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LAW COMPLAINE

UPDATE

➤ INDIA ACCUSES THE US OF TAKING UNILATERAL MEASURES TO PRESSURIZE COUNTRIES TO ACCEPT IPR PROTECTION BEYOND WTO OBLIGATIONS:

- The United States released its Special 301 Report, an annual review of the global state of IPR protection, which classified India as a priority watch list country.
- India, in response, said that the laws in force here meet all the obligations under the TRIPS agreement, and being a developing country, India utilizes the flexibilities provided in the international regime to address its developmental concerns.
- In addition, India accused US of pressurizing countries into relaxing their IPR laws for the American Industry to benefit. The Report is allegedly based on the inputs provided by the American Companies as to the level of protection provided by countries.
- It is a common perception that India has stricter rules for patenting forms of known substances, compulsory licensing, etc. and the laws favour the general public to companies.
- Members of WTO are calling for the implementation of TRIPS-plus, a new version of the original agreement that would severely limit the existing flexibilities for bypassing patents.
- In protest, hundreds of activists gathered near Jantar Mantar demanding India not to sign TRIPS-plus, as signing the agreement would cut off the potential supply of cheaper generic medicines that can potentially save thousands of lives, especially when the original branded products are priced so high that only a select few can afford them.

➤ STATISTICS SUGGEST THAT INDIA IS NOT AN ANTI IP-COUNTRY:

- India has been perceived as an anti IP-country. Foreign companies, of late, have been apprehensive of launching their products in India because of this perception.
- However, an analysis of the reported judgements and orders in the field of intellectual property from 1995 to May 2014 suggests otherwise. Since 1995, a total of 2,157 cases have been reported, out of which 1,433 decisions went in favour of IP owners.
- It is to be noted that this means that roughly 65% of the cases were in favour of IP owners. It has been suggested that foreign companies aren't well protected. However, the statistics remains the same, with 65% of the reported cases involving a foreign entity on either side being in favour of the foreign entity.
- The perception of India being an anti IP-company has seen a sharp decline in the number of IP reported matters. This can be attributed to the few decisions that went against the IP owners, as the flexibilities provided under the TRIPS agreement were rightly utilized.
- India has been facing strong criticism from the US administration for its weak IPR laws, especially in pharmaceutical and solar sectors. However, India's legal

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framework and the reported judgments show that the perception of the US administrators is not in consonance with the reality of India's IPR worthiness.

- Whether or not the Indian Courts have the power to pass orders against such unknown "John Doe" defendants in exercise of its inherent jurisdiction even though there is a strong prima-facie case of infringement of various Copyright laws and the Plaintiff is unquestionably to suffer irreparable loss and injury if such an order is not passed?

- **LATEST ORDER:**

- Injunction order granted, prohibiting free access to the aforementioned sports content by these defendant Websites, which violates Plaintiff's exclusive broadcast rights.
- Department of Telecommunications(DoT) and the Department of Electronics and Information Technology(DEITY) were directed to ensure and secure compliance of this order by calling upon the various internet service providers registered under it to block access to the various websites identified by the plaintiffs in the instant suit, or such other websites that may subsequently be notified by the plaintiffs to be infringing its exclusive rights.

**CASE STUDY:**

• **STAR INDIA PVT. LTD. VS. HANEETH UJWAL**  
- **INTERIM ORDER PASSED BY THE DELHI HIGH COURT**

- The suit has been filed by Star Sports Channel for grant of a permanent injunction against defendant Websites, who have been providing free access to sports content, even though the Star Sports Channel have the exclusive broadcast reproduction rights.
- The Star Sports Channel had made substantial investments in securing the exclusive Internet, Mobile and On-Demand Rights for the 2014 India-Egland Series, with a view to capture revenues through viewership in India.
- By this suit, filed for the infringement of various Copyright laws under section 55 read with section 37 and section 39A of the Copyright Act, aims to put a stop to illegal websites from broadcasting the aforesaid sports content.
- The first challenge was that the Star Sports Channels faced was that most of these websites operated behind a veil of secrecy and the owners are mostly anonymous.
- Secondly, even if the Star Sports Channels were able to block the sports content by writing an application to DoT, the defendant Websites could change the URL by adding or deleting a few strings of alphanumeric characters, and therefore, unless the whole website was blocked, it would render any injunction against the present website infructuous.
- The plea that was taken by the plaintiffs is that the defendant Websites, who are known and unknown, and whose identity cannot be compartmentalized, are jointly and severally liable for infringement and violation of the plaintiff's exclusive rights and the plaintiffs are entitled to all remedies available to it under common law and under Section 55 read with Sections 37 and 39A of the Copyright Act.
- Therefore, in view of the already existing specific provisions of Copyright Act combined with the consideration of the short duration of the event and veil of secrecy that the internet today provides, such orders need to be given that protects the plaintiffs from immense prejudice, harm and irreparable loss, whilst according protection for its legal rights.
- Hence, an ex-parte order granting permanent injunction is to be given as the balance of convenience lies in the favour of the plaintiff and against the defendant Websites.

- **DISPUTE:**

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