



PROTECTION ON DATA PIRACY VIS-A-VIS INTELLECTUAL PROPERTY RIGHTS IN CYBER SPACE IN INDIA: AN ANALYSIS

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Abstract

As far as Data piracy is concerned, it means when people access to data that is the intellectual property of another person and claim it as theirs. Piracy also involves monetary gain from another's intellectual property with his consent. Piracy of software is one of the biggest issues in the cyber space. Software piracy is the illegal copying, distribution, or use of software. According to the Business Software Alliance (BSA), about 36% of all software in current use is stolen. Software piracy causes significant lost revenue for publishers today's world. Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his creation for a certain period of time. IP shall include rights relating to literary, artistic and scientific works etc. This paper analyzes the main economic issues of intellectual property rights (IPRs) protection in the context of the World Trade Organization (WTO) agreement with respect to trade related aspects of intellectual property right (TRIPS). The impact that IPR protection can have in promoting growth and development, and the relation of IPRs with other economic policies, is discussed. It suggests that it is not sufficient to write policy and expect employee understanding and compliance; employees should be educated on policy and tested regularly on it. In addition, policy itself needs employee involvement during development, and updating as technology, laws and the business environment change. An organization cannot afford for policy to become shelf-ware. There is a growing concern about the inadequacies of India legal system in protecting data being transferred to it from other nations for the purpose of processing. This paper recommends that India adopt a system of specialised courts to address matters related to cyber infringement, including data privacy.

Keywords: - *Legislation, Piracy, privacy, Trade Related Aspects of Intellectual Property Rights (TRIPS), World Trade Organisation (WTO)*

Introduction

Now a day there has been increase in global attention to data piracy and intellectual property rights (IPR) issues, so we have to pay more attention to IPR and data protection and its economic impact. One problem in conducting this research has been the measurement of IPR and data protection. Prior attempts are limited in their ability to capture IPR protection, focusing more on the laws with limited attention paid to how nations enforce those laws. The importance of the enforcement component becomes more critical given the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement under the World Trade Organization. The TRIPS agreement requires that most nations should be in compliance with the minimum standards for IPR protection by the year 2006. The enforcement of intellectual property laws has been a critical issue, particularly in trade relations between developed and developing countries [1].

The issue of data piracy and data security in India has come under greater scrutiny. The absence of appropriate statutory measures in India is becoming increasingly of great concern to investors, corporations, the legislature and the public in other nations. India has strong desire to enact an adequate data protection regime which dictates the appropriate parameters for the collection, storage and use of personal data by private and government sites. The existing enforcement regime in India's legal system is deficient. India will be unable to provide adequate protection to data.

The paper recommends a system of specialized courts that deal with data protection and other cyber infringement matters and presents some idea for measuring IPR protection that incorporates the strength of national intellectual property laws and nations' enforcement practices of those laws. After analyzing specialized courts in various other jurisdictions and assessing their viability in India, a proposal is made for specific features for a Cyber Infringement Court in India [2].

Intellectual property Rights in India

India is one of top priority overseas markets. If we plan to do business in India, it is essential to know how to use, guard and enforce the rights we have over the intellectual property (IP) that we or our business own.

What are Intellectual property Rights

Intellectual property (IP) is a term referring to a brand, invention, design or other kind of creation, which a person or business has legal rights over. Almost all businesses own some form of IP, which could be a business asset.



Common types of IP include

Copyright- This protects written or published works such as books, songs, films, web content and artistic works;

Ministry administering the IPR

- Ministry of Human Resource Development The Copyright Act, 1957

Concerned IP Act:

- The Copyright Act, 1957 (as amended)

Patents- This protects commercial inventions, e.g. a new business product or process;

Ministry administering the IPR:

- Department of Industrial Policy and Promotion,
- Ministry of Commerce & Industry

Concerned IP Act:

- The Patents Act, 1970 (as amended in 2005)

Design

This protects designs, such as drawings or computer models;

Ministry administering the IPR:

- Department of Industrial Policy and Promotion
- Ministry of Commerce & Industry

Concerned IP Act:

- Designs Act 2000

Trademark

This protects signs, symbols, logos, words or sounds that distinguish our products and services from those of your competitors.

Ministry administering the IPR :

- Department of Industrial Policy and Promotion
- Ministry of Commerce & Industry

Concerned IP Act :

- Trade Marks Act 1999 (as amended in 2010) [3]

Geographical Indications

A geographical indication identifies agricultural or natural or manufactured goods as originating or manufactured in the territory of a country or region or locality in that territory, where a given quality, reputation or other characteristic of such goods are essentially attributable to its geographical origin and in case where such goods manufactured goods one of the activity of either.

