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# **INTERFACE OF E-COMMERCE WITH** **INTELLECTUAL PROPERTY RIGHTS**

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## **Abstract**

The internet has developed into a breakthrough technology in today's economy of global innovation, and it is well known for empowering both consumers and companies with the benefits of networking at all stages. Intellectual Property (IP) is arguably the most undervalued element of E-Commerce, although having the highest value, either because it is less understood or because its significance in relation to E-Commerce is not readily apparent. Unlike any other platform, e-commerce frequently involves the sale of products and services that are dependent on intellectual property and its licensing. Online firms should thus make earnest efforts to guarantee that their operations are free of IP hazards that might hinder or even endanger their operations. Having intellectual property is an asset that is worth more than possessing actual tangible assets. Additionally, IP plays a role in how e-commerce operates since a variety of components, including programs, processors, networks, layouts, and routers, among others, which are all examples of IP that need to be safeguarded for the Internet to operate. All online and e-commerce enterprises rely on product licensing to operate. Due to the wide range of technologies required to produce a product, the majority of online firms either contract out the creation of some aspects or share technology through licensing agreements. Businesses that rely on e-commerce generally possess patent portfolios and trademarks to increase the value of their online operations and view intellectual property (IP) as their most important asset. The digital economy and the realm of technology make this the most obvious. This paper therefore attempts to understand the role of IP in e-commerce and its significance, specific IP issues arising in e-commerce activities and how they can be countered.

***Keywords: E- commerce, intellectual property, technology, assets, protection and enterprises.***

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## Introduction

### *What are Intellectual Property Rights?*

Intellectual property (IP) is a legal term that has been attributed to industrial property, copyrights, and other rights in a related industry. It is a process whereby someone invents something, produces literary or artistic works, generates designs, symbols, names, or visual representations that are employed in trade. Intellectual property is an intangible asset that results from intellect, according to the Oxford Dictionary<sup>1</sup>. There are many different types of intellectual property, but a few important ones include copyrights, trademarks, and patents. IPR also covers the creation of new music or song lyrics, a start-up business, and a variety of other things.

### *What is E-commerce?*

The term "ecommerce" refers to businesses and individuals that purchase and resell goods and services online. E-commerce can be done on computers, tablets, cellphones, and other smart devices, and it operates in a variety of market categories. E-commerce transactions make almost every good or service conceivable accessible, including books, music, airline tickets, and financial services like stock trading and online banking. The U.S. Department of Commerce considers online marketplaces, auction sites, transactional websites, and websites with static content as ecommerce businesses<sup>2</sup>.

### *Interference of E-commerce with IPR*

With the rapid advancement of technology, human dependency on it has become inevitable in the modern world. E-commerce has made its way into our daily lives at every pick and instance. In the e-commerce arena, Intellectual property is a fundamental aspect that needs to be protected as it a huge value- bearing asset to an e-commerce entity. Few entrepreneurs have paused to think about who owns the patent on a business approach or process their site is using because innovation has proliferated so quickly in recent years. Because of how

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<sup>1</sup> Oxford Dictionary, 'Intellectual property', <https://www.oxfordlearnersdictionaries.com/definition/english/intellectual-property#:~:text=%2F%CB%8C%9%AAnt%9%99%CB%8Clekt%CA%83u%9%99%20%CB%88pr%9%91%CB%90p%9%99rti%2F,prevents%20other%20people%20from%20copying> (last visited on Nov. 14, 2022)

<sup>2</sup> International Trade Administration, Types of eCommerce Websites, "eCommerce Website Types." (last visited on Nov. 14, 2022)

nimble the Web has been, many businesspeople have disregarded trademark laws and registered domain names that could be mistaken for the registered trademarks of other organizations. In conclusion, the Internet has shown its ability to undermine established interpretations and applications of intellectual property law that have been evolved over the past 200 years. The main moral dilemma surrounding e-commerce and intellectual property is how we (as individuals and as business professionals) ought to handle other people's property.

From a sociological perspective, the primary queries are: Does intellectual property protection still have significance in the era of the Internet? What benefits or disadvantages does it bring to society for intangible thoughts to be treated as property? From a political standpoint, we must consider how the Internet and e-commerce may be governed or regulated to safeguard the concept of intellectual property while also promoting the expansion of e-commerce and the Internet.<sup>3</sup> Trade secrets are protected under intellectual property law from being revealed, which also means unfair competitors are shielded. Because of this, owning intellectual property is an asset that is worth more than possessing actual assets. The digital economy and the realm of technology make this the most obvious.<sup>4</sup> The hard work of someone may have been stolen and circulated throughout the world without incurring any costs for the creator's time spent on the innovation if there were no intellectual property rules and statutes guiding the operation of IP laws.

With the basic understanding of the two concepts, we now proceed to attempt and understand the role of IP in e-commerce and its significance, specific IP issues arising in e-commerce activities and how they can be countered.

## **Research methodology**

The methodology adopted in this work is the doctrinal mode of research. This paper is an attempt to understand the role of IP in e-commerce, specific IP issues arising in e-commerce activities and how they can be countered via the existing regulatory regime.

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<sup>3</sup> E-Commerce and Intellectual Property, exy intellectual property, <https://www.exyip.com/2021/02/23/e-commerce-and-intellectual-property-rights/> (last visited Nov.14, 2022).

<sup>4</sup> Ajeet Khurana, Intellectual Property in Ecommerce: Your Greatest Asset, THE BALANCE (28.02.2017), [www.balance.com/intellectual-property-in-ecommerce-your-greatest-asset-1141708](http://www.balance.com/intellectual-property-in-ecommerce-your-greatest-asset-1141708) ." (last visited on Nov. 14, 2022)

## Need for Protection of IP in e-commerce

IPR in E-commerce is quite an important aspect. IPR stands for intellectual property rights, which are the privileges that allow a company to use its invention to outperform rivals in the market and reap financial rewards. Due to the fact that most people are unable to comprehend it and because its linkages to e-commