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## Cyber Torts

A tort is a negligent or intentional act is done by someone that injures someone else in some way. Cyber Torts are simply a tort done over cyberspace. Cyber torts are very important because they are on the rise and are still crimes that can have serious effects on society. Everyone should be exposed to the dangers and damages caused by cyber torts because technology is an important aspect in everyone's lives, especially now.

The word "tort" originates from the French language, in English, it is equivalent to term "wrong" and it is derived from the Latin word "tortum" which means "wrong or injury" and the word tortum is developed from the word "torquere" which means "to twist". It is simply a breach of duty which amounts to a civil wrong.

A person who commits a tort is called as a tortfeasor and if there are multiple persons involved, then they are called joint tortfeasor as they are jointly liable for the tortious act and they can be sued individually or jointly.

## Essential Elements of a tort

There are three essential elements which constitute a tort, these are

### (1) A Wrongful act

A wrongful act is any act which is violative of the law.

### (2) A duty imposed by the law.

A duty which is legally enforceable in the courts if violated.

### (3) The act must give rise to legal or actual damage.

The wrongful act must give rise to a remedy in a suit for either liquidated damages (fixed value) or unliquidated damages (value not fixed)

## **Various Kinds of cyber torts**

### **Cyber Stalking**

Cyberstalking involves following a person's online presence on various social media or other websites, by posting messages which can be threatening also as well as posting on bulletin boards.

### **Harassment via e-mails**

Harassment via emails is a very old concept and has been there since the initial days of electronic mails, it is very much similar to the concept of harassment via letters in real life.

### **Cyber Obscenity**

Pornography on the internet has various forms. It may also include prohibited material such as child pornography, which is a heinous crime in real life as well.

### **Cyber Defamation**

Defamation is an act of making a statement about an individual which may lower his reputation in the eyes of the right thinking people. It can be written and oral also. Cyber defamation is very similar to defamation in real life except for the involvement of a virtual machine. Cyber defamation is that kind of defamation which is done through the virtual medium.

### **Cyber-Vandalism**

Conventional vandalism means to deliberately destroy or damage the property of someone. Thus cyber-vandalism means to deliberately put any kind of physical harm to anybody's computer or virtual machine. These acts may be in the form of theft of a computer or any peripheral of the computer also.

## **Unauthorised access over someone's virtual machine**

The activity of gaining access to someone else's virtual machine without their consent is also a cyber tort as it is a violation of their private space.

## **Trafficking**

Trafficking is of many kinds, it may be in drug, ammunition, or even human beings, etc. Trafficking is taken a form with the ascension of the internet as cyber trafficking has also developed, where the process of trafficking is done online through the use of a virtual machine.

## **Fraud and Cheating**

Online fraud and cheating have become one of the biggest threats the government has to deal with. These include Credit card crimes, fake job offerings, misappropriation, etc.

**Example:** Some organisations of hackers are specifically made to create fake links and send them as emails in order to gather information related to the credit cards.

## **Different Types of Civil Wrongs under the IT Act 2000**

**Civil Cyber Wrongs** A civil cyber wrong is one which is committed online and is civil in nature, such as a tort of defamation committed online through a computer (or any device which has access to the internet and is able to modify the information or post anything online, such as a mobile phone, or a tablet) is used as a tool to commit that kind of wrong. Although not defined or addressed as civil cyber wrongs, the essence of civil liability is defined under section 43 of the IT Act, 2000.

## Criminal Cyber Wrongs

A criminal cyber wrong is a serious threat and it must be dealt with as soon as possible, a criminal cyber wrong is a criminal wrong committed online through the use of technology, crimes such as Hacking, information theft, denial of service attacks, etc. Although not addressed as criminal cyber wrongs in any acts, but various wrongs of criminal nature are defined under the IT Act, 2000, such as Child pornography defined under **Section 67-A** of the act.

## Types of Civil Suits

In law there are two main types of litigation, civil and criminal.

### Criminal Litigation

In [criminal litigation](#), we focus on clear violations of state and federal law. The lines are more clearly defined and there is a clear case of right or wrong.

