

## **Digital Kaleidoscope : IP Rights in India**

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## **SCOPE**

- The International legal regime
- The Digital Revolution: Implications for IP Rights
- New treaties
- Indian laws: Are these adequate?
  - Copyright law
  - Trade Marks law
  - Information Technology law
  - Convergence Bill

## **The International Legal Regime**

### Prior to 1996

- The Berne Convention, 1886
- The Universal Copyright Convention, 1952
- The Rome Convention, 1961
- The Phonograms Convention, 1971

## **The digital revolution: Implications for IP Rights**

- Software/ computer program
- Reproduction right
- Communication to the public
- Rental, Licensing and enforcement
- Fair use
- Jurisdiction
- E.g., Napster, Tasini & Greenberg

## **New International Treaties**

### The WIPO Treaties of 1996

- The WIPO Copyright Treaty (WCT) - In force today (w.e.f March 6, 2002)
- The WIPO Performances & Phonograms Treaty (WPPT) - In force today effective May 20 2002

## **Indian laws: Are these adequate?**

- The Copyright Act (last amended in 1999)
- The Trade & Merchandise Marks Act, 1958
- Information Technology Act, 2000
- Convergence Bill

## The Indian Copyright Act, 1957

### Copyright

- Original literary, dramatic, musical & artistic works
- Cinematograph films
- Sound recordings

### Related Rights

- Rights of broadcasting organizations
- Rights of performers

## Indian Copyright Act...

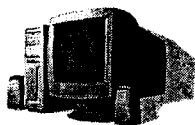
### International Copyright Order, 1999

- Extends protection of Indian Copyright law to any work/ performance/ broadcast first published in:
    - a Berne Convention country;
    - a UCC country;
    - a Phonograms Convention country; and
    - a WTO country
- as if it was first published in India

## Indian Copyright Act...

### Computer program

- treated as a literary work
- includes source/ object code



## Indian Copyright Act...

### Reproduction Right

- Includes the storing of a work in any medium by electronic means (limited to literary, dramatic and musical works)
- Extends to digital copies of cinematograph films and sound recordings



## Indian Copyright Act...

### Communication Right

- Includes making available right
- Covers communication through satellite or cable or any other means of simultaneous communication

## Indian Copyright Act...

### Right of rental

- Available to computer programs subject to a proviso
- Cinematograph works
- Sound recordings
- Extends to digital copies of the above

## Indian Copyright Act...

### Licensing and assignment of copyright

- must be in writing and signed by respective parties
- post IT Act 2000, on-line license / assignment valid if affixed with digital signatures issued by a certifying authority



## Indian Copyright Act...

### Exemptions from copyright protection

- Fair use exceptions available to literary, dramatic, musical or artistic works by way of
    - private use
    - criticism or review
    - reporting of current events
- Computer programs are excluded

## Indian Copyright Act...

- Fair use exceptions are not specifically afforded to cinematograph films and sound recordings except for use in the course of teaching in an educational institution

## Indian Copyright Act...

### Exemptions from copyright protection

- Special fair use exception available to lawful possessor of a computer program to make a copy or adaptation:
  - in order to utilize the computer program for the purpose for which it was supplied
  - to serve as back-up copies for temporary protection against loss, destruction or damage

## Indian Copyright Act...

### Exemptions from copyright protection

- Broadcasting organizations/ performer's right
  - making a sound/ visual recording for the purposes of private use or for bona fide teaching or research
  - use of excerpts for reporting current events or for bona fide review, teaching or research.

## Indian Copyright Act...

### Jurisdiction

- Indian jurisprudence in Internet related offences still in the nascent stage
- Proactive judicial application of procedural law
- Himalaya Drug Company v. Sumit (High Court of Delhi)

## Indian Copyright Act...

### Issues not addressed by Indian Copyright law

- Activities and liabilities of on-line intermediaries relevant to issues of copyright infringement: caching/ linking/ framing/ search engines
- Obligations concerning technological measures and rights management information

## Trade Marks law

### Misappropriation of TM rights

- Use in the course of trade
  - Passing off remedy extended
  - Yahoo Inc. v. Akash Arora
  - Rediff Communication v. Cyberbooth & Anr
- Cybersquatting \_\_\_\_\_
  - ICANN administered UDRP Process
  - Indian DRP process \_\_\_\_\_

## Trade Marks law

### Indian Internet Domain Name Dispute Resolution Policy

- .in category available for registration subject to certain conditions
- It is no longer mandatory that the applicant maintain a place of business in India
- NCST administered Dispute Resolution Policy

## Trade Marks law

### Indian Internet Domain Name Dispute....

- Registrants subject to the mandatory Dispute Resolution policy of NCST in the event of dispute
- Scope of disputes laid down in DRP
- Decision of the Domain Name Registrar is appealable to Internet Management Group from where a further appeal lies in an appropriate court in Mumbai, India

## Other Cyber Laws

### The Information Technology Act, 2000

- Objectives include
  - recognition of electronic commerce
  - legal recognition of electronic communication and digital signatures
  - enabling electronic filing of documents with government departments
- First certifying authority appointed
- Digital signatures issued

## Other Cyber Laws

### The Information Technology Act, 2000

- Some consequences for copyright and related rights
  - tampering with/ hacking a computer system/ source document
  - publishing of obscene information in electronic form
- constitutes a criminal offence

## Other Cyber Laws

### The Information Technology Act, 2000

- ISPs exempt from liability for any third party information provided:
  - the offence is committed without its knowledge
  - ISP exercised due diligence to prevent commission of such offence

## Other Cyber Laws

### The Information Technology Act, 2000

- Issues relating to caching, linking, framing and search engines not covered

## Other Cyber Laws

### The Communications Convergence Bill 2000

- Yet to be passed
- Seeks to create a common regulatory authority for the carriage and content of communications (including broadcasting, telecommunications and multi-media)
- Does not address issues of copyright or other IPRs

## Conclusion



- India
  - is an information technology major
  - has the largest movie industry in the world
  - is broadly in the race for the fluid world of the Internet
  - has a pro-active judiciary

THANK YOU

