

# Intellectual Property & Information Technology Laws News Bulletin



Vol. VI, Issue I, May-June 2011

## From the Editor's Desk...



Dear Readers,

Indian IP scenario is changing, so is the Indian IP office is also changing. The office of the Controller, Patents, Designs and Trademarks in India has come up with some people-friendly features in its official website. The Trademarks Registry in India has made trademark search engine officially free. Now, India is at par with many other countries having well-equipped online trademark search process.

In this issue we have focused on a major trade mark infringement case decided by the High Court of Delhi wherein the Court refused to grant injunctions on substantially descriptive marks, using the decisions as an opportunity to censure such "bad" trademark registrations, and discuss the Indian position on descriptive marks in general.

The law in regards commercial disparagement is crystal clear i.e. a trader can puff up his goods in comparison to his competitors goods but he cannot denigrate or disparage the competitor's goods while doing so. This issue also analyses a decision of the Delhi High Court which draws the line between harmless puffery and denigration of a rival product i.e. Comparative Advertising. Recently, a number of cases have been filed before various High Courts of India against denigrating advertisements. Violation of intellectual property rights (IPR) continue to increase, having reached, in recent years, industrial proportions.

We also focus on the changing mindset of the Indian Judiciary towards curbing the menace of piracy and the change in the liability of the intermediaries after the Amendment of (Indian) Information Technology Act, 2000.

We welcome, as always, your views, comments and input.

With Regards,

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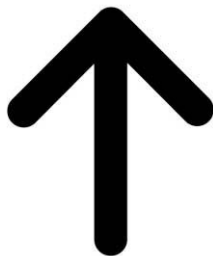
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## RECENT DEVELOPMENTS

### Trademark Registration changes in India

#### Application Fees goes up!!!



The official fees for filing a trademark application in India in a single class has been increased from ₹ 2,500 to ₹ 3,500, with effect from December 29, 2010. Therefore, going forward, the official fees for filing a trademark registration application in a single class will be ₹ 3,500.

#### Trademark Search for free!!!



In a public friendly decision, the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) has abolished the fee for search including the system of Official Search<sup>1</sup>. Now, any interested person can conduct a search from the online data base of the Registrar of Trademarks **free of cost**<sup>2</sup>. According

to this notice, anyone can now access the search facility at the IPO website at zero cost. Now, India is at par with many other countries having well-equipped online trademark search process.

#### Check it!!!

#### Is your trademark a "well known"

##### Trademark?



As per the Website of the Controller of Patents, Trademarks and Designs, India, following Trademarks are being treated as well known Trademarks, which may enjoy special protection status<sup>3</sup>.

As per Section 2(zg) of the (Indian) Trade Marks Act, 1999<sup>4</sup>, a "well-known trade mark", in relation to any goods or services,

means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or service would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

A well known trademark under Section 9 of the (Indian) Trade Marks Act, 1999, can seek registration as a matter of right.

Further under Section 11(2) of the (Indian) Trade Marks Act, 1999, a trade mark shall not be registered if the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier well known trade mark.

Under Section 11(10) of the (Indian) Trade Marks Act, 1999, a duty has been casted upon the Registrar to protect a well-known trademark against the identical or similar trademarks.

Criteria for determining whether a trademark is a well known trademark or not has been provided under Section 11(6) of the (Indian) Trade Marks Act, 1999 as under:-

- i. Knowledge or recognition of the trademark in the relevant section of the public.
- ii. Knowledge obtained by the public as a result of promotion of trademark.
- iii. The duration, extent and geographical area of any use of the trademark.
- iv. The duration, extent and geographical area of any promotion of the trademark.
- v. Advertising or publicity and presentation at fairs.
- vi. Exhibition of the goods or services.
- vii. Duration and geographical area of any registration.
- viii. Record of successful enforcement of the rights in the trademark.
- ix. Recognition of the trademark as a well known trademark by any Court or Registrar.