### Civil Litigation

With [civil litigation](#), matters are not so simple. Civil litigation occurs when a plaintiff believes they have incurred a loss because of someone else. As such, they demand some form of legal compensation or remedy. This often occurs in business, but it's just as common for individuals to file civil lawsuits. In this post we'll look at some of the most common instances of civil law.

### Contract and business suits

This type of civil suit generally falls under the umbrella term of commercial law. It refers to any business dispute or breach of contract. The business community is founded on the strength of its contracts. Any partnership or client relationship has a contract at the core. When one party breaks that contract or fails to deliver, a lawsuit can arise. This can come in many forms, and clients often choose to settle rather than take proceedings to court.

### Tort (injury claims)

A rising form of civil litigation is tort or injury claims. They commonly arise against a business from its own employees and outside individuals because every company is liable for the safety and protection of its employees. If someone becomes injured on company property, the company is inherently liable for damages. Again, these are often settled for agreed compensation figures. In other cases, plaintiffs may ask for punitive damages above and beyond the compensation.

### Car accidents

Auto incidents are also very common civil suits. In fact, any damage to one's property or assets can form a civil lawsuit. Often there is a clear element of blame in these cases. One driver is typically responsible for the collision and therefore, the damages. In such a simple case, auto insurance companies step in to pay the bill. They may even do much of the negotiating. In more unclear cases, however,

the case may be brought to lawyers. A case will help identify blame and apportion the damages accordingly.

### **Property damages and disruption**

Like the car accident example above, any damages to any property can cause legal action. For example, the next-door neighbor could accidentally break your window while playing baseball. Also, the mailman could drive over your lawn by mistake. There are all sorts of factors at play here. The bottom line is that compensation can be claimed if you incur a loss due to someone else's negligence.

### **Complaints against the city**

In some cases, plaintiffs can bring a lawsuit against their city. This often happens if they have brought a complaint to the city authority but have been unable to reach an agreement. At this point, a lawyer can help define the lines and reach a settlement.

## **Intellectual property issues**

Intellectual property rights are the legal rights that cover the privileges given to individuals who are the owners and inventors of a work, and have created something with their intellectual creativity. Individuals related to areas such as literature, music, invention, etc., can be granted such rights, which can then be used in the business practices by them.

The creator/inventor gets exclusive rights against any misuse or use of work without his/her prior information. However, the rights are granted for a limited period of time to maintain equilibrium.

The following list of activities which are covered by the intellectual property rights are laid down by the World Intellectual Property Organization (WIPO) –

- Industrial designs
- Scientific discoveries
- Protection against unfair competition
- Literary, artistic, and scientific works
- Inventions in all fields of human endeavor
- Performances of performing artists, phonograms, and broadcasts
- Trademarks, service marks, commercial names, and designations

- All other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields

### Types of Intellectual Property Rights

Intellectual Property Rights can be further classified into the following categories –

- Copyright
- Patent
- Patent
- Trade Secrets, etc.

### Advantages of Intellectual Property Rights

Intellectual property rights are advantageous in the following ways –

- Provides exclusive rights to the creators or inventors.
- Encourages individuals to distribute and share information and data instead of keeping it confidential.
- Provides legal defense and offers the creators the incentive of their work.
- Helps in social and financial development.

### Intellectual Property Rights in India

To protect the intellectual property rights in the Indian territory, India has defined the formation of constitutional, administrative and jurisdictional outline whether they imply the copyright, patent, trademark, industrial designs, or any other parts of the intellectual property rights.

Back in the year 1999, the government passed an important legislation based on international practices to safeguard the intellectual property rights. Let us have a glimpse of the same –

- The **Patents** (Amendment) Act, 1999, facilitates the establishment of the mail box system for filing patents. It offers exclusive marketing rights for a time period of five years.
- The **Trade Marks** Bill, 1999, replaced the Trade and Merchandise Marks Act, 1958
- The **Copyright** (Amendment) Act, 1999, was signed by the President of India.

- The *sui generis* legislation was approved and named as the Geographical Indications of Goods (Registration and Protection) Bill, 1999.
- The **Industrial Designs** Bill, 1999, replaced the Designs Act, 1911.
- The **Patents (Second Amendment)** Bill, 1999, for further amending the Patents Act of 1970 in compliance with the TRIPS.

