

IN BRIEF – TECHNOLOGY LAW DISPUTES



OVERVIEW

Technology law disputes in India cover a broad spectrum, mainly centering on contractual conflicts and the enforcement of statutory or common law rights. As business activities increasingly shift to the digital realm, the legal framework surrounding public policy and privacy has evolved. We explore the current landscape of technology law disputes in India, delving into the existing legal framework and the challenges within this dynamic field.

Contractual Disputes:

A significant portion of technology-related conflicts involves contractual disputes, often hinging on the interpretation of terms and conditions, alongside relevant statutory provisions. Given the technical nature of these agreements, specialized expertise is often necessary to navigate complex terms and obligations.

Intellectual Property Issues:

Technology law disputes also extend to intellectual property matters, including patents, trademarks, domain names, copyrights, software, and piracy. Indian courts have actively worked to establish a robust intellectual property framework, safeguarding privacy rights, combating online piracy, and fostering innovation across various technological domains.

Domain Names:

Domain names, recognized as identifiers for companies, have become a focal point for disputes. Recent court decisions emphasize specific relief in trademark infringement cases related to domain names, advocating for the implementation of abuse policies by registrars. Courts have also directed international registrars to disclose details to prevent evasion of injunction orders, reflecting a trend towards targeted actions and efficient enforcement.

Copyright Protection and Cyberspace:

Advancements in technology have expanded the scope of copyright laws in India. The Copyright Act of 1957 underwent a crucial amendment in 2012, recognizing 'computer-generated work' and addressing issues in the digital sphere. The Act protects computer programs and databases as literary works, with temporary copying, or 'caching,' considered a copyright violation. Liability for copyright infringement requires establishing responsibility, whether with the receiving party, internet service provider (ISP), or the transmitting party.

Data Privacy:

Data privacy concerns have grown with increasing reliance on technology. The Information Technology Act of 2000 penalizes 'cyber contraventions' and 'cyber offences,' with subsequent amendments incorporating provisions for data security. The recently approved Digital Personal Data Protection Act, 2023, applies to processing of digital personal data. Consent is pivotal, and businesses must obtain specific, free, informed, and unambiguous consent from data principals. The laws also address data breaches, mandating reporting to affected data principals and the Data Protection Board. Businesses must review and update internal policies related to IT, data protection, data retention, cybersecurity, and consent management to comply with these laws.

Recent legal developments highlight the need for specialized expertise, targeted actions, and comprehensive safeguards to navigate the evolving landscape of technology-related conflicts.

RECENT DEVELOPMENTS

Dynamic Injunction and Rogue Websites:

Dynamic injunctions play a crucial role in safeguarding intellectual property rights in the digital realm, as evidenced by recent cases. Notably, a court issued a dynamic injunction preventing rogue websites from streaming copyrighted films by Warner Bros¹. and Sony Pictures Animation, including titles like 'Spider-Man: Across the Spider-Verse' and 'Spider-Man: Into the Spider-Verse,'² showcasing a commitment

¹ Warner Bros. Entertainment Inc. v. www.uwatchfree.st, 2022 SCC OnLine Del 2826.

² Sony Pictures Animation Inc. v. FLIXHD.CC, 2023 SCC OnLine Del 3286.

to combat online piracy. Another significant decision involved an injunction against unauthorized streaming of the film 'Brahmastra Part One: Shiva,'³ emphasizing the importance of enforcing copyright laws. Similar orders were also passed concerning streaming of sports events such as the ICC Cricket World Cup where real time blocking orders were issued⁴, and recently in relation to a reality show⁵.

To address challenges posed by unidentified infringers, a court issued an unstopable dynamic John Doe injunction, enabling rights holders to seek injunctions against unknown parties involved in infringement⁶. Courts have also effectively employed permanent injunctions against rogue websites engaged in piracy, preventing unauthorized distribution of copyrighted content⁷, especially after a film's release when plaintiff rights were not in question. These cases collectively underscore the judiciary's proactive stance in protecting intellectual property rights and curbing online piracy, fostering a secure environment for content creators and industries reliant on copyright protection.

Dynamic injunctions prove particularly useful when infringing websites attempt to evade blocks through various means. In India, courts have established a procedure allowing plaintiffs to file subsequent applications to add additional URLs or mirror sites to existing injunctions, with High Courts permitting extension orders by subordinate courts to ensure the ongoing efficacy of these measures⁸.

Intermediary Guidelines:

In 2021, the Ministry of Electronics and Information Technology introduced the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, replacing the 2011 regulations. Focused on personal data protection, grievance redressal, and user safety, these rules distinguished between social media intermediaries and significant social media intermediaries, imposing stricter obligations on the latter. Significant intermediaries were mandated to appoint a chief compliance officer, a nodal contact person, publish monthly compliance reports, and comply with various restrictions.