1. [http://www.ipindia.nic.in/iponew/publicNotice\\_13january2011.pdf](http://www.ipindia.nic.in/iponew/publicNotice_13january2011.pdf)  
 2. [http://www.ipindia.nic.in/iponew/publicNotice\\_13january2011.pdf](http://www.ipindia.nic.in/iponew/publicNotice_13january2011.pdf)  
 3. <http://124.124.193.235/tmrpublicsearch/frmwelknownmarks.aspx>  
 4. [http://ipindia.nic.in/tmr\\_new/tmr\\_act\\_rules/TMRAct\\_New.pdf](http://ipindia.nic.in/tmr_new/tmr_act_rules/TMRAct_New.pdf)

7 O' CLOCK	LETTER 'T' IN A CIRCLE
AIWA	Logo 'M'
BAJAJ	MAHINDRA & MAHINDRA
BATA	MARS
BENZ	NIRMA
BISLERI	ODOMOS
CARREFOUR	ODONIL
CARTIER OMEGA	
CATERPILLAR	PANADOL
CHARLIE PEPSI	
DR. REDDY	PHILIPS
DUNHILL	PIZZA HUT
ENFIELD BULLET	PLAYBOY
EVIAN Mineral Water	REVLON
FEDDERS	RED BULL
GLAXO	TACO BELL
Hamdard TATA	
HAYWARDS 5000	TELCO
HOLIDAY INN	TOSHIBA
HONDA USHA	
HORLICKS	VICKS
Infosys	VOLVO
Intel	WHIRLPOOL
INTIMATE	WOOLWORTH
KANGARO	Yahoo
KIRLOSKAR	

### Prohibited!!!



In India, use of certain emblems and names is prohibited for any professional or commercial purposes under THE EMBLEMS AND NAMES (PREVENTION OF IMPROPER USE) ACT, 1950<sup>5</sup>. This law has been enacted by the Government of

India for protecting public interest. The prohibited names also include some generic names of salts and chemicals.

Recently, the Controller of Patents, Trademarks and Designs, India, has come up with a list of Trademarks of the words and symbols registration of which have been prohibited under the (Indian) Trademarks Act, 1999<sup>6</sup>.

2, 4, 5-T	HETHOXYCHLOR
2, 4, D	HHDN
ALDRIN	ICS
ALLETHRIN	INTERPOL
ANIZPHOS-METHYL	IR
ANTU	ISI
ASOKA CHAKRA	ISO
ATRATON	LINDANE
AZINPHOS-ETHYL	LORD BUDDHA
BALAJI	LORD VENKATESWARA
BHC	MAHATMA GANDHI
CHATRAPATI SHIVAJI MAHARAJ	MALATHION
CHLORBENSIDE	MAZIDOX
CHLORDANE	MCPA
CHLORFENSON	MECARBAM
CHLOROBENZILATE	MEVIPHOS
CHLORPROPHAM	MIPAFIX
DAZOMET	MORPHOTHION
DHARMA CHAKRA	NATIONAL
DIAZINON	NCL
DIELDRIN	NEHRU
DIMETHOATE	NEOD
DINEX	NPL
DINOPROP	PANCHSHEEL
DINOSAM	PANDIT JAWAHARLAL NEHRU
DNC	PARAQUAT
DNOC	PARATHION
D-T	PP-DDT
ENDRIN	PROPHAM
FENOPROP	SCHRADAN
FENSON	SHIVAJI
FENTHION	SHREE SAI BABA
FERBAM	SRI RAMKRISHNA
GAMMA-BHC	SRI SARDA DEVI
GANDHI	SWAMI VIVEKANANDA
GURU AMARDAS	THE BHARAT SCOUTS AND GUIDES
GURU ANGAD	THE HOLY MOTHER
GURU ARJUN DEV	THIRAM
GURU GOVIND SINGH	TOXAPHENE
GURU HAR KRISHNAN	UNESCO
GURU HAR RAI	UNITED NATIONS
GURU HARGOBIND	UNO
GURU NANAK	VENKATESWARA
GURU RAM DAS	WARFARIN
GURU TEJ BAHADUR	WHO
HEPTACHLOR	WIPO
	ZINEB

5. <http://www.fcamin.nic.in/Events/EventDetails.asp?EventId=1247&Section=Acts%20and%20Rules&ParentID=0&Parent=1&check=0>

6. <http://124.124.193.235/tmrpublicsearch/frmprohibitedmarks.aspx>

## INDIAN IPR DECISIONS

**MARICO LIMITED**

**Vs.**

**AGRO TECH FOODS LTD.**

**174 (2010) DLT 279**

***Losorb Vs. Low-Absorb***

**Description or Deception?**



A “descriptive word” cannot be registered as a trademark, the Delhi High Court held so while dismissing an appeal filed by FMCG major Marico seeking injunction on the use of word “Low absorb” by Agro Tech Foods Ltd.,

makers of SUNDROP oil.

