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# THE IMPACT OF SOCIAL MEDIA AND ONLINE PLATFORMS: PROTECTING CONFIDENTIAL INFORMATION AND TRADE SECRET

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## ABSTRACT

This paper explores the evolving landscape of trade secrets and confidential information, focusing on the legal protection mechanisms in India and a comparative analysis with global practices. Trade secrets, encompassing proprietary recipes, algorithms, and business strategies, play a vital role in securing competitive advantages for companies. While several countries like the United States, United Kingdom, China, and Japan have codified trade secret laws aligned with the TRIPS Agreement, India lacks a specific statutory framework, relying instead on common law principles, contract law, and judicial precedents. The study underscores the urgent need for dedicated legislation in India to address modern business and digital challenges, especially in the context of rapid innovation and the influencer economy. Additionally, it highlights the relevance of intellectual property protection for content creators on social media platforms, emphasizing the importance of registering copyrights, trademarks, and patents. Through the examination of international legal models and notable case laws, the paper argues for robust regulatory measures to protect intellectual assets, prevent economic espionage, and foster a trustworthy digital environment. The conclusion advocates for the adoption of stringent laws, awareness among stakeholders, and proactive steps by businesses and influencers to safeguard intangible assets in both traditional and digital marketplaces.

**Keywords:** Trade Secrets, Confidential Information, Intellectual Property, Indian Legal System, Social Media Influencers.

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## INTRODUCTION

In the rapidly evolving digital age, the protection of intellectual property, particularly trade secrets and confidential information, has become a critical concern for businesses worldwide. Trade secrets, which encompass proprietary business knowledge such as formulas, algorithms, customer lists, and marketing strategies, serve as invaluable assets that provide competitive advantages.<sup>3</sup> However, as digital platforms and social media continue to permeate various aspects of business operations, they also pose significant threats to the confidentiality and security of these assets. The proliferation of social media and online platforms has significantly altered the landscape in which businesses operate, creating new challenges for safeguarding sensitive business information. In India, the legal framework surrounding the protection of trade secrets and confidential information remains underdeveloped compared to global standards. While nations such as the United States, the United Kingdom, and Japan have enacted comprehensive and robust trade secret protection laws, India still lacks a dedicated statute addressing these issues. Instead, India relies on a fragmented mix of common law principles, contract law, and judicial precedents. This legal uncertainty poses significant risks, particularly as businesses and content creators increasingly navigate the complexities of the digital environment. Furthermore, with the rise of the influencer economy and online business models, there is an urgent need to establish clearer legal mechanisms to protect intellectual property in the context of social media. This paper explores the growing significance of trade secrets and confidential information in the digital economy, examining the current legal landscape in India and comparing it to international practices. Through a critical analysis, the study highlights the need for a specific legislative framework that can address the challenges posed by the digital age and evolving business models. The research underscores the importance of intellectual property protection for social media influencers, content creators, and businesses operating in online platforms. Additionally, it advocates for the adoption of comprehensive legal reforms that can safeguard intangible assets, prevent economic espionage, and foster a trustworthy digital environment for businesses and content creators alike. By reviewing global practices, analyzing judicial precedents, and considering the regulatory gaps in India's legal system, this paper seeks to contribute to the development of a more robust and adaptable legal framework. Such a framework would not only offer better protection for trade

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<sup>3</sup> Neeraj Pandey and Khushdeep Dharni, *Intellectual Property Rights 3-10* (Eastern Economy Edition, Delhi, 1 2014).

secrets and confidential information but also align India's legal approach with international standards, promoting innovation and economic growth in the digital era.<sup>4</sup>

### **STATEMENT OF PROBLEM**

In the digital age, the proliferation of social media and online platforms has significantly increased the vulnerability of trade secrets and confidential information to unauthorized access, misuse, and economic espionage. While trade secrets represent vital intangible assets for businesses—ranging from proprietary formulas and algorithms to client databases and marketing strategies—India lacks a comprehensive legislative framework specifically dedicated to their protection. Unlike countries such as the United States, Japan, and the United Kingdom, which have enacted robust statutes to safeguard trade secrets, India relies primarily on fragmented legal provisions under contract law, common law, and judicial precedents. This legal ambiguity poses serious risks to organizations, entrepreneurs, and especially content creators and influencers operating in an increasingly competitive and transparent online environment. The absence of clearly defined legal protections and enforcement mechanisms not only undermines the economic interests of businesses but also hampers innovation, investment confidence, and digital trust. Therefore, there is a pressing need to critically analyze existing laws and propose a coherent, enforceable, and tech-adaptive framework.

