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“Journal of Unique Laws and Students” (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE II of Volume 1 focuses on three themes i.e. (i) Artificial Intelligence and Block chain in Law (ii) Intellectual Property Rights and Media, and (iii) Laws applicable to the intermediaries.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

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**Research Title: INTELLECTUAL PROPERTY RIGHTS AND SOCIAL MEDIA***Author - Khushi Makwana\****ABSTRACT**

In general, intellectual property rights relate to a collection of intangible assets held and legally protected by an individual or corporation from outside use or implementation without approved approval, such as invention, creativity, and contributions to the relevant area of expertise. The economic process, financial incentive, and motivation for advanced innovations engrained in the appropriate legal protection of Intellectual Property Rights demand expert, guided, and constantly updated assistance in the field of Intellectual Property Rights. With the tremendous rate of technical, scientific, and medical innovation that we are experiencing today, intellectual property has become increasingly crucial. Furthermore, developments in the global economic climate have had an impact on the creation of business models in which intellectual property is a key component in building value and prospective growth. Several new intellectual property legislations have been passed in India in order to fulfil international commitments under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. As a result, intellectual property has become one of the world's largest and fastest-growing disciplines of law, necessitating the need for specialists to deal with IP.

Copyright is a broad sphere that encompasses innovations, creations, intellectual products in print, audio-visual, sign & symbol, and digital formats. Copyright is a tremendous stimulant for the social media industry, which is full of invention and innovation. Media platforms, including social media, employ creative ideas, pictures, sounds, scripts, and a variety of other tools and ways of communication for professional, commercial, and individual aspirations. All of these forms, which are generated by individuals and businesses with rigorous efforts in design, research, and development, need a significant expenditure.

These projects were built through the dedication of one's time and money has yielded a profit to the creators and it has become a source of encouragement for everybody.

**Key Words:** *Intellectual property rights, media law, copyright, media*

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## **INTRODUCTION**

Since 1991, the period of economic liberalisation and globalisation began as a result of which the system of trade and commerce has indeed altered dramatically. Nowadays in the age of competition and constantly evolving technology, intellectual property has become a critical aspect for market survival, managing demand patterns, and adding additional consumers to the services and ideas that are being created and delivered.

The goal of IPR is to protect others from benefitting improperly from one's innovations or ideas. 'Intellectual Property Rights (IPR) are legal rights that apply to particular types of information, ideas, or other intangibles in their represented versions.'<sup>1</sup>

IPR acknowledges cognitive ideas as property, thereby broadening the definition of property. The term "property" refers to a person's or business's ownership of something. Property is classified into two types: tangible and intangible. Tangible property is present in physical form, such as a structure or home, land, automobile, currency, jewellery, and so on, whereas intangible property is not present in physical substance for example knowledge, goodwill, patent etc.

With the passage of time, we have built systems and laws to safeguard tangible goods, yet it was previously impossible to safeguard things available in unsubstantial forms. IPR protects such things and acknowledges a person's or enterprise's ownership over them. It enables people to profit from their efforts to create or develop new intellectual creations. 'Intellectual property rights are similar to other types of property rights. They enable patent, trademark, or copyrighted content creators or owners to gain from their own effort or investments in a project'.<sup>2</sup> In our nation, intellectual property rights (IPR) is not a new discussion Thousands of excellent discoveries, ideas, and methods in all disciplines of knowledge have been provided by our great academics throughout the history of civilization. Everything in the public domain was made possible by these great people. Whatever our great intellectuals created was passed on to society.

Upon the arrival of industrialization and Western influence, we began to take steps to protect the rights of intellectual property by following the strategies established by regulatory bodies and the rules implemented by the government. 'In the year 1856, George Alfred DePenning is

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<sup>1</sup> Adukia. S.R. [2012]. *Handbook of Intellectual Property Rights in India* P-3.

<sup>2</sup> WIPO Publication no. 450 (E) P-3.



said to have filed the first patent application in India. The Government of India issued a proclamation on February 28, 1856 legislation to grant “exclusive privileges for the encouragement of inventions of new manufacturers” i.e., the Patents Act<sup>3</sup>.

The world's mass media infrastructures vary according to the economics, politics, religion, and culture of various civilizations. There were restrictions on what the media should be allowed say about the government in nations that followed communism, such as the former USSR. For fear of a revolt, almost anything expressed opposing the state was prohibited. On the other hand, in nations with a Bourgeois Democracy, such as the United States, practically everything is permitted. Journalism is free in India and its Parliamentary Democracy system, however it is subject to some reasonable restrictions provided by the Constitution of India, 1950. Prior to the effect of globalisation, the mass media was completely controlled by the government, which permitted the media to represent just one side of events. However, the situation has changed dramatically as a result of globalisation and privatisation.<sup>4</sup>

## **BASICS OF INTELLECTUAL PROPERTY**

Intellectual rights are granted to the inventor or innovator in order for them to reap the economic gains of their invention or production. Intellectual property rights are exclusive rights that allow the owner to sell, purchase, or licence his Intellectual Property in the same way as real property can be sold, bought, or authorized. To seek benefits, one must file IPR with a legal body in a presentable or observable way. Each form of IPR grants a unique set of rights to the inventor or developer in order to preserve and reap economic benefits, which in turn encourages talent and social advancements. On the basis of type of invention and creation of human mind and their applications the intellectual property rights are classified as follows: i) patents, ii) trademarks, iii) industrial designs, iv) layout design of semiconductor integrated circuit, v) geographic indications of source, vi) copyright rights be it literary or artistic works, music, photos, motion pictures or short films, memes, computer programmes and performing arts and broadcasting work.

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<sup>3</sup> Adukia. S.R. (2012).P. 11

<sup>4</sup>Legal Services India, <http://www.legalserviceindia.com/> [last visited May 10,2021]

## **PROTECTION OF INTELLECTUAL PROPERTY IN INDIA**

The right to intellectual property Infringement is described as the use of another person's intellectual property without the permission of the owner of that intellectual property. When an individual violates the law by acting Ultra Vires, he is violating the statute. Infringement is described as "a crime less serious than a felony." Intellectual property rights infringement is called a tortious violation of property. In cases including the misuse and/or breach of intellectual property rights, Indian courts have the authority to provide relief. The numerous intellectual property laws in India have provisions for civil and criminal redress for enforcing intellectual property rights. India has laws covering different aspects of intellectual property and the rights and the consequences if the rights get infringed, as mentioned below:

- Trademarks - Trade Marks Act, 1999
- Patents - The Patents Act, 1970 (as amended in 2005)
- Copyrights and Related Rights - The Copyright Act, 1957
- Industrial Designs - The Designs Act, 2000
- Geographical Indications - The Geographical Indications of Goods (Registration and Protection) Act, 1999
- Layout Designs of Integrated Circuits - The Semiconductor Integrated Circuits Layout Design Act, 2000
- Plant Varieties - The Protection of Plant Varieties and Farmers' Right Act, 2001
- Information Technology and Cybercrimes - The Information Technology Act, 2000
- Data Protection

## **ROLE OF IPR ON SOCIAL MEDIA**

With the growing use of social media, many people are sharing their creativity and posting their works, thoughts and innovations be it music, films, photos or anything else. Along with the growing usage of social media there has been a growth in the number of people or organizations that copy or steal someone else's work as if it were their own. The Registrar of Copyrights recently addressed the need of amending the Copyright Act 1957, acknowledging that "innovative industries are performing and changing in light of developments brought on by internet use, digital transformation, and an increasingly globalised demand for modern

content.” Social media is now an essential component of communications campaigns and marketing of both big and small companies. Connecting with consumers is the current norm. But this pattern impacts all original content producers and those who want to repost something that wasn't created by them. This growth gives India the chance to realign its goals for the future. It is important to secure the owner's original work from piracy, so that no one can use it without the owner's consent or permission.<sup>5</sup>

