

## **U-III CYBER LAW AND RELATED LEGISLATION**

### **Patent Law:**

- Patent is monopoly right granted by state to an inventor for a limited period of time
- Patent ACT-1970 came into force on 20-04-1972 replacing Indian patent and design Act-1911
- Patent act contains 23 chapters which are relating to patent procedure international arrangement and other miscellaneous matters

### **Types of patent applications:**

1. Patent application under patent Act-1970
2. International application under PCT(Patent corporation treaty)

### **General Precaution:**

- It is common experience that through ignorance of patent law inventors loose the chance of obtaining patent for their invention
- Most common is to publish invention in news papers and scientific technical journal before obtaining patent
- So inventor should not tell world about their invention before they apply for patent nor they should use their invention for commercial purpose
- Another mistake frequently made is to wait until there invention are fully developed for commercial working before applying for patent

### **Documents required for filling application form for patent:**

1. Application form in triplicate
2. Provisional or complete specification in triplicate
3. Drawing in triplicate (if necessary)
4. Abstract of invention in triplicate
5. Information and Undertaking
6. Declaration of Inventor ship
7. Power of attorney(if filled through agent)

### **System of patent serves many useful services**

- If invention is commercially utilized, the patent ensures just reward in terms of money and recognition for inventor, for all the time ,effort, knowledge, skills, money and other resources invested to come up with invention
- For society commercial exploitation of an invention means newer and better products, higher productivity and more effective means of production
- Objective of patent is to ensure that it is utilized in the country, it doesn't mean to block production or further Research & Development
- Patent system encourages Technological innovation and dissemination of Technology

### ***Patents apply to inventions***

- Should be: non-obvious, novel, useful
- Requires a complex process of patent application
- 20 years from application

*Copyright applies to the expression of ideas, patents to the ideas themselves*

### ***Patent Rights and Ownership***

- Rights of patent holder: prevent others from making, using, selling, or offering to sell the claimed invention
- Patents treated as personal property for ownership purposes
- Ownership of patent rights governed by common law,
- Recording an assignment prevents voiding of first conveyance by subsequent purchasers.

Joint owners of patents can make, use, sell, offer to sell invention without accounting to other owners

### **Software Patents and India**

- India's patent law states that computer programs per se are not inventions in the sense of the law.
- Program claims are not allowed and the patent office's examination guidelines seem to take the software exclusion more seriously than even in Europe.
- However due to international pressure and a growing domestic patent movement, the limits of patentability have been eroding.

### **Fundamental Problems of Software-Patents**

- 2 pillars of Patent-Law:
  - No Patents on methods and algorithms
  - Patents on technical innovations
- Software as an in-between: Technical adaptation of a algorithm
- Incremental innovations characteristic for software development
- Interoperability
- Network effects reinforcing monopoly tendencies resulting of patents
- Difficult assessment of novelty: no databases for prior art

### ***Problems with software patents***

- Poor quality of patent examiners can lead to broad patents for routine computing concepts
- Usually difficult to know where ideas originate
- International differences
- ***The situation is a serious mess!***

### **Hot Areas for Software Patents**

- Computer networking
- Computer Security
- Biostatistics
- E-Commerce

### **Some notable software patents**

- RSA public key encryption (now expired)
- LZW Lempel Ziv compression
- MP3
- FAT file system (disallowed)
- XML (claimed)
- Reverse auction online

### **Patent Summary**

- Patents protect ideas, not just expressions of ideas.
- Independent development is not a defense to patent infringement except for limited business method exception.
- Software is protectable as process or programmed device under patent law.

### **Trademark Law: (Trademark ACT-1999)**

- Trademark is visual symbol (word, letter, numeral, name, signature, device, label, and symbol) identifying goods or services of one person from those of others and capable of graphics representation
- Trademark also includes shape of goods, packaging, combination of colors

### **Registration of Trademark:**

- Controller general of patents designs and trademarks is also registrar of trademarks
- Registry head office is situated in Bombay
- Registry head office is having 4-branch offices : Kolkata, Chennai, New Delhi, Ahmadabad
- Register of trademark contain all the record of registered trademarks, users, assignments
- A digital library of around 1,50,000 trademarks and 1250 trademarks journals on CD and soft format is available with the trademark registry offices

