

# Trademarks and Their Importance to Digital Economies of India

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## ABSTRACT

In the age of the knowledge economy, the efficient and creative use of knowledge is a key determinant of international competitiveness, wealth creation and improved social welfare. An effective intellectual property (IP) system embedded within a national strategy which anchors IP considerations firmly within the policy-making process will help a nation to promote and protect its intellectual assets, thereby driving economic growth and wealth creation.

**Keywords:** Trademarks, Digital Economics, Developing Countries

## I. INTRODUCTION

### 1.1 Digital Economy and Development

The 'Digital Economy' is all economic activity mediated by software and enabled by telecoms infrastructure. This includes core telecom services such as voice, messaging, data, and video. The goods and services within the digital economy can be broadly grouped as:-intrinsically digital – streaming video, e-books, computing services, Software-as-a-Service (SaaS), social media (e.g. FB, line) substitutes for established equipment and services – virtual private communications networks, security services and services delivered online (e.g. accounting / other business processes, graphic design, software development, SaaS, data analytics, knowledge-based outsourcing), marketing, sales, logistics, etc. of physical goods – e.g. Amazon, eBay, Alibaba, Tarad.com, Pantipmarket.

Digital economy offers developing countries enhanced opportunities for accelerated integration into the global economy.

### Comparative advantages:

- ✓ Accessing new international markets at low cost and with minimal capital investment
- ✓ Improving competitiveness and customer services
- ✓ Realizing cost savings by reducing physical transactions and overheads
- ✓ Reducing administration costs



**Figure 1.** Intellectual Property and Digital Economy

### 1.2 Intellectual Property and Digital Economy

Technological changes driven by the Internet and digital technologies, the primary driver of economic growth is based on the ability to innovate. No longer is competitiveness based on the ownership of land or the access raw materials or capital. Thus, it is time for the change to a digital economy based on the ownership/control of intangible assets which are exploited digitally. Digital Economy is the means of

enabling participation by all in social and economic enterprise, and also includes the role played by government in developing infrastructure and services.

### 1.3 Trademarks and Digital Economy

When a trademark is used in Digital Economy, it is potentially accessible by viewers world wide. Businesses are realizing that their on-line identities are potentially valuable resources and must be protected accordingly. Companies should know what constitutes a valid trademark and be prepared to enforce their trademark rights over digital media. They must also be aware of methods to detect further infringement and what remedies are available.

## II. TRADEMARKS IN DIGITAL ECONOMIES: INDIA

Certain countries, such as India and Malaysia in the Asia-Pacific region have demonstrated relatively rapid uptake of digital technologies and corresponding growth in their digital economies. While the reasons are manifold, the governments of countries that exhibit greater digital development have focused on training and export of information technologies, telecommunications and infrastructure development, and legal and policy regimes that promote the protection of intellectual property and are therefore conducive to e-development.

The Government of India undertook a series of steps, to conform India IP legislation to acceptable international standards. The regulations relating to all forms of IP have been amended or reissued in recent years, mainly in response to India's accession to the WTO. India's well-established framework for protecting intellectual property rights has been an important inducement to business investment.

### 2.1 Here are some of the developments in IP legislation in India

- ✓ Trademark law brought at par with international practices
- ✓ Protection to geographical indications provided
- ✓ Copyright law modified
- ✓ Patents law more aligned with TRIPS
- ✓ Protection for plant varieties and rights of farmers established
- ✓ New designs law
- ✓ Integrated Circuits Provisions adopted

### 2.2 Trademark law brought at par with international practices

India replaced the Trade and Merchandise Marks Act, 1958, with the Trade Marks Act, 1999.

Service marks, for the first time, made protectable through registration. The definition of "trademark" now includes graphic representations, shapes, packaging and combinations of colors, thereby widening IPR protection. The procedure for registration of trademarks expedited. In addition, only a single application need now be filed for registration of a trademark in different classes. The 1999 Act also provides for the classification in conformity with recognized International Classification of Goods and Services. The period of registration and renewal has been increased from seven to ten years. The definition of "trademark infringement" has been broadened to give protection beyond the use of identical/deceptively similar marks in relation to goods for which they are registered.

### 2.3 Trans-border reputation recognized

Indian courts first recognized the concept of trans-border reputation in *NR Dongre v Whirlpool Corporation* (1995). A foreign entity can now enforce trademark rights against an Indian entity if it can demonstrate that its trademark enjoys trans-border reputation by way of documentary evidence (e.g.,

magazine and newspaper articles, television coverage, and online presence).

## 2.4 Customs recordal efficiently used

The Intellectual Property Rights (Imported Goods) Enforcement Rules 2007 empower Customs to seize, forfeit and destroy counterfeit goods that have been imported into India. A rights holder may register its trademark, copyright, design or patent with Customs. The recordal process can be done online and takes approximately three to four working days to be processed.

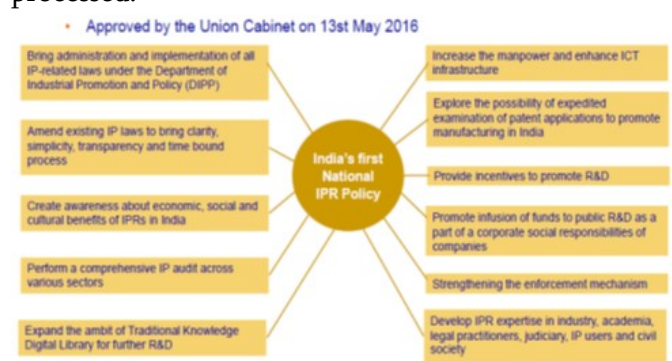


Figure 2. National IPR Policy

## III. INTELLECTUAL PROPERTY AND DIGITAL ECONOMY: WRAP-UP

Innovation is crucial to competitive edge, sustainability and relevance. That makes Intellectual Property (IP) policy an increasingly important tool for stimulating economic growth. IP can also act as a barrier to innovation and creativity if not properly managed where it is too expensive to access knowledge, where it is too complicated to use or where it is goes too far in obstructing market entry. Enterprises are required to re-look their approach to business – sales, customer service, distribution and production.

When a trademark is used in Digital Economy, it is potentially accessible by viewers worldwide. Businesses are realizing that their on-line identities are potentially valuable resources and must be

protected accordingly. Companies should know what constitutes a valid trademark and be prepared to enforce their trademark rights over digital media. They must also be aware of methods to detect further infringement and what remedies are available.

## IV. CONCLUSION

Digital Economy offers developing countries enhanced opportunities for accelerated integration into the global economy. In particular, there are comparative advantages for accessing new international markets at low cost and with minimal capital investment, for improving competitiveness and customer services, and for realizing cost savings by reducing physical transactions and overheads. However, by opening up new marketing channels, the digital economy offers wider scope for both the legitimate and counterfeit use of trademarks. The challenge is to develop a system which is flexible to technology, consumer demand and particularly for developing countries allows for affordable access and development which meets the needs of country.

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