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**ANALYZING THE IMPLICATION OF TRADEMARK AND
COPYRIGHT IN CYBERSPACE**

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ABSTRACT

With the present concern over the implications of Intellectual Property Rights in the cyber world, it was relevant to have a detailed evaluation of the method and proposition of trademark and copyrights. It is also necessary to understand why India needs to have a law that deals with the issues of IPR in cyberspace by analysing abroad laws. The Information Technology Act of 2000 has been a result of the General Assembly of the United Nations (UNCITRAL) resolution of January 30, 1997, which enacted the Model Law on Electronic Commerce on International Trade Law. Cybercrime is one of the world's fastest increasing crimes. While the IT Act has been successful in establishing a framework of legislation in Cyber Space and addressing a few pressing concerns about technological exploitation, it has a few severe flaws that have not been addressed, such as difficulties in Intellectual Property Rights. As e-commerce and e-business have grown in prominence, it has become increasingly vital for businesses and organizations to safeguard their intellectual property rights online. Intellectual property rights may be characterized as a combination of ideas, innovations, and creations. Intellectual properties include copyright, patents, trademarks, and designs. However, The Information Technology Act of 2000 has no bulletproof formula for Intellectual Property protection, even though trademark and copyrights infringement are one of the most

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difficult areas in cyberspace. Although Copyright and domain name infringement does occur on the internet, the Copyright act of 1957 and the Trademark Act of 1999 are neutral on these issues. To have a broader view, an attempt has been made to analyze the disputes between Trademark and Domain issues by discussing important case laws under this factor. As a result, there is no enforcement mechanism in place to safeguard the safety of domain names on the internet. The time has come to adopt a proper amalgamation to safeguard intellectual property rights in cyberspace.

HIGHLIGHTS OF IT ACT 2000

The internet has changed our life drastically. People from different fields are using computers to produce, transfer, and save information in electronic form rather than conventional paper and document formats. Electronically stored information offers several advantages, including cost savings, ease of storage, retrieval, and connection speed. Though it offers numerous benefits, it has been abused by many individuals for personal gain, or to hurt others in some other way. The ability to link to the rest of the world from anywhere has resulted in a rise in crime, necessitating the creation of legislation to safeguard people.

In order to keep pace with the changing time Information Technology Act, 2000 was passed. This act is on the UN Model on Electronic Commerce 1996 which was suggested by the General Assembly of the United Nations on 30th January 1997. The IT Act has 13 chapters and 90 sections. The four sections starting from section 91- 94 are the revised form of the Indian Penal Code, 1860.

The act was introduced to carry lawful and trustworthy digital and online transactions. For Example: When any person gains unauthorized access to the computer and adds or deletes the files or changes the password to deny the access to the authorized person. This act is applied not only to protect the information but to protect the security of the computer resources from attack by any unauthorized person. Unfortunately, the IT Act does not define cybercrime officially. Cybercrime in a narrow sense means the illegal activity aiming towards the security of computer systems and the data handled by them through electronic operations.

The objective of this act is to ascertain legal recognition for transactions involving

electronic data interchange and alternative forms of electronic communication, unremarkably noted as "electronic commerce," which involve the use of non-paper-based methods of communication and information storage, and to make electronic filing of documents with government agencies easier.

CONCEPTUALIZATION OF INTELLECTUAL PROPERTY RIGHTS

When we go home or shop for something, we are surrounded by human creativity and inventions, which can range from your furniture to designer carpets and refrigerators, microwaves to your favorite books and music. These items are referred to as intellectual property because they are the result of the human mind. The internet is currently utilized for a variety of purposes other than education; it is now used for commerce. Industrial activities, scientific acts, and artistic creations all give rise to intellectual property rights, which are a broader concept of legal property. Inventions and industrial designs are both considered industrial property.³

India has been recognizing the activity of Intellectual Property Rights since Ancient times. During the Harappa civilization, distinctive signs on pottery were recognised as trademarks. When we talk to the respect of global scenario, in 1409, a specific license was granted in the construction of a model mill to store wheat in Germany. Other than this, an exclusive right for stained glass were established in England in order to encourage creators. Even the Europe's Alp Mountains are recognised in the historical background of Intellectual Property Rights when in 1300s, the individuals who discovered the mines for the first time used to impose terms on the available resources in the area, such as water, wood, and so on. As a result, from being utterly alien to the nomadic society, an era emerged in which every new concept was granted protection under the category of Intellectual Property Rights.