### **Copyright Law:**

- Copyright in India is governed by copyright ACT-1957
- Copyright is a right given by the law to creators of literary, dramatic, musical, artistic work , producers of cinematograph films and sound recording
- In fact copyright is bundle of rights including rights of reproduction, communication to the public adaptation and translation of work

### **Why should copyright be protected?**

- Copyright ensures minimum safeguard of rights of others over their creation thereby protecting and rewarding creativity
- Copyright provides protection to the efforts of writers, cinematograph films and computer software
- Copyright creates atmosphere conducive to creativity which induces them to create more and motivate others to create

### **Software copyright or patented**

- The term software patent does not have a universally accepted definition, one definition suggested by Richard Stallman (Co developer of GNU-Linux OS) “Patent on any performance of computer realized by means of computer program”
- “Software patents are patents which cover software ideas, ideas which would be use in developing software”
- i.e. software patent refers to patent that could be granted on product or processes (including methods) which include or may include software as significant or at least necessary part of their implementation

### **Conceptual difference between Software Copyright and Software Patent:**

- Software traditionally protected under copyright law since code fits quite easily into description of literary work. Thus software is protected as work of literature under Berne Convention and software written is automatically covered by copyright this allows creators to prevent another entity from copying the program
- Software patenting is recently emerged (only in US, Japan & Europe) where patent give their inventor or owner right to prevent others from using a claimed invention
- Patent covers underlying methodologies while copyright prevents direct copying of software but do not prevent other authors to write their own code

### **Is it not true that strict application of the principle of protection of copyright hampers economic and cultural development of the society?**

Yes. If copyright protection is applied rigidly, it can hamper progress of the society. However, copyright laws are enacted with necessary exceptions and limitations to ensure that a balance is maintained between the interests of the creators and of the community.

To strike an appropriate and viable balance between the rights of the copyright owners and the interests of the society as a whole, there are exceptions in the law. Many types of exploitation of work which are for social purposes such as education, religious ceremonies, and so on are exempted from the operation of the rights granted in the Act. Copyright in a work is considered as infringed only if a substantial part is made use of unauthorizedly. What is ‘substantial’ varies from case to case. More often than not, it is a matter of quality rather than quantity. For example, if a lyricist copy a very catching phrase from another lyricist’s song, there is likely to be infringement even if that phrase is very short.

**Does the law allow any use of a work without permission of the owner of the copyright, and, if so, which are they?**

Subject to certain conditions, a fair deal for research, study, criticism, review and news reporting, as well as use of works in library and schools and in the legislatures, is permitted without specific permission of the copyright owners. In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. Some of the exemptions are the uses of the work

- i. for the purpose of research or private study,
- ii. for criticism or review,
- iii. for reporting current events,
- iv. in connection with judicial proceeding,
- v. performance by an amateur club or society if the performance is given to a non-paying audience, and
- vi. the making of sound recordings of literary, dramatic or musical works under certain conditions.

**What is the scope of protection in the Copyright Act,1957 ?**

The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright in an idea.

**Does copyright apply to titles and names ?**

Copyright does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information. Copyright does not protect ideas or concepts. To get the protection of copyright a work must be original.

**What is a work?**

A work means any of the following , namely, a literary, dramatic, musical or artistic work, a cinematograph film, or a sound recording.

**What is a work of joint authorship?**

"Work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

**What are the classes of works for which copyrights protection is available in India?**

Copyright subsists throughout India in the following classes of works:

- o Original literary, dramatic, musical and artistic works;
- o Cinematograph films; and
- o Sound recordings.

### **What is an artistic work?**

An artistic work means-

- a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
- a work of architecture; and
- any other work of artistic craftsmanship.

### **What is a musical work?**

"Musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. A musical work need not be written down to enjoy copyright protection.

### **What is a sound recording?**

"Sound recording" means a recording of sounds from which sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced. A phonogram and a CD-ROM are sound recordings.

### **What is a cinematograph film?**

"Cinematograph film" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films.

### **What is a government work?**

"Government work" means a work which is made or published by or under the direction or control of

- the government or any department of the government
- any legislature in India, and
- any court, tribunal or other judicial authority in India.

### **What is an Indian work?**

"Indian work" means a literary, dramatic or musical work,

- The author of which is a citizen of India; or
- which is first published in India; or
- the author of which, in the case of an unpublished work is, at the time of the making of the work, a citizen of India.

