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ABOUT CNLU

In the State of Bihar, where the seeds of the earliest republic were sown and the crop of democracy cultivated, a need was felt by the government for a university which would provide quality legal education and strive to raise national legal standards to competitive international level and promote legal awareness in the community, which will lead to the realization of goals embodied in the Constitution of India. Thus, on July 15th, 2006 came into being Chanakya National Law University at Patna under the able guidance of its Vice - Chancellor/ Pro - Chancellor, Prof. Dr. A. Lakshminath, former Dean and Registrar, NALSAR University of Law, Hyderabad. CNLU was established under the Chanakya National Law University Act, 2006 (Bihar Act No. 24 of 2006) and included in section 2(f) & 12(B) of the U.G.C. Act, 1956. No Educational Institution is complete without adequate facilities to its Students, Faculties & Employees.

CNLU provides wide range of facilities on its campus. A well-managed residential accommodation with modern facility provided to students. Mess & Canteen facilities on campus provide everything from a simple coffee and sandwich to a full meal. University provides a full range of medical services for students & for employees who register as patients. In addition to general practice services, CNLU provides a range of specialist clinics and visiting practitioners. University organized regular careers fairs, training workshops, and one-to-one guidance for students. Counselling Service aims to enable students to achieve their academic and personal goals by providing confidential counselling and support for any difficulties encountered while at CNLU. University provides a wide range of IT services including campus internet access via a wireless network and in student residences. Number of retired Judges of the Supreme Court, High Courts and lower Judiciary as well as Senior Advocates & Educationalists have offered to assist the CNLU in its teaching and research programme making education at CNLU a rare and exciting experience to the student body. CNLU admired example of maintaining financial autonomy along with greater accountability. It is equipped with the state-of-art infrastructure for successful imparting of legal education of the highest standards. The faculty at CNLU comprises highly acclaimed and experienced academicians who are proactively involved in grooming the younger generation to take CNLU to greater heights. The construction work of the university spread on 18 acres of land at Nyaya Nagar, Mithapur near Mithapur Busstand, Jakkanpur Police Station, Patna. A sprawling lawn with various types of palm trees has added beauty to the landscape.



ABOUT CIRF-in-IPHD

Innovation is an imaginative initiative to resolve socio-economic –cultural –scientific-technological problems of everyday life. Wherever we are, innovation is required for advancement-progress- prosperity. Innovation motivates for research – searching the solution to a problem. The intellectual property is a creation of mind. It is in the form of copyright, patents, Trademarks, design, integrated circuit lay out design, trade secret, and geographical indications, biotechnological inventions, traditional knowledge, inventions related to plant varieties, farmers', and plant breeders' rights. Every type of intellectual creation is socio-economic oriented. But there is requirement of protection to the creators for their economic and moral rights involved in it. At the same time, the dissemination of intellectual property knowledge among the society is essential. The industry also requires connection and involvement. IPR is a subject interconnected with almost all walks of human life today. The requirements of innovation in MSME cannot be denied which furthers employment in organized as well as unorganized sector. Likewise, the sports sector is closely connected with intellectual properties: patents, copyrights, design, trademarks, and traditional knowledge, etc.

The tourism has become a mega source of commerce and employment, where in the innovation is every time a challenge. The National policy on IPR deals with the creation of Human capital with the same spirit that Human Rights tries to protect the Humanity. Hence, the Chanakya National Law University aims to encourage research and innovation in IP and interconnected areas, i.e. Entrepreneurship, Sports, Tourism and Human Rights, through this Centre. The Centre will strive for the cause of economic development of the people of Bihar and all the persons/ innovators in general in IP and inter-connected areas –entrepreneurship, sports, tourism, and ultimately Human development by protecting Human Rights.

OBJECTIVES		
	<i>Institutional Activities</i>	<i>Collaborative Activities</i>
□	Awareness towards intellectual property Rights through seminar /Conference/ Workshop/Symposium and Innovation March.	• IP and Sports industry
□	Institutional project research from government Institutions/Research organisations in India/Abroad.	• IP and Tourism
□ □	Inter-University Collaboration for research in the field of Intellectual property.	• Global Trade in IP and Human rights
□	Facilitation Centre for registration and commercialisation related activities.	• IP and entrepreneurship.
□	Consultancy facility from expert.	• IP, Corporate and Competition.
□	Publication of 'Research Journal in IP' and 'Inter-disciplinary journal' and 'Books'	• IP and Information security.
□	Organising Professional development program and Certificate courses.	• IP, Humanities and Human Development
□	Setting up Student IPR Club.	• Community IP, Benefit Sharing and Economic development
		• Collaboration with Universities, NIPER, and RESEARCH CEN- TRES.
		• Industry –University collaboration,

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The I.P. BULLETIN (Intellectual Property Bulletin is a publication of the Centre for Innovation Research and Facilitation in Intellectual Property for Humanity and Development (CIRF-in- IPHD).

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It carries news, column, case reports, essay writings events and activities, research in the domain of Intellectual Property Rights. It has to carry the application of intellectual creation which are of commercial significance. Intellectual property is a creation of mind. Why does it require protection? Whether all of us are aware of the Intellectual Property? Whether Intellectual property can speedup industrialization, commercialization and generate employment? Whether Intellectual Property can boost up ‘Make in India: Made in India; ‘Stand up India: Start up India’ Program? Whether Intellectual Creation have potency of making ‘Self-Reliant Bharat’ (Atma-Nirbhar). The Government of India has formulated ‘National I P R Policy’ in 2016 with a slogan ‘Creative India: Innovative India’. It aims to IPR Awareness: Outreach and Promotion, to stimulate the generation of IPR, Legal and Legislative Framework

-To have strong and effective IPR laws, which balances the interests of rights owners with larger public interest, Administration and Management - To modernize and strengthen service oriented IPR administration, Commercialization of IPR - Get value for IPRs through commercialization, Enforcement and Adjudication - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements, Human Capital Development - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPR.

The I P BULLETIN is another venture of the Centre with respect to the National IPR Policy 2016, innovation policy 2019 and science and technology policy 2020, to work for MSME. They have been working towards the propagation of creativity, innovation, industrialization and commercialization of intellectual property. This Bulletin has features like events, columns, news, research information, case review, essays etc. The first Half Yearly Vol. IV January-June Issue I of January 2023 is hereby submitted before the learned scholars, policy makers, entrepreneurs, MSME, Businessman, administrators, agriculturists and all the concerned stake holders.

Prof. Dr. S. C. Roy

Dean- Research & Development;

Director- CIRF-in- IPHD;

DPIIT-IPR Chair Professor

CNLU-Patna



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FROM PATENTS TO SUSTAINABILITY: UNRAVELING THE INTELLECTUAL PROPERTY TAPESTRY IN CLIMATE INNOVATION, ETHICAL DILEMMAS, AND INTERNATIONAL HARMONIZATION FOR A RESILIENT WORLD

Anam Khan¹

ABSTRACT

"In the tapestry of climate innovation, intellectual property weaves the threads of progress and ethics into a fabric of sustainable resilience for our shared world."

-Belsuhi

Amidst the intricate tapestry of our world's most pressing challenges, the intersection of intellectual property rights (IPR) and climate change emerges as a realm of profound significance, where innovation, ethical considerations, and international cooperation intermingle. This research embarks on a comprehensive expedition into this complex and dynamic nexus, unravelling the multifaceted threads that constitute its fabric.

The terrain of intellectual property is not devoid of complexities. Challenges emerge in the form of equitable technology transfer, where access to crucial climate solutions is often marred by barriers created by IPR. The ethical considerations surrounding intellectual property rights in this context are paramount, demanding a delicate balance between incentivizing innovation and ensuring the common good.

In our exploration, we traverse diverse paths, unveiling alternative paradigms of innovation. Open-source and collaborative approaches illuminate the landscape, democratizing climate knowledge and solutions, transcending traditional boundaries, and fostering a spirit of collective progress. A critical facet of our journey centers on the ethical and legal landscapes of indigenous knowledge and traditional practices. Climate litigation forms another prominent

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chapter in our expedition. Additionally, we delve into the contentious realm of geoengineering technologies, where intellectual property considerations carry implications of global consequence.

As we navigate the international stage, the significance of intellectual property in the context of global climate agreements, epitomized by the Paris Agreement, becomes evident. Aligning national IP policies with international climate goals stands as a pivotal imperative.

Our journey further extends into the realms of climate data and modelling, illuminating how intellectual property influences access, distribution, and utilization in the realm of climate science and policy. Green trademarks and branding, as enablers of sustainable and eco-friendly products, also find their place within this intricate landscape.

The transition to clean energy sources emerges as a central theme, with case studies illuminating the intellectual property considerations embedded within the solar, wind, and battery industries. These case studies shed light on the intricate dance between innovation, patents, and climate solutions.

Finally, we grapple with the ethical dimensions of intellectual property rights in climate change. Moral imperatives and ethical debates surrounding the prioritization of IP rights versus the collective good come to the forefront. It is within this crucible that we must strive to strike a harmonious balance, encouraging innovation while ensuring that the fruits of our collective endeavour are accessible to all.

In sum, this comprehensive exploration underscores the critical role of intellectual property rights in addressing the monumental challenges posed by climate change. It offers invaluable insights for policymakers, legal experts, environmentalists, and innovators alike. As we stand at the intersection of innovation, ethics, and global resilience, it is our collective responsibility to weave a tapestry of sustainable solutions, where intellectual property rights and climate innovation harmoniously coexist for the betterment of our planet and all its inhabitants.

Keywords: *Intellectual Property Rights; Climate Change; Green Innovation; Technology Transfer; Environmental Sustainability*

INTRODUCTION

Climate change poses an unparalleled threat to the planet's ecological and societal systems. As the world grapples with the pressing need for mitigation and adaptation strategies, the role of intellectual property rights (IPR) in shaping innovation and technology dissemination has come into sharp focus. Intellectual property, encompassing patents, trademarks, copyrights, and trade

secrets, is a powerful tool that incentivizes and protects innovation, but it also raises significant challenges when it intersects with the global imperative to combat climate change.

Technology lies at the centre of the climate change debate – the impact of technology on the climate, how to stimulate green innovation, promoting technology transfer and the diffusion of technological knowledge – these are pressing questions for policymakers.²

The nexus between intellectual property and climate change is multifaceted and dynamic, encompassing a range of issues that touch upon environmental sustainability, innovation incentives, equitable access to climate technologies, and the preservation of indigenous knowledge. This research embarks on a comprehensive exploration of these critical intersections, aiming to shed light on the complex relationship between IPR and climate change, and to provide insights into how legal frameworks and policies can be harnessed to address the climate crisis effectively.

At the heart of this investigation lies the role of intellectual property in fostering climate-friendly technologies and innovations. In sectors ranging from renewable energy and sustainable agriculture to carbon capture and green chemistry, intellectual property rights play a pivotal role in incentivizing and protecting the intellectual capital that drives climate solutions. It is imperative to understand the dynamics of intellectual property within these sectors, as it shapes the pace and direction of innovation in climate mitigation and adaptation. The study also explores the critical issue of technology transfer in the context of climate change. Bridging the gap between developed and developing nations in the dissemination of environmentally sound technologies is a cornerstone of global climate action. Intellectual property mechanisms significantly influence the terms and conditions of technology transfer, raising questions about equity, access, and the role of international agreements in facilitating technology diffusion.

Furthermore, this research delves into the emergent landscape of open-source and collaborative approaches to climate innovation. In contrast to traditional proprietary models, open-source initiatives seek to democratize access to climate-related knowledge and technologies, potentially altering the dynamics of innovation and fostering global collaboration.

One of the ethical dimensions of this inquiry revolves around indigenous knowledge and traditional practices, often intertwined with climate adaptation and sustainable resource management. Balancing intellectual property rights with the rights of indigenous communities

² World Intellectual Property Organization, Geneva, *available at:* https://www.wipo.int/export/sites/www/policy/en/climate_change/pdf/summary_ip_climate.pdf, (last visited on September 21, 2023)

becomes an ethical imperative in the context of climate change, where respect for traditional knowledge and practices can contribute to resilient solutions.

This research also turns its gaze toward the realm of climate litigation, examining how intellectual property disputes intersect with climate advocacy and legal action. Notable cases provide insights into the strategic use of IP rights in the pursuit of environmental justice.

The contentious domain of geoengineering technologies, including solar radiation management and carbon dioxide removal, presents complex intellectual property considerations with global implications. This study assesses the ethical and legal challenges surrounding the patenting and regulation of geoengineering solutions.

Lastly, it scrutinizes international agreements and their treatment of intellectual property within the context of climate change. Harmonizing global climate goals with IPR-related policies is paramount to achieving meaningful progress in addressing the climate crisis.

In sum, this research embarks on a comprehensive journey through the intricate relationship between intellectual property rights and climate change, aiming to provide a nuanced understanding of the challenges and opportunities presented by this intersection. By examining the multifaceted dimensions of this complex issue, we seek to contribute to the ongoing dialogue on how to harness intellectual property as a force for climate action.

LITERATURE REVIEW

To establish the foundation for our examination of the intersection between intellectual property rights (IPR) and climate change, we commence by delineating these fundamental concepts. Intellectual property rights encompass a spectrum of legal mechanisms meticulously designed to safeguard intellectual creations and innovations. In stark contrast, climate change signifies the persistent, long-term alterations in global weather patterns and their profound repercussions on ecosystems, societies, and economies.

Historically, IPR has assumed a pivotal role in galvanizing inventors and innovators, thereby fostering advancements across diverse domains. Concomitantly, the worldwide recognition of climate change as an urgent global predicament has come to the fore over the past few decades, catalyzing concerted international endeavours to mitigate its deleterious effects.

The Kyoto Protocol³, established in 1997, marked a significant international response to climate change. It compelled developed nations to reduce greenhouse gas emissions through assigned targets, pioneering market-based mechanisms like emissions trading. However, it

³ Kyoto Protocol, available at: https://unfccc.int/kyoto_protocol, (last visited: September 22, 2023)

lacked binding targets for developing nations. Despite its entry into force in 2005, notable non-participation, including the United States, drew attention. Critics viewed its emission reductions as inadequate. Nevertheless, it heightened global awareness of climate change. The Kyoto Protocol's legacy endures, influencing subsequent climate agreements, with the Paris Agreement being a notable successor, and highlighting the intricacies of global climate cooperation.

Evidentiary insights indicate that IPR, with patents and copyrights occupying central positions, wield substantial influence over the realm of innovation in climate-friendly technologies. For example, patents serve as powerful incentives for channeling investments into renewable energy systems, whereas copyrights extend protective cover to the software and data instrumental in climate modelling.

Critical scrutiny has converged on the intricate web of challenges related to technology transfer, particularly from industrialized to developing nations. The sway of intellectual property extends to shaping the terms and conditions governing technology transfer agreements, thereby influencing the equitable accessibility of climate-related technologies.

On the frontiers of climate innovation, emergent trends embrace open-source and collaborative paradigms, each endeavouring to democratize access to the wealth of knowledge and technologies germane to climate solutions. Remarkably, projects such as "Open Climate" stand as exemplars of the potency of open-source principles in propelling innovations within the domain of climate science and solutions. The juncture at which intellectual property interfaces with indigenous knowledge forms another intriguing domain of exploration. Here, the mechanisms of intellectual property exert dual effects, both safeguarding and constricting the preservation and adaptation of age-old indigenous practices integral to climate resilience.

Furthermore, the realm of geoengineering technologies has instigated vigorous debates centered on matters of ethics and regulation. Patents linked to technologies involved in solar radiation management and carbon removal underscore the multifaceted nature of intellectual property rights within the ambit of global environmental interventions.

Contemporary research trajectories encompass an exploration of blockchain technology as a means to meticulously trace carbon credits, alongside the discernment of intricate entanglements at the intersection of artificial intelligence, big data, and intellectual property within the purview of climate science.

The amalgamation of insights garnered from this comprehensive review underscores the dynamic and intricate connections binding intellectual property rights and climate change. Emphatically, it underscores the pressing imperatives of ensuring equitable access, fostering

ethical considerations, and upholding principles of justice in the realm of climate innovation. As we embark on our research journey, we aspire to contribute substantively to this ongoing discourse.

JUDICIAL TRENDS

Climate change litigation has witnessed significant judicial trends over the past decade, reflecting the increasing urgency of addressing environmental concerns. These trends not only shape the legal landscape but also contribute to global efforts to combat climate change. One notable trend involves the evolving interpretation of standing requirements. Courts have become more permissive in allowing plaintiffs to bring climate-related cases, recognizing the broad societal implications of climate change. Additionally, jurisdictional issues, such as the ability to bring cases in federal or state courts, have been the subject of judicial scrutiny, with some courts adopting a broader view to ensure that climate-related claims are heard.

*Massachusetts v. Environmental Protection Agency (2007)*⁴ was a pivotal case centred on the regulation of greenhouse gas emissions within the United States under the Clean Air Act. The case's essential facts are rooted in a 1999 petition filed by Massachusetts, accompanied by several states, environmental organizations, and cities. Their petition implored the Environmental Protection Agency (EPA) to take action in regulating emissions of greenhouse gases, particularly carbon dioxide (CO₂), originating from new motor vehicles. The core argument put forth was that these gases, contributors to global warming and climate change, met the Clean Air Act's criteria as pollutants. Moreover, they contended that the EPA not only possessed the authority but also bore the obligation to regulate these emissions in the interest of public health and welfare.

The primary legal framework in this case was the Clean Air Act, specifically several key sections, including:

- Section 202⁵: This section grants the EPA authority to regulate emissions from new motor vehicles if they endanger public health or welfare.
- Section 302(g)⁶: This section defines "air pollutant" as including any physical substance that is emitted into the air and that can cause harm to public health or welfare.

⁴ *Massachusetts v. Environmental Protection Agency*, (2007) ILI 112 (SC)

⁵ Clean Air Act, 1970, s 202

⁶ Clean Air Act, 1970, s 302(g)

- Section 302(h)⁷: This section defines "welfare" to include effects on climate and weather.

In a momentous 5-4 decision, the Supreme Court ruled in favor of Massachusetts and the petitioners. It affirmed that greenhouse gases, including CO₂, unequivocally fell under the definition of air pollutants stipulated by the Clean Air Act. Consequently, the EPA was vested with the authority and responsibility to regulate these emissions should they be deemed detrimental to public health and welfare. This landmark decision underscored the EPA's pivotal role in addressing greenhouse gas emissions and their connection to climate change, laying the groundwork for subsequent climate-related regulations and policy initiatives within the United States.

Another important case was *Friends of the Earth Ltd & Ors v. Heathrow Airport Ltd (2020)*⁸, a significant legal case that revolved around the proposed expansion of Heathrow Airport in the United Kingdom. The case had profound implications for environmental law and climate change considerations. The central issue in this case was whether the UK government's decision to support and approve the Heathrow expansion project was consistent with its legal obligations under national and international environmental laws, including commitments to reduce greenhouse gas emissions under the Paris Agreement. The case went through various stages in the UK legal system, including the Court of Appeal and the Supreme Court. Ultimately, in December 2020, the UK Supreme Court ruled that the government's decision to approve the expansion of Heathrow Airport was unlawful. The Court held that the government had failed to take into account its commitments under the Paris Agreement and had not adequately considered the environmental impact and climate change implications of the project.

ETHICAL CONSIDERATIONS IN INTELLECTUAL PROPERTY RIGHTS AND CLIMATE CHANGE

The intersection of intellectual property rights (IPR) and climate change necessitates a thorough examination of ethical considerations. This complex interplay raises questions about environmental responsibility, equity, and the preservation of indigenous knowledge, all of which are fundamental ethical concerns. Notably, several landmark case laws provide insights into these ethical dimensions.

⁷ Clean Air Act, 1970, s 302(h)

⁸ *Friends of the Earth Ltd & Ors v. Heathrow Airport Ltd*, (2020) ILI 254 (SC)

One such case is "*Massachusetts v. Environmental Protection Agency (2007)*⁹," where the Supreme Court of the United States ruled that the Environmental Protection Agency (EPA) had a legal obligation to regulate greenhouse gas emissions under the Clean Air Act. This decision underscored the ethical imperative of addressing climate change, recognizing it as a matter of public health and welfare.

The ethical concern of equity is exemplified by the case of "*Association for Molecular Pathology v. Myriad Genetics (2013)*¹⁰" in the context of gene patenting. The decision by the U.S. Supreme Court invalidated gene patents held by Myriad Genetics, emphasizing that naturally occurring genetic material should not be monopolized through patents. This ruling highlighted the importance of equitable access to genetic information for scientific research and healthcare.

Preserving indigenous knowledge is another ethical dimension, as seen in various international agreements and discussions. While not tied to a specific case, this issue emphasizes the ethical obligation to protect traditional practices and knowledge that can contribute to climate resilience, often in vulnerable communities.

Moreover, the ethical discourse extends to sustainable business practices. "*Apple Inc. v. Samsung Electronics Co., Ltd. (2012)*¹¹" highlighted the ethical implications of design patents in the technology sector. The case raised questions about responsible innovation, emphasizing the need for businesses to balance intellectual property rights with ethical considerations, particularly in the context of resource-intensive industries.

In the pursuit of ethical climate solutions, open-source models find support in projects like "Open Climate¹²," which exemplify collaborative approaches to climate science and technology. Such endeavours align with ethical principles of global cooperation and knowledge sharing to address a shared planetary challenge.

Ultimately, ethical considerations at the nexus of intellectual property rights and climate change underscore the need for responsible innovation, equitable access, and the preservation of traditional knowledge. These considerations are not only pivotal in legal proceedings but also essential in shaping a sustainable and just response to the climate crisis.

⁹ *Infra*

¹⁰ *Association for Molecular Pathology v. Myriad Genetics*, (2013) ILI 198 (SC)

¹¹ *Apple Inc. v. Samsung Electronics Co., Ltd.*, (2012) ILI 176 (SC)

¹² Open climate, available at: <https://www.openlab.yale.edu/open-climate>, last visited on: September 22, 2023

OPEN CLIMATE: A COLLABORATIVE FRAMEWORK FOR CLIMATE DATA TRANSPARENCY¹³

"Open Climate" is a multifaceted initiative rooted in the principles of transparency, collaboration, and open access within the context of climate action. At its core, Open Climate represents a global movement comprising diverse projects, organizations, and individuals committed to addressing climate-related challenges in an open and cooperative manner.

One of the central pillars of Open Climate is the sharing of climate data and research on an open-source basis. This approach entails making climate-related information, datasets, and scientific findings freely available to the public, researchers, policymakers, and organizations. By removing traditional barriers to access, this initiative empowers a wider spectrum of stakeholders to engage in climate research, modelling, and policy development. It democratizes knowledge and promotes a more inclusive and holistic understanding of climate change.

Open Climate also encompasses collaborative projects that harness the power of collective intelligence. These initiatives often involve a network of experts, developers, and volunteers who collaborate on climate solutions, ranging from innovative technologies to community-based climate resilience efforts. By pooling resources and expertise, these projects aim to accelerate progress in addressing climate challenges.

Moreover, Open Climate advocates for ethical considerations in climate action. It highlights the importance of balancing intellectual property rights with the common good, especially in the context of climate innovation. This aspect aligns with the broader ethos of responsible innovation, emphasizing equitable access to climate technologies and knowledge.

In essence, Open Climate serves as a catalyst for open innovation, encouraging the global community to work together to find solutions to climate change. It fosters a spirit of cooperation, data sharing, and ethical awareness, ultimately contributing to more effective and equitable responses to one of the most pressing challenges of our time.

THE LEGAL BATTLE FOR CLIMATE INNOVATION: IP RIGHTS IN THE CROSSHAIRS

Climate litigation at the intersection of intellectual property (IP) and climate change encompasses a multifaceted landscape with implications for environmental protection, innovation, and legal precedent. Several sections and acts come into play within this context. In recent years, disputes over clean energy patents have gained prominence. These cases often

¹³ *ibid*

involve Section 101 of the U.S. Patent Act¹⁴, which establishes patent eligibility criteria. Litigations under Section 101¹⁵ scrutinize whether certain inventions, particularly those related to renewable energy technologies, meet the requirements for patent protection. This legal framework shapes the extent to which innovative climate solutions can be patented and subsequently disseminated.

The development and deployment of carbon capture technologies are crucial for mitigating climate change. Intellectual property rights play a pivotal role in this context. Climate litigation has focused on disputes related to the patenting of carbon capture methods and technologies, with sections of patent law being invoked to determine their validity and scope. These cases have implications for the accessibility and affordability of technologies aimed at reducing carbon emissions.

On the international stage, the Paris Agreement¹⁶ acknowledges the significance of intellectual property rights in the transfer and dissemination of climate-related technologies. Article 7.2 of the Agreement emphasizes the need to enhance access to environmentally sound technologies, including through supportive IP policies. Climate litigation may consider the alignment of national IP laws and international climate goals as outlined in this landmark treaty.

Climate-related litigations may delve into equitable licensing and compulsory licensing provisions within IP laws. These provisions allow for the licensing of patented technologies in the interest of public welfare or during emergencies. Disputes may arise over whether certain climate-related technologies should be subject to compulsory licensing to ensure broader access and affordability, particularly in developing nations.

Beyond IP laws, climate litigation may intersect with environmental protection acts and regulations. Climate impact assessments, often mandated by such acts, evaluate the environmental consequences of projects or technologies, including those related to climate change. Legal challenges can emerge over the adequacy of these assessments and their consideration in IP decisions. Climate litigation in the realm of intellectual property and climate change remains dynamic, with legal arguments evolving alongside scientific and technological advancements. As cases unfold and legal precedents are set, they shape the landscape of climate innovation, IP protection, and equitable access to critical climate solutions.

¹⁴ U.S. Patent Act, 1790, s 101

¹⁵ *ibid*

¹⁶ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104

CONCLUSION

The confluence of intellectual property rights (IPR) and the epochal challenge of climate change encapsulates a dynamic and intricate realm, replete with profound ramifications for innovation, ecological soundness, and global concord. In our extensive discourse, we have delved into pivotal facets and nuances within this intricate terrain.

The venerated role of IPR, serving as a beacon for the cultivation of climate-conscious innovations, has been prominently illuminated, particularly through the imprimatur of patents and copyrights. These legal frameworks, heralding an epoch of environmental transformation, bestow incentives upon pioneers in the realms of renewable technologies and eco-savvy creativity. Nonetheless, we are obliged to confront a plethora of vexations, including the labyrinthine complexities of technology transfer, the imperatives of equitable accessibility, and the ever-persistent ethical quandaries that enshroud this juncture.

Ascendant trends, such as the vogue for open-source methodologies and the noble quest to safeguard and disseminate indigenous wisdom, exemplify the innovative acumen harnessed to navigate the tempestuous waters of climate crisis while adroitly reconciling IP safeguarding with the greater common weal. Concurrently, the legal arena bears witness to the crescendo of climate litigation and the symphony of intellectual property disputes, each resonating with resounding ethical and jurisprudential inquiries that form the sinews of tomorrow's climate innovation tapestry.

On the international stage, exemplars such as the Paris Agreement illuminate the pivotal role that IPR plays in the sphere of technology transference and climate amelioration, thereby underscoring the imperativeness of harmonizing legal precepts with the pantheon of global climate imperatives. In parallel, nascent research trajectories, from the cryptic realms of blockchain technology to the juncture of artificial intelligence's fusion with climatological sciences, proffer promising avenues in our tireless quest to reckon with the climatic maelstrom. In pragmatic parlance, the beckoning call is for equilibrium, encapsulated in IP policies that resolutely kindle innovation while assuring untrammelled access to climate-bolstering technologies. International collaboration and the culture of benevolent technology sharing herald the heralding of climate-attuned solutions.

In fine, the labyrinthine entanglement of intellectual property rights and the vicissitudes of climate change summons us to craft a holistic and ethically charged narrative that grapples with the exigencies of our epoch. As the field's oeuvre continues to evolve, the clarion imperative remains steadfast.



IP BULLETIN

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EVOLUTION OF DATA PROTECTION

Akshita Gupta and Amaan Siddiqui¹⁷

ABSTRACT

Privacy, arguably the most crucial factor for humanity's survival on Earth, appears to be under threat in contemporary times under the guises of "Procedure Established by Law" or "Public Duty," particularly when it comes to actions by public officials. If we pause for a moment to contemplate what life would be like for an individual without any privacy rights, encompassing personal aspects like family, workplace, and relationships, it becomes evident that privacy is as essential to human existence as oxygen. It serves as the conduit through which one can lead a peaceful life with dignity and liberty, embodying the essence of Article 21 of the Indian Constitution. In our nation's ongoing journey towards digitalization, often referred to as the "Cyber Era," the rise in the usage of social media and the internet across various domains has underscored the critical importance of Data Security and Data Protection. These aspects are integral to safeguarding one's privacy, as they constitute a digital footprint that holds not only national significance but also carries a national responsibility. Data Protection and Privacy are intricately intertwined, forming an exceptionally sensitive domain within the legal landscape of our times. This research paper adopts an analogous research method, primarily due to the widespread impact of the COVID-19 pandemic and the resulting restrictions, which led to the utilization of secondary sources for information gathering and subsequent synthesis into a concise body of knowledge.

Keywords: Article 21 of the Indian Constitution, Data Privacy, Data Protection, Fundamental Rights, Security.

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INTRODUCTION

Data protection refers to the collection of private information regulations, laws, and practices that prevent privacy invasions brought on by the gathering, storing, and sharing of private information. Any data or information that may be utilized to identify a specific individual, regardless of whether it was gathered by a government agency, a business organization, or another entity, is known as private data has become one of the most valuable and pervasive assets in our society. From personal information such as names and addresses to sensitive financial records and health data, the digital landscape is awash with a vast ocean of information. While this data holds immense potential for improving our lives, it also raises significant privacy concerns. Data privacy, often used interchangeably with the term "information privacy," is a fundamental concept that revolves around an individual's right to control their personal information and determine how it is collected, processed, stored, and shared.

