

NMIMS – IIPS
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IPR ISSUES IN THE VIRTUAL GAMING WORLD

Distinguished Professors and My Dear Students,

I have been asked to be the Guest of Honour in the 6th National Moot Court Competition which is being organized by NMIMS under its institute of IPS. It gives me an immense pleasure to be a part of the gathering and especially the students who are waiting here eagerly to exhibit their skill, knowledge. The topic on which the entire Moot Court Competition revolves is Intellectual Property issues in a Trade Mark and Copy Right in the virtual gaming world.

In today's scenario, intellectual property, I would without hesitation say, is the most important issue which has to be dealt by all of us because India has become a hub of global business and by virtue of the fact that today's entire world has become a geography without boundaries.

To me what is intellectual property in Virtual World is as:

I would highlight some interesting aspects of Massively Multiplayer Online Role Playing Games (MMORPGs), such as *Second Life* and *World of Warcraft*. The number of participants in these so-called virtual worlds are increasing exponentially (currently millions of players). Beside the economic and social impact, several challenging legal issues arise. I would deal with intellectual property issues.

The rapid growth of online “virtual worlds,” or computer-based interactive electronic environments, such as *Second Life*[®] and *There.com*, has created new opportunities for creating custom, virtual content, and for advertising and selling “real world” and virtual products and services. Along with these opportunities come a number of unique and potentially complex legal issues that arise in establishing and enforcing intellectual property rights – including trademark, trade dress, copyright, rights of publicity and other rights – in the context of “virtual realities.” Conversely, owners of such rights need to be cautious in deciding whether to create their own presence in such virtual worlds, especially if the virtual world’s Terms of Use contain restrictions on how IP rights must be allocated or licensed, or how IP disputes must be resolved.

Virtual worlds, such as *Second Life* and *There.com*, allow users to operate online characters, commonly called “avatars,” who may shop for real goods and build, buy and sell virtual items and locations. (See, e.g., www.secondlife.com and www.there.com.)

The capability of computer users, to create and sell virtual items has led to concerns regarding unauthorized use of trademarks, copyrighted material and unauthorized content. At the same time, there are a number of additional legal issues concerning the governance of these online communities, the extent of the service providers’ responsibilities, jurisdictional boundaries, and the applicability and enforceability of real-world laws within virtual worlds.

Companies should secure legal guidance as they consider whether and how to monitor and quickly respond to reported IP violations within virtual worlds, especially threats to trademarks, copyrights and other important IP rights. For example, licensors of virtual products should consider taking steps to restrict the use of, and where appropriate, ensure obsolescence of, any “virtual property” bearing their marks.

Business-oriented virtual worlds, in particular, tend to exhibit a convergence of characteristics that can lead to serious IP enforcement challenges:

- 1. Prevalence of user anonymity**
- 2. Proliferation of user-generated content**
- 3. Real-world economic transactions**
- 4. Enforcement authority**

In addition to IP ownership, licensing, jurisdiction and enforcement issues, there are a number of virtual-world issues that might not be readily apparent, since the excitement or fantasy nature of the virtual world can mask a number of serious underlying concerns. An example of potentially unanticipated or unnoticed issues is that some Terms of Use contracts may define virtual items as "property" that is "sold" rather than as the subject of a temporary, non-exclusive license to control the display and use of a visual image. The distinction can have legal consequences; an approach conceiving of the virtual goods as property may result in the absence of any limitations on sublicensing of trademarked or copyrighted virtual items.

India is one of countries which is enacted as separate Cyber law, way back in 2000 following the steps of Singapore which is also one of the countries to enact such law. Before I come to the topic today all of us are well aware of Cyber war and Cyber crime. This has become a reality in our day to day life. The recent case of the two young girls of Maharashtra who were slapped with the charge allegedly for defaming someone under the IT Act is a classic example. Today social media network, internet has become the most powerful weapon all over the world to express your ideas, feelings and to get in contact with like minded people and create awareness of issues. The flip side is that it can also spread unwarranted rumors and can also harm other's private and social life. Many countries which fear the power of such weapon is trying to slap bands on the use of such media. The recent Dharmadhikari report which has appeared in the Times of India of 22nd Feb 2013 also suggest, placing curbs on such social network in order to create obedient girls or women and save them from the hands of people who exploit them.

The religious, spiritual leaders across have different views on the social media and as to how it affect the life in the family especially as whether it creates harmony and disharmony in the life. With this background, I am coming to the topic. I would now briefly touch upon the challenges faced by IPR system.

Interaction between in-game and in real life

Second Life enables users to create all kinds of constructions in the game, and many companies are now creating virtual branches in Second Life. These virtual branches can be housed in virtual copies of buildings that exist in real life. For instance, exact copies of shopping malls, universities and town halls can be found in Second Life. When real life brand logos and trademarks (Coca Cola) are used to decorate virtual shopping malls without rightsholders' permission, infringement of intellectual property right may occur. The more real life interferes with a game, the more chances there are of intellectual property issues arising. Examples of topics where real life is currently interfering with in-game life are the provision of news and the creation of in-game fashion.

CONCLUSION

MMORPG providers are legislator, judiciary, and government in one. Balance of powers

appears to be completely absent in the virtual world. In virtual worlds or MMORPGs norms are defined on at least three levels: mainly by MMORPG providers, partly by MMORPG players, and finally by real world legislation.

How should the legal status of in-game objects, transactions and relations between avatars be determined? Tensions arise between the scope of terms of use governing in-game life and regulations governing real life, for example with regard to the application of intellectual property rights.

Although at this moment the analysis of legal issues already explores the boundaries of existing legal systems, our expectation is that soon it will no longer be possible to approach virtual worlds without adding new concepts and norms. The exercises undertaken now are not only interesting for a good understanding of existing law, but also set the lines for future research in this field.

Challenges faced by the Indian IPR System

- IPR will play a very important role in the competitive world and it would be in the interest of every one that there is a legal framework which is sensitive to the social, cultural, and political needs of the country but still provides enough incentives for innovators and the process of innovation.
- Open source system for collating and utilizing innovations is in the nascent stage and is yet to generate enough evidence for its candidature as an effective tool for generation and sharing of IPR.
- Perhaps patent pooling in the specific areas regulated by standards may be a better candidate to be pursued provided a proper legal framework is worked out.
- To handle the increasing number of prosecution and litigation matters, there is an urgent need of qualified and competent patent examiners, lawyers, judges, and court staff. We must make the necessary changes in the curriculum of business schools, law schools, and other schools to have graduates specializing in patent law.
- The matters pertaining to the patent of telephone (Graham Bell) or electric bulb (Edison) were finally settled in the American Supreme Court. Similarly, Henry Ford had to fight a long legal battle against Selden to manufacture the mass-produced car, which revolutionized the automobile industry.
- We as a society need to nurture strong public initiatives in creating intellectual property and holding them in trust for public use directed at social or national strategic goals. Public action, philanthropy, and shaping of public policy are all necessary to ensure that the government and the not-for-profit sector earmark sufficient funds for the creation of intellectual property and technology innovation directed at social and strategic objectives.

Regards,

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