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Intellectual Property Rights in the Era of Social Media: Its Challenges and Reforms in India

Introduction:

The emergence of social media in today's world has been tremendous, encompassing users activities, practices, and behaviours through media by sharing information, knowledge, and opinions. Social media, social networks and social communities offer new forms of collaboration and communication. Today, almost everyone is on some type of social media – teenagers on Instagram Reels and snapchat, influencers and small companies on Instagram and Facebook, or professionals on LinkedIn. When it comes to maximizing connection in any industry, social media is often the first option that comes to mind. A significant development in this realm is that social media platforms are transforming into business platforms through content creation and social media influencing. This shift underscores the necessity of understanding the dynamics of social media and intellectual property (IP) law to ensure the protection of copyright and intellectual property in an increasingly connected world. Technological advancements, including the rise of social media, have influenced patterns of IP infringement and enforcement, necessitating a redefinition of the law's role as a means of technological control. Thus, the importance of IP law in the digital era extends beyond protecting copyright and patents. It also involves the adaptation and evolution of the law to address new challenges arising from technological developments. In India, social media has significantly transformed how content is created, shared, and consumed. This transformation requires a re-examination of intellectual property rights and their protection in the digital age to keep pace with these changes.

Intellectual Property- Relevance in Social Media :

Intellectual property (IP) encompasses original creations of the human intellect, including artistic, literary, technical, and scientific works. Intellectual property rights (IPR) refer to the legal rights granted to inventors and creators to protect their works for a specified period. The various forms of IPR include copyright, trademarks, patents, geographical indications, designs semiconductor integrated circuit layouts, and plant varieties.

However, the proliferation of social media platforms has introduced significant obstacles to IP protection. Concerns include copyright infringement, trademark infringement, and theft of trade secrets. Social media's ease of sharing and dissemination can lead to the unauthorized use of legally protected works. Moreover, the rapid sharing and distribution of information can make it

challenging to track and enforce IP rights. Identifying legal responsibility for infringement can become complicated when information is shared and reshared across multiple platforms. The fast-paced nature of social media also makes timely IP protection difficult.

IPR Challenges in Social media:

- 1. Copyright:** The unauthorized reproduction of copyrighted content, including photographs, videos, music, software, and literary works, constitutes a serious violation of copyright laws. On social media platforms, users frequently engage in the unauthorized reposting, downloading, and sharing of copyrighted content that they do not own or have permission to use. In the digital era, the widespread proliferation of the internet and new technologies has created novel challenges for copyright holders, particularly with regards to the unauthorized copying and distribution of copyrighted works. One of the most significant copyright challenges in the digital era is the rampant issue of piracy. With the advent of peer-to-peer file sharing and online streaming platforms, it has become easier than ever for individuals to access and share copyrighted content without obtaining the necessary permissions. This has resulted in financial losses for copyright holders in the music and film industries. Another challenge that has arisen in the digital era is the issue of fair use. Fair use is a legal doctrine that allows for the limited use of copyrighted material without permission for specific purposes, such as criticism, commentary, news reporting, teaching, scholarship, or research. However, the digital era has made it increasingly difficult to determine what constitutes fair use, particularly with regards to online content.
- 2. Trademark:** Trademarks, which protect brand names, logos and other identifiers, face unique challenges on social media. The instantaneous and global nature of these platforms can amplify both the benefits and risks associated with trademarks. Social media can be a source for brand misuse, including counterfeit goods, unauthorized use of trademarks, and parody accounts. Such misuse can dilute brand value and confuse consumers. Negative comments and reviews can quickly damage a brand's reputation. While trademarks don't protect against criticism, companies must navigate the fine line between addressing false statements and respecting free speech.
- 3. Online piracy and content sharing:** Online piracy refers to the unauthorized use, distribution or reproduction of copyrighted material, such as music, movies, software, and books. This typically involves downloading or sharing files without proper licensing or permission from the copyright holders. Piracy can lead to significant financial losses for creators, distributors

4. and publishers. When people access content for free and illegally, it can reduce sales and revenue. Content sharing involves distributing digital material over the internet, often through platforms like social media, file-sharing services, or peer-to-peer networks. Unlike piracy, content sharing can be legal or illegal depending on the nature of the content and the permission granted.
5. **Social media regulation and freedom of expression:** To prevent social media from becoming a source of conflict, a regulatory approach rather than restrictive measures is necessary. Such regulations should strike a balance between ensuring responsible social media usage and upholding the fundamental Right to Freedom of Speech and Expression. While social media has undoubtedly transformed communication and emerged as a powerful catalyst for social change, it also presents challenges that require thoughtful consideration. In a diverse and democratic society like India, the dynamic interplay between freedom of expression and the need for regulation is crucial. Strengthening cyber laws without undermining fundamental rights is essential to harness the benefits of social media while mitigating its potential harms. By adopting a nuanced approach, we can promote responsible social media usage, protect citizen's rights, and foster a healthy online environment that encourages constructive dialogue and debate.
6. **Digital rights management and royalty issue:** DRM and royalty issues are central to the management of digital content and its distribution. While DRM aims to protect intellectual property, it can also create user friction and interoperability problems. Royalty systems strive to ensure fair compensation for creators but can face challenges in transparency and consistency. As technology and industry practice evolve, finding balanced and fair approaches to both DRM and royalties will be key to supporting a healthy digital content ecosystem.