Marico, which uses the expressions 'losorb' and “Lo-sorb” for its product Saffola and Sweekar respectively, had filed an injunction application against Agro Tech Foods Ltd. claiming that the use of the expression “LOW-ABSORB” in the product Sundrop oil, by “Agro Tech” was deceptively similar to Marico's registered trademark 'Losorb' and 'Lo-sorb.' They also claimed that use of the expression “LOW ABSORB TECHNOLOGY” in relation to its edible oil product amounts to passing off the goods of Marico.



Dealing with the contention of Marico regarding trademark infringement, the court held that the word “LOW ABSORB” was a common descriptive expression, and while rejecting the appeal, the Court held that the expression “LOW ABSORB” is not a coined word and at best it is a combination of two popular English words which are descriptive of the nature of the product.

In a caustic comment on the trend of claiming trademark monopoly over descriptive words, the court said:

“It is high time that those persons who are first of the blocks in using a trade mark which is ... purely descriptive [of the] product ought to be discouraged from appropriating [such] a descriptive

expression ... for claiming the same to be an exclusive trademark and which descriptive word mark bears an indication to the products kind, quality, use or characteristic etc.”

According to the court, both the trademarks "LOSORB" and "LO-SORB" were a minor variation on the descriptive phrase "LOW ABSORB". The phrase itself was not an unusual juxtaposition of English words.

## PATENT

**NIPPON STEEL CORPORATION Vs. UNION OF INDIA & ORS.**

**W.P. (C) 801 of 2011 in the High Court of Delhi**

**Amendment of Patent Application after abandonment of Patent Application Due to failure to file Request for Examination: Consequences**

Under Section 11-B(4) of the Indian Patents Act 1970, after filing of the application for grant of patent, an applicant needs to make a request to the patent office to examine the patent application within 48 months of the priority date of the application. Otherwise, the application will be deemed to have been withdrawn.

An interesting question of law involving the interpretation of Section 11-B (1) and (4) of the Patents Act, 1970 ('Act') and Rule 24 B of the Patents Rules 2003 ('Rules') arose in the writ petition filed by Nippon Corporation before the High Court of Delhi.

On February 9, 2007, the Petitioner herein filed an application being under the Patent Cooperative Treaty (“PCT”) that designates India as a member. The said application claimed priority date of February 9, 2006 from a Japanese Patent application No. 2006-031911.

Due to an accidental docketing error in the computer in the attorney's office, the deadline for filing the RFE in India was inadvertently missed by over 8 months. When it came to the knowledge of the petitioner's attorney, steps were immediately taken to rectify the said error by filing an application for amendment of the priority date of the application under Section 57(5) of the Indian Patents Act, 1970.

The amendment sought was to disregard the Japanese priority date of February 9, 2006 and to change the application's priority date to the international filing date of the PCT application i.e.

February 9, 2007. The idea was that by making this amendment, the deadline for filing the RFE would stand extended to four years (48 months) from February 9, 2007 and would expire on February 9, 2011.

The Indian Patent Office refused to entertain the request for amendment, pointing out that the request had become time-barred, since the application had ceased to exist. The petitioner preferred a writ petition before the High Court of Delhi, however, when the matter reached court, the patent applicant argued, inter alia, that while there may be a time limit for submitting an RFE, a request for amending the priority date could be taken on record at any time.

Justice S Muralidhar of the Delhi High Court, in a decision crafted with immense clarity, held that a request for amendment could be made “only in relation to an application that exists in law”. The applicant's writ petition was dismissed without merit, and the IPO's decision to reject the request for amendment was upheld.

**DISPARAGEMENT**

**GLAXOSMITHKLINE CONSUMER HEALTHCARE LTD.**

**Vs.**

**HEINZ INDIA (P) LTD.**

**The Nutrition Brand Wars Continue!**

**Harmless puffery Vs. Denigration of a rival product**



The Horlicks-Complan Saga reached new heights with GlaxoSmithKline (Horlicks) filing two suits against Heinz (Complan) for disparaging their product as 'cheap' and a 'compromise'. This particular ad-war took a rather ugly turn with the competitors calling each others product 'cheap'.