As a distinctive identification of a firm or a product, the trademark plays a vital role. It is a symbol of a brand's or company's position among consumers, as well as a guarantee of a specific standard and quality. Trademarks require intellectual property protection since companies spend a lot of effort and money developing their brands. They don't want some imposter selling items or services under their trademarks, fooling customers and causing financial and reputational harm. Names, logos, and designs used in packaging or on the

³ Khushboo Garg, *Nature, Concept and Theories of Intellectual Property Rights*, LEGAL READINGS (Feb. 18, 2022, 6:31PM), <https://legalreadings.com/intellectual-property-right/>.

items themselves are examples of trademarks.⁴

While watching a movie, buying a book, or renting a DVD, you may come across the words "*All Rights Reserved or the sign* ©." This is simply a manner of expressing that the copyright for the movie, book, or DVD is controlled by the publisher, and that no one can reproduce or use the material in any form without their permission. Copyright protection can be divided into two types:

- **Moral Rights:** These rights are non-transferable rights, and the owner has the right to be identified as the work's original or true owner. The owner of the work also has the exclusive right to any deformity or misrepresentation of the work.
- **Economic Rights:** Economic Rights allow the owner to govern or regulate how his or her innovation or creation is used in any way that is beneficial to the owner. Making copies, performing their work in public, broadcasting, and issuing public copies of work are all options available to the original owner. Economic Rights can also assist in obtaining a financial recompense for the owner's efforts.⁵

COPYRIGHT ISSUES IN CYBERSPACE

Today, copyright is used in a wide range of businesses, including the publishing and distribution of books, journals, and newspapers, the production and distribution of dramatic and musical works for performances, the publication of musical works and cinema, broadcasting, and so on. Copyrights, as Intellectual Property, migrate more readily and quickly from country to country than other types of property. Copying copyright content has become easier because of technological advancements. As a result, copyright infringement has been difficult, if not impossible, to control. Books, recorded tapes, video cassettes of films, and computer programs may all be easily transported from one country to another, and thousands of copies can be generated and distributed. Unauthorized home recordings of radio and television shows have become commonplace around the world.

The copyright's goal is to encourage authors, composers, and directors to create original works by giving them the exclusive right to duplicate and publish them for the public good. When the restricted right, i.e., the copyright period, expires, the works become

⁴ IPTSE, <https://iptse.com/types-of-intellectual-property-rights/>, (last visited Feb. 18, 2022).

⁵ Karan Singh, *What are the Types of Intellectual Property Rights?*, SWARIT ADVISORS (Feb. 15, 2022, 9:05 PM), <https://swaritadvisors.com/blog/types-of-intellectual-property-rights/>.

public domain, and anybody can duplicate them without permission. The original literary, dramatic, musical, artistic, cinematographic film, sound recording, and computer program are all protected by copyright.

COPYRIGHT INFRINGEMENT SEEN IN CYBERSPACE

With the merging of the internet and increased use of the worldwide web, the possibilities of copyright infringement have grown exponentially. Free and simple access to the internet, as well as the ability to download, has generated new issues in copyright infringement. Digital technology has made it easy to take content from one site, edit it, or simply reproduce it on another site, posing significant problems for traditional interpretations of individual rights and protection. A publisher can be anyone with a computer and a modem. Because it incorporates text, pictures, and even audio and video, a web page is similar to a book, a magazine, or a multimedia CD-ROM and will be eligible for copyright protection.⁶

The owner of a copyrighted work has the sole right to authorize reproduction, development of derivative works, distribution, and other activities under copyright law. This principle, however, cannot be strictly applied to copyright on the internet. Even simply surfing material on a computer terminal which is similar to reading a book or magazine in a bookstore can result in the creation of an unauthorized copy since a temporary copy of the work is produced in the RAM of the user's computer for access. It was held in *Feist Publishing vs. Rural Telephone Service Co. Inc. (1991)*, that there must be at least some degree of innovation, and that what should be protected by copyright were the fruits of intellectual labor, not just the sweat of the brow.⁷

Although, properly speaking, it may be a copyright infringement. However, there is an implied public access policy for linking to other web pages. The Internet was founded on the ability to build hypertext links to any other location, and it is

⁶ Tabrez Ahmad, Copyright Infringement in Cyberspace and Network Security - A Threat to E-Commerce LEGALSERVICEINDI (Feb. 18, 2022, 7:17 PM).

⁷ *Feist Publications v Rural Telephone Service Company*, [1991] 499 U.S. 340.

assumed that once a page is published on the internet, an implied agreement is granted unless the website owner expressly states otherwise.

COMPUTER SOFTWARE AND CYBER INFRINGEMENT

Software is specifically defined as a set of instructions capable of influencing a computer to do a specific task when incorporated in a machine-readable form. To put it another way, it's a set of directives that the machine can understand.

There are three types of software that are required for a computer to function

1. MICROCODE – which is a program that controls the details of execution,
2. OPERATING SYSTEM SOFTWARE – which controls the sources of a computer and manages routine tasks and is a required requirement for a computer to function, and
3. APPLICATION SOFTWARE – which is designed to perform a specific task.⁸

Piracy happens when copyrighted software is made accessible for download to users without the copyright owner's express authorization. Illegal software can be found in places like online classified ads, newsgroups, bulletin board services, and auction sites. Piracy stifles innovation, slows the creation of new software and the local software sector, and harms e-commerce. Consumers are harmed by piracy, and the local and national economies suffer as a result. Viruses, as well as corrupted and malfunctioning applications, pose a threat to consumers.⁹

In *Sega Enterprises v Maphia (1994)*, the plaintiff produced video games that could only be played on the plaintiff's gaming systems. The defendant ran a bulletin board system that allowed users to upload Sega games for others to download. The court determined that defendant infringed the plaintiff's copyright because it caused or contributed materially to the infringement.¹⁰

In *Michael v/s Internet - Group Inc. (1998)*, the court found that making videotapes available over the internet without authorization and displaying unauthorized copies of electronic clipart on web pages are both violations of copyright owners' exclusive

⁸ Linda Rosencrance, 'Definition – Software', TECHTARGET (Feb. 18, 2022, 7:36 PM), <https://www.techtargget.com/searchapparchitecture/definition/software>.

⁹ Antariksh Anant, 'Copyright Issues in Cyberspace', LEGALBITES (Feb. 21, 2022, 10:30 AM)

¹⁰ *Sega Enterprises Ltd. v. Maphia*, [1994] 857 F. Supp. 679.

statutory right of the display.¹¹

If a web designer builds a website by merging the best aspects of several different websites. This could be considered illegal adaption of plaintiff software as well as infringement of plaintiff's copyright. In digital media, an almost unlimited number of copies can be made without sacrificing quality. As a result, transferring data from one computer to another infringes on authors' reproduction rights. Copyright infringement occurs when an unauthorized person copies or "scans" a copyrighted printed document into a digital file, then uploads or downloads the infringing file to a bulletin board system.¹²

It was held in *MAI System Corp. v. Is Peak Computers Inc (1993)* that temporary copies made into a computer RAM constitute copies. However, in the case of *Religious Technology v/a Netcom*, a US District court ruled in 1995 that momentary copying while browsing is the functional equivalent of reading and hence does not violate copyright rules. So, in terms of browsing, one must conclude that it does not constitute a violation and can be misconstrued as a fair transaction.¹³

However, The Indian Copyright Act is unable to protect works from being distributed and used without permission via the internet. Infringement and piracy on the internet are posing a threat to creative works around the world, as well as the internet's, e-commerce, and digital economy's growth. E-mail attachments and forwarded e-mails are subject to the copyright owner's exclusive right of distribution.

Databases are protected as literary works in India. In the United States, an author's creativity in picking and arranging material, rather than simply presenting the data as facts, will be recognized. In the United Kingdom, a database with no original contribution and only moderate skill and labour requirements is granted the right to unfair extraction for only 15 years. While data developed via complete creativity is protected by copyright for the duration of the author's life plus 70 years. When the requisite selection coordination and organization is combined with the abstraction,

¹¹ MICHAELS v. INTERNET ENTERTAINMENT GROUP, INC., [1998] **5 F. Supp. 2d 823**.

¹² Deepika Gupta, 'India: Copyright and Cyberspace: Software and Digital Piracy', MONDAQ (Feb. 19, 2022, 12:07 PM).

¹³ Religious Technology Center v. Netcom, [1995] **923 F. Supp. 1231**.

filtering, and comparison test, data compilations that are not protectable can be the topic of protection.¹⁴

The work of authors can be displayed in several countries over the internet, which is difficult to detect. As a result, display rights can be easily infringed upon over the Internet. Without authorization, the software can be easily disseminated to the public by downloading it from a computer, and unauthorized copies can be sold or rented out.

