

## **LAW RELATING TO ELECTRONIC RECORDS IN SPECIFIC CONTEXT OF IPR PROTECTION**

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### **Abstract**

The term "intellectual property" is used to refer to the legal ownership of intangible works such as ideas and designs. Everything that can be thought of, seen, spoken, written, or created is contained here. Also included are various types of digital material that may be downloaded and played offline, such as movies and music. Since intellectual property is intangible, it may be difficult to recover stolen funds. Now, let's assume that someone has come up with a brilliant idea for a fresh new invention. The origins of copyright lie in the times when written works such as books and newspapers were the most common ways of spreading information. Due to the digital nature of today's information, there is no longer any practical barrier to making illegal copies. A wide range of concepts associated with intellectual property rights (IPR) are discussed in detail in this article. These concepts include intellectual product, patents, copyright, designs, trademarks, software, databases, the Internet, and cyber laws. Data that may be accessed digitally or electronically issues with copying and protecting digital property. The study's overarching goal is to analyse the broader context and practical implications of intellectual property rights as they pertain to digital resources. In addition, we will examine the constraints imposed by the Indian Constitution on legislation controlling electronic records from the standpoint of intellectual property rights. Finally, we will go through how intellectual property rights may help make electronic documents more secure. This descriptive study analyses the effect of presupposition, an implicit assumption that influences the questions asked and the interpretations assigned to the data. Journals, media pieces, and dissertations are just a few of the many print and digital sources that provide instances of secondary analyses. The results show that IPR are meant to protect and encourage the use of information for innovation, not to place roadblocks in the way of such use.

**Keywords:** Digital, internet, electronic record, copyright, IPR, judgement, protection

### **1. Introduction**

In e-commerce, digital records refer to all digitally stored, transported, and utilised products. Email or file downloads provide digital files. Digital records include e-books, audio files, software, digital photos, website designs, electronic instructions, and anything else that may be recorded in a file or numerous files. Digital files are sometimes called e-goods. Digital records

are electronic representations of tangible personal property. Digital products may be exchanged like physical goods. Digital goods may exist without physical counterparts.

### 1.1 Background

"Intellectual property rights" safeguard a collection of intangible assets, such as an invention, production, or contribution to the state of the art in knowledge, from unauthorised use or use by other parties. Expert, focused, and constantly updated guidance on Intellectual Property Rights is crucial for economic growth, financial incentive, and motivation for cutting-edge technologies<sup>1</sup>. Patents, registered designs, copyright, and trademarks safeguard IP. Regional indicators, anti-competitive licencing policies, and IC architectural concepts. Tech companies value copyright. In the Internet age, copyright protection is crucial for electronic records. Copyright, ownership, price, and use laws affect digital information's intellectual property.

Technology outpaces IP legislation. Copyright laws don't ban theft or infringement. The internet requires fundamental changes to these conventions. Digital documents may replace paper copies and allow fast access in a networked system<sup>2</sup>. One document may cover networked records and distant users. This may create issues. Photocopier loans will disappear. Viewing digital files requires opening. Entry charges. Digital document customers must know whether it's beneficial and if they must pay for it. Cryptographic methods, user authentication and access limits, cross-platform security, network, system, application, and user workstation protection, password regulations, etc. will protect IPRs but deter users. Multiple copyrights should encourage content reuse and readership. It's hard to determine what's legal, to what degree, and what's a rights infringement.<sup>3</sup>

### 2. Literature Reviews

Baruah says 2019 intellectual property rights allow artists to express themselves freely. Creative, original, and imaginative projects need significant investment in their early stages. Thus, the innovator/creator and/or parent organisation should want to profit from and protect such ideas as they would any other valuable asset. Thus, many for-profit and non-profit

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<sup>1</sup>Parashar, L. (2020). The Protection and Enforcement of Intellectual Property Rights in the E-Commerce Industry. Issue 4 Int'l JL Mgmt. & Human., 3, 119.

<sup>2</sup>Rakoto, Andriamirado, The Protection of Intellectual Property Rights in E-Commerce (April 24, 2018). Available at SSRN: <https://ssrn.com/abstract=3167687> or <http://dx.doi.org/10.2139/ssrn.3167687>

<sup>3</sup>Arora, S. (2020). Strengthening IP in Digital India. *Supremo Amicus*, 15, 297.

organisations believe it is their duty to get legal protection for their ideas to maximise return on investment and encourage more investment in similar R&D<sup>4</sup>.

Cr, 2020 said that industrialised countries invest in cutting-edge technology to attract international money and boost their commercial and service industries. Some nations have IPRs to protect writers' rights. Several government representatives lobbied for GATT inclusion of global intellectual property protections. WTO members included IPRs in TRIPS over criticism from developing states. Due to developing countries' belief that developed nations are imposing IPRs on them due to their superior technology, they will disagree on a wide range of intellectual property rights issues. The World Intellectual Property Organisation (WIPO) and the Trade-Related Aspects of Intellectual Property (TRIPS) Agreement make it easier for wealthy nations to give money or other assets to underdeveloped nations, according to Gürkaynak et al. (2018). Industrialised nations sometimes violated foreign authors' copyright rights, even while they were developing. The US, a net importer of intellectual property when Charles Dickens' writings were released there, is not immune from this regulation<sup>5</sup>.

According to Harnowo, 2022, intellectual property law protects patents, registered designs, copyright, and trademarks. We add integrated circuit design, anti-competitive licences, and regional indicators. Copyright is important in technology and information sectors. Thus, copyright protection is a crucial topic for information technology professionals, especially in the Internet age. Digital content intellectual property issues include copyright, ownership, pricing, and regulations governing varied uses<sup>6</sup>.

Foster, et al. (2018) claim that physical item creation has minimal influence on electronic information. Since all necessary documentation will be stored digitally, a design's protection will extend through production. Branding services and commodities like Dell Computers, AOL online, and Netscape Navigator, among hundreds of others on the Internet, will depend on future trademark usage. This chapter covers copyright, the most complicated kind of intellectual property for digital information, with brief references to other rights. Every "electronic rights" document is the outcome of a sophisticated development process based on these key ideas. Copyright now protects authors instead than publishers (Feather 1994). Using precedents, some countries have changed their legal systems to reflect technological changes.

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<sup>4</sup>Baruah, M. R. (2019). INTELLECTUAL PROPERTY RIGHTS (IPR): AN OVERVIEW & IMPLICATIONS IN LIBRARY.

<sup>5</sup>Cr, K. (2020). Research methodology methods and techniques.

<sup>6</sup>Harnowo, T. (2022). Law as Technological Control of the Infringement of Intellectual Property Rights in the Digital Era. *Corporate and Trade Law Review*, 2(1), 65-79.

The European Union's Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society creates new rights based on copyright<sup>7</sup>.

## 2.1 Research Gap

The researcher of this work have focused their efforts on filling the gaps in knowledge that they discovered in the existing literature. The lack of an in-depth connection between EBIs and IPRs has been highlighted as a major research gap. The research has also highlighted the differences between Indian intellectual property rights and those of other countries with regard to cyber security procedures.

## 2.2 Research Question

I. What are the big picture and practical consequences of intellectual property rights in regard to digital documents?

II. How the Indian Constitution's restrictions on legislation concerning electronic records from the standpoint of intellectual property rights is undertaken?

III. What are the ways in which the security of electronic documents might be improved in accordance with the principles of intellectual property rights?

## 2.4 Research Objectives

I. to analyse the big picture and practical consequences of intellectual property rights in regard to digital documents.

II. to examine the Indian Constitution's restrictions on legislation concerning electronic records from the standpoint of intellectual property rights.

III. to talk about ways in which the security of electronic documents might be improved in accordance with the principles of intellectual property rights.

## 2.5 Scope and Limitation

The paper is limited to the research of Law relating to electronic records in specific context of IPR Protection. The study will constrain to India only.

## 3. Research Methodology

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<sup>7</sup>Foster, J., McLeod, J., Nolin, J., & Greifeneder, E. (2018). Data work in context: Value, risks, and governance. *Journal of the Association for Information Science and Technology*, 69(12), 1414-1427.

Qualitative data will be efficiently examined using a descriptive research approach. The research questions were investigated qualitatively. Presuppositions influence the researcher's questions and interpretation of the data. Qualitative analysis assumes reality is neither simplified or ludicrous. Secondary analysis is found in many published and unpublished works, including dictionaries, novels, journals, media, and dissertations.

### 3.1 Research Method & Design

The suggested study would combine doctrinal and non-doctrinal research methods. The doctrinal study will exhaustively and in-depthly analyse statutes, instruments, judicial pronouncements, etc., while the non-doctrinal study will exhaustively and in-depthly analyse data from field observations and formal questionnaires to investigate court operations, the strengths and weaknesses of the current system, and reform suggestions<sup>8</sup>.

### 3.2 Research Approach

Research involves data collection, analysis, and application. Scientific inquiry follows positivism, interpretivism, and realism. This project's qualitative research will be interpretivist<sup>9</sup>. The suggested study uses a systematic approach to explore project issues and provide a thorough analytical framework. This key research step will use descriptive and theme analysis methods. Thus, a descriptive approach is best for factual analysis<sup>10</sup>.

## 4. Analysis of Study

### *I. What are the big picture and practical consequences of intellectual property rights in regard to digital documents?*

Archiving and preservation—the activity that has quietly sustained research, education, trade, and public interaction with creative works throughout human history—is the poor relative in an increasingly imbalanced digital copyright relationship<sup>11</sup>. Multiple factors caused this. Digital preservation isn't a priority, and politicians would rather spend their time on other issues. Many politicians consider conservation as pointless and long-term issues as the responsibility of future generations. The recent Term Extension Directive for sound recordings was touted as protecting session musicians rather than corporate copyright holders, as most

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<sup>8</sup>Mishra, S. B., & Alok, S. (2022). Handbook of research methodology.

<sup>9</sup>Busetto, L., Wick, W., & Gumbinger, C. (2020). How to use and assess qualitative research methods. *Neurological Research and practice*, 2(1), 1-10.

<sup>10</sup>Pandey, P., & Pandey, M. M. (2021). Research methodology tools and techniques. Bridge Center.

<sup>11</sup>Yang, M. (2019, February). Research on intellectual property rights of electronic commerce from the perspective of big data. In *2018 International Symposium on Social Science and Management Innovation (SSMI 2018)* (pp. 442-444). Atlantis Press.

independent research predicted<sup>12</sup>. This case shows how well-funded lobbying affects copyright policy.

Digital technology has made it feasible to distribute information quickly and accurately. Distributing literature, art, and science to a broad audience through the Internet and other electronic media is effective and efficient. However, it raises several concerns. Most are,

- I. Is digitalization like replication?
- II. Is digitising analogous to translating languages logically?
- III. Can digital content be distributed commercially or broadcast over the Internet?
- IV. Is distribution right depletion significant in the information age?
- V. Is a database a special work that needs specific regulations to preserve it or a collected work that deserves copyright protection?
- VI. What does "Faire usage" imply on the Web?
- VII. What concerns record-keepers?
- VIII. How can the public use such works fairly online if the copyright owner may technologically restrict access?
- IX. Should record keepers be prohibited from utilising digital technology to make three copies—an archive copy, a master copy, and a use copy—to preserve works?
- X. Should Internet access providers like schools and corporations be held legally responsible for a user's violation of another's intellectual property rights simply because they enabled the transfer of binary digits that became that creator's copyrighted creation?.

The above issues are internet-specific. Record keepers allow patrons to read a document, browse the entire collection, search the web catalogue, request a Xerox copy for research or education, get photocopies of articles from other sources or clearinghouses, and disseminate widely reprinted documents that need public attention<sup>13</sup>. Can these traditions survive digital technology? If we consider of digitization as duplication, the original work is turned into a digital format by a machine without human involvement. Digitization converts human speech to machine binary code. Digitising, like reprography, is mechanical and needs no creativity. Copyright protects writers. Digitising writing is not creative activity<sup>14</sup>.

## ***II. How the Indian Constitution's restrictions on legislation concerning electronic records from the standpoint of intellectual property rights is undertaken?***

Technology can enforce intellectual property rules, but it cannot solve social, legal, and economic issues connected to work ownership or rectify erroneous solutions. Many believe IP

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<sup>12</sup>Vindele, L., & Cane, R. (2022). The role of intellectual property rights in the technological age. *Acta Prosperitatis*, 183.

<sup>13</sup>RG, S. (2021). Intellectual Property Rights (IPR): An Overview. *Emperor International Journal of Library and Information Technology Research*.

<sup>14</sup>Shieh, C. J., & Qiang-Jun, Q. I. (2020). An Integration of Internet IPR Synchronous Teaching on Learning Outcomes. *Revista de Cercetare si Interventie Sociala*, 69.

laws just safeguard IP holders' monetization rights. Technical protections may check information source and tampering<sup>15</sup>. This feature will benefit information consumers, and publishers require authenticity measures to protect their brands.

The legislature has included certain rights safeguards under Article 21 of the Indian Constitution. RTI Act Section 8(j) prohibits intellectual property rights-related electronic data rules. Indian law does not guarantee privacy. Courts have interpreted the Indian Constitution's rights to free speech and expression (Article 19(1)(a)) and life and personal liberty (Article 21) to encompass privacy. The state may reasonably restrict Fundamental Rights under Art. 19(2) of the Indian Constitution. The Hon'ble Supreme Court's constitution bench declared the Right to Privacy a basic right, with certain limits, in Justice K S Puttaswamy (Retd.) & Anr. vs. Union of India and Ors<sup>16</sup>.

India lacks data privacy legislation. India protects data via the Information Technology Act, 2000 and the Contract Act, 1872. India will enact strict data protection legislation.

The Indian Information Technology Act, 2000 penalises personal data abuse, disclosure, and violation.

A company that improperly handles sensitive personal data or information may have to pay damages under section 43A of the (Indian) Information Technology Act, 2000. An injured party may claim as much as they can prove as compensation is unlimited.

The government issued the Information Technology (Reasonable Security Practises and Procedures and Sensitive Personal Data or Information) Rules, 2011. The Rules protect only "Sensitive personal data or information of a person," defined as data or information that may reasonably be expected to cause substantial harm to an individual.

Passwords; Information about your bank account, credit card, debit card, or other payment method; Well-being, sexual orientation, Patient medical records; and Biometric info

Trademarks, Copyright, Patents, Designs, and Geographical Indications Acts safeguard intellectual property in India.

Indian IP law has improved. The Patent (Amendment) Act, 2005 was also amended.<sup>17</sup> India's copyright policy has recently strengthened. The Copyright (Amendment) Act, 2012 grants

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<sup>15</sup>Parkhomenko, M., Pustovit, J., Ivanenko, D., Denisov, A., & Voinarivskyi, M. (2019). Digital law and electronic ethics in the formation of society 4.0. *Journal of Legal, Ethical and Regulatory Issues*, 22, 1-6.

<sup>16</sup> Writ Petition (Civil) No 494 of 2012; (2017) 10 SCC 1; AIR 2017 SC 4161

<sup>17</sup>Modic, D., Hafner, A., Damij, N., & Zajc, L. C. (2019). Innovations in intellectual property rights management: Their potential benefits and limitations. *European Journal of Management and Business Economics*.

lyricists, composers, and singers royalties and other recompense for literary and musical works in motion pictures and sound recordings. The Act ensures that artists be adequately rewarded, including from performance recordings. The new legislation allows import of copyrighted works from any nation. It punishes copyright violators severely. With few limitations, Section 65A allows up to two years in prison and a fine for circumventing technological copyright protection mechanisms. Breaking a system to secure it, cooperating with law enforcement, or conducting a legal inquiry are examples. Illegally removing digital rights data may result in a two-year prison term and a fine<sup>18</sup>. The injunction, demand for damages, and delivering up of infringing items are only some of the legal remedies available to the owner of copyright whose right has been violated.

***III. What are the ways in which the security of electronic documents may be improved in accordance with the principles of intellectual property rights?***

Digital Rights Management (DRM) systems (sometimes called Electronic Rights Management Systems) safeguard copyright via material identification and protection, access control, content integrity, and payment assurance. DRM prevents unauthorised access. Licences and passwords limit access. TPM can secure digital assets. These advances assist media producers protect consumers' music, text, and video investments against theft and piracy. DRM helps authors charge users to access their work<sup>19</sup>. It's becoming more common to use TPM and DRM technologies when marketing and distributing digital media online.

For as long as there have been networks, cryptography has been used to keep data secure and private. This is accomplished by encrypting the data in such a way that only the intended recipient can decipher it (or decrypt). To be clear, cryptography safeguards the work only while it is being sent or distributed. Once the file has been decrypted, it offers no security any more.