### Intellectual Property in Cyber Space

Every new invention in the field of technology experiences a variety of threats. Internet is one such threat, which has captured the physical marketplace and have converted it into a virtual marketplace.

To safeguard the business interest, it is vital to create an effective property management and protection mechanism keeping in mind the considerable amount of business and commerce taking place in the Cyber Space.

Today it is critical for every business to develop an effective and collaborative IP management mechanism and protection strategy. The ever-looming threats in the cybernetic world can thus be monitored and confined.

Various approaches and legislations have been designed by the law-makers to up the ante in delivering a secure configuration against such cyber-threats. However it is the duty of the intellectual property right (IPR) owner to invalidate and reduce such *mala fide* acts of criminals by taking proactive measures.

### Interface with copyright law

Copyright law is a type of intellectual property law that protects creative works, which can include things like plays, movies, manuscripts, paintings, drawings, songs, letters, and many other things. In the United States, the Constitution provides that copyright law protects “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. Most other countries that are members of the World Intellectual Property Organization (WIPO) have similar definitions.

Meet **Smashing Book 6** is our brand new book focused on *real* challenges and *real* front-end solutions in the *real* world: from design systems and accessible single-page apps to CSS Custom Properties, CSS Grid, Service Workers, performance, AR/VR and **responsive art direction**. With Marcy Sutton, Yoav Weiss, Lyza D. Gardner, Laura Elizabeth and [many others](#).

Copyright law does not protect ideas, procedures, methods of operations, or mathematical concepts (though other types of IP may protect them under certain circumstances). In other words, **copyright law is about protecting a particular expression of an idea**, not functional elements of a given work.

Copyright law can apply to all kinds of technological works that are used with computers, tablets, smartphones, or video game systems. This includes apps, computer programs, databases, spreadsheets, screen displays, and even virtual reality environments. Copyright also applies to works that are used or distributed on the internet like websites, blogs, and other online content.

### **Types of Works Protected by Copyright**

Copyright law protects "works of authorship." The Copyright Act states that works of authorship include the following types of works:

- Literary works. Novels, nonfiction prose, poetry, newspaper articles and newspapers, magazine articles and magazines, computer software, software documentation and manuals, training manuals, manuals, catalogs, brochures, ads (text), and compilations such as business directories
- Musical works. Songs, advertising jingles, and instrumentals.
- Dramatic works. Plays, operas, and skits.
- Pantomimes and choreographic works. Ballets, modern dance, jazz dance, and mime works.
- Pictorial, graphic, and sculptural works. Photographs, posters, maps, paintings, drawings, graphic art, display ads, cartoon strips and cartoon characters, stuffed animals, statues, paintings, and works of fine art.
- Motion pictures and other audiovisual works. Movies, documentaries, travelogues, training films and videos, television shows, television ads, and interactive multimedia works.
- Sound recordings. Recordings of music, sounds, or words.
- Architectural works. Building designs, whether in the form of architectural plans, drawings, or the constructed building itself.

### **Uncopyrightable Works**

Works prepared by federal government officers and employees as part of their official duties are not protected by copyright. Consequently, federal statutes (the Copyright Act, for example) and regulations are not protected by copyright. This rule does not apply to works created by state government officers and employees.

The design of a useful article is protected by copyright only if, and to the extent that, the design "incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." For example, while a "normal" belt buckle is not protected, a three-dimensional belt-buckle design with a dolphin shape qualifies for limited protection.

Uncopyrightable works and works for which copyright protection has ended are referred to as "[public domain](#)" works.

### Procedure for Getting Protection

Copyright protection arises automatically when an original work of authorship is fixed in a tangible medium of expression. Registration with the Copyright Office is optional (but you have to register before you file an infringement suit).

The use of copyright notice is optional for works distributed after March 1, 1989. Copyright notice can take any of these three forms:

1. © followed by a date and name.
2. "Copyright" followed by a date and name.
3. "Copr." followed by a date and name.

### Interface with Patent Law

#### Patent Law: What Is It?

Patent law is part of intellectual property law and controls what inventions qualify for patents, the [patent application](#) process, and how [patent infringement](#) is handled.

