



SCHOOL OF LAW, CHRIST DEEMED TO BE UNIVERSITY,
BANGALORE

Webinar on Creation & Commercialisation: Protection of IP Assets




CHRIST
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BANGALORE · INDIA

SCHOOL OF LAW, CHRIST
(Deemed to be University)

INTELLECTUAL PROPERTY RIGHTS COMMITTEE
2020-2021

GUEST LECTURE SERIES
SESSION-1

Creation & Commercialization:
Protection of IP assets



Mr. Sanjeeth Hegde
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Counsels and specializes in IP strategy,
licensing, and entertainment law

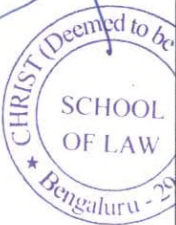

17th October, 2020
Saturday
2:30pm-4:30pm IST

Student Convenors:
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Maria Grisha Borges

The Management :
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Dr.Jayadevan S Nair, Dean
Dr.Sapna S, HOD

Faculty Coordinators:
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Dr. Avishek Chakraborty

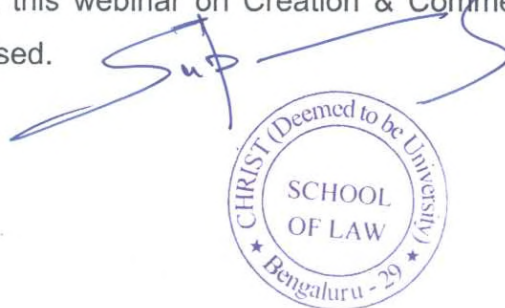
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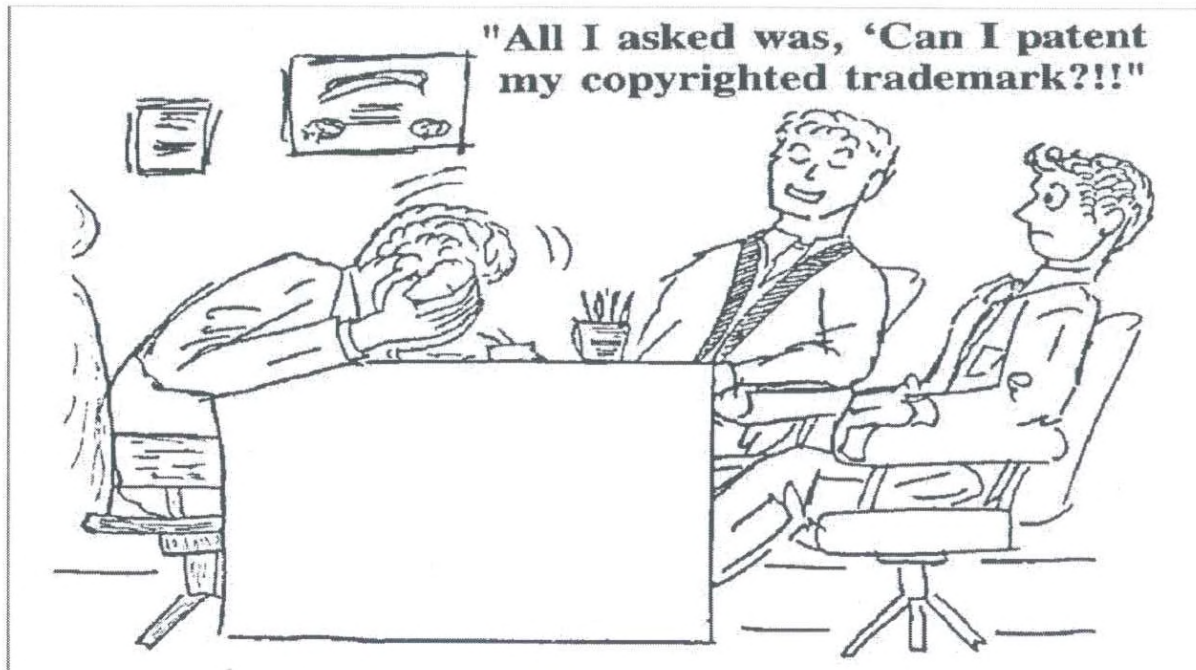
The Intellectual Property Rights Committee commenced its Guest Lecture series with an online Webinar on the Creation and Commercialisation: Protection of IP assets on 17th October, 2020 from 2:30 to 4:30. It was an absolute honour to listen to Mr Sanjeeth Hegde, one of the most distinguished IP lawyers of the country, throw light on the practical aspects of Intellectual Property Law. Mr Sanjeeth Hegde who graduated with a Juris Doctorate from the University of New Hampshire School of Law in 2004 went on to also secure a Masters in Intellectual Property, Commerce and Technology from the same institute. Currently, he is a senior partner at BananalP Counsels, one of India's leading IP consultancies, leading the Trademarks/Copyrights, Media & Entertainment and IP Licensing and Transactions practices of the firm. He is also the creator of "Hegde Simplifies", a popular online IP and legal education initiative, helpful to students and professionals alike. His research areas include changing the legal landscape in digital media and effective methods for IP portfolio creation and management in the entertainment industry.

Intellectual Property has gained critical importance in a rapidly changing global economy. For companies and business, intellectual property constitutes intangible assets that they can exploit commercially. Due to the expansive reach of intellectual property like patents, trademarks, copyrights, designs etc., effective protection and promotion of these assets can be the key determining factor in whether a business is successful or not. However, many intellectual property right holders are unaware of the value of their IP assets, the potential risks threatening their assets such as infringement of copyrights, and passing off of trademarks. Due to this, they do not take any measures to capitalize upon their assets.

At IPRC, we believe that it is important for the student community, as future lawyers, to understand not only the theoretical and statutory aspects of IP, but also to have an in-depth understanding of the practical application of IP laws. This practical knowledge is pertinent to ensure that we are able to effectively advise clients, and put our skills to the best use. With the focus of this webinar being to equip students with a combined arsenal of both theoretical understanding and practical application of IP law, we wish to explore the creation, protection and commercialization of IP assets. Therefore, this webinar on Creation & Commercialisation: Protection of IP Assets was organised.



Intellectual Property Law is often confusing, especially for those who haven't studied the intricacies of it. This was cleverly highlighted by the speaker showing a cartoon that had someone innocently asking, "Can I patent my copyrighted trademark?" This confusion is what gives the well informed an edge and that is where we, as IP practitioners and lawyers come to the rescue.



Businesses are the epicentre of innovation for as Peter Drucker rightly says, the purpose of businesses is to create customers and hence they have only two functions- marketing and innovation. Neither the Business nor its IP assets are in isolation of each other, they go hand in hand. Approximately 60 years ago the longevity of the largest companies in the market was about 68 years but now with the rapid changes in technology, it has been reduced to 18 years leaving companies with the choice of innovating or moving out. Mr. Hegde illustrated this by showing us a list of top IP applicants consisting of fortune 500 companies like Apple, Alphabet, Samsung, etc. at the top. These companies invest a significant amount of their profits in research and development to keep innovating and remain at the forefront.

However, there were not a lot of Indian companies on the list of top IP applicants as India is still in the process of transforming ourselves to create more innovation to pursue patents. While we are still unable to identify the treasure trove of resources that we have in terms of some of the smartest minds, foreign companies set up their research and development units in India, tapping into our resources. This creates a

hierarchy in terms of innovation and a consumer base with the United States in the lead followed by countries like Japan and China. However, Mr. Hegde opined that China's political war with India and other countries may prove advantageous for India as it gives Indian businesses a chance to thrive in the domestic as well as global market, thanks to nationalism.

