



Intellectual Property rights protection in India: An analysis

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Table of contents

1.0 INTRODUCTION	3
2.0 INDIAN SOFTWARE INTELLECTUAL PROPERTIES RIGHTS	3
3.0 SUMMARY OF INDIAN GOVERNMENT INITIATIVES TO PROTECT IPR.....	3
4.0 BEST PRACTICES TO MINIMIZE THE RISK OF OFFSHORE INTELLECTUAL PROPERTY LOSS.....	4
5.0 CASE STUDIES RELATED TO INDIAN IPR PROTECTION	5
6.0 CONCLUSION.....	6

1.0 Introduction

“How are we going to ensure that our Intellectual property is protected at an offshore location?” is a question often asked in board meetings of companies that are planning their offshore initiatives in India. The importance of IP exponentially increases in companies that are planning to execute some of their core projects offshore and in companies that need to provide access to classified company data to the offshore location for BPO/Call center initiatives. It is important for companies to understand IP rights in India and the best practices that can be followed to protect the IP.

In this paper, Indian Intellectual Properties Rights, key initiatives taken by the Indian government to protect the Intellectual Properties, best practices that companies can follow to protect their Intellectual property, case studies related to Indian IP Protection are described.

2.0 Indian Software Intellectual Properties Rights

World Intellectual Property Organization defines Intellectual Property as legal rights that result from intellectual activity. The intellectual activity may include any activity in the industrial, scientific, literary and artistic fields. According to the Center for Intellectual Property Rights in India, the major Indian Intellectual properties typically fall into 4 major buckets; Copy Right, Patent, TradeMark and Design Protection.

In India, the Intellectual Property Rights (IPR) of computer software is covered under the Copyright Law. Accordingly, the copyright of computer software is protected under the provisions of Indian Copyright Act 1957. Major changes to Indian Copyright Law were introduced in 1994 and came into effect from 10 May 1995. These changes or amendments made the Indian Copyright law one of the toughest in the world.

The amendments to the Copyright Act introduced in June 1994 were, in themselves, a landmark in the India's copyright arena. For the first time in India, the Copyright Law clearly explained:

- The rights of a copyright holder
- Position on rentals of software
- The rights of the user to make backup copies

Since most software is easy to duplicate, and the copy is usually as good as original, the Copyright Act was needed. Some of the key aspects of the law are:

- According to section 14 of this Act, it is illegal to make or distribute copies of copyrighted software without proper or specific authorization.
- The violator can be tried under both civil and criminal law.
- A civil and criminal action may be instituted for injunction, actual damages (including violator's profits) or statutory damages per infringement etc.
- Heavy punishment and fines for infringement of software copyright.
- Section 63 B stipulates a minimum jail term of 7 days, which can be extended up to 3 years.

3.0 Summary of Indian Government Initiatives to Protect IPR

The Indian government has initiated various steps towards Intellectual Properties Rights Protection.

Indian enforcement agencies are working effectively and there is a decline in the levels of piracy in India. In addition to intensifying raids against copyright violators, the Government has taken a

number of measures to strengthen the enforcement of copyright law. A summary of these measures is given below:

1. The Government has brought out A Handbook of Copyright Law to create awareness of copyright laws amongst the stakeholders, enforcement agencies, professional users like the scientific and academic communities and members of the public. Copies of the Handbook have been circulated free-of-cost to the state and central government officials, police personnel and to participants in various seminars and workshops on IPR.
2. National Police Academy, Hyderabad and National Academy of Customs, Excise and Narcotics conducted several training programs on copyright laws for the police and customs officers. Modules on copyright infringement have been included in their regular training programs.
3. The Department of Education, Ministry of Human Resource Development, Government of India has initiated several measures in the past for strengthening the enforcement of copyrights that include constitution of a Copyright Enforcement Advisory Council (CEAC), creation of separate cells in state police headquarters, encouraging setting up of collective administration societies and organization of seminars and workshops to create greater awareness of copyright laws among the enforcement personnel and the general public.
4. Special cells for copyright enforcement have so far been set up in 23 States and Union Territories, i.e. Andhra Pradesh, Assam, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Orissa, Pondicherry, Punjab, Sikkim, Tamil Nadu, Tripura and West Bengal.
5. The Government also initiates a number of seminars/workshops on copyright issues. The participants in these seminars include enforcement personnel as well as representatives of industry organizations.

As a consequence of the number of measures initiated by the government, there has been more activity in the enforcement of copyright laws in the country. Over the last few years, the number of cases registered has gone up consistently.

4.0 Best Practices to minimize the risk of offshore Intellectual Property loss

The following Best Practices will help minimize the risk of losing Intellectual Property in conducting business offshore.

1. **Understand the Intellectual Property rights:** The first and foremost step is to get an overview of the different Initiatives and laws undertaken by the offshore country to protect the Intellectual Property.
2. **Set up an Internal Intellectual Property protection team:** Intellectual property protection is an ongoing business responsibility and not a one-time act. This makes it very critical to have a team in the company that is responsible for monitoring their Intellectual properties, violations etc.
3. **Examine the work entities that can be copyrighted/patented:** An ongoing evaluation of the company's work entities to identify copyright protection/patents is very critical. While copyrighting, it is important to make sure that such a protection will be valid in the country of offshore activity/development.