The first suit pertains to two advertisements by Complan (Heinz) against Horlicks wherein the 'Complan Mother' tells the “Horlicks Mother” that she's compromising her child's health by buying a product made of cheap ingredients.

The second suit pertains to a print advertisement comparing the ingredients of Complan and Horlicks with specific emphasis on the fact that some of the ingredients in Horlicks are 'cheap' and how a Child's growth would be compromised by Horlicks.

Deciding in favour of GlaxoSmithKline (Horlicks), the court recognised the powerful and lasting impact that audio visual images have on viewers. Court held that unlike the printed word, which is processed analyzed, and assimilated uniquely by each individual, an advertisement in the electronic media, particularly, has a different impact. The Court further observed that it is for this reason that the disparaging advertising by Complan was looked upon with more severity than the print advertisement by Horlicks. Advertisers therefore will have to tread much more carefully when creating comparative advertisements for television.

The law in regards commercial disparagement is crystal clear i.e. a trader can puff up his goods in comparison to his competitors goods but he cannot denigrate or disparage the competitor's goods while doing so. Therefore while it may be permissible to state that Product A is better than Product B it is not permissible to state that Product B is worse than Product A. There is a plethora of Indian case-law laying down the criteria for 'puffing'.



**COPYRIGHT**

**THE ACADEMY OF GENERAL EDUCATION, MANIPAL**

**Vs.**

**SMT. MALINI MALLYA**

**MIPR 2008 (I) 0373**

**Literary works vs. dramatic works**



In the above case, the famous Kannada writer Dr. Karanath, by a registered Will bequeathed Copyrights of his literary works to SMT. MALINI MALLYA (The Respondent). The allegation of the respondent in the original suit was that the Appellant tried to copy a distinctive DANCE FORM, which was developed by Lt. Dr. Karanath, resulting in infringement of Copyright over the said dance form. The Trial Court decided the case in favour of the Respondent, hence the



present Appeal was filed by the Appellant, The Academy of General Education, Manipal.

In the Appeal, one of the basic contention of the Appellant was that literary works are different from dramatic works, hence, there was no infringement of the Copyright. Another contention of the Appellant was Lt. Dr. Karanath had bequeathed copyrights of his literary works only, which does not include the dramatic works.

Deciding the above controversy, the Court held that Section 13(1)(a) of the Copyright Act, 1957 classifies the works into four categories namely, original

- Literary;
- Dramatic;
- Musical; and
- Artistic works.

in which copyright subsists, and that does not give room to take the view that a 'literary work' has nothing to do with a dramatic work and vice versa. It was also held that dramatic work is also a form of literature.

## KNOWLEDGE BANK

### INDIAN COURTS STRIKE AT PIRACY

In a spate of recent judgments, the Indian judiciary has shown zero tolerance for copyright infringement and has been prompt in providing interim remedies to software owners. The judicial activism has provided a fillip to anti piracy campaign even as software businesses step up the fight against piracy in an attempt to plug losses running into thousands of crores of rupees every year.



According to Sixth Annual BSA (Business Software Alliance) - IDC (International Data Corporation) Global Software Piracy Study released in May 2009 the piracy losses in India was nearly \$2.7 billion. (<http://www.bsa.org/idcstudy.aspx>)

While the laws to enforce copyright regime in India were always present, their enforcement remained tardy. Presently pirated CDs are freely available in the markets and the fear of law enforcement is nearly non-existent.

The respect for copyright regime would greatly increase as in recent cases the Courts have come down heavily on lawbreakers. *It is astounding to note that Microsoft has filed almost around 300 cases in Delhi High Court itself in the last 3 years.* Delhi High Court continues to remain tough on the issues of software piracy in the country. Since 2005, the Courts in India having original jurisdiction have seen a deluge of IP cases and have also begun awarding punitive and compensatory damages in such matters.



In a landmark judgment against software infringement in the year 2009, which came as a sigh of relief for the two plaintiffs, Microsoft and Adobe, the Delhi High Court has awarded ₹ 10,00,000/- as compensatory and punitive damages against the infringing company for using pirated software for commercial purposes without adequate and genuine licences<sup>7</sup>. The Court expressed the view that counterfeiting and use of duplicate software by the Defendant not only violates the legal rights of the Plaintiffs and cause financial damages, but also causes deception to the public as well. The Court also expressed concern for the huge losses of revenue, which the government suffers as such counterfeiters neither maintains any account books nor pays any taxes.

