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Review Article

Indian Perspective Overview of Intellectual Property Rights and Domain Protection Issues

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Abstract

IPR is an acronym that hardly needs to be expanded nowadays. Everyone, who matters in scientific circles, is talking about intellectual property rights and the importance of protecting scientific discoveries, with commercial potential, in a tight maze of patents. These rights are awarded by the State and are monopoly rights implying that no one can use these rights without the consent of the right holder. It is important to know that these rights have to be renewed from time to time for keeping them in force except in case of copyright and trade secrets. In India, Software Patent Law is undefined and has not caught up with the rapid pace of technological change. Being a new territory, Indian law-enforcing authorities need to address many gray areas and because of absence of concrete laws for protection of personal information over the Net, it seems essential to formulate the scope of an individual's "information rights," that is, the rights that individuals in India should possess regarding their personal information over the Net that is scattered about in various databases. This paper is an attempt to analyze the Intellectual Property Rights (IPR), primarily Copyrights and Patents in India and further it analyzes the protection available to domain name holders under the laws of India.

Keywords: IPR, Copyrights, Patents, Domain Name, Trademark law, DNS

Introduction

Intellectual property (IP) is a term referring to a number of distinct types of creations of the mind for which property rights are recognized—and the corresponding fields of law. Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs. Common types of intellectual property include copyrights, trademarks, patents, industrial design rights and trade secrets in some jurisdictions. IPR are largely territorial rights except copyright, which is global in nature in the sense that it is immediately available in all the members of the Berne Convention [1]. These rights are awarded by the State and are monopoly rights implying that no one can use these rights without the consent of the right holder. It is important to know that these rights have to be renewed from time to time for keeping them in force except in case of copyright and trade secrets. IPR have fixed term except trademark and geographical indications, which can have indefinite life provided these are renewed after a stipulated time specified in the law by paying official fees. Trade secrets also have an infinite life but they don't have to be renewed. IPR can be assigned, gifted, sold and licensed like any other property. Unlike other moveable and immoveable properties, these rights can be simultaneously held in many countries at the same time. IPR can be held only by legal entities i.e., who have the right to sell and purchase property. In other words an institution, which is not autonomous may not in a position to own an intellectual property. These rights especially, patents, copyrights, industrial designs, IC layout design and trade secrets are associated with something new or original and therefore, what is known in public domain cannot be protected through the rights mentioned above. Improvements and modifications made over known things can be protected. It would however, be possible to utilize geographical indications for protecting some agriculture and traditional products.

Literature Review

Copyright law entered India in 1847 through an enactment during the East India Company's regime. According to the 1847 enactment, the term of copyright was for the lifetime of the author plus seven years post-mortem. But in no case could the total term of copyright exceed a period of forty-two years [2]. The government could grant a compulsory license to publish a book if the owner of copyright, upon the death of the author, refused to allow its publication. The act of infringement comprised in a person's unauthorized printing of a copyright work for (or as a part of attempt of) "sale hire, or exportation", or "for selling, publishing or exposing to sale or hire". In 1914, the then Indian legislature enacted a new Copyright Act which merely extended most portions of the United Kingdom Copyright Act of 1911 to India. The 1914 Act was continued with minor adaptations and modifications till the 1957 Act was brought into force on 24 January 1958 – very shortly after the attainment of independence. The Indian Copyright Act 1957 ("the 1957 Act") repealed the Indian Copyright Act 1914 ("the 1914 Act") which had virtually incorporated the whole of the Imperial Copyright Act 1911. The revision of the 1914 Act occurred within a mere seven years of independence [4].

Intellectual Property Rights over Internet

After the advent of Internet most of the corporate Intellectual Property are held in the digital form as it provides affordable access of all the IPR resources to the public at large. However, internet has also made infringement of IPR, in particular copying of Copyright material easy and simple internet is being termed as the world's biggest copying machine. India has specific legislations to deal with various kinds of IPR infringement however these legislations are not equipped to deal with some of the modern day copyright violations. The Copyright Act, 1957 prohibits reproduction of the copyrighted work in any material form including the storing of it in any medium by electronic means, by any unauthorized person but is incapacitated to deal with illegal duplication, importation,

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distribution and sale of pirated music as it becomes difficult to trace the location of information [3].

