

Changing Dimensions Of Trademark and Copyright **In Cyberspace**

Dissertation Synopsis submitted towards the partial fulfilment of the
grading as requirement for the award of Degree in Masters of Law
(Intellectual Property Rights)

Submitted by
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Under the Supervision and Guidance of

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LOVELY PROFESSIONAL UNIVERSITY
PHAGWARA – 14411, INDIA

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November 2017

CERTIFICATE

I hereby certify that this synopsis entitled “**Changing Dimensions of Copyright and Trademark in Cyberspace**” submitted for the award of Degree of Master of Laws (LL.M) is a record of research work done by **Jasmine Sudhir** during the period of his/her study under my guidance at School of Law, Lovely Professional University, Phagwara, Punjab, India, and that the synopsis has not formed the basis for the award of any Degree, Diploma, Associateship, Fellowship or other similar titles to the candidate. I further certify that this dissertation represents the independent work of the candidate.

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Date:

Ms. Chandrika Tewatia

Assistant Professor

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Date:

Dr. Shailesh N. Hadli

Dean and Professor

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DECLARATION

I hereby declare that the synopsis entitled “Changing Dimensions of Copyright and Trademark in Cyberspace” **submitted to the School of Law, Lovely Professional University for the award of degree of Master of Laws (LL.M)** is a record of original and independent research work done by me under the supervision and guidance of Ms. Chandrika Tewatia, Assistant Professor, School of Law, Lovely Professional University and that the dissertation has not formed the basis for the award of any Degree, Diploma, Associateship or other similar titles.

Student Signature

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Introduction

The 21st Century is known as a century of science and technology. Science and technology in this world are undergoing rapid advancements. Changing technology has both a direct and an indirect impact on law and jurisprudence. The law should change with the changing pace of science and technology; otherwise, it will become obsolete.

Person sitting or working in any remote corner of the world can violate Intellectual Property Rights or other rights of any individual residing anywhere in world. Intellectual Property Rights (IPRs) are legal rights, which result from intellectual invention, innovation and discovery in the industrial, scientific, literary and artistic fields. These rights entitle an individual or group to the moral and economic rights of creators in their creation. The cyberspace has bestowed many gifts upon humanity; but at same time it has become a place to do all sorts of activities which are prohibits¹. Networking has led to a concept of cyberspace.² The word cyber has evolved to denote a virtual space or memory, it denotes the medium in which certain activities take place, like the way thoughts work in human memory. Activities take place at the back end of a computer and the results are displayed in the monitor. The data stored in the electronic form as soft copier, which could be retrieved at any point of time and visualized in the monitor. The present day data transmission is far superior in terms of speed, quality, visuals, utility, impact and connivance. Internet is global in nature³. Now we have moved from ink and paper age to totally digital format where there are only cyber footprints which are intangible. The rapid increase in internet usage over the past several decades has led to the development of new and essential areas of legislation and legal study. The thorny question to take on is how to define the field that has come to be known variously as cyber law, cyberspace law or internet law.

Infringement of intellectual property rights in cyber era is a global phenomenon. The advent of global information infrastructure and the so-called digital revolution raise countless issues and questions regarding the Copyright and Trademark in the digital medium. Copyright is a legal right created by the law of a country that grants the creator of original work exclusive rights for its use and distribution. It includes literary & artistic works such as novels, poems,

¹ Mayuri Patel & Subhasis Saha, Trademark Issues in Digital Era, JIPR 118(2012).

² The word 'cyberspace' was coined by William Gibson in his Science fiction novel Neuromancer published in 1984.

³ Murgendra B.T, "Copyright and Trademark in cyberspace"1 IJSER Volume 3, Issue6, 2012.

plays, films, musical works, drawing, painting, photography, sculpture, architectural design. On the other hand, Trademark is a recognizable sign, design, or expression which identifies products or services of a particular source from those of others. Trademarks used to identify services are usually called service marks.