### **RESEARCH QUESTION**

1. What are the key legal and regulatory differences between India's approach to trade secret protection and those of countries like the US, UK, China, and Japan.
2. How do social media and online platforms contribute to both the risk and protection of confidential information and trade secrets for businesses and content creators.
3. What legislative and judicial measures are necessary in India to enhance the protection of trade secrets in the context of increasing digitalization and influencer-driven content sharing.

### **RESEARCH OBJECTIVES**

1. To examine the legal framework governing trade secrets and confidential information in India and compare it with international practices.

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<sup>4</sup> Social Media and Intellectual Property (IP): Part I- Protection and Ownership, available at: [https:// 2 www.bananaip.com/ip-news-centre/social-media-and-intellectual-property-ip-part-i-protection- andownership/](https://2www.bananaip.com/ip-news-centre/social-media-and-intellectual-property-ip-part-i-protection-andownership/) (last visited on January 19, 2025).

2. To assess the role of social media and online platforms in the exposure and protection of intellectual property, including trade secrets.
3. To analyze judicial precedents that shape the protection of trade secrets in India and globally, particularly in the context of employment and digital disclosure.
4. To suggest policy reforms and protective measures for businesses and content creators to safeguard trade secrets and IP assets in the context of emerging digital environments.

### **RESEARCH METHODOLOGY**

This study adopts a qualitative, doctrinal research methodology, primarily based on the analysis of statutory provisions, judicial decisions, and international legal instruments related to the protection of trade secrets and confidential information. Comparative legal analysis is employed to examine the frameworks of countries like the United States, United Kingdom, China, and Japan. Secondary data sources, including academic articles, legal commentaries, case laws, government reports, and IP regulatory guidelines, form the foundation of this research. The study also incorporates an analytical approach to evaluate the impact of social media on intellectual property rights and to propose legal reforms suitable for India's evolving digital landscape.

### **TRADE SECRET AND CONFIDENTIAL INFORMATION**

#### **CONFIDENTIAL INFORMATION**

When one party shares information with another in the process of doing business, the information is considered confidential and must not be made public. The principle of equitable sharing and the notion of law of confidence form the basis of the concept of confidential information. This means that the recipient of the information must not exploit it for their own benefit at the expense of the original source, unless both parties have given their approval.

#### **TRADE SECRET**

Simply put, a trade secret is information about a company or trade that is known to only a small number of people but has significant financial value. A trade secret is any piece of confidential information that has the legal right to be sold or licensed, as defined by the World Intellectual Property Organization (WIPO). Contrary to other forms of IP, trade secrets do not need to be registered.

## ESSENTIALS OF TRADE SECRET

- Since it is confidential, it ought to be commercially valuable.
- Only a small number of people directly involved with the company should be aware of it.
- Taking reasonable precautions, the owner has ensured that the information remains confidential.

Included in this category are things like procedures, recipes, software codes, lists of customers, supply channels, financial data, and formulas. Trade secrets are everywhere; just look at Nestle Maggi Masala, KFC chicken, Listerine Mouthwash, Hershey's Milk Chocolate, Google Algorithm, Coca-Cola, and countless more. One example of confidential information is a trade secret. While some information may be considered confidential, not all of it will be considered a trade secret. Any material that contains important or secret details should be treated as confidential, and the recipient has no obligation to share or utilize the information for any reason other than the original intent. Consider the following: client lists, company revenues and profits, personnel information, etc. Confidential information with monetary value that has been diligently guarded for an extended period of time is known as a trade secret. For instance, any kind of technical document, program, data, formula, recipe, etc.

## INDIA – PROTECTION OF TRADE SECRETS AND CONFIDENTIAL INFORMATION

### THE CONCEPT OF TRADE SECRET EVOLVED IN INDIA

Following liberalization in 1991, India joined the WTO, and in 1994, it also signed TRIPS, an agreement pertaining to trade-related aspects of intellectual property rights. All member governments were required by the TRIPS Agreement, namely Article 39, to safeguard trade secrets and other concealed information. In India, there is currently no legislation in place to safeguard confidential information or trade secrets. Common law and equity are its basis. As technology progressed, the government of India enacted new trade secret protection rules and unveiled the 2008 Draft National Innovation Act. Unfortunately, the Trade Secrets Protection Legislation was never enacted into law, so the necessary safeguards were never put in place.