## **AUTHORSHIP AND OWNERSHIP**

### **Whose rights are protected by copyright?**

Copyright protects the rights of authors, i.e., creators of intellectual property in the form of literary, musical, dramatic and artistic works and cinematograph films and sound recordings.

### **Who is the first owner of copyright in a work?**

Ordinarily the author is the first owner of copyright in a work.

### **Who is an author?**

- In the case of a literary or dramatic work the author, i.e., the person who creates the work.
- In the case of a musical work, the composer.
- In the case of a cinematograph film, the producer.
- In the case of a sound recording, the producer.
- In the case of a photograph, the photographer.
- In the case of a computer generated work, the person who causes the work to be created.

### **Who all have rights in a musical sound recording?**

There are many right holders in a musical sound recording. For example, the lyricist who wrote the lyrics, the composer who set the music, the singer who sang the song, the musician (s) who performed the background music, and the person or company who produced the sound recording.

### **Is it necessary to obtain any license or permission to use a musical sound recording for public performance?**

A sound recording generally comprises various rights. It is necessary to obtain the licences from each and every right owner in the sound recording. This would, *inter alia*, include the producer of the sound recording, the lyricist who wrote the lyrics, and the musician who composed the music.

### **Who is the owner of copyright in a government work?**

In the case of a government work, government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

### **Who is the owner of copyright in the work of a public undertaking?**



In the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

**Who is the owner of copyright in works by journalists during the course of their employment?**

In the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work.

**Who is the owner of a work produced during the course of the author's employment?**

In the case of a work made in the course of the author's employment under a contract of service or apprenticeship, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

**Who is the owner of the copyright in the case of a work produced for valuable consideration at the instance of another person?**

In the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

**Is copyright assignable?**

Yes. The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

**What is the mode of assigning copyright?**

It shall be in writing signed by the assignor or by his duly authorised agent. It shall identify the specific works and specify the rights assigned and the duration and territorial extent of such assignment. It shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

**Does an assignment lapse automatically?**

Where the assignee does not exercise the rights assigned to him within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

**What will be the period of assignment if not specifically stated in the assignments?**

If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

**What will be the territorial extent of the assignment if not specified in the assignment?**

If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within the whole of India.

**Can an author relinquish copyright and, if so, how?**

The author of a work may relinquish all or any of the rights comprising the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights.

**DIFFERENT RIGHTS**

**Are copyrights same for all classes of works?**

No. The rights vary according to the class of work.

**What are the rights in the case of a literary work?**

In the case of a literary work (except computer programme), copyright means the exclusive right

- To reproduce the work
- To issue copies of the work to the public
- To perform the work in public
- To communicate the work to the public.
- To make cinematograph film or sound recording in respect of the work
- To make any translation of the work
- To make any adaptation of the work.

**Is translation of an original work also protected by copyright?**

Yes. All the rights of the original work apply to a translation also.

**Are computer programmes protected under Copyright Act?**

Yes. Computer programmes are protected under the Copyright Act. They are treated as literary works.

**Are there any special rights in computer programmes?**

Yes. In addition to all the rights applicable to a literary work, owner of the copyright in a computer programme enjoys the rights to sell or give on hire or offer for sale or hire, regardless of whether such a copy has been sold or given on hire on earlier occasion.

### **What are the rights in a dramatic work?**

In the case of a dramatic work, copyright means the exclusive right

- To reproduce the work
- To communicate the work to the public or perform the work in public
- To issue copies of the work to the public
- To include the work in any cinematograph film
- To make any adaptation of the work
- To make translation of the work.

### **What are the rights in an artistic work?**

In the case of an artistic work, copyright means the exclusive right

- To reproduce the work
- To communicate the work to the public
- To issue copies of the work to the public
- To include the work in any cinematograph film
- To make any adaptation of the work.

### **What are the rights in a musical work?**

In the case of a musical work, copyright means the exclusive right

- To reproduce the work
- To issue copies of the work to the public
- To perform the work in public
- To communicate the work to the public
- To make cinematograph film or sound recording in respect of the work
- To make any translation of the work
- To make any adaptation of the work.

### **What are the rights in a cinematograph film?**

In the case of a cinematograph film, copyright means the exclusive right

- To make a copy of the film including a photograph of any image forming part thereof
- To sell or give on hire or offer for sale or hire a copy of the film
- To communicate the cinematograph film to the public.