Online technology raises many legal issues, the law available today to help us resolve them, at least today, is largely based on the world as it existed before online commerce became reality. Thus the challenge is to predict how these new legal issues may be resolved using the current law.⁴

This has led to many legal and jurisprudential problems and challenges for the enactment, enforcement and interpretation of laws. At the same time, international organisation like WIPO, UDRP etc are working in order to meet challenges posed by cyber crimes and IPR violations. Domestic courts of states have been dealing with the problems posed by cyberspace, but have come up with inconsistent answers. To meet changing demands of cyberspace, various sovereign countries have enacted a number of domestic legislations. On international level too, there are conventions enacted in the arena of cyberspace and intellectual property rights. The present research is intended to critically analyze the existing legal framework.⁵

With the Copyright and Trademark taking over this digital medium, there is a need to reconceptualise and to chalk out new legal boundaries for these Intellectual Property Rights with regard to International Standards set by TRIPS and also WIPO Internet Treaties and various others like treaties.⁶

The extraordinary power of the internet derives partly from the fact that it enables a single individual or firm to transmit information cheaply and quickly throughout the globe. Information placed on a website is accessible from countless locations, even without the knowledge or control of the source of the information. The cyber law might best be considered a law of the 'online intermediary', and that by focusing on the regulation of online

⁴ Artee Aggarwal, Jatin Trivedi, Sucheta Burman, Usage of Internet and the Evolving Challenges of IPR Issues in India: A Review, 2 IJBQEAMR, Volume 1, Issue, 10 March 2015

⁵ Atul Satwa Jaybhaye, Cyber law and IPR Issues: The Indian Perspective 1 BLR, April-June, 2016

⁶ Trademark Law in cyberspace: Protection to Internet Address, JLRS, Volume 3 Issue 3 (June 2017).

conduct by search engines, online retail outlet, internet service provider and online social networks, a more cohesive and comprehensive concept of cyber law may be developed.⁷

The purpose of researcher's dissertation is to try to find those problems of Intellectual Property Rights infringement over the Internet with reference to Indian as well as International scenario. Technology is a double-edged sword. On one hand, it is creating new means to fix the original expression in a tangible form and on the other it is being exploited in infringing the copyright with impunity.⁸The relationship between the Internet and Copyright law is complicated. The internet is an international system for the transmission and reproduction of material, much of which is protected by copyright. It therefore presents previously unimaginable possibilities for copyright infringement and may pose challenges for copyright law. The following features of the internet pose particular difficulties for copyright law: - Information may be easily reproduced and distributed. (Once the information is in digital form on a computer connected uploaded downloaded and distributed), Internet users expect free access to copyright mate. (Much of copyright material published on the internet has been made available free of charge. This has created resistance among users to pay for the Internet material). Internet users may act anonymously.

It is difficult to identify an industrial internet user. Users may therefore infringe copyright wattle little risk of detection, especially if the infringements are relatively small-scale and non-persistent. Taken together the above features of the Internet have raised new kinds of internet cases: Linking and Framing, Copying and uploading copyrighted material, distribution of copyrighted work etc.⁹

With the globalisation and commercialization of the internet, domain names have also taken on a new connotation as business identifier. The basic structure of IP addresses is not mesmeric, due to which it becomes tedious and difficult to remember such IP addresses. Introduction of domain names have played a great role in recollection and now considered as corporate assets. Domain names and Trademark has a close nexus. In the era of information technology it becomes pertinent to address this issue of online infringement of trademark

⁷ Mayuri Patel & Subhasis Saha, Trademark Issues in Digital Era, JIPR 118(2012).

⁸ Yakul Sharma, Information Technology Law and Practice (Universal Law Publishing Co.Pvt.Ltd,2006.)