### TRADE SECRET LAW IS GOVERNED

Confidential information and trade secrets are protected by the laws:

## COMMON LAW

Section 27 of the **Contract Act**<sup>5</sup> is the statute that obligates the parties to a non-disclosure agreement not to reveal any material that might violate the terms of that agreement.

- **Copyright Law** as well as safeguards the confidential information that companies keep. In addition, a new legislative framework known as the Personal Data Protection Bill, 2019 was put in place to ensure the security and privacy of all data, whether digital or not.
- Section 72 of **Information Technology, 2000**<sup>6</sup> establishes a fine for violating privacy and confidentiality.
- Section 405-409 of the **Indian Penal Code,1860**<sup>7</sup> processes matters involving allegations of criminal breach of trust.

## LAW OF CONFIDENCE AND FIDUCIARY RELATIONSHIP

Under a trustee-beneficiary relationship, when one party divulges information to another, the recipient is obligated to maintain confidence and trust, even in the absence of a written non-disclosure agreement.

## JUDICIAL PRECEDENTS

Since there is no dedicated law in India to safeguard proprietary information or trade secrets, the protection of such assets is based on judicial precedents and opinions. Cases that illustrate the use of the judicial mind are as follows:

In **Dr. Sudipta Banerjee Vs. L.S. Davar & Company & Ors.**,<sup>8</sup> The former workers of a law firm were enjoined by the Calcutta High Court for leaking proprietary information and trade secrets that they had acquired while working for the company. Reevaluating Section 27 of the Indian Contract Act necessitates striking a balance between contract and trade freedom, according to the court. Disclosure of such communications and material by the employee would be unethical and a violation of the service contract's confidentiality provision, harming the law firm.

<sup>5</sup> The Indian Contract Act 1872, s. 27

<sup>6</sup> Information Technology Act 2000, s. 72

<sup>7</sup> Indian Penal Code 1860, s. 405-409

<sup>8</sup> FMAT 735 OF 2021

**M/s Lifecell International Private Limited v. Vinay Katrela**,<sup>9</sup>The Madras High Court reached the conclusion that no arrangement, including a franchise agreement, can contain an absolute restriction once an employee's employment has ended. Additionally, the court ruled that the prohibition can only apply to developed and acceptable trade secrets that are not to be disclosed since they are vital to the company's future prospects.

In **Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibbers**<sup>10</sup> The defendant had worked for the plaintiff's company in the past, and he used the plaintiff's contact information to launch a competing business after he left. The plaintiff's talent and labor went into developing the contacts database, which the court ruled is protected under laws pertaining to trade secrets and confidential information.

In **Saltman Engineering Company Limited v. Campbell Engineering Company Limited**,<sup>11</sup> or "Saltman Engineering Case", Once Saltman began utilizing the pictures for his own ends, he was in direct opposition to the Campbell Act. Since there is no written agreement requiring him to do so, Campbell maintained that he is free to treat the designs as confidential. "Whether there was a contract or not would not matter the least bit," Lord Greene remarked. The fact that the defendants had only had temporary access to the designs meant that Campbell knew they belonged to Saltman and were confidential. Therefore, the defendant was found to have committed a Breach of Confidence in this case.

In **John Richard Brady & Ors v Chemical Process Equipment P Ltd & Anr**,<sup>12</sup> principles of confidentiality were discussed for the first time in this case. The Court held that "There is no implied contract that governs the law on this matter. The general principles of equity state that one must not unfairly benefit from knowledge that has been shared in confidence".

## **CONFIDENTIAL INFORMATION AND TRADE SECRET LAW IN GLOBAL TRENDS**

### **US**

In the US, Trade Secrets are protected by specific law- The Uniform Trade Secrets Act (USTA) which the Uniform Law Commission passed into law in 1979 at the state level. The federal

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<sup>9</sup> O.A. Nos. 599 and 600 of 2018

<sup>10</sup> 61 (1995) DLT 6

<sup>11</sup> Saltman Engineering Company Limited v. Campbell Engineering Company Limited (1948) 65 RPC 203

<sup>12</sup> AIR 1987 Delhi 372

Defend Trade Secrets Act (DTSA)<sup>13</sup> of 2016 further ensures its protection. When it comes to protecting trade secrets against theft, the United States has the best legislation in the world. In order to ascertain whether the data in question constitutes a trade secret, the following criteria must be satisfied, according to Roger M. Milgrim's Milgrim on Trade Secrets:

- How widely known the details are outside of his company?
- How much his organization's staff and other stakeholders are aware of it?
- The depth of his efforts to protect the confidentiality of the data?
- How much this data is worth to his company and its rivals?
- The resources (both financial and human) used by the company to compile the data?
- The simplicity or complexity of obtaining or replicating the data from other sources?

