



## 4. Protecting Innovation in the Digital Market

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### **ABSTRACT**

*As E-Commerce is an industry which is developing at a quick rate. Also, there can be different occurrences where creation and development of somebody can be open without giving the individual enough credit, work and cash isn't given to the designer. So for this reason Intellectual Property assumes an exceptionally fundamental job. It offers assurance to all the substance which is accessible over the web. A few E-Commerce transactions take place between a representative or organization and customers, but to make these transactions safer, secured technology plays an important role.*

### **KEYWORDS**

*Intellectual property, Commerce, Innovation, security, cyberspace etc.*

Electronic Commerce alludes to every single business exchange which is dependent on electronic transmission and handling of information, involving content, pictures and sound. E-commerce transactions are also included in this category, along with "Electronic Data Interchange (EDI)" On one hand, by mid-1800s, electronic business had started, when the main contract was done/executed over electronic transmit or phone.

In any case, the articulation 'electronic business' is regularly utilized regarding the extension of trade utilizing PCs and present day correspondences, most strikingly the web and the internet. The improvement of security conventions has helped the quick extension of electronic business by considerably decreasing business chance components.

Safety and security are of the highest significance in the realm of internet commerce. 'Open key cryptology' was developed in response to internet security issues. With the insurgency set up, the examination of law in regards to electronic trade starts. It requires understanding earthbound standards, social conduct and the utilization of lead of law.

The dominant part of lawful issues emerging using electronic business that can be addressed attractively by utilization of standard legitimate standards. All parties involved in web-correspondences, electronic money storage, email transactions/contacts, and the Internet as a whole have a role to play in this.

Customary law does not sufficiently govern a large range of anomalous circumstances, rights, benefits, and connections that have arisen as a result of the internet. Numerous concerns could not be satisfactorily addressed without legislative action, broad public support, and a number of judicial battles.

Intellectual property (IP) is a term that encompasses both copyright and the protection of industrial structures, licensees, branded goods, and land marks, which is why IP and "licensed innovation" are sometimes used interchangeably. This policy protects against unwarranted competition, data security, and the sharing of confidential information. Like knowledge, intellectual property (IP) can be considered as a significant (physical or fictitious) asset or resource. It is highly regarded in terms of physical resources (or, to put it another way, the importance of invention and creative activities in this economy). Products may be one-of-a-kind and successful when they have distinctive names, look, new concepts, and diverse articulations when trademarked innovation is used. Patent or other IP rights are frequently exchanged, or 'authorized,' in their own privilege, without exchanging the value of a fundamental item or administration.

Licensed innovation is critical to online business for a number of reasons, and online business is critical to protecting innovation. For the delivery of services and goods based on IP and its licensing restrictions, online business frameworks are employed more frequently than any other company frameworks. Intellectual property can be traded in a variety of methods, including the creation of frameworks and codes, plans and drawings, music and images via web-based enterprises, etc. As a result, the protection of intellectual property and mechanical security is considered as critical since, if an object is stolen or pilfered while being sent over the Internet, it might lead to the demise of the firm. IP rights are used to safeguard Internet frameworks such as coding (which encompasses everything from software to switches and switches to a user's UI) from unauthorized usage. As a means of ensuring consumer recognition, branding, and fostering a collaborative spirit in online commerce, trademarks play a vital role in reducing rivalry and conflict. This means that IP is critical to the success of any online business.

A wide range of innovations are required to manufacture an item, which the organizations often disperse the advancement of some portion of things or provide advancements through patenting games plans for both web-related and web-based business-related businesses. Premium innovation items would not be attainable if each inventive component were developed or offered by a separate firm. The financial aspects of internet business are dependent on the cooperation of companies (mostly Small and Medium Enterprises) in order to share, via allowing, the opportunities and risks of company. Web based business and organizations often hold a majority of their incentive in IP. Along these lines, it won't be false to state that valuation of one's web based business will be definitely influenced by the way that they've secured their IP or not. Many internet businesses are now able to boost their business valuation because of the availability of trademarks and patent portfolios. Copyrights, trademarks and licenses make up the greater part of the zone of law known as Intellectual Property. Every one of them joined, are endeavoring to orchestrate the impacts that web based business and the Internet have had on the person's capacity to access and utilize that data. As e-commerce grows, so do the legal issues that go along with it, such as cybercrime, surveillance, and domain name disputes, all of which will be the subject of this article.

## **2. International Institutions and Framework behind E-Commerce:**

More than a few international organizations, such as "UNCITRAL, the International Chamber of Commerce (ICC), the Asia-Pacific Economic Cooperation (APEC), the Organization for Economic Cooperation and Development (OECD), the World Trade Organization (WTO), have invested significant time and money to resolve legal issues and challenges in electronic business."<sup>1</sup>

### **2.1 “UNCITRAL Model Law on E-Commerce”**

UNCITRAL's concept for online/electronic insurance immediately became the most widely approved and frequently utilized model after it was launched in 1996.<sup>2</sup>

UNCITRAL Model Law on E-Commerce<sup>3</sup> was developed to offer national lawmaking bodies with a structure of international standards adequate to minimize legal snags and create an improved legal environment for online commerce. It's been argued that the Model Law may be used for electronic information trade such as email and electronic mail. If you're going to conduct business online, you're going to have to adhere to certain rules and regulations, such as those governing the transportation of goods.

The Model Law has increased critical universal acknowledgment (near eight countries including India). It doesn't particularly allude to contract law. Regulation of the equalization of electronic media in corporate transactions is handled by this legislation. If the electronic form factor is proportional to the traditional one, then the legislation should employ the same criterion. This regulation applies to all legislation that depends on Model Law. For the second time, the Model Law should be "neutral in attitude to innovation" (the term was picked because of the acknowledgment that innovation is continually creating). Information message, in contrast to more specialized terms like "electronic mail," indicates that it is broader in nature.

This Law addresses:

- Messages that are legally recognized as information
- In addition, there is the matter of writing and marking.
- Information communications' admissibility and weight in the court of law
- Retaining and archiving information
- Agreements' development and legality are also addressed in this section.
- Recognition via information message gatherings
- Information message attribution is the seventh step.
- Acceptance of (digital) delivery

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<sup>1</sup> The “Free Trade Agreement of the Americas, the “International Organisation for Standardisation” and the “International Telecommunications Union” are some other relevant bodies.

<sup>2</sup> General Assembly Resolution 51/162 of December, 1996, amended in 1998.

- When and where information messages<sup>3</sup> are sent and received

## **2.2 E-Commerce and WTO Implications:**

To address the issue of cross-border tax issues, the World Trade Organization (WTO) has been working since 1998.

It's understandable that many questions remain about this brand new mode of transport. The WTO has reacted to this new request as a matter of necessity.<sup>5</sup>

### **2.2.1 Proposition, Communications and Submissions to WTO:**

On electronic communications, the "United States of America," the primary WTO adjustment party, reduced tariffs. The worldwide network suggested that customs requirements be temporarily halted until it had addressed the legitimate consequences of placing such responsibilities on internet enterprises.<sup>6</sup> It was just a matter of time until Canada made the same suggestion. Furthermore, the Canadian proposal put the issue in context, suggesting that citizens need to become familiar with the challenges of international trade before deciding on a solution to them. The recognized issues are:

- Under what conditions should an electronic deliverable be viewed as a decent or benefit?
- To what degree is internet business secured by existing WTO exchange commitments?
- How should online business be tended to with regards to future exchange arrangements?

It was Canada's recommendation that members agree not to apply any new estimates that would have the impact of charging traditional taxes on electronic expectations. Such a duty stop on new measures would be without bias to measures as of now set up. It was likewise illuminated that the levy stop would apply just to expectations that are transmitted electronically. It would not make a difference to expectations requested electronically but rather conveyed non-electronically. On behalf of its members, the Ministerial Declaration on Global Electronic Commerce called for "the General Council to set up by its next gathering in unique session a far-reaching work program to examine all exchange-related issues related to worldwide web-based business." This was proposed in May 1998. The Members will likewise proceed with their current routine with regards to not forcing custom obligations on electronic transmissions."

As it was watched, a problem that needs to be addressed has been the inconvenience of taxes on web based business. Items ordered and paid for online but delivered in person will be subject to current WTO administrators' charges and customs regulations, much like exchange-traded products. As a result, the tax assessment of things that are transmitted as

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<sup>3</sup> *Model Law*, Articles 5 to 15.

<sup>4</sup> "Global Electronic Commerce," Proposal by The United States, WT/GC/W/78, February, 1998.

<sup>5</sup> "Tariff Standstill on E-Commerce," Proposal by Canada, WT/GC/W/82, April, 1998.

<sup>6</sup> WT/MIN(98)/DEC/2.

digital data via the internet is more complicated because of a variety of concerns relating to the proper plan administration. On Feb. 19, 1999, the United States made a concession on the Work Program with regard to online business starting.<sup>7</sup> It was argued that the clearest way to encourage a positive attitude toward internet business and its advantages was to permanently ban customs obligations on electronic communications. The Communication<sup>8</sup> from Australia echoed this sentiment, saying that extending tax administrations to electronic transmissions<sup>9</sup> would be extremely difficult to administer, and that the costs would outweigh the benefits. By the end of July 1999, Indonesia and Singapore had joined the temporary craze, followed by Japan.<sup>10</sup> the European Communities (as well as their Member States) then submitted their Communication<sup>11</sup> to the WTO, stating that all GATS arrangements (general, particular, and special cases Article XIV) should be made appropriate for electronic conveyances. It was additionally fought that the current routine with regards to not forcing custom obligations on electronic transmissions ought to be kept up.

### **2.3 State of E-Commerce in India:**

Web based business promulgates an idea, which covers any type of business exchanges/data trade executed, by utilizing data and correspondence innovation among organizations and also, open organizations. Online business is no different from dealing with customers in person, by mail, or by phone.<sup>12</sup>

The term "web based business" refers to any type of business that is conducted online. It comprises of intra/extranets, B2B (business to business), B2C (business to purchaser), internet publicizing or even simple online nearness (of any shape), utilized for any kind of correspondence. Web based business has expanded essentially because of its brisk and bother free method for trading merchandise and enterprises on a worldwide scale in the recent decades. Online retail in India grew by an astonishing 12 percent in 2010-11, demonstrating the country's potential as a market for online businesses of all kinds.<sup>13</sup> Organizations and customers are increasingly turning to the internet to buy and sell goods and services, taking advantage of wholesalers' discounts on retail prices. Internet commerce has now grown to be a massive and vital sector of the economy. Web-based company activities generated Rs.5.7 billion in revenue in India between 2004 and 2005, according to a study by the Internet and Online Association of India (IOAI).

When it comes to developing countries like India, e-business is just getting started, but a strong money economy, an expanding web client base, and a population with rapid/relentless growth in proficiency expansion, mechanical advancement, among other things, make the country an ideal location for e-business (low when compared to the UK or

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<sup>7</sup> WT/GC/16.

<sup>8</sup> WT/GC/25.

<sup>9</sup> WT/GC/W/247.

<sup>10</sup> WT/GC/W/253.

<sup>11</sup> WT/GC/W/306.

<sup>12</sup> Ashok Panigrahi, Ranjan Upadhyay, "E-Commerce Services in India: Prospects and Problems," *International Journal on Textile Engineering and Processes*, Vol.2, Issue 1, 2016.

<sup>13</sup> Bhavya Malhotra, "E-Business: Issues & Challenges in Indian Perspective," *Global Journal of Business Management and Information Technology*, Vol. 4, No. 1, 2014.

US markets). In the same way that low-cost PCs opened the door to web-based businesses,<sup>14</sup> ISP markets in countries like India have paved the way. One of the fastest-growing segments of the Indian economy is that of e-commerce. Travel, e-Tailing (online shopping), classifieds, and digital downloads have all seen a boom in popularity as a result of the urban web-savvy populace (still in its underlying stage). Indian Railways (IRCTC) is strictly controlled by the government, in contrast to commercial travel businesses like Makemytrip, Clear trip, and Yatra that operate on the internet. The classifieds are divided into three sections: Jobs, Matrimony, and Real Estate.

Indian e-business is growing at a rate of 70% annually, according to the Internet and Mobile Association of India, and it has increased by more than 500% since 2007.<sup>15</sup>

The protection of intellectual property rights on the internet is becoming increasingly crucial as e-commerce becomes a more sensitive platform because of the likelihood of counterfeit things being offered, remote access to anybody from anywhere, and trademark infringement. In the important case of Jasper Infotech Pvt Ltd v. Deepak Anand & Ors<sup>16</sup> In this case, the most serious problem was from Snapdeal, an online retailer, selling fake goods. One of the retailers, KAFF (maker of kitchen appliances) even issued a caution notice accusing Snapdeal of selling fake goods and tampering with prices, so that their customers would refrain from buying any of their products from e-commerce companies as they were not authorized dealers. Another important element was the fact that the corporation did not offer any kind of guarantee on its products, and any purchases or transactions made by customers were done at their own risk and expense. However, the Delhi High Court, put a stay on caution notice by means of an interim order.

### **3. Protectable Intellectual Property and Issues:**

As a result, the guarantee of licensed invention rights ('IP' or 'IPR') is a developing problem among significant e-corporations and enterprises. Though IPR rights are protected in the real world by law, Indian laws does not extend to online trading, despite the fact that IPRs are protected. A portion of the primary types of licensed innovation assurance that an online commercial activity would be aware of are as follows:

- Patents: ensuring (if permitted by law) usefulness of product, techniques on which those internet commercial activity is based. PC program patent security measures, which India now lacks, are becoming increasingly important as technology and society evolve.
- Copyrights: guarantee of the content, web-designs, merchandise, and substance delivered on those stages.

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<sup>14</sup> “*Protection issues and implications for research and education,*” Journal of Consumer Studies & Home Economics, Vol.24, No.2, June 2000.

<sup>15</sup> Harjot Kaur, Daljit Kaur, “*E-Commerce in India – Challenges and Prospects,*” International Journal of Engineering and Technique, 2015.

<sup>16</sup> CS (COMM) 729/2016; I.A. 18655/2014.

- Trademarks: ensuring words, slogans or logos that would lead a random person to relate it to some online corporation/company. Web-based businesses must protect both their own trademarks and those of other companies/brands that appear on their site.

### **3.1 IP Problems in E-Commerce Domain:**

#### ***3.1.1 Implied license and Fair Dealing:***

Virtual RAM (Random Access Memory) of the Computer is the place where the content of a website is stored/put away whenever one uses the internet. The VRAM might add up to multiplication and such unapproved propagation might be considered as an encroachment. The Copyright Act<sup>17</sup> permits the legitimate owner of PC projects to make duplicates or adjust the program with the end goal to utilize it for the proposed reason. It likewise enables the owner to make reinforcement duplicates simply as a brief security against misfortune, annihilation or harm. In this manner, the Copyright Act allows keeping a brief duplicate of the program in either RAM or VRAM. Websites may include copyright-protected information (other than computer software) that should only be retained or shown after an implicit permission has been obtained.

There is a clear line drawn by Section 52 of the Copyright Act between conduct that constitute infringement and those that do not. In this way, proliferation of the duplicate in RAM or VRAM might be asserted for individual utilize and might be regarded as reasonable managing. As an alternative, a person who creates and publishes such a website might provide for a proposed permit that everyone can access and use for linking or printing purposes. By means of usage/conduct or even the conditions, licenses can be implied, which is further propagated by Court decisions. In any event, it's still an open question whether downloading the material into the PC's permanent memory for subsequent use would be secured as appropriate management or under a proposed permit.

#### ***3.1.2 Parallel Imports:***

In accordance with the Copyright Act, a parallel import is prohibited. Only for domestic usage is there an exemption. The Copyright Act does not define "import" or "importer," but courts have understood the phrase to cover anything brought into India from outside India.<sup>18</sup> Its common for different distributors to be granted rights in different countries for the distribution of a book. A single ambitious distributor uploads the whole book on the web and provides full accessibility.

It's illegal for him to distribute the book in countries where he doesn't have the authorization to do so. The condition of the distributor in India is unfortunate as the Copyright Act somewhat allows each individual in India for downloading a single copy (might for local utilize). Regardless of whether the server is situated in a similar nation or not, the distributor can be held liable if he puts the book online, in a region where he has no rights.

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<sup>17</sup> Section 52(aa), The Copyright Act of 1957.

<sup>18</sup> *Birendra Bahadur Pandey v Gramophone Company of India Ltd* (AIR 1984 SC 667).

### ***3.1.3 Platform Scheming/ Where a Third Party is responsible for creating Content:***

The site/stage where the business is done is one of the most well-known examples of a circumstance that stands out. Regularly internet business organizations redistribute the activity of outlining such sites/stages or production of substance to outsider contractual workers. The issue here would be who might claim the IP in the plan and usefulness (programming hidden the site) of the site and in the substance. A portion of the vital focuses for thought in such conditions would be as per the following:

- A composed understanding that unmistakably illuminates the IP responsibility relating to territory/region, nature of right and terms.
- It's critical to look into the ownership and intellectual property rights of any third parties (only if outsider IP is utilized by the contractual workers).
- An organization which is involved in utilizing 'open source programming', must always be aware of the authorizing terms & conditions of programming.

### ***3.1.4 Website displaying Content used by Third Party:***

It is a general fact and understanding that to access all substance present on public domain, vital authorization or appropriate from the proprietors of such substance has to be taken. Substance could run from data to logos of outsiders. When an outsider asserts the IP (such trademark or copyright), the online corporation/company acquires the required endorsements. Thus giving connects to different sites is a worry that should be tended to also.

### ***3.1.5 Domain Names:***

A company or organization that intends to conduct business online will first need to obtain a domain name. "www.yahoo.com," "www.amazon.in," and other web addresses can be considered domain names. Technically, a domain name is the site's Internet Protocol asset's meaningful name.<sup>19</sup> Trademark law often governs their use. Similar but not identical domain names will not be accepted by the Registry of Domain Names if they are indistinguishable from one another. For example, "www.fcbk.com," "www.fb." or "www.goooooogle.com" can/might/are registered by a third party/outsider sometimes misleadingly comparing domain names. The content shown or hosted on any of the aforementioned websites may lead a casual visitor to believe that Facebook or Google supports it. In some situations, trademark law can help. In order to avoid the possibility of a cyber squat, the corporation or organization should exercise caution while selecting a domain name for registration.

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<sup>19</sup> V.K.Unni, "Trade Marks & Emerging Concepts of Cyber Property Rights," (1st ed.) Eastern Law House, 2002.



There are many noteworthy cases in the Indian legal scenario like *Rediff Communication v. Cyber booth & Anr*<sup>20</sup> and *Yahoo Inc. v. Aakash Arora & Anr*<sup>21</sup>, where because of usage of conflicting domain names, injunction have been granted. One shouldn't forget the purpose of trademark and a domain name, which is basically the same. In *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.*<sup>22</sup>, the Hon'ble Supreme Court decided that "a domain name may connect to the arrangement of administrations within the meaning of section 2(z) of the Trade Marks Act, 1999."

### **3.1.6 RMI or Rights Management Information:**

Any data which distinguishes work or its creator or proprietor of some privilege based on that work or some numbers/codes which speak/correlates to such data is called RMI. It enables the copyright proprietor to follow a copy/duplicate and to evaluate whether the copy is an infringing one or not. The WIPO Treaty mandates signatory members to take precautions against the alteration of any/all electronic RMI. India's copyright law mandates that the copyright holder and his or her work must be shown when a cinematographic film or solid chronicle is being circulated.<sup>23</sup> although on electronic rights, the laws remain quiet.

### **3.1.7 Hyperlinking, Framing and Meta Tagging:**

An essential thought for web based business organizations is their capacity to showcase their business and their capacity to always adjust to and utilize innovation to fill that need. In quest for accomplishing such advertising objectives, web based business organizations here and there need to manage meta-tagging<sup>24</sup>, hyperlinking, deep linking,<sup>25</sup> and framing<sup>26</sup> issues and it is critical that the lawful ramifications of the same needs to be understood in a concise manner.

Example: If a Company X's site links to another Company Y's site without permission, or if Company X's site has meta-tags that are similar to Company Y's trademarks, then the Company X is subject to be sued for violating Company Y's intellectual property. There are new concerns about unfair competition as well as infringement of intellectual property rights. Hyperlinking (especially the more profound ones) and Meta-tagging are both regarded to be copyright and trademark infringement by Courts in several countries, examples of which include:

- The US case laws of *Batesville Serv. Inc. v. Memorial service Depot Inc.*<sup>27</sup> and

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<sup>20</sup> 1999 PTC (19) 201.

<sup>21</sup> AIR 2000 Bom 27.

<sup>22</sup> AIR 2004 SC 3540.

<sup>23</sup> Section 52(A), The Copyright Act of 1957.

<sup>24</sup> Codes (example: HTML) which describe the contents of a web page without appearing on the same.

<sup>25</sup> Deep linking links to a specific interior page/paragraph inside a website surpassing the homepage whereas Hyperlink is the reference to a webpage/document present on Internet.

<sup>26</sup> The juxtaposition of two separate web pages (within the same page).

<sup>27</sup> DFH-TA. WL 2750253 (2004).

*Ticketmaster v. Tickets.com*<sup>28</sup> establishes copyright encroachment.

- In judgments of *Institution Technologies Inc. v. National Enviro-tech Group L.L.C*<sup>29</sup> and *Playboy Enterprises Inc. v. Calvin Designer Lab*<sup>30</sup>, trademark infringement was established. A similar judicial view was upheld in notable cases of *Reed Executive plc and v Reed Business Information and ors*<sup>31</sup> and *Road tech Computer Systems v Mandata Ltd*<sup>32</sup>.

However, these problems are not addressed in detail when it comes to the Indian courts and legal scenario.

#### 4. Upholding Ip - Liability for Infringement of Ip:

With the end goal to assess the requirement for not encroaching on an outsider's IP as well as for ensuring one's IP, the degree of risk for infringement of an IP must be assessed first. IP infringement can be difficult to prevent when the protected/secured IP works are dispersed over the internet, making it difficult to identify the offender and the copyright holder. In certain cases, the infringing substance or subject is only present at a specific domain or location for a short length of time before reappearing elsewhere.<sup>33</sup> IP security rules become regional in scope when it comes to evaluating the possible danger or responsibility (as determined by common law) that may arise when an IP is violated, which is an important factor for identifying what we might call 'jurisdiction'.