If you want to get legal protection for your inventions, you should understand the basics of patent law. It may also benefit you to have some knowledge of overall intellectual property law, the background of patent law, what requirements an invention must meet before it qualifies for a patent, and some of the issues that make patent law difficult to navigate.

#### What Is a Patent?

[A patent is a property right](#) that gives an inventor the legal ability to stop others from making, using, or selling an invention for a certain amount of time.

There are three distinct [types of patents](#):

- A [utility patent](#), which is the most common type, protects functional devices. **Software patents** fall under this umbrella, but are sometimes regarded as a different type of patent altogether.
- A **design patent** covers non-functional, or aesthetic aspects of an item. [Design patents](#) are exclusive to the United States. Other countries have different intellectual property laws that protect designs.
- A [plant patent](#) protects new varieties of plants.

Inventors may also submit a **provisional patent application**, which enables the inventor to label an invention as "**patent pending**" to warn away anyone who might want to copy the invention. You are also allowed to say that an invention has a patent pending if you have filed a non-provisional, or regular, patent application — even if the application hasn't been approved yet.

Note that patents only protect fully developed inventions, not ideas.

## What Are the Requirements for Patentability?

Before an invention can be protected by a utility patent, it must meet the following requirements:

- **Patentable subject matter** must be involved. The invention must fall into one of the categories of **patentable** items that the law defines. Generally, processes, devices, machines, and anything that can be manufactured are patentable. There is an ongoing debate about whether business methods and printed material are patentable, but traditionally they are not.
- The invention must be **useful**.
- The invention must be **novel**. It needs to have an element of newness to it. No one else may already hold a patent for the same invention.
- The invention must be **nonobvious**. This means that no one with a basic knowledge of the type of item that was invented would find the invention to be obvious.
- The inventor must be able to describe the invention in such detail that someone else would be able to make it based on your instructions. This principle is known as **enablement**. Part of enablement is describing the best way to make and use the invention. If you do not have a preferred method of using or making your invention, or if you did not think about the best way to make or use the invention, you cannot be accused of violating this requirement.

## What Rights Does a Patent Grant?

A patent grants its holder two basic rights: the right to exclude and the right to sue infringers.

### The Right to Exclude

This means that patent holder can stop others from making, using, or selling the invention. If others wish to use or sell your invention, you can either sell the patent or arrange a **patent license agreement**.

Note that a patent does not grant its holder the right to make or sell an invention. Other [existing patents](#) or local laws may affect an inventor's ability to use, sell, or make a patented invention.

### **The Right to Sue Infringers**

Most patents have more than one claim. **Claims** are the section of the patent that lists which parts of the invention are protected. Only one claim must be violated before the patent holder can sue for infringement.

If you sue for infringement, a federal court may grant an **injunction**, or a strict order, that tells the guilty party to stop infringing on your patent and you may be awarded damages.

Sometimes, when the government infringes on a patent, litigation or legal processes occur through the United States Claims Court. Keep in mind that the US government can use any patent invention without asking for permission, but when this happens, the patent holder has the right to ask for compensation from the government

## **TRADEMARK AND DOMAIN NAME issues**

### **Domain Name**

A domain name is an Internet resource name that is universally understood by Web servers and online organizations and provides all pertinent destination information. To access an organization's Web-based services, website users must know the precise domain name.

Domain names are used worldwide, particularly in the world of networks and data communication. The following points explain how they work and how they are used:

- Domain names have two parts that are separated by a dot, such as example.com.
- A domain name can be used to identify a single IP address or group of IP addresses.
- A host or organization may use a domain name as an alternate IP address because domain names are alphanumeric (as opposed to all numbers), making them easier to memorize.
- A domain name is used as part of a URL to identify a website.
- The part that follows the dot is the top level domain (TLD), or group to which the domain name belongs. For example, .gov is the TLD for U.S. government domains.

- The IP address in the domain name's background is converted to a recognizable, alphanumeric domain name by a system known as the domain name system (DNS).

## Domain name issues

### 1.Stolen Domain Names

From a legal perspective, this is one of the simplest scenarios in domain name law. If a third party has without any right whatsoever managed to transfer a domain name from your account to its own, then it has infringed your domain rights and you should be able to recover it by contacting the ISP and proving your case. In a world menaced by terrorism and global warming, stolen domain names might not sound like a serious issue but the entities behind such foul play are often serious criminals. Where fraud or other forms of criminal behaviour are involved, you should notify the police. Whilst that may not provide a fast method of recovering the stolen domain name, it may help to capture the perpetrator and avoid recurrence.