After laying down these basics the webinar proceeded into discussing the importance of Intellectual Property in a Company. To make it simpler to understand, Mr. Hedge gave the audience an example of one of his clients- Peps. Using this example he explained how identifying and creating an IP inventory is useful for companies to gain competitive advantage, significant market share and a large consumer base. Consumer loyalty to the brand can be increased by bringing out constant innovations that give them value for their money and an IP right protecting that innovation would give the owner of the asset an advantage by preventing similar brands entering the market. IP assets can be used in different ways like selling them, licensing them and transferring them. Using the example of Qualcomm, the speaker explained how licensing out their innovations can also prove as a good IP strategy. Qualcomm being a manufacturer dealing in microchips that make up the hardware for a lot of devices, licenses its designs to manufacturers of electronic items, gaining royalty every time a device using their microchips is used.

Mr. Hegde also highlighted the importance of competitive intelligence and undertaking a landscape analysis of IP portfolios to ensure that companies are not treading into domains that are not dominated by their competitors. The speaker also went on to demonstrate the necessity of a patent search to enable the company to analyse competitors in the same market to make decisions to determine the company's market share.

The influence of IP on enterprises are divided into 3 categories- dedicated R&D, Product Development and Technology Status Quo. Companies in a lot of various industries, primarily the automobile or IT industry, invest their profits to engage in research and innovation which would ultimately build their IP portfolios. Often these companies do not use all of their research and patents rather they keep patent fillers. Enterprises in the product development categories continually invest in the efficient development of their products for bigger market share. Other companies invest in

continually developing their products or methods to obtain a better market share and yet others can stay with old models and technology and still find consumers. Mr.Hegde concluded the presentation by illustrating the different methods, namely income method, cost method and market method for determining the valuation of a company.

After Mr. Sanjeeth Hegde's enlightening and scintillating presentation, there was a Q&A session to engage with the audience. The audience dropped off questions in the chatbox which was very ardently answered by Mr. Sanjeeth Hegde and Prof. Avishek Chakroborty. The questions and answers for the same are as follows :

Q1. The Copyright (Amendment) Rules 2019 had the motive of ensuring that copyright law can address the rapid technological advances taking place in the digital age. Do you think the Rules achieve this objective, keeping in mind problems such as licensing issues of online streaming platforms?

A. Mr. Hegde started his answer by highlighting the recent Bombay HC judgement which held that online streaming platforms cannot be characterized as broadcasting organisations. According to him, the streaming platforms had gotten together as a collective and decided to self-regulate to minimise government intervention. Netflix and other streaming platforms to some degree have reached some consensus on the content that is being streamed especially regarding explicit content. The speaker also pointed out that it would be unlikely for the government to intervene in the next few years and come up with regulations or restrictions that might drastically change the current system.

Q2. What would be your advice to entrepreneurs in this session as not much is known to them about the commercialization of IP assets? Especially as they have limited funds how do they make the most out of their IP assets.

A. Mr Hegde stated that the Startup India Scheme is an initiative where eligible startups can get a variety of benefits. However, the speaker pointed out that the startups have not been able to enjoy the benefits of the scheme. The speaker also stressed the importance of raising IP awareness in order to identify the intellectual property and leverage it as most entrepreneurs are unaware that their unique innovations can be protected as intellectual property. For instance, Mr. Hegde made references to the role of incubation programme run by the IPR cells of universities

(the same which Mr. Hegde has also participated in) to raise awareness as a step forward in educating startups on IP.

Q3. What is the extent of liability of internet service providers in digital piracy and copyright infringement in India?