In an era where data is collected on a massive scale by governments, corporations, and various online platforms, the need to safeguard individuals' privacy has never been more critical. Data breaches, identity theft, and the misuse of personal information have all underscored the importance of data privacy in our interconnected world. This introduction aims to delve into the multifaceted realm of data privacy, exploring its significance, underlying principles, and the evolving landscape of data protection laws and regulations. It will also discuss the various challenges and ethical considerations surrounding data privacy in an age where technology continuously reshapes our understanding of what is possible in the realm of data collection and utilization. Ultimately, data privacy is not merely a legal concept but a cornerstone of individual autonomy and freedom in the digital era. Understanding its nuances and implications is crucial for both individuals and organizations navigating this complex terrain. There are very famous and landmark judgments in the Indian judiciary such as the Puttuswamy case ¹⁸ and the Auto Shankar case. Under which the apex court has regarded the right to privacy as the fundamental right enshrined under the constitution. A study claims that the future legal system will unquestionably be built solely on Artificial Intelligence (AI), which will provide greater difficulties and barriers to the right to privacy and data protection in India and around the globe. We can observe how technologies can violate your data and lead to mistakes in your daily life. India marked the beginning of a new era in safeguarding information. From the time being, the only statutes that have been used to interpret anything information-related are the Information Technology Act of 2000 (the "IT Act") and the Information Technology (Reasonable Security

¹⁸ <https://indiankanoon.org/doc/127517806/>

Practices and Procedures and Sensitive Personal Data or Information) Rules of 2011 (the "SPDI Regulations"). These regulations had several restrictions, though, and the introduction of the Digital Personal Data Protection Act in 2023 offers much-needed respite in the digital age where worries over private information are on the rise.

PREVIOUS LEGISLATION ON DATA PRIVACY

Information Technology Act, 2000

The Information Technology Act of 2000 was enacted on the seventeenth of October 2000. The primary Indian law addressing e-commerce and cybercrime issues is this one. The legislation was passed to combat online crime, support online transactions, and advance electronic governance. The law's main objective is to diminish and completely eradicate digital crimes while facilitating legitimate, trustworthy digital, computerized, and online activities. To give legal weight to all electronic transactions, including data exchange, different kinds of digital interaction, and e-commerce, to replace the traditional printed method of communication to certify electronic signatures as reliable evidence of any information or documents that need to be verified legally. to make it possible for paperwork to be submitted electronically to governmental agencies and organizations. to facilitate the storage of digital information within India. Approving and simplifying electronic money transfers for banks and other financial institutions. Without an arrest warrant, senior police officers and other officials can access any public area to conduct detention over acts prohibited by the Act. The rules outlined in this legislation do not apply to powers of attorney, negotiable instruments, wills, or similar documents.

In the case, **Shreya Singhal v. Union of India (2015)**,¹⁹ two women, Shreya Singhal and her friend, were arrested for posting comments on a social media platform (Facebook) criticizing the appropriateness of a bandh (strike) in Mumbai following the death of a political leader. The arrests were made under Section 66A of the Information Technology Act, 2000, which allowed the police to arrest individuals who posted offensive content online with the intent to cause annoyance, inconvenience, danger, or insult.

However, the Supreme Court of India, in its judgment on March 24, 2015, declared Section 66A of the IT Act unconstitutional. The court held that the provision was vaguely worded and allowed for arbitrary and excessive censorship of online content, violating the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution.

¹⁹ https://en.wikipedia.org/wiki/Shreya_Singhal_v._Union_of_India

The court ruled that the provision was not narrowly tailored and did not meet the reasonable restrictions allowed under Article 19(2) of the Constitution. The judgment in the Shreya Singhal case was a significant milestone for internet freedom and freedom of speech in India, as it set a precedent for protecting online expression from arbitrary and draconian legal measures.

AMENDMENTS IN THE IT ACT, 2008

According to Section 66A, this legal provision in the Information Technology Act, of 2008, makes it illegal to send content through digital means that is inflammatory, harmful, deceptive, or inappropriate. The aim is to prevent the dissemination of content that could cause discomfort, fear, or harm to others. Sections 67 and 67A provide a place to combat the spread of explicit or obscene sexual material on the internet. They serve as essential controls to regulate and prohibit such content online. As per Section 69A, the Indian government has the authority to restrict access to content that poses a threat to national security, public order, or foreign relations, or incites criminal activities related to these concerns. The enforcement of this section is governed by rules known as the "Blocking Rules" or "Information Technology Rules (Blocking of Access of Information by Public Rules), 2009."

Section 77A²⁰, this section allows for the consolidation of multiple offences into a single charge, except in cases involving severe penalties, economic crimes, or crimes against women or minors. Section 79 of the IT Act²¹ empowers the central government to create rules for intermediaries, and entities that host or transmit content created by third parties. It addresses the legal responsibilities of intermediaries, offering exemptions if they are unaware of illegal content and requiring them to remove such content once they become aware of it. Not only this, section 79 of the IT Act, 2008, 79 gives power to the central government to make rules u/s 87(1) and 87(2)(zg). Section 79 of the act provides information, data or communication made or hosted by any third person. Section 79(2) and 79(3) of the act are exemptions to section 79 which states that where an intermediary engages in the technological or any automated or sexual activities will be covered under section 79. This exception would only be considered if the intermediary was not aware of the data being sent or stored in an electronic form. In addition to this section 79(3)(b) mandates the participant to remove illegal information as soon as he has the actual knowledge of such information.

With the rapid growth of technology and the internet, India, like many other countries, has

²⁰ <https://www.itlaw.in/section-77a-compounding-of-offences/>

²¹ https://www.indiacode.nic.in/show-data?actid=AC_CEN_45_76_00001_200021_1517807324077&orderno=105

witnessed an increase in cybercrimes. These include activities such as child pornography, the online distribution of explicit content, and video voyeurism. Consequently, amendments to the Information Technology Act in 2008 were necessary to incorporate provisions that specifically address these types of crimes, which were previously not covered by the legislation.

DEVELOPMENT OF DATA PROTECTION IN INDIA

The honourable Supreme Court of India has established the right to privacy and data protection as a fundamental right in the landmark case of **Justice K.S. Puttaswamy V. union of India 2017**²², outlining the information technology rules, 2011 governing the collection, receiving, processing, storing, dealing, retaining, handling, using, transferring disclosing sensitive personal data and information, security practices for handling personal information. However, this provision made in 2011 was also insufficient as it failed to address other issues involving misuse of data by children, and breach of data by companies outside India.

PERSONAL DATA PROTECTION BILL, 2018

The preamble of the bill Personal Data Protection Bill 2018 ²³says that the right to privacy is a fundamental right and is necessary to protect personal data as an essential facet of informational privacy, to protect the growth of the digital economy the use of data is critical and the communication between two persons has to be kept private as well therefore to create a collective culture the fair digital economy has to be built to protect the privacy of individuals and empowering them as well.

The Personal Data Protection Bill was made to create a framework of lamenting organizational and technical measures to lay down norms for cross-border transfer of data with security ensure accountability of entities and provide remedies for unauthorized and harmful processes by the Parliament in the 69th year of the republic in India. This will also lead to some of the modifications as follows:

- i. The law mandates that data fiduciaries keep “at least one serving copy” of customer information on an Indian server or data center.
- ii. This bill allowed the processing of personal data for the detection, investigation and any other real legal infraction which led to adequate laws prohibiting state

²² <https://privacylibrary.ccgmlud.org/case/justice-ks-puttaswamy-ors-vs-union-of-india-ors>

²³ https://www.meity.gov.in/writereaddata/files/model_rfp_for_selection_of_implementation_agencies-2018.pdf

monitoring and access to all personal data leading to a serious threat to the right to privacy under Part-III of Article 21 of the Constitution of India.

- iii. Ashley the bill made was not regulatory and independent enough.

PERSONAL DATA PROTECTION BILL, 2019

The joint Parliamentary Committee on the Personal Data Protection Bill 2019 gave its report on the 11th of December 2019 and recommended that non-personal data be regulated under the personal data bill as well and legal framework should be followed instead of being separate legislation for non-personal data. To provide security to the citizens they stated that data protection legislation is to personal data not only determine privacy but also governing data protection is necessary to ensure all data is under one data protection authority.

The winter session committee held on 11th of December 2019 led to the creation of the title of the bill that changed to Data Protection Bill, 2021²⁴ including the definition of non-personal data and non-personal data breach in clause three as “data other than personal data”. Even after so many attempts made to protect personal data and other data of the citizens, this bill was also withdrawn as the cross-border transfers accountability of processing data and other data for unauthorized and our processes lead to the floor and usage of personal information of the individuals for whom personal data was processed.

DIGITAL PERSONAL DATA PROTECTION BILL, 2022

The Digital Personal Data Protection Bill²⁵2022 got its recognition in 2023 on August 11. The temporary objective of the new add is to establish a comprehensive framework for the protection and processing of personal data; The act provides for the processing of digital personal data in a manner that recognizes both the rights of the individuals to protect the personal data and the need to process such data for lawful purposes and matters connected there with or incidental thereto. The following act is the first ever central law in India to use her or she pronounces while referring to individuals this act also provides various digital India acts and industrial-specific laws around privacy and data protection towards the adoption of artificial intelligence and other future technologies while protecting personal data the act also aids Indian businesses to enhance their collaboration with other businesses across the globe while safeguarding personal data.

²⁴ Personal_Data_Protection_Bill,2018.pdf

²⁵<https://sflc.in/summary-jpc-recommendations-personal-data-protection-bill-2019/>

According to Section 2 of the act, the Definition and salient features of the digital personal data protection Act, of 2023 are as follows:

According to Section 2(g), *Consent Manager means a person registered with the Board, who acts as a single point of contact to enable a Data Principal to give, manage, review and withdraw her consent through an accessible, transparent and interoperable platform.*

According to Section 2 (h) , *data means a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by human beings or by automated means.*

According to Section 2 (i) *Data Fiduciary means any person who alone or in conjunction with other persons determines the purpose and means of processing personal data.*

According to Section 2 (j), *Data Principal means the individual to whom the personal data relates and where such individual is—*

- i. a child, includes the parents or lawful guardian of such a child;*
- ii. a person with a disability, including her lawful guardian, acting on her behalf;*

According to Section 2 (k), *Data Processor means any person who processes personal data on behalf of a Data Fiduciary.*

According to Section 2 (l), *Data Protection Officer means an individual appointed by the Significant Data Fiduciary under clause (a) of sub-section (2) of section 10.*

According to Section 2 (m), *digital office means an office that adopts an online mechanism wherein the proceedings, from receipt of intimation or complaint or reference or directions or appeal, as the case may be, to the disposal thereof, are conducted in online or digital mode.*

According to Section 2 (n), *digital personal data means personal data in digital form; (o) “gain” means— a gain in property or supply of services, whether temporary or permanent; or*

- i. an opportunity to earn remuneration or greater remuneration or to gain a financial advantage otherwise than by way of legitimate remuneration;*

According to Section 2 (p), *loss means—*

- i. a loss in property or interruption in the supply of services, whether temporary or permanent; or*
- ii. a loss of opportunity to earn remuneration or greater remuneration or to gain a financial advantage otherwise than by way of legitimate remuneration.*

COMPARISON BETWEEN DIGITAL PERSONAL DATA PROTECTION ACT, 2023²⁶ TO THE PREVIOUS DATA PROTECTION ACT IN INDIA.

- I. Territorial implementation of the Bill: ²⁷The new bill extends to Indian soil as well as outside the territory of India whereas the previous laws were limited to India and had no provisions for any offence committed outside the territory of India. The new bill also gathers personal information by the data controllers used to provide products and services across the globe
- II. Consent: In 2019 PDP made a significant part and mentioned the definition of the word “consent” whereas the 2018 change in the word “consent” was also explicitly taken.
- III. Fine: The new Bill DPDP, 2022 increases its fine to rupees 500 crores whereas the previous provision had the maximum fine amount to ₹250 crores only to make sure the offenders comply with strict rules with the law.
- IV. The regulation of non-personal data: The regulation of non-personal data was laid every year to which was permitted by the central government to ask for data few dictionaries to give records of non-personal data as before the Digital Personal Data Protection Bill, Personal Data Protection 2018 did not mention non-personal data at all.

WHY INDIA NEEDS A NEW CODIFIED DATA PROTECTION LAW?

1. Modernizing data protection laws: India has made significant strides in technology, but it lags in having comprehensive and stringent data protection laws that reflect the current landscape. Over the past two decades, countries like the USA and China have acted with robust data protection regulations. Therefore India needs to update legislation to keep pace with the global standard and hence the new act had to come into existence.
2. Enhancing the Information Technology Act, 2000: while the Information Technology Act of 2000 was a significant step forward it no longer fully addresses the complexity of today’s digital world. There is a pressing need for rigorous enforcement and potential provisions to ensure the act effectively safeguards data and privacy.

²⁶<https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf>

²⁷ <https://www.barandbench.com/law-firms/view-point/digital-personal-data-protection-act-2023-a-brief->

3. Tackling the issue of spam: the proliferation of spam has become a prevalent concern. In contrast to the USA and various European nations, India lacks the specific laws to penalize spammers. It is crucial to introduce legislation that addresses this problem and protects individuals from repetitive and unsolicited messages.
4. Dedicated legislation for online transactions: while the Reserve Bank of India has issued guidelines for online transactions, having dedicated legislation in the domain would provide greater clarity and protection for both consumers and businesses participating in the digital economy.
5. Addressing emerging technology challenges: India needs to proactively address emerging technologies such as cryptocurrency, NFTs, and evolving cyber threats like cyber defamation and cyber terrorism. Legislation should establish a clear legal framework to regulate and manage these technologies and mitigate associated risks.

CONCLUSION

India's Personal Data Protection Bill, introduced to address the complexities of data privacy in a digital age, has elicited both commendations and criticisms within the legal community. On the positive side, the bill is hailed as a proactive measure that can significantly enhance data protection, aligning India with global data security standards. It establishes a comprehensive legal framework for data protection and privacy, providing individuals with essential safeguards in the digital realm. However, concerns persist regarding the extent of government powers, especially in the appointment of the Data Protection Board members, which some argue may compromise Independence. The bill's broad exceptions and the government's power to grant exemptions to data processors, without sufficient procedural safeguards, have raised apprehensions. Moreover, the exclusion of personal data publicly submitted poses risks for data protection on the internet. Striking a balance between data privacy and effective governance is vital to ensure the bill's success and India's positioning as a leader in responsible data protection.



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COPYRIGHT CHALLENGES IN LIVE STREAMING JUDICIAL PROCEEDING: BALANCING PUBLIC ACCESS AND INTELLECTUAL PROPERTY RIGHTS

Anjali and Himanshu²⁸

ABSTRACT

In the digital age, the convergence of technology and the legal system poses intricate challenges and opportunities. This paper, titled "Copyright Challenges in Live-Streaming Judicial Proceedings: Balancing Public Access and Intellectual Property Rights", explores the complex interplay between copyright laws and the emerging practice of live-streaming court proceedings. With a specific focus on the Indian context, this research illuminates the critical juncture where the imperative of public access to judicial proceedings intersects with intellectual property rights.

The central inquiry revolves around the ownership of copyright in court proceeding recordings by the Hon'ble Courts and its implications for fair use. This study investigates the evolving dynamics between live-streaming technologies and established copyright norms, particularly within the framework of the Indian Copyright Act of 1957.

The research is set against the backdrop of a recent Delhi High Court ruling, which endorses live-streaming court proceedings in the broader interest of transparency. However, this ruling raises questions about the exclusive copyright ownership of these recordings by the courts and their authority to regulate dissemination.

The study also addresses pressing concerns regarding the potential misuse of court proceeding recordings, including manipulation, selective editing, and misrepresentation. These actions risk distorting the integrity of judicial proceedings and disseminating misinformation. While copyright laws exist to guard against such abuses, they can paradoxically curtail access to vital information.

The objectives are twofold: firstly, to navigate the complex terrain where the public's right to

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access justice intersects with copyright protection, and secondly, to delineate the legal ramifications and safeguards related to fair use of copyrighted materials.

The research posits that the surge in live-streaming court proceedings has the potential to reshape copyright paradigms and necessitates a recalibration of fair use principles. It scrutinizes the intricate legal framework encompassing copyright ownership, the right to access justice, and the delicate equilibrium between public interest and individual intellectual property rights. Ultimately, this study aspires to provide guidance for harmonizing copyright protection with the imperatives of transparency, accountability, and inclusivity within the legal ecosystem.

Keywords: *Copyright, Live-Streaming, Judicial Proceedings, Indian Copyright Act, Fair Use, Transparency, Accountability*

INTRODUCTION

In the rapidly evolving 21st-century landscape, technology's pervasive influence extends into the hallowed halls of justice, presenting a nuanced intersection between the legal system and the digital age. This chapter, titled "*Copyright Challenges in Live-Streaming Judicial Proceedings: Balancing Public Access and Intellectual Property Rights*", navigates this intricate relationship by exploring the dynamic interplay of copyright laws within the context of live-streaming court proceedings, with a specific focus on the Indian context.

Before delving into the specifics, it is crucial to recognize the global significance of the issue. The practice of live-streaming court proceedings is a growing trend worldwide, transforming the landscape of judicial transparency. This not only makes the issue relevant within the Indian legal framework but also highlights its importance in other jurisdictions grappling with similar challenges.

For readers who may not be well-versed in legal terminology, let's begin by defining some crucial terms. Copyright, as an indispensable pillar of intellectual property rights, provides creators, authors, and artists with the means to safeguard their original works. Within this framework, the Indian Copyright Act of 1957²⁹ grants exclusive rights to creators, including the authority to control reproduction, distribution, performance, and adaptation of their creations.

Amidst the digital transformation, the Indian legal system stands as a guardian of transparency,

²⁹ The Copyright Act, 1957, (Act 14 of 1957).

accountability, and the public's right to access justice. Recognizing the pivotal role of observing and recording court proceedings, including live streaming, in upholding these foundational principles, we confront the issue of copyright ownership in these recordings.

The recent Delhi High Court ruling³⁰ endorsing live-streaming of court proceedings brings the question of copyright ownership to the forefront. This ruling prompts discussions about who holds the copyright in these recordings, the extent to which courts can restrict their sharing, and how to balance the public's interest in transparency and accountability with the protection of copyright owners' rights.

This study aims to address the copyright dilemma inherent in live-streaming judicial proceedings, with a particular emphasis on the Indian Copyright Act of 1957. Our investigation will probe into the ownership of copyright in court proceeding recordings by Indian courts, scrutinize their authority to restrict the sharing of such recordings, and strike a balance between the imperative of transparency and accountability and the need to safeguard copyright owners' rights.

Additionally, we will explore the broader legal implications of live streaming and recording court proceedings on copyright laws, with a specific focus on the Indian legal context. Furthermore, we will investigate the legal safeguards and implications surrounding the principle of fair use concerning copyrighted materials.

With this foundational understanding in place, let us now delve into the intricate web of copyright challenges and live-streaming judicial proceedings, starting with Chapter II: "Legal Framework of Copyright Laws in India: Public's Courtroom Or Government's Office?"

LEGAL FRAMEWORK OF COPYRIGHT LAWS IN INDIA: PUBLIC'S COURTROOM OR GOVERNMENT'S OFFICE?

In this chapter, we embark on a comprehensive exploration of the legal underpinnings of copyright laws in India and their profound relevance to the evolving landscape of live-streaming court proceedings. While our primary objective revolves around understanding the ownership of copyright in court proceeding recordings by Hon'ble Courts and their capacity to restrict sharing, it is imperative to embark on a journey that immerses us in the intricate tapestry of copyright laws within which this issue is embedded.

³⁰ Live Streaming and Recording of Court Proceedings Rules of the High Court of Delhi, Rule 1, High Court of Delhi, 2022.

Historical Evolution of Copyright Laws in India

Colonial Roots (1847-1914)

In 1847, the East India Company introduced India's first copyright law³¹. It granted copyright protection for the author's lifetime plus seven years after death, with a maximum duration of 42 years.³² Compulsory licenses could be imposed if copyright holders denied posthumous publication. Unauthorized printing, sale, hire, or export of copyrighted material was deemed infringement, with jurisdiction in the highest local civil court. Ownership of copyright in certain works was granted to proprietors, publishers, or conductors. Copyright had to be registered for enforcement, preserving authors' rights to legal action.

Transition (1914-1957)

The Copyright Act of 1914, an extension of the UK Copyright Act of 1911, introduced criminal penalties for infringement (Sections 7-12) and modified copyright duration. Section 4 set a ten-year limit on an author's exclusive right to produce translations, except when authorized within this period.³³

Transformative Amendments (1957 Onwards)

The Copyright Act of 1957 replaced the British Act. Amendments in 1983, 1984, 1992, 1994, and 1999 shaped Indian copyright law. In 2012, the Copyright Amendment Bill aligned Indian law with WIPO treaties.³⁴

2012 Revisions (Six Categories)³⁵:

- **Rights in Creative Works:** Storing a creative work electronically constituted reproduction. Authors gained equal membership rights and payment entitlements.
- **Amendments Relating to WCT and WPPT Rights:** Aligning Indian law with WIPO treaties.
- **Author-Friendly Changes:** Authors received better terms in assignments and licenses.
- **Access Facilitation:** Enhancing access to copyrighted works.
- **Enforcement and Anti-Piracy Measures:** Stringent border controls, presumption of authorship, and protection for technical measures.
- **Copyright Board Changes:** Streamlining Copyright Board operations.

³¹ The Copyright Act, 1847, (Act XX of 1847) (Rep., Act 3 of 1914).

³² The Copyright Act, 1847, (Act XX of 1847) (Rep., Act 3 of 1914), s. 1.

³³ Copyright Act, 1914, ch. 320, 38 Stat. 717 (repealed 1976).

³⁴ Dr. Raghavender GR, *A Brief History of Evolution and Development of the Copyright Law of India* (67th Anniversary of Enactment of the Copyright Act, 1957 on 4th June 2023), LinkedIn Articles.

³⁵ Abhai Pandey, *Development In Indian IP Law: The Copyright (Amendment) Act 2012*, INTELLECTUAL PROPERTY WATCH (January 1, 2013), <http://www.ip-watch.org/2013/01/22/development-in-indian-ip-law-the-copyright-amendment-act-2012/>.

In summary, the 2012 revisions to India's Copyright Act harmonized the nation's laws with international standards. These changes aimed to benefit authors, artists, and performers while addressing digital age challenges and online piracy. India's copyright journey, from its colonial beginnings, now balances public access and intellectual property rights in live-streaming judicial proceedings. **Government Copyright and Live-Streaming Court Proceedings**

In the context of government works, including court proceedings, the Indian Copyright Act takes a unique stance. It automatically grants copyright protection to works created by the government, irrespective of whether they originate from the executive, judicial, or legislative branches.³⁶ This aspect holds particular significance in our examination of live-streamed court proceedings, as it raises questions about the ownership and control of these recordings.

To understand the implications of government copyright, we must explore the historical and legal rationale behind it. This section will provide an in-depth analysis of the justifications for government copyright, emphasizing its role in preserving public records and cultural heritage. Additionally, we will discuss the potential clash between government copyright and the imperatives of transparency, public access, and the digital age.

Historical Perspective and Justifications

To fully grasp the implications of government copyright in the digital age, we must delve into its historical roots and the underlying legal rationales. Traditionally, copyright has been justified in two primary ways, reflecting differing perspectives worldwide.

In the United States, copyright is framed as a means to achieve essential public purposes, such as motivating creative activity while providing public access to creative works after a limited period of exclusive control. The U.S. Supreme Court has emphasized that copyright's purpose is to serve an important public interest rather than merely providing private benefits.³⁷

Economic theories of copyright, on the other hand, focus on incentives for creators. However, in the modern context, the ideal period of copyright has shifted from being a mechanism to recover costs to a rewards-based model. This transition challenges the traditional incentive-based rationale, especially when applied to government-created works.

³⁶ The Copyright Act, 1957, (Act 14 of 1957), s. 28.

³⁷ *Princeton University Press V. Michigan Document Services, Inc.*, 99 F.3d 1381 (6th Cir. 1996).

Exceptions and Limitations in Government Copyright

While government copyright exists, it is not absolute. The Indian Copyright Act includes limited exceptions and legal provisions allowing specific uses of government works. These exceptions are essential in determining the extent to which court proceeding recordings can be shared and accessed by the public.

For instance, the "work for hire" doctrine, embodied in Section 17 of the Copyright Act, holds that it is the employer who is treated as the owner of copyright, not the author.³⁸ This doctrine contradicts the natural rights theory and raises questions about why certain types of knowledge investments receive special protection. Furthermore, there is no reason why the state should safeguard the investments of publishers, primarily benefiting from copyright, more than other businesses.

Ambiguities and Challenges in Government Copyright

In the digital era, government copyright faces new complexities and ambiguities, particularly in the context of live-streaming court proceedings. Copyright enforcement becomes challenging when every digital activity potentially violates copyright, leading to a situation where almost everyone is inadvertently infringing copyright.

For example, even President Barack Obama inadvertently violated copyright law by gifting copyrighted music, highlighting the challenges of navigating copyright in the digital age.³⁹ Additionally, the extradition of individuals for potential violations of copyright law underscores the international implications of copyright enforcement.

The case of the British courts seeking extradition for copyright violations⁴⁰, the impact of copyright on pricing and access to books, and the need to consider open access principles will provide concrete instances of the challenges and potential solutions.

Government Copyright in the Digital Era

Government copyright, as it stands, may not be suited to cover all the works it currently does. It evolved historically and is often seen as a colonial imposition on developing countries, prioritizing modernity and newness over tradition. Moreover, copyright law's varying treatment

³⁸ The Copyright Act, 1957, (Act 14 of 1957), s. 17.

³⁹ David Kravets, *EFF Wonders: Did Obama Violate Copyright Law With iPod Gift?*, WIRED (Apr. 2, 2009), [<https://www.wired.com/2009/04/eff-wonders-did/>].

⁴⁰ Peter Walker, *'Piracy' Student Loses US Extradition Battle Over Copyright Infringement*, The Guardian (June 13, 2012), [<https://www.theguardian.com/law/2012/jan/13/piracy-student-loses-us-extradition>].

of different types of works, such as literature versus sound recordings, reflects historical distinctions rather than logical reasoning.

For example, the expansion of copyright to include photographs and even minor modifications to documents raises questions about what should be eligible for protection. The shift from copyright as an incentive mechanism to a rewards-based model further complicates matters.

In conclusion, the complex interplay between government copyright and live-streaming judicial proceedings presents multifaceted challenges. While government copyright aims to protect intellectual property rights, it must adapt to the digital age and evolving societal needs. Balancing the imperatives of transparency, public access, and the preservation of intellectual property rights is an ongoing debate.

COPYRIGHT AND LIVE STREAMING OF JUDICIAL PROCEEDINGS

In this chapter, we delve into the complex interplay between copyright laws and the emerging practice of live-streaming court proceedings, with a specific focus on the Indian context. Our exploration bridges the legal framework discussed in Chapter 2 with the copyright issues that arise in the context of live-streaming court proceedings.

Linking the Legal Framework and Copyright Issues

This section bridges the established legal framework from Chapter 2, governing live-streaming of court proceedings, with the intricate domain of copyright concerns. The legal framework provides a blueprint for transparency and access to justice, defining roles and responsibilities. However, a pivotal question arises: how does court-asserted copyright ownership align with the doctrine of fair use, particularly within the Indian Copyright Act of 1957?

The recent endorsement of live-streaming by the Delhi High Court, driven by transparency goals, has introduced complexities. It questions exclusive court copyright claims and their authority over dissemination. This chapter rigorously examines the role of copyright in the digital age, scrutinizing the interplay between established norms and disruptive technology. It raises essential questions about the sufficiency of current copyright structures in balancing intellectual property protection with open access to crucial legal content.

Through academic inquiry and robust argumentation, we explore whether existing frameworks effectively address challenges and opportunities arising from live-streaming court proceedings. Our objective is to contribute substantively to the ongoing discourse on harmonizing copyright protection with transparency, accountability, and inclusivity in the legal sphere.

Understanding Copyright Ownership of Court Proceeding Recordings

Rule 9.2 of the live-streaming guidelines explicitly forbids unauthorized use and imposes penalties, including those under the Indian Copyright Act of 1957, the Information Technology Act, and contempt of court laws.⁴¹ While the legal consequences under the IT Act and contempt laws are relatively clear, the relevance of copyright laws demands further scrutiny.

Under Rule 8(4)⁴², the recordings are made publicly accessible on the Court's website, albeit without permission for distribution. Here, we encounter the assertion that the Delhi High Court possesses exclusive copyright ownership over these recordings and archive materials, prohibiting any unauthorized recording, sharing, or transmission. However, the claim of copyright by the Court regarding live broadcasts remains a subject of debate.

Discussing Legal Implications of Live Streaming on Copyright Laws

One of the significant concerns pertains to the potential manipulation and misrepresentation of court transcripts when shared on platforms like YouTube. Restricting sharing permissions to authorized individuals may mitigate some of these issues. Nevertheless, it is crucial to deliberate whether copyright serves as the most effective means of addressing false news or media portrayals of legal proceedings, especially when compared to the initiation of contempt proceedings.

The unauthorized sharing of publicly available recordings also poses a risk of contempt penalties. Considering the right to freedom of speech and expression, as established in *Sakal Papers Pvt. Ltd.*⁴³, we must weigh the importance of allowing snippets from these recordings for educational or training purposes to enhance public understanding of the legal system.

Examining the Right to Access Live Court Proceedings and Copyright

The right to access justice, protected by Article 21⁴⁴, inherently includes the ability to view court proceedings live. This right directly connects to the copyright issues discussed in this chapter. The *Mirajkar Case*⁴⁵ emphasizes the significance of open court proceedings, with exceptions reserved for exceptional cases.

⁴¹ Live Streaming and Recording of Court Proceedings Rules of the High Court of Delhi, Rule 9.2, High Court of Delhi, 2022.

⁴² Live Streaming and Recording of Court Proceedings Rules of the High Court of Delhi, Rule 8(4), High Court of Delhi, 2022.