According to the Economic Espionage Act of 1996<sup>14</sup>, it is a criminal offense to steal or misappropriate a trade secret with the purpose of benefiting any foreign government, foreign instrumentality, or foreign agent.

## UK

Since trade secrets are a subset of confidential information, the common law regime for protecting such information is heavily influenced by the Trade Secrets (Enforcement, etc.) Regulations, 2018. If it meets the three criteria, any information deemed confidential can be protected under UK common law:

1. "Quality of Confidence" must be there in the information.
2. In order for the knowledge to inspire the Quality of Confidence, certain conditions must be met.
3. An unauthorized or harmful use of information affecting the owner of the information must occur.

Damages, injunctions, accounts of profits or compensation, publicity orders, and other remedies are available for the wrongful use of confidential information and trade secrets.

## CHINA

Confidential information and trade secrets are safeguarded by a variety of Chinese regulations.

These laws include:

- The Anti-Unfair Competition Law which was revised in 2019
- Civil Code (effective from 2021); Civil Procedure Law (revised in 2017)

<sup>13</sup> The Federal Trade Secrets Act (DTSA), 2016.

<sup>14</sup> The Economic Espionage Act, 1996.

- Labor Law which was revised in 2018
- Criminal Law which was revised in 2015
- Provisions of Supreme People's Court

According to the Anti-Unfair Competition Law, "trade secrets" are defined as "any information, whether technical, operational, or commercial, that is not generally known to the public, has commercial worth, and as to which the infringer has taken steps to protect its secrecy. If someone other than the owner transfers or licenses a trade secret, the owner could face fines of up to 5 million RMB, an injunction, and the forfeiture of illicit profits.

## AUSTRALIA

There is no legislation in Australia that specifically addresses the need to safeguard proprietary information or trade secrets. The following statutes govern its protection from disclosure of confidential information:

- The Freedom of Information Act, 1982<sup>15</sup>
- The Privacy Act, 1988<sup>16</sup>
- The Corporations Act, 2001<sup>17</sup>

Under Australian law, trade secrets are simply seen as a type of confidential information; no precise definition is provided for them. The provision pertaining to "undisclosed information" in Article 39(2) of the TRIPS Agreement serves as a guiding principle. Contractual obligations and equitable remedies for violations of confidence can provide protection.

## JAPAN

There are both criminal and civil safeguards in Japan's Unfair Competition Prevention Act (UCPA) to prevent the disclosure of trade secrets. The provisions of USPA were ratified in accordance with Japan's 1995 TRIPS membership.

## **TRADE SECRETS ARE DEFINED AS TECHNICAL OR BUSINESS INFORMATION THAT IS MAINTAINED UNDER WRAPS BY MEANS OF SECRECY MANAGEMENT;**

- possessing practicality that is beneficial to corporate operations.
- belonging to the private, non-public, non-disclosed sector.

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<sup>15</sup> The Freedom of Information Act, 1982.

<sup>16</sup> The Privacy Act, 1988.

<sup>17</sup> The Corporations Act, 2001.

Owners of trade secrets are not obligated to take reasonable precautions to safeguard their secrets.

## UAE

Among the countries that have joined the TRIPS Agreement is the UAE. The term “trade secret” is not defined in statute, although it is protected by a number of federal statutes pertaining to civil and criminal liability.

- Patent Law – Article 39 to 42
- Penal Code – Article 379
- UAE Companies Law- Article 369
- Civil Code.

In 2019 the Intellectual Property Law was passed by the Dubai International Finance Centre (DIFC) in the United Arab Emirates to safeguard Trade Secrets and Intellectual Rights. Being a Free Zone, it has its own judicial system and can rule on matters pertaining to IP rights both within and outside of the free zones.

The preceding debate leads one to the conclusion that, as a world-leading economy, India need a dedicated statute to safeguard confidential information and trade secrets. Achieving success and making a contribution to the economy through innovation, research, and development in any firm requires a rigorous regime. The owner of a trade secret should rest easy knowing that India’s statutes punish both civil and criminal culpability for the theft or unauthorized disclosure of such information.

