline of first-rate artwork, indigenous craft and artifacts, numerous museums and artwork galleries have digitized their collections and made them to be had for viewing on the internet. One such website online, Art net, lets in users to get right of entry to works by over sixteen, artists and in over , hundred art galleries. interesting questions have arisen as to whether the digital pictures of works of art, themselves, turn out to be derivative works entitled to copyright protection. There are also many artists the use of the digital technology themselves, to create artwork specially for the virtual networks⁷.

1.5 PATENTS IN ELECTRONIC SHAPE

A patent is an exclusive proper to make, use or promote an invention in a certain united states of america and it is a central authority granted monopoly on an invention. An invention usually is a tool or product or a way of creating a product, although also strategies for processing a sign can be patentable. In now a days's dot com international, many players are spending big sums on obtaining digital commerce "e-commerce" patents. maximum of these patents are a touch bit software patents, a little bit commercial enterprise approach patent, and likely invalid. there may be indeed developing subject among incorrect due to the fact a patent, as soon as issued, is presumed to be legitimate, that's one of the troubles, certainly. fact demonstrates that many e-commerce patents are not objectively valid and are rising from

⁷ Jeremy Phillips, Alison Firth, Introduction to Intellectual Property Law, Oxford University Press, New York, 2005 p.19

prosecution playing the equal presumption of validity that each one patents enjoy. In fact, many commercial enterprise approach and software program patents that have been issued had been confirmed to be invalid. traditionally it was best viable to reap patents on technological innovations, like mild bulbs, shavers, drug treatments and so on. New economic strategies or methods of selling matters have been frequently explicitly excluded in patent laws. This used to maintain authentic for software as properly, however because of the large boom of the software program enterprise and the growing desire to shield software-associated innovations, it have become possible approximately 10 years ago in maximum Western nations to patent software⁸.

CONCLUSION

Therefore, it may be concluded that in the span of only a few years, the net has advanced from a technical curiosity to an increasingly crucial and pervasive element of present day commercial enterprise and subculture. With its worldwide attain, the net affords intellectual belongings proprietors with a seemingly unlimited marketplace for their works. at the same time, but, the net offers in addition improved opportunities for the ones seeking to infringe the rights of others, at the same time as making the detection and elimination of such infringement extraordinarily tough.

The project that the law has confronted in the recent years is a way to foster the development of intellectual belongings on the net even as preventing its unauthorized exploitation. In fashionable, unauthorized use on the internet of every other's written words, logos, change names, service marks, literary characters, fix, song or sound is a violation of that birthday celebration's intellectual belongings rights, just as it might be in a non-net medium beneath conventional standards of intellectual property law. due to the fact intellectual assets infringement takes region at the net infinite instances every day, but, intellectual property owners have to make hard decisions approximately -the way to allocate resources to discover and prevent infringement. moreover, a number of the most common net infringements concerned an-prepared

⁸ Id. at p. 457.

web sites committed to numerous components of famous way of life, intellectual property owners may also chance alienating their purchasers and/or creating a possible public family members backlash via too aggressively defensive intellectual assets rights. finally, intellectual assets proprietors should be mindful of recent styles of possible intellectual belongings infringement that rise from the specific nature of internet generation, consisting of linking, framing, using metatags, spamming, and similar ideas.

BOOKS REFERRED

1. Acharya, N.K, Text book on Intellectual Property Rights, Asia law House, Hyderabad, 2006.
2. Aggarwal, Nomita, Jurisprudence, Allahabad Law Agency, Faridabad, 2001.
3. Ahmad, Tabrez M, Cyber laws, E-Commerce and M-Commerce, APH Publishing, New Delhi, 2004.
4. Bently, Lionel and Sherman, B, Intellectual Property Law, Oxford University Press, Delhi, 2004.

WEB SITE REFERRED

1. <http://www.judis.nic.in/>
2. <http://www.niscair.res.in/>
3. <http://www.manupatrafast.com/>
4. <http://www.supremecourtfindia.nic.in/scr.htm>
5. <http://www.ssconline.com>
6. http://www.slp.wa.gov.au/legislation/statutes.nsf/main_actsif.html
7. <https://www.der.wa.gov.au/>