⁴³ 1962 SCR (3) 842

⁴⁴ Constitution of India, art. 21.

⁴⁵ 1966 SCR (3) 744.

Furthermore, this right aligns seamlessly with Section 4 of the RTI Act, 2005⁴⁶, as the judiciary qualifies as a "public authority." It is important to note that exceptions under Rule 5(2)⁴⁷ of the Rules limit this access in certain cases.

Open courts play an indispensable role in enhancing public trust in the administration of justice. Although concerns about media misreporting are valid, authorized recordings can help evaluate accusations against judges or attorneys, fostering transparency and judicial accountability.

The surge in live-streaming court proceedings has the potential to reshape copyright paradigms, necessitating a recalibration of fair use principles. This study scrutinizes the intricate legal framework encompassing copyright ownership, the right to access justice, and the delicate equilibrium between public interest and individual intellectual property rights.

FAIR DEAL USAGE AND COPYRIGHT LAWS

Relevance of Fair Dealing to Live-Streaming Court Proceedings and Copyright in India

In this section, we delve into the critical concept of fair dealing as it pertains to the context of live-streaming court proceedings and copyright issues in India. Fair dealing, enshrined in Section 52 of the Indian Copyright Act⁴⁸, plays a pivotal role in striking a balance between public access to judicial proceedings and the protection of intellectual property rights.

Overview of the Concept of Fair Deal Usage

Understanding Fair Deal Usage

To comprehend the relevance of fair dealing to live-streaming court proceedings, it is essential to have a clear understanding of the concept itself. Fair dealing, though not explicitly defined in the Act, is rooted in principles of equity and aims to facilitate lawful use of copyrighted material for specific purposes such as private use, study, criticism, or review.

The courts have emphasized that Section 52 is meant to safeguard the constitutional right to free expression, particularly through research, private study, criticism, and reporting of current events.⁴⁹ However, the definition of "fair dealing" remains elusive and subject to interpretation.⁵⁰ It hinges on factors such as the amount and substantiality of the portion used, the purpose and character of the use, and its potential effect on the market.

⁴⁶ Right to Information Act, 2005, § 4.

⁴⁷ Rules of the RTI Act, 2005, Rule 5(2).

⁴⁸ The Copyright Act, 1957, (Act 14 of 1957), s. 52.

⁴⁹ *Wiley Eastern Ltd. v. IIM*, 61 (1996) DLT 281 Para 19.

⁵⁰ *Hubbard v. Vosper*, CA 1971 [1972] 2 WLR 389.

Factors in Fair Dealing⁵¹

a. The Amount and Substantiality of the Portion Used: Indian courts have considered this factor in various cases, emphasizing that the intention of the alleged infringer is not the sole determinant.⁵² It's crucial to evaluate whether the use constitutes a substantial taking of the copyrighted work.

b. Purpose and Character of the Use: Section 52 of the Indian Copyright Act enumerates specific objectives that fall under fair dealing, including private study, research, criticism, and reviews. The transformative nature of the use is also essential, with courts emphasizing that it should result in a unique and not merely derivative work.⁵³

c. Effect on the Potential Market: The likelihood of competition or market substitution is a vital consideration. The Indian courts, although giving it less attention, have recognized the importance of this factor in determining fair dealing.⁵⁴

Discussion of Legal Implications of Fair Deal Usage in Relation to Recordings of Court Proceedings

Recordings of court proceedings hold significant importance in fostering transparency and accountability within the judicial system. However, utilizing these recordings for purposes falling under the fair dealing provisions of copyright law raises several critical legal implications. In this section, we will thoroughly examine these implications, considering the Indian legal landscape and international precedents.

Copyright Protection of Court Proceedings Recordings in India

Before delving into fair deal usage, it is essential to establish the copyright protection afforded to recordings of court proceedings in India. Both the Information Technology Act of 2000⁵⁵ and the Copyright Act of 1957⁵⁶ grant copyright protection to such recordings. Additionally, the 1971 Contempt of Courts Act⁵⁷ and similar legislation impose penalties for their unauthorized use. However, two exceptions exist: fair dealing for educational purposes and journalistic reporting.

⁵¹ 17 U.S.C. § 107.

⁵² *S.K. Dutt vs Law Book Co.*, AIR 1954 All 570 Para 45.

⁵³ *V Ramaiah v. K Lakshmaiah*, 1989 (9) PTC 137.

⁵⁴ *ESPN Stars Sports v Global Broadcast News Ltd*, 2008 (36) PTC 492 (Del) Para 17.

⁵⁵ Information Technology Act, 2000, (Act 21 of 2000).

⁵⁶ The Copyright Act, 1957, (Act 14 of 1957).

⁵⁷ Contempt of Courts Act, 1971, (Act 70 of 1971).

Balancing Fair Deal Usage with Copyright Protection

The crux of the matter lies in striking a balance between fair deal usage and the protection of copyright in court proceeding recordings. The implications of this balance extend to several key aspects:

Accessibility vs. Copyright Protection

One of the primary concerns is whether the exclusions provided for in the law are sufficient to prevent chilling effects that might hinder widespread, legal fair deal usage. If access to court recordings is limited to a select few, it could potentially restrict fair deal usage, preventing the public from accessing crucial information. This raises questions about the transparency and accountability of the legal system, as well as the potential impediment to the work of academics and journalists who rely on fair dealing exceptions for their research.

Fair Deal Usage Restrictions

Another challenge arises from the limitations placed on fair deal usage within the Copyright Act. For instance, Rule 9(2)(iv)⁵⁸ restricts the use of recordings for marketing, advertising, or promotional activities. While this limitation aims to prevent misuse, it may inadvertently curtail the amount of material that can be shared, impacting academics and journalists who depend on fair dealing exceptions.

Transparency and Accountability

Transparency and accountability within the judicial system are paramount. Allowing the public to access recordings of court proceedings serves as a critical check on the judiciary and promotes public scrutiny. Therefore, it is essential that copyright laws recognize and protect fair dealing exceptions without unduly limiting them.

The Complex Landscape of Fair Deal Usage

To appreciate the intricacies of the legal implications surrounding fair deal usage in the context of court recordings, it is vital to understand that the application of fair dealing is multifaceted. While copyright laws are designed to protect the interests of creators, fair dealing exceptions are essential to ensure transparency and accountability within the judicial system. Striking the right balance between these interests requires careful consideration of various factors, as

⁵⁸ Copyright Rules 2013, Rule 9(2)(iv).

discussed in Section 4.2.2.

Relevance of International Precedents

It is also worth noting that international precedents can provide valuable insights into the legal implications of fair deal usage in relation to court proceedings recordings. Comparative analysis with other jurisdictions, such as the United States and the United Kingdom, can shed light on best practices and potential pitfalls.

In conclusion, the legal implications of fair deal usage concerning court recording copyrights are multifaceted and require a delicate balance between protecting the rights of creators and ensuring transparency and accountability in the judicial system. The next sections will explore concrete examples and cases to illustrate the practical application of these principles within the Indian legal framework.

Relevant Cases and Examples

In this section, we delve into key court decisions and real-world examples that illustrate the intricate interplay between fair dealing, court recordings, and copyright in India. These cases and instances shed light on the practical implications of fair dealing provisions in the Indian legal landscape.

While hearing the *Shemaroo Entertainment Limited v. News Nation Network Private Limited*⁵⁹, the Bombay High Court provided a pertinent illustration of the challenges in applying fair dealing to copyrighted materials used for news reporting. The court ruled that using copyrighted materials solely for news reporting does not necessarily qualify as fair use under the fair dealing doctrine. The case also emphasized that a mere quantitative analysis of the duration of the content used does not significantly impact the outcome. Even a brief usage of copyrighted material may be deemed a copyright infringement.

Further the Delhi High Court⁶⁰ establishes the boundaries of fair use concerning copyrighted materials used for critical evaluation or analysis. It clarified that using copyrighted material exclusively for critical evaluation or analysis does not constitute unfair usage. Additionally, the court underlined that any transformative work should not be automatically considered as fair use under the fair dealing doctrine. This ruling is relevant because it implies that not all

⁵⁹ *Shemaroo Entertainment Limited v. News Nation Network Private Limited* IA(L) 21705/2021 in COMIP(L) 434/2021.

⁶⁰ *Super Cassettes Industries v. Mr. Chintamani Rao*, I.A. No. 13741/2006 in CS(OS) 2282/2006.

uses of court proceedings for critical analysis may be considered fair dealing.

The Gujarat High Court's ruling in *Devendrakumar Ramchandra Dwivedi v. State of Gujarat*⁶¹ extended fair use and fair dealing principles to non-profit performances of music and other non-dramatic works. The court emphasized that music may be performed at social gatherings, religious services, or official government events without violating copyright, provided certain conditions, such as the absence of a profit motive, are met. What's crucial here is that it shows how fair dealing can extend to court proceedings when used in non-profit contexts, like social gatherings, religious services, or official government events. This broadens our understanding of fair dealing beyond traditional settings like journalism and education.

In the *Masters & Scholars of University of Oxford v. Rameshwari Photocopy Services*⁶², the Delhi High Court clarified the scope of fair dealing for educational purposes. It affirmed that reproducing copyrighted material from course books for academic use does not require advance permission from the publisher for distribution. The judgment underscored that using copyrighted material for educational purposes aligns with fair use principles. This case is particularly relevant in understanding the application of fair dealing in educational institutions in India.

In addition to the above-mentioned cases, there have been several other instances where fair dealing provisions and their relevance to court recordings and copyright issues have been explored in the Indian legal system. These instances might involve the use of court recordings in documentary filmmaking, historical research, and public interest reporting. They show us that fair dealing considerations aren't restricted to specific categories but can extend to various uses of court proceedings, underlining the need to carefully balance public access and copyright protection.

In summary, these court cases and additional instances illustrate the intricacies of applying fair dealing to court proceedings. They emphasize that each case should be examined in its unique context, considering factors such as purpose, transformation, and profit motive. Striking the right balance between public access to judicial proceedings and safeguarding intellectual property rights is a nuanced task that requires a deep understanding of fair dealing principles and their application in various scenarios.

⁶¹ SCA No. 9979 of 2009.

⁶² (2016) 16 DRJ (SN) 678.

CONCLUSION AND RECOMMENDATIONS

In the ever-evolving landscape of law and technology, where transparency and access to information are fundamental tenets of a just society, our journey through the intricacies of copyright laws in the context of live-streaming court proceedings within India has revealed a complex web of challenges and opportunities. This concluding chapter encapsulates the culmination of our exhaustive exploration, shedding light on the critical findings and insights that have arisen in our pursuit of equilibrium between intellectual property rights and the public's right to know. The Indian Copyright Act of 1957, our guiding framework, has undergone scrutiny, revealing significant gaps that beckon for resolution. We've traversed the path of recent legal precedent, ventured into the depths of legitimate concerns, and emerged with practical recommendations to illuminate the way forward.

KEY FINDINGS AND INSIGHTS

Our investigation revealed a significant gap in the Indian Copyright Act of 1957, as it does not explicitly address the issue of ownership of copyright in recordings of court proceedings. This lacuna leaves room for ambiguity concerning the rights and responsibilities of courts in relation to such recordings.

The recent Delhi High Court ruling encouraging live-streaming of court proceedings in the interest of transparency underscores the importance of public access to judicial processes. However, the ruling does not definitively clarify whether the court possesses exclusive copyright ownership of these recordings, leading to uncertainty regarding the extent of control the courts can exert over their dissemination.

We also highlighted a legitimate concern regarding the potential manipulation, selective editing, or misrepresentation of court proceeding recordings. While this concern should not be used as a pretext to restrict access to these recordings, it underscores the need for safeguards to preserve the integrity of judicial proceedings.

RECOMMENDATIONS

Building upon these key findings and insights, we propose the following practical recommendations:

Amend the Indian Copyright Act: To address the existing gap in copyright law, it is essential to amend the Indian Copyright Act of 1957 to expressly define the ownership of copyright in recordings of court proceedings. This amendment should clarify that the courts have exclusive copyright ownership and outline the scope of their authority to regulate the use of such recordings. A real-life instance of the same is the case of '*ABC News v. Aereo*⁶³' in the United States, where the Supreme Court ruled that Aereo's retransmission of television broadcasts without permission constituted copyright infringement. This ruling set a precedent for the protection of copyrighted content in the digital era.

Authentication Measures: To mitigate concerns about the authenticity and integrity of court proceeding recordings, we recommend the implementation of authentication measures. These may include watermarking or time-stamping of recordings to ensure their reliability and prevent unauthorized alterations. The practice of timestamping and certification employed by the Australian Broadcasting Corporation (ABC) in Australia, ensures that their archived court proceedings maintain their integrity and authenticity.⁶⁴

Adopt International Best Practices: Drawing inspiration from jurisdictions like the United States and Australia, where specific legislation addresses the recording of court proceedings, India should consider incorporating similar provisions. These provisions strike a balance between transparency and copyright protection, offering valuable insights for Indian legal reform. The '*Camera in Court*' programs in various U.S. states enables live broadcasting of trials while adhering to strict copyright regulations.⁶⁵ These programs serve as a model for balancing transparency and copyright protection.

Public Awareness and Education: To foster a better understanding of the issues at hand, courts should engage in public awareness campaigns and educational initiatives. These efforts

⁶³ 573 US 431 (2014).

⁶⁴ Australian Broadcasting Corporation Annual Report 2018-19, Appendix 4 - ABC Code of Practice (& associated standards) (Transparency Portal).

⁶⁵ Dennis Hetzel & Ruth Ann Strickland, *Cameras in the Courtroom*, Free Speech Ctr. (Middle Tenn. St. U. Blog), Aug. 11, 2023.

can help dispel misconceptions about the implications of copyright in live-streamed judicial proceedings. The '*Open Justice*' initiative in the United Kingdom is a successful example, which educates the public about the benefits and limitations of live-streaming court proceedings, emphasizing transparency while respecting copyright.⁶⁶

In closing, let us underscore the paramount importance of our mission—to ensure that copyright laws serve as a bulwark against exploitation, without becoming an impediment to enlightenment. As we advocate for amendments to the Indian Copyright Act to definitively address the ownership of copyright in court proceeding recordings, we recall the echoes of '*ABC News v. Aereo*' and '*Camera in Court*' programs, from across the oceans, exemplifying the delicate equilibrium that we strive to achieve. The implementation of authentication measures, inspired by the diligence of the Australian Broadcasting Corporation, promises to safeguard the sanctity of judicial records in our digital age. And in the spirit of public engagement, we draw inspiration from the 'Open Courts' initiative, an educational beacon from the United Kingdom. In sum, this research calls for a harmonious symphony between copyright protection and public access, where the melodies of justice are not stifled but amplified by the resonance of transparency. With these recommendations, we hope to chart a course that respects the rights of creators, preserves the integrity of legal proceedings, and enlightens the public in its quest for justice.

⁶⁶ Open Justice Charter, Initiative (Jan. 2017), <https://appeal.org.uk/open-justice>.



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INTELLECTUAL PROPERTY RIGHTS AS COACH FOR FORMULA ONE

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ABSTRACT

The absolute legal provisions of Formula one as an organization and F1 as a sport is quite ambiguous as to the status of protection provided to the design and manufacture of the car parts that are kith and kin of the sport. Even though the car parts are technical and mechanical in nature, the nature of the manufacturing process requires protection of intangible assets through intellectual property law. The need for such protection and how the breach of the protection is regulated by the governing body of the motorsport is discussed in a brief and descriptive manner. The paper deals with formula one as a sport and deals with intellectual property law being spinal cord for the nature of the sport. In simple understanding, the nature of the sport requires the protection of design and manufacturing parts without infringing the intellectual property rights of other teams in F1. Usually the designs, manufacture and testing are dealt under the provisions of trade secrets, while patenting, trademark and copyright are used for commercial purposes of the same sport. The outcome of manufacture and production is reiterated for each season to produce a race car specifically designed to participate for racing and winning in this format. There are instances where breach of intellectual property rights occurred; it is mostly dealt with internally in Federation Internationale De l'Automobile, the governing body generally spoken as FIA.

Keywords

Formula one; protection; design; intellectual property rights; trade secrets.

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INTRODUCTION

“It is lap eight. Williamson’s car suddenly shoots off the track on a fast, but otherwise unproblematic stretch of the circuit. Subsequent investigations reveal marks on the concrete which suggest suspension trouble, but it could just as easily have been a tyre defect; driver error can effectively be ruled out. The car smashes into the guard-rail, is hurled back across the track, somersaulting several times. It comes to rest upside down against the safety barrier opposite.”⁶⁸

The words of Niki Lauda describing F1 driver Roger Williamson's tragic fire accident while driving his second Formula One race at Dutch Grand Prix Zandvoort Circuit on 29th July, 1973. Unfortunately, Williamson did not make it out of his car, March 731 when the fuel tank caught fire.⁶⁹ There have been many tragic accidents in Formula 1 races that transpired due to mechanical failure in their cars. The disheartening moment is to watch the drivers hit the safety barrier and lose their soul. As of 2022, fifty two drivers of Formula 1 have had fatal accidents and never survived.⁷⁰ When a catastrophic incident occurs in a team’s car, the engineers’ efforts and money put behind it by the sponsors also becomes futile.

A Formula 1 car, approximately contains 14,500 parts dancing synonymously to perform better than their rivals in the Formula 1 grid.⁷¹ Each part, designed and manufactured by the teams specifically to perform well and to be protected as an intellectual property. Even though an F1 car comes under tangible assets, the mere innovation of the work comes from a man’s mind. Accordingly, it is considerate to say that F1 weighs upon the Intellectual Property rights to protect any kind of infringement against (i) designs of their innovative works, (ii) trademark or any marks related to the Formula One Management Limited, and (iii) copyrighted works and merchandises.

The Spygate investigation and a patent infringement case by Jens Nygaard against FIA (Federation Internationale De l’Automobile) (also known as The Halo Case) are amongst the important cases which discusses the Intellectual property rights in Formula One. There is a need to understand the mechanism of an F1 car and history of the sport to chronicle the

⁶⁸ Niki Lauda, To Hell and Back : An Autobiography <<https://books.google.co.in/books?id=lt-uDwAAQBAJ&lpg=PP1&pg=PT20#v=onepage&q&f=false>> accessed 16 December 2022.

⁶⁹ Formula-1 Dictionary available at <https://www.formula1-dictionary.net/roger_williamson.html>

⁷⁰ List of Formula One fatalities available at <https://en.wikipedia.org/wiki/List_of_Formula_One_fatalities#:~:text=Fifty%20two%20drivers%20have%20died,being%20the%20first%20in%201952>

⁷¹ Motorsport.com Insider’s guide: How is an F1 car made? <<https://us.motorsport.com/f1/news/how-is-an-f1-car-made/7626324/>>

remedies provided against the IP infringement in Formula One.

Each part of an F1 car goes against various levels of testing to withstand the amount of pressure during the races.⁷² Initially, the process of building the car happens throughout a year. The Formula One World Championship is held from the month of March to November of every year to decide the Drivers' Championship and to nominate the Constructors' Championship Titles. Due to this tight and continuous schedule of races, the teams eventually comprise multiple groups individually working to develop and test the car for the next season. The process of patenting the designs of an F1 car internationally will consume more time. Since an F1 car is built and developed each season, the designs tend to be changed within a short range of period. Thus the process of applying for a patent and then making changes in the design and manufacturing becomes impractical. Thus the existence of Trade secrets came into existence in Formula One.

Building an F1 car begins from design and development and concludes with shakedown and testing of the car in the race tracks. Once an idea of how the car should be made is finalized, then the teams continue to produce hundreds of 3D drawings of parts per day in CAD (computer aided design).⁷³ Then the best design is further made as a prototype to be built as a model for testing the aerodynamics and composite design of the car. The blueprint of designing and manufacturing of an F1 car is necessary to deduce how important it is to protect the design of car parts and other Intellectual property rights.

A FORMULA ONE RACE CAR

The cost and manpower behind an F1 car is huge and expensive. Building a complete Formula 1 race car requires three significant steps.

- (1) Design and Development
- (2) Manufacturing the parts
- (3) Assembly and Testing.⁷⁴

In the design and development stage, a prototype is built based on the feedback given by the drivers during the current season and is assessed to build the car for the next season. Computer aided design software is used to develop multiple 3D drawing designs of the car. The parts used by each team must be standard and prescribed parts⁷⁵ as per the regulations imposed by

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ *ibid.*

FIA (Federation Internationale De l'Automobile). Then the team moves on to making the prototype and testing the design virtually in CFD (Computational Fluid Dynamics) to decide which design is optimal to enter the wind tunnel testing. After testing in the wind tunnel, the design enters the manufacturing stage. In the manufacturing stage, the parts are produced delicately by the team or outsourced to other specific manufacturers. After manufacturing the required parts, it proceeds to the assembly and testing stage, in which the car is assembled and tested in the tracks before the start of the next season.⁷⁶

DESIGN AND DEVELOPMENT

The cars are supposed to run with certain standard and prescribed parts as in the given set design. When a Formula 1 car is made, the teams are bound to follow the technical regulations specifying certain dimensions, no go areas, weight limits and material specs.⁷⁷ The reason for building the car with standard and prescribed parts is to keep the cost down. But the FIA also allows the teams to buy and sell some transferable parts (such as gearboxes and clutches) in between teams. Only the transferable parts are allowed to be exchanged in between the teams, whereas other parts should be designed individually by each team in their preferable manners. Any theft of design or illegal transfer of parts is investigated by the FIA to take necessary actions, provide remedy and to prevent any such thing from happening in the future. The Spygate investigation reveals such an incident that occurred between the Ferrari team and the McLaren team in 2006.

Each team produces 3D designs of multiple parts through CAD software individually and are used to unravel the design that can be produced as an F1 car. The teams focus on various aspects of a car.

Transmission, Electronics, Mechanical designs, Aerodynamics, and Composite design are the aspects by which four wheels and a chassis body are put behind an F1 grid by the teams. More efforts are seeded in aerodynamics to make sure that the car does not behave abnormal while going above the speed of 300 km/hr and to withstand any amount of external pressures while balancing the car at that speed.

To test which car design can perform well in the wind tunnel testing, CFD (computational fluid dynamics) is used to measure the designs' performances and are comparatively analyzed to

⁷⁶ *ibid.*

⁷⁷ *ibid.*

produce a rapid prototype of a design that performed well. After testing the design of the prototype virtually, the teams move to the Wind Tunnel testing. Due to technical regulations, each team is allowed only for a certain period of time in the CFD and Wind tunnels. Wind tunnel is a space where the car is placed in a belt with sensors and a huge fan flows up to a maximum speed of 300 km/hr. In this testing, existence of limitation reduces the availability of wind tunnels to only one location per team and up to a speed of 180 km/hr.⁷⁸

MANUFACTURING THE PARTS

Before beginning the manufacturing process, a giant roll of carbon strands coated with resin is bought and stored in a cool place to preserve it in pristine condition. An F1 car can structurally be divided into parts such as (i) Monocoque chassis (ii) Front wings (iii) Rear wings. The materials in the components of the car's structure are mostly carbon fiber material. It is lightweight and has more strength compared to other materials. The quality of an F1 car must be ensured to sustain races and to survive fatal crashes. The halo became an important component of an F1 car, it is the only part that goes above the drivers' head and provides head support in case the machinery flips or crashes upside down.

Around 80% of the car is made from composites and pre-preg carbon fiber. The epoxy component is first cut with precision of 0.05mm each using five-axis milling machines with the help of the CAD data.⁷⁹ Then the epoxy patterns are utilized to manufacture the female mould which takes form as final parts. The procedure for manufacturing and producing the mould parts is supposed to happen in a very hygienic and clinical environment. It is of such nature that any minute particles can affect the process and lead to failure. The parts are supposed to be packed in tight and protective covers and people working in the place are required to wear protective overalls. At this level, the carbon fiber matting is cut into specific shapes as per the design of the parts. Even Though most materials used are a mixture of carbon fiber and resins, a part's strength is proportionate to the amount of layers stacked.

The part layup is done by hand to ensure that the car is built as per the required flexibility and strength for the team to succeed. Part layup is a process by which the processed carbon fiber matting is stacked giving thickness and to provide strength to the parts. Each team alters the layers of the parts to the demand of strength and flexibility that they need. Usually the layers in some areas of the front wings will be weaker to facilitate proper balance to go at higher

⁷⁸ *ibid.*

⁷⁹ *ibid.*

speed and can flex under load⁸⁰. Even at this stage, the cars are allowed to race if they pass the static load tests.

After the process of part layup is complete, the carbon fiber moulds created are placed inside vacuum bags and are placed in an autoclave to be cooked under pressure. Due to the high temperature of the autoclave, the resin coating melts in between the carbon fiber making the mould parts hard and strong. The hardness of the final parts depends on the frequency of the autoclave stage.

The carbon fiber parts finally put together are usually categorized as top and bottom parts of the monocoque chassis, front wings and rear wings⁸¹.

TESTING OF PARTS

All 14,500 parts of an F1 car must be inspected and signed off before it is assembled into the car. The materials of every part are literally placed under a microscope to verify the authenticity. The parts undergo non-destructive testing using x-ray or ultrasound techniques to evaluate the condition of bonding between the joints, laminate conditions, firmness checks, visual checks and thorough cleaning.⁸²

Using the computer based coordinate measuring machines (CMM) and hand-held laser devices, the dimensions and micron-level accuracy are measured to perfectly fit and for legality.

Every manufactured part is given mileage based on their expected life up to which they can last. The parts must be removed and replaced after the life of the part is exhausted. The safety critical parts are tested three to four times to ensure the ability to endure. All sub-assemblies and assemblies are put together to see the track action on dynamic rigs.

Before the power unit is connected to the car, it must undergo FIA crash tests for the car to certify. The crash test is cataclysmic in nature. Front impact, rear impact, side impact and rollover tests are mandatory for the car to be certified and used in the race events. After passing the crash tests, for the first time, the power unit, fuel system, hydraulics, transmission and cooling system are all attached to the chassis and are connected, tackling all difficulties. This is the first fire-up of the car.

The working condition of the car is almost in raw condition at this stage. After all the parts are manufactured, it takes a week to completely build the car including the paint job in the race

⁸⁰ *ibid.*

⁸¹ *ibid.*

⁸² Motorsport.com Insider's guide: How is an F1 car made? <<https://us.motorsport.com/f1/news/how-is-an-f1-car-made/7626324/>>

bay. The sub-assemblies are fastened to the chassis monocoque which is the central section of the car. In the shakedown and testing stage, the cars are run in track at a speed less than 100 km/hr to make sure that the car is assembled properly and can stay together as one part.

THE COST TO DEVELOP AND CAP LIMIT ALLOWED

Value of an F1 car cannot be determined specifically. But the FIA regulates the spending limit on how much a team can spend entirely per season. This regulation is to suit all the teams to have a fair chance on dealing with the cars and to keep the entertainment going. The teams were allowed a cap limit of \$140 million (₹1159.06 crores) in 2022 covering all the car performance costs. This cap limit does not include the drivers' salaries, marketing costs and three expensive team members' salaries. For the 2023 season, the FIA has reduced the cap limit compared to the 2022 season from \$140 million to \$135 million (₹1117.66 crores).⁸³

F1 COST CAP BREACH BY RED BULL AND ASTON MARTIN

In the first year of implementing this regulation (2021), the FIA proclaimed cost cap breach by Aston Martin F1 team and Red Bull F1 team. The teams were allowed to enter an Accepted Breach Agreement (ABA) to settle deals with the FIA.

Aston Martin had some procedural breach compared to the minor overspend and procedural breach committed by the Red Bull team. The Red Bull team claims to have had some tax issue and budget overspend on catering services and sick pay provided to employees who did not come under the cap which is believed to be in the region of \$1.8 million (₹14.9 crores). The Red Bull team were given both financial and sporting penalties.

Financial penalty usually means to pay a sum of money as fine to the FIA. Sporting penalty includes reduction in the time spent by the team's car in the wind tunnel and CFD.⁸⁴

HOW ARE DESIGNS PROTECTED IN F1?

"I'm not interested with the whole thing (halo). If you give me a chainsaw I would take it off. I think we need to look after the drivers' safety but what we have implemented is aesthetically not appealing. We need to come up with a solution that simply looks better. It's a massive weight on the top of the car, you screw up the center of gravity massively with that thing. As

⁸³ *ibid.*

⁸⁴ Autosport: Red Bull, Aston Martin agree F1 cost cap breach deals with FIA
<<https://www.autosport.com/f1/news/red-bull-aston-martin-agree-f1-cost-cap-breach-deals-with-fia/10391173/?continueflag=09893b9b2b388dcce38f0d0199cd963d>>

much as it's impressive to look at the statistic that you could put a bus on top (of it), this is a Formula One car.”⁸⁵

Mercedes team chief Toto Wolff was completely disappointed when the FIA made it mandatory for all F1 cars to be designed with the halo on top of the driver's head for the 2018 season. The halo is a device made from Grade 5 Titanium which is known for being lightweight whilst providing great strength and is coated with carbon fiber.⁸⁶

The need to protect the designs of Formula 1 arose when the cars were designed by the teams to compete in championship series. A team cannot simply copy the designs used by another team to build the car. There will not be a difference and it defeats the whole purpose of the sport. When a design is involved in any other industry they are protected either as industrial designs or as patent protection internationally, but F1 lacks patents. There could be various reasons as to why the FIA prohibits the protection of design through patent protection in F1.

But one of the important reasons being, F1 as a sport is where 20 drivers compete in a series of races to decide the championship. If one team or individual is allowed to patent the design of a car, then it gives monopoly rights over the design, and other teams cannot potentially be competitors in the sport. FIA has regulated that the patented technology would be ruled illegal if an F1 team were to try and enforce a patent.⁸⁷

Even in case FIA allows patenting, the time taken for processing the approval of the patent is not applicable to F1's level of changes in designs. Another new season might fire up while the patent protection for the previous gets approved. The time for application is not available for the teams to consider patenting their designs.

