IPR Violations in Cyberspace

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The rapid growth of cyberspace has reshaped the enforcement of Intellectual Property Rights (IPR), exposing creators and businesses to new risks of piracy, counterfeiting, and misappropriation. Copyright violations through illegal downloads, trademark misuse via domain squatting, and online patent theft exemplify the challenges of a borderless digital world. Indian courts have responded by adapting traditional legal principles to cyberspace. This article examines these developments, highlights emerging concerns like NFTs and AI, and underscores the need for balanced regulation to safeguard innovation while ensuring access and fair use in the digital era.

Introduction

The digital revolution has created unprecedented opportunities for the creation and dissemination of intellectual works, while simultaneously generating novel challenges for the protection of Intellectual Property Rights (IPR). Cyberspace, the virtual and borderless realm of the internet and global computer network, where electronic communication and data exchange occur, enables the effortless duplication and distribution of creative and technical works/contents, posing threats to copyright, trademark, patent, and trade-secret protection. This article highlights the principal forms of IPR infringement, analyses key case laws dealing with such violations in India, addresses the issue and extracts strategic lessons for internet users in this fast-changing arena of cyberspace and digitalization.

Brief on IPR Laws in India

IPRs primarily refer to rights attributed to creations of the mind, such as inventions, literary and artistic works, designs, and symbols. India has had a legal framework for its protection for over a decade, with the oldest act being the Act VI of 1856 on the protection of inventions. Over the years, India has aligned its intellectual property regime with global commitments under international agreements and conventions, such as the WTO's TRIPS Agreement and various WIPO treaties, and has shaped its robust legal framework for patents, trademarks, copyrights, and industrial designs. The following laws are key to IPR protection in India:

- **The Patents Act, 1970,** which governs the protection of inventions, granting exclusive rights to inventors, for a certain and limited period.
- **The Copyright Act, 1957,** which protects original works of authorship, including literary, dramatic, musical, and artistic creations.
- **The Trademarks Act, 1999**, which deals with the registration and protection of trademarks, which are symbols, names, or logos used to identify goods and services.
- **The Designs Act, 2000**, which protects the visual appearance or design of a product.
- **The Geographical Indications of Goods (Registration and Protection) Act, 1999,** to protect products that have a specific geographical origin and possess qualities or a reputation due to that origin.
- **The Protection of Plant Varieties and Farmers' Rights Act, 2001,** for the protection of new plant varieties developed by farmers, and
- **The Semiconductor Integrated Circuits Layout-Design Act, 2000**, protects the layout design of integrated circuits.

While ensuring global commitments are met, these legislations have been designed, keeping in view India's IPR policy that is focused on its national interests, public health, and socio-economic development. Moreover, judicial interpretations have been pivotal in clarifying the contours of IPR infringement. IPR protection in virtual cyberspace is more complicated than in the physical world due to the lack of traditional geographic boundaries. Even establishing jurisdiction can be challenging for online actions that can originate from one place, be directed at another, and have effects felt in a third location. Besides, once things are on the World Wide Web, after-effects and consequences cannot be easily controlled, and the scale of infringement can be very large. Since the challenges in cyberspace are different, another Act that is instrumental in IPR protection is the Information Technology Act, 2000 (IT Act). It protects IPRs by providing legal recognition for digital signatures and electronic transactions. It also directly contains provisions

deterring copyright infringement through sections like Section 66B of the IT Act, which penalizes the possession of pirated content and ensures data protection and helps in safeguarding the confidentiality and integrity of digital IP assets like trade secrets. It is also pertinent to note that even though the IT Act primarily applies to cyber offences and contraventions in India, Section 75 of this Act makes it applicable to offences or actions committed outside India also, if such contravention is in respect of a computer programme, system or network in India.

Copyright Infringement in Cyberspace

We often come across instances where original videos online are reposted by someone else on their own YouTube channel, without permission and without giving due credit to the creator of the original work or an audio version of the copyrighted book is published illegally on YouTube. These are cases of copyright infringement u/s 51 of the Copyright Act, 1957. Copyright infringement is the unauthorized use of copyrighted work, without permission of the author/copyright holder, thereby violating the exclusive rights of the copyright holder to display, distribute or reproduce the copyrighted work. When such an infringement occurs on a mass level, it is called as piracy. We normally understand that literary, dramatic, artistic or musical works are subject matter of copyright, so there is infringement of copyright, where portions of books, movies, songs, etc. are circulated online without the permission of the author, and some revenue is generated out of it. Besides, websites and webpages also have copyright, which is owned by the creator of the webpage or the owner of the website. So, if a webpage of a website is copied, the owner can sue others for infringement. In cyberspace, the process of infringement can be designed in multiple complicated ways, for instance:

A) torrent sites and cyber-lockers can be used for unauthorized streaming or downloading of music and films,

B) unlicensed uploads of songs or video clips to social-media platforms,

C) derivative works such as remixes or AI-generated content that reproduce substantial parts of the protected work,

D) software piracy and distribution of cracked programmes.