In 2023, the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Amendment Rules were introduced, adding further regulations. Intermediaries were obliged to prevent the hosting and advertisement of unapproved online games, avoid sharing false information about the Indian government, and regulations streamlining online gaming platforms. The amendments highlighted fact-checking obligations to prevent the dissemination of fake information about the Union Government, as determined by the government's fact-checking unit.

While these 2023 amendments aimed to tackle harmful online games, fact-

checking, and online gaming regulation, ongoing discussions revolve around the scope of intermediary responsibilities, the effectiveness of self-regulation, and the legislative process for online gaming rules. This underscores the necessity for thoughtful consideration and balanced approaches in these evolving areas.

Patentability of Software:

A recent case involving Microsoft's patent application challenged its rejection based on computer-executable instructions and algorithms. The court clarified that while computer programs alone aren't patentable, those with novel hardware components or providing technical contributions beyond the program may be eligible⁹. The court emphasized the technical solution to a security problem in question, surpassing mere user-interface enhancements. It criticized the narrow interpretation and lack of consideration for the invention's technical advancements, calling for a comprehensive assessment based on technical effects.¹⁰ The court urged a reconsideration of outdated exclusions under the Patents Act related to software inventions, advocating legislative revision to align with technological advancements¹¹. It also stressed the need to update the Manual of Patent Office Practice and Procedure for clearer guidance¹².

Privacy and Right to be Forgotten:

In a privacy-related judgment, a petitioner's request for anonymity in a rape case was granted, considering the absence of evidence and the negative impact of online availability. The court directed legal depositories to outline their 'right to be forgotten' policy¹³. While not universally recognized, this decision aims to protect privacy and establish guidelines for handling sensitive online information.

Safe Harbour Provision for Intermediaries:

An Indian court granted Flipkart intermediary status under the Information Technology Act, 2000 recognizing compliance with relevant rules and exemptions from liability¹⁴. Another court quashed a criminal case against Flipkart, emphasizing intermediary protection and 'due diligence.'¹⁵ These cases underscore the evolving legal landscape for e-commerce platforms, emphasizing the need for balanced regulation.

Disclosure by Intermediaries:

A court ruled on the mandatory disclosure of details regarding copyright infringement, reinforcing the fight against online violations by compelling intermediaries to share information about infringing activities¹⁶. This decision highlights the importance of safeguarding intellectual property rights.

Game of Skill and Chance and Use of NFT:

A court ruled that skill-based games like rummy are not taxable as 'betting' or

³ *Star India Private Limited v. 7MOVIERULZ.TC*, 2022 SCC OnLine Del 2744.

⁴ *Star India Pvt Ltd vs Jiolive Tv and Ors* CS (CO?MM) 688 of 2023, order dated 27 September 2023 by Delhi High Court.

⁵ *Viacom18 Media Private Limited vs Biggbos.live & Ors*, CS (COMM) 730 of 2023 order dated 12 October 2023 by Delhi High Court.

⁶ *Arha Media and Broadcasting Limited v. www.vcinema.com*, CS (COMM) 925 of 2022, decided on 28 December 2022 by Delhi High Court.

⁷ *Star India Pvt. Ltd. v. Moviesghar.art*, 2022 SCC OnLine Del 3819.

⁸ *UTV Software Communication Ltd & Ors v. 1337x To & Ors*, (2019) 78 PTC 375; *Disney Enterprises, Inc & Ors vs Kimcartoon To & Ors*, CS (COMM) 275/2020.

⁹ *Microsoft Technology Licensing, LLC v. The Assistant Controller of Patents and Designs*, 2023 SCC OnLine Del 2772

¹⁰ *ibid*

¹¹ *OpenTV Inc v. The Controller of Patents and Designs*, 2023 SCC OnLine Del 2771.

¹² *AGFA NV v. The Assistant Controller of Patents and Designs*, 2023 SCC OnLine Del 3493.

¹³ *SK v. Union of India*, 2023 SCC OnLine Del 3544.

¹⁴ *Flipkart Internet Private Limited v. State of UP*, 2022 SCC OnLine All 706.

¹⁵ *Flipkart Internet Pvt Ltd v. State of NCT of Delhi*, 2022 SCC OnLine Del 2439

¹⁶ *Neetu Singh v. Telegram FZ LLC*, CS (Comm) 282 of 2020, decided on 30 August, 2022 by Delhi High Court.