### **What are the rights in a sound recording?**

- To make any other sound recording embodying it
- To sell or give on hire, or offer for sale or hire, any copy of the sound recording
- To communicate the sound recording to the public.

### **What is the right of reproduction?**

The right of reproduction commonly means that no person shall make one or more copies of a work or of a substantial part of it in any material form including sound and film recording without the permission of the copyright owner. The most common kind of reproduction is printing an edition of a work. Reproduction occurs in storing of a work in the computer memory.

### **What is the right of communication to the public?**

Communication to the public means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion. It is not necessary that any member of the public actually sees, hears or otherwise enjoys the work so made available. For example, a cable operator may transmit a cinematograph film, which no member of the public may see. Still it is a communication to the public. The fact that the work in question is accessible to the public is enough to say that the work is communicated to the public.

### **What is an adaptation?**

Adaptation involves the preparation of a new work in the same or different form based upon an already existing work. The Copyright Act defines the following acts as adaptations:

- a. Conversion of a dramatic work into a non dramatic work
- b. Conversion of a literary or artistic work into a dramatic work
- c. Re-arrangement of a literary or dramatic work
- d. Depiction in a comic form or through pictures of a literary or dramatic work
- e. Transcription of a musical work or any act involving re-arrangement or alteration of an existing work.

The making of a cinematograph film of a literary or dramatic or musical work is also an adaptation.

### **Can any person translate a work without the permission of the owner of the copyright in the work?**

No. A person cannot translate a work enjoying copyright without the permission of the copyright owner.

### **Is there any copyright over news?**

No. There is no copyright over news. However, there is copyright over the way in which a news item is reported.

## **COLLECTIVE ADMINISTRATION OF COPYRIGHTS**

### **What is collective administration of copyright?**

Collective administration of copyright is a concept where management and protection of copyright in works are undertaken by a society of owners of such works. Obviously no owner of copyright in any work can keep track of all the uses others make of his work. When he becomes a member of a national copyright society, that society, because of its organisational facilities and strength, is able to keep a better vigil over the uses made of that work throughout the country and collect due royalties from the users of those works. Because of the country's membership in international

conventions, the copyright societies are able to have reciprocal agreements with similar societies in other countries for collecting royalties for the uses of Indian works in those countries. From this it can automatically be inferred that it will be in the interests of copyright owners to join a collective administration organisation to ensure better protection to the copyright in their works and for reaping optimum economic benefits from their creations. Users of different types of works also find it easy to obtain licences for legal exploitation of the works in question, though the collective administrative society.

### **What is a copyright society?**

A copyright society is a registered collective administration society. Such a society is formed by copyright owners. The minimum membership required for registration of a society is seven. Ordinarily, only one society is registered to do business in respect of the same class of work. A copyright society can issue or grant licences in respect of any work in which copyright subsists or in respect of any other right given by the Copyright Act.

### **What are the functions of a copyright society?**

A copyright society may:

- i. Issue licences in respect of the rights administered by the society.
- ii. Collect fees in pursuance of such licences.
- iii. Distribute such fees among owners of copyright after making deductions for the administrative expenses.

### **Are there any registered copyright societies in India?**

Yes. The following are the registered copyright societies in India:

- i. Society for Copyright Regulation of Indian Producers for Film and Television (SCRIPT) 135 Continental Building, Dr. A.B. Road, Worli, Mumbai 400 018, (for cinematograph and television films).
- ii. The Indian Performing Right Society Limited (IPRS), 208, Golden Chambers, 2<sup>nd</sup> Floor, New Andheri Link Road, Andheri (W), Mumbai- 400 058 (for musical works).
- iii. Phonographic Performance Limited (PPL) Flame Proof Equipment Building, B.39, Off New Link Road, Andheri (West), Mumbai 400 053 (for sound recordings).

### **Is it necessary to obtain licences from more than one society for exploitation of a work?**

In many cases, it is necessary to obtain licences from more than one society. For example, playing of the sound recording of music may involve obtaining a licence from the IPRS for the public performance of the music as well as a licence from the PPL for playing the records, if these societies have the particular work in their repertoire.

## **MORAL RIGHTS**

### **What are the moral rights of an author?**

The author of a work has the right to claim authorship of the work and to restrain or claim damages in respect of any distortion, mutilation, modification or other acts in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. Moral rights are available to the authors even after the economic rights are assigned.

### **Do the author's moral rights remain after assignment of copyright?**

Yes. The moral rights are independent of the author's copyright and remains with him even after assignment of the copyright.

### **Will failure to display a work infringe the moral rights of an author?**

No. Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the moral rights of the author.

## **COPYRIGHT INFRINGEMENTS**

### **Which are the common copyright infringements?**

The following are some of the commonly known acts involving infringement of copyright:

- i. Making infringing copies for sale or hire or selling or letting them for hire;
- ii. Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- iii. Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright ;
- iv. Public exhibition of infringing copies by way of trade; and
- v. Importation of infringing copies into India.

### **Has the owner of an auditorium or a hall any liability while renting out the place for communication to the public of a copyrighted work?**

Yes. If a person permits for profit any place to be used for the communication of a work to the public, where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright, he will be deemed to have committed an offence under the Copyright Act.

### **What are the civil remedies for copyright infringement?**

A copyright owner can take legal action against any person who infringes the copyright in the work. The copyright owner is entitled to remedies by way of injunctions, damages and accounts.

### **Which is the court having jurisdiction over civil remedies in copyright cases?**

The District Court concerned has the jurisdiction in civil suits regarding copyright infringement.

**What is the proof of the authorship of a work?**

Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher appears on copies of the work as published, or, in the case of an artistic work appeared on the work where it was made, the person whose name so appears or appeared shall, in any proceeding in respect of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

**What are the rights of owner over infringing copies and equipments used for making infringing copies?**

All infringing copies of any work in which copyright subsists and all plates used or intended to be used for the production of such infringing copies shall be deemed to be the property of the owner of the copyright.

**What are the remedies in the case of groundless threat to legal proceedings?**

Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of copyright, any person aggrieved thereby may institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit –

- a. obtain an injunction against the continuance of such threats; and
- b. recover such damages, if any, as he has sustained by reason of such threats.

**Is copyright infringement a criminal offence?**

Yes. Any person who knowingly infringes or abets the infringement of the copyright in any work commits criminal offence under Section 63 of the Copyright Act.

**What are the punishments for a criminal offence under the copyright law?**

The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of Rs. 50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

**Is copyright infringement a cognizable offence?**

Any police officer, not below the rank of a sub inspector, may, if he is satisfied that an offence in respect of the infringement of copyright in any work has been, is being, or is likely to be committed, seize without warrant, all copies of the work and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable be produced before a magistrate.

**How are the seized infringing copies or plates disposed off?**

The Court may order delivery to the owner of the copyright all such copies or plates.

### **Who is responsible for copyright offence committed by a company?**

Every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against.

### **Which court can try copyright offence cases?**

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under the Copyright Act.

### **Can a police officer seize infringing goods without warrant?**

Yes. A police officer not below the rank of sub inspector can seize without warrant all infringing copies of the work.

### **Electronic database and its protection:**

In the context of India, the word database itself appears in the Copyright Act, 1957 and the Information Technology Act, 2000.

The closest definition of the term *database* is found in Section 43 Explanation (ii) of the Information Technology Act, 2000 which defines *computer database* to mean *a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalized manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network*. This definition appears to extend only to electronic databases.

- With increasing penetration in online usage of more and more people towards Internet ,e-banking, e-shopping etc the concern of data protection and related issues goes on growing day by day
- This is wrong fact that data protection legislation is there in India
- Data protection and privacy is dealt within IT ACT-2000 but not in exclusive manner
- India (major beneficiary of e-com) provides copyright protection to database under copyright ACT-1957
- There is proposed personal data protection bill 2006 which deals with protection of personal data
- Solution advocated is Sui Generic legislation which clearly prescribe property rights and limitation



### **Limitations of Copyright Protection**

- Copyright protection laws though provide protection to the original work of author they are usually not extendable to every element.
- It extends to the author's original expression only, not the idea, process, system or method of operation.
- The elements such as ledger sheets and blank forms, rules and recipes, white pages listings of telephone directories, facts and theories, ideas and principles, methods of operation/processes falls under non-copyrighable elements.
- Use of infringing materials may invalidate copyright in compilation or derivative work.