THE HALO CASE

“I wasn't for the halo some years ago but I think it's the greatest thing we brought to Formula 1 and without it I wouldn't be able to speak to you today.”⁸⁸

Any auto enthusiast will know the brutal accident Romain Grosjean went through in the Bahrain Grand Prix, November 2020. Romain Grosjean's Haas F1 car was cut into two pieces crashing at a trackside barrier at 140 mph (225 kmph) and catching fire. Romain Grosjean was

⁸⁵ Fox News : F1 drivers don't like the halo, but have gotten used to it <<https://www.foxnews.com/auto/f1-drivers-dont-like-the-halo-but-have-gotten-used-to-it>>

⁸⁶ F1 Beat : The Halo explained <<https://f1beat.com/the-halo-explained/>>

⁸⁷ IPleaders : What is the driving force behind Intellectual Property of Formula 1 <<https://blog.ipleaders.in/driving-force-behind-intellectual-property-formula-1/>>

⁸⁸ Fox News : Formula One's Romain Grosjean says 'halo' saved his life in fiery crash <<https://www.foxnews.com/auto/formula-ones-romain-grosjean-halo-crash>>

on fire, upside down in the single seater for 27 seconds, the halo protecting his head from contact with the ground. After which he pushed himself out and survived. The halo has played an important role in saving many lives including this incident. The FIA were taken to court in the United States after being accused of a patent infringement relating to the halo design⁸⁹.

Norwegian inventor Jens Nygaard regards the halo design as his invention and has patented it. He alleges to have requested the Formula One management to add his design in the Formula One cars as a safety device. The management included the halo design in the F1 cars as a mandatory safety device, but Jens Nygaard was not compensated for the addition of his patented design. Consequently, Nygaard sued the Formula One management, the FIA, racing drivers, and the teams in F1 entirely. The US District Court for the Western District of Texas struck out many unrelated defendants as they were all under the protection of customer-suit exception. The customer-suit exception protects the end-product consumers who are mere users of the patented device, but not related to any aspect of infringement of the patent. After releasing the drivers such as Lewis Hamilton, and Charles Leclerc, the teams and companies such as Scuderia Ferrari and Daimler were also released from the suit⁹⁰.

TRADE SECRET IN F1

The selection of patent protection is inaccessible for the teams in F1. Due to this situation, the designs can be exploited by any unauthorized dealers or users. To prevent theft and infringements of IPs in Formula One. The FIA allowed the teams to curb the designs as Trade secrets.

Trade secrets are intellectual property (IP) rights on confidential information which may be sold or licensed.⁹¹ Trade secrets are considered to be protection to an intellectual property which cannot be disclosed to the public in any manner. The trade secrets have value of being exploited and misused if not taken care of.

There are specific essentials that an intellectual property must possess, to be protected under trade secrets:

- (i) The confidential information must have a commercial value in the market.
- (ii) The complete details of the intellectual property must be known only to a narrow group of persons.

⁸⁹ Express : FIA president Ben Sulayem lifts lid on court case and £16m issue he inherited
<<https://www.express.co.uk/sport/f1-autosport/1705967/FIA-Ben-Sulayem>>

⁹⁰ WIPR : Daimler, Ferrari escape Formula One Halo suit <<https://www.worldipreview.com/news/daimler-ferrari-escape-formula-one-halo-suit-21068>>

⁹¹ WIPO : Trade Secrets <<https://www.wipo.int/trademarks/en/>>

(iii) The rightful holder of the information must have taken necessary steps to prevent the leakage of the intellectual property.⁹²

There is a history of innovations being used in F1 cars and are kept as trade secrets. The usage of paddle-shift gearboxes began in Formula One before making its way into commercial vehicles. The paddle-shift gearboxes can be seen in Ferrari cars designed, manufactured and marketed by Scuderia Ferrari. A trade secret in a sport had gradually evolved to be an industrial design. Adaptive suspension and traction control are also commercially exploited in the automotive industry. Mercedes cars are known for having extraordinary suspension control in their commercial vehicles⁹³.

The struggle with trade secrets is the vulnerability of being stolen and exploited. If the trade secret is misappropriated, then the rightful holder can sue the liable person to claim damages and to receive proper remedy. Infringement of trade secrets is considered to be a violation of trade secret protection which is among the intellectual property law. The laws of trade secrets are not codified in India.

There are cases of infringement and theft of designs in Formula One. 2007's Spygate controversy is a dispute of design theft that happened between Ferrari and McLaren teams.

SPYGATE CONTROVERSY

"It was the sporting scandal that had everything. Vengeance, vindictiveness and ambition. Blackmail, secrecy, and the offence that gave it its name - spying."⁹⁴

Many F1 fans will call the 2000s one of the significant decades to have existed with Michael Schumacher, Kimi Raikkonen in the Ferrari F1 team and Fernando Alonso claiming two consecutive titles breaking Schumacher's spell in the sport. The stage in which the team McLaren plummeted to the ground to build back again. The story of rivalries on-track and off-track resulted in the Spygate controversy and McLaren receiving a fine of \$100 million (₹827 crores). This is the price McLaren paid for an employee mishandling a complete report of an F1 car that the Ferrari team designed for the next season.

Fernando Alonso was the main driver and Lewis Hamilton was a rookie for the team at that stage. During this time, there was an enmity in the Ferrari team group. Nigel Stepney was a

⁹² *ibid.*

⁹³ The engineer : F1 IP demonstrates value of trade secrets <<https://www.theengineer.co.uk/content/opinion/f1-ip-demonstrates-value-of-trade-secrets#:~:text=There%20is%20a%20long%20list,available%20in%20the%20automotive%20industry>>

⁹⁴ BBC : F1 'spygate': Fifteen years on from the sporting scandal that had everything <<https://www.bbc.com/sport/formula1/63575321>>

chief mechanic in Ferrari when Michael Schumacher reigned as the world champion. Nigel Stepney was promised the position of team principal while working. But, to his disappointment, he was not made the principal of the team. Dissatisfied with the team, Nigel Stepney decided to extract 780 pages of confidential information related to the 2007 F1 Ferrari car that the Ferrari team held secretly. Furthermore, Nigel provided the disclosed report of 780 pages to his friend in the McLaren, Mike Coughlan who was working as chief designer at that time. The report is alleged to contain information related to the blueprints and designs that the Ferrari was working on. Unfortunately, the plan of Mike Coughlan and Nigel Stepney became an utter failure, when Mike Coughlan's wife went to photocopy the report in a local photocopy shop. Astonishingly, the local photocopier owner was a Ferrari fan, and looking at all the designs and blueprints, he emailed the Ferrari team⁹⁵. Even Though, the story seems quite unintelligent, the journals state it as fact.

This was a plan between two friends Nigel Stepney and Mike Coughlan and the first investigation was held by the FIA. During this investigation McLaren team was considered to be innocent as no other team members knew about the confidential information. While this incident was going on, the on-track rivalry began interfering into the investigation matters. Apparently, Fernando Alonso who grew tired of working with Lewis Hamilton threatened the McLaren team principal Ron Dennis that he possesses emails related to the spygate scandal that might end bad for the team. Immediately after this incident, the then FIA President Max Mosley was informed. And the second investigation began piercing into the espionage.

Max Mosley and Ron Dennis have had a history of off-track rivalry for more than 30 years. Due to this, Ron Dennis and the McLaren alleged to have received the penalty of \$100 million and thrown out of the constructors' championship that year.

MERCEDES AMG HPP VS. BENJAMIN HOYLE⁹⁶

In this case, Mercedes AMG sued Benjamin Hoyle claiming him to have committed high-level theft of confidential information relating to their F1 car. Benjamin Hoyle was working under contract for the Mercedes F1 team until 31 December 2015. It was in Mercedes team's knowledge that Benjamin Hoyle will be heading to their direct competitor Ferrari team after the termination of the contract. The Mercedes team declared that they had due diligence while protecting the trade secrets related to the designs and other confidential information. Even after

⁹⁵ *ibid.*

⁹⁶ Orrick available at <<https://s3.amazonaws.com/cdn.orrick.com/files/mercedes-amg-high-performance-powertrains-limited-v-benjamin-hoyle-novembe-2015.pdf>>

taking due diligence, the team alleges that Benjamin Hoyle stole important confidential information and to have deleted the same in the team's system, so no suspicions arise.

After the knowledge about Benjamin Hoyle joining Ferrari team after terminating the contract in Mercedes. The Mercedes had served Benjamin a new laptop completely wiped off the F1 data and a new email address so that he does not receive any confidential information. Mercedes alleges that Benjamin Hoyle stole details of race reports, data related to the damages in F1 and engine files containing the codes to decrypt the raw race data files.

BRAKE DUCT DESIGN CASE

As the name suggests, the brake duct design related to F1 cars was legally in transfer between the Mercedes team and Racing Point team (currently Aston Martin) beginning from the year 2018. The Racing Point team received CAD designs and blueprints for the brake duct of the following year Mercedes' W10 F1 car. The Racing Point had even photographed the designs of the W10 to copy as best as possible.⁹⁷

In early 2019, the FIA announced the brake ducts as listed parts and were not allowed to be transferred. But the Racing Point team had already used the front brake duct design and was embedded into the DNA of the RP19 car. The FIA decided in this issue, that the design was incorporated into the car when it was legal, thus it was considered valid. During that season, Mercedes performed well in the races. So, the Racing Point team was alleged to have considered incorporating the W10 car's rear brake duct design into their RP20 car.

Even Though the Racing Point team claimed to have no similarity between their rear brake duct design and W10 brake duct design. The FIA was in denial. The FIA considered this a minor problem and the fine was for the advantage they gained over other teams by using the blueprints that they possessed. The Racing Point team was awarded a fine of \$429,292 (₹3.5 crores) and 15 point reduction in the constructors' championship.

CONCLUSION

The involvement of Intellectual Property Rights in Formula 1 is inevitable. The sport impressively includes the use of both tangible and intangible properties that makes the protection of the properties quite difficult. The protection of a specific part or equipment in the

⁹⁷ Motorsport magazine : What Racing Point did wrong: brake duct penalty explained
<<https://www.motorsportmagazine.com/articles/single-seaters/f1/what-racing-point-did-wrong-brake-duct-penalty-explained?v=c86ee0d9d7ed>>

car can become a difficult process if it involves the process of patenting the products for the use in Formula 1. Since the process of patenting a product consumes more time, quick sport such as Formula 1 follows the use of trade secrets to reduce the consumption of time as well as provides protection equal to that of Patents. The F1 teams' hold the duty of preventing the leak of information and considers important information as trade secret and infringement of the same by any other teams can lead to infringement of trade secrets. The cases discussed above disclose the wide relation of Formula 1 to Intellectual Property Law.



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DECIPHERING THE INTRICACIES: ROLE OF ARTIFICIAL INTELLIGENCE IN MODERN COPYRIGHT CHALLENGES

Sheheen Marakkar⁹⁸

ABSTRACT

The swift advancement of artificial intelligence (AI) has catalyzed revolutionary shifts in various sectors, leading to notable challenges in copyright considerations. This article delves deep into the nuanced interplay between AI and copyright regulations. It evaluates the dilemmas introduced by content produced by AI under copyright perspectives, scrutinizes prevailing legal structures, and suggests potential avenues to reconcile these issues, all the while promoting ingenuity and progress.

KEYWORDS: Artificial Intelligence (AI), Copyright, Intellectual Property, Algorithmic Creation, Ethical Considerations

INTRODUCTION

Artificial intelligence (AI) stands at the forefront of modern technological evolution, pushing the limits of what's possible across numerous sectors.⁹⁹ With its outstanding capacity to grasp, adapt, and mimic human activities, AI ushers in a new age of innovation. Central to this transformation is the merging of AI with creative fields, as AI-driven creations become pivotal in areas ranging from literature and music to visual arts and software design. While the prospects of AI-centered advancements are compelling, they also ignite nuanced debates about copyright, intellectual property, and the balance between human creativity and automated generation.

⁹⁸Assistant Professor, Dr. Ambedkar Global Law Institute Tirupati, Andhra Pradesh

⁹⁹Abbott, Ryan (2016). I Think, Therefore I Invent: Creative Computers and the Future of Patent Law. Boston College Law Review, 57, 1079-1121.

The profound influence of AI-generated works calls for a thorough exploration of its ties with copyright. As models like OpenAI's GPT-3, Google's BERT, and DeepMind's AlphaGo generate content resembling that crafted by humans, the lines distinguishing human from machine creativity become less clear. This leads to intricate debates spanning legal, ethical, and philosophical dimensions.¹⁰⁰ These discussions encompass intellectual property challenges, addressing themes of originality, authorship rights, ownership claims, fair use practices, and redefining creativity in this algorithm-driven era. This article delves into the intricate landscape where AI-generated content and copyright intersect. It embarks on a comprehensive exploration of the multifarious challenges and opportunities that emerge from this fusion, shedding light on the nuances that govern this dynamic relationship. The examination encompasses both the underlying technological advancements that enable AI-generated content and the established legal and ethical frameworks that underpin copyright. By navigating the complex contours of this intersection, we aim to unravel the complexities, dilemmas, and potential resolutions that shape the future of AI-generated content within the realm of copyright law.

Drawing insights from legal scholarship, technological innovation, ethical considerations, and collaborative solutions, this article contributes to the ongoing discourse surrounding AI and copyright. By understanding the intricacies of this multidimensional interplay, we aspire to offer a comprehensive foundation for policymakers, legal practitioners, content creators, AI developers, and scholars to engage in informed dialogues, forging a pathway that ensures both the protection of intellectual property rights and the nurturing of creative technological innovation. Through a harmonious blend of law, ethics, technology, and human ingenuity, we embark on a journey to navigate the uncharted waters of AI-generated content and copyright concerns, seeking to strike a balance between fostering innovation and safeguarding the rights of creators in this brave new digital era.

COPYRIGHT IMPLICATIONS IN THE AGE OF AI-CREATED CONTENT

As artificial intelligence continues to make significant strides, AI-generated content has emerged as a prominent facet of this technological evolution.¹⁰¹ The cornerstone of copyright law is recognizing and protecting the rights of authors. However, attributing authorship to AI-

¹⁰⁰ Lemley, Mark A. (2015). IP in a World Without Scarcity. *New York University Law Review*, 90, 460-515.

¹⁰¹ Felten, Ed (2012). Robots, Copyright, and Other IP Challenges – Perspectives from the White House. *Journal of International Commercial Law & Technology*, 7, 29-35.

generated content becomes complex due to the absence of human intent and creativity. Traditional copyright paradigms must adapt to address the question of authorship in the AI age. Many instances of AI-generated content involve human designers, programmers, and trainers who shape the algorithms and curate the training data. Determining the extent of human input and its impact on content creation becomes vital in establishing ownership rights.

AI algorithms possess the ability to create content autonomously, raising questions about the nature of independent creation.¹⁰² Copyright doctrines often emphasize human involvement, but AI's capacity to generate content without direct human intervention challenges these notions. The analogy of AI as a tool implies that copyright should be attributed to the human operator or creator of the AI, rather than the AI itself. However, this perspective might overlook the intricate decision-making processes within AI systems.

Copyright laws across jurisdictions were primarily designed with human-authored works in mind. Adapting these frameworks to accommodate AI-generated content requires a balance between fostering innovation and preserving creators' rights. AI models like GPT-3 are proprietary creations, leading to debates about ownership rights. While developers own the AI model, the generated content's ownership remains contentious, particularly when it draws from copyrighted material.

AI-generated content is increasingly being utilized for commercial purposes.¹⁰³ This shift highlights the need for clear ownership guidelines to prevent disputes and ensure creators are fairly compensated for their AI-generated works. Exploring licensing agreements and royalty distribution mechanisms for AI-generated content can provide a framework for content creators, AI developers, and copyright holders to collaborate and share benefits equitably.

The realm of AI-generated art challenges the conventional understanding of creativity and originality. Engaging with philosophical discussions on aesthetics can enrich the discourse on copyright ownership. AI transcends geographical boundaries, necessitating international cooperation in establishing unified standards for copyright ownership in AI-generated content. Harmonization efforts can foster a consistent approach to this global issue.

The convergence of AI and copyright ownership ushers in a new era of legal complexities.

¹⁰² Lecun, Yann, Bengio, Yoshua & Hinton, Geoffrey (2015). Deep Learning. *Nature*, 521, 436-444.

¹⁰³ Fairfield, Joshua A.T. (2017). *Owned: Property, Privacy, and the New Digital Serfdom*. Cambridge University Press.

Striking a balance between acknowledging human ingenuity, fostering innovation, and respecting the intrinsic nature of AI systems requires a thoughtful and adaptive approach. As AI continues to reshape creative landscapes, it is imperative that legal frameworks evolve alongside to ensure a just and equitable future.

STANDARDS: EXPLORING THE COPYRIGHT NUANCES

The synergy between artificial intelligence and content creation has engendered a paradigm shift in the understanding of originality and creativity.¹⁰⁴ As AI-generated content permeates various spheres, this article endeavors to dissect the intricate relationship between these concepts and copyright, highlighting the challenges and opportunities that arise.

Originality, a cornerstone of copyright, traditionally refers to the standard of creative works.¹⁰⁵ With AI's ability to synthesize vast datasets, the notion of originality becomes multifaceted. The line between recombination and creativity blurs, prompting a reconsideration of what constitutes an original work. Human creativity stems from consciousness, emotions, and experiences. AI, while devoid of consciousness, can mimic creative patterns observed in human creations. This raises fundamental questions about whether AI-generated content can be truly creative, and whether it warrants copyright protection.

AI algorithms can generate content that is unpredictable and unprecedented, constituting a form of algorithmic creativity.¹⁰⁶ This novel dimension challenges conventional perceptions of creativity, provoking discussions on whether algorithmically created works should be granted copyright protection. AI's capacity to produce creative content is intertwined with human training and curation. The programming and selection of training data impart AI with creative biases. Determining the extent to which human intervention influences the resulting content is pivotal in copyright considerations.

The convergence of human and AI creativity necessitates an exploration of hybrid authorship. Recognizing the collaborative efforts between humans and AI could lead to equitable copyright solutions that celebrate both creative contributors. Determining creativity and originality is inherently subjective. While human-authored works often evoke emotional and cultural

¹⁰⁴Levendowski, Amanda (2018). How Copyright Law Can Fix Artificial Intelligence's Implicit Bias Problem. *Washington Law Review*, 93, 579-608

¹⁰⁵ Menell, Peter S. & Vacca, Ryan (2011). Guiding the Evolution of Copyright Law: A Comparative Approach. *Notre Dame Law Review*, 86, 1405-1460.

¹⁰⁶ World Intellectual Property Organization (2019). *WIPO Technology Trends 2019 - Artificial Intelligence*.

responses, AI creations might lack similar human essence. Balancing subjective interpretations with objective criteria is crucial.

Copyright law's adaptability to technological shifts is paramount. Amending legal definitions to accommodate AI-generated content while preserving the essence of creativity and originality is essential for copyright's continued relevance. Considering a spectrum of protection for AI-generated content could entail distinct categories of copyright, ranging from human-authored to fully autonomous AI-created works. Such a spectrum would reflect the degree of human involvement and AI's contribution.

The convergence of AI and copyright law compels us to redefine the contours of originality and creativity. As AI-generated content reshapes creative landscapes, striking a balance between traditional notions of human creativity and algorithmic innovation is paramount. By embracing adaptability and engaging in inclusive dialogues, society can chart a course towards a harmonious coexistence between AI and copyright.

MANUAL CONTRIBUTION VS. SELF-DIRECTED CREATION

The interplay between artificial intelligence and copyright law presents multifaceted challenges, especially concerning the extent of human involvement in the creation of AI-generated content.¹⁰⁷ AI-generated content often involves the expertise of human designers, programmers, and trainers. Their roles encompass developing algorithms, curating training data, and shaping the AI's behaviour.¹⁰⁸ This human-AI collaboration prompts intricate inquiries about ownership, authorship, and the balance between creative contributors. Traditionally, copyright law attributes authorship to humans with creative intent. However, in the realm of AI-generated content, discerning the originator becomes intricate. Questions arise: should human input or autonomous generation be the decisive factor in claiming authorship?

Determining the threshold of human involvement necessitates assessing the nature and extent of human contributions. From fine-tuning AI models to pre-defining parameters, the spectrum of human influence impacts the creative process and copyright considerations. The emergence of AI-generated content without direct human intervention challenges conventional notions of

¹⁰⁷ World Intellectual Property Organization (2019). Artificial Intelligence and Intellectual Property: An Interview with Francis Gurry. WIPO Magazine.

¹⁰⁸ Perzanowski, Aaron & Schultz, Jason (2016). The End of Ownership: Personal Property in the Digital Economy. MIT Press.

authorship. Copyright protection might need adaptation to encompass purely autonomous creations, raising debates about granting intellectual property rights to non-human entities. Copyright laws crafted for human-authored works need recalibration to address AI-generated content. A flexible legal framework should consider the unique dynamics of AI-human collaboration and autonomous AI creation. The possibility of conferring limited intellectual property rights to AI-generated content prompts discussions about AI's legal personality. While protecting AI's creations is essential, legal frameworks must remain rooted in human interests. Given the global nature of AI, international harmonization of copyright law becomes crucial.

Collaborative efforts can pave the way for unified standards, ensuring consistent treatment of AI-generated content worldwide. The juxtaposition of human input and autonomous creation in AI-generated content challenges established copyright paradigms. Striking a balance between human ingenuity, AI capabilities, and evolving legal considerations is paramount. By fostering interdisciplinary dialogues and embracing adaptive legal frameworks, society can navigate the evolving landscape of AI and copyright harmoniously. AI's ability to produce content by drawing from existing works prompts concerns regarding derivative works and fair use. The application of fair use doctrine becomes intricate when AI systems create transformative content by reimagining and remixing existing copyrighted material.

AI SYSTEMS AND THE CHALLENGES COPYRIGHT INFRINGEMENT

The rapid evolution of AI has brought unprecedented capabilities in content generation, raising intricate questions about copyright infringement. AI algorithms, often trained on vast datasets that include copyrighted material, can inadvertently produce content that constitutes copyright infringement.¹⁰⁹ Understanding the intricate process through which AI systems generate content is vital to decipher the factors that contribute to potential infringement.

Traditional copyright infringement involves deliberate intent or knowledge of wrongdoing. However, AI systems lack consciousness and intent. The absence of malicious intent raises the question of whether AI-generated copyright infringement should be treated differently.¹¹⁰ Determining responsibility for AI-generated content involves a nuanced assessment of the roles played by AI developers and users. Developers design algorithms, while users provide prompts

¹⁰⁹ Malcolm, Jeremy (2018). Artificial Intelligence: Governance and Intellectual Property. Electronic Frontier Foundation.

¹¹⁰ Sobel, Ben (2017). Artificial Intelligence's Fair Use Crisis. Columbia Journal of Law & the Arts, 41, 45-73.

and context, shaping the AI's output. Understanding their roles is pivotal in ascertaining liability.

AI-generated content can lead to both direct and indirect copyright infringement. Direct infringement occurs when AI reproduces copyrighted material verbatim, while indirect infringement relates to AI-generated content that encourages or enables further infringement. AI's role in copyright infringement introduces a paradigm shift in liability assessment. The traditional attribution of intent to individuals does not align with AI's autonomous nature. Legal frameworks must adapt to address this novel form of liability. Existing safe harbor provisions, shielding online platforms from user-generated content infringement, may not be directly applicable to AI-generated content. The automated nature of AI content generation warrants a fresh examination of these provisions.

Innovative technologies can play a pivotal role in addressing AI-generated copyright infringement. AI algorithms designed to identify and prevent potential infringements within generated content can serve as a proactive safeguard. Promoting ethical AI use among developers, users, and content creators is essential. Educating AI practitioners about copyright laws, ethical guidelines, and best practices can reduce unintentional infringements.

The rise of AI-generated content brings forth novel challenges in copyright infringement. While AI lacks intent, its potential to generate infringing material necessitates innovative solutions within the existing legal framework. Through collaborative efforts, technologically-driven solutions, and adaptive legal mechanisms, society can navigate the complex terrain of AI-generated content and copyright infringement harmoniously.

MORAL RIGHTS IN THE INTERSECTION OF AI AND COPYRIGHT

The advent of AI has transformed content creation, challenging traditional notions of authorship and creativity.¹¹¹ Moral rights, intrinsic to copyright law, safeguard the personal and reputational interests of creators.¹¹² These rights include attribution, integrity, and the right to object to derogatory treatment of one's work. The expansion of AI-generated content sparks debates about how these rights apply in the context of non-human creation. AI-generated

¹¹¹ Grimmelmann, James (2016). There's No Such Thing as a Computer-Authored Work – And It's a Good Thing, Too. *Columbia Journal of Law & the Arts*, 39, 403-426.

¹¹² Ginsburg, Jane C. (1990). Creation and Commercial Value: Copyright Protection of Works of Information. *Columbia Law Review*, 90, 1865-1937

content raises concerns about preserving the integrity of works. AI systems can manipulate and remix existing creations, potentially compromising the original intent and authorship. Examining AI's impact on the integrity aspect of moral rights is essential.

Attribution, a fundamental moral right, ensures that creators receive recognition for their works. However, AI-generated content blurs the lines between human-authored and machine-generated creations, complicating the determination of attribution. Moral rights also protect creators from the derogatory treatment of their works. The transformative nature of AI content generation prompts discussions about when AI-altered works might infringe on these rights.

The autonomy of AI-generated content challenges the personal connection inherent in moral rights. The lack of human emotional intent in AI sparks inquiries about how to ensure that AI creations respect the ethos of the creator. Cultural context and sensitivities often shape creative works. Ensuring that AI-generated content respects cultural and ethical boundaries while upholding the moral rights of creators is a pressing concern. The definition of "creator" is evolving in the AI era. While AI systems do not possess consciousness, they contribute to content generation. Exploring how these contributions align with the spirit of moral rights is pivotal. AI-generated content often arises from user-initiated prompts. Examining user intent becomes integral when assessing whether the AI-generated work adheres to the moral rights of creators.

Current copyright frameworks primarily address human-authored works.¹¹³ Adapting these frameworks to encompass AI-generated content while preserving moral rights necessitates collaborative efforts between legal experts and AI practitioners. Given AI's global nature, international collaboration is crucial in establishing uniform standards for the ethical treatment of AI-generated content. Harmonized approaches can address cross-border challenges. The intertwining of AI and moral rights reflects the complexity of the digital age. Balancing AI's innovation with the ethical preservation of authorship integrity requires introspection, collaboration, and adaptive legal frameworks. By ensuring that AI respects the spirit of moral rights, we can foster an environment where creators, both human and machine, coexist harmoniously.

¹¹³ Samuelson, Pamela (1986). Allocating Ownership Rights in Computer-Generated Works. University of Pittsburgh Law Review, 47, 1185-1230.

UNIFIED APPROACHES: NAVIGATING COLLECTIVE RESOLUTIONS

The symbiosis of AI and content creation has revolutionized creative landscapes. However, this synergy also raises intricate copyright challenges. This article explores collaborative solutions to navigate the complexities of AI-generated content and copyright, emphasizing the importance of interdisciplinary cooperation, ethical considerations, transparency, and adaptive legal frameworks. Addressing the multifaceted challenges of AI-generated content necessitates the collaboration of diverse stakeholders. Legal experts, AI developers, content creators, policymakers, and ethicists must join forces to foster a holistic understanding of the intricate dynamics. Ethical considerations form the bedrock of responsible AI development.

Collaborators should establish ethical guidelines that encompass content generation, licensing, attribution, and respect for human-authored works, thus aligning AI practices with societal values. Promoting ethical AI practices involves educating AI developers, users, and content creators about copyright norms, moral rights, and responsible content generation. Ethically informed stakeholders are essential for the sustainable integration of AI in creative domains. Transparent disclosure of AI involvement is vital to ensure that consumers and audiences are aware of content's origin. Transparency also upholds the moral rights of creators, as well as the integrity of AI-generated content. Collaborators should devise robust attribution mechanisms that acknowledge both human and AI contributions. This ensures that creators are recognized and properly compensated, irrespective of whether content is AI-generated or human-authored. Licensing models should be designed collaboratively to cater to the hybrid nature of AI-generated content. Fair compensation for human creators and AI developers can be established through innovative licensing agreements.

Copyright laws and legal frameworks should evolve in collaboration with technological advancements. Adapting legal norms ensures that AI-generated content remains protected while preserving the essence of copyright principles. Collaboration between copyright experts and AI developers can result in fair use guidelines tailored to AI-generated content. These guidelines should balance transformative use, originality, and the impact on the market for existing works. Given the global nature of AI and content distribution, international collaboration is imperative. Achieving consensus on ethical practices, attribution, licensing, and legal norms ensures uniformity in addressing AI-generated content challenges. Users should be encouraged to provide input on AI-generated content policies. Public engagement fosters a democratic approach to shaping copyright norms that align with societal expectations.

Workshops, seminars, and educational initiatives that unite AI experts and copyright professionals can bridge the gap between technology and law. Such collaborations foster a deeper understanding of the challenges and potential solutions. Public and private sector cooperating is crucial for shaping policy frameworks that strike a balance between AI innovation and copyright protection. These partnerships can facilitate cross-sectoral expertise sharing. The integration of AI in content creation requires a harmonious blend of technological innovation, ethical considerations, and legal adaptations. Collaborative solutions, fueled by multidisciplinary dialogue, transparency, and dynamic frameworks, offer a comprehensive approach to addressing copyright concerns associated with AI-generated content. By working together, stakeholders can navigate the complexities of this evolving landscape and ensure a balanced, equitable, and sustainable future for AI and copyright.

CONCLUSION

The intricate interplay between artificial intelligence (AI) and copyright concerns has traversed a landscape that is both promising and perilous. The transformational potential of AI is undeniable, revolutionizing how we create, consume, and interact with content. Yet, the rapid proliferation of AI-generated content demands a recalibration of our traditional legal and ethical frameworks. The investigation has underscored the pressing need for adaptive copyright laws that accommodate the novel modes of creativity that AI ushers in. Flexibility, innovation, and a willingness to rethink established norms will be essential to strike the right balance between incentivizing AI innovation and preserving the rights of human creators.