Amended to clearly identify the adjudicatory authority which should decide what would constitute anti-competitive practice. Similarly, the provisions of the Competition Act, 2002 such as S.3(5) is required to be amended, as there exists an inherent defect in understanding what would be labelled as reasonable and what would be labelled as unreasonable.

Thus, a balanced approach which would allow a balance between the contracts concerning patents and their impact on Competition. It has been well identified that the Patent rights and Competition policies complement each other. Therefore, a balance in implementation of Competition Policies and patent rights is required to be made. This balance would prevent the abuse of patent rights without annulling the reward provided by the Patent system.

COMPUTER SOFTWARE & COPYRIGHT LAW

Programming code run on a computer processor is known as computer software. Machine-level code or code developed for an operating system can both be used. An operating system is software that is designed to offer a predictable and stable foundation for other programmers to create applications on top of.¹⁵

A computer program is defined as a "collection of instructions expressed in words, codes, schemes, or any other form, including a machine-readable medium, capable of enabling a computer to do a certain task or accomplish a particular result," according to section 2(ffc) of

¹⁴ Dr. Nehaluddin Ahamd, *Copyright Protection in Cyberspace: A critical study with reference to Electronic Copyright Management Systems (ECMS)*, 7 J. IBIMA. 1943-7765 (2009), <https://ibimapublishing.com/articles/CIBIMA/2009/873738/873738.pdf>.

¹⁵ Ben Lutkevich, 'Definition – Software License', TECHTARGET (Feb. 20, 2022, 01:21 PM), <https://www.techtartget.com/searchcio/definition/software-license#:~:text=A%20software%20license%20is%20a%20document%20that%20states,how%20many%20times%20the%20software%20can%20be%20downloaded%3B>.

the Copyright Act.¹⁶ Within the meaning of the Copyright Act, computer software is a "computer program.

The Copyright Act definition of literary work was expanded in 1994 to cover "computer programs, tables, and compilations, including computer databases." Copyright laws protect computer program owners. The first 25 and last 25 lines of source code of a computer program can be registered with the Registrar of Copyrights. Again, supplying logbooks recording development activity, etc. is preferred to establish the date of development.

It is permissible to make copies of legally obtained computer programs to produce backup copies as a temporary safeguard against damage or destruction. It is illegal to use an infringing copy of a computer program with the intent to infringe.¹⁷

SOFTWARE LICENCES

End users are usually granted the right to make one or more copies of software without infringing on copyrights. The license also spells out the duties of the parties involved in the agreement, as well as any limitations on how the program can be used. Fair use of the software, limitations of responsibility, warranties, and disclaimers, and protections if the software or its use infringes on the intellectual property rights of others are all common features of software licensing terms and conditions.

Software licenses are typically proprietary, free, or open-source, with the rules under which users may redistribute or copy the software for future development or usage being the distinguishing feature. There are four kinds of licenses, they are:

A. Freeware Licenses

Freeware is copyrighted computer software that is available for free and for an indefinite time. Freeware licenses are typically generated and provided for free by software creators who want to give back to the community. There are, however, some limitations. As an example, A freeware license is nonexclusive, non-transferable, and has a limited scope of application. Many freeware licenses stipulate that the software cannot be used for commercial reasons. The license is non-exclusive since it does not grant any user exclusive rights. Furthermore, the license is non-transferable, and the licensee is not permitted to

¹⁶ The Copyright Act, 2 (ffc) §§ (1957).

¹⁷ SOFTWARE COPYRIGHT – BASICS EXPLAINED [GUIDE 2021], <https://www.10duke.com/resources/glossary/software-copyright/>, (last visited Feb. 20, 2022).

transfer any rights to a third party.¹⁸

B. Shareware

This type of software is often known as "trial before you buy." For a limited time, this program normally comes with full capability.¹⁹ Users must either purchase the software or uninstall it from their PCs at the end of the trial period. The trial period could be specified in terms of days.

C. Open-Source Licenses:

As the name implies, this license is open to anyone and has no restrictions. To be considered "open source," software must meet several requirements. Once a person has created an open-source license, the software must be freely distributed and redistributed. The owner of an open-source license cannot prevent others from selling, altering, distributing, or using the license for purposes such as genetic research.²⁰

D. Demo Ware

Demo ware is only intended for use in demonstrations. The demo software has no practical functions, and its sole purpose is to demonstrate the features to potential users.