### **WHAT CONSTITUTES COPYRIGHT INFRINGEMENT?**

Copyright is one of the types of intellectual property (IP) rights and is intended to secure the creator's, owners, or holder's proprietary privilege to assert an original project as their own—when the work is fixed in a tangible form. Copyright infringement occurs where one uses another person's work or a copyrighted work without authorization. If the content, or a significant portion of it is used without the owner's consent, copyright is infringed. That is the misuse or breach of a person's intellectual property. Copyright infringement is also known as theft of the art and the originator's exclusive and authentic work, as well as taking advantage of the content. Infringement of copyright is specified in Section 51 of the Copyright Act.

### **PROTECTION OF CONTENT CREATED ON SOCIAL MEDIA AND INTELLECTUAL RIGHTS INVOLVED**

Marketing on social media is not new; in fact, social media has become one of the most common means of communicating with the general public. As a result, any communications specialist should be well-versed in the convergence of intellectual property law and social media. Copyright covers original works of authorship that are fixed during the process of expressing themselves in a physical form. Everybody is a creator of art, such as pictures, songs, visual graphics, animations, computer apps, and website displays.

If it is an original work, it is protected as a literary work under the Copyright Act. No one has the right to copy or use it without the author's consent, just like no one has the right to copy or use any other literary work in the offline environment.

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<sup>5</sup> VARUN RAMDAS, SHWETA VENKATESAN , *Why India needs to modernise its copyright laws for the digital era*, [May 10 2021 6:21P.M], <https://theprint.in/opinion/why-india-needs-to-modernise-its-copyright-laws-for-the-digital-era/550243/>

Let's say if it is a cartoon illustration or photograph, the post will be covered as an artistic work. If the post was viewed as a film, it will be protected as cinematographic work. According to Section 14 of the Copyright Act, no one has the freedom to edit, print, or communicate a work to the public without the consent of the work's author.<sup>6</sup> Infringements on intellectual property rights occur on a regular basis. The material shared by users on social media platforms, mostly videos and images, music, animations, and so on, is used on a daily basis by third parties, whether or not they are social media users, without prior authorization from the holders of the copyright. This activity meddles and infringes with the originator's rights.

### **COPYRIGHT POLICIES OF SOCIAL MEDIA**

Users adhere to the website's specific terms of use when they establish a social media account. These terms also include a disclaimer certifying that the poster owns all intellectual property rights to the material posted to the web. For example, let's take Instagram's terms of use and other legal information explain who owns your posted material, how others can use it, and how you can legally post content on Instagram. In the Instagram's Terms of use it mentions how you cannot use Instagram. It says that one should not publish anyone else's private or sensitive information without their consent, nor may you do something that infringes on their interests, including intellectual property rights (e.g., copyright infringement, trademark infringement, counterfeit, or pirated goods). Whenever you share your work on social media, you establish ownership of the copyright if the work is qualified, such as a photo/meme posted on Instagram. No one may use your work without your consent, and the website does not claim ownership. There is one exception: when sharing to a website like YouTube, Instagram or Twitter, you are agreeing to the site's terms of use, which often grant the site a permission to use the work. More specifically, you are enabling other people to share your work on the website. As a social media customer, you must consider and understand the terms of service and comply with them. Simply posting your work on social media would not grant anyone the right to use it without attribution. For instance, if you make a meme and share it on Instagram, other users will reshare it. However, if anyone just steals the meme without credit and shares it on their own

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<sup>6</sup> N. Mahabir, *India: Copyright Protection Of Online Content*, Litmus Legal, [May 10 2021 7 P.M], <https://www.mondaq.com/india/copyright/607438/copyright-protection-of-online-content>

feed or anywhere else other than social media, it would not actually constitute equal use and is most certainly in violation of the law and the terms and conditions of the platform. Users can only publish artistic works that are in the public domain, work that qualifies for fair use, work that they have authorization to share or their personal creation.