The notion of authorship, which lies at the heart of copyright, has taken on new dimensions in the age of algorithms. AI-generated content raises profound questions about what it means to be an author and whether the absence of human intent compromises the creative essence that copyright seeks to protect. The exploration has emphasized the importance of recognizing hybrid authorship, wherein humans and AI collaborate in the creative process. This recognition can pave the way for equitable attribution, fair compensation, and the preservation of the creative spirit. The ethical considerations woven into this discourse are equally vital. Ensuring that AI-generated content respects cultural sensitivities, adheres to moral rights, and upholds the principles of fairness and transparency is paramount. As AI continues to evolve, the ethical compass that guides its development should be grounded in a commitment to responsible innovation that aligns with societal values and expectations.

Collaboration emerges as a recurring theme in the discussion. The intricate web of challenges stemming from AI-generated content and copyright cannot be untangled by any single stakeholder. The collaboration between legal scholars, technologists, content creators, ethicists, policymakers, and industry leaders is indispensable in crafting holistic solutions.

Multidisciplinary dialogues that bridge the gap between law, technology, and ethics can pave the way for informed decisions that account for the diverse perspectives involved. As we envision the future of AI-generated content and copyright, it is crucial to recognize that this intersection is not static. The dynamic nature of technology demands continuous vigilance and adaptation. Legal frameworks must be designed to evolve alongside technological advancements, ensuring their relevance and efficacy. Ongoing dialogues, workshops, and collaborative initiatives will be essential to keep pace with the rapid changes this domain undergoes. The coalescence of AI and copyright embodies the essence of modern innovation – a fusion of complex challenges and boundless possibilities. Through this article, we have delved into the nuanced dimensions that govern this relationship, contemplating the rights of creators, the capabilities of algorithms, and the ethical implications of it all. As society navigates this uncharted terrain, it is our collective responsibility to approach AI-generated content and copyright concerns with a judicious blend of legal acumen, ethical reflection, and technological savvy. By doing so, we can shape a future where innovation thrives, creativity flourishes, and the rights of all stakeholders are diligently upheld.



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GEOGRAPHICAL INDICATION: PROTECTOR OF INDIA'S RICH CULTURAL HERITAGE

Shrayash Shriwas and Shraddha Mudgal¹¹⁴

ABSTRACT

India is a nation of extraordinary cultural diversity, with a variety of traditions, crafts, and cuisine that have evolved over thousands of years in various parts of the Indian subcontinent. This richness in culture and heritage is not just a source of pride for the nation but also a tribute to the intersection between location and tradition. Geographical Indicators (GIs), a component of Intellectual Property Rights (IPR), emerge as a vital way to conserve this Cultural heritage by tying products to their distinctive locations of origin. GIs are place-based labels used to distinguish products that draw their features, characteristics, and reputation from their geographical location. They are a symbol of the complex relationship between a region's particular natural elements, cultural behaviors, and the products they yield. In India, GIs are more than just a legal instrument; they are the keepers of the nation's diverse heritage which has been preserved and passed on through generations. The Indian subcontinent carries an extensive range of GIs that reverberate internationally, from the beautiful craftsmanship of Banaras silk and Kosa silk to the fragrance of Darjeeling tea and the complex artistry of Jaipur's blue ceramics to Madhubani paintings of Bihar. Beyond its economic value, these GIs illustrate centuries-old traditions, skills handed down, and indigenous knowledge systems that have lasted through time. With this paper we want to showcase the importance of GI's in India, its importance, its application and how it is important to protect India's centuries-old cultural legacy in international trade. We begin by defining GI, its significance, and its history before moving on to discuss its applicability in India, what constitutes GI, relevant case law, GI from a national and international viewpoint, and contemporary GI-related issues in India.

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Keywords: Culture, Heritage, Geographical Indicator, Protection, Intellectual Property Rights

INTRODUCTION

India's cultural diversity is rooted in its history and geography. Over the years, the nation has been the home of a wide variety of cultures and religions, and each had a distinctive impact on Indian civilization. The variety of art forms in India is among the most visible features of its cultural diversity. India is home to an extensive variety of creative traditions, including the classical dances of Kathakali and Bharatanatyam and the folk art of Madhubani and Warli, each of these art forms tells a story of the unique culture and traditions of its region. These art forms are not just aesthetic expressions; they are also repositories of knowledge and history. These artistic expressions give an in-depth look into the diverse and rich history of India while also reflecting different cultures of India.

Depending on the context and type of usage, Copyright and industrial property are two of the main subcategories of intellectual property rights. Industrial property rights are used to evaluate a person's legal authority over things that are relevant to business and industry. 'Geographical Indications'¹¹⁵ comes under this category. 'Geographical indications (hence referred to as GIs) represent distinctive signs applied to identify items with a specific geographic origin and qualities that are distinctly connected to the geographical area from which they arrive.'¹¹⁶ GIs are particularly important in India, where many traditional art forms are produced using traditional methods and materials. For example, Chanderi sarees are a type of handwoven silk and cotton fabric that originate from the town of Chanderi in Madhya Pradesh.¹¹⁷ The sarees are known for their fine texture, intricate designs, and gold and silver zari work. Similarly, Bastar Dhokra is a form of metal casting that uses the lost-wax technique to create intricate sculptures of animals, deities, and tribal motifs, the art form is practiced by the indigenous tribes of Bastar in Chhattisgarh, who use locally available materials such as beeswax, clay, and alloys of brass, bronze, nickel, and zinc.¹¹⁸ These two are only a couple of the many GIs that

¹¹⁵ Part III, Article 22(1) of TRIPS Agreement 1994; Articles 1 (2) and 10 of the Paris Convention 1979 for the Protection of Industrial Property; Section 2(e), Geographical Indications of Goods (Registration and Protection) Act 1999

¹¹⁶ https://www.wipo.int/geo_indications/en/ (Last visited Oct. 08, 2023)

¹¹⁷ Precious Rongmei, *This town in Madhya Pradesh has a GI-tag and numerous historical gems*, Times of India, (Oct. 02, 2023 at 03:20 PM), <https://timesofindia.indiatimes.com/travel/destinations/this-town-in-madhya-pradesh-has-a-gi-tag-and-numerous-historical-gems/articleshow/99853883.cms>

¹¹⁸ IBEF. "Bastar Dhokra Craft." IBEF Experience India, 2023. <https://www.ibef.org/experience-india/products/bastar-dhokra-craft> Accessed October 2, 2023.

may be registered under the Geographical Indications for the Identification of Goods (Registration and Protection) Act, 1999.

GI indicates that there is a close relationship between a good's characteristics and the location of its production, meaning that the product inherits its attributes from that location. The link ought to inform consumers of certain significant details regarding the goods and its original production location. GI tagged products are goods that reflect the culture and nature of specific regions. They are sought-after and precious in the global market, where people pay extra for their quality and authenticity. But they also risk fakes and fraud by greedy traders who want to benefit from their reputation. This can harm both the makers and the users of GI tagged products, as they can face quality loss, market decline, and trust erosion. So, it is vital to regulate and verify the quality of GI tagged products, to ensure they comply with the GI standards. GI tag is a quality guardian, as it helps to spot and certify the real products, protect them from violation and exploitation, and make them aware and valued by the people. By registering these GIs, India aims to preserve the cultural heritage, promote the economic development, and protect the consumer rights of these unique products.

DEFINITION AND CONCEPT OF GEOGRAPHICAL INDICATORS

The complexity of GIs stems from the fact that they integrate a variety of economic and legal principles, including those pertaining to consumer protection, intellectual property rights, and unfair competition. Additionally, due to the worldwide extent of GIs, they can be protected in various countries. There is no one widely recognized definition of geographical signs because of their nature and broader geography of protection, therefore enables room for interpretations. Some of the definitions used regularly in India Are-

Geographical Indication means “a sign which identify an article as starting in the territory of a member, or a region or locality located within that territory, where a given quality, reputation, or other characteristic of the good is essentially attributed to its geographical origin” in Part II, subsection three of Article 22(1) of the World Trade Organization's (WTO) 1995 Settlement on Trade- Related aspects of Intellectual Property Rights, also known as the TRIPS Agreement.¹¹⁹

Section 2(e) of the Geographical Indications of Goods (Registration and Protection) Act 1999

¹¹⁹ Trade-Related Aspects of Intellectual Property Rights, 1994, art. 22.

defines geographical indications as “geographical indication, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.”¹²⁰

As defined by the World Intellectual Property Organization (WIPO), geographic indicator is “a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.”¹²¹

GI tag provides confirmation of the product’s country of manufacturing or origin. The value tag works as an identifier for the consumers that are buying genuine products that have the unique qualities associated with that region. It also enables the manufacturer to cultivate brand recognition and reputation for their products, which in turn helps them command a higher price due to their quality and traditional means of production.

A GI tag has several functions in alongside performing as an identifier, namely the following:

- I) gives a hint about the goods’ quality: A GI tag indicates that the specified goods have distinctive features due to their origin and that these characteristics set them against other goods in the exact same category.
- II) Culture protecting function: GI guarantees that communities get paid fairly for their products while preserving the traditional methods of producing commodities that were developed by them. This ensures that certain production techniques don't become extinct in this day and age.
- III) Export growth is stimulating the economy, and this is made possible by GI tags, which boost export growth. An item with a GI tag is of a specific standard, has a good reputation, and was manufactured using conventional manufacturing methods.
- IV) Provides Legal protection:

¹²⁰ The Geographical Indications of Goods (Registration and Protection) Act, 1999 (Act 48 of 1999), s. Section 2(e)

¹²¹ WIPO. Geographical indications: What do they specify? (Last visited Oct. 8, 2023)

Only producers in the geographical region associated with the GI can use the GI tag on their products. This prevents unauthorized producers from using the GI tag to mislead consumers and benefit from the reputation of the GI-protected product. Producers who have registered a GI have exclusive rights to use the GI tag on their products. This means that other producers cannot use the GI tag on their products without permission from the registered proprietor. Producers who have registered a GI have exclusive rights to use the GI tag and can sue anyone who violates their GI rights. This covers producers who create items with false GI tags, producers who create things that aren't real, and producers that mislead consumers regarding the nation of origin of their products.

The following prerequisites must be satisfied for a sign to be considered as a geographic indication:

- The Symbol must be related to the Good.
- The products must come from a specific geographical territory; and
- The items being sold must display a company's logo, a reputation, or additional characteristics symptomatic of their origin.

Geographical indications (GIs) are based on two separate notions that are connected with the origin and quality of the merchandise. These two ideas can be separated according to the following:

1. Protected Appellation of Origin

An appellation of origin (AO) is an identifier that protects the reputation and name of a product from a specific area. For example, Darjeeling tea is an AO, which signifies that tea that is grown and produced in the Darjeeling region of India can only be identified as Darjeeling tea.

2. Indication of source

Indications of source are a type of GI that simply indicates the geographical origin of a product. They do not necessarily connote any special qualities or reputation. For example, the phrase “Made in France” is an indication of source that can be used on any product that is manufactured in France.

BACKGROUND

As defined in article 27 of the UDHR “Everyone has the right to freely participate in the cultural life of the community, to share scientific advances and its benefits, and to get credit for their own work. This article firmly incorporates cultural rights as human rights for all.”¹²²

After achieving independence in 1947, India decided to maintain a closed economy for a number of years. This was brought on by historical aspects including the requirement to defend indigenous industry from foreign competition. But in order to boost economic growth, India embraced globalization in 1991. GI was created to preserve the identity, diversity, and heritage of traditionally made products, and improve their economic and social value for the makers and the country. It also aims to prevent the imitation and fraud of these products by unscrupulous traders who want to take advantage of their popularity and goodwill. The origins of Geographical Indications (GI) may be found in the 19th century, when certain nations, like France, began to defend the trade names and trademarks of food items associated with certain regions. Later, in 1919, France established the notion of “appellation of origin” to control the standard of cheeses and wines from particular areas.¹²³

The term geographical indication gained international attention in 1994 when it was recognized as intellectual property in the WTO TRIPS Agreement. Since then, many countries have adopted laws and regulations to safeguard and promote their GI products. India, for example passed the Geographical Indications of Goods (Registration and Protection) Rules 2002 as well as the Geographical Indications of Goods (Registration and Protection) Act 1999, which came into force on September 15, 2003.

GEOGRAPHICAL INDICATION AS AN INTELLECTUAL PROPERTY

People who develop new knowledge and ideas are given the right to intellectual property. Intellectual property includes things like patents, trademarks, copyright, trade secrets, and geographical indications. All these terms—patent, trademark, trade secret, etc.—are connected to fresh concepts and discoveries regarding a specific person or business. Typically, geographical identifiers comprise processing techniques that have been handed down through the centuries. The method employed in the item can be very dated. Why do intellectual property

¹²² United Nations General Assembly. “Universal Declaration of Human Rights.” Resolution 217 A (III), December 10, 1948. (Accessed on October 4, 2023). <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

¹²³ World Intellectual Property Organization. (n.d.). Summary of the Paris Convention for the Protection of Industrial Property. Retrieved October 2, 2023, from https://www.wipo.int/treaties/en/ip/paris/summary_paris.html

rights include geographical indication? The answer to the problem is that, with regard to agricultural goods, such as Sohrai Khovar paintings and Ratnagiri Alphonso mangoes, respectively, the geographical indicator is only given to individuals who have genuine knowledge about the product. A geographical indication is a tool that can be employed to some extent to safeguard and preserve both community traditions and natural resources. However, the geographical indicator is a form of intellectual property that is frequently associated with outdated ideas and procedures.

Geographical Indication is a case when intellectual property rights are not applicable.

Since agricultural items receive the majority of GI, this will aid in preserving sustainable agricultural methods. Additionally, GI aids in preventing improper product use by other parties. Since customers are more likely to purchase original products than counterfeit ones, GI can also assist in generating some financial benefit.

As a result, GI safeguards not just the goods produced or processed but also the community's knowledge and technical expertise. It is evident from the TRIPS agreement's regulations that GI is considered intellectual property.

SIGNIFICANCE OF GEOGRAPHICAL INDICATIONS (GI)

Certain countries rely on trademark laws, passing off lawsuits, unfair competition laws, and safeguarding customers' laws based on their attempts to defend their intellectual property rights.

Geographical indications (GIs) are exemptions or signs applied to products that differentiate them from competitors based on specific characteristics, usage of traditional manufacturing methods, or unique reputation derived from their location of origin. They originated in France, where they were first used as an Appellation d'origine controlee (AOC) in the early 20th century. However, the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) of 1994 allowed for the extension of the Agreement to other member nations as well, including India. According to the provisions of the Geographical Indications of Goods (Registration and Protection) Act, 1999, which came into force on September 15, 2003, the Geographical Indications Registry, a body under the Department of Industrial Promotion and Internal Trade, Ministry of Commerce of India, must provide geographical indications. Any producer, whether individual, group, company or legal entity, can apply for a geographical map. The request must be sent to the authorized organization in the correct format and with the

appropriate fee.

The first-ever GI tag was awarded to Darjeeling Tea in 2004,¹²⁴ since then, several additional applications and registrations have been made. Around 370 GI tags have reportedly been attached to various objects in compliance with Section 2(f) of the Geographical Identification of Commodities (Registration and Protection) Act, 1999.

If a product fails to fulfill the necessary requirements, the owner of the geographical indicator right has the authority to prohibit others from using the indication. Tea manufacturers, for example, are permitted to remove the label “Darjeeling” from tea that was not produced in compliance with the requirements outlined in the code of conduct for the geographical indicator or that was not cultivated in their own tea gardens. On the contrary, the holder of a protected geographical indication is not entitled to prohibit others from producing a product using techniques similar to those described in the criteria for that indication. Generally, obtaining a claim to the indication-providing sign is the first step towards obtaining GI tag protection.¹²⁵

National and international legislation, such as those pertaining to mark certification, unfair competition, and consumer protection, safeguard GIs. By protecting them from unfair acts like copying and deception, these regulations aid in protecting GIs. Governmental protections are in place to protect GIs from unfair tactics. National laws, generally speaking, Determine if it's still a sign or if it's just a coincidence. Specifically, a general comment on whether the word has become meaningless and has become a general phrase. The phrases that follow have addressed the three fundamental categories into which national legislation is divided.

All potential safeguards against the direct application of statutory provisions or legal precepts provided by the philosophy of law are included in the first category of nation France, protection in this manner is frequently apparent, as evidenced by The French Law of May 6, 1997. The appropriate authorities established a control mechanism, and quality control areas frequently operate. Initially solely applicable to wines and spirits, this protection was eventually expanded to cover other goods like dairy products including dairy products, butter, chicken, and plant-based foods. The protection of GIs through collective mark registration, also known as certification mark protection (“The label used as a certification mark will be evidence that the

¹²⁴ Government of India, “Registration Details of Geographical Indications” 1 (Ministry of Commerce, 2004)

¹²⁵ Protection of Geographical Indication and its judicial findings, LEGAL SERVICE INDIA - LAW, LAWYERS AND LEGAL RESOURCES, <https://www.legalserviceindia.com/legal/article-2405-protection-of-geographical-indication-and-itsjudicial-findings.html> (last visited Oct 11, 2023).

company's products meet the specific standards required for the use of the certification mark”), is an element of the second class of defense systems. An example of this is the French “agricultural label.” This French law stipulated the criteria for the continued use of labels of origin and acknowledged their existence. Since it may be used to identify the source of goods or services, a certification mark may be somewhat appropriate for the protection of geographical indications. Indicators resulting from a decision made by a competent government authority fall under the last category of protection at the national level. The system in Singapore can be used as an example. The protection there is somewhat narrow, available only to countries who are signatories to the Paris Agreement, members of the World Trade Organization (WTO), or those the Government Gazette has designated as “qualified countries”. The Geographical Indications Act of Singapore does not require GIs to be registered, and under Indian law, GIs may be protected in a similar way to trademarks. Laws have been appropriately modified in 2000 to comply with the needs.

The marketing of goods that have GI is subject to administrative permission, allowing administrative controls over how the GI is used on those commodities. The best example is wine and liquor sales, which are governed in many nations. The requisite must be satisfied for approval to be given; otherwise, GI cannot be utilized for marketing reasons. Fair trade and consumer protection are guaranteed by administrative label control programmers. Different actions, such as unfair competition, fair dealing, or the marketing of specific items in accordance with specified criteria, may be taken to uphold fair trade and consumer protection. The administrative tool also tries to stop the misrepresentation of GI on goods. If lying continues, criminal penalties may be levied.

1. National Significance

Geographical indications are built on a shared tradition that has evolved through centuries in a specific geographic location, region, or place. Because GIs encourage ongoing evaluation and the prosperity of the GI designated region, protecting GIs is actually a manner of rewarding traditions.

1.1. Rural development

In the Indian context, Gandhian doctrine is heavily founded on Gramme Swaraj, which believes in rural development through village self-rule. However, in today's globalized economy, there is high market competition because large corporations control economic activities at large, and as a result, the cottage industry and traditional varieties

of food and craft products that originated in rural areas are under threat of extinction. They require protection, and a GI tag can be very useful in providing that protection. By expanding local cash inflows and possibilities for employment, effective protectionism and distribution can directly contribute to the eradication of absolute poverty. Due to their reputation, many products manufactured in India that have traits that could possibly be explained by their origin are acceptable for the GI label. These products are from several categories, such as handicrafts, handloom, agricultural, and food stuff, and are primarily produced in rural areas; thus, trade benefits obtained through GI tags would be pro-poor and supportive of rural communities. Because the GI tag increases the value of these products, they can be marketed globally. The popularity of a product. Recognition of GIs, on the other hand, may bring other economic activity, like tourism, crafts, and services, to the local area.¹²⁶As a result, by keeping rural farmers with their financial resources, GI certification lowers the vulnerability of the rural poor to poverty via the reputation channel and, as a result, lowers the amount of immigration from rural to urban regions. The European Union (EU) has conducted a number of studies that demonstrate the significant changes that are occurring, including the growth and expansion of geographically designated commodities and their increased economic potential after GI membership. However, without empirical research, it is impossible to evaluate and quantify the true effects of geographical indications (GI) in India.

2. International

In 1995, the “International Trade Organization Framework” replaced the International Intellectual Property Organization (WIPO) as the administrative body for intellectual property. The TRIPS Agreement of 1994 is an international treaty that defines the minimal standards for intellectual property (IP) protection in WTO nations that are members. Amongst the numerous IP rights that are protected by this are copyrights, patents, trademarks, designs for products, and proprietary information. The Agreement has significantly altered the landscape of intellectual property by promoting creative thinking and innovation, lowering trade barriers, and contributing to economic growth.

¹²⁶ Megha Ojha, GEOGRAPHICAL INDICATIONS AND RURAL DEVELOPMENT IN INDIA: AN ANALYTICAL STUDY OF THE SCOPE AND CHALLENGES IN GUJARAT AND RAJASTHAN SHODHGANGA@INFLIBNET: GEOGRAPHICAL INDICATIONS AND RURAL DEVELOPMENT IN INDIA : AN ANALYTICAL STUDY OF THE SCOPE AND CHALLENGES IN GUJARAT AND RAJASTHAN (1970), <https://shodhganga.inflibnet.ac.in/handle/10603/332101> (last visited Oct 11, 2023).

An important boost was the incorporation of intellectual property (IP) under the WTO regime, which brought IP under the purview of international trade law. As a result, nations can now resolve IP disputes through WTO dispute resolution processes. The WTO dispute settlement process has promoted the growth of a more unified international IP system and improved IP rights enforcement on a worldwide scale. The TRIPS Agreement has both positive and negative impacts. On the one hand, by providing them with robust protection for their intellectual property, it has assisted in making it simpler for people to develop new ideas and produce new goods. Additionally, technology has made it simpler for firms to conduct international trade and for nations to expand their economies. However, the Agreement can be challenging to put into effect, particularly for developing nations. It has also received criticism for not allowing nations sufficient flexibility to safeguard their inhabitants' welfare and public health.¹²⁷

Protecting Geographical Indications Before the TRIPS Agreement

1. The Convention of Paris

The Paris Agreement was absolutely the most important agreement that many countries accepted in the 20th century. The 1883 Parisian Convention was further elaborated upon by the Madrid Protocol of 1891. Following revisions in Brussels (1900), London (1911), The Netherlands (1925), London (1934), Lisbon (1958), and Stockholm (1967), it was modified in 1979. The Paris Convention, the first accord on this topic, guaranteed relatively little protection of geographical indications. There are numerous articles of the Paris Convention that deal with indications of source or trademarks of origin; article 1(2) lists "indications of source" and "appellations of origin" amongst the products regulated by industrial property.

2. The Madrid Agreement

The Madrid Agreement for the Repressed emotion of Untrue and Deceptive Indications of Source on Goods is a specialized agreement inside the Paris Union. In between being modified in Lisbon in 1958, London in 1911, The

¹²⁷ Kritika Nagpal, INTERNATIONAL DEVELOPMENTS IN GEOGRAPHICAL INDICATIONS ISSUES AND CHALLENGES SHODHGANGA@INFLIBNET: INTERNATIONAL DEVELOPMENTS IN GEOGRAPHICAL INDICATIONS ISSUES AND CHALLENGES (1970), <https://shodhganga.inflibnet.ac.in/handle/10603/362750> (last visited Oct 11, 2023).

Hague in 1925, and London in 1934, the Madrid Agreement was first ratified in 1891. It has 33 signatory states as of the 5th of January 2001, and it had been expanded by the Additional Act of Gothenburg (1967). Unlike the Paris Convention, which is a worldwide treaty providing protection for. The Madrid Agreement incorporates exhaustive instructions on how to remove deceptive and bogus source information and covers an extensive number of diverse classifications of rights in industrial property nevertheless, there is no clearly request that such measures be taken; rather, the States Parties to the Agreement can recommend that the parties concerned utilize through a public prosecutor or any other competent authority. The Agreement also establishes norms for how seizures ought to take place and indicates the competent authority to enforce such measures.

APPELLATIONS OF ORIGIN ARE SAFEGUARDED BY THE LISBON AGREEMENT

The Lisbon Agreement was approved in 1958, then accompanied by amendments in Stockholm in 1967 and finally changes in 1979. This agreement sets up a correspondingly greater extent of protection, and the TRIPs geographical indications regulations were modeled after it. One of these agreements, the Lisbon Agreement, is the location where the notion of "appellations of origin" is first defined. The term "geographical indications" is not used, nevertheless. The arrangement guarantees descriptors of origin, or markers for items with special characteristics and the characteristics relating to their place of origin.¹²⁸

IMPORTANCE OF GEOGRAPHICAL INDICATORS

- **“Preserving our knowledge, our culture, and our heritage”:** Every community accumulates a certain body of knowledge over a protracted period. The geographical setting and human interactions are responsible for the development of this knowledge base, which has become a significant component of their economy and heritage. The importance of a cohesive relationship between human culture, economy, and traditional

¹²⁸ Rekha S Chavan, LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS: NATIONAL AND INTERNATIONAL PERSPECTIVE SHODHGANGA@INFLIBNET: LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS: NATIONAL AND INTERNATIONAL PERSPECTIVE (1970), <https://shodhganga.inflibnet.ac.in/handle/10603/14514> (last visited Oct 11, 2023).

knowledge is stressed by GIs. These are susceptible to misuse in a globalized culture, making the task of safeguarding knowledge and heritage crucial. It is necessary to recognize the locals who have worked hard to develop the manufacturing process or just traditional knowledge over a period of time. “The International Conference on Intellectual Property's Article 37 states that any local community's artistic and cultural assets must be protected from unfair competition and adequately compensated. Since GIs are built on shared traditions and decision-making processes, they are well suited for the safeguarding of traditional knowledge. GIs not only support the evolution of traditional knowledge but also protect and reward it”.

- **“Competition”:** Things can be replicated easily in the present electronic age.

Unfair competition is a result of this copying. At the international level, these items are covered by legislation. Damages result from unfair business practices. Four different categories of damages for unfair competition have been recognized by courts. Any competitive act that violates ethical standards in business or industry is clearly described as unfair competition in this law. Since it is the fundamental purpose of law to encourage moral and ethical behavior in the marketplace, fair competition is essential. According to S. Ricketson, if anyone is harvesting the crop without sowing and maintaining it, it is against the principles of natural law. Fair competition is not only important for protecting the original producer and source of origin, but it is also particularly helpful in the context of evolving business practices.

- **“Foreign trade”:** International trade is largely dependent on intellectual property. Since the prosperity of the national economy is always boosted by the wise and effective application of information. In a nation like Australia, the value of intellectual property is \$30 billion and rising. The TRIPS agreement is in place on a global scale to maximize the use of intellectual property for economic success. It also features a mechanism that guarantees the eradication of unfair competition and the advancement of environmental protection. In the same way that trademarks or brand names are used to distinguish high-quality goods and build their reputation and goodwill, geographic indications (GIs) are likewise an IPR that is used to establish premium prices in foreign markets. GIs run the risk of being abused without sufficient protection. Such unethical business practices not only cause the real owners of the GIs to lose a significant amount of money, but they may also, in the long term, damage the GIs' goodwill and reputation.

CASE LAWS

1. *Tea Board of India vs. Mitsui Norin KK, Japan*

The application for "Divine Darjeeling" in Category 30 (Darjeeling tea, coffee, and chocolate produced in Darjeeling, India) was contested in this case by the country's Tea Board. Three things in particular had a significant impact on the opposition: Insofar as "Darjeeling coffee and cocoa" is concerned, Divine Darjeeling falls short because neither coffee nor cocoa are grown in the Darjeeling region. However, Darjeeling tea is recognized as a geographical designation according to international treaties, such as TRIPS, as well as ought to be protected because Japan is a TRIPS member. The one thing that requires protection is the phrase "Darjeeling," which is simply unparalleled because "divine" is a praiseworthy term. The Japan Patent Office Opposition Board approved the invalidation claim offered by the Tea Board of India since it was determined that the "Divine Darjeeling" mark did not distort or deceive customers regarding the nature of the product. The non-use cancellation process was unsuccessful because the allowed possessor was unable to provide the required documentation showing that the mark had been used in Japan.¹²⁹

2. *Basmati rice case*

Late in 1997, Ricetec Inc., an international company with its primary headquarters in Alvin, Texas, was awarded a patent from the USPTO for a revolutionary "grain" commonly referred to as "basmati." The firm and innovative "basmati" crop claimed that several varieties had been safeguarded because they possessed attributes superior to those of the original crop. On the international rice market, it has been selling numerous varieties of rice under the names "Jasmati" or "Kasmati". It was also claimed that basmati rice was bred with American basmati, often known as "Texmati," a different species, resulting in the creation of a brand-new variety of fragrant rice. A patent for the brand and granule of basmati rice has been awarded to the company by the USPTO. Later, the invention had been challenged by the Research Foundation, the Institute for Science, the Centre for Food Security, and

¹²⁹ Ayush Verma, RELIEFS PROVIDED FOR VIOLATION OF GEOGRAPHICAL INDICATION IN INDIA iPLEADERS (2020), https://blog.ipleaders.in/reliefs-provided-for-violation-of-geographical-indication-in-india/#Tea_Board_of_India_vs_Mitsui_Norin_KK_Japan (last visited Oct 11, 2023).

finally the Centre for Science and Industry Research. While Thailand battled to keep its right to grow rice made from jasmine, the Indian subcontinent maintained its a long-standing basmati rice business. Around 2000, the Indian Government reviewed the proof that was available and challenged the business's copyright assertions.¹³⁰

3. *Scotch Whisky Association v. Pravara Sahakari Karkhana Ltd.*

In the present matter, the respondent, Pravara Sahakari Shakar Karkhana Ltd., the manufacturer of various Indian whisky brands, which includes "blended scotch whisky" or "blended with Scotch," under the various brand names "Drum Beater" and "God Tycoon," was sued for passing off by the plaintiff Scotch Whisky Association, an organization participated under the age of the United Kingdom's Companies Act. A ruling by the Bombay High Court, the plaintiff in this case had a compelling enough argument to stop the defendant from portraying the brand of Indian Whisky in order to maintain Scotch whisky's goodwill and image. By referring to their product as blended scotch whisky when it didn't happen, the company in question misrepresented the products they were selling. At an outcome, the court instructed an interim injunction. By utilizing the phrase "Blended with Scotch," the defendant attempted to capitalize on the complainant's goodwill whilst also engaging in unfair trade and colorable imitation. Alcohol that isn't Scotch whisky cannot be advertised, rendered available for public buying, as well as or redistributed by the defendant anywhere. The decision makes it abundantly obvious that the Indian judiciary frequently offered GIs the benefit of the belief even when there was not a law in practice at the time.¹³¹

LEGAL PERSPECTIVE OF GI IN INDIA

The Section 9 of the Indian GI Act, discusses the comparative arrangement is. Enrollment in this location is restricted to GIs that have been determined to be non-specific. In a nation like India, where many of the conventional gardening goods derive their distinctive features and

¹³⁰ Basmati Rice and patent battle : When Indigenous Knowledge is patented for profit, IPLEADERS (2020), https://blog.ipleaders.in/basmati-rice-patent-battle-indigenous-knowledge-patented-profit/#Facts_of_the_incident (last visited Oct 11, 2023).