Now, what adds up or builds the way towards infringement of a particular IP, shifts for the type it is based on. Coming to the Courts, in deciding whether an infringement of trademark or copyright or combination of both have taken, a lot of factors are taken in to consideration. Probably the most well-known types of risks associated with infringement in India are as follows:

- Short term/Temporary or Permanent Injunction, where the infringing actions of the concerned wrongdoer are restricted via the orders of a Court.
- Payment of damages (determined to the extent or degree of lost profits or goodwill/reputation because of infringing tasks of the wrongdoer).
- Accounts of profits are being requested for.
- Request where the infringing articles are seized and destroyed subsequently.

In addition to the well-known civil remedies, some IP laws include strict provisions that impose criminal liability for violations of penalties and offenses, such as a three-year prison

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<sup>28</sup> C.D. Cal 97-3055 RAP (1997).

<sup>29</sup> C.A. 97-2064 (E.D. La.).

<sup>30</sup> U.S. Dist. Lexis 14345 (1997).

<sup>31</sup> EWCA Civ 159 (2004).

<sup>32</sup> ETMR 970 (2000).

<sup>33</sup> After subsequent posting, web page creators or sometimes Hosts, tends to delete files in a matter of days or hours.

sentence for filing a trademark application that is false in nature,<sup>34</sup> infringing a copyright<sup>35</sup> with prior knowledge, and filing a geographical indication<sup>36</sup> application that is false in nature.

#### **4.1 Universal Frameworks relating to Protection of IP in E-Commerce:**

Tripoli and the Berne Convention on Literary and Artistic Works have laid the foundation for the evolution of copyright law across the world during the industrialization era, continuing to now. The "World Intellectual Property Organization (WIPO)" has been in charge of overseeing global copyright instruments and aspects since 1974. This organization's goal (as outlined in the agenda that led to its formation) is to ensure global advancement in the assurance/insurance of licensed innovation by collaboration among states and, when appropriate, as a team with other universal organizations. The World Intellectual Property Organization (WIPO) now manages six copyright treaties and has 180 member nations. As stated in its mission statement, the organization attempts to "homogenize national intellectual property laws with an eventual view toward the formation of a uniform and coherent body of worldwide international law."<sup>37</sup>

##### **4.1.1 The Berne Convention:**

There has been a worldwide effort since 1886 to organize copyright law in accordance with the Berne Convention, as previously mentioned. Each member country must treat each other's copyrighted works the same as they treat their own, according to the Convention.

As part of the treaty, "jurisdiction" was discussed, and the "International Court of Justice" (also known as the "Hague Court" in conflicts between member nations) was designated as the court to handle any issues. As a matter of choice, treaty signatories might opt in or out of accepting this specific area of legal authority.

##### **4.1.2 The TRIPS Agreement:**

In addition to WIPO, "GATT" has made a significant contribution to international copyright law and concerns. TRIPS was developed in 1994 as part of the "Uruguay Round of GATT," generally known as the Agreement on Trade-Related Intellectual Property Rights (TRIPS). The "World Trade Organization (WTO)" was established as a result of the Uruguay Round of Negotiations. The "Paris, Bern, and Rome Conventions" are part of the accord and spell forth standards for commercial innovation laws.

- According to the Berne Convention (1971) and its Appendix, which are inseparably linked to member nations, "Article 9.1 of the Trade Agreement on Intellectual Property

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<sup>34</sup> The Trademark Act, 1999, Section 103.

<sup>35</sup> The Copyright Act, 1957, Section 63.

<sup>36</sup> The Geographical Indication of Goods Act, 1999, Section 39.

<sup>37</sup> "Study on Intellectual Property Rights, the Internet and Copyright", available on [www.iprcommission.org/papers/pdfs/study.../sp5\\_story\\_study.pdf](http://www.iprcommission.org/papers/pdfs/study.../sp5_story_study.pdf).

(TRIPS). Although Article 6bis of the Convention grants some rights, this Agreement does not apply to them."<sup>38</sup>

- Article 10.1 of the Bern Convention states that "Computer programs, whether in source code or object code, should be protected as literary works."<sup>39</sup>
- Art. 10.2 also states that<sup>40</sup>, "Compilation of data and material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual inventions should be protected as such."

#### **4.1.3 "World Intellectual Property Organization (WIPO)":**

The Executive Committee, the Global Bureau of Bern, and the Assembly of the Paris Union all served as launching pads for what would eventually become the World Intellectual Property Organization (WIPO), an agency of the "United Nations (UN)." Involvement in licensed innovation rights organization, legislative participation promotion, and specific program activities are just a few examples. In order to preserve and enforce intellectual property rights, WIPO encourages legislative cooperation, develops particular programs and recently questionable objectives offices. With evolvement of new technology<sup>41</sup>, it was found necessary by the member countries to deal with the emerging copyright issues on a global scale and hence, form a treaty.

#### **4.1.4 WIPO Copyright Treaty of 1996:**

The Diplomatic Conference in Geneva adopted this treaty on December 20, 1996. Together with "Article 2 of the Bern Convention," this agreement offers a unique perspective. Internet and cutting-edge technology are synonymous with it. Unlike the "Bern Convention," which only allows for a limited range of rights for artists, the WIPO copyright agreement grants many greater rights to creators.