Reforms and initiatives:

1. **National IPR Policy(2016):** The National Intellectual Property Rights (IPR) Policy of India, introduced in 2016, primarily focuses on the broader landscape of intellectual property rights, including patents, copyrights, trademarks, and designs. While the policy itself does not specifically address social media in great detail, its principles and objectives have implications for social media platforms and online content. It maintains the sanctity of innovations so that the litigations in this domain are minimised. The policy effectively prevents film and music piracy, while prioritizing the enhancement of access to essential services such as healthcare, food security, and environmental protection. Furthermore, it

2. stimulates creativity and innovation across various sectors, facilitating a stable, transparent, and service-oriented Intellectual Property Rights (IPR) administration in the country. By doing so, the policy aims to increase awareness, cultivating an environment that fosters creativity and innovation, and ultimately leading to the generation of protectable Intellectual Property (IP) that can be successfully commercialized, thereby driving economic growth and development. While the National IPR Policy of India does not explicitly target social media, its principles and objectives are relevant to the challenges and opportunities presented by digital platforms. Addressing these issues requires a comprehensive approach that includes awareness, management, enforcement, and commercialization of IP in the context of social media. Future developments may involve more specific guidelines or regulations to better integrate social media considerations into the broader IP framework.
3. **Digitalization of IPR registration processes:** The digitalization of Intellectual Property Rights (IPR) registration processes has been a transformative development for managing intellectual property. This shift to digital platforms offers numerous benefits, including increased efficiency, accessibility, and transparency. Applicants from anywhere in the world can access registration services, making it easier for international businesses and individuals to file for IP protection. Digitalized IPR systems typically include searchable public databases, which help users verify existing IP rights and avoid conflicts. Digital platforms can offer educational resources and training on IP rights, helping social media users understand how to protect and manage their content effectively. The digitalization of IPR registration processes significantly impacts social media by providing efficient, accessible, and transparent mechanisms for protecting and managing intellectual property. It enhances enforcement capabilities, facilitates IP transactions, and addresses challenges such as digital piracy,
4. **Social media guidelines and platform accountability:** Social media platforms should establish clear community standards and enforce them consistently and fairly. Users should be able to report harmful content easily, and platforms should provide transparency into their moderation processes. Additionally, platforms should comply with relevant laws and regulations, take responsibility for moderating harmful content, protect user privacy and data, and be transparent about their algorithms and content prioritization. Furthermore, social media companies should be subject to independent oversight and audits to ensure accountability. By taking these steps, social media platforms can create safer and more positive online environments for users.

5. **IPR awareness campaigns and educations:** Intellectual Property Rights (IPR) awareness campaigns and education are crucial to promote understanding and respect for IPR among various stake holders. Effective campaigns can raise awareness about the importance of IPR, prevent infringement and piracy, encourage innovation and creativity, support economic growth and foster a culture for respect for IPR. To achieve this, strategies such as workshops, online resources, collaborations with schools, public outreach and development of educational materials can be employed. By educating and raising awareness about IPR, we can promote a culture of innovation, creativity and respect for intellectual property, ultimately supporting creators, innovators and the economy as a whole.

Case Laws:

Living Media India Limited & Anr. v. Aabtak Channel.com (John Does) & Ors:

The Court restrained the defendants from using the plaintiff's name and mark 'AAJ TAK' because the defendants without the plaintiff's authorization used it on various social media platforms, including Twitter, Facebook and Instagram. The court also ordered those social media platforms to take down all the infringing posts, pages and videos referring to the plaintiff's mark, AAJ TAK.

Facebook Inc. v. Surinder Malik & Ors and Instagram LLC v. Surinder Malik & Ors:

The Delhi High Court held that, while online intermediaries, such as Facebook and Instagram, may not perform an active role in posting of the infringing contents on their platforms, being facilitators of the infringement, they are under an obligation to pull down such content as and when it is brought to their notice/ knowledge.

YouTube v. Myspace (2019):

The Bombay High Court directed Myspace to remove infringing content that violated YouTube's copyright rights. YouTube had complained that Myspace users were uploading copyrighted YouTube videos without permission.

Rayban v. Saurabh Baid (2020):

The Delhi High Court granted an injunction against Saurabh Baid for selling counterfeit Rayban products on social media platforms. The court held that Baid's actions infringed on Rayban's trademark rights and were likely to cause damage to Rayban's reputation.

Conclusion:

The advent of social media has transformed content creation, sharing, and consumption, posing significant Intellectual Property Rights (IPR) challenges in India. Rampant IPR infringement, including copyright, trademark, and patent violations, has become a major concern due to the ease of sharing and accessibility on social media platforms. To address these challenges, India needs to strengthen online IPR enforcement mechanisms, enhance awareness and education among social media users, update legal frameworks, and encourage social media platforms to adopt robust IPR policies and takedown procedures. India has taken steps in this direction, amending the Copyright Act, 1957, to include online copyright infringement, introducing the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and establishing the Intellectual Property Office of India. However, more needs to be done to strike a balance between IPR protection and innovation. Ongoing efforts are necessary to ensure India's IPR regime is robust, effective, and adaptable to the evolving digital landscape, fostering creativity, entrepreneurship, and economic growth while safeguarding intellectual property rights. Ultimately, a collaborative approach involving government, social media platforms, and stakeholders is crucial to navigate the complexities of IPR in the social media era and promote a culture of innovation and respect for intellectual property.

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