In this scenario, where sharing of information among people has become the major function of the internet, the peer-to-peer file sharing services provided by various websites, linking, deep linking, framing and other innovations which have changed the way people share information over the world wide web, have given rise to a legal controversy. While the users downloading music, software, computer games and other copyrighted material are held liable for direct copyright infringement, the service providers go scot free as the existing Copyright Act has no provision for making a service provider liable in such a situation. The rapid dissemination of data over the Internet means that one has to spend a lifetime and fortune tracking down copies of the work that infringes those rights, identifying the infringer and litigating in each concern jurisdiction.

The protection to computer software is derived out of two Acts, the Indian Copyright Act, 1957 and the IT Act, 2000. While the Copyright Act grants protection to the computer program as it is granted to other forms of copyrighted work, the technological and complex nature of the computer programs calls for technically effective protection.

The Indian Copyright Act, 1957 accords a special status to computer software as compared to other forms of copyrighted work [6]. The Copyright Act regards the computer programs as literary works and in addition to the general exclusive rights provided to other literary works, it grants extraordinary exclusive rights to the owners of the computer programs like right to sell or offer for sale, and the right to give on commercial rental or offer for commercial rental. The Act has also exempted computer programs from 'fair dealing exception' (i.e. private use for research, criticism or review of that work or any other work) which is available in case of other copyright works. The IT Act, 2000 provides for punishment for tampering with the 'source code' of a computer program but this protection applies to computer source codes 'which are required to be kept or maintained by law for the time being in force'. Hence, the protection accorded by the IT Act is only for 'source code' of computer programs of government agencies and the 'source code' of computer programs of private users still stand unprotected.

Copyrights

Copyright is a right, which is available for creating an original literary or dramatic or musical or artistic work. Cinematographic films including sound track and video films and recordings on discs, tapes, perforated roll or other devices are covered by copyrights. Computer programs and software are covered under literary works and are protected in India under copyrights. The Copyright Act, 1957 as amended in 1983, 1984, 1992, 1994 and 1999 governs the copyright protection in India [5]. The total term of protection for literary work is the author's life plus sixty years. For cinematographic films, records, photographs, posthumous publications, anonymous publication, works of government and international agencies the term is 60 years from the beginning of the calendar year following the year in which the work was published. For broadcasting, the term is 25 years from the beginning of the calendar year following the year in which the broadcast was made. Copyright gives protection for the expression of an idea and not for the idea itself. For example, many authors write textbooks on physics covering various aspects like mechanics, heat, optics etc. Even though these topics are covered in several books by different authors, each author will have a copyright on the book written by him / her, provided the book is not a copy of some other book published earlier. India is a member of the Berne Convention, an international treaty on copyright. Under this convention, registration of copyright is not an essential requirement for protecting the right. It would, therefore, mean that the copyright on a work created in India would be automatically and simultaneously protected through copyright in all the member countries of the Berne Convention. The moment an original work is created, the creator starts enjoying the copyright. However, an undisputable record of the date on which a work was created must be kept. When a work is published with the authority of the copyright owner, a notice of copyright may be placed on publicly distributed copies. The use of copyright notice is optional for the protection of literary and artistic works. It is, however, a good idea to incorporate a copyright notice. As violation of copyright is a cognizable offence, the matter can be reported to a police station. It is advised that registration of copyright in India would help in establishing the ownership of the work. The registration can be done at the Office of the Registrar of Copyrights in New Delhi. It is also to be noted that the work is open for public inspection once the copyright is registered. Computer program in the Copyright Act has been defined as a set of instructions expressed in words, codes, schemes or any other form, including a machine-readable medium, capable of causing a computer to perform a particular task or achieve a particular result. It is obvious that algorithms, source codes and object codes are covered in this definition. It is advisable to file a small extract of the computer program at the time of registration rather than the full program. It is important to know that the part of the program that is not being filed could remain a trade secret of the owner but would have to be kept well guarded by the owner. It may be noted that computer programs will become important in the area of medicines when one talks about codification of DNA and gene sequencing. Generally, all copyrightable expressions embodied in a computer program, including screen displays, are protectable. However, unlike a computer program, which is a literary work, screen display is considered an artistic work and therefore cannot be registered through the same application as that covering the computer program. A separate application giving graphical representation of all copyrightable elements of the screen display is essential. In the digital era, copyright is assuming a new importance as many works transacted through networks such as databases, multi media work, music, information etc. are presently the subject matter of copyright.

Coverage provided by copyright

(i) Literary, dramatic and musical work. Computer programs/software is covered within the definition of literary work.

(ii) Artistic work

(iii) Cinematographic films, which include sound track and video films.

(iv) Recording on any disc, tape, perforated roll or other device.