- Computer programs are protected by "treaty provisions" in Article 4 because of the significance of Article 2. Computer programs are protected by law, regardless of how they are constructed.<sup>42</sup>
- As additionally expressed by Article 5 that "assemblages of information or other material, in any frame, which by reason by the determination or course of action of their substance establish scholarly manifestations, are secured all things considered. As long as the information or content contained in the gathering doesn't fall under copyright protection, this security isn't affected. When compared to the TRIPS Agreement, which only protects object code or source code, the WIPO Copyright Convention typically

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<sup>38</sup> "WTO Analytical Index, TRIPS Agreement", pg. 1, available at [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/trips\\_art9\\_jur.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/trips_art9_jur.pdf).

<sup>39</sup> "Copyright in Digital Era", pg. 17, available at [http://www.rmlnlu.ac.in/webj/alok\\_kumar\\_yadav.pdf?cv=1](http://www.rmlnlu.ac.in/webj/alok_kumar_yadav.pdf?cv=1).

<sup>40</sup> Id.

<sup>41</sup> Jain, Pankaj & Rai. Pandey Sangeet, "Copyright & Trademark Laws relating to Computers", pg. 85, 2005.

<sup>42</sup> Ibid, at pg 86.

protects all forms of computer programs.<sup>43</sup> As a result, the "WIPO Copyright Treaty" coincides with the TRIPS Agreement, aside from a few minor tweaks.<sup>44</sup>

#### **4.1.5 The DMCA or "Digital Millennium Copyright Act":**

Digital Millennium Copyright Act (DMCA) enacted into law in October 1998 brought the United States' copyright law into the digital era.<sup>45</sup>

The DMCA:

observes/orders the tasks like allowing the splitting of copyright insurance gadgets to pursue encryption, test PC security frameworks, evaluate item interoperability, (for non-benefit libraries and files) giving exclusions from against circumvention arrangements & instructive foundations in certain situations and estimating incorporated profit with copyrighted material, as crimes.

- Restricting/banning the appropriation of code breaking gadgets used for illegally duplicate programming and also its manufacture or sale;
- Shields Internet specialist co-ops from copyright encroachment obligation for basically limiting the risk of educational/non-benefit establishments, when they serve as online specialist organizations (or ISPs). Employees and graduate students may infringe intellectual property rights while engaging in cooperatives meant to eliminate information or subject matter from their frameworks that may be considered as constituting or adding up to acts of intellectual property infringement (IPR). and
- Guarantees that "web casters" pay their license costs to record labels.<sup>46</sup>

#### **4.1.6 Commonwealth Countries (like Australia and New Zealand):**

Trademarks are protected under the Trademarks Act, 1995 (Cth)<sup>47</sup>. A trade-mark application can be lodged in any number of classes as long as the goods or services for which it is intended to be used are in use (in Australia itself, there are 42 classes for registration of a trademark). A sign can comprise any or all of the following: a shape, name, letter, signature, word, number, device, label, brand, ticket, header, shape, aroma, color, sound, or package appearance.<sup>48</sup> In addition to framing, domain names, hyperlinks, metatags and cybersquatting are all examples of how trademark rights are being misused (commercial or personal). Section 120 of the Act mandates that alleged offenses be made public. The Patents Act 1990 of Australia has recently been amended to include protection for business

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<sup>43</sup> Ibid.

<sup>44</sup> Id.

<sup>45</sup> "Copyright and the Internet - Global Internet Policy Initiative", available at <http://www.internetpolicy.net/practices/20041200copyright.pdf>.

<sup>46</sup> "The Digital Millennium Copyright Act – Overview", available at <http://www.gseis.ucla.edu/iclp/dmca1.htm>.

<sup>47</sup> For the New Zealand equivalent, see the Trade Marks Act 2002 (NZ).

<sup>48</sup> Section 6 of the Trade Marks Act (Cth) 1995.

processes and other technologies (Cth).<sup>49</sup> According to Section 18, a patentable invention must be original, not in use prior to the priority date of the patent claim, and have some practical use. This is a requirement for patentability.

## **4.2 E-Commerce security in Indian Scenario:**

There is a tremendous expansion of the Internet infrastructure in India nowadays. In addition, the web has been shown to have a number of issues. Be that as it may, the pivotal problem concerning Internet is insurance of protected innovation creation/ideas/works of the creator/author. With reference to Section 13 and also section 63 of the Indian Copyright Act of 1957, pictures, artistic works, sound accounts & other imaginative works are shielded from getting replicated if the permission/consent of the holder of copyright isn't taken. As the same erroneous or duplicated material appears on the Internet, it becomes difficult to comprehend how the copyright law will handle the given situation.<sup>50</sup> The Copyright Act of 1957 doesn't manage any kind of obligation of ISPs (Internet Service Providers) by any stretch of the imagination. For a long time, India's position on copyright infringement by foreign material was not well understood. The (Amendment) Act, 2008 will specify the degree of middle-class invulnerability. Prior to the new IT Act, only certain invulnerabilities could be accessed, but now these invulnerabilities can be accessible at any time and in any situation. As long as the ISP has no knowledge of the breach or has taken "due care" to prevent unauthorized access, it is free from liability for any external data or information given by the ISP. An intermediary is no longer at danger of his own use being made of third-party communications, data, and information. To provide Internet service providers (ISPs) more freedom and flexibility, Section 79 of the Communications Act of 1934 was changed.<sup>51</sup>

### **4.2.1 Data-based Copyright:**

As academic works, databases in India are protected under copyright law. To be enlisted in the US, the author must be imaginative when it comes to selecting and masterminding the material, and those that merely offer the information as facts are permitted to do so. Databases in the UK that seek innovative information or need just moderate levels of ability and labor gain are granted unreasonable protection for only 15 years in the UK. Copyright protection is granted for the life of the author, as well as an additional 70 years, provided the material is created with full/pure innovation. Information accumulation (which itself is not protectable) could become subject of assurance which serves as the vital choice coordination & game plan, ending up consolidating it with the correlation, deliberation and filtration and test.<sup>52</sup> Through web crafted by creators can be shown in various purviews and

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<sup>49</sup> For the New Zealand equivalent, see the Patents Act 1953 (NZ).