## **HOW TO PROTECT YOUR CONTENT ON SOCIAL MEDIA**

Since copyright is created as soon as you create work, you are not required to have a copyright notice alongside your work. However, if you're sharing your work on social media, it's a good idea to add a copyright warning although registering your work under copyright is advisable but you can also put a disclaimer or like ©2020 Lola Evans, as a notice to others that you own the work. One can also take these necessary precautions while posting their content online:

- I. Post content from your company's or your official website or page to ensure your content is tightly tied to your brand. As a result, whether you or your audience share your material, your brand's website will feature in the post's connection display as a non-editable label, branding the content as yours.
- II. Use your logo as the featured graphic in your content. This ensures that whoever posts your content, and if your logo is displayed on the content the link to your work will still appear.
- III. Portraying your photographs or making a design that clearly reflects your brand so that your photos are easily identifiable.

## **HOW TO REMOVE DUPLICATE CONTENT FROM SOCIAL MEDIA?**

- 1) The first thing you can do is, if you suspect someone has stolen your material, contact them. Most of the websites or the page has a contact number, email address, or a link to another profile. Gather proof of the content, look for the websites or the page's founder and check where it is registered and its operations. Inform the site that the material has been copied, include a link or a screenshot to the original piece of content and the date when it was posted, and request that it be removed as soon as possible to prevent an official DMCA lawsuit.

- 2) The second option you have is to send it to the social media site that they copied and uploaded it. You could file a complaint under The Digital Millennium Copyright Act (DMCA) or a copyright violation, also known as an intellectual property Takedown notice, and say, "YouTube, Instagram, I own this stuff, this individual copied it" or if this person copies your content every time you can get the handler of the page banned. That's the quickest way of getting the content off of someone's profile.
- 3) There are few third-party takedown services available which help artists, content writers to safeguard their work and help them remove the stolen content. It is cheaper and attainable.
- 4) You can also serve someone with a cease-and-desist letter. You must: (a) apply for copyrights, (b) sue them, and (c) demonstrate that you either lost revenue as a result of them copying your material, or that they improperly obtained profits from using your artistic works.

You legally hold a copyright as soon as you make a film, photograph, or artistic work. And, to some degree, you are right. You hold what are known as common law copyrights, which means you have the power to prevent anyone from using your work, so you must first go through the legal process. There may be legal stumbling blocks, such as whether you haven't applied for copyright rights on your images, films, or artistic work, your cease-and-desist letter may lack legal backing.<sup>7</sup>

- 5) Don't make the error of not knowing whether the material has been copied, duplicated or stolen. It is easy and inexpensive as compared to the costs that can be incurred if left unchecked. To further avoid the duplication there are various tools that help like copyscape, DMCA.com and google alerts.<sup>8</sup>

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<sup>7</sup> The Social Media Law Firm, <https://thesocialmedialawfirm.com/services/intellectual-property/copyrights/>, [last visited May 10 2021]

<sup>8</sup> Greg Secrist, *Is Your Content Stolen? Here's What You Can Do*, Search Engine Journal, [May 10 7:38 P.M], <https://www.searchenginejournal.com/3-ways-find-stolen-content-take-action/162831/>

## **SUGGESTIONS**

- Be vigilant.
- Use your logo or the name of the company and mention it in every post you share.
- Understand your intellectual property rights.
- Connect with a professional who has expertise on the subject.
- Check to see if the concept is unique. If it is, you can rely fairly on your copyrights and patents, and employ an investigator to differentiate between registered and non-registered ones.
- Maintain a track of all that is connected to the work.
- Protect and register your IP as soon as possible.

## **CONCLUSION**

With the changing and growing social media and content creation on media, it is very important to know that if you did not create the content you are sharing on social media, copyright laws likely prohibit you from using it without the owner's consent. The common practices of copying and pasting excerpts of content, playing music in the background of your YouTube video, copying images and pasting them in your posts or on your page, and copying html to use on your own site, are all copyright infringing activities—unless you created the content, have a license to use it, or your use falls under one of the exceptions in the statute.