⁹ Atul Satwa Jaybhaye, Cyber law and IPR Issues: The Indian Perspective 1 BLR, April-June, 2016

with utmost care and approach towards the correct solution and application of law for such protection.¹⁰

Contours of the Intellectual Property Rights are transformation with influx of digitalization. Hence there is need to comprehensively study the transforming dimensions of copyright and trademark in digital medium. There is need to study the shift in approaches of copyright and trademark and legal legislations dealing with it.

Statement of Problem

With the advent of internet and cyberspace the architecture of Copyright and Trademark has changed drastically. There is stringent need to study this new legal branch and the legislations regarding the same. The nature of cyberspace is not static and is ever-changing, hence the laws need to adapt to this nature of cyberspace. The laws need to be in harmony with the international legislations and conventions. It is need of hour to chalk out the issues under copyright and trademark in cyberspace and find out the loopholes and lacunas in the same and also suggest remedies and new legislation which could deal these issues effectively.

Scope of Research

The present research of the researcher is limited to copyright and trademark in the cyberspace. With the digitalization there is a great need to amend or interpret the copyright and trademark legislations in a new light. The cyberspace is not static and is ever-evolving, hence there is great need to chalk out the possible issues and challenges in this field and suggest amendment in current legislations.

¹⁰ Murgendra B.T, "Copyright and Trademark in cyberspace"1 IJSER Volume 3,Issue 6,2012.

Research Objectives

1. To study the past, present and future contours of copyright and trademark.
2. To study the position of copyright and trademark in Cyberspace in context of global platform that internet provides.
3. To study the shift in Copyright and Trademark architecture due to the digital influx.
4. To find out the possible defects and loopholes in the existing laws dealing with copyright and trademark in cyberspace.
5. To suggest appropriate amendments in respective national laws to resolve the issues of Copyright and Trademark in Cyberspace.

Research Questions

- 1) How Copyright and Trademark evolved in cyberspace?
- 2) What is the nexus between Intellectual Property Rights and Cyberspace?
- 3) How this nexus between copyright & trademark and Cyberspace is dealt under National and International law.
- 4) What are the key issues as regards to Copyright and Trademark in cyberspace?
- 5) Which are the laws dealing with the infringement of Copyright and Trademark in cyberspace?
- 6) What can be further done to improve and better the laws on infringement of the same based on futuristic approach?

Hypothesis

India has sufficient laws in compliance to international standards to deal with Copyright and Trademark issues in Cyberspace.

Research Methodology – Sources of Data

The researcher has relied upon the Doctrinal Research Methodology, which is also known as library based research. This research methodology is utilized to criticize or analyse laws, rules, regulations, judicial pronouncement, legal doctrine and principles with the help of criticism and analysis by various other jurists, authors or writers. The analysis and criticism with the help of available material will be helpful to reach the conclusion. The Library, Internet (Including Legal Databases, like LexisNexis, West Law, SCC Online, and Manupatra etc.), Newspapers, Articles and Periodicals will be utilized as sources of data collection.

Literature Review

The present literature review is based on the selected and well cited books and articles on the issues selected by the researcher. The present literature review is undertaken in order to find out whether there are any gaps or lacunae in present literature with respect to problems or issues posed by the researcher.

Books

- 1) **Rethinking Cyber law: A New Vision for Internet Law by Jacqueline D. Lipton, Edward Elgar Publishing, 2015 Edition**

The author Jacqueline Lipton holds David L. Brennan Chair in Law and is Director, Center for Intellectual Property Law and Technology, University of Akron School of Law, US.

The rapid increase in Internet usage over the past several decades has led to the development of new and essential areas of legislation and legal study. Jacqueline Lipton takes on the thorny question of how to define the field that has come to be known variously as cyber law, cyberspace law or internet law. This book tackles the question with the benefit of hindsight and draws on several decades of legal

developments in the United States and abroad that help illustrate the scope of the field.

The author argues that cyber law might best be considered a law of the ‘online intermediary,’ and that by focusing on the regulation of online conduct by search engines, online retail outlets, Internet service providers and online social networks, a more cohesive and comprehensive concept of cyber law may be developed. Topics covered include current comparative and global strategies, suggestions for future approaches to cyberspace regulation, and the creation of a cohesive and comprehensive framework for the cyber law field.

Providing an excellent summation of current, past and future cyber law, this book is extremely valuable source in the researcher research with respect to transforming dimensions of copyright and trademarks in cyberspace.

2) **Copyright Law in an age of exception and limitation, by Ruth Okedji, Cambridge University Press. 2017 Edition.**

The author states, Copyright Law in an Age of Limitations and Exceptions brings together leading copyright scholars and the field's foremost authorities to consider the critical role of copyright law in shaping the complex social, economic, and political interaction critical for cultural productivity and human flourishing. The book addresses defining issues facing copyright law today, including justifications for copyright law's limitations and exceptions (L&Es), the role of authors in copyright, users' rights, fair use politics and reform, the three-step test in European copyright law, the idea/expression principle with respect to functional works, limits on the use of L&Es in scientific innovation, and L&Es as a tool for economic development in international copyright law. The book also presents case studies on the historical development of the concept of 'neighbouring rights' and on Harvard Law School's pioneering model of global copyright education, made possible by the exercise of L&Es across national borders.

In this author has given, a first-rate group of contributors debates the future of copyright at a time when the policy debate is tilting away from maximalism, and re-

focusing on the value of copyright limitations and exceptions. Researcher has gained a deep understanding of the history of copyright limitations and exceptions, and the current debate over their future - a debate that ranges over both copyright's empirics and its foundational justifications.

3) Cyber Law of Information and Technology and Internet, by Anirudh Rastogi Lexis Nexis., Edward Elgar Publishing, 2015 Edition

The author introduces analyses and provides a comparative critique of the laws governing Information Technology and Cyber- crime in India. It covers the Information Technology Act in detail alongside other legislations governing jurisdiction, cyber-crime, and intellectual property rights in cyberspace, e-contracts, intermediary liability and electronic evidence. The book also covers emerging areas of study and concern such as state surveillance, virtual currencies, cloud computing, regulation of social media and amplification, website terms and conditions, and e-governance. The research can use this book understand IT Law, 2000 and also the concept of jurisdiction and intellectual properties in cyberspace.

4) Information Technology Law and Practice- Cyber Laws and Laws Relating to E-Commerce, Yakul Sharma, Universal Law publication, 2017 Edition.

The author in this book captures the essence of the Information Technology Act, 2000 like no other book.. A section-wise commentary on the IT Act, 2000, this book discusses and analyses in great detail different aspects related to the subject and the challenges posed by information technology. Issues related to cyber-crime, virtual currency (bitcoin), Internet blocking, sexting, child pornography, surveillance, cyber terrorism, encryption, digital India, social media, cyber security have been discussed in the legal context. Further, considering the nature of the subject and the international perspective this book includes a comparative analysis of corresponding provisions in other jurisdictions to render an in-depth view to reader.

The researcher can use this book to the know the jurisdiction of intellectual property in cyberspace, and to know copyright and trademark issues in cyberspace.

5) Law of Copyright and Industrial Designs, by P Narayan, Eastern Law House; 2007

In this book the author talks about the changing nature of copyright. The author has focused the latest development of law in the wake of the Berne Convention, GATT and TRIPs and parried all possible problems with probable solutions. The topics of discussion include matters of copyright, joint authorship, piracy and infringement, criminal proceedings, copyright society, international conventions, industrial design and so on , to meet the pressing need of the hour. The can use the copyright portions for his work on transforming dimensions of copyright in cyberspace.

Articles

**1) Copyright and Trademark in Cyberspace: Author:-Muragendra B.T
Source:-International Journal of Scientific & Engineering Research Volume
3, Issue 6, June-2012.**

The article highlights the key issues of intellectual property. Infringement of these rights over the internet is common now days and these includes Linking and Framing, Uploading of copyright material, Downloading of copyright material, Domain Name disputes like Cyber squatter, Cyber parasite, Cyber Twins and Reverse domain name hijacking. This article also discuses some of the case laws

regarding the same issues. The concept of cyberspace is beautifully explained by the author.