The owner of software copyright has the right to reproduce and make as many copies of his work as he wants. Second, he may put his software on the internet, which would be considered a public display. He also has the right to sell, rent, transfer, update, and alter his copyrighted software. Without the owner's consent, no one can use a copyrighted work for personal gain. However, copyright infringement occurs when someone uses a copyrighted work for a commercial purpose or to deprive the owner of the money.²¹

Even though the software copyright owner has many exclusive rights, they are not absolute and are subject to certain limitations and exceptions to preserve and safeguard the public interest, notably that of software users. In some socially acceptable conditions, the use of a copyrighted work is permitted even without the author's permission. Fair dealing with a

¹⁸ FREEWARE DEFINITION, <http://www.linfo.org/freeware.html>, (last visited Feb. 20, 2022, 03:57PM).

¹⁹ WHAT IS SHAREWARE? – HOW IT WORKS AND HOW TO PROTECT YOURSELF, <https://www.kaspersky.com/resource-center/definitions/shareware>, (last visited Feb. 20, 2022, 4:43 PM).

²⁰ Mahak Bandi, 'All About Open-Source Licenses', FOSSA, (Feb. 20, 2022, 02:21 PM), <https://fossa.com/blog/what-do-open-source-licenses-even-mean/>.

²¹ Terry Hancock, 'what if copyright didn't apply to binary execution?', FSM, (Feb. 20, 2022, 02:40 PM), <http://freesoftwaremagazine.com/articles/what-if-copyright-didnt-apply-binary-executables/>.

literary, dramatic, musical, or artistic work for private use, including research, criticism, or review, to use the computer program for the purpose for which it was supplied or to make backup copies purely as temporary protection against loss, theft or destruction or damage to the computer program to only use it for the purpose for which it was provided are some of the acts that do not constitute copyright infringement in India.

TRADEMARK LAW AND DOMAIN NAME ISSUES IN CYBERSPACE

There was no trademark legislation in India before 1940. Infringement of registered or unregistered trademarks previously dealt with under Section 54 of the Specific Relief Act of 1954, while trademark registration was dealt with under the Indian Registration Act of 1908.²² The original statute, designated as the Trademarks Act of 1940 and later superseded by the Trademark and Merchandise Act of 1958. This statute got abolished, and the new Trademark Act of 1999 got enacted.

Domain name is a website address which gives you an online identity on the internet. The address to the internet web servers is assigned and managed through the Domain Name system. The common categories of domain systems are .com.,org, .net, in. A domain name increases the access value of the business from any place of the world.

A domain name fulfils the same role in online business interactions and transactions like a trademark does in offline business dealings and transactions. While a trademark is an eye-catching graphic representation of your product or organisation, a domain name is a guide to your company on the internet and the virtual image of your brand. The registered domain name can provide protection against the unauthorised use by any person or organisation.

There have been a number of cases related to trademark domain name issues. It is also believed in fact that domain names clashes are very frequent which makes its registration complicated. One popular case was of *People Interactive (India) Pvt. Ltd. Vs Vivek Pahwa and Ors. (2016)*, *Shaadi.com* and *secondshaadi.com* were embroiled in a passing off case before the Bombay High Court. The court ruled in favour of the defendants, finding that "Shaadi" is a generic and generally descriptive term. Bombay High Court held that Domain name is the address on the internet, where it directs all the users to the particular web where

²² Anshal Dhiman, 'The Doctrine of Prior use under the Indian Trademark Act', IPLEADERS, (Feb. 19, 03:08 PM), <https://blog.ipleaders.in/doctrine-prior-use-indian-trademark-act/>.

the registrant of the domain name stores displays all the necessary information about the business.

DISPUTES BETWEEN TRADEMARK AND DOMAIN NAME

The trademark act, 1999 was enacted to reform and consolidate the legislation governing trademarks for goods and services as well as to prevent the use of illegitimate trademarks. Yet, trademark owners who wish to use their trademarks as their domain names have discovered that such domain names have been acknowledged by unauthorized users, frequently as an attempt to infringe the rights of the original trademark owner. Indeed, Domain Names are registered as “first come, first serve” basis which frequently results in what are known as “abusive registration” and this has created many disputes with the Trademark Owners.