Infringement of copyright

Copyright gives the creator of the work the right to reproduce the work, make copies, translate, adapt, sell or give on hire and communicate the work to public. Any of these activities done without the consent of the author or his assignee is considered infringement of the copyright [7]. There is a provision of 'fair use' in the law, which allows copyrighted work to be used for teaching and research and development. In other words making

one photocopy of a book for teaching students may not be considered an infringement, but making many photocopies for commercial purposes would be considered an infringement. There is one associated right with copyright, which is known as the 'moral right', which cannot be transferred and is not limited by the term. This right is enjoyed by the creator for avoiding obscene representation of his /her works. Following acts are considered infringement of copyrights:-

(a) In the case of literary, dramatic or musical work, not being a computer program----

(i) To reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) To issue copies of the work to the public not being copies already in circulation;

(iii) To perform the work in public, or communicate it to the public;

(iv) To make any cinematography film or sound recording in respect of the work;

(v) To make any translation of the work; to make any adaptation of the work;

(vi) To do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in Sub-clauses (i) to (vi);

(b) In the case of computer program -

(i) To do any acts specified in clauses (a);

(ii) To sell or give on hire, or offer for sale or hire any copy of the computer program, regardless of whether such copy has been sold or given on hire on earlier occasions;

Transfer of copyright

The owner of the copyright in an existing work or prospective owner of the copyright in a future work may assign to any person the copyright, either wholly or partially in the following manner.

i. For the entire world or for a specific country or territory; or

ii. For the full term of copyright or part thereof; or

iii. Relating to all the rights comprising the copyright or only part of such rights.

Special provisions for computer programs

Following tasks will not be considered infringement as they are legally allowed under the

Indian laws:-

the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer program with other programs by a lawful possessor of a computer program provided that such information is not otherwise readily available;

(i)the observation, study or test of functioning of the computer program in order to determine the ideas and principles which underline any elements of the program

(ii)while performing such acts necessary for the functions for which the computer program was supplied;

(iii)The making of copies or adaptation of the computer program from a personally legally obtained copy for non-commercial personal use. One of the important requirements of copyright is that the work / expression should be fixed in a tangible medium for copyright protection. Protection attaches automatically to an eligible work of authorship, the moment the work is sufficiently fixed. A work is fixed when it is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than a transitory duration. A work may be fixed in words, numbers, notes, sounds, pictures, or any other graphic or symbolic indicia; may be embodied in a physical object in written, printed, photographic, sculptural, punched, magnetic, or any other stable form; and may be capable of perception either directly or by means of any machine or device now known or later developed. Basically, the fixation of a work should allow perceiving, reproducing, or communicating the work either directly or thorough some machine. For instance, floppy disks, compact discs (CDs), CD-ROMs, optical disks, compact discs-interactive (CD-Is), digital tape, and other digital storage devices are all stable forms in which works may be fixed and from which works may be perceived, reproduced or communicated by means of a machine or device. A simultaneous fixation (or any other fixation) meets the requirements if its embodiment in a copy or phonogram record is "sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration."Works are not sufficiently fixed if they are "purely evanescent or transient" in nature, "such as those projected briefly on a screen, shown electronically on a television or cathode ray tube, or captured momentarily in the 'memory' of a computer." Electronic network transmissions from one computer to another, such as e-mail, may only reside on each computer in RAM (random access memory), but that has been found to be sufficient fixation.

Domain Protection and Privacy

Internet technology facilitates the gathering of personal data. But this also brings a possibility of a threat to the privacy of a cyber consumer or netizens. With the boom in online service provider companies in India, misusing of the personal data of a cyber consumer has become a major menace. However, there is no specific legislation to protect the personal data of a person though to a little extent protection may be given under the Copyright Act, 1957.

With US and EU having strict policies relating to privacy and protection of personal data, it becomes very important for India, considering the inflow of foreign investments and other business opportunities, to have specific data protection and privacy laws. The Information Technology Act protects privacy rights only from government action and its unclear if such protection can be extended to private actions as well.

The absence of data protection and privacy law has also been creating obstacles for Indian companies while dealing with the EU as the data protection directives require a very high level of protection [2]. India needs to adapt to the changing needs of the time and provide for a comprehensive data protection regime which will not only help in gaining consumer confidence but also increase the amount of business that Indian BPO service providers receive from the EU.