<sup>50</sup> "Copyright software & internet", available at [nopr.niscair.res.in/bitstream/1/JIPR%2013\(1\)%20\(2008\)%2035-42.pdf](http://nopr.niscair.res.in/bitstream/1/JIPR%2013(1)%20(2008)%2035-42.pdf).

<sup>51</sup> "Fair Use in the Digital Era", available at [webworld.unesco.org/infoethics2000/documents/paper\\_correa.rtf](http://webworld.unesco.org/infoethics2000/documents/paper_correa.rtf).

<sup>52</sup> "Copyright Infringement In Cyberspace And Network Security: A Threat To E-commerce", available at [www.legalserviceindia.com/.../1462-Copyright-Infringement-in-Cyberspace-&-NetworkSecurity.html](http://www.legalserviceindia.com/.../1462-Copyright-Infringement-in-Cyberspace-&-NetworkSecurity.html).

which is extremely hard to identify. Thus, over the Internet, the presentation rights, can be effectively disregarded. According to Section 43 of the Indian Penal Code, people who get, reproduce, or maintain data from a PC, framework, or arrangement unlawfully face a fine of up to one crore rupees. When used in relation to databases, it is referred to be a "coded representation of facts, learning, knowledge, concepts, or guidelines." When it comes to data kept on computer networks, databases function as a visual representation, auditory, or even visual representation of that data.<sup>53</sup> This component has not yet been put to the test on the Internet in terms of protecting data or databases. As a party to the TRIPS Agreement and the Berne Convention, India recognizes the importance of creativity and innovation in protecting copyright. According to Section 2(o) of the Copyright Act, a computer database is protected by copyright law.<sup>54</sup> The Copyright Act states, "Copyright shall exist in original works of literature.

## **5. Judicial Pronouncements in Relation To Infringement of IP:**

### **5.1 International cases:**

- a. Framing was employed in the case of *Total News v Washington Post Co.*<sup>56</sup> to show the material of other news websites including Reuters, CNN, Dow Jones and Times Mirror.<sup>55</sup> On conditions that allowed the defendant to continue connecting to the plaintiff's website, but prohibited them from employing the framing technique, the matter was settled.
- b. In *Play Boy Enter Inc. v Frena*,<sup>56</sup> respondent's supporters downloaded unapproved photos of playboy 'endeavours' or activities on a public notice board framework. An American court concluded that respondent's clients infringed on the injured party's right of selective conveyance. Notice board administrators must keep a look out for efforts by their users to publish or download unauthorized content in order to safeguard their customers' intellectual property.
- c. Framing can be used as a foundation for a claim of intellectual property infringement, as demonstrated by the Supreme Court's decision in *Futuredontics Inc. v Applied Anagramatics Inc.*<sup>57</sup>
- d. The difference in theories of Copyright was elucidated upon in the judgment of *Feist publication v Rural Telephone Service Co. Inc.*,<sup>58</sup>. To ensure or to be considered valid for copyright protection, 'sweat of the brow' principle has to be brought in accordance with the principle of 'minimal degree of creativity.
- e. The decision of the Federal Court in the removal of meta-tags including the name of the defendant on plaintiff's website and cancellation of certain domain names, on grounds of trademark violation was noteworthy in the case of *Yoga Malik Pty Limited v Kailash*

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<sup>53</sup> Explanation (ii) of Section 43 of the Information Technology Act, 2000.

<sup>54</sup> *Databases & its implications*", available at <http://www.unc.edu/courses/2006spring/law/357c/001/projects/dougf/node1.html>.

<sup>55</sup> 97 Civ 1190 (NY 1997).

<sup>56</sup> 839 F. Supp. 1552 (Fla 1993).

<sup>57</sup> CV 97-6991, 1998 US Dist. Lexis 2265 (9<sup>th</sup> Cir 1998).

<sup>58</sup> 737 F.Supp. 610, 622 (Kan. 1990).

*Centre for Personal Development Inc.*<sup>59</sup>

- f. In the case of *Netcom v. Religious Technology*,<sup>60</sup> the US District Court ruled that the temporary duplication involved with perusing is what could as well be called perusing and does not violate the copyright rules. Perusing isn't a violation and may be viewed as reasonable management, hence one must get to this conclusion.
- g. As long as other essential conditions are satisfied, the Court concluded that "methods of conducting business" can be patentable and legitimate in the ruling of *Signature Financial Group Inc. v State Street Bank and Trust Co.*<sup>61</sup>. This includes "e-commerce, Internet technology and banking."
- h. Images uploaded on the Internet were retrieved using Internet search engines in *Kelly v. Arriba Soft*.<sup>62</sup> There is no indication that the respondent contacted the copyright proprietors of the photos on the list of litigants to get their permission to use them. Copyright infringement and Digital Millennium Copyright Act (DMCA) violation were two of the claims made in the cases (forbiddance on the evacuation of copyright administration data). There was no way to expand or view a larger thumbnail image of the offended party on the litigants' web crawler's thumbnail images list. In the opinion of the court, it was more dangerous to display a big version of the image without directing the user to the website of the offended party. As a result, the court decided that the litigant's file did not negotiate for either the worth of the injured party's labor or the market for it.<sup>63</sup>
- i. In *Merrill Lynch's Application*,<sup>64</sup> the UK Court of Appeal ruled that a "computerized trading system (meant for equities and shares)" might be patented. Further it went on to confirm those inventions are still allowed to be patented whose non-obviousness and novelty reside in computer programs (non-patentable subject matter).