A. Prof. Avishek Chakroborty was invited by Mr.Hegde to give an overview on the liability of internet service providers and Dr.Avishek draws the attention of the audience to the *Myspace v Super Cassettes*, a decision by the division bench of Delhi HC that clarified the current legal position on the liability of ISPs being that of secondary liability. The issue of internet service providers being the scapegoats when ascertaining liability when primary infringers could not be identified was dealt with by the instant case and it delivered a judgement that was very positive and beneficial to the internet service providers. Dr. Avishek also highlighted the differentiation that was made by the Delhi HC between actual knowledge and constructive knowledge read with the Copyright Act. To further elaborate on the practicality of intermediary liability, Mr.Hegde gives an example of the film industry and makes mention of a website known as TamilRockers that retains a monopoly in finding exclusive copies of films and releasing it before the film has been officially released. Big film production companies not wanting to lose out on money can approach the Court and get orders known as Ashok Kumar orders by noting all the major intermediaries that are going to grant internet access by mobile or other devices to immediately block any content being uploaded concerning the film and if the intermediaries fail to do so, they can be held liable for the losses incurred by the film producers. Mr. Hegde goes on to mention that this practice has been adopted from the US where it is common for those in the film industry to obtain John Doe orders before their big release.

Q4. Apple has lost an enormous amount of money in 'first to file' countries despite having innovation and brand value over other companies that use the same trademark. Do you think 'first to use' regime is far better than 'first to file' regime? And how can companies protect their IPs if different countries have different positions with respect to innovation?

A. Mr. Hegde states that the question is a cross-over between patent and trademark filing. According to the speaker, with respect to patent filing, most countries around

the world operate with the first to file system. Interestingly, Mr. Hegde gives an example of the United States which has transitioned from a first to use system to a first to file system and the applicability can be attributed to innovation/patents. With reference to the different positions on patent innovation in different countries, Mr. Hegde elaborates on patent filing by stating that notification and publicization of an innovation, when done in one country, is also carried over to other countries. For instance, if Apple is to file an application in California where the innovation has taken place, publicization of the same would restrict other competitors from filing the same anywhere else in the world and prevent them from infringing or capitalising on Apple's innovation. According to the speaker, when Apple files a patent, it would simultaneously file in all the different countries where there is a business operation. However, in trademark filing, there is leeway with respect to the first to file/use and in light of this, Mr. Hegde refers to the Mountain Dew case where the trademark Mountain Dew was applied in Hyderabad for packaged drinking water where due to a prior application of this trademark for packaged drinking water, they were able to obtain a temporary injunction against PepsiCo because of prior use by the packaged drinking water company for many years before Mountain Dew entered the Indian markets. Mr. Hegde also points out a loophole where this first to file can be overrode in case of a well-known trademark, for instance, Apple which can dominate any market and enjoy the benefits of multiple legislations due to their established trademark so they can ultimately prevent other businesses from entering their market space.

Q5. Could you please give an insight on the effects of producers and production houses taking over the OTT Platforms during Covid-19? How is it affecting competition law?

A. According to Mr. Hegde, the OTT platforms have not intersected with competition law yet. The speaker also feels that the big production houses are not dominating the OTT platforms but they do certainly have an advantage when it comes to piercing or moving into the OTT platforms. However, from what Mr. Hegde has observed it is the small production houses, startups or individuals that have been pitching into digital series or shows on platforms like Netflix and the typical Bollywood Production Houses have not taken over

the space yet and therefore he does not see the role of competition law in OTT platforms as of now.

A total of 397 participants had tuned into the webinar to listen to Mr. Sanjeeth Hegde. His insights in the area brought out the practical aspects of Intellectual Property Law creating the drive and enthusiasm among the members of the audience to learn more about the field, bringing the first instalment of the Guest Lecture series to a fulfilling end. The vote of thanks delivered by Dr. Sapna S, the Head of Department, School of Law expressed the sincere gratitude of the audience toward Mr. Sanjeeth Hegde for sharing his knowledge with us. The Committee through this Webinar series aims to focus on the fourth Sustainable Development Goal of imparting quality education by raising awareness in the area of intellectual property law. By focusing on enlightening the future lawyers and innovators who are in essence the future of the nation, the Intellectual Property Rights Committee has contributed to the overall student e-learning experience.

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