4. **Offshore vendor history:** If the company is planning to enter into a vendor relationship with an offshore entity, extreme caution has to be exercised in understanding the vendor's history with respect to any Intellectual property violations.
5. **Define IP violation clause:** In executing a contract with the offshore vendor, define a separate Intellectual Property Violation clause and define the consequences of Intellectual property violation (Some companies sign the contract with the onsite entity of the offshore vendor as it gives them more leverage to take any legal action if they have to).
6. **Seek a reference check for all the team members:** It is not only important to look at the resumes of the offshore team but also very important to seek the appropriate references to make sure there is no IP violation case history behind the individual.
7. **Pay Attention to use of unauthorized software/third party products:** As the saying goes, 'Practice what you Preach'. Heavily discourage the use of unlicensed software or products both by the onsite and the offshore team.
8. **Enforce Central Repository:** Enforcing a central repository for all the code and documents can not only improve the overall efficiency, and will also avoid numerous placeholders for critical documents and code.
9. **Perform Periodic IP Audit:** Perform a periodic IP audit and examine any new work that can be copy righted, remove all the unauthorized software/product, reiterate the importance of IP, look into all the place holders of the code/documents, assign appropriate ownership to the critical documents and update any change of ownership to patents.
10. **Enforce the use of References:** In all the company meetings/presentations make sure the appropriate references and credits are given to the owner of the work (be it internal or external). Making this practice a habit will raise the standards of the employees to acknowledge and respect and protect other people's work.
11. **Develop Awareness:** Protecting the Intellectual property can be greatly enhanced if all the employees of the company and the offshore team are on the same page as to how much attention the company pays to protect Intellectual Properties. In some companies IP protection is made as a part of the performance plan for each employee and reviewed periodically.

5.0 Case Studies Related to Indian IPR Protection

Bangalore Aug10, 2003. Banashankari police arrested three software engineers for illegally copying software from a company they were working for. The accused engineers, who were working with the Ishoni Networks India Private Limited, had started a new company called Ample Wave Communication Network in Koramangala. They had illegally copied code of the company's software and were using at their company, police said. Ishoni Director Antonio Mario Alvares had lodged the complaint with Banashankari police. Police have seized four computers, four CPUs, four keyboards, one server and one laptop from the accused.
(Source: DH News Service, Bangalore)

New Delhi Aug28, 2002. Central Bureau of Investigation officials in New Delhi nabbed Shekhar Verma, a former employee of Mumbai-based Geometric Software Solutions Company and a computer engineer from the Indian Institute of Technology, Kharagpur. It turned out that Verma was accused of stealing \$60 million worth of source code of a software product of Geometric Software's US-based client, SolidWorks, and trying to sell them to other companies for a fortune. The American firm has the exclusive rights over the software. (Source Rediff.com)

Results of Nasscom Initiatives

Calcutta, 7 April 2000: The Enforcement Branch, Calcutta police with the assistance from Nasscom and BSA, seized pirated software worth of Rs. 2.61 crore (US\$ 6,08,000) from companies while conducting raids in the city. 4 persons, including owners, partners and senior level employees of the companies, were arrested for this offence. The police recovered around 636 CDs, and 2 computers loaded with pirated software.

Hyderabad, March 2000: Hyderabad Police, with assistance from Nasscom and BSA, seized pirated software worth of Rs. 75,16,400 (US\$ 174,800) from 7 companies at a conducted raid. 13 people, including senior level employees of the companies, were arrested in this regard. The Police recovered around 293 CDs, 5 hard disks and 7 computers loaded with pirated software. The estimated value of the pirated software was worth Rs.77 lakh.

Chennai, February 2000: Pirated software worth Rs.1.11 crore (US\$ 253,200) was seized by the Chennai police at a raid conducted at the premises of four outlets. A total of 6 employees were arrested which included the Managing Director of one outlet and proprietors of each of the outlets.

New Delhi, 1st December 2000: Nasscom and BSA launched a new anti-piracy initiative - The Reward Programme to make India's business community take note of the dangers of software piracy. The reward offered, an amount up to Rs. 50,000 is for information leading to successful legal action against companies using unlicensed software. The reward program was aimed to encourage people to support the fight against piracy and to report software piracy to the NASSCOM-BSA Anti-Piracy Software Hotline on 1600 334455 to help Nasscom and the BSA remedy the illegal activity.

6.0 Conclusion

Protection of Intellectual Properties is a very critical element in the offshore business model. There have been many cases where companies have lost their position in the market due to the loss of intellectual property. Understanding the country's IP Rights and following the best practices described in this paper can drastically reduce the risk of losing the company's intellectual property. Commitment to protect the intellectual property of a company should be developed and nurtured at all levels of the organization.