The technology behind digital watermarks consists of embedding a digital signal or pattern into an electronic document. It's quite close to the on-screen logos that TV stations use. The piece is identified by a special code. Ownership, sender, receiver, and copyright authorization details may all be included in the communication<sup>20</sup>. A watermark generator, an embedder, and a watermark detection decoder make up the system. In the hands of a legitimate user, a simple programme can eliminate these watermarks. Watermarking is widely utilised for the security of multimedia content.

The sender's and/or recipient's names, a timestamp, a unique code, and other information are all part of a digital signature. Data like this may be included into electronic goods. A software

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<sup>18</sup>Karakilic, E. (2019). Rethinking intellectual property rights in the cognitive and digital age of capitalism: An autonomist Marxist reading. *Technological Forecasting and Social Change*, 147, 1-9.

<sup>19</sup>Sappa, C. (2019). How data protection fits with the algorithmic society via two intellectual property rights—a comparative analysis. *Journal of Intellectual Property Law & Practice*.

<sup>20</sup>Chander, H., & KAUR, G. (2022). *Cyber laws and IT protection*. PHI Learning Pvt. Ltd..

product is digitally signed and sealed before being transferred to a single buyer. Digital fingerprints are used to verify the originality of a document and deter forgery.

Marking documents digitally involves the creation of a distinctive signature that is then attached to every single copy. This method is used in electronic publication, when papers are printed, copied, or faxed, and to safeguard intellectual property<sup>21</sup>.

## 5. Results

The study's aims and questions suggest that IPRs comprise patents, registered designs, copyright, and trademarks. Anti-competitive licencing agreements and integrated circuit layout design geographical indicators are also included. Digital papers and other informative works need copyright. This presentation will concentrate on copyright protection in the Internet era, a significant issue for business experts, record keepers, and registrars. Digital information intellectual property issues include copyright, ownership, pricing, and multiple use laws.

This report found that intellectual property and copyright restrictions were uninteresting and superfluous before ICT. However, ICT has made intellectual property law one of the most intriguing and fast-changing areas of law. As the economy becomes knowledge-based, understanding intellectual property rights (IPR) is essential to technological progress. As digital rights infringements increasingly difficult to establish, information and knowledge providers must be more IPR conscious. Due to the increased number of people using digital content at once, fair use, access, and preventing piracy are more difficult.

## 6. Conclusion

The pace at which technology advances is outpacing legal safeguards. Unfortunately, the existing copyright restrictions do little to prevent theft or other types of infringement. Major changes are being made to these rules so that they can effectively serve the online and linked world. Theoretically, in a networked environment, a digital document may completely replace physical copies while still providing immediate access to a large number of users. Recent developments in remote access and downloadable documents have made it feasible for a single document to meet the requirements of all network users. Databases, multimedia works, and computer software, together with their security in a network environment, are reviewed, along with the laws that protect them. The previous research delved deeply into many provisions of the IT Act. Despite the law, a level playing field is necessary for rights holders, publishers, staff, and users. The various deterrent/regulatory measures, such as cryptographic techniques, authentication of users, access limits, security across multiple platforms, protection at the network, system, application, and user workstation levels, password regulations, etc., will undoubtedly safeguard the IPRs, but they will also discourage many would-be users. The goal

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<sup>21</sup>Neves, P. C., Afonso, O., Silva, D., & Sochirca, E. (2021). The link between intellectual property rights, innovation, and growth: A meta-analysis. *Economic Modelling*, 97, 196-209.

of the various copyright regimes should be to encourage and safeguard material use and reading, not to strangle them. It's not always obvious whether something is lawful and does not violate rights.

### 6.1 Future Scope

To find how ,more effectively should the Indian government draft the IPR rules within the context of digital documents, records.

### 6.2 Suggestions

Trying to protect data in a variety of different ways when taking it to a different jurisdiction, where one protects and the other does not, is a time-consuming and confusing process that could be greatly simplified if the world adopted a single copyright law or legislation that addressed all cross-country issues relating to the protection of digital content. In order for the new copyright laws to be successfully implemented and passed into law, there has to be opportunity for the use of creative layering talents to enhance the structure, policy, schemes, legislation, and bill.

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