Ministry administering the IPR :

- Department of Industrial Policy and Promotion
- Ministry of Commerce & Industry

Concerned IP Act:

- The Geographical Indications of Goods (Registration & Protection) Act, 1999 [4]

International Considerations

India has been a World Trade Organisation (WTO) member since 1995. WTO member nations must include some IP protection in their national laws. That means, if we doing business with India, we will find some similarity between local IP law and enforcement procedures, and those in force in the UK.

Agreements-

India has the following international IP agreements:

- The Paris Convention - under this, any person from a signatory state can apply for a patent or trade mark in any other signatory state, and will be given the same enforcement rights and status as a national of that country would be;
- The Berne Convention - under this, each member state recognises the copyright of authors from other member states in the same way as the copyright of its own nationals;
- The Patent Cooperation Treaty - this is a central system for obtaining a ‘bundle’ of national patent applications in different jurisdictions through a single application.



Intellectual property Rights-System in India

India has been a member of the World Trade Organisation (WTO) since 1995. This requires member nations to establish intellectual property (IP) laws whose effect is in line with minimum those of other developed countries.

Copyright

India has an agreement to the Berne Convention on copyright. It may be a good idea to register our copyright which helps to prove our ownership, if there are criminal proceedings against infringers. In most cases though, registration is not necessary to maintain a copyright infringement claim in India. Registration is made, in person or via a representative, with the Copyright Office. Internet piracy of films, music, books and software is an issue in India.

Patents

India's Patents Act of 1970 and 2003 Patent Rules set out the law concerning patents. As in the UK, there is no provision for utility model patents. The regulatory authority for patents is the Patent Registrar within the department of the Controller General of Patents, Designs and Trade Marks, which is part of India's Ministry of Commerce and Industry. Patents are valid for 20 years from the date of filing an application, subject to an annual renewal fee.

India's patent law operates under the 'first to file' principle that is, if two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent.

Design

The laws governing designs are the designs Act 2000 and the designs rules 2001. Designs are valid for maximum of ten years, renewable for a further five years

Trademark-India's trade mark laws consist of the 1999 Trade Marks Act and the Trade Marks Rules of 2002, which became effective in 2003.

The regulatory authority for patents is the Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion. The police now have more robust powers in enforcing trade mark law. But these powers are tempered by the requirement for the police to seek the Trade Mark Registrar's opinion on the registration of the mark before taking action. Trade names also constitute a form of trade mark in India, with protection, irrespective of existing trade names, for those wishing to trade under their own surname.

Because of the widespread practice of 'cyber squatting' - the registration in bad faith of marks by third parties registering domain names for certain well known marks in order to sell them to the original rights owners - it is advisable for rights owners to register their domain names in India as trademarks as soon as possible.

Registration takes up to two years. A trade mark in India is valid for ten years and can be renewed thereafter indefinitely for further ten-year periods.

Important of Registration of Intellectual property

Developments of new products and processes, brand names, content, etc. are resource intensive and usually require huge investments. It is therefore, the expectation of the individuals or entities creating them that they have exclusive rights over their creation to the exclusion of others. Intellectual Property system and laws essentially provides this exclusivity. For certain forms of IP like trademark and copyright, the right is born the day the work is created, registration though not mandatory provides certain benefits and advantages [5].

Registering and enforcing IP rights in India

- To enjoy most types of intellectual property (IP) rights in India, we should register them.
- For patents, individual registrations must be made in India, but for rights other than industrial designs you can apply under the terms of the Patent Cooperation Treaty, which is usually easier and quicker.
- For trademarks, you should register them within India.
- For copyright, no registration is required but registering copyrights with the copyright authorities is advisable.
- IP rights can be enforced by bringing actions to the civil courts or through criminal prosecution. India's laws governing all forms of IP set out procedures for both civil and criminal proceedings, as does the Competition Act.
- As in other countries, the Indian Government brings actions in criminal cases, although in most cases actions follow complaints to magistrates or police authorities by rights owners. Criminal proceedings against infringers carry the prospect of much harsher remedies, including fines and imprisonment.



Data Protection Laws in India

Protection of data refers to the set of privacy laws, policies and procedures that aim to minimize intrusion into one's privacy caused by the collection, storage and dissemination of personal data. Personal data generally refers to the information or data which relate to a person who can be identified from that information or data whether collected by any Government or any private organization or an agency.

The Constitution of India does not patently grant the fundamental right to privacy India presently does not have any express legislation governing data protection or privacy. However, the relevant laws in India dealing with data protection are the Information Technology Act, 2000 and the (Indian) Contract Act, 1872. A law on the subject of data protection is to be introduced in India in the near future. The (Indian) Information Technology Act, 2000 deals with the issues relating to payment of compensation (Civil) and punishment (Criminal) in case of wrongful disclosure and misuse of personal data and violation of contractual terms in respect of personal data.