¹³¹ Scotch Whisky Association and another v Pravara Sahakari shakar karkhana limited on 18 July 1991 - judgment, LAWYERSERVICES, <https://lawyerservices.in/Scotch-Whisky-Association-and-Another-Versus-Pravara-Sahakari-Shakar-Karkhana-Limited-1991-07-18> (last visited Oct 11, 2023).

attributes from the particular topographical area where they are developed, the above genericide exemptions, which seems more extensive than needed, could turn out to be a real hit to manufacturers. Darjeeling's unique and complicated combination of agro climatic conditions has allowed for the development of tea there since 1835. Such tea has an undeniable, regularly occurring quality and flavor.¹³²

APEDA and the Department for Promotion of Industry and Internal Trade (DPIIT) are two organizations that promote exports of agricultural and processed food products are two governmental organizations that have been proactively promoting GI-tagged products to consumers and businesses throughout the world. Those organizations have initiated numerous initiatives to promote and advertise Indian GIs through a wide range of countries. APEDA has set up online marketplaces for GI food items with countries like the UAE, the USA, and Qatar. GI producers can sell their products directly to these markets. APEDA has also funded promotional activities for GI mangos in Belgium and Denmark. It has helped GI producers export their goods to countries like Bahrain, Italy, and the UK.¹³³

DPIIT has organized the “India Geographical Indications (GI) Fair 2022” with EPCH. The fair displayed the wide range of Indian GIs, such as handicrafts, textiles, cuisine, and beverages. It attracted domestic and international visitors. DPIIT also set up a special pavilion for GI products at the IITF in Delhi. DPIIT has organized various events for GI producers to network with buyers and partners, and to increase awareness and demand for their products.¹³⁴ These activities help Indian GIs to grow in the global market. India’s GIs reflect its rich culture and its talented artists and craftspeople. The government supports GIs to boost the economy and preserve traditional livelihoods.

The following is a list of some of the export marketing organizations in the nation that promote items with GI tags:

- Export Development Authority for Farm and Processed Food Goods

¹³² Legal protection of geographical indications: International and national perspective, LEGAL SERVICE INDIA - LAW, LAWYERS AND LEGAL RESOURCES, <https://www.legalserviceindia.com/legal/article-3254-legal-protection-of-geographical-indications-international-and-national-perspective.html> (last visited Oct 11, 2023).

¹³³ “Center Takes Proactive Steps to Promote the GI Tagged Products in the Global Market”, Press Information Bureau, Feb. 10, 2023, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1898020> (last visited on Oct. 5, 2023).

¹³⁴ “Center Takes Proactive Steps to Promote the GI Tagged Products in the Global Market”, Press Information Bureau, Feb. 10, 2023, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1898020> (last visited on Oct. 5, 2023).

- Apparel Export Promotion Council
- Carpet Export Promotion Council
- Cashew Export Promotion Council of India
- Coffee Board
- Coir Board
- Council for Leather Exports
- Export Promotion Council for Handicrafts
- Gem and Jewellery Export Promotion Council
- Handloom Export Promotion Council
- Indian Silk Export Promotion Council
- Jute Products Development & Export Promotion Council
- Rubber Board
- Shellac and Forest Products Export Promotion Council
- Spices Board
- The Cotton Textiles Export Promotion Council
- Tea Board
- Handicrafts Business Promotion¹³⁵

ACT OF 1999 RELATING TO GEOGRAPHIC INDICATIONS OF GOODS (REGISTRATION AND PROTECTION)

Some Important definitions

1) Who can register as the owner of a geographical indication?

An ensemble of individuals, a manufacturer, a corporation, or a body represented by or regulated by the law can all be considered approved licensees. They must be listed as the registered proprietor for the looked-for Geographical Indication in the Geographical Indication Register.

2) What are “Goods”?

"Goods" covers all manufactured, handcrafted, natural, and agricultural goods as well as food products.

¹³⁵ Centre takes proactive steps to promote the GI tagged products in the global market. Press Information Bureau. (n.d.). <https://pib.gov.in/PressReleasePage.aspx?PRID=1898020>

3) Who is a permitted user?

A manufacturer of goods may submit an application to become an authorized user. A registered geographical indicator must be involved.

4) Who in their right mind is a producer in respect to a geographic indication?

The term “Producer” refers to those who deal with three types of things:

- The production, processing, trading, or dealing of agricultural goods is included.
- The exploitation, exchange, or dealing of natural resources.
- Manufacturing, trading, and dealing all fall under the category of handicrafts or industrial items.

5) Who may utilize the registered geographical indication?

The sole right to use a geographical indicator in relation to items for which it is registered belongs to an authorized user.

6) When is it considered to have violated a registered Geographical Indication?

When an unauthorized user intentionally misleads the public about the geographic origin of products by using a geographical indication to imply or indicate that the items come from somewhere other than their actual place of origin. When a geographical indicator is used in an unfair business practice, such as passing off a registered geographical indication. When a product's origin is misrepresented to the public as being in a territory to which a registered geographical indicator refers as a result of the use of another geographical indication.

7) Can a geographical indicator that has been registered be allocated, communicated, etc.?

Additionally, there can be no swap of a geographical indicator. The general commodity referred to as a geographical indication is owned by the creators of the in question anything. It cannot be part of a transfer, authorization, commitment, the mortgage, or other equivalent agreement. On the other hand, the right belongs to the heir when an approved user passes away.

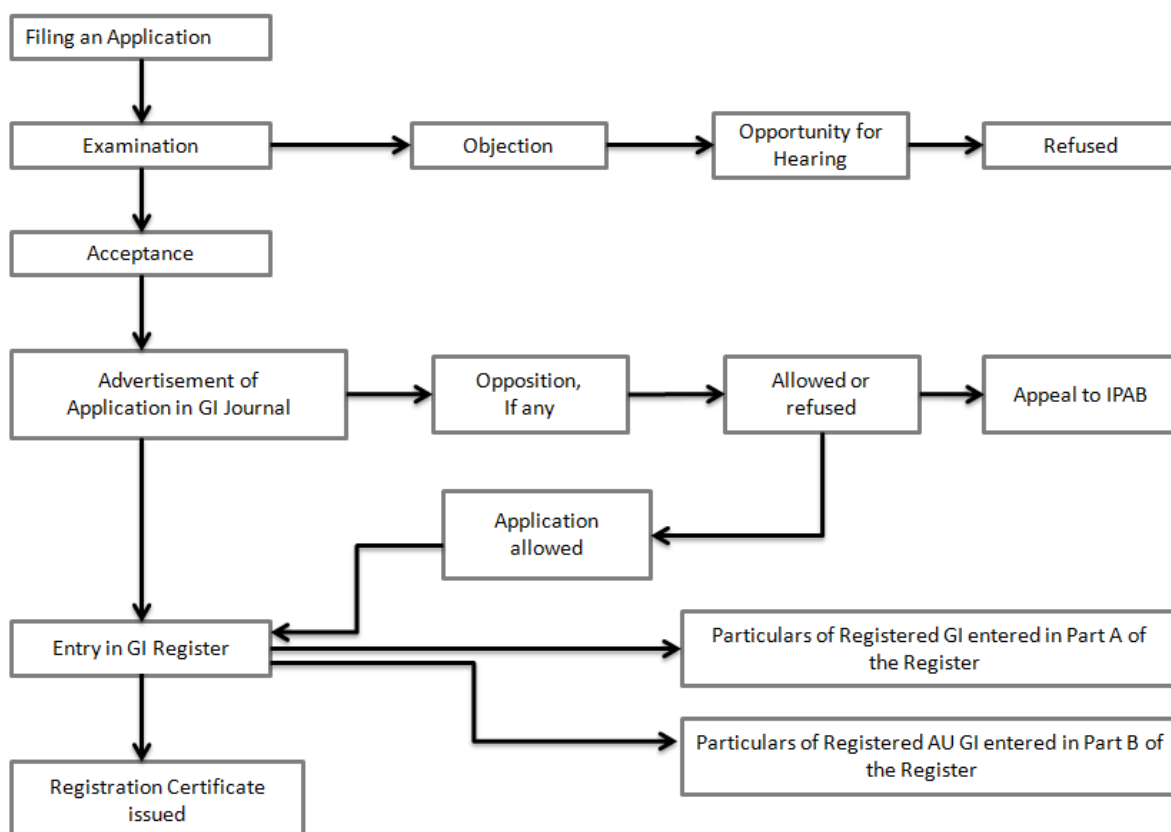


Fig: Registration Process of Geographical Indication in India¹³⁶

International Perspective of Geographical Indications (GI)

The World Intellectual Property Organization (WIPO), an intergovernmental organization, is the global forum for intellectual property policy, services, information, and cooperation.

The international perspective of GIs in the current time is that they are becoming increasingly important for several reasons.

1. **Economic benefits:** GI-protected products are often associated with high quality and unique characteristics, which makes them attractive to consumers in international markets. This can lead to increased exports and economic growth for producers in GI-designated regions.

For example, the GI-protected product Darjeeling tea is a major export earner for India. In 2021, India exported over 300 million USD worth of Darjeeling tea.

¹³⁶ India Official IP website, available at <https://www.ipindia.gov.in/the-registration-process-gi.htm> (last visited Oct. 10, 23)

2. **Consumer awareness:** Consumers are becoming increasingly aware of the importance of origin and quality when making purchasing decisions. They are willing to pay a premium for products that are authentic and of high quality. This is creating a growing demand for GI-protected products in international markets. For example, 60% buyers are happy to pay additional for goods which are marked as having a GI, revealed in a study by the European Commission.
3. **Cultural preservation:** GIs can help to conserve Customs from the region by ensuring that traditional products and Methods of manufacturing are preserved. GI-protected products are often associated with a specific region's history and culture. This can help to promote awareness and appreciation of that culture.
For example, the GI-protected product Basmati rice is a traditional product of India. It is produced using a unique cultivation method that has been passed down from generation to generation. The GI protection for Basmati rice helps to ensure that this traditional product and production method are preserved.
4. **International cooperation:** The international community is increasingly recognizing the importance of GI protection. This is leading to a number of initiatives to promote the use of GIs and to help countries to develop and implement GI protection systems.
For example, the WIPO GI Registry is a database of registered GIs from around the world. This registry helps businesses and consumers to identify GI-protected products and to learn more about GI protection.

GI protection provides an abundance of benefits that are however there are particular concerns which have to be resolved as well.

1. First challenge is that GI protection can be complex and expensive. This can deter some producers from registering their products as GIs.
2. The challenge is that GI protection can be difficult to enforce in some countries. This is because it can be challenging to distinguish between genuine GI-protected products and counterfeit products.

Despite these challenges, the international community is committed to promoting the use and protection of GIs. This is because GIs play an important role in promoting economic growth, consumer awareness, cultural preservation, and international cooperation.

Conflicts between GI tags and Trademarks

Disputes frequently arise when geographic indication tags and intellectual property rights, which are two distinct forms of distinguishing labels used on merchandise, are employed to protect things in the market. Conflicts about who has the sole authorization to use a unique sign might occur when multiple parties ask for permission to do the task. Systems are set up to stop problems within competing trademark ownership assertions. Similar copyrights that are used for the same products or services may persist in different nations, according to the territoriality concept. Currently, the following methods have been implemented to avoid and cope with problems related to trademarks with geographic indication tags:

On the whole, it is important to make sure that trademarks aren't descriptive or misleading. As a result, geographical indications are not protected by trademark law if their use would mislead customers about the true origin of the goods on which they are used. The rules that guard against unfair competition and passing off are designed to provide redress for unethical business practices including making false or deceptive claims while conducting business. A plaintiff must prove, among other things, that the usage of the geographical indicators is deceptive in a passing off and unfair competition lawsuit involving illegal usage of a geographical indication. The application of communal or certification marks in order for the purpose of safeguarding commodities through geographical indication is regulated under the appropriate trademark laws.. In accordance with trademark law, disputes involving opposing trademark rights are resolved according to the priority principle. Under a system of registered geographical indications or appellations of origin, geographic indications are protected as sui generis rights. Various approaches are viable based on the relevant legal context.

CONCURRENT PROBLEMS RELATED TO GI IN INDIA

1) Failure in establishing link between origin and the product

The Indian GI Act offers extensive protection for GIs but does not make a distinction between various product types. This can provide the wrong idea of the origin of various handicrafts, which are unique because of human abilities and methods rather than innate characteristics. In such circumstances, GI registration may be absurd and limit the opportunities available to artisans in the future. To distinguish between different product categories and provide craftsmen greater flexibility, the Indian GI system needs to be modernized. This would ensure that authentic GIs are protected by GI registration while protecting the interests of artisans.

2) Requirement of Precise history for GI - Registration

Documentary proof is required by the Indian GI Registry to demonstrate the connection between the product and the location. TRIPS does not mandate this, and in areas where oral history is more prevalent, it might be a challenge. As many GI producers might not be able to give historical proof of their products, it is crucial to solve this issue.

3) Geographical Challenges

For various goods, particularly agricultural and food-related goods, there are numerous disagreements over their precise place of origin. This is so that the same product can be manufactured or grown in different regions. As an illustration, numerous states make GI claims about Basmati rice. The Copyright and GI office, in contrast to other IP offices, has just one location: Chennai. Since they might have to travel far to hear testimony, producers from other states may find this challenging.

4) Involvement of state government in protecting GI

Geographical Indications (GIs) are intended for strengthening community and safeguard the interests of producers. Any group of individuals, producers, organizations or organizations representing producers' interests may submit an application for the official designation of a GI in India. This gives India's GI protection a broad range of options. The post-enforcement of GI rights and the function of inspection bodies, however, are significant responsibilities as the Indian government accomplishes. For this reason, it's crucial to make sure that government institutions and authorities continuously promote the interests of GI producers.

5) Lack of awareness

The lack of knowledge about GI Laws in India is the main social issue. Even though the Indian government passed the GI Act in 1999, many rural producers and common artisans are unaware that their skilled goods or produce are valuable enough to qualify for protection. They are ignorant of how to file for and obtain GI protection. They are much less informed in the event that someone else is abusing and deceiving their GI. They are unaware of the options they have to prevent this usage. There is a significant variation in registration status, according to subsequent analysis.

CONCLUSION

In conclusion, protecting geographic indications (GIs) has become increasingly important, largely in reaction to the decrease in trade barriers and the creation of new market support mechanisms. In order to compete with lower-priced alternatives in the global market, producers of traditional, and high-quality items with distinct regional origins must now have efficient marketing and trading instruments. This is especially important in the context of India, a nation recognized for its rich cultural past and wide range of unique and traditional goods. In India, GIs are essential to protecting these assets from copying and poor imitations as well as, more crucially, promoting their promotion and distribution on a worldwide scale. However, a number of obstacles must be overcome to guarantee the effective safety of Indian GIs. The most significant of these is the widespread ignorance about GI rights, especially in rural areas where many traditional product producers reside. In addition, there are issues with India's single centralized office handling intellectual property rights (IPR) disputes, which makes resolution of the case time-consuming, expensive, and difficult. Despite these obstacles, a growing effort is underway to support and protect Indian GIs. Governmental and non-governmental groups are jointly leading this initiative, which has received strong backing from a coalition of producers, consumers, and diverse stakeholders. They collectively serve as a testament to the growing dedication to sustaining the economic and cultural importance of India's traditional goods and guaranteeing their ongoing recognition and protection in the rapidly changing global market.



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ARBITRABILITY OF TRADEMARK DISPUTES: A DETAILED ANALYSIS OF GOLDEN TOBIE (P) LTD. VS. GOLDEN TOBACCO LTD.

Vaibhavi Nagar¹³⁷

ABSTRACT

In the modern era of business and innovation, intellectual property is a necessary component. It safeguards originality and creativity, enabling the owner to use these qualities to further their own success and inspiring others to support creativity and innovation. One of the areas that intertwine with IP laws is Arbitration. The possibility of arbitration in cases of trademark agreements, is covered in this article. The primary objective of the study is to ascertain if and under what circumstances trademark disputes are arbitrable in India. The theory indicates that, with certain exclusions, trademark disputes may be arbitrated in India notwithstanding legal restrictions. The law technically says that the issuance and registration of patents and trademarks are solely governmental functions, which raises the question of whether trademarks can be arbitrated or not. In the case at hand, the Delhi High Court had to deal with the question about whether a trademark license agreement dispute may be arbitrated. In cases where the disagreement resulted from a contract, the aforementioned matter can serve in examining the arbitrability of IPR matters. This decision sought to resolve any ambiguity that had developed regarding the arbitrability of any disputes involving intellectual property rights. This paper studies this less researched area of law in the highlight of the case Golden Tobie (P) Ltd. Vs. Golden Tobacco Ltd.

Keywords: IPR, Trademarks, Arbitrability, License Agreement, Contracts

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INTRODUCTION

The Copyright Act, 1957 under section 62, states that a breach matter cannot be brought before any court lower than the jurisdictionally competent court of that particular district or as mentioned in the agreement, caused confusion because the common interpretation was that IPR-related matters could not be arbitrated. As a result, the arbitrability of IPR has always been a source of concern in India as there is a lot of ambiguity present in the procedure. The various stances and decisions made by various courts in India can be used to analyse the entire arbitral conundrum in IPR problems. The Hon'ble Supreme Court stated in *Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd.*, that disputes that fall under the category of right in rem are non-arbitrable, but that disputes that fall under the category of right in personam are¹³⁸. Further, in its ruling in *A. Ayyasamy v. A. Paramasivam and Ors.*, the Hon'ble Supreme Court referenced OP Malhotra's book "The Law & Practice of Arbitration and Conciliation" and declared that patent, copyright, and trademark issues are not subject to arbitration.¹³⁹ In the case of *Eros International Media Ltd. v. Telex*, the Bombay High Court, however, reached an alternate outcome while deciding the issue of the arbitrability of trademarks. The bench ruled that Section 62 did not forbid arbitration because IPR disputes are inherently private and because IP rights are a sort of property right that cannot be distinguished as a separate body of law in light of the court's interpretation of the section¹⁴⁰. The court made the crucial observation that an arbitrator could take any action that a civil court could take. As a result, IPR disputes would be resolved through arbitration.

GOLDEN TOBIE (P) LTD. V. GOLDEN TOBACCO LTD.

Citation: [2021 SCC ONLINE DEL 3029]

FACTS

The Defendant initially supplied the Plaintiff with its unique brands of "Golden's Gold Flake, Golden Classic, Taj Chhap, Panama, and Chancellor" under the terms of a Master Long Term Supply Agreement that the Plaintiff first entered into on 16/8/2019. They only procured, handed out, and sold these products in domestic and international markets. A trademark license agreement was then signed by the Plaintiff and Defendant on December 2, 2020. Under the terms of this agreement, the Plaintiff was given the sole right to produce the Defendant's goods at the Plaintiff's Noida plant, sell them, and transport them as needed. This license was

¹³⁸ *Booz Allen and Hamilton Inc v. SBI Home Finance Ltd. & Others*, (2011) 5 SCC 532

¹³⁹ *A. Ayyasamy v. A. Paramasivam and Others*, (2016) 10 SCC 386.

¹⁴⁰ *Eros International Media Ltd v. Telex Links India Pvt. Ltd.*, 2016 SCC Online Bom 2179

confidential, assignable, and nontransferable.

Plaintiff established that despite significant capital and operational investments, including those made by Plaintiff for marketing and advertising initiatives aimed at expanding the Defendant's product's reach, on August 14, 2020, Defendant arbitrarily decided to terminate the license agreement, disregarding the ongoing pandemic.

Plaintiff added that on August 29, 2020, a second amended agreement was signed between the parties after the termination communication was withdrawn. After then, on February 13, 2021, the Defendant gave the Plaintiff another notice of termination for failing to make the required payments on time, in accordance with the contract. With immediate effect, the defendant cancelled the original agreement from February 12, 2020 and the modification agreement from August 29, 2020. As a result, the plaintiff was no longer permitted to produce and market the defendant's exclusive brands under the registered trademark. Consequently, the current lawsuit was started.¹⁴¹

ISSUE

Whether the assignment of Trademark in the present case is arbitrable or not?

CONTENTIONS

Plaintiff

According to the plaintiff, the agreement dated 12/02/2020 could not be terminated solely due to the royalty installment was late because the defendant had handed over the trademarks in question to the plaintiff for entire tenure. Plaintiff further emphasized that the data was submitted to SEBI and Trademark Registry in accordance with the contract. Additionally, it is asserted that since the Plaintiff established the disputed plant in accordance with the Agreement, the Agreement cannot be dissolved.

Coming to the main issue of the case, Plaintiff asserted that closure of the issuance of trademark by the defendant raises the question of trademark registration, which is a matter of Honourable Court, and urged the court to reject the defendant's request of reference of the dispute to arbitration in accordance with Section 8 of the Arbitration and Conciliation Act, 1996.

¹⁴¹ *Golden Tobie (P) Ltd. V. Golden Tobacco Ltd. (2021) SCC ONLINE DEL 3029*

Defendant

The defendants' position is that the trademark license agreement, dated 12/02/2020, and amendment agreement, dated 29/08/2020, that the claimant is aiming to impose, are stipulated and subject to a lawful termination under article 8 of the legally binding agreement, dated 12/02/2020, and clause 5 of the amended agreement, dated 29/08/2020, and that termination of such agreement via a legal notice, dated 13/02/2021, was therefore completely valid and legal. Defendant highlighted clause 12 of the parties' Trademark License Agreement and asked that the case should be referred to a single Arbitrator, selected in accordance with such clause and asserted that the trademark license agreement's trademark transfer was actually an action in personam.

DECISION

The court held the opinion that, in the process of determining whether the dispute could be arbitrated, it was exercising the same jurisdiction as the Arbitral Tribunal under Section 8 of the Arbitration and Conciliation Act, 1996. As such, the Honourable Court had to make sure that its jurisdiction under Sections 8 and 11 would not be used in a way that would make the Arbitral Tribunal less able to rule on the matter. The court upheld the view that, Trademark licensing enables the owner of the mark to give another party specific rights to use the mark, with or without limitations and conditions. This licensing is crucial for expanding the proprietorship's enterprise market reach and aids in the technology transmission process. A proprietor can only grant licenses for registered trademarks. under the Indian Trade Marks Act. The licensing of an unregistered trademark is not expressly prohibited, however, and is therefore seen as being legal under common law. The "permitted use" of the trademarks is outlined in Sections 48 to 56 of the Trademarks Act, 1999. A formal agreement stating the registered proprietor's consent is required in order to use a trademark authorized by a party other than the registered owner, as specified under Section 2(1)(r) of the Trademarks Act, 1999. As a result, the core of a trademark licensing arrangement is the sharing of a brand's use without renouncing ownership, often for better company exposure and reach, then a cost that is paid by the third party that utilizes the property that has been allocated for profitability and commercial benefits.

A trademark license agreement's arbitration clause mandates that the parties submit their dispute to arbitration. If such a provision is provided., the Honourable Court will advise the parties to apply arbitration to resolve their disputes rather than going to court, unless a party or a lone arbitrator or arbitration tribunal has not been constituted in accordance with Section 11

of the Act is requesting an interim remedy as per Section 9 of the Act.

Further, the court determined based on the facts of this case that a sale or mortgage agreement creates rights in personam and that the associated duties belong to the parties. On the other hand, these contracts result in the transfer of a real property right. It was decided by the court that issues involving rights in rem must be resolved by courts and tribunals, but they may also be brought to arbitration. The court highlighted a crucial distinction when it said that arbitration would be available for conflicts concerning subordinate rights in personam that emerged from rights in rem.

Thus, the conflict that results from the parties' agreement was determined to be arbitrable. The Honourable Court further stated that as trademark was already awarded and registered. Furthermore, it was determined that a contract, not statutory fiat, is required for the transfer of a trademark. No governmental authorities are used in this process.

Thus, in accordance with the Arbitration Agreement, the court referred the parties to arbitration.

CONCLUSION AND WAY FORWARD

The situation regarding the arbitrability of IPR disputes is still unclear. According to numerous judgments, if a trademark dispute between the parties relates to a contract or other agreement amidst them, then that conflict may be submitted to arbitration if it falls under the terms of the arbitration agreement and hasn't already been completely dismissed. The courts have consistently held that IPR violations that result from a contract between the parties give rise to an action in personam. Such rights may be asserted in opposition to a specific party.

The ruling in *Hero Electric Vehicles Pvt. Ltd. v. Lectro E-Mobility Pvt. Ltd.*, stated that "when a dispute arises as a result of an infraction of the trademark agreement between the parties, it cannot be alleged to be an infringement of the provisions of the Trademark Act, and thus the rights arising from the disputes cannot be claimed to be protected by the Trademark Act,"¹⁴² was apparently reinforced by the current case. Consequently, trademark registration is a governmental function; nonetheless, licensing or assigning is carried out via the contract's instrument, and the parties to the contract are the only ones with rights and obligations arising from it. No other parties are granted any rights. "If one of the parties to the dispute wishes to refer the dispute to the Arbitral Tribunal, the arbitration agreement cannot be ignored and an opportunity for the same must be provided. The court should not absorb the dispute as that

¹⁴² *Hero Electric Vehicles Pvt. Ltd. v. Lectro E-Mobility Private Ltd*, 2021 SCC OnLine Del 1058

would amount to usurping the powers of the Arbitral Tribunal." This is because the parties have an arbitration agreement and the cause of action comes from a breach of a contract provision between the parties. In addition to further extending the holding in *Vidya Drolia and Ors. v. Durga Trading Corporation*, this case clarifies when a dispute ceases to be amenable to arbitration and ensures that the "broad scope of the *Vidya Drolia* judgement cannot be misconstrued or misinterpreted to bypass.¹⁴³ Thus it can be said that there needs to be an official notification or a legislature that clarifies the current situation.

Given an increase in IPR-related transactions, it is critical to remember that IP disputes do not always result from infringement of an IP laws. Since such disagreements may also be about contracts, arbitration is one option.

¹⁴³ *Vidya Drolia & Others v. Durga Trading Corporation*, 2019 SCCOnLine SC 358.



IP BULLETIN

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ENFORCING SOFTWARE IP PROTECTION IN THE FACE OF COPYRIGHT VIOLATIONS WITH EMERGING TECHNOLOGIES WITH A SPECIAL EMPHASIS ON SOFTWARE COPYRIGHT PROTECTION

Siva Ram J¹⁴⁴

ABSTRACT

IPR involves protecting corporate rights and preventing the free exchange of knowledge. This paper will discuss how the software industry is protected under copyright, its purposes, and its effects. This is an extensively used legal software protection methodology for developing the world economic system of intellectual property right into the problems surrounding IPR, emphasizing the need for precise protection to safeguard against copyright infringement and violations. Elucidating the complexities of software development and the evolution of information technology highlights the significance of copyright in fostering innovation while ensuring fair compensation for creators.

The study delineates the process of copyrighting software, recognizing its pivotal role in the modern IT sector. It underscores the importance of understanding and adhering to copyright laws to mitigate infringement risks. Furthermore, it examines the impact of copyright protection on the economic dynamics of the software industry, emphasizing its role in fostering a conducive environment for innovation and growth.

Through a comprehensive analysis, the paper reveals how intellectual property protection, enshrined in copyright laws and regulations such as the Information Technology Act, is a transparent barrier against unauthorized dissemination and misuse of software. It underscores the necessity of upholding ethical and legal standards to safeguard against illicit activities that undermine the integrity of the software ecosystem the paper synthesizes key findings,

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advocating for a balanced approach that upholds the rights of creators while promoting the dissemination of knowledge and technological advancements. It underscores the critical importance of intellectual property protection in shaping the future trajectory of the software industry, ensuring sustainable growth and innovation in the digital era.

Keywords: Intellectual property right, software industry, copyright law, programming, licensing, Technology.

INTRODUCTION

Intellectual property means anything created or invented by any person to the world, such as literary works, scripts, artwork, Designs in industry, Symbols, names, fonts, and images used for commercial purposes. Intellectual property is the rights of such inventions or creations. IP Rights for trademarks, copyrights, and patents must be protected by law and technology. It should be legally legitimate to grant licenses for a particular brand, copyrights, and patents used by others. Different types of law came up with new advancements and ideas to cover rights and duties with various sectors in intellectual property rights. The technology law deals with cybercrimes and other online illegal activities used by electronic devices, computer systems, or social media of connected Networks after cybercrimes and online scamming-related issues and after an increasing number of crimes brought into notable before the government of law. The Information Technology Act of 2000 was implemented, often known as cyber law.

Computer programs were not protected under the Copyright Act until 1974 and were not viewed as fixed, physical objects. However, traditional copyright law was expanded to cover machine-readable software 1983, and the Copyright Act granted computer programs the same copyright rights as literary works. Software piracy of programming material, data theft, and copying of coding languages, fonts, and names that owners or creators do not permit are some of today's most prevalent copyright infringements.