Domain Name Protection in India

The original role of a domain name was to provide an address for computers on the Internet. The Internet has, however, developed from a mere means of communication to a mode of carrying on commercial activity. With the increase of commercial activity on the Internet, a domain name is also used as a business identifier. Therefore, the domain name not only serves as an address for Internet communication but also identifies the specific Internet site. In the commercial field, each domain name owner provides information/services, which are associated with such domain names. Domain names are used in various networking contexts and application-specific naming and addressing purposes. A domain name is an identification

label to define a realm of administrative autonomy, authority, or control in the Internet, based on the Domain Name System (DNS). The Domain Name Systems (DNS) is a hierarchical naming system for computers, services or any resource participating in the internet. It associates different information with domain names assigned to each of the participants. Domain names are also used as simple identification labels to indicate ownership or control of a resource. Such examples are the realm identifiers used in the Session Initiation Protocol (SIP), the Domain keys used to verify DNS domains in e-mail systems, and in many other Uniform Resource Identifiers (URIs). Thus, Domain name is the address of a web site that is intended to be easily identifiable and easy to remember, such as yahoo.com. These user-friendly addresses for websites help connect computers and people on the Internet. Because they are easy to remember and use, domain names have become business identifiers and, increasingly, even trademarks themselves, such as amazon.com. By using existing trademarks for domain names – sony.com, for example – businesses attract potential customers to their websites.

Domain Name & Intellectual Property Rights

Domain Names and Intellectual Property rights lies in the understanding of Intellectual Property Rights. Intellectual property (IP) is legal property right over creations of the mind, both artistic and commercial, and the corresponding fields of law. Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; ideas, discoveries and inventions; and words, phrases, symbols, and designs. The intellectual property rights provide creators of original works economic incentive to develop and share ideas through a form of temporary monopoly.

Originally, Domain Names were conceived and intended to function as an address, but with an increasing number of cases of registered domain names being illegally occupied (cyber squatting), it has posed additional problems in how to handle trademark disputes in cyberspace. Cyber squatting as an offence relates to the registration of a domain name by an entity that does not have an inherent right or a similar or identical trademark registration in its favour, with the sole view and intention to sell them to the legitimate user in order to earn illegal profits. An address in the cyber-space is imperative in the new e-economy for companies and individuals to be easily traceable by their consumers with the emergence of the Internet as an advertising forum, recruiting mechanism, and marketplace for products and services whereby companies doing business have a strong desire to register domain names akin to their products, trade names or trademarks. For example, owners of famous trademarks, such as Haier, typically register their trademarks as domain names, such as www.haier.com. Domain names may be valuable corporate assets, as they facilitate communication with a customer base. With the advancement of Internet communication, the domain name has attained as much legal sanctity as a trademark or trade name and, therefore, it is entitled to protection.

Another issue is the registration of names of popular brands with a slight spelling variation like pesi.com and radiff.com for the sole purpose of diverting traffic to their website through typing errors. 'A significant purpose of a domain name is to identify the entity that owns the website.' In Rediff Communications Ltd. v. Cybertooth & Another the Bombay High Court while granting an injunction restraining the defendants from using the domain name 'RADIFF' or any other similar name, held that when both domain names are considered there is every possibility of internet users being confused and deceived into believing that both domain names belong to one common source and connection although the two belong to two different persons. Again the website using the domain name, 'Naukari.com' was held to be confusingly similar to that of the plaintiff, 'naukri.com', with a different spelling variant establishing prima facie inference of bad faith.

Domain Name Protection: Legal Aspect

The constant increase in the use of internet for commercial purposes has greatly increased the level of cyber crimes and other internet related offences. Thus, the legal protection of such domain names is a serious issue which must be dealt with. In order to do so, the Internet Corporation for Assigned Names and Numbers ('ICANN'), a domain name regulatory authority, adopted a Uniform Domain Name Dispute Resolution Policy ('UDRP'), which is incorporated into the Registration Agreement, and sets forth the terms and conditions in connection with a dispute between the registrant and any party other than the registrar over the registration and use of an Internet domain name registered. Upon entering into the Core Registration Agreement with ICANN while registering a domain name, one agrees to submit to proceedings commenced under ICANN's Uniform Domain Name Dispute Resolution Policy. According to the ICANN policy, the registration of a domain name shall be considered to be abusive when all the following conditions are met:

(a) The domain name is identical or misleadingly similar to a trade or service mark in which the complainant has rights.
(b) The holder of the domain name has no rights or legitimate interests in respect of the domain name; and
(c) The domain name has been registered in bad faith.

The term 'bad faith' does not simply mean bad judgment but it implies the conscious doing of a wrong with a dishonest purpose. In order to prove bad faith, the following circumstances, if found, are sufficient evidence of bad faith registration:
(a) When there is an offer to sell, rent or otherwise transfer the domain name to the owner of the trademark or service mark, or to a competitor of the complainant for valuable consideration.

(b) When the respondent registers the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct.

(c) When by using the domain name, a party has intentionally attempted to attract, for commercial gain, internet users to its website or other online location by creating a likelihood of confusion with the trade or service mark of the complainant.

INTA has consistently sought to protect domain names in the cyberspace in the same way as in any other media as these domain names can and often do work as trade marks. For the very same reason, INTA seeks to achieve the following six objectives:

(a) Establishment of specific minimum standards for domain name registration;
(b) A publicly accessible domain name database, which contains up-to-date and accurate contact information;
(c) A uniform and easy-to-use dispute resolution policy which renders administrative – not legal – decisions;

(d) A reasonable mechanism whereby exclusions can be obtained and enforced for famous marks;
(e) A "go-slow" approach on the addition of new generic top-level domains ("gTLDs"); and
(f) A voice for trademark owners in the formulation of domain name policy.

INTA believes that when the above-mentioned six objectives are achieved, it would safeguard the trademark rights, which in this case would be the domain names.

Domain Name Issues

With the advancement of e-commerce, the domain names have come to acquire the same value as a trademark or the business name of a company. The value attached to domain names makes it lucrative for cyber criminals to indulge in domain name infringements and the global nature and easier and inexpensive procedure for registering domain names further facilitates domain name infringements. When a person gets a domain name registered in bad faith, i.e. in order to make huge profits by registering a domain name corresponding to a trademark of another person, with an intent to sell the domain name to the trademark owner at a higher price, such activities are known as cyber squatting. The IT Act does not deal with the domain name issues. In India the domain name infringement cases are dealt with according to the trademark law. The issue concerning protection of domain names came up before the Supreme Court of India in the case of Satyam Infoway Ltd. vs. Sifynet Solutions P. Ltd (2004(28) PTC 566). The court, in an authoritative decision has held that internet domain names are subject to the same legal norms applicable to other Intellectual Properties such as trademarks. It was further held by the Supreme Court of India that: "The use of the same or similar domain name may lead to a diversion of users which could result from such user mistakenly accessing one domain name instead of another. This may occur in e-commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available less than one domain name may be confused if they accidentally arrived at a different but similar website which offers no such services. Such users could well conclude that the first domain name owner had misrepresented its goods and services through its promotional activities and the first domain owner would thereby lose their custom. It is apparent therefore that a domain name may have all the characteristics of a trade mark and could found an action for passing off." The court further held that there is no legislation in India which explicitly refers to dispute resolution in connection with domain names. The operation of the Trade Marks Act, 1999 is also not extra territorial and may not allow for adequate protection of domain names. This does not mean that domain names are not to be protected legally to the extent possible under laws of passing off. However, with most of the countries providing for specific legislations for combating and curbing cyber squatting, India also needs to address the issue and formulate legal provisions against cyber squatting. For settlement of Disputes, WIPO has introduced a new mechanism called ICANN (Internet Corporation for Assigned Names and Numbers) for settlement of disputes relating to domain names. As the parties are given the right to file the case against the decision of ICANN in their respective jurisdictions, the decisions of ICANN is having only persuasive value for the domain users. A domain name is easy to remember and use, and is chosen as an instrument of commercial enterprise not only because it facilitates the ability of consumers to navigate the internet to find websites they are looking for, but also at the same time, serves to identify and distinguish the business itself, or its goods or services, and to specify its corresponding online internet location. Consequently where a domain name is used in connection with a business, the value of maintaining an exclusive identity becomes critical. As more and more commercial enterprises trade or advertise their presence on the web, domain names have become more and more valuable and the potential for dispute is high. Whereas a large number of trademarks containing the same name can comfortably co-exist because they are associated with different products, belong to business in different jurisdictions etc, the distinctive nature of the domain name providing global exclusivity is much sought after. The fact that many consumers searching for a particular site are likely, in the first place, to try and guess its domain name has further enhanced this value. The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that the goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are: Honesty and fair play are, and ought to be, the basic policies in the world of business. When a person adopts or intends to adopt a name in connection with his business or services, which already belongs to someone else, it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury. Thus, a Domain Name requires a strong, constant and instant protection under all the legal systems of the world, including India. This can be achieved either by adopting harmonization of laws all over the world or by jealously protecting the same in the municipal spheres by all the countries of the world.