### **Why Data Protection Law**

- In some instances, the value of a whole business may be dependant on the ability of that business to protect databases of information from exploitation by competitors
- Personal data are not processed in ways which make it likely that personal integrity and privacy will be infringed or invaded.
- There should be clear-cut provisions regarding data available in public domains
- Expiration time as in copyright law exist needs to be redefined due to the varied nature of databases. The EC Directive mentions that the term of protection will expire after 15 years.

### **Indian Scenario**

- There is no specific privacy or data protection law in India at present. The Constitution makes no specific mention of privacy, but the courts have read an implicit basic right of privacy in the Constitution.
- The Information Technology Act 2000 was enacted to deal generally with e-commerce. It has nothing specifically directed toward data; however, it touches briefly upon database issues. It focuses on abuse and evidence law with regard to computer crimes.
- The protection to data at present is basically through contract law. Other laws which help in the process are the Information Technology Act, copyright law, the Indian Penal Code and customs and practices developed with the passage of time.
- The Information Technology Act 2000 for punishment for tampering with computer source code, hacking and breach of confidentiality and privacy.
- The Indian Copyright Act 1957 — with latest amendments — is one of the best copyright laws in the world. Any person who knowingly makes use of an illegal copy of a computer programme shall be punishable.
- The Indian Penal Code provides for punishment for criminal breach of trust and cheating and dishonestly inducing delivery of property. These are general laws and it is often seen that they do not serve the purpose in the case of crimes related to data.

### **Domain name and copyright dispute:**

- Domain name is simply the address of the Internet
- Domain names are divided in hierarchy
- Top level of hierarchy appears after **last (.)**
- E.g. **bitdurg.org**                      **(.org)** – top level domain
- Dispute that arise over domain name involves for second level domain i.e. bitdurg
- Domain is unique address that may be assigned to only a single entity
- If concerned domain is registered so no other company is able to register same name under concerned top level domain
- Identical second level domains cannot exist under the same top level domain (.com, .org)
- ICANN- (Internet corporation for assigned names and numbers) will monitor disputes regarding domains
- When a specific company finds domain name corresponding to their corporate name or product trademark is owned by someone else the company can choose a different name or fight back to get the domain name back from its current owner
- ICANN – resolves disputes with domain dispute policies available with it
- Online domain dispute is resolved by domain name dispute resolution policy-2005

### **Domain Names in India**

India has been a relatively slow starter on the scenario of Internet. Internet services were started in India by Videsh Sanchar Nigam Limited (VSNL) in 1995. However, it was only in 1997 & 1998 that awareness about the Internet grew. As of today, lakhs of domain names have been registered by Indians. With this increasing number of domain name registrations, the number of domain name disputes grew as well. In order to streamline the resolution of these disputes, India adopted the Indian Domain Name Dispute Resolution Policy in 2005. This Dispute Resolution Policy provides a comprehensive single step solution to settle domain name disputes and has been widely regarded as an efficient means of resolving such disputes.

This Policy sets out the terms and conditions to resolve a dispute on following grounds

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.

The Registrant is required to submit to a mandatory arbitration proceeding in the event that such a complaint has been filed.

The IDR Policy has, by and large proved to be successful, with several decisions being passed against foreign cyber squatters as well.

### **Domain name dispute resolution in India**

With the advance of e-commerce in India, disputes relating to domain names are on the rise. Persons aggrieved by the wrongful use of their domain names have the following two options to settle their dispute.

1. They may resort to the Uniform Domain Name Dispute Resolution Policy (“UDRP”), framed by the Internet Corporation for Assigned Names and Numbers (“ICANN”); or
2. They may file a suit in a civil court of competent jurisdiction, seeking a permanent injunction against the wrongful user of the domain name.