While passing the above judgment, the Court heavily relied on the famous judgment of Time Incorporated v/s Lokesh Srivastava<sup>8</sup>, wherein it was held that: "Courts dealing with actions for infringement of trademarks, copyrights, patents etc, should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers, who indulge in violations with impunity out of lust for money so that they realise that in case they are caught, they would be liable not only to reimburse the aggrieved party, but would be liable to pay punitive damages also, which may spell financial disaster for them."

The Court has sent a strong message through this judgment, that piracy of software not only harms the copyright owner, but also affects the national economy as a whole and is a deterrent to economic growth. This recent trend demonstrated by the Indian judiciary is particularly noticeable, as it is a significant step in creating extremely healthy precedents in the IPR regime in India.

7. Adobe Systems, Inc and Anr. v Mr. PBhoominathan and Anr. , 2009 (39) PTC 658 (Del)

8. 2005 (30) PTC 3 (Del)

Courts are becoming sensitive to the growing menace of piracy. They have started granting punitive damages even in cases where the exact sale figures of the defendant are not known.



In the matter of Microsoft Corporation v. Deepak Raval<sup>9</sup>, wherein the Court while granting damages of ₹ 5,00,000/- , heavily relied on the principle that while awarding punitive damages for wilful, intentional and flagrant violation of the plaintiff's copyright, the Court should take into consideration conduct of wrong doer.

Apart from the judicial activism and enhanced judicial process of protection of IPRs by the Indian Courts, the Indian Government has also set up a Copyright Enforcement Advisory Council to review the progress of enforcement of the Copyright Act that prohibits the sale of any unauthorized copy of the computer programme. The Council also reviews the progress of enforcement of the Copyright Act and also advises on measures, both on the policy front as well as on the implementation front for its better enforcement. Special cells for monitoring the enforcement of copyright have been set at police headquarters in the States and Union Territories of India. Also, a police officer of the rank of sub-inspector is empowered to seize infringing copies, duplicating and other equipments used for making infringing copies, without a warrant.

It is to be noted that IPR law firms are playing a crucial role in curbing the menace of piracy and trademark violation. Increasingly, a large number of corporate houses, movie, Music and software companies are hiring the IPR lawyers to seek legal recourse. The IPR lawyers help in collecting evidence against copyright and trademark violation, coordinate with the local police authorities in conducting raids and also seek effective and immediate remedy in the Courts by seeking injunction orders.

Keeping in mind the stringent software laws and their enforcement, it is imperative for companies to be legally compliant with all the rules and regulations. There are several good ways to keep track of licenses and users, like using available software asset management systems, audit tools, and other resources to ensure software compliance. It is also particularly important to educate the staff on the licensing requirements of software purchases.

9. MANU/DE/3700/2006 in CS (OS) No. 529 of 2003



In order to avoid getting directly or indirectly implicated legal actions for software piracy, which is punishable with imprisonment upto 3 years and fine upto ₹ 2,00,000/-<sup>10</sup> besides incurring Civil liability in the form of injunction, damages and compensation, it is advisable to get an immediate internal audit carried out of your Information Technology Infrastructure and Computer Network through a law firm or Conduct a self-audit of the software licenses and acquire any license needed for full compliance. It is also equally important to have Information Technology and Intellectual Property Usage Policy in your organization.

### LIABILITY OF INTERMEDIARIES UNDER THE IT AMENDMENT ACT 2008

After the notification of Information Technology Amendment Act, 2008 in the official gazette, it came into force on October 27, 2009<sup>11</sup>. Under the Information Technology Act, 2000<sup>12</sup> (old Act), intermediary was defined as any person, who on behalf of another person, receives, stores or transmits that message or provides any service with respect to that message. However, the Information Technology Amendment Act, 2008<sup>13</sup> has clarified the definition "Intermediary" by specifically including the telecom services providers, network providers, internet service providers, web-hosting service providers in the definition of intermediaries thereby removing any doubts. Furthermore, search engines, online payment sites, online-auction sites, online market places and cyber cafés are also included in the definition of the intermediary.