The inventor or owner had granted copyright protection to the specific software or coding languages. If other companies must use copyrighted data of software or coding, they should get a license to use technology with the permission of the inventor or creator. Any unauthorized copyrighted software is used by any of the ones it leads to be illegal. With software copyright, there are some specific problems related to copyright, but the laws and rules apply. As a result of technological advancements, information and intellectual property can be copied, transferred, and altered more rapidly than ever before. In this procedure, computer software can process specific data structures based on user commands or sets of programs.

COPYRIGHT INFRINGEMENT RELATED TO CODING:

Copyright is a type of computer coding or programming that, under some circumstances, can be violated without a copy of the thing being copied. For instance, if a new program is created using the same methodology, functionality, and significant or minor programming code or component similarities as an original computer program for "inspiration,"¹⁴⁵ the actual program is also copyrighted. However, copyright infringement is still possible even if the original code is not used.

UNDERSTANDING OF COPYRIGHT SOFTWARE LICENSING AND IP

Utilizing computers for information processing and storage does not inherently pose more significant challenges for copyright holders in upholding their rights. Competitors are not entitled to replicate your coding efforts, recognizing the substantial time and dedication invested in creating programming code, software, and applications. The primary concern revolves around both piracy and plagiarism, which are issues that should not arise due to the illicit distribution and sale of counterfeit versions. Copyright software licensing serves as a protective measure in preventing software theft while still allowing widespread access to the program. The core of this process lies in copyright software licensing, serving as a framework for legitimate software utilization without violating copyright laws. In this context, developers and managers must ensure the software is entirely free from copyright restrictions and available for public use.¹⁴⁶

There are two primary categories of licenses: open-source and proprietary. The availability of open-source software is often determined by the type of open-source license in use, alongside specific terms and conditions that govern alterations, distribution, and usage. Acquiring proprietary software typically involves obtaining a permit with an associated annual fee rather than an outright purchase. In contrast, free software is crucial in enabling the public to learn from others, fostering collaborative problem-solving, and advancing knowledge in an open and

¹⁴⁵ Vijay K. Tyagi* (no date) *NFRINGEMENT OF COPYRIGHT IN COMPUTER PROGRAMS IN INDIA UNDERSTANDING THE STATE OF VIRTUAL NON-LIQUET AND CHALLENGES VIS-À-VIS ARTIFICIAL INTELLIGENCE*, *ILI Law Review Vol. II*. Available at: <https://ili.ac.in/pdf/vkt.pdf> (Accessed: 10 October 2023).

¹⁴⁶ Group, T. (no date) *Software copyright guide: Examples & protection*, *Software Copyright Guide: Examples & Protection from Infringement*. Available at: <https://cpl.thalesgroup.com/software-monetization/software-copyright-guide> (Accessed: 15 October 2023).

Twin, A. (no date) *Non-disclosure agreement (NDA) explained, with pros and cons*, *Investopedia*. Available at: <https://www.investopedia.com/terms/n/nda.asp> (Accessed: 16 October 2023).

accessible manner.¹⁴⁷ However, it is essential to note that such free software usually lacks the sharing of all its source code, making it inaccessible to users who do not have access to the underlying code.

SECURITY BREACHES AND MEASURES FOR PROACTIVE DEFENCE

And there is multi-layer protection of perimeter defences inside your computers of companies inside the network perimeter. Some employees are working in the same company. The stealing data act & information of secret findings to another company stealing IP thieves will eventually the levels of security must restrict breakthrough use access controls of system employees and admins. According to the functional level of controls, access & restrictions to sensitive data in configuration setting as proper credential authorization. The file encryption must protect to symmetric access of both files from A key to end key to access such files without encryption or decoding. Hackers can easily breach your defences by relying on IP data and getting easy access through folders. They regularly monitor the network activity which user data can reveal before hacking through hackers that sensitive IP data & information. Routine Auditing is a setup tool that automatically analyses the whole connected network/domain used by machine learning and artificial intelligence in the initial security stages.

The immediate knowledge with high accuracy and large volume analysis. The complex of copyrighted data combined with automation and study through AI algorithms and machine learnings. And two more important intellectual property safeguards originate network on the malware detection, which will prevent malware from unwanted websites, email bombings, or SMS bombings that reach your networks.¹⁴⁸ The Anti-malware software implemented to deal with impacted networks. This intelligence malware assists us in removing and detecting viruses that enter the action. When firewalls are installed as the primary server's gateway, authorized connections can open and close portals with the required authorization. To secure a company's intellectual property (IP), software coding and programming techniques, and private data files, email filters and web content filters are also crucial. As to be covered by the layout of network structures in every location in connected network platforms. Threats such as email spoofing are used to protect the environment, which is usually cleared with correct authorization. Hackers will steal information and data from systems through various domains of cybercrime

¹⁴⁸ Amanda N. Craig, JD (no date) *Proactive cybersecurity (final)* - *dlc.dlib.indiana.edu, dlib.indiana.edu*. Available at: <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/10249/SSRN-id2573787.pdf?sequence=1> (Accessed: 15 October 2023).

that are actively involved in these crimes happening due to the legal issues and difficulties with enforcing copyright protection of IP law nowadays.

INFLUENTIAL TECHNOLOGY AND ITS TRANSFORMATIVE EFFECTS ON INDIVIDUALS' LIVES

An essential aspect of human life involves the influence of technology on intellectual property rights. The advancements in storage technology have had the most significant impact on copyright law within this context, with three categories of technology being of concern. This development has important implications for content owners regarding their rights regarding the duplication of their works, among other things. These developments have consequences for the media industry, the publishing industry, and the performing arts industry. Introducing new data and information processing technologies has also affected and implied rights, specifically regulating plagiaristic works. The purpose of this chapter is to demonstrate how advancing technology is enforced by exploring how these technologies interact with each other and how these interactions significantly contribute to shaping the mechanisms that govern intellectual property rights.

Due to recent advancements in storage technology, intellectual property rights enforcement may be a significant issue in the future. The initial phase of storage technology has made gaining exclusive rights to one's creations quite challenging, as many people worldwide have been able to use these technologies to copy works without obtaining any IP licenses to reproduce pieces made.¹⁴⁹ A subsequent phase in information, data, programming, and coding storage systems is characterized by the decline of specialization toward specific data types. Computerized components and procedures are designed to handle diverse forms of information, including text, graphics, audio, and video. Hence, governing information, data, programming, and coding within traditional formats becomes challenging in computer technology, especially when these components and systems are designed to handle diverse forms of information. Because of these innovations, Owners and creators face an escalating threat of unauthorized copying.

In this digital age dominated by technology, computers significantly impact copyright enforcement, and the act of information storage presents challenges for copyright holders striving to safeguard their rights. Specifically, the challenge is apparent when we consider the

¹⁴⁹ *Chapter 4 impact of technology on enforcement of ... - Princeton University.* Available at: <https://www.princeton.edu/~ota/disk2/1986/8610/861007.PDF> (Accessed: 15 October 2023).

regulation of reproduction systems, which introduces three notable concerns regarding copyright infringement, distinguishing it from other data storage or duplication technologies like photocopying or videotaping. In contrast to these methods, digital information can be duplicated swiftly and inexpensively. Moreover, computer-mediated information has the potential to generate multiple flawless copies of content. Importantly, it is essential to recognize that ownership of the original work is not a prerequisite for obtaining future copies of the same quality and content. The author indicates that while some of these copies may only persist for a fraction of a second, others may endure until the computer is powered off, with a few remaining stored on magnetic tape or disk.

LEGAL PROVISIONS OF THE COPYRIGHT ACT & CONTRACTS BETWEEN PERSONS

According to copyright act 1957 section 2(0) you can protect any software or programming codes from making duplicate, translating, or copying, pirating others creative of data to protect you from copyright infringement. The software infringement means if any persons creative of work is copied or replicating the original work without their consent in unauthorized manner. If the technology of software is ready to launch in market must protected under intellectual property law with licensing management. A computer capable of performing a specific task or achieving a particular result is referred to as programmable a set of instructions expressed in words, codes, schemes, or in any other form, including a machine-readable medium, according to Section 2(ffc) of the Copyright Act 1957, read with Section 2(o).

Copyright licenses for software coding or programming are provided under IP law. There will be a mutual contract of agreement with the owner or developer if someone pays for the use of software technology. Once the agreement is in place, there will be terms and conditions for licenses to access intellectual property. For example, if any programme is downloaded through the internet, it might be anything from secondary sources of unauthorized websites to cracked software or unpaid one or few charges in irrelevant websites on an online network platform. One of the most serious issues in IP law is the internet era. Intellectual property software piracy is a continuous problem that has now become a global issue as copyright infringement. There are several online sources, including as BitTorrent, Subtonic, and others, from which you can obtain peer-to-peer file sharing websites. So, this bothers an original artist, authors, creator, or owners the legitimate payment they deserve for their work.

In that technology to protect the software, there are so many methods by way of unauthorized access to the company network easily. To enable by way of preventing up and anytime active

IT defences on the fortune of securing each file in computer networks each software's with the protection of cyber security in connected networks of computers. As we mentioned in cyber security, computer networks, in addition to adding security levels, must be set up in all interconnected networks while using domains in each IP address number.

A LEGAL PERSPECTIVE ON SOFTWARE LICENSING AND NONDISCLOSURE AGREEMENTS

Understanding software licensing agreements and nondisclosure agreements (NDAs) is vital for protecting the interests of software developers and technology businesses. Let us begin by looking at software license agreements, which are legally binding contracts that outline the conditions and situations under which a software developer or company permits users to use their software, which can be found in the user licensing agreement. A software license agreement defines the use of a piece of software, how it can be distributed, and what safeguards are associated with it. Software licensing agreements are available in various forms, such as proprietary licenses, open-source licenses, subscription agreements, and agreements covering intellectual property rights. In these contracts, software developers are guaranteed the right to license their intellectual property when substantial intellectual property is involved. When this is the case, you have the legal authority to prevent others from using your intellectual property commercially. If you own a piece of intellectual property, you possess the legal power to do so. Licensing is advantageous for intellectual property owners, as it allows them to generate revenue by allowing others access to their assets to generate revenue for the owner without relinquishing ownership.¹⁵⁰ Licensing is also advantageous for licensees, as it saves them the cost of purchasing assets outright.

We can also discuss the importance of nondisclosure agreements in intellectual property rights. Nondisclosure agreements (NDAs) protect proprietary software and other confidential business information. Such information may include marketing strategies, sales plans, potential customers, manufacturing processes, or proprietary software. Several legal actions can be taken if an NDA is breached by one party, including seeking court action to prevent any further disclosures, and suing the other party for monetary damages in case the breach was intentional.

¹⁵⁰ Ray, A. and About The Author Adhip Ray is the founder of WinSavvy. He has a legal (2023b) *Software licensing agreements: An international perspective*, WinSavvy. Available at: <https://www.winsavvy.com/software-licensing-agreements/> (Accessed: 16th October 2023).

They establish a legal obligation for the receiving party not to disclose or misuse the confidential information. The software source code, algorithms, designs, and license agreements. Both software licensing agreements and nondisclosure agreements are critical legal tools for software developers to protect their intellectual property and their business interests.

THE LEGAL ASPECTS OF PROTECTING SOFTWARE IP

Addressing the Legal Aspects of Software Intellectual Property (IP) Protection is vital for businesses and software creators. Enforcing copyright to prevent violations is a paramount concern in this context. Given the intricate nature of the tech industry, managing the legal intricacies surrounding software innovations can be challenging. Here is an overview of various stages: Fair Use, Reverse Engineering, Compulsory Licenses, Data Privacy, GDPR, and Software Piracy.

Within the realm of software, legal implications, and concerns play a crucial role in safeguarding software IP, especially in terms of fair use under copyright law, and these legal aspects extend to how software serves as a gateway for various applications.

I. Fair Use

The concept of fair use within copyright law, as it pertains to software, represents a beneficial defence available to copyright holders. This defence can be invoked when someone is accused of copyright infringement. Fair use permits specific individuals to utilize a copyrighted work without the owner's explicit permission. This exception applies in cases involving criticism, commentary, news reporting, teaching, or research. It is important to note that the legal framework for fair use was established by the judicial system and codified in the Copyright Act.¹⁵¹

Within the copyright act, specific factors must be considered to determine what qualifies as fair use. These factors include examining the purpose and character of the service, which includes whether it has a commercial aspect, the nature of the copyrighted work, the significance of the portion used to concern the whole, and the impact the use has on the potential market value of the copyrighted work.

¹⁵¹ *What is fair use?* (2023) Copyright Alliance. Available at: <https://copyrightalliance.org/faqs/what-is-fair-use/> (Accessed: 12 October 2023).

II. Reverse Engineering

The concept of reverse engineering has been frequently associated with the idea of fair use in computer technology and the realm of trade secrets. Reverse engineering is equivalent to evaluating a product's functional side within the trade secrets domain. Instances of reverse engineering encompass the examination of chipboard layouts, integrated circuits, or the de-compilation of computer software¹⁵². The ability to duplicate the code or the software itself makes the outcomes analysis feasible. The courts have determined that making these copies for reverse engineering falls under the category of fair use, which does not constitute the infringement of the copyrights of the original authors.

III. Compulsory licenses:

Through compulsory licensing, the government grants permission to an external entity to manufacture or employ a patented product for its purposes, even without the patent holder's consent. A patent license allows a third party to utilize, create, produce, and sell an innovation already patented by another entity without securing prior approval from the patent holder. These licenses are exclusively issued by the government, the authorizing body. This principle is part of the World Trade Organization's TRIPS Agreement, which encompasses the flexibility of patent protection.

The process of reverse engineering software is one of the most essential methods of reversing software defects, especially in the software industry. Reverse engineering is a method by which hackers can uncover vulnerabilities within software that can be exploited to create malicious programs by using the vulnerabilities discovered.¹⁵³ In general, reverse engineering is legal. This term refers to deconstructing a known product to understand or reproduce it, as established in the “Kewanee Oil Co. v. Bicron Corp” (416 U.S. 470, 1974) case. Software maintenance and machine development are just a few examples of how reverse engineering can be applied in various fields. Reverse engineering can be defined as converting a source code back into the machine code of a program. This source code represents the algorithm used in the program's initial creation and programming.

¹⁵² Admin *et al.* (no date) *Legality of reverse engineering of a computer programme: Does it amount to copyright infringement*, RACOLB LEGAL. Available at: <https://racolblegal.com/legality-of-reverse-engineering-of-a-computer-programme-does-it-amount-to-copyright-infringement/> (Accessed: 14 October 2023).

¹⁵³ Kumar, R.S. (2021) *Compulsory license under the Patents Act*, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3896012 (Accessed: 16 October 2023).

IV. GDPR and Data privacy:

This article provides an overview of the General Data Protection Regulation (GDPR), which imposes stringent data protection standards for processing, storing, and transmitting personal data within the European Union. To ensure compliance with the General Data Protection Regulation, which includes rights like the right to erasure and data portability, software used to process data must comply with specific instructions to ensure compliance with those rights. Furthermore, obtaining user consent for data processing and maintaining transparency in software's data handling practices are crucial to consent and openness.

In the digital age, software companies must implement robust strategies and security measures to safeguard their proprietary information, including source code, algorithms, and confidential databases, in compliance with copyright laws. I want to emphasize a few key aspects of software. In the context of software piracy, it is the act of unauthorized duplication, distribution, or utilization of software, which results in significant financial losses to software developers and companies. Businesses can address this issue in several ways, including legal action against individuals involved in piracy or corporations breaking piracy laws. Equally important, companies can develop tools and methods to combat piracy.

CASE STUDIES AND CASE LAWS

1. In “*Ferid Allani v Union of India*, the Delhi High Court argued that patent restrictions on computer programs hinder technological progress in areas like AI and blockchain. It ruled that inventions based on computer programs could be patented if they showed a technical contribution. The Court held that 'an invention is patentable if it displays a technological effect or contribution, even if it is based on a computer program’¹⁵⁴
2. The invention in “*Accenture v Assistant Controller of Patents* was a data document design system addressing database system challenges. Initially, it faced objections for not having unique hardware adaptation. Upon appeal, the IPO granted the patent, establishing that software patents do not need hardware modifications”
3. In a high-stakes dispute between Oracle and Google, Oracle accused Google of using Java SE code without its permission in Android and sought to recover \$9 billion in damages. Ultimately, the U.S. Supreme Court ruled in Favor of Google, which has now

¹⁵⁴ (No date) *Ferid Allani vs Union of India & Ors on 12 December, 2019 - Indian kanoon*. Available at: <https://indiankanoon.org/doc/90686424/> (Accessed: 15 October 2023).

been permitted to use Java code snippets for its purposes, ending a decade-long controversy.

4. A growing number of computer programs are being illegally used and copied globally. According to a report by the Federal Security Administration in 2002, 92% of all software in China was illegally copied (BSA, 2002). There is a high percentage of unlawful software in Vietnam, with 97% being illegal (Carrasco Muniz, Stocking, BSA, 2003). Unauthorized software use frequently exceeds 80% in various other Southern nations.¹⁵⁵

CONCLUSION AND SUGGESTIONS

This conclusion concludes with the statement that safeguarding software intellectual property is a complex undertaking requiring both technological and legal solutions. For copyright to be upheld in the digital age, proactive measures must be taken, international law needs to be understood in all its intricacies, and most importantly, a strong commitment should be maintained to defending the rights of software developers. Given the dynamic nature of technology, the landscape of software intellectual property protection will evolve, underscoring the significance of adaptability and vigilant protection of innovations for stakeholders. To guarantee ample security and legal integrity, it is frequently recommended to engage technologists to create and enforce these contracts. Constructing a robust cybersecurity policy, fortifying IoT connections, adopting a people-centric strategy, and managing access to sensitive data are some valuable guidelines to consider. As part of its initiatives to modernize its intellectual property framework, there should be revisions to the IPR enforcement toolkit to aid law enforcement in addressing IP-related offenses, notably counterfeiting and piracy.

Additionally, this update should facilitate direct collaboration between industry stakeholders and state law enforcement agencies to combat digital piracy linked to copyright infringements in programming, coding, and emerging technologies. In software, enforcing intellectual property rights in the face of copyright violations remains a dynamic and ever-evolving challenge. These technologies do come with several limitations and warrant additional research. Software engineers need to be well-versed in these challenges to navigate them effectively, and they should seek legal advice when it is prudent to do so.

¹⁵⁵ *Technology and innovation report 2021 - UNCTAD*. Available at: https://unctad.org/system/files/official-document/tir2020_en.pdf (Accessed: 15 October 2023).



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EXPLORING THE AMBIT OF INJUNCTION UNDER THE IPR

Prity Kumari Suman¹⁵⁶

ABSTRACT

Injunctions are court orders that protect intellectual property (IP) owners' rights by prohibiting certain activities. They can be types like preliminary, permanent, or temporary restraining orders. The legal standards for injunctions include merits, irreparable harm, hardships, and public interest. Enforcement of injunctions involves contempt proceedings and damages. International perspectives on injunctions are discussed, as are the potential impact on innovation, competition, and consumer welfare. Understanding these aspects can provide a comprehensive analysis of IP law's crucial role in protecting IP rights. This text explores the challenges and mechanisms for enforcing injunctions in IP cases, their international perspectives, and their potential impact on innovation, competition, and consumer welfare, balancing protection of IP rights with market competition.

Keywords: Injunction, Preliminary Injunction, Permanent Injunction, Intellectual Property owner.

INTRODUCTION

“The judiciary's ability to adjust to changing conditions and its dedication to providing strong protection for intellectual property rights are both demonstrated by dynamic injunctions in intellectual property rights.”

Intellectual Property is an intangible property created by virtue of human intellect and protected as just like any other tangible property under the laws across jurisdiction is. Any commercially valuable product of the human intellect, in a concrete or abstract form such as a copyrightable

¹⁵⁶ Student at School of Law and Governance Central University of South Bihar, Gaya

work, a protectable trademark, a patentable invention, or a trade secret renders it protection in intellectual property. Such protection is granted to protect these creation against infringement and allow the creators benefit out of their intellectual investment and efforts.

The various types of intellectual property includes Copyright, Related rights, Trademarks, Geographical Indications, Industrial Designs, Patents, Trade Secrets, Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources. These are safeguarded and acknowledged under Copyright Act of 1970, Trade Marks Act of 1999, and Patents Act of 1970, and Geographical Indications of Goods (Registration and Protection) Act of 1999 e.t.c. Effective protection of exclusive right is crucial for fostering creativity, innovation, and economic growth by enticing companies and peoples in research.

There exist several Civil and Criminal remedies at infringement of these IP rights. This research paper aims to give to the reader, the concept of injunction under the IPR laws, judicial development to dynamic injunction.¹⁵⁷

WHAT IS INJUNCTION

A prohibitive writ issued by a court of equity, at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do some act, or to permit his servants or agents to do some act, which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action fit law.¹⁵⁸

The legal process is an unpredictable journey filled with highs and lows, turns and twists, and obstacles. By definition, an injunction is a form of preventive remedy. An equitable remedy known as an injunction can be granted to stop a defendant party from performing specific acts or demonstrations, or it can force them to perform such acts such that the plaintiff is not inconvenienced or bothered by them. In such a lawsuit, the court renders a judgment, which the parties are required to follow; otherwise, there may be harsh financial penalties or, in certain situations, even jail time.

Another way to think of an injunction is as a discretionary remedy granted by the court that either compels the party to do something or forbids them from doing something. It could come in the form of a final or temporary order. Only a few situations call for the application

¹⁵⁷ <https://blog.ipleaders.in/injunction-all-you-need-to-know-about-it/>

¹⁵⁸ Black's Law Dictionary: 2nd Edition

of the injunction remedy:

- (a) To stop someone from posting anything offline or online, or to remove information that has already been published,
- (b) In order to stop additional building on a plot of land, as well as the sale or transfer of any related property,
- (c) If a search order is granted,
- (d) to stop someone from leaving the nation or location.

One of the most potent instruments available to judges is the issuance of an injunction, which can be used to both order someone to refrain from infringing the rights of another person and to order them to be carried out in order to uphold those rights.¹⁵⁹

HISTORICAL BACKGROUND OF INJUNCTION

The genesis of the concept of injunction is grounded on the principle of equity, and it is solely the discretion of the courts under equitable considerations. The traces of injunction is found in the England's Equity Jurisprudence, where it is borrowed from the Roman law which call injunction as 'Interdict'. Earlier in the era of Henry 6th, it was evolved as chancery remedy. It was prohibited by the chancellor, after that effect the common law decrees were prohibited to be executed through this remedy. This civil remedy is a strong mechanism and also entitled as powerful legal tool.

There were three types of injunctions at that time, are as follows:

- Prohibitory Injunction
- Restitutory Injunction
- Exhibitory Injunction

At that time, the prohibition through injunction on execution of the common law court's decree raised as a matter of clash between the common law courts and the Chancery Court. This conflict was fixated by the Attorney General, Bacon, as the affirm and strong legal tool of the court of equity. He settled this case in the favour of the chancellor and held it as strong arm.

¹⁵⁹ <https://blog.ipleaders.in/injunction-all-you-need-to-know-about-it/>

NEED OF INJUNCTION IN INTELLECTUAL PROPERTY RIGHTS

When an intellectual property holder suffer by the actions of any individual, to bridge the gap of IP holder's loss the injunction is needed as remedy. The suffering of irreparable harm can only be resolved through injunction, and no other means can provide the same. In order to stop individuals from breaching the IP holder's right by such actions, injunction is needed to prevent such irreversible damages. Injunction is used as preventive measure, to prevent continuous infringement or any as such initiatives which is helpful in maintaining the values and exclusivity of the intellectual property. It is required to preserve the rights of IP holders by putting full stop on unauthorized use, distribution and reproduction of protected work and also protecting the services given under different sectors. It can also be termed as a strong enforcement tool, compels to cease the infringement of IP rights and stop infringing activities. It ensures compliance and protection IP laws. Injunction controls the damages which cannot be fixated in long term. It is used to controls the duplication of the protected work which helps in minimising the financial losses and also harm one's reputation which can be made by potential infringers.

The purpose of the availability of the injunctions is to create sense of deterrence among infringers and the potential harmers. The unauthorized use of protected work is clear breach of exclusive rights of IP owners which is granted by IP laws itself. It cannot be tolerable to the legal system and the suffering IP holders; it will result into legal consequences.

In a round figure, injunction is an essential enforceable tool to avail remedy to IP owners and provide timely relief to prevent from monetary losses.

Court should keep favour the purpose of injunction to defeat the infringement of IP laws and should stick to these important guidelines:

- The injunction should be granted to protect and enforce rights of people and to prevent infringement of rights of IP holders.
- Injunction should be in favour of public interest. It should not defeat the purpose of preventive measure.
- Court must also record reasons and also cite proper objects that how delay may defeat the purpose of law regarding injunction.
- Injunction cannot be issued against third party and only after considering the accurate joinders of the case.

- The court can refuse the appliance of injunction if there is other efficacious relief is available and the sole ground for claiming irreparable losses under an injunction is monetary loss.
- It is an equitable relief based on equity principle which aims to provide equity in law and used as essential preventive measure to protect rights of individuals from getting breached by the potential infringers.
- Injunction do not only restrict also guarantee to specific performance of certain acts to uphold the affected party's rights.
- It is recognised as enforceable tool to serve justice as it aims to maintain the status quo of both parties by issuing injunction against the potential infringer.
- Furthermore, it aims to undo the irreparable damages. It is a tailored solution for both parties based on facts and circumstances of each case.
- Conclusively, it restricts wrongdoers by creating any sort of nuisance or scenarios which may potentially harm the intangible properties and lead their owners to monetary losses and many more irreversible damages.

LEGAL FRAMEWORK OF INJUNCTIONS IN IPR

Injunction have pivotal role in the realm of Intellectual Property Rights (IPR), as powerful legal tool it is prohibiting the infringement of products or services. Injunction is a civil remedy, sought by the right holders for redressal of unauthorized use and their exclusive rights to their intellectual property. This remedy is available to the IP owners in actual and possible infringement of their Intellectual Property Rights. Injunction is sought against possibility of future infringement of IP rights. This remedy is in the nature of Interim/Temporary for pre-trial and Permanent/Mandatory for the latter.

This research work will explore the definition “A Court order commanding or preventing an action. To get an injunction, the complainant must show that there is no plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted.”

Intellectual Property Rights govern injunctions by national laws and also committed to state laws. The legal framework of injunction varies in IPR cases depends on jurisdictions but the doctrine and principle of IPR applies commonly across many legal systems.

To obtain an injunction the legal standards of IPR cases varies according to raised different IP issues and infringement of different IP rights. For instance, to claim IP rights on patent at issue the patentee can sought an injunction only if there is strong likeness to occur the irreparable harm if injunction will not be granted. The granting of injunction should be in public interest

and in scenarios when patentee is likely to succeed on claiming merits of intellectual property rights infringement and must maintain the equilibrium of favoured adversity of an injunction. In case of trademark, to get an injunction the plaintiff should show the distinctiveness of their trademark and not non-confusing to prove as an enforceable and valid trademark. To get an injunction for the protection of trademark, the plaintiff need to prove the confusing nature of trademark used by the defendant and their malafide intention to steal the goodwill of proprietor. The use of like trademarks is likely to create confusion and peoples with rational minds would not be able to differentiate and may lead them to irreparable harm to the consumers and monetary damages to the plaintiff. Hence, the injunction should be passed in the interest of public at large and also to protect the goodwill and the brand value having span of years in market.

To sought an injunction in case of copyright infringement, the plaintiff should must be the the owner of an authorized and valid copyright and they will suffer irreversible damages on violation of their exclusive rights. For instance, direct copy of someone's work or plagiarisms, is breach of copyright owner's exclusive right on their work. Illegal reproduction of protected work is another example of copyright infringement. Creation of derivative work without the prior permission of author or the copyright owner is termed as "Fan fiction" which is a clear infringement of their exclusive rights which is guaranteed to them by the copyright laws to control their work distribution, reproduction of their work and its uses. In such cases, if the injunction is not granted, it may led the copyright owners to suffering of irreparable damages. In Intellectual Property Rights cases, to obtain an injunction requires typical legal process as complaint filing with the court to seek a preliminary injunction at primary stage of alleged breach of copyright or in situation of pending case plaintiff can seek a restraining order temporarily. The Copyright owner can also seek permanent injunction in case if their merit prevails and after the proper consideration of both parties contentions and admitted evidences the court will grant injunction according to the situation of issue.

As the legal standards to obtain an injunction in IPR cases may vary on the type of IP right at issues. Jurisdiction is one of those major legal standards and to sought an injunctive relief different jurisdiction have different legal process. In some jurisdiction, it may require the plaintiff to post a bond with court due to the compensatory reasons. This bond is related to the compensation which is given to the defendant in case if the granted injunction is later proved to be granted wrongfully and have widely affected the defendant. The process of posting a bond to court clearly intends to ensure fairness and justness of the purpose behind granting the injunction. It is a preventive measure for the protection of defendants to prevent the misuse and

ensure the pre-emption of abuse of injunction and assure fairness to both of the parties. Furthermore, to get an injunctory relief an IP owner may seek injunctive relief directly from arbitration processes and through the agencies of administration and their by their administrative agents. The other mechanisms of seeking injunction in IP cases totally depends on the jurisdictional factor of the issue which may differ with place of that specific jurisdiction. In precise, injunction is overall a crucial civil remedy available to the IP owners to get their exclusive rights protected. It plays a pivotal role in protection of Intellectual Property Rights and smoothen the implementation of intellectual Property Laws and their Acts which specify different types of Intellectual Properties. To understand the legal framework of injunction is critical to enforce the rights of Intellectual Property owners for the effective protection of their valuable intangible assets.¹⁶⁰

LAWS GOVERNING INJUNCTION

In context of Intellectual Property Rights (IPR), injunction have wide arena, it is governed by specific regulations and laws which vary as per jurisdiction. Specifically, the injunctions covered under three major Acts:

- Specific Relief Act, 1963
- Code of Civil Procedure, 1908

In India, to succeed an injunction the following laws and their respective section are referred to provide with preventive reliefs under these Acts.