'gambling' under the Central Goods and Service Tax Act, 2017 emphasizing the distinction between skill and chance¹⁷. The judgment pre-dates the overhaul change to the GST regime concerning online gaming. Pertinently, the High Court recently also set aside the blanket ban imposed by Tamil Nadu concerning online gaming, affirming that the same cannot extend to game of skill. The court also clarified that the use of NFT technology by defendants does not imply endorsement or association with players¹⁸, emphasizing freedom of speech and expression.

NAVIGATING LEGAL AVENUES IN TECHNOLOGY DISPUTES: CLAIMS, REMEDIES, AND ROAD AHEAD

Technology disputes in India involve intricate legal landscapes that require a nuanced understanding of intellectual property rights, infringement claims, and the evolving digital domain. This discourse delves into the types of relief available for infringement, discusses damages and compensation, examines interim and permanent injunctions, scrutinizes the invocation of writ courts, and delves into criminal proceedings. Subsequently, the focus shifts to Alternative Dispute Resolution (ADR) mechanisms, emphasizing the significance of arbitration, pre-institution mediation, early neutral evaluation, and online dispute resolution.

TYPES OF RELIEF FOR INFRINGEMENT

Patent:

Patent infringement, stemming from the violation of exclusive rights granted to patentees under the Patents Act 1970, can result in various remedies. Courts may issue injunctions, award damages, or demand an account of profits. Additionally, the court holds the authority to order the seizure, forfeiture, or destruction of infringing goods.

Copyright:

Copyright infringement, defined in Section 51 of the Copyright Act 1957, includes unauthorized engagement in reserved activities, offering for sale, distribution, or public exhibition of copyrighted material. The Copyright Act offers both civil and criminal remedies, providing a robust legal framework.

Anton Piller Orders:

To secure premises or materials relevant to proceedings, a party may seek Anton Piller orders. The court can authorize designated individuals to inspect, preserve, or detain materials, ensuring the collection of comprehensive evidence.

Damages and Compensation:

In cases of infringement, a plaintiff has the option to seek compensatory or punitive damages. Recent trends indicate an increasing inclination toward awarding damages, especially in software piracy cases.

Injunctions:

Interim injunctions are crucial in technology disputes, acting as a protective

measure during the litigation process. They are granted based on prima facie proof of infringement and a balance of convenience, with permanent injunctions following after trial conclusion.

INVOCATION OF WRIT COURT

Intermediaries often approach writ courts under the Information Technology Act, 2000, challenging onerous compliance and seeking intervention. Writ jurisdiction, vested in high courts and the Supreme Court, enables challenges against rules and actions deemed ultra vires.

CRIMINAL PROCEEDINGS AND OFFENCES

Criminal actions are limited to offenses stipulated in law. For instance, the Copyright Act, 1957 specifies offenses, and the Information Technology Act, 2000 allows for notices, including search, seizure, and takedown notices.

ALTERNATE DISPUTE RESOLUTION

Arbitration:

With the absence of specialized tribunals for technology disputes, arbitration plays a vital role. The Supreme Court's four-fold test helps determine the arbitrability of disputes, ensuring a private forum for in-personam actions.

Pre-Institution Mediation:

The Commercial Courts Act, 2015 and the Mediation Act, 2023 introduced pre-institution mediation, emphasizing mediation before civil action initiation. Despite exceptions for urgent relief, pre-institution mediation proves effective in settling disputes at early stages.

Early Neutral Evaluation:

Early Neutral Evaluation (ENE) aids in assessing strengths and weaknesses in technology-related disputes. Confidential and cost-effective, ENE is particularly relevant in cases involving licensing, patentability, and biotechnology.

Online Dispute Resolution (ODR):

ODR presents a positive impact on resolving domain name disputes and addressing data breach concerns by intermediaries. It offers efficient tools for handling consumer disputes.

OUTLOOK AND CONCLUSIONS

India's legal framework for technology disputes is commendable but necessitates refinement. Expedited resolution mechanisms, a more adaptable regulatory framework, and the impending implementation of Digital Data Protection statute are crucial for addressing the challenges in this dynamic landscape. ADR mechanisms are expected to play a pivotal role in achieving timely and effective resolutions. Continuous updates and adaptations are essential to bolster investor confidence, stimulate technological innovation, and uphold justice in an ever-evolving digital era.

¹⁷ *Gameskraft Technologies Pvt. Ltd. v. DGGSTI*, 2023 SCC OnLine Kar 18.

¹⁸ *Digital Collectibles Pte Ltd. v. Galactus Funware Technology Pvt. Ltd.*, 2023 SCC OnLine Del 2306.

This newsletter has been contributed by:

Ashish Singh and Juhi Chawla, Partners, Dua Associates, New Delhi

For further information contact:

Shiraz Patodia, Senior Solicitor, Dua Associates, New Delhi

Email: shiraz@duaassociates.com

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