### 2.Cybersquatting

This is one of the most common scenarios in domain disputes. Domain law is now well established in this area. In the leading cybersquatting case of *BT v One in a Million* [1999] FSR 1 the court decided that it was not legally acceptable for a cybersquatter i.e. an entity without relevant domain rights to register a domain name which the public would naturally expect to be associated with a third party. This can overlap with passing off domain name activity. In that scenario, the domain name is usually diverted to the website of a third party competitor who seeks to trade off the goodwill of the legitimate brand owner. However, typically cybersquatting and passing off domain name machinations are quite distinct. The former involves someone who simply buys domain names with a view to holding the proper rights owner to ransom whereas in cases of passing off domain name activity, it is almost always a

competitor trying to benefit from the goodwill established by the legitimate company but usually without seeking to sell the domain name to that company.

### **3. Passing Off Domain Name**

This is probably the busiest area of activity for the typical domain name lawyer. Domain name disputes often pivot around the issue as to whether a company has overstepped the mark by registering a domain name which reflects the trading name or product name of one of its competitors. Another similar form of dispute may arise where a company uses metatags or pays for sponsored ads which incorporate the competitor's branding. Each case is assessed on its facts but if the bottom line is that a trading entity is taking unfair advantage of a competitor's branding and/or marketing efforts, the courts will usually find in favour of the competitor and award damages or order an account for profits

#### **trademark**

A trademark is a [logo](#), image, symbol, word(s), letter(s) or color(s) that is used and sometimes legally registered as a representation of a company. For service industries, trademarks are often called servicemarks, particularly in the United States. Trademarks are often noted by way of <sup>TM</sup>, or ® if registered.

Trademarks are used to keep a company's distinctly identifying [intellectual property](#) secure. Trademarking company identifiers provides legal rights that prevent other parties using the registered property. This legal protection can help prevent counterfeiting of the company's product. For consumers, a trademark allows them to recognize [brands](#) and continually purchase those with which they have had a positive experience or recommendation.

A trademark must be distinct, identifiable and original. Often a trademark will convey the [brand essence](#) of a product. Trademarks are seen everywhere in modern life. <sup>TM</sup> or ® and the associated slogans, images and logos are placed on products, packaging, advertising, magazines, and more.

A trademark's ownership is maintained simply by its continued use by a company. Use affords protection against use by other companies internationally, in accordance with trade agreements. Trademarks may be legally registered, usually for a term of 7-12 years. Registering allows companies to bring infringing parties to court to prosecute for damages, typically projected losses resulting from the infringement sometimes including damages to [brand equity](#). Trademarks may be licensed to outside companies to produce products, often to offer products the original holder does not have the capacity to supply.

**Trademark related issues** – Here are ten issues keeping trademark attorneys and rights holders alike, on their toes.

### **Innovative Trademark Trolling**

Just like their patent troll counterparts, individuals and agencies are using predatory registrations to insidious ends. Unscrupulous characters are exploiting the opportunity to demand licensing fees from alleged infringers when a potential for confusion may not even exist. But the practice is growing in prevalence, with new efforts capitalizing on recent social or political events to trademark popularized terms and then using overly aggressive enforcement to turn a profit.

### **App Branding**

With the ubiquity of smartphones and the rising significance of smartphone applications in consumers' day-to-day lives, trademarking is reaching into the realm of application icons. Disputes are most likely to arise from letters and colors used, so savvy registrants would do well to look at combinations that improve on this limited distinction in order to secure appropriate and watertight protections.

### **Trademarks as Keywords**

Google's AdWords program empowers advertisers by allowing them to assign keywords to their ads that trigger their appearance in particular search queries. In an effort to interject brand awareness, even in the case of specific queries for competitors, businesses have adopted the practice of tapping competitor's keywords in their AdWords approach. The technique obviously obfuscates the search picture, but, at present, the law current allows the practice, provided the keyword doesn't appear in search links sponsored by advertisers.