The purpose of enactment of Specific Relief Act, 1963, was enforcement and protection of the primary rights and to offer the some alleviation, mentioning it further.

An injunction under this Act is passed to declare decree, for specific performance, to recover the possession of property, for the rectification or cancellation of instrument and one of them is injunctions.

Under Specific Relief Act, 1963, injunctions are granted as a remedy to prevent breach of plaintiff's rights and provide relief to them. As per this Act, there are three different kinds of injunctions:

- Obligatory Injunction
- Temporary Injunction

• ¹⁶⁰ The Yale Law Journal, Vol. 29, No. 4 (Feb., 1920), pp. 462-463

- Permanent Injunction

Code of Civil Procedure, 1908, also talk about an interim injunction. Unlike a temporary injunction, a perpetual injunction is permanent in nature, and a decree will be issued for the same. An obligatory injunction is also called mandatory injunction, like an injunction for destroying copies which have been already published. Mandatory injunction is committed to the aim to force someone to do action in reference to the enforcement of the rights another person.

These preventive reliefs are dealt under the Part III of the Specific Relief Act of 1963. The discussion of injunction is given under the, Chapter VII of this Act. This chapter deals with injunction in general and not specifically. The section 36 is specific about the discretion of court, that court may, at its discretion, give preventive relief through both of the injunctions, interim and permanent injunctions.

Furthermore, section 37 provides an explanation of permanent and interim injunctions. In addition, Chapter VIII discusses perpetual injunctions which last forever. The cases in which a court may issue perpetual injunctions are listed under Section 38. The mandatory injunction is mention under Section 39.

Additionally, Section 40 specifies that a plaintiff may requests an injunction in such cases, damages may be awarded in lieu of or in addition to the injunction claimed. The circumstances in which an injunction cannot be granted are outlined in Section 41. Additionally, Section 42 also specifies that the court may issue an injunction for the performance of agreements having negative nature or an affirmative agreement. The court can issue an injunction even if the court is not able to compel specific performance of an affirmative agreement.

Further, under Sections 133, 142, and 144 of the Code of Criminal Procedure, 1973, also court may issue injunctions in cases dealing with nuisance matters.

Under the Code of Civil Procedure, 1908, with the consent of the court two or more individuals or an Advocate-General may institute a suit for a declaration and injunction in cases of illegal conducts affecting the public and which may harm them or creating public nuisance, under the Section 91 of the Code. In addition, Sections 94 and 95 also states about the temporary injunctions granted by the courts in order to fulfil the goals of serving justice and commitment of justness as well as the compensation which is given to the plaintiff in order of obtaining an injunction on insufficient and inadequate grounds. Further, under the Rule 32 of Order XXI, execution of injunction or a decision for a particular performance is addressed. Interlocutory orders and temporary injunctions are particularly covered by Order XXXIX of the Civil

Types of Injunction

To prevent the infringement of plaintiff's rights, there are various types of injunctions available in the Specific Relief Act of 1963. This Act has discussed many forms of injunctions which are discussed below in detail:

1. **Interim Injunction:** Section 37 of the Specific Relief Act of 1963 addresses interim injunctions. Temporary injunctions are continued for a predetermined period of time or addition of further rulings by the court. They are addressed under the Code of Civil Procedure, 1908 and it may be admitted at any point of lawsuit.

The main objective to grant an injunction is the protection of the interest of party or the property until the verdict is rendered. Injunction sticks with its primary objective to prevent infringement of parties rights. The following factors should must be considered while granting such injunctions.

- In case, if a party has a prima facie case for one side
- In the case of measured balance of convenience in the complainant's favour
- If the injunction would not be granted, the plaintiff will suffer irreparable damages.

2. **Perpetual Injunction:** The injunction suit is fully resolved when the perpetual injunction is granted. Perpetual injunction is given at the time of final judgement. Section 37 (2) of the Specific Relief Act, 1963 defines the issuing of a perpetual injunction. This is relief is not provisional relief injunction rather it is definitive. Under this section, to grant a perpetual injunction an enquiry should must be followed to issue a decree and also a hearing is required on merits of case. It bars the defendant from exercising his rights permanently or getting engaged in as such behaviour that would breach the plaintiff's rights.

3. **Mandatory Injunction**

The Mandatory Injunction is covered by the Special Relief Act of 1963, under Section 39. This provision addresses the mandatory injunction and ground on which it is granted but does not provide a precise definition. As per this clause, the court is

¹⁶¹<https://blog.ipleaders.in/injunction-all-you-need-to-know-about-it/#:~:text=Historical%20background%20of%20injunctions,injunctions%20were%20called%20'Interdict'>

authorised to impose injunctions against the potential infringers those who are allegedly infringing and can, compel the performance of certain acts at its discretion in order to prevent the duty from being breached. While providing a definitive and long term remedy inspite of temporary relief, like in an exceptional or model situations like protecting lives.

4. Mareva Injunction

Mareva injunction is to protect the interests of the plaintiff during the pendency of the suit and is granted to restrain the defendant from disposing of their assets within the jurisdiction until the trial ends or judgment in the action for infringement is passed.

5. Anton Pillar Orders

In appropriate cases, the court has inherent jurisdiction on an application by the plaintiff made ex parte and in camera to require the defendant to permit the plaintiff to enter his premises and take inspection of relevant documents and articles and take copies thereof or remove them for safe custody. These are known as Anton Piller orders. The necessity for such an order arises when there is grave danger of relevant documents and infringing articles being removed or destroyed, so that the ends of justice will be defeated.

6. John Doe Orders

John Doe orders are the orders issued by the court to search and seize against unnamed/ unknown defendants; which virtually translates into untrammelled powers in the hands of the plaintiffs, aided by court-appointed local commissioners, to raid any premises where infringement activities may be carried out.¹⁶²

AMBIT OF INJUNCTION IN IPR

An injunction in IPR is a legal remedy can be sought in case of infringement of Intellectual Property Rights of an IP holder. Injunction have a significant ambit in the field of Intellectual Property Rights. It is pivotal in IP laws because it successfully defend the Ip rights of Ip holders and protect their rights from getting breached. It ensure the compliance and enforceability of Intellectual Property Laws. To consider the ambit of injunction in Intellectual Property Rights, we will understand the legal principles governing injunctions in IPR cases.

Equity should be balanced, when we consider that whether an injunction to be granted or not,

¹⁶² <https://www.indialaw.in/blog/civil/types-of-injunctions-under-civil-laws/>

the balance of equities among parties should must be checked. Only in case of balanced equities, the court can grant an injunction in an IPR case. The weighing of harm and its consequences in case the injunction is not granted to the owner of IP rights, what irreparable damages he may suffer is very crucial before granting such injunction. It would be allowed in case of alleged infringement of IP rights.

To seek an injunction in IPR, the interest of public cannot be curtailed and court should also consider it as one of the aspect of case. In case the public interest is in favour of the mechanism of granting an injunction to get the integrity of products is protected. Injunction should be granted to enhance the creativity and encourage the innovation in our country but not the stake of public interest at large.

The doctrine of IP laws should be applied such as the fair practice and also considering the exceptions of these principles we should also focus on the justness and fairness of practices. To measure the fairness, we may refer to the clean hands doctrine. This doctrine is all about the conduct of owner itself. The dependency of this doctrine is principled on the question whether the owner itself is engaged in inequitable work or any misconduct is raising at their own part. The clean hand doctrine is completely based on the people seeking the relief should have equitable conduct and clean and fair hands on their work.

To decide the authenticity of the case to grant an injunction the court considers some of the major factors. Those factors includes irreversible damages, hardships balance, chances of successful claim on merits of the case and also the public interest should be considered.

The court need to go for proper assessment to determine the strength of the case and the gravity of the situation before granting injunction. Injunction cannot be granted in case of no likelihood of success over claims of merits in issue. It need to determine whether they are likely to successfully claim on merits in issue and to prove the actual breach of their IP rights. The court should also be fully satisfied by the fact that damage is going to be irreparable and irreversible and in case of non-granting of injunction will made an IP owner suffer adversely. The harm cannot be repaired and compensated adequately if an injunction is not granted. To balance the hardships court will measure the gravity of situation and hardships which may happen to IP owner. The damage should be hard for defendant the parties to seek an injunction. The hardship should be overweigh at the side of defendant to get an injunction for immediate seize at the IPR infringement. Furthermore, considering public interest as one of the major factor to decide an injunction is a compliment to the public at large and the respect of their interest. The injunction should be in the favour of the public interest and should be of positive nature which affects creativity and innovation positively.

AMBIT OF INJUNCTION IN IP LAWS

To understand the circular ambit of injunction we need to explore the ambit of intellectual property and further we will understand injunction for different types of Intellectual Properties. To scale the ambit of injunction in intellectual property, we need to delve into the various types of intellectual property. We cannot deny that intellectual property is vast. In this 21st century it has slipped from the recipe of our kitchen to the cloth/paper slips attached with our clothes, their brandings. In wider term the strategy to treat biometric details of humans as intellectual property under trade secret is in debate. The different types of IP includes:

- Trademarks
- Patents
- Copyrights
- Geographical Indications
- Designs
- Trade secret

All of these intangible properties rights are protected under various statutes like Trademarks Act, 1999, the Copyright Act, 1957, Patents Act, 1970, Designs Act, 2000, Geographical Indications of Goods (Registration and Protection) Act, 1999 and Trade secret laws etc.

In case of infringement of intellectual properties rights or any future possible infringement of rights of intellectual property, the IP owner have right to get an injunction in relation to infringement of any of the rights. In India, injunction is governed under various laws in the field of Intellectual Property.

In case of Patent infringement, Section 108 of the Indian Patents Act, 1970 states the provision to seek an injunction in case of patent rights infringement. To get an injunction for breach of patent laws the owner should have a valid patent and as per the gravity of situation, court may grant temporary or permanent injunction after the consideration of issues merits. In case of a copyright infringement, the Copyright Act, 1957, the Section 55 of this Act advocates about the getting injunction in case of infringement of copyright. If we look at the Trademark Law, in case of infringement of trademark, Section 135 of Trademarks Act, 1999 advocates about the injunctions. In case where the design law is involved the Section 22 of the Designs Act, 2000 allows the courts to grant an injunction and prevent the infringement of designs rights and the monetary irreversible which may result out of that. To tackle with the Geographical Indications, Section 22 of the Geographical Indications of goods (Registration and Protection) Act, 1999 allows the court for granting an injunction.

In addition to such specific laws, general principles of jurisprudence and equity is applied to seek an IPR injunction in India.¹⁶³

JUDICIAL DEVELOPMENT TO DYNAMIC INJUNCTION

The dynamic injunction had started to develop way back, we can trace back with the consideration of need for smooth and easy remedies which can defensively response to the complex complicacies of global markets in modern times in era of tech. The traditional injunctions are rigid and so so traditional to be smooth. It is static and also fail to address the dynamic nature of intellectual property conflicts and disputes. On the other side of the issue, dynamic injunction is easy to mould and adaptable to changing scenarios. It easily mould as per the advancements of technologies, global markets, and shifting as per the competitive pressure.¹⁶⁴

CONCLUSION

A remedy based on equity is an injunction. The court has full authority to decide whether or not to issue an injunction. It is not possible to claim the relief as a matter of right, regardless of how strong the applicant's argument is. Therefore, extreme caution, diligence, and attention must be taken when using the authority to issue an injunction. It is an incredible and delicate power that has the possibility of causing harm or losses to the innocent party. Thus, the granting of an injunction is likewise not absolute, unlike anything else in this world.

Delays are one of the biggest obstacles to justice administration in the modern world. All parties involved must work together to address the issue of justice delays. The unpleasant reality of today's world is that we are moving closer to a civilization where swarms of lawyers—hungry like locusts—and bridges of judges—in numbers never before imagined—overrun the landscape. However, it is untrue to say that the general public wants their conflicts settled by black-robed judges, elegantly attired attorneys, and well-functioning courtrooms. People who are facing legal difficulties, such as those who are in agony, desire relief as soon as possible, and one way to assist those people in obtaining remedy for protecting their rights is through the use of an injunction.

¹⁶³ <https://indianlawportal.co.in/law-of-injunction/>.

¹⁶⁴ The Cambridge Law Journal , November 2012, Vol. 71, No. 3 (November 2012), pp. 501-505



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TRAVERSING THE REALMS OF INDIAN COPYRIGHT LAW IN THE WORLD OF DOCUMENTARIES

-Jayanti Ranjan¹⁶⁵

ABSTRACT

Copyright Law in India caters to the protection of original artistic, literary, or dramatic work. A copyright infringement occurs when an original work of an author is used to produce new copies of work without obtaining the due consent of the original author of the work in terms of licensing. Movies fall under the category of dramatic work produced by a filmmaker. The movie industry in India is largely prone to such infringement of original work without giving due credit. Adaptations or derivative work also come under the domain of the copyright law. Documentaries are movies made on the foundation of such derivative work. Documentary filmmakers have to necessarily use reliable sources as the purpose of a documentary is to showcase reality based on the available shreds of evidence and data. Hence, it becomes essential to protect the intellectual property rights of both the original author of such work and the adaptive author. This paper aims to examine the current position of copyright law concerning such documentary movies. The author delves into the challenges surrounding the domain of documentary films and what relief the copyright law offers them.

Keywords: Copyright act, Documentary, Filmmaking, Fair Use

Introduction

Film Production is a challenging task in India. A movie and its script are always developed around an idea. This idea could be an original creation of the mind or a borrowed concept from some prior work. A movie that borrows the concept from some original piece of literary, dramatic, or artistic work and subsequently converts it into an adaptation requires permission from the original author before using it. An adaptation is defined under Sec 2av of the

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copyright act as – Concerning any work, any use of such work involving its rearrangement or alteration.

In recent times, Bollywood has witnessed an increasing trend in the making of biographical and documentary movies. Making a movie of such sort requires the fulfillment of all the required conditions in the checklist. One of these conditions includes The Copyright Act of 1957. Under Sec 13 of this Act¹⁶⁶, it seeks to protect work such as original literary, dramatic, musical, and artistic work, cinematograph films, and sound recordings. The Act grants exclusive rights to the owner or author of such work against any exploitation of his work without his will.

Classification of Work

A piece of work can be categorized broadly into three domains such as adaptation, derivation, and transformation. The point of intersection between all three is that they are not purely original, there exist some parts which have been drawn upon by some other work. If all of them involve the use of an already existing piece of work what makes the difference?

The difference lies in the amount of copyrighted work used and also the design of use. An adaptation is a work that is essentially the same as the original work although there may be a change in the format, a derivation is based on the original work but is different from it since it incorporates an original contribution from its creator and a transformation is a work which is completely new but is based on the raw data contained in the original work.¹⁶⁷

Adaptations and derivations of an original work would infringe upon its copyright, assuming the work is protected by copyright law and there is no license granted by the copyright owner.

But to the contrary, a transformation of the original work would not infringe upon its copyright and would not require a license from the copyright holder. This is because adaptations and derivations heavily depend on and incorporate the original work, whereas a transformation uses only the underlying data or ideas from the original work, which are not protected by copyright.¹⁶⁸

¹⁶⁶ Copyright Act, 1957, § 13, No. 14, Acts of Parliament, 1957 (India).

¹⁶⁷ Nandita Saikia, *Adaptations, Derivations and Transformations in Copyright Law*, LAW MATTERS, (Oct. 06, 2010), <https://copyright.lawmatters.in/2010/10/adaptations-derivations-and.html>.

¹⁶⁸ *Id.*

History of Documentary Filmmaking

Documentary films are a genre of movie peculiarly focussing on available facts and data from reliable sources. A movie of such type aims to showcase the reality of a situation. It is far more original and real completely away from any fictionality. It tends to disseminate information to the common masses which could not be ordinarily obtained by them. Filming of a documentary movie requires thorough and deep research into the issue. Searching for the sources through which information could be gathered is a tedious task and also not all sources could show a true picture hence, picking out an original and reliable source becomes a challenge. A documentary filmmaker must possess good research and analysis skills to draw out scientific and objective conclusions. These movies are either made for educational or entertainment purposes.

Documentaries have been the greatest contributors to the idea of realism in several countries across centuries. The word draws its origin from the French word *documentaire* from the mid-1920s. Its history could be traced back to the filming of the events from the Bolshevik annexation of power during the early 20th century.

World War II significantly boosted the production of documentaries. In Germany, the Nazi regime utilized the state-controlled film industry to create propaganda films. Meanwhile, American director Frank Capra produced the "Why We Fight" series (1942-45) for the U.S. Army Signal Corps. In Great Britain, notable documentaries like "London Can Take It" (1940), "Target for Tonight" (1941), and "Desert Victory" (1943) were released. In Canada, the National Film Board focused on creating educational films that served the national interest.¹⁶⁹

Filmmaking regulations in India

As we have previously discussed how filmmaking involves the adherence to certain prerequisites before the actual process starts, these barriers are erected to safeguard each one's right. A duty is imposed by law upon the filmmaker to abide by these conditions to make his films. Obtaining a copyright license from the original owner of the work is one of them, however other conditions whose performance ought to be necessary are:

1. CBFC Certification- In India the responsibility for the classification of movies based on the content and its audience is placed on the Central Board of Film Certification. It issues

¹⁶⁹ The Editors of Encyclopaedia, *Documentary Film*, BRITANNICA, (Jun. 25, 2024, 4:08 PM), <https://www.britannica.com/art/documentary-film>.

U (Unrestricted), U/A (Parental guidance), and A (Adult) certificates to movies.

2. State Regulations- Films fall under the purview of the state list in the constitution which allows the state to formulate its guidelines related to it.
3. Contractual Obligation- The making of a film involves directors, producers, actors, screenwriters, musicians, distributors, and several other parties, which gives rise to the signing of multiple contracts and agreements between them to avoid any future disputes. These contracts typically cover royalties, credit, dispute resolution methods, etc.
4. Cracking Deals- These movie makers try negotiating and finalizing deals with distributors and cinema theatres for the movie's exhibition hovering over issues such as the areas of exhibition, profit-sharing, promotion, and marketing.
5. Complying with Labour law, tax law, and locational permits- Before the beginning of the actual shoot, a filmmaker needs to necessarily abide by the Labour laws and respected tax laws of the country. Also, locational permits for shooting must be obtained from the concerned local authority.¹⁷⁰

Copyright ownership: An endless tussle

"A director is the only person who knows what the film is about.

-Satyajit Ray"¹⁷¹

Ever wondered when watching through the casting of a movie, who owns the right to the work? Whose rights are being shielded? Ideally, it's the producer of the movie. However, to draw upon this concise conclusion. The journey hasn't been easy, the struggle for securing one's ownership over the work in the cinema industry is still a struggle. The history of reaching the destination has been long and involves various stakeholders such as directors, producers, and writers. So how have we come to guarantee those rights to the producer is to be understood?

Going by the statute in place, Sec 17(b) of the Copyright Act¹⁷², 1957 clearly states that in a work such as a film, the ownership is delivered to the party whose consideration in its making is significant, unless there subsists an agreement otherwise. This indicates that the producer over any other party be it the writer, director, or lyricist holds authority as an owner of the

¹⁷⁰ Film Making Laws in India, Laws, and Regulations of The Indian Media and Entertainment Industry, Legalities in Making Films in India, <https://mediumpulse.com/2024/05/15/film-making-laws-in-india-laws-and-regulations-of-the-indian-media-and-entertainment-industry-legalities-in-making-films-in-india/>

¹⁷¹ Manish Jindal, *Understanding the Layers: Copyrights in the Film Industry*, (Dec. 06, 2023), <https://bytescare.com/blog/copyright-director>.

¹⁷² Copyright Act, 1957, § 17(b), No. 14, Acts of Parliament, 1957 (India).

work to reproduce, distribute, perform, and showcase their work.

However, a contrary question to this arises regarding the director's role in making a film. A director is the original creator of an idea. It originates as a fruit of the intellectual labour of his mind. Hence, naturally, the idea is his and thus he must have ownership over it. Therefore, his contribution to the making of a film is maximum. Who is responsible for safeguarding his intellectual property then, if not the copyright act? The question came before the court in the case of *Ramesh Sippy v. Shaan Ranjeet Uttamsingh & Ors*¹⁷³. The question was addressed by the Bombay HC upholding the law by delivering the ownership right or authorship right of a movie in the hands of the producer. The director argued that his right be acknowledged because of his creative contribution to the work. The rationale behind the court's judgment here was that a producer's financial contributions and the associated risks taken up in a movie are more significant and crucial due to which he is entitled to his rights.¹⁷⁴ Film directors are also without gain from the special right offered to the author to claim relief concerning any distortion, mutilation, or modification of the work if such work causes bias to his reputation under Sec 57(b) of the Copyright Act¹⁷⁵.

Another important aspect to be dealt with for understanding this tussle for ownership involves answering the question 'Are script writers granted exclusive rights over their work?' The answer is yes. Then how do we solve the conflict between a writer and a producer of the same work? Scriptwriters are the default owner/author of the written work. Authorship rights are granted to them for their literary contribution but the right is not limitless. The following limitation is that a writer has exclusive rights over his work only until it is voluntarily waived off. By voluntarily waiving off, we mean that they are transferred or sold to the production company for commissioning into a movie.

What stakes the actors hold over ownership is also a pertinent question. The Copyright Act under Section 38(b)¹⁷⁶ seeks to protect the moral rights of the performers in a work whose alteration results in harm to his/her reputation in the eyes of the public. But there lies no remedy to grant any protective right to the director as he is neither considered the owner nor an author of the work.

¹⁷³ *Ramesh Sippy v. Shaan Ranjeet Uttamsingh*, 2013 SCC OnLine Bom 523

¹⁷⁴ Copyright Act, 1957, § 57(b), No. 14, Acts of Parliament, 1957 (India)

¹⁷⁵ Manish, *supra* note 6

¹⁷⁶ Copyright Act, 1957, § 57(b), No. 14, Acts of Parliament, 1957 (India).

For developing a movie out of an original adaptive work, prior temporary or perpetual permission must be obtained from the original owner before adapting. The transfer of rights is facilitated by paying a sum of money called a royalty to the owner of the work. A documentary movie works similarly to adaptations. Before including any statement of facts, images, or video clips in the movie, rights have to be obtained from the concerned owners upon whose failure, the original owner might file a suit for copyright infringement under Sec 63 of the Copyright Act¹⁷⁷.

Fair Use Doctrine: A saviour for documentary filmmakers

The primary objective of the copyright law is to protect the creators of original work and their work from being unauthorisedly copied. An artistic work either in the form of a painting, movie, or book is developed on an idea and an idea cannot just pop out of nowhere, it traces its origin from an inspiration. This inspiration is most of the time an already available work.

To execute the making of any such inspired work, the prior transfer of rights from the original owner to the maker must take place. The copyright act as highlighted previously allows this through the transfer of copyright license. This process often becomes a struggle for documentary filmmakers. Securing a copyright license to use the work isn't a cakewalk most of the time. The insight and frame of reference that documentaries aim to deliver are compromised by the obligation to select only the licensed copyright material and make it available at a reasonable price. At the same time, documentarians also strive to secure their copyright over their own making.

Fair use doctrine as a key principle of copyright law comes to their rescue. This principle has been founded as a result of the negotiation process between the owners of copyrighted works and their users. Its applicability is limited to the domain of transformative work. An illustration of transformative work is the Assamese song "*Bistirnapaarore*" by Dr. Bhupen Hazarika who took inspiration from the song "*Old Man River*"¹⁷⁸

Recognition in Legislation

Article 13 of the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) stipulates that any limitations or exceptions to exclusive rights must be limited to specific special cases. These limitations must not interfere with the normal use of the work and

¹⁷⁷ Copyright Act, 1957, § 57(b), No. 14, Acts of Parliament, 1957 (India).

¹⁷⁸ Nishka Kamath, *Fair Use under Copyright Law*, IPLEADERS, (Jan. 25, 2023), <https://blog.ipleaders.in/fair-use-under-copyright-law/>.

should not unfairly harm the legitimate interests of the rights holder.¹⁷⁹ Similarly, Article 9(2) of the Berne Convention mandates that any exceptions to exclusive rights should be clearly defined, not disrupt the normal exploitation of the work, and not unjustly prejudice the rights holder's legitimate interests.¹⁸⁰ Since all WTO member countries must adhere to both TRIPS and the Berne Convention, these principles are embedded in many national copyright laws. The Indian Copyright Act under Sec 52¹⁸¹ extensively covers this principle. This section allows for a limited usage of copyright-protected material without the need for obtaining permission from the original owner of such work.

What constitutes fair Use?

“Using a literary, dramatic, musical, or artistic work for research, private study, criticism, review, or reporting current events is considered fair use and does not infringe on copyright. The Copyright Amendment Act, of 2012 broadened this scope to include “any work,” extending fair use provisions to cinematograph films and musical works.”¹⁸² This means more types of content can be used freely for personal and private purposes, allowing greater relaxation for individuals engaging in these activities. The standards of fair use are flexible depending upon a case-to-case basis and are open to judicial interpretation. However, the difference between a reasonable and fair use of work in the name of freedom of expression and a deliberate attempt to infringe is mostly delineated by a blurry line.

The following factors are kept in mind by jurists while deciding whether the making of a work from copyrighted material can be exempted under the fair use concept:

1. Nature of the copyrighted work
2. Weighing the amount and significance of the copyrighted work in the new work
3. Probable outcome of use on the copyright owner and the reputation of the work¹⁸³

All of the mentioned standards were tested by the court in the case of *Sanjay Kuamr Gupta v. Sony Picture Networks India Pvt. Ltd*¹⁸⁴ Herein this case the petitioner used the term

¹⁷⁹ Agreement on Trade-Related Aspects of Intellectual property rights, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

¹⁸⁰ Berne Convention for the Protection of literary and Artistic Works, September 9, 1886, as revised at Paris on July 24, 1971, 828 U.N.T.S. 221

¹⁸¹ Copyright Act, 1957, § 52, No. 14, Acts of Parliament, 1957 (India).

¹⁸² *Id.*

¹⁸³ Muskaan Mandhyan, *What is Fair use of Copyright doctrine*, MONDAQ, (Jul.28, 2023), <https://www.mondaq.com/india/copyright/1348352/what-is-fair-use-of-copyright-doctrine>

¹⁸⁴ *Sanjay Kuamr Gupta v. Sony Pictures Networks (India) (P) Ltd.*, 2018 SCC OnLine Del 10476

“*Jeeto Unlimited*” for his idea of a quiz game show whose winners were appreciated for their achievement by giving various gifts. The appellant presented that Sony Network (respondent) compelled him to sign a consent letter that sought to allow them to use his concept without incurring any liability. The petitioner later filed a suit for infringement of copyright on Sony Network for using his concept in their game show named KBC. The court’s decision favoured Sony Network mentioning that getting the audience involved in a television program is a recurring phenomenon. Also, the selection of candidates by way of answering questions displayed on their Television is substantially different from the appellant’s concept.¹⁸⁵

Purposes for usage of Copyrighted Work

1. Critical media analysis – A filmmaker is guaranteed his freedom of expression by way of using the fair use doctrine to critically analyse or critique copyrighted material without obtaining a license. The amount of work used should not be more than the material needed to make the argument. The use shall not become a substitute for the original work.
2. Citing to validate a point – Quoting copyrighted works for deliberation and substantiation of one’s viewpoint is also discharged from being held as an infringement of copyright material. The intended purpose of use should be to produce new content and not just the mere exploitation of the old content for value.
3. Incorporating copyrighted media in a new work – The use of real-life media sounds and images for the portrayal of reality in a work is also excused under fair use. It is observed that the major role played by documentaries is to showcase reality and not falsify it henceforth, incorporation of copyrighted media does not violate the copyright act.
4. Representing historic events of the past – Historical documentaries are so in fashion these days. Collecting material about a certain period or concerning a past event is in itself a challenging task. However, their use has become essential in filming historical documentaries. Validating and illustrating a stance on such past events in the absence of sufficient records makes it inevitable for documentarians to refrain from using copyrighted work. Thus, the fair use principle provides them with a relaxation to execute

¹⁸⁵ Sheetal Vohra, *Bollywood and IPR- Famous Copyright Cases in Movies in India*, (Aug.13, 2019), <https://www.lawyered.in/legal-disrupt/articles/judgemental-hai-kya-movie-posters-copyright-infringement-or-not/>

their work.¹⁸⁶

Conclusion

The intricate relationship between Indian copyright law and documentary filmmaking is marked by numerous challenges and evolving dynamics. This paper has explored the various facets of this relationship, from the legal intricacies surrounding adaptations and derivative works to the protection of intellectual property rights of both original and adaptive authors. The fair use doctrine emerges as a critical tool for documentary filmmakers, allowing for the use of copyrighted material in a manner that supports creativity and the dissemination of information while respecting the rights of original creators.

The history of documentary filmmaking underscores the genre's unique role in portraying reality and educating the public. However, as this study has shown, the legal landscape in India presents significant hurdles that filmmakers must navigate to avoid copyright infringement. The stringent requirements for obtaining licenses and the complex web of ownership rights necessitate a deep understanding of copyright law for anyone engaged in documentary production.

Furthermore, the rise of OTT platforms and digital piracy introduces new challenges that require robust surveillance, governance, and control measures. These platforms, while providing vast opportunities for content distribution, also pose risks to the protection of copyrighted material. The necessity for well-formulated policies that balance the interests of content creators and the free flow of ideas cannot be overstated.

In conclusion, while Indian copyright law aims to protect the intellectual property rights of creators, it must also adapt to the evolving needs of documentary filmmakers. A nuanced approach that considers the unique nature of documentaries, coupled with a strong legal framework that addresses modern challenges, will be essential in fostering a vibrant and fair creative industry. The ongoing dialogue between legal frameworks and creative expression must continue to evolve to support the flourishing of documentary filmmaking in India.

¹⁸⁶ Documentary Filmmakers' Statement of Best Practices in Fair Use, <https://cmsimpact.org/code/documentary-filmmakers-statement-of-best-practices-in-fair-use/> (last visited Jun. 28, 2024).