## **5.2 Indian Cases:**

- a. *Bixee.com v Naukri.com*: The Delhi High Court secured a preliminary injunction prohibiting "deep-linking" on Naukri.com's website. Naukri.com has incurred huge revenue losses as a result of users/readers being diverted away from adverts, which led to an early finding.
- b. *Satyam Infoway Limited v Sifynet Solutions (P) Limited*:<sup>65</sup> the word 'sify', which was a coined term, which the appellants, by using elements of its corporate name, Satyam Infoway, end up inventing. The respondents, under the domain names 'www.siffynet.com', started carrying business of internet marketing. No evidence had been presented to support an adverse finding by either City Civil Court or High Court that the appellants had been lying or misleading their customers in any other way.
- c. *The Google & T-Series Case*:<sup>66</sup> T-Series, a music company, brought forth a body of

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<sup>59</sup> [2003] FCA 536.

<sup>60</sup> 907 F. Supp. 1361 (Cal. 1995).

<sup>61</sup> 47 USPQ 2d (Fed Cir 1998).

<sup>62</sup> (280 F.3d 934 (CA9 2002).

<sup>63</sup> "Copyright Use and Excuse on the Internet", available on [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=239747](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=239747).

<sup>64</sup> [1989] RPC 561.

<sup>65</sup> (2004) 6 SCC 145.

<sup>66</sup> CS (OS) 2192/2007.



evidence against YouTube and also its parent organization i.e. Google Inc., in 2007, for acquiring benefits to the detriment of its legitimate copyright proprietor, where the supporters/user base were enabled to transfer copyrighted material of T-Series without getting a permit/authorization from company itself. Users of the video-sharing site 'www.youtube.com' posted some T-Series copyrighted content. To be on the safe side, T-Series should have taken action against the individual who made the post. As a result, "section 51" of the Indian Copyright Act was invoked to define this as a crime. When it comes to abetment of invaders, protest section 63 encompasses that. Because of this, T-Series and SCIL, the parent company of T-Series, have launched a lawsuit against YouTube and Google Inc. Any media works in which SCIL possesses valid, subsisting, and genuine copyright have been prohibited from being made, altered, distributed, or shown on YouTube for a limited period of time. Rather than obtaining permission from SCIL (the parent company that reaped benefits from selling these copyrighted works/tunes on the market as CDs and DVDs), YouTube and Google decided in favor of T-Series because they were able to profit financially by making their copyrighted works, which included advertisements, freely accessible (without consent or expense). *Cyber booth*:<sup>67</sup>: *Rediff Communication Ltd.* An Indian court has ruled that internet domain names are valuable commercial assets. Passing off should be avoided at all costs when it comes to domain names, which are more than just "internet addresses".

- d. *Titan Industries Ltd. v Prashant Koapati*:<sup>68</sup> Here, the Plaintiff's trademark application of 'tanishq' in India, which was still pending, as of the date of the hearing in 1998, yet had extensive tradename use of the same. Thus, relief was granted based on the passing-off doctrine in the nature of trademark infringement.
- e. *Sumit v Himalayan Drug Company*:<sup>69</sup> An Indian organization which carried on business of assembling and showcasing home grown restorative items, happened to accumulate a 'natural database', which in turn, was posted on the company's site. An infringer (from Italy) wrongfully copied/duplicated the database and also, posted its equivalent on a site facilitated by a US server. Using the "Indian Copyright Act," an Indian Organization database that was "naturally/homegrown" was sued by the organization's "US server/ISP" for Italian infringement since the database was "scholarly and distinctive." When a database is illegally copied, it infringes the individual's right to interact with the public. The Delhi High Court granted an ex parte order barring the defendant from plagiarizing the work of the plaintiff. An Indian party contacted a US-based Internet Service Provider (ISP) in accordance with India's "Digital Millennium Copyright Act" (DMCA), requesting that the ISP limit access to/cripple an invading site in return for certain terms and conditions. This was only after the US Internet Service Provider (ISP) issued a notice about the reprovved website.
- f. *Yahoo Inc. v Akash Arora & Anr*:<sup>70</sup> Here, the defendants who were attempting to use the domain name "www.yahooindia.com" (for internet related services), were granted a permanent injunction in reply to the Yahoo! Inc.'s petition, who were seeking injunctive relief, by the Delhi High Court.

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<sup>67</sup> AIR 2000 Bom 27.

<sup>68</sup> IA no. 787 of 1998 (Del).

<sup>69</sup> [2006 PTC 112 (Del)].

<sup>70</sup> 1999 PTC (19) 210 (Del).

**Conclusion:**

As E-Commerce is an industry which is developing at a quick rate. Also, there can be different occurrences where creation and development of somebody can be open without giving the individual enough credit, work and cash isn't given to the designer. So for this reason Intellectual Property assumes an exceptionally fundamental job. It offers assurance to all the substance which is accessible over the web. There are a few E-Commerce organizations which are performed between the representative or organization and customers though to make these exchanges more secure, protected innovation assumes imperative job.

New ways of conducting business and new ideas have fueled the fast growth and development of Internet business systems and related sectors, but they have also brought to light problems with current national norms and laws. Every major urban/rural or even mobile location today has access to it, thanks to the internet's rapid growth and development since its creation as another marvel of the technological boom. Due to the rapid growth of internet usage and the accompanying services, it is necessary to create a formal system for punishing and enforcing new limitations. Intellectual property difficulties in commercial operations conducted online have taken a new turn as customers learn how to deceive other customers and effectively copy information. Managing the web's tangles may be accomplished in a variety of ways, some of which are more effective and more rigorous than others. It is important for internet enterprises to have an "all-out" thorough working of legal administration, as well as a grasp of the issues an online portal/business would face and proper checking and regulatory procedures, in order to succeed today in the modern technological era.