These rules indicate that the disputes may be broadly categorized as: A prior registrant can protect its domain name against subsequent registrants. Confusing similarity in domain names may be a ground for complaint and similarity is to be decided on the possibility of deception amongst potential customers. The defenses available to a complaint are also substantially similar to those available to an action for passing off under trademark law. As far as India is concerned, there is no legislation, which explicitly refers to dispute resolution in connection with domain names. But although the operation of the Trade Marks Act, 1999 itself is not extra territorial and may not allow for adequate protection of domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off In India, the Trademarks Act, 1999 (Act) provide protection to trademarks and service marks respectively. A closer perusal of the provisions of the Act and the judgments given by the Courts in India reveals that the protection available under the Act is stronger than internationally required and provided.

Rule 2 of the UDNDR(Uniform Domain Name Dispute Resolution) Policy requires the applicant to determine that the domain name for which registration is sought, does not infringes or violates someone else's rights. Thus, if the domain name, proposed to be registered, is in violation of another person's "trademark rights", it will violate Rule 2 of the Policy. In such an eventuality, the Registrar is within his right to refuse to register the domain name. This shows that a domain name, though properly registered as per the requirements of ICANN,

still it is subject to the Trademarks Act, 1999 if a person successfully proves that he has 'rights' flowing out of the Act.

The Conflict with Trademark Law

The most visible aspect of the domain name problem has been the tension between trademark law and domain name registration. This tension has been made visible by a host of well-publicized lawsuits between trademark owners and the holders of domain names corresponding to their trademarks [8]. In the notorious cases, domain name "squatters" registered domain names corresponding to famous trademarks and sough t to sell the domain names at a profit to the trademark owners. In other cases, disputes have arisen between parties each having a colorable trademark-based claim to a given domain name [8]. Numerous articles have been written addressing the tension between trademark law and domain name registration. Although this is the most visible aspect of the problem, it is, if considered in isolation, in some ways the least troubling. The courts have begun the process of sorting through the trademark implications of domain names. In some cases, domain names have been transferred to the trademark owners, under theories of likelihood of confusion or trademark dilution.[9] In other cases, the parties have settled, with the trademark generally going to the party with the trademark right. The legal system is gradually effecting a rough accommodation between trademark law and the domain name registration system. To be sure, the process is slow and costly. However, as decisions become more widely publicized, litigation should decrease as the rights of trademark holders are more clearly established. The one area of potentially serious conflict involves the geographic and subject matter scope of domain names. Whereas trademark law permits some limited concurrent use of the same trademark (in different geographic areas or with different products and services), the domain name system, as it is currently structured, permits no concurrent use, since domain names are both unique and operate worldwide. Thus, for example, a pizza shop in New Haven and a pizza shop in Seattle can both be called "Broadway Pizza." Similarly, both Apple Record s and Apple Computer can share the same "Apple" mark. There can be, however, only one apple.com. Although this inconsistency presents some tension, it is certainly not irresolvable by the courts.[10] The courts, in[1 applying traditional trademark principles, may resolve this tension in any one of a number of different ways. The courts (1) might require the registration of different types of marks (e.g., apple computer.com and applerecords.com); (2) could award the domain name to neither party, in order to reduce consumer confusion; (3) could award the domain name to the party that first registered it with NSI, or that first registered it federally [11]. If the courts fail to set clear standards, Congress can step in to clarify the rights of the respective parties. In short, numerous options exist. Trademark law can be adapted to fit the new medium of the Internet.

Conclusion

The domain name problem is unique in many ways, yet it may be a precursor to future debates regarding technical standards. As the Internet becomes more and more important in our daily lives, its methods of governance will come under increasing scrutiny. Issues that were once purely technical may now have serious distributional consequences. Conversely, issues that were once purely substantive may soon have a large technical-standards component, as more and more Internet regulation becomes written into the underlying code. The protection of domain name under the Indian legal system is standing on a higher footing as compared to a simple recognition of right under the UDNDR Policy. The ramification of the Trademarks Act, 1999 are much wider and capable of conferring the strongest protection to the domain names in the world. The need of the present time is to harmoniously apply the principles of the trademark law and the provisions concerning the domain names. It must be noted that the moment a decision is given by the Supreme Court and it attains finality, then it becomes binding on all the person or institutions in India.

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