Also, normally, in the case of webpages and websites, the traffic or number of visits to a webpage determines its commercial value. However, infringers may use a process called *Linking,* in which the user is directly connected from one website to another through hyperlinks, without having to type in the URLs. This diverts the traffic from one website to another. Linking affects the rights of the actual owner of the website, as the linked site lose their revenue, which depends upon the number of people visiting the website.

a) Legal test

Indian courts apply the "idea–expression" dichotomy and the "substantial similarity" or "material part" test. The core question is whether the infringing work reproduces protectable expression and whether the copying is substantial enough to give the ordinary observer an unmistakable impression of reproduction. The principle is that while abstract ideas are not protected by copyright, the specific way those ideas are expressed is protected.

> "Copyright infringement is the unauthorized use of copyrighted work, without permission of the author/copyright holder, thereby violating the exclusive rights of the copyright holder to display, distribute or reproduce the copyrighted work."

b) Key cases

The Supreme Court in *R. G. Anand v. Deluxe Films*[1] held that copyright does not protect ideas or general plots; protection extends only to the *expression* of those ideas. The test is whether a viewer would obtain an "unmistakable impression" that the subsequent work is a copy of the earlier one. This principle remains the touchstone for film-script disputes and is equally applicable to digital adaptations and AI-generated derivatives. This judgment provided a crucial framework for distinguishing between unprotected ideas and protected expression and helped define the limits of intellectual property rights, ensuring that while creators' works are protected, the free flow of ideas and artistic innovation remains possible.

In *Gramophone Co of India Ltd v. Super Cassettes Industries Ltd*[2], the Delhi High Court examined remix recordings and clarified that making a "version recording" of a copyrighted song, without a proper license, constitutes infringement, unless it falls within statutory exceptions. The decision illustrates that transformation or remixing of sound recordings does not

[1] *R.G. Anand v. Delux Films AIR 1978 SC 1613*

[2] *Gramophone Co of India Ltd v Super Cassettes Industries Ltd 2010 SCC Online Del 4743*

automatically escape liability. Subsequently, a new Section 31C was introduced through the Copyright (Amendment) Act, 2012, which provides a statutory license to create a cover version, with the consent of the owner of the work.

Online enforcement is complicated by the anonymity of uploaders and the transnational location of servers. Courts increasingly orders to block infringing websites, requiring Internet Service Providers (ISPs) to disable access to specified URLs.

c) Intermediary Liability: Platforms as Gatekeepers

Another issue that arises in the digital arena is that, as most digital infringement occurs through platforms like YouTube, Facebook, Spotify, Kindle, etc., the question of liability of such intermediaries is crucial. To protect such intermediaries, Section 79 of the Information Technology Act, 2000, read with Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 grants "safe harbour" to intermediaries that observe due diligence and act expeditiously on takedown notices.

In *Super Cassettes Industries Ltd v Myspace Inc*[3], the Delhi High Court examined whether a social-media platform could claim safe harbour for user-uploaded infringing content. The judgment clarified that intermediaries are not liable for copyright infringement if they lack "actual knowledge" of the infringing content, provided they promptly remove it upon receiving proper notice. The decision underscores the need for robust content-management systems.

Trademark Infringement and Cybersquatting

A trademark is a symbol, word, or phrase that legally identifies a brand's goods or services and distinguishes them from those of competitors, which can include logos, names, slogans, sounds, and even specific colors, and once registered, they are legally protected against unauthorized use.

a. Digital forms

Forms of trademark infringement in cyberspace include:

- **Cybersquatting:** It is a specific form of infringement, where a person registers a domain name identical or confusingly similar to a trademark with malicious intent, to profit from the trademark's goodwill. For instance, the well-known organization *People for the Ethical Treatment of Animals* (PETA) sued Michael Doughney for registering the domain peta.org and using it to promote "People Eating Tasty Animals," a message directly opposed to PETA's mission.
- **Typosquatting:** It is also a kind of cybersquatting where infringers register domain names that are common misspellings, variations, or alternative top-level domains of legitimate websites to trick users into visiting malicious or fraudulent sites. For instance, a user might mistype "google.com" as "gogle.com" or "googgle.com"
- **Keyword Advertising:** When a person uses the trademarked name of a competitor as a keyword to display sponsored ads on search engines like Google, aiming to divert customers, it may be regarded as infringement. While not all usage is infringement, Indian courts have ruled that using a rival's trademark, as a keyword, can be infringement if it causes consumer confusion and deceit regarding the source of goods or services. The Court held that third-party bidding on trademarks as sponsored keywords, for use by internet search engines, is 'misrepresentation' and thus constituted an infringement. However, using the trademark without confusing may not be deemed infringement.
- **Meta-tagging:** Meta-tags are hidden code that describes a page and are not visible to users. Meta-tag trademark infringement occurs when someone uses another company's registered trademark in their website's meta-tags without authorization, aiming to divert traffic or gain an unfair advantage by misleading consumers and appearing in search results. Courts view this practice as a serious violation of trademark law, especially under Section 29 of India's Trade Marks Act, 1999.
- **Social Media Misuse:** It involves using brand names, logos, or other protected elements without authorization, leading to consumer confusion, brand dilution, and potential financial losses. It is not

[3] *Super Cassettes Industries Ltd v MySpace Inc FAO(OS) 540/2011*

uncommon to see local shoemakers selling shoes with Nike's tick logo, or counterfeited watches, handbags, and clothes being sold using Facebook, WhatsApp, X, etc. These are all forms of infringement, and addressing these issues requires proactive monitoring of online activity, reporting violations to social media platforms, issuing cease and desist letters to infringers, and staying informed about evolving intellectual property laws.

Each method exploits a trademark's goodwill for unauthorized gain, leading to consumer confusion and economic harm.

b. Legal Test

Under Section 29 of the Trade Marks Act, infringement occurs where the impugned mark is identical or deceptively similar and likely to confuse as to origin or sponsorship.

c. Leading Case Laws

Yahoo! Inc v Akash Arora[4], the first ever case of cybersquatting in India, way back in 1999, the Delhi High Court held that domain names are entitled to the same protection as trademarks and restrained the defendant from using the domain "yahooindia.com," which was confusingly similar to the plaintiff's well-known trademark "Yahoo!". This early decision set the foundation for Indian jurisprudence on cybersquatting and remains widely cited till date.

In *Consim Info Pvt. Ltd. v. Google India*[5], the appellant, being involved in an online matrimonial service, was the registered trademark owner for terms like Bharat matrimony, Tamil matrimony, Telugu matrimony, etc., and prayed for a permanent injunction against the defendants from using these trademarks or the likes in AdWords or as keywords for internet search. It was argued by the respondents (a common contention by the advertisers) that the usage of the trademark as a keyword did not constitute '*use in course of trade*'--an important element for trademark infringement under the Act, as the usage did not involve using the trademark over goods or services as provided in the Act. Further, the use conformed with *honest business practice* and also the words *'matrimony', 'Tamil' or "bharat"* are generic words. The Madras High Court held that the use of registered trademarks as keywords in the advertisement did fall under Section 2(2)(c)(ii) and Section 29(6)(d) of the Trademark Act, 1999 and though such words when used independently did not constitute a trade marks infringement, but when used conjunctively, with or without a space, constitutes an infringement.

The Delhi High Court's ruling in *Titan Company Limited v. Lenskart Solutions Pvt. Ltd*[6], has underscored a vital principle that invisibility does not shield illegality. Using a competitor's trademark in website meta-tags, even if invisible to users, amounts to trademark infringement under the Trade Marks Act, 1999.

On the other hand, the Supreme Court of India dismissed a trademark infringement case by Make My Trip (MMT) filed against Booking.com and Google for use of words "MakeMyTrip" as a Google Ads keyword as it held there is no likelihood of confusion because MakeMyTrip and Booking.com are both well-known, distinct platforms in the travel industry, and a user searching for one is unlikely to confuse the other's services.

Patent Infringement in the Digital World

Patents are legal rights issued to inventors to protect their inventions from anyone else claiming or using them for a certain time. Patent infringement may occur when someone unauthorizedly makes, uses, sells, or imports a patented invention, often a computer-related process or software feature, through digital means like the internet, apps, or software-as-a-service (SaaS) platforms. This can involve the unlawful use of a company's proprietary algorithms, unique features, or other patented aspects of their SaaS offering by a competitor.