Section 79 deals with the immunity of the intermediaries. Section 79 of the old Act (IT Act 2000) was vaguely drafted and was considered harsh on the intermediaries. One such example is the case of Baazee.com (now renamed as [ebay.in](http://ebay.in)), an auction portal which is owned by the American auction giants Ebay.com.



10. Section 63B of the Copyright Act, 1957; <http://copyright.gov.in/Documents/CopyrightRules1957.pdf>  
 11. [http://www.mit.gov.in/sites/upload\\_files/dit/files/downloads/itact2000/act301009.pdf](http://www.mit.gov.in/sites/upload_files/dit/files/downloads/itact2000/act301009.pdf)  
 12. [http://www.mit.gov.in/sites/upload\\_files/dit/files/downloads/itact2000/itbill2000.pdf](http://www.mit.gov.in/sites/upload_files/dit/files/downloads/itact2000/itbill2000.pdf)  
 13. [http://www.mit.gov.in/sites/upload\\_files/dit/files/downloads/itact2000/it\\_amendment\\_act2008.pdf](http://www.mit.gov.in/sites/upload_files/dit/files/downloads/itact2000/it_amendment_act2008.pdf)

In this case, the CEO of the company was arrested<sup>14</sup> for allowing an auction of a pornographic video clip involving two students on his website. Under the old Act, intermediaries were exempted only to the extent if they proved that they had no knowledge of the infringement or they had exercised all due diligence to prevent such infringement or offence. This kind of approach made websites liable if constructive knowledge was proved or it lacked sufficient measures to prevent such infringement. It is virtually impossible for any website, having medium traffic, to monitor its contents and involves cost implications as well.

This draconian approach led to the amendment of the Information Technology Act 2000. Under the Information Technology Amendment Act, 2008, Section 79 has been modified to the effect that an intermediary shall not be liable for any third party information data or communication link made available or hosted by him. This is however subject to following conditions:

- the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted;
- the intermediary does not initiate the transmission or select the receiver of the transmission and select or modify the information contained in the transmission;
- the intermediary observes due diligence while discharging his duties.

As a result of this provision, social networking sites like Facebook, Twitter, Orkut etc. would be immune from liability as long as they satisfy the conditions provided under the section. Similarly, Internet Service Providers (ISP), blogging sites, etc. would also be exempt from liability.



However, an intermediary would lose the immunity, if the intermediary has conspired or abetted or aided or induced whether by threats or promise or otherwise in the commission of the unlawful act.

Sections 79 also introduced the concept of “notice and take down” provision as prevalent in many foreign jurisdictions. It provides that an intermediary would lose its immunity if upon receiving actual knowledge or on being notified that any information, data or communication link residing in or connected to a computer resource controlled by it is being used to



commit an unlawful act and it fails to expeditiously remove or disable access to that material.



Even though the intermediaries are given immunity under Section 79, they could still be held liable under Section 72A for disclosure of personal information of any person where such disclosure is without consent and is with intent to cause wrongful loss or wrongful gain or in breach of a lawful contract. The punishment for such disclosure is imprisonment extending upto three years or fine extending to five lakh rupees or both. This provision introduced under IT Amendment Act, 2008, is aimed at protection of privacy and personal information of a person.

The most controversial portion of the IT Amendment Act 2008 is the proviso that has been added to Section 81 which states that the provisions of the Act shall have overriding effect. The proviso states that nothing contained in the Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957 and the Patents Act, 1970. This provision has created a lot of confusion as to the extent of liability provided under section 79.

Section 79 under IT Amendment Act, is purported to be a safe harbour provision modelled on the EU Directive 2000/31. However, Information Technology Amendment Act 2008 left a lot to be desired. Both EU and USA provide specific exclusion to internet service providers under the respective Copyright legislations. In order to clarify the issue and put the controversy to rest, Indian legislators need to insert a similar provision providing immunity to ISP in the Copyright Act, 1957.



It is interesting to note that even auction sites, search engines and cyber café s fall within definition of intermediaries. There is no parallel legislation in the world which provides immunity to such a wide range of intermediaries. This can be reason behind addition of proviso to Section 81. Nevertheless, Information Technology Amendment Act 2008 makes a genuine effort to provide immunity to the intermediaries but has failed to achieve its objective due to loose drafting of few provisions. Indian Legislators need to plug in these gaps and provide indispensable immunity to the ISPs to enable them to operate in India without any fear and inhibitions.





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