## **PROTECTIVE STEPS FOR INFLUENCERS AND CONTENT**

### **CREATORS**

Even though their work is freely and readily available in an internet-governed world, social media influencers who have created original content should take steps to safeguard it. Some people plagiarize other people’s work and profit from it without their knowledge or consent. Consequently, influencers should immediately register their IP in order to protect it from potential third-party claims. It is important for social media influencers to register their work for copyright as soon as it is developed, including their channel’s name. They can also start using their trademarks to protect their content on social media as soon as they start using them. Some influential people have gone to great lengths to trademark their name in this area.

To mention a few famous people who fit this description: Huda Kattan, Justin Bieber, Katy Perry, Rihanna, Victoria Beckham, Donald Trump, and Taylor Swift. For example, when Kylie Jenner attempted to register the term “KYLIE” as a trademark in the US, the well-known Australian singer Kylie Minogue contested the move because Minogue already had her trademark in hand.<sup>18</sup> This is only one obvious case that shows how important it is to register the trademark in these situations. Just like Huda Kattan, ‘Huda Beauty’ is a registered trademark in the UK and EU under her name. This is essential since there are imposters out there who utilize these names for nefarious, often unseen, financial gain.

As far as trademarks are concerned, this is the situation. For influencers to avoid legal trouble with copyright issues, it is recommended that they register their original content with the appropriate authorities. Since many nations’ Intellectual Property Regimes only allow for copyright registration as a means to recover damages for copyright infringement, this is an essential step to take. In addition, the statute of limitations for claiming damages begins to run from the date of registration. However, issues emerge when substantial financial damage to the infringed work and its owner has already occurred by the time registration takes place. Nevertheless, compensation related to copyright might be obtained after registration.

In addition to copyright and trademark protection, social media sites may also be eligible for patent protection. It is patentable; however, the scope and relevance of such subject-matter protection differs from nation to country. Patents have been filed for several social media technologies and applications. So far, a patent that Twitter has on a way to identify and control groups serves as an example of this in action. An estimated thirty thousand patents have been filed in the US pertaining to methods and technologies linked to social networking.<sup>19</sup> In addition to the points made above, social media platforms also serve as repositories for confidential company information. Recent years have seen the judicial recognition of trade secret protection for social media activities such as LinkedIn contacts to visitors and liker details. Trade secrets can be protected in this area if the right actions are done with respect to things like LinkedIn connections, Twitter followers, advertising stats, etc..<sup>20</sup>

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<sup>18</sup> *Kylie Minogue v. Kylie Jenner* (2016).

<sup>19</sup> Social Media and Intellectual Property (IP): Part I- Protection and Ownership, *available at*: <https://www.bananaip.com/ip-news-centre/social-media-and-intellectual-property-ip-part-i-protection-and-ownership/> (last visited on January 19, 2025).

<sup>20</sup> *Ibid*

For this reason, it is safe to say that whoever makes anything that appears on social media platforms like Facebook, YouTube, or Instagram becomes the rightful owner of any copyright, trademark, patent, or design that pertains to those platforms.<sup>21</sup>

## **IMPLICATIONS OF IPR IN CONTEXT TO CONTENT CREATORS AND INFLUENCERS**

Those in the music industry, including promoters, YouTubers, and musicians, are increasingly vulnerable to IP-related lawsuits as the reach of social media grows. A lot of work goes into building a reputation as an authority on certain themes, goods, and sectors for social media marketers and content producers. A whopping \$15 billion will be spent on influencer marketing by 2022, up from the current 15% of total global advertising value. In addition to information and products, promoters also make a range of smart and secure devices.<sup>22</sup>

Every day, people use a variety of devices to access the content found on social networking platforms. They need to be aware that millions of people can easily access and replicate their work with this. Understanding and protecting their intellectual property is of the utmost importance. To prevent infringing on the rights of others, social media platforms ensure they have sufficient authorization and consent before exploiting the creative works of others in films, images, or text on social media. This is something to keep in mind when creating material.<sup>23</sup>

The following are a few reasons to register Intellectual Property:<sup>24</sup>

- i. *Establishing ownership of Intellectual Property Rights:* In order to facilitate the enforcement of rights in the case of a disagreement, it is crucial to establish ownership of intellectual property rights.
- ii. *Registered IP becomes more credible and legitimate:* Users are more inclined to return to and trust protected information.
- iii. *Easier to get plagiarized content removed if IP is registered:* When intellectual property is registered, it is easier to remove content that is being misused or copied

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<sup>21</sup> *Supra* note, 17.