Another form of infringement can happen due to the advent of 3-dimensional printing, which, if users are allowed to download patented designs or create them from existing ones and then print physical copies. A patent holder can sue for direct or indirect infringement for actions like making, using, or selling the infringing item, though enforcement can be difficult, due to the distributed nature of file sharing and 3D printing.

Patent infringement in the digital realm has given rise to newer problems. Key challenges in identifying and stopping such infringements include the global nature of the internet, making it difficult to pinpoint the infringer's location and apply jurisdiction, and the ease with which digital content can be copied and distributed. The Patent Act of 1970 provide penalties, but issues arise in applying these laws to digital inventions and thus Indian case laws on purely digital patents remain sparse. However, injunction standards from conventional patent disputes, like *prima facie* case, balance of convenience and irreparable harm would guide courts in deciding the matters.

[4] *1999IIAD(DELHI)229, 78(1999)DLT285.*

[5] *2013 (54) PTC 578 (Mad)*

[6] *CS(COMM) 589/2025*

Emerging Challenges in IPR protection in the era of NFTs and Artificial Intelligence

Non-Fungible Tokens (NFTs) are unique digital assets, like digital art or collectables, that act as a verifiable certificate of ownership recorded on a blockchain. They provide proof of authenticity and ownership for digital items, allowing creators to monetize their work and enabling collectors to own unique digital property. The rise of NFTs has introduced new disputes as artists have found their works "minted" as NFTs without their consent. Courts will apply standard copyright and trademark principles, but questions of jurisdiction and blockchain anonymity complicate enforcement.

Generative artificial intelligence (AI) raises additional concerns. Training large language or image models on copyrighted datasets, without a license, may infringe reproduction rights, while the originality and ownership of AI-generated outputs remain unsettled. In a very short period, companies like Microsoft and OpenAI are facing numerous litigations for IPR violations. Policymakers globally are debating exceptions for text-and-data mining and mechanisms for collective licensing.

Remedies and Enforcement

Rights-holders can pursue a mix of civil and criminal remedies:

a. Civil Remedies:

- Injunctions: temporary or perpetual orders to stop the infringing activity
- Damages: monetary compensation for losses
- An account of profits: repaying profits made by the infringer
- The seizure and destruction of infringing goods.

Besides, pre-trial remedies can also be obtained for evidence gathering and to prevent asset disposal by the infringer.

b. Criminal Remedies:

- Section 63 of the Indian Copyright Act 1957 imposes criminal liability for knowingly infringing copyright, with penalties of 6 months to 3 years imprisonment and a fine of Rs. 50,000 to Rs. 2,00,000.
- Sections 65A and 65B of the Indian Copyright Act, 1957 address digital copyright issues, providing criminal penalties for those who illegally circumvent technological protection measures (TPMs) and for those who alter or remove rights management information (RMI), and offenders can face imprisonment for up to 2 years and a monetary fine.
- Under India's Trademark Act, 1999, penalties for trademark infringement can include imprisonment for a term not less than 6 months and up to 3 years, a fine not less than Rs. 50,000 and up to Rs. 2,00,000, or both. For second or subsequent offences under Sections 103 or 104, the penalty is enhanced, with imprisonment not less than one year and up to three years and a fine not less than Rs. 1,00,000 and up to Rs. 2,00,000.

c. Enforcement:

Effective enforcement requires preservation of electronic evidence (server logs, timestamps, screenshots), use of blockchain or digital fingerprinting to prove ownership, and cross-border cooperation for servers located overseas.

Conclusion

Cyberspace amplifies both the value of intellectual property and the risk of misappropriation. Indian jurisprudence has begun to chart the boundaries of online IPR enforcement by adapting classic principles such as the idea–expression dichotomy and the tests for substantial similarity, while recognising new doctrines for intermediary liability and domain-name protection. In India, there is still a lack of awareness among creators about proactive measures—watermarking, contractual safeguards and timely registration of rights. Moreover, rapid technological change—from blockchain to generative AI—demands continuous legislative and judicial evolution. Statutes need to be updated to address AI-generated works and data use for training AI. Intermediaries should be encouraged to adopt automated detection tools and transparent takedown processes.

A coordinated strategy combining legal vigilance, technical safeguards and international collaboration will be essential to ensure that innovation and access do not come at the expense of creators' rights. The legislature and its interpretation need to evolve very fast to keep pace with the ever-changing digital world.

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