- 2) Copyright protection in Cyberspace: A critical study with reference to Electronic Copyright Management System (ECMS) Author: - Dr. Nehaluddin Ahmad, Source:-Communication of the IBIMA, Volume 7, 2009 ISSN: 1943-7765**

In this article the author has tried to exhibit that the copyright protection of computer programmes which has though reached to the maturity stage but many questions are yet to be answered. Thus a general overview of copyright protection followed by examination of the infringement act of copying with regards to computer programmes, the technological protection measures used to access control, examining situations after Digital Millennium Copyright Act and the EU Directive. The legal backing for the technical measures, concludes that the technological measures used to access control mechanism may be appropriate answer in the light of piracy menace but whether it is on the cost of doctrine of fair use or rights of user, if so then precautions have to be taken to balance the both rights.

- 3) Cyber Law and IPR Issues: The Indian Perspective, Author: - Mr. Atul Satwa Jaybhaye, Source:- Manupatra-Bharati Law Review, April-June, 2016**

In this article the author about the Information Technology Act 2000 and highlights the advantages of the IT act in regulating the cyberspace. This article focuses on the Indian scenario and the legislation like copyright act 1957 and trademark act 1999 as well as above said IT Act, 2000 and states how trademark and copyright infringement online are dealt in India specifically.

- 4) Trademark Law in Cyberspace: Protection to Internet Address, Source:- Journal of Legal Studies and Research, Intellectual Property Rights Law Review, Volume 3 Issues 3 (June 2017)**

The author highlights that trademark has been a hot property on the internet since its inception. Internet has not just provided a great platform to user for educational purposes but also for business purpose. It has now provided a great economic value to the online business but the same time it is also exposed to many ways in which it provides these online business holders at a risk. For having a distinct market in cyberspace, just like trademark, some alphanumeric characters are given which are Internet Domain Names and the risk associated with these domain names are as Domain Name Disputes. Through this article the author has tried to analyze the relation of internet domain name with trademark and how the domain name disputes come into play with it. The main purpose of this article is to analyze the issue of cyber squatting and other similar domain name disputes. It also discusses the legal position under trademark law for protection of trademark in cyberspace. As the trademark law territorial in nature, so the article also discusses the issue of inadequacy of laws for dealing with this matter. It further outlines as to how UDRP(Uniform Dispute Resolution Policy) deals with the same situation at extra-territorial level according to mechanism provided by ICANN (The Internet Corporation for Assigned Names and Numbers).The article concludes by providing some suggestions as to how Trademark Laws can make the working of UDRP better by working on its own laws.

- 5) Usage of Internet and the Evolving Challenges of IPR Issues in India: A Review, Author:-Artee Aggarwal, Jatin Trivedi, Sucheta Burman Source :- International Journal of Business Quantitative Economics and Management Research, Volume 1, Issue 10, March 2015**

This article deals with raising issues of intellectual property rights with the rising usage of internet. The internet poses two basic challenges for an intellectual property right administrator: what to administer and how to administer. The augmented use of internet is supposed to result in a bigger challenge to IPR protection than at present. While Internet is all set for a huge leap in the country, there are no practical solutions to the intellectual property right issues of internet, as empirical knowledge of such issues is very restricted. Intellectual property rights issues are already there but they are more in the area of theory than practicality. Some of the major issues are highlighted in the article. This article deals with the present issues in the area of IPR rising with the usage of internet in India.

6) Intellectual Property Rights in Cyberspace, Author:- Muhammad Aulia Adnan, Source:- Partner in Haeyes Associates Attorney at Laws.

This article highlights the relationship between law and cyberspace, also emphasis what is copyright, applicability of copyright to online medium, digital challenges to copyright owners, information protected by copyright. Even this article covers the how to acquire and perfect copyright right, who can own copyright.etc. The author had also taken effort to explain new issues in copyright law in this transforming and non-static nature of digital era.

Proposed Chapterisation

Chapter 1: - Basic Concept of the Cyberspace: An Overview

1.1 Introduction

1.2 Cyberspace

1.2.1 Meaning of Cyberspace

1.2.2 Salient features of Cyberspace

1.3 Evolution of Internet

1.3.1 History of Internet in India

1.3.2 Evolution of Intellectual Property Rights

Chapter2 :- Trademark in the Cyberspace

2.1 Introduction to Domain Names

- 2.1.1 Anatomy of Domain Names
- 2.1.2 Classification of Domain Names.
- 2.1.3 Generic Top Level Domain.
- 2.1.4 Country Code Top Level Domain
- 2.1.5 Procedure for registration of Domain Name.
- 2.1.6 Procedure for registration of Generic Top Level Domain Names.
- 2.1.7 Procedure for registration of Country Code Top Level Domain (in) in India.
- 2.1.8 Nexus between Trademark and Domain Name

2.2 Types of Domain Name Disputes

- 2.2.1 Cyber Squatting
 - 2.2.1.1 Ingredients of Cyber Squatting.
 - 2.2.1.2 Genesis of the problem of Cyber Squatting.
 - 2.2.1.3 Method to recognise Cyber Squatting.
 - 2.2.1.4 Judicial approach toward Cyber Squatting.

2.3 Typo Squatting.

- 2.3.1 Trademark Dilution by the use of Meta Tags.
- 2.3.2 Meaning of Meta Tags.
- 2.3.3 Trademark Infringement through Meta Tags..
- 2.3.4 Judicial Approach towards Meta Tags.

2.4 Reverse Domain Name Hijacking (RDNH).

- 2.4.1 Evolution of the Concept (RDNH).
- 2.4.2 Definition of RDNH.
- 2.4.3 Prevention of RDNH.
- 2.4.4 Protecting legitimate registrants.
- 2.4.5 Deterring trademark holders from misusing ownership.
- 2.4.6 Remedies available to a victim of RDNH.
- 2.4.7 Uniform Dispute Resolution Policy and RDNH.
- 2.4.8 Deficiency in UDRP.
- 2.4.9 Role of Arbitration panels.

2.4.10 Judicial Approach towards RDNH.

Chapter 3: -Copyright in Cyberspace

3.1 Overview of the Law of Copyright

3.1.1 WIPO Treaties

3.1.2 Registration of Copyright

3.3.3 Protection of Multimedia Works

3.3.4 Multimedia under Copyright Act, 1957.

3.2 Linking

3.2.1 Introduction

3.2.2 Liability for Linking under Indian Law.

3.3 Framing

3.3.1 Definition of Framing.

3.3.2 In linking.

3.3.3 In linking and Indian Law.

3.4 Protection of Website Content

3.4.1 Introduction

3.4.2 Liability of Internet Service Provider (ISP) for copyright infringement.

3.4.3 ISP's Liability under Copyright Act, 1957.

3.4.4 ISP'S Liability under the IT Act, 2000

3.4.5 Filtering ISP's Liability through IT Act, 2000.

3.4.6 Exemption of an ISP from liability for copyright infringement.

3.4.7 Impleadment of ISP's in the cases of copyright infringement on the internet

**Chapter 4 : - International Perspective of Copyright and Trademark
in Cyberspace.**

1) International Perspective of Copyright and Trademark in Cyberspace.

4.1 International Perspective of Copyright in cyberspace.

4.1.1 U.S.A

4.1.2 U.K

4.1.3 Japan

4.2 International Perspective of Trademark in cyberspace.

4.2.1 U.S.A

4.2.2 U.K

4.2.3 Japan

Chapter 5:-Conclusion and Suggestions

Conclusion

Suggestions.

BIBLIOGRAPHY