<sup>22</sup> "Importance of Intellectual Property for Social Media Influencers and Content Creators", *available at:* <https://www.lexorbis.com/importance-of-intellectual-property-for-social-media-influencers-and-content-creators/> (last visited on November 19, 2025)

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

than when it is unregistered, which necessitates significant proof.

- iv. *Avoiding replications altogether:* People would be less likely to duplicate the content in the first place if they were required to register, since this would make copying illegal.

The present economic climate makes it possible for a company's intangible assets to constitute a substantial portion of its market value. Regardless, many companies have no idea how much their IP is worth or don't even realise it. An IP audit can unearth valuable IP assets, the most essential of which is the presence or absence of significant unregistered IP. This includes crucial brands, technology, and trade secrets that should be registered or appropriately protected. An IP audit can help a business better protect, defend, and commercialize its intellectual property, as well as increase its value. Further investigation into the company's logo, technology, key documents, and confidential information can accomplish the same goal. Once an IP portfolio has been established, companies should establish mechanisms to continuously contribute to it as new IP is created<sup>25</sup>

When a company has established a strong reputation and positive associations with a certain brand, trademarks can become highly valuable assets. Legal protection for unregistered trademarks is often limited to areas where they have become highly popular due to extensive advertising and usage. Among the many substantial legal benefits bestowed by registration are the following: the owner's exclusive right to use the mark throughout a country in relation to the goods and services specified in the registration, protection from others using a confusingly similar trademark for similar goods or services, and the ability to limit third parties' use of the mark in a manner that damages the brand or diminishes the value of the goodwill associated with it. Registration in the national Trademark Registry helps preserve trademarks by making the public aware of these rights. Consequently, the Indian Trademark Registry should have all significant firm names, logos, and slogans recorded.

Companies whose foundation is innovation must have patents to safeguard their investments. A company must register its goods, methods, and development activities in order to secure patent rights, which are necessary to protect the company's assets. However, patent protection is only available for novel, previously undisclosed inventions. Only the United

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<sup>25</sup> Mrinal Kumar, "Intellectual Property Rights for Social Media Influencers", available at: <https://lawinfluencers.com/intellectual-property-rights-for-social-media-influencers> (last visited on March 10, 2023).

States and Canada offer applicants a one-year grace period before they must disclose their innovation globally. Organizations should keep all of their internal processes and research and development activities completely secret if they wish to seek patent protection in any country where they want to do business. Evaluating new items and processes for possible patent protection should be a standard element of the process for obtaining corporate authority or capital approval to sell the product or process. Incorporating IP counsel into the screening process can aid in determining whether patentable technology exists and, if so, whether it is beneficial to pursue patent protection. Most people consider a product's release to the market to be an enabling disclosure, meaning that patents are no longer needed. Therefore, before releasing a product, participating in a trade exhibition, or undertaking market research, it is essential to submit any necessary patent applications.<sup>26</sup>

In addition, before launching a product or expanding your brand into new jurisdictions, it is essential to conduct the necessary clearance searches. This will help you avoid any unsavory surprises, like discovering that someone else is using the mark or that another company has the patent for a technical aspect of your product. Businesses can use trademark clearance searches to find out if a particular name or phrase is accessible. To protect its rights to the name and discourage others from doing the same, it could be prudent to register the planned mark if it hasn't already. To determine if a product can be sold in a certain jurisdiction without infringing against other people's IP rights, similar freedom-to-operate investigations should be conducted. Businesses hastily enter the market only to find out that someone else has already patented a key aspect of their product, its production process, or one of its technological features. The product's commercialization in a particular jurisdiction may be severely hindered or even halted by this discovery.<sup>27</sup>

Keeping an accurate IP register does more than only prevent third-party infringement; it also aids in managing the IP more effectively, forming smart partnerships, licensing it, and selling it. It is essential that any new trademark applications or changes to current registrations cover any new goods or services that are covered by trademarks. This is an equally important consideration when working with other parties to create a co-branding or cross-promotional strategy. It is the responsibility of each party to review the potential goods and services linked

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<sup>26</sup> Kathryn Park, "The Path to Protection- Good Trademark Strategies Start at the Beginning", *WIPO Magazine*, (December 4, 2020), available at: [https://www.wipo.int/wipo\\_magazine/en/2020/04/article\\_0008.html](https://www.wipo.int/wipo_magazine/en/2020/04/article_0008.html) (last visited on March 10, 2025)

<sup>27</sup> *Ibid*

with their marks and, if needed, revise their trademark registrations accordingly.<sup>28</sup>

It is recommended that organizations consult the Trademarks Register to confirm if any additional products or services could be used with their marks before entering into any agreements to expand the range of products or services associated with them. Submitting an application to amend the present registration or to apply for the mark again in relation to new products and services is also a smart idea.<sup>29</sup>

Intellectual property safeguards creative endeavors that originate from the mind. The IP framework will ensure copyright protection regardless of the development location or method. Hence, regardless of where they were uploaded, ideas, inventions, and creative works created on social media will be protected by intellectual property laws. The sort of safeguard, nevertheless, is dependent on the nature of the work. Images, literary works, films, and other creative works can all be safeguarded by copyright laws. A social media representation's name, domain, or page name might be trademarked. Products that are visually appealing can be protected through trade dress, design patents, or industrial designs. Apps, tools, programs, techniques, and other inventions can also be protected by patents. It is possible to employ trade secrets to safeguard industry-specific data, contacts, information, and interactions. Protecting intellectual property in social media is easier than in more established media types because the industry is still in its infancy.<sup>30</sup>

But some countries have set down rules to regulate who can own what on social media. The Digital Millennium Copyright Act of 1998 amended the United States Copyright Act of 1976. The changes made three important changes: first, it is now illegal to provide false copyright information. Second, online service providers have protections against users who violate copyrights. Third, content owners are encouraged to make their content accessible to more people in exchange for protection against unauthorized use. Perhaps the most direct Indian analogue to the DMCA is Section 52(1) © of the Copyright Act, 1976, which permits the submission of takedown requests to file-sharing services in order to eradicate unlawful content. Providers of online content, such as websites, may delete or remove links to material

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<sup>28</sup> *Ibid.*

<sup>29</sup> P. Narayanan, *Intellectual Property Law* 159-161 (Eastern Law House, New Delhi, 2020).

<sup>30</sup> W. M. Dhumane and Mihir Shashikant Patil, "Rise of Social Media leading to Privacy and IP disputes", *available at*: <https://theprint.in/opinion/rise-of-social-media-leading-to-privacy-ip-disputes-indian-laws-need-teeth-to-tackle-them/969261/> (last visited on January 20, 2025).

when they receive a takedown notice.<sup>31</sup>

Similar to India, the European Union (EU) is considering imposing restrictions on social media use, in particular in response to terrorist-supporting comments. Another piece of legislation that the EU put into place was the General Data Protection Regulation (GDPR) in 2016. This law dictates how companies, including social media platforms, are required to obtain and manage user data. Additionally, measures have been implemented to protect copyright. By transferring responsibility for user-generated content that infringes on copyrights to social media platforms, its copyright policy ensures that platforms will not post copyright-infringing information. So, social media platforms need to be very selective about the content they allow on their sites. The Information Technology Act, 2000 and its accompanying rule, which provides protection to businesses and social media service providers in India, and the Digital Millennium Copyright Act (DMCA)<sup>32</sup>, 1998, which protects businesses and social media service providers in the US, are in direct conflict with this instruction.<sup>33</sup>

Companies with over two million German registered users were required by the NetzDG law, sometimes called the Facebook Act, to establish procedures for handling complaints regarding the content they hosted and to remove any prohibited material within twenty-four hours of receiving the complaint. Thus, the government can remove an article without informing the writer, regardless of whether the author has claimed intellectual property rights to it. Similar restrictions mandate that social media networks erase recognized information within 36 hours according to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021. These rules apply to both social media and over-the-top (OTT) platforms<sup>34</sup>

Another reason content restriction has always been a big deal in India is the country's incredibly diversified cultural landscape, which includes religion, class, language, and economic standing. To control social media, rules and laws such as the Information Technology Act of 2000 and the Copyright Act of 1957 have been put in place. Websites

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<sup>31</sup> *Ibid*

<sup>32</sup> The Digital Millennium Copyright Act (DMCA), 1998.

<sup>33</sup> "Key Social Media Privacy Issues for 2020", available at: <https://sopa.tulane.edu/blog/key-social-media-privacy-issues-2020> (last visited on March 10, 2025).

<sup>34</sup> *Ibid*.

that link to unlawful content are only one example of a problem that the legislation does not adequately address. To follow other nations in regulating ownership rights on social media service providers, India must take into account users' rights to exclusive ownership of their creative output, among other things.<sup>35</sup>

Ever since social media made it possible for everyone to publish and distribute anything, the rules controlling its usage have undergone a sea change. Social media were not considered when the present rules were being crafted. The protection of intellectual property assets has lagged behind the implementation of policies meant to address worries about data usage and privacy. There are a number of countries that have passed their own laws to protect citizens' privacy and IP rights. The problem of intellectual property on social media is complicated in India because of the country's many cultural backgrounds. However, if the right steps are taken, such as passing laws such to the General Data Protection Regulation (GDPR) and the Digital Millennium Copyright Act (DMCA), which are based on social demands and are firm with Indian norms, the problem may be effectively addressed.<sup>36</sup>

Additionally, a transformative draft strategy needs to be tested in the Indian ecosystem to safeguard intellectual property on social media. This will be useful in figuring out where we are and how to strengthen social media IP asset protection.

## **THE FUTURE OF PROTECTING DIGITAL CONTENT ON SOCIAL MEDIA**

Sharing one's ideas, images, and videos with the world has never been easier than with the rise of social media. Nevertheless, there is a substantial danger that someone could quickly steal or copy one's digital content due to this ease. Social media influencers must disclose their brand relationships in a transparent manner in accordance with government regulations or face penalties. Publication of explicit disclosures regarding brand affiliations is one of the regulations put forth by the government to ensure transparency and consumer protection.<sup>37</sup>

In the past few years, social media influencers have been more prominent than anyone else.

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<sup>35</sup> *Ibid.*

<sup>36</sup> *Supra* note, 1.

<sup>37</sup> Govt. Lays Down New Rules for Social Media Influencers", available at: <https://www.outlookindia.com/business/lays-down-new-rules-for-social-media-influencers-here-s-all-what-you-need-to-know/> (last visited on February 12, 2025).

They tell us which brands to buy, where to eat, and how to invest our money. Even if consumers should be careful with their money and take appropriate action, these social media influencers could easily trick their followers. No one should ever let the recommendations of social media affect their shopping decisions. Among the seminal rulings in *Marico Limited v. Abhijeet Bhansali*,<sup>38</sup> the Bombay High Court noticed two main issues:

The court ruled that the defendant, a YouTube content maker, cannot denigrate the plaintiff's product by providing inaccurate information while posing as an educator or delivering the public the truth. We support any effort to inform the public by presenting them with accurate and truthful information.

But you can't use that as an excuse to spread false information about someone else's goods in a way that makes people think twice about buying it.

It is also not consistent with honest standards in business or industry for the defendant to use the plaintiff's registered trademark without permission in a way that damages its unique qualities or reputation. There are still unanswered questions, despite the fact that this is the first case to surface involving social media. However, with the proliferation of social media influencers and the inevitable complexity of future cases, the courts will be inundated with them.

## **CONCLUSION**

Companies, organizations, and businesses should take all necessary precautions to protect trade secrets, including implementing secrecy management policies, drafting employee-employer contracts, and instituting non-disclosure agreements. Successful companies in the United States and Japan are able to stay ahead of the competition because their governments have implemented measures to better protect trade secrets and confidential information. Giving growth importance to social media or online platform as to make their business powerful tools as for branding, consumer acquisition, collaboration etc. They also present the more challenges to protect information securely. The risk of emerging technologies such as AI it also misleads the to major segment of the trade likely to cause confusion, reputation, economically or sometimes legal consequences. The knowledge, accountability, and adaptation are essential for protecting information and trade secrets in the social media era. By implementing innovative

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<sup>38</sup> 2020 (81) PTC 244 (Bom).

techniques, establishing a proactive security culture, and sticking to legal as well as ethical norms, organizations may also secure their most valuable assets and guarantee long-term trust, resilience, and competitive advantage in the digital age.

### **SUGGESTIONS**

1. In the age of globalization, modernization, and technological advancement, it is easier to copy or steal someone else's work through social media platforms, adding a few minor details to give it a different identity. This is why it is important to protect new inventions, creations, formulas, ideas, logos, symbols, and anything else that represents the owner's identity with their work.
2. There should be penalties for this type of conduct in addition to fines.
3. To protect sensitive data, a suitable legal framework and consistent application of that framework are required. Lawmakers and policymakers must compare and contrast how other countries handle these issues.
4. For the employee of an enterprise, business or any social media influencer, there must be provision of regular training and time-to-time awareness camps in order to reduce the sensitive data shared or leaked, whether intentionally or accidentally on such online platforms like Facebook, twitter etc.
5. Employer-employer agreements are required, and third-party agreements on social media platforms, such as non-disclosure agreements, emphasize responsibility and accountability for those who misuse confidential information or disseminate it without the owner's permission.

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