



National Judicial Conference for High Court Justices on IPR

Challenges of IPR in Digital Age

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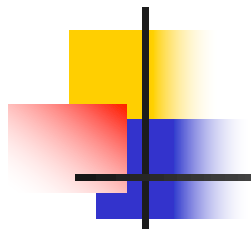
**National Judicial Academy, Bhopal
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The World goes digital

- Till a few decades back, the term *international* was used to describe the relations between nations - now it is *globalization**
- The change denotes a fundamental *shift* in the manner in which the world interacts
- Transformation of a model based on the interaction between fragmented territorial components, *nations*, to one of seamless interaction across the globe

- Technology has always played an important role in all aspects of social activity
- Rapid changes have significantly affected IP protection systems, opening up new challenges *and* possibilities of protection
- Paradigm shifts have impacted on creativity, as it becomes easier to copy and distribute – particularly through the digital medium
- Digital Technologies produce enormous benefits for consumers but pose multiple challenges for creators and their business associates
- Access and business models revolutionized - *Ola* offers low priced and flexible transport services; *Airbnb* the same with hotels



Some Sectors



Music

- Digital sales increased but not compensating decline in sales of physical formats
- Shift in value chains - first to be impacted by the advent of the Internet
- Early distribution of digital music files occurred outside the licensed channels
- Costs of creating, distributing and storing copies of music decreased
- Recording industry: half of sales from digital sources



Film

- State of flux: some markets continue to expand sales (Asia-Pacific; China, 34%); others falling (America, Europe) but fast increases in digital (US 60%)
- Shift in the value chain - digital lowers costs (production and distribution), enhances visual effects and disrupts traditional business strategies; creates opportunities for smaller players
- Top five largest producers of films - India, USA, China, Japan and UK



Publishing

- Rise of e-commerce and electronic publishing shifting the value chain (Amazon)
- E-books and print-on-demand have also contributed to the rise in self-publishing
- The Chinese website, Qidian publishes over one million works (made millionaires out of authors)
- Sales of e-books has increased nearly twenty-fold since 2008



***Effect on Creative
Community***



The Challenge

- Copyright owners view Internet as a threat:
 - Easy to disseminate widely to a huge audience
 - Copies good as original
 - Costless distribution
 - Protected material easily procured off the net
 - Anonymity of user
- Right owners incurring losses due to counterfeiting and piracy
- Various estimates



Response

- Historically IP has been responding to the challenges from disruptive technologies
- The cyber revolution has spawned two IP worlds: the traditional and the emerging
- The traditional one relied on promoting creativity by providing a legal framework for protecting and facilitating the exploitation of creative output
- The new world relies increasingly on the movement of information in electronic formats – therefore, concern for both the information and the medium
- New Mechanisms devised globally



WIPO Copyright Treaty (WCT)

- Special agreement under the Berne Convention that specifically deals with the protection of works and the rights of authors in the digital environment
- Two subject matters to be protected
 - computer programs
 - databases, constituting intellectual creations
- Additional rights to be protected
 - the right of distribution;
 - the right of rental; and
 - a broader right of communication to the public

- Limitations and exceptions: Extends three step test to determine limitations and exceptions
- Such limitations and exceptions, as established in national law in compliance with the Berne Convention, may be extended to the digital environment; may devise new exceptions and limitations appropriate to the digital environment
- Legal remedies to be provided against the circumvention of tech measures (encryption)
- Enforcement procedures to be available to permit effective action against any act of infringement of rights covered by the Treaty – including expeditious remedies to prevent infringement as well as those that constitute a deterrent to further infringement



WIPO Performances and Phonograms Treaty (WPPT)

- Rights of two beneficiaries, in the digital environment:
 - performers (actors, singers, musicians, etc.); and
 - producers of phonograms
- For performers it grants economic and moral rights in their performances fixed in phonograms
 - the right of reproduction;
 - the right of distribution;
 - the right of rental; and
 - the right of making available