Under Section 43A Information Technology Act, 2000, a body corporate who is possessing, dealing or handling any sensitive personal data or information, and is negligent in implementing and maintaining reasonable security practices resulting in wrongful loss or wrongful gain to any person, then such body corporate may be held liable to pay damages to the person so affected. It is important to note that there is no upper limit specified for the compensation that can be claimed by the affected party in such circumstances.

Under Section 72A of the (Indian) Information Technology Act, 2000, disclosure of information, knowingly and intentionally, without the consent of the person concerned and in breach of the lawful contract has been also made punishable with imprisonment for a term extending to three years and fine extending to INR 5,00,000. The issue of data protection is generally governed by the contractual relationship between the parties, and the parties are free to enter into contracts to determine their relationship defining the terms personal data, personal sensitive data, data which may not be transferred out of or to India and mode of handling of the same[9].

Information Technology Act, 2000

The Information Technology Act, 2000 ("IT Act") is an act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce".

Under Section 69 of the IT Act, the Controller, appointed by the Government, can direct a subscriber to extend facilities to decrypt, intercept and monitor information.

Penalty for Damage to Computer, Computer Systems, etc. under the IT Act

The IT Act of 2000, Section 43(b) affords cursory safeguards against breaches in data protection. The scope of Section 43 (b) is limited to the unauthorized downloading, copying or extraction of data from a computer system, essentially unauthorized access and theft of data from computer systems.

Tampering with Computer Source Documents as provided for under the IT Act, 2000

Section 65 of the IT Act lays down that whoever knowingly or intentionally conceals, destroys, or alters any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to INR 200,000, or with both.

Computer related offences

Earlier, the IT Act under Section 66 defined the term hacking and provided penalty for the same. However, the term hacking has now been deleted by the introduction of the IT Amendment Act, 2008. The substituted Section 66 now reads as "If any person, dishonestly or fraudulently does any act referred to in Section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both".

Penalty for Breach of Confidentiality and Privacy

Section 72 of the IT Act provides for penalty for breach of confidentiality and privacy. The Section provides that any person who, in pursuance of any of the powers conferred under the IT Act Rules or Regulations made there under, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent



of the person concerned, discloses such material to any other person, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to INR 100,000, or with both.

Under the Section 79 of the act, which inserts “knowledge” and “best efforts” qualifiers prior to assessing penalties? A network service provider or intermediary is not liable for the breach of any third party data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention[10].

Recent amendments as introduced by the IT amendment Act, 2008

The following important sections have been substituted and inserted by the IT Amendment Act, 2008:

1. Section 43A – Compensation for failure to protect data.
2. Section 66 – Computer Related Offences
3. Section 66A – Punishment for sending offensive messages through communication service, etc.
4. Section 66B – Punishment for dishonestly receiving stolen computer resource or communication device.
5. Section 66C – Punishment for identity theft
6. Section 66D – Punishment for cheating by personating by using computer resource
7. Section 66E – Punishment for violation for privacy
8. Section 67 – Punishment for publishing or transmitting obscene material in electronic form
9. Section 69 – Powers to issue directions for interception or monitoring or decryption of any information through any computer resource
10. Section 79 – Exemption from liability of intermediary in certain cases
11. Section 84A – Modes or methods for encryption
12. Section 84B – Punishment for abetment of offences [11]

Conclusion and Suggestion

The Indian government has taken several initiatives to create a contributing environment for the protection of intellectual property rights of innovators and creators by bringing about changes at legislative and policy level. So, specific focus has been placed on improved service delivery by upgrading infrastructure, building capacity and using state-of-the-art technology in the functioning of intellectual property offices in the country. Data protection is an issue that is gaining increasing importance as our trans-national exchange of private information grows. The Indian laws remain unsatisfactory to give protection on data. It is anticipated that India will soon enact legislation which will provide acceptable protection to private data. The issue that remains to be dealt with in the Indian context is, unfortunately, far larger than the enactment of strong protectionist laws. Laws act as a deterrent to wrongful conduct if they are applied with certainty and speed: both sadly deficient in the Indian judicial system. Unless addressed, the systemic problems of enforcement in India, and specifically of unresolved cases due to court delays, will continue to render India's data protection laws inadequate.

In this paper I suggest to establishing a vibrant IP regime in the country, efficient processing of IP applications by inducting additional manpower, augment IT facilities and automation in Intellectual Property Offices, adopt best practices in IP processing, Strengthening public delivery of IP services, Highest levels of transparency and user-friendliness. Cyber Infringement Courts, specialized courts with jurisdiction over all intellectual property and data protection issues, are a necessary solution to India's enforcement problems. India must expediently adopt this system of specialized courts in order to render adequate protection to data.

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