### **Dispute resolution through the UDRP**

The UDRP sets out the guidelines for the resolution of disputes relating to generic top level domain names (“gTLDs”) such as <.com>, <.net>, and <.org>. Under the UDRP, domain name disputes may be resolved by filing a complaint with any of the accredited Service Providers such as the World Intellectual Property Organization Arbitration and Mediation Center (“WIPO”), the National Arbitration Forum, e-Resolution and the CPR Institute for Dispute Resolution. A complainant seeking the transfer or cancellation of a domain name under the UDRP must establish that each of the following factors exists:

1. The domain name is identical or deceptively similar to a trade mark in which the complainant has rights;
2. The domain name holder has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith. Since the UDRP is an efficient and cost-effective means of resolving disputes relating to wrongful registration of domain names in the gTLDs, a growing number of Indian companies have chosen to settle their domain name disputes through the UDRP

### **Dispute resolution by court proceedings**

The filing of a complaint under the UDRP does not prevent either party from submitting the dispute to a court of competent jurisdiction for independent resolution either prior or pursuant to the conclusion of proceedings before the Administrative Panel. If an Administrative Panel decides that the domain name registration should be cancelled or transferred, then there is a period of ten working days during which the documentation of commencement of a lawsuit must be submitted to the concerned Service Provider. If such documentation is received within the ten business day period, the Administrative Panel's decision will not be implemented. No further action will be taken by the Service Provider until it receives:

1. Satisfactory evidence of a resolution of the dispute between the parties;
2. Satisfactory evidence that the lawsuit has been dismissed or withdrawn; or
3. A copy of an order from the court dismissing the lawsuit or ordering that the domain name be cancelled or transferred.

It must be noted that the Trade and Merchandise Marks Act, 1958 (the “TM Act”) and the Information Technology Act, 2000 of India do not deal with domain name disputes. Indian Courts, therefore, apply the rules of “passing off” with respect to such disputes.

The action against passing off is based on the principle that “a man may not sell his own goods under the pretence that they are the goods of another man.” (N. R. Dongre v. Whirlpool Corporation (1996) 5 SCC 714) Passing off is a species of unfair trade competition by which one person seeks to profit from the reputation of another in a particular trade or business. A passing

off action is a direct subject matter of the law of tort or common law of right, i.e. case law. The TM Act does not define passing off, but only provides the rules of procedure and the remedies available.

#### **IT ACT and Civil Procedure Code:**

- Code of Civil procedure - 1908 came into force on 1 January 1909
- Applicable to whole India except J & K the state of Nagaland and tribal Areas
- Basic civil law governing citizens of India are set by parliamentary legislation such as Civil procedure code
- Since its enactment it has been amended for several times to improve the justice delivery system
- Despite this many of its provisions have often been found to cause endless delay as a result peoples seems to be losing faith in the efficacy of dispute resolution process

#### **Criminal Procedure Code (1973):**

- With several modification and amendments criminal procedure code came in existence in 1872
- After independence code was amended time to time
- Finally in 1973 major amendments were made and old code was replaced by code of criminal procedure 1973
- Civil procedure code is having total 37 chapters
- Its having 484 sections
- Chapter - 5 : Deals with arresting persons( Section 41-60)
- Chapter -13: Jurisdiction of criminal courts in enquiries and trial ( Section 177 to 189)
- Chapter -23: Evidence in enquiries and trial (Section 272 to 299)
- Chapter -33: Provision of bail and bonds( Section 436 to 450)
- Chapter -37: Miscellaneous ( Section 474 to 484)

#### **Indian Evidence Act (1872):**

- Defined as act No.-1 of 1872 and called Indian evidence ACT-1872
- It has 11-chapters and 167 sections and came into force on 1<sup>st</sup> sept 1872 at that time India was part of British empire
- Over a period of more than 125 years since its enactment Indian Evidence act has basically retained its original form except certain amendments from time to time

**Primary Evidence:** Document itself produced for the inspection of court

**Secondary Evidence:**

1. Certified copies given
  2. Copies made from original by mechanical process
  3. Copies made from or compared with the original
- Following sections are amended for accepting digital evidences

**Section 3:** Definition of evidence and details of CA

**Section 17:** Oral documentary is amended to electronic form

**Similarly section- 22, 34, 35,39,47,65 are amended**

**Bankers Books Evidence ACT (1891):**

Section 2 (a) clause-3 specify details of bankers books as follows

Banker's books include ledger, day book, cash book, account book - kept in written form or printouts of data stored in floppy disc or tapes or any other form of electromagnetic storage device

Section 2(b) for clause -8 "Certified copy"

Section 2A – Certificate of person in-charge or computer

**(Note:** Bankers books evidence act simply replaces old and traditional banker's books with new and electronic format books)