There are various forms of infringement in Trademark through Cyberspace:

Cybersquatting:

Cybersquatting is a practice of registering the well-known trademark as the domain name by the third parties who do not possess any rights in such names. In *Manish Vij v Indra Chugh AIR 2002 Del 243*, Delhi High Court defined Cybersquatting “an act of fraudulent registration of a domain name with an intention to sell it to the lawful owner of the name at a premium.” The practice of cybersquatting is abusive as one person registers a domain name that includes the trade name or domain name of another person. This practice is usually followed either to block the legitimate owner from registering the domain name or to sell the name to the owner in order to earn high profit. In order to file a complaint to prevent cybersquatting the complainant has to show dishonest intention and lack of legitimate rights.²³

Meta tags:

Meta tags are snippets of text that provide information about the web page. These tags are not visible on the web page but they can be found in the page’s source code. There are different types of meta tags with different kinds of functions such as ‘Title tag’ which forms the title of the web page and ‘Description Attribute’ which provides the brief description of the contents of the web page⁴⁹.

In *People Interactive (I) Pvt Ltd. v. Gaurav Jerry & ors., (2014)* Bombay High Court while

²³ TECHNOPEDIA, META TAG, <https://www.techopedia.com/definition/2338/meta-tag#:~:text=What%20Does%20Meta%20Tag%20Mean%3F%20A%20meta%20tag,not%20visible%20or%20displayed%20in%20the%20concerned%20page>, (last visited Feb. 25, 2022).

addressing a domain name infringement of the plaintiff's domain name "Shadi.com" by the defendants' "ShadiHiShadi.com," utilized meta-tags to identify malaise intent. The Hon'ble Court discovered that the defendant was utilizing the Plaintiff's domain name, "Shadi.com," in their meta-tags to redirect traffic and, for the first time, defined Meta Tags as follows: "Meta Tags are special lines embedded in web pages. All HTML uses tags in coding web pages. Meta tags are special types of tags. They do not affect page display instead they provide additional information about the web page."²⁴

Reverse Domain Name Hijacking:

It is referred to as reverse cybersquatting. It occurs when a trademark owner attempts to secure a domain name by filing fraudulent cybersquatting allegations against the genuine owner of a domain name through legal action. In order to avoid legal action and hefty expenditures, domain name owners may have to surrender ownership of the domain name to trademark owners at times, particularly when the domain names belong to smaller organizations or individuals who are not financially sound to defend the case.²⁵

LOOPHOLES IN IT, TRADEMARK & COPYRIGHT ACT

In 2008, the Act was revised to add new provisions about corporate accountability for sensitive personal data, cyber terrorism, and child pornography, in response to the growing number of cybercrimes. To deal with new offenses, some additional sections were added: Section 66A of the Communications Act of 1934 imposed various limits on internet expression, Section 66B deals with receiving and keeping a stolen computer resource dishonestly; section 66C deals with misusing a digital signature, and section 66D deal with other types of cheating using a computer resource . It should be mentioned that the Supreme Court deemed Section 66A of the Information Technology Act, 2000 illegal in 2015, citing a violation of Article 19(1)(a) of the Indian Constitution's protection of freedom of speech.

However, in India's present or prospective Information Technology Act, there is no provision to prosecute cyber-squatters at best, the domain can be taken back. Even though the IT Act

²⁴ Krishna & Saurastri Associates, '*India: Bombay High Court Pronounces on Personal Jurisdiction in Cyberspace and Use of Trade Mark in Meta-Tags - From Our Corner*', MONDAQ, (Feb. 25, 2022, 1:21 PM), <https://www.mondaq.com/india/trademark/364796/bombay-high-court-pronounces-on-personal-jurisdiction-in-cyberspace-and-use-of-trade-mark-in-meta-tags--from-our-corner>.

²⁵ Ananyaa Banerjee & Sanjana Kala, '*India: Reverse Domain Hijacking – Care full who you pick!*', MONDAQ, (Feb. 25, 2022, 11:11 AM), <https://www.mondaq.com/india/trademark/934040/reverse-domain-hijacking-care-full-who-you-pick>.

does not provide for legal compensation, to dissuade squatters from taking more domains, the IN registration has taken proactive steps to compensate victims. The majority of squatters, on the other hand, go by aliases. The IN Registry is an autonomous entity under NIEI (National Internet Exchange of India), with primary responsibility for maintaining the IN CC-TLD (Country Code Top Level Domain), as well as guaranteeing its operational stability, reliability, and security. It will carry out the many aspects of the new policy outlined by the Indian government's Ministry of Communications and Information Technology's Department of Information Technology.