## Confusing Courts

Unfortunately, the aforementioned practice, as confusing as it is, currently sees no ready remedy. Federal appeals courts have wrestled with the use of trademarks as “purchased search terms” for some time. Some circuits do not specifically address the issue, since case law on the matter has not yet been created. Therefore, those wishing to litigate the issue should investigate which circuits may hear the case before entering into a jurisdiction with no precedent.

## Challenges Closing Counterfeiters

The international economy has given birth to prolific bastions of piracy. Unfortunately, at the present time, no catch-all solution exists to deal with such infringement. Simple steps may be followed, however, that can help lock down these criminals and protect commercial interests. Concerned firms should begin by determining whether or not the operation is legitimate and willing to change. If not, overseas jurisdictions can provide some relief. This may come in the form of asset freeze orders or domain name seizures, but no one-size-fits-all solution exists to remedy the problem. What’s important to remember is that over-aggression toward legitimate outfits can lead to bad press and poor relationships, so verification is vital.



## Global Enforcement

As mentioned, some jurisdictions provide relief for worldwide operations, but some areas provide inadequate redress for dilution cases. For this reason, understanding global trademark law in potentially infringing cases is essential to effective enforcement. For example, some areas do, for a three-year period, allow for registration on more items than the mark is actually used, providing opportunities to lock down dilution through legitimate legal enforcement.

## .Everything

The ability to use trademarks in domain names offers significant protection of identity in an increasingly connected world. However, a tidal wave of top-level, generic domain names are headed toward computers world-wide. These new domains, which include country-specific domains and almost any word in any language, will require heavy enforcement once the Trademark Clearinghouse launches. Effective protection of commercial interests will necessitate recording of key marks in order to block other domain-name applicants and give priority on matching domains during periods of introduction.

## Social Media Evidence

The social currency of our society is being digitized, even from a legal perspective. In fact, social media reactions to marketing materials can significantly impact a business' ability to enforce trademarks down the road. For this reason, businesses should monitor social networks to ascertain evidence in the event of legal disputes, and also develop strategies to address consumer responses that pose risks to brand protections in the future.

## Leveraging Facebook

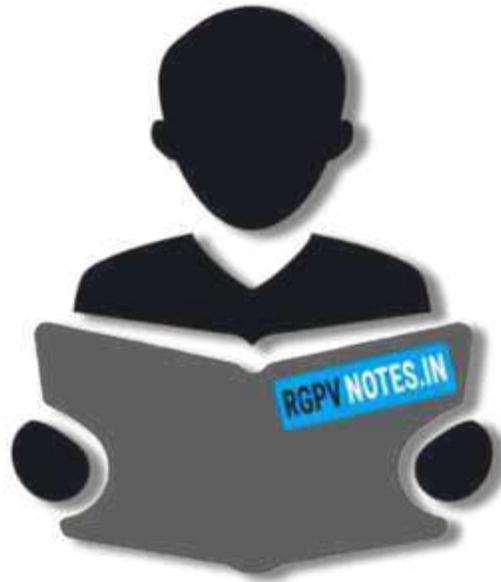
These same platforms that may provide evidence for potential litigation also pose a challenge for trademark holders. Brand messaging on social media where third parties use trademarks can lead to a loss of control over messaging and perception. In order to combat this, owners should develop their own presence on social networking favored by customers. The benefit lies particularly in platforms that offer [takedown procedures](#) that are often more effective than traditional cease-and-desist letters. Finally, in order to stay on top of this evolution, firms should be quick to adopt social media programs for their enforcement potential.



## 3-D Protections

In what is likely the most nascent of these trademark issues, the plunging cost of 3-D printers is making multi-dimensional infringement a reality. The concerns raised are analogous to those presented when MP3 technology and photocopiers rose to prominence. Organizations wishing to nip the issue in the bud will benefit from understanding the intersection of design patents and applicable trade dress protections.

The issues facing trademarks continue to evolve year after year. Legal evolution and adaptation are needed in order to ensure that the facility maintains its integrity. From trademark trolling to social media gospel, the changing landscape of applicable enforcement continues to surprise. Knowing the issues and adapting to the trends can help seal your mark tight, even when new technologies present challenges equal to their capacity for positive change.



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