**RBI ACT (1934):**

Section -58 Subsection (2) after clause(P) following clause should be inserted (PP) regulation of fund transfer through electronic means between the banks or between the banks and other financial institution referred to in clause ( c ) of section 45-1 including the laying down of the condition subject to which bank and other financial Institution shall participate in such fund transfer

### **Indian Penal Code (IPC):**

- Exhaustive document that covers almost all the crimes happening in society
- It is British colonial legislation in India in 1860
- Now it's providing a penal code for all of India including J & K where it was renamed as RPC( Ranbir Penal Code)
- Code applies to any offence committed by an Indian Citizen anywhere and on any Indian registered ship or plane
- IPC came into force in 1862 and regularly amended
- Code contains several sections related to dowry law in India
- It has total 511 sections covering various aspects of criminal law
- IPC was inherited by Pakistan and Bangladesh as formerly they are the part of British India

### **Purpose of IPC:**

1. Maintains law and order
2. Adjudicate disputes
3. Punish the offenders
4. Satisfy the victims
5. Protect the society

### **Amendments to IPC -1860:**

- After section 29 following section shall be inserted namely electronic record
- 29 A “ The word electronic record”
- Section 167- for the word “ public servant changed with the preparation of any document to preparation of any e-document
- Section 172,173 for word “ Produce a document in a court of justice: The word produce electronic document or record in court of justice
- Similarly following sections are amended  
175,192,204,463,464,466,468,469,470,471,474,476, 477A

### **Employee and Internet:**

- With respect to employee bad acts courts regularly recognize that an employer can implement software that control and monitor Internet asset
- Courts habitually point out that even without the aid of specialized Internet monitoring software an employer can easily determine which website the employee visited and what Internet transaction an employee engaged in on any given day
- To avoid collateral privacy issues of employee employer must have to frame Internet access and monitoring policy and distribute it to the employee – that recognizes the employer right to monitor employee website activity and e-mail
- Internet access policy makes it clear that e-mail ,Internet site visits and other internet records are not confidential
- Use of technology helps to minimize employee Internet bad acts, typically firms employee employ internet transaction monitoring software that allow control access to large scope of websites and limit or eliminate Internet communication that contain pornography and hate literature

### **Alternative Dispute Resolution (ADR):**

- ADR means to resolve the disputes other than the traditional courts and administrative forum
- ADR means settling disputes outside of the courtroom, ADR typically include
  - Arbitration
  - Mediation
  - Early neutral evaluation
  - Conciliation
- ADR has greatly expanded over last several years in addition to traditional commercial dispute in the form of arbitration
- Mediation has become an important first step in dispute resolution
- Arbitrator and mediator have an important role in resolving the disputes
- Mediator act as neutral to reconcile the parties differences before proceeding to arbitration or litigation
- **Mediation:** is informal process in which a third party or neutral party meets jointly with disputants to find a common ground so as to resolve their claims
- **Arbitration:** is formal process in which third neutral party after hearing evidence and argument of dispute parties in formal way renders a legal decision which binds disputants

### **Online Dispute Resolution (ODR):**

- ODR is branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties
- It primarily involves – negotiation, mediation or arbitration or combination of all three
- The use of technology usually involves the use of Internet based communication Technology at some stage but ODR does not necessarily involves online process

### **ODR is also referred as**

1. Internet dispute resolution ( I-DR)
2. Electronic dispute resolution ( E-DR)
3. Electronic Alternative dispute resolution ( E-ADR)
4. Online Alternative dispute resolution ( O-ADR)

### **Most Common Methods of ODR**

- Automated negotiation
- Assisted negotiation
- Online Mediation
- Online Arbitration

### **Advantages**

- You may resolve your problem easily
- You may be awarded compensation
- Process is less formal than going to the court
- It may cost less than court
- Process is confidential



**Questions:**

1. What is patenting and why it's so important
2. Write a note on trademark and copyright law
3. What is difference between software copyright and software patenting
4. Explain domain dispute issues and how they are handled
5. Explain laws associated with electronic database and its protection
6. Write a note on following (a) Civil Procedure Code (b) Criminal Procedure code
7. Explain the relevant sections of following acts related to IT ACT (a) Indian evidence act (b) Bankers book evidence act (c) Indian Penal Code (c) RBI Act
8. Write a note on law and policy related to Employees and Internet
9. Explain ADR and ODR with advantages
10. Compare ADR with ODR