The Information Technology Act is deficient in various areas, such as jurisdiction, cybercrimes involving IPR, cyberstalking, cyber defamation, and so on. Similarly, the Indian Trademark Act of 1999 and the Copyright Act of 1957 are quiet on concerns concerning online trademark and copyright infringement. However, there are no remedies for online software infringement under the Copyright Act. Though the Copyright Act protects computer programs, it does not establish remedies for online software piracy.

LANDMARK JUDGEMENTS ON TRADEMARK AND DOMAIN ISSUES

- ***Yahoo! Inc v Akash Arora & Anr. (1999)***

The first case of Cybersquatting in India. Yahoo Inc owns the well-known brand yahoo as well as the domain name yahoo.com. *Akash Arora & Anr.* created and offered the same service as yahoo.com under the name yahooIndia.com. So, Yahoo Inc filed the case against *Akash Arora & Anr.* for trademark infringement. The court noticed, "The domain name registrant has no legal rights to use the specified domain name. Just because they have registered the domain name, they may still be liable for trademark infringement." Therefore, the court pronounced the verdict against *Akash Arora & Anr.* who had registered themselves as *YahooIndia.com*.²⁶

- ***Rediff Communication Limited v. Cyberbooth & Anr (1999)***

In this case, the defendant registered the domain name radiiff.com which is identical to the plaintiff domain name *rediif.com*. The court pronounced the verdict in favour of the plaintiff. The court also stated that the domain name should get equal protection like a registered trademark as it is a valuable asset for the company.²⁷

²⁶ Yahoo! Inc. v Akash Arora and another, [1999] ARB. L. R. 620.

²⁷ Rediff Communication Limited v. Cyberbooth & Anr., [2000] AIR Bombay 27.

- ***Dr. Reddy's Laboratories Ltd v. Manu Kosuri (2001)***

In this case, *Manu Kosuri (defendants)* barred from using *drreddyslab.com* as a domain name because it was similar to *Dr. Reddy's Laboratories Ltd (plaintiff)* trade name. The court held the defendant liable for passing off. The court also restricted them from using the domain name *drreddyslab.com* or any other trademark/domain name identical to the plaintiff trademark.²⁸

- ***Tata Sons Ltd v. Manu Kosuri & Ors (2001)***

The defendant, in this case, obtained registration for several domain names including the well-known trademark **TATA**. The plaintiffs filed suit against the defendants, seeking a permanent injunction prohibiting them from using the trademark/domain name "**WWW.TATAINFOTECH.IN**" or any other mark/domain name that is identical to or deceptively similar to the plaintiffs' trademarks "**TATA**" and "**TATA INFOTECH**". The court referred to the Rediff Communication case and restricted the use of **TATA** as a domain name by the defendant.²⁹

- ***Acqua Mineral Ltd v Parmod Borse and Another (2001)***

In this case, *Parmod Bose (defendant)* registered the domain name *www. bisleri.com* which was similar to the *Acqua Mineral (plaintiff)* domain name. The High Court held the defendant liable for trademark infringement and transferred the domain name to the plaintiff.³⁰

CONCLUSION

There is a pressing need for strong legislation in this area, so that IPR-related crimes can be avoided in the future. Intellectual property is one of a person's most precious possessions, and it should be preserved at all costs because a person invests his or her skills and effort in its creation. The new domain name dispute law could provide trademark and service mark owners legal recourse against defendants who acquire domain names that are deceptively similar to a trademark "in bad faith." It should be a powerful tool for trademark owners who want to safeguard their intellectual property online. Most of the other countries already have a better cyber security law like the "U.S. Anti-Cybersquatting Consumer Protection Act, 1999" which protects the interests of owners of both registered and unregistered trademarks against use of

²⁸ Dr. Reddy's Laboratories Limited v Manu Kosuri and Anr., [2001] (58) DRJ 241.

²⁹ Tata Sons Limited and Anr. vs Fashion Id, [2001] PTC 432 (Del).

³⁰ Mayank Garg, '*Laws against Cyber Squatting*', IPLEADERS BLOG, (Feb. 26, 2022, 1:29 PM), <https://blog.ipleaders.in/cyber-squatting/>.

their marks within domain names in the United States. In fact, it also protects living people from having their personal name used in certain situations. As a result, it makes India to believe that it is a high time to protect the right of trademark and copyright owners.