- For producers of phonograms, it grants the following economic rights in their phonograms:
 - the right of reproduction;
 - the right of distribution;
 - the right of rental; and
 - the right of making available
- To determine limitations and exceptions, same "three-step" test, as provided for in Article 9(2) of the Berne Convention, extending application to all rights
- Countries to provide for legal remedies against the circumvention of technological measures (e.g., encryption)



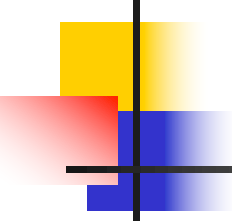
Internet – ‘Cybersquatting’

- Bad faith, abusive registration of domain names that violate trademark rights
- Originally intended to facilitate connectivity between computers through the Internet - now business identifiers, coming into conflict with trademarks
- Lack of connection –
 - Trademarks registered by national authorities after rigorous examination with clearly defined jurisdiction rights
 - Domain names administered by NGO, without any functional limitation, on a first-come, first-served basis, offering a unique, global presence on the Internet

- Persons have exploited to register, as domain names for themselves, the trademarks of other persons or enterprises ("cybersquatting")
- ~~To tackle issue~~, the Uniform Domain Name Dispute Resolution Policy was established in 1999
- Legal framework for the resolution of disputes between a domain name registrant and a third party (i.e., a party other than the registrar) over the abusive registration and use of an Internet domain name in the generic top level domains or gTLDs (e.g., .biz, .com, .info, .mobi, .name, .net, .org), and country code top level domains or ccTLD
- Provides a faster and cheaper way to resolve a dispute

- Policy for disputes meeting the following criteria:
 - the domain name registered by the domain name registrant is **identical or confusingly** similar to a trademark or service mark in which the complainant (the person or entity bringing the complaint) has rights;
 - the domain name registrant has **no rights or legitimate interests** in respect of the domain name in question; and
 - the domain name has been registered and is being used in **bad faith**

- Administrative Procedure has five stages:
 - **1.** the filing of a Complaint
 - **2.** The filing of the Response
 - **3.** The appointment of an Administrative Panel to decide the dispute
 - **4.** The issuance of the Panel's decision and the notification of all relevant parties
 - **5.** The implementation of the decision by the registrar(s) concerned – if decision that the domain name(s) be cancelled or transferred

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- The Administrative Procedure is normally completed within 60 days from receipt of Complaint
 - Cost:

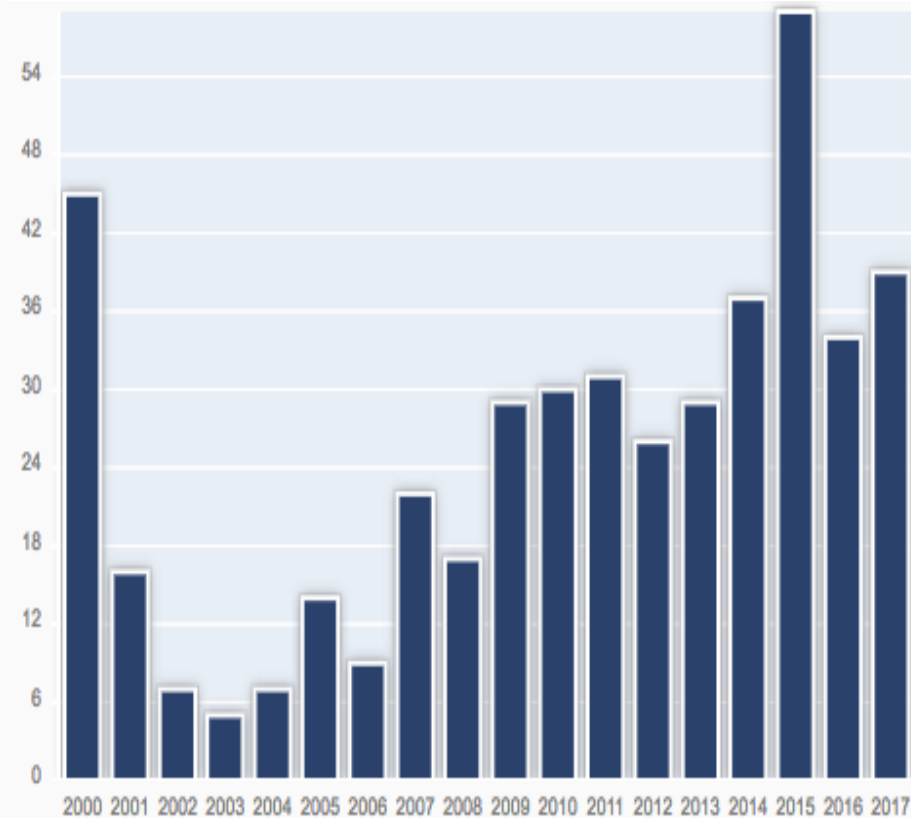
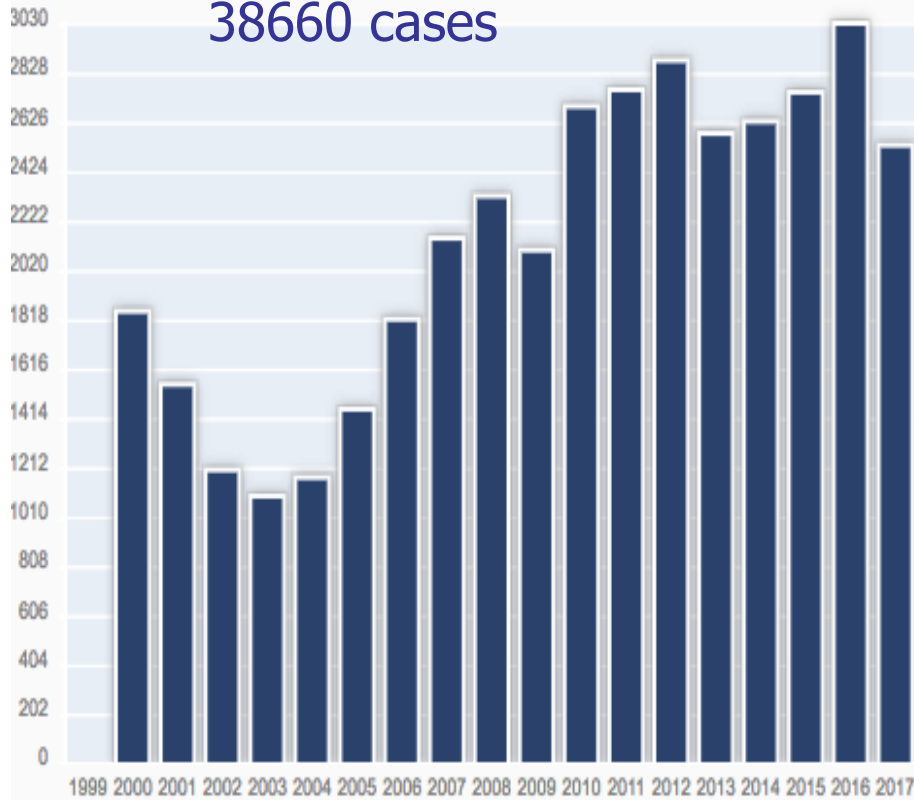
Domain names	Panelist	Cost (US\$)
1 to 5	1/3	1500/4000
6 to 10	1/3	2000/5000

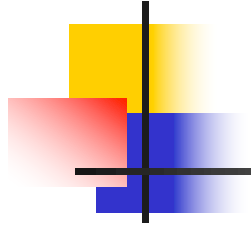
DNS Cases at WIPO

Global

India

1999 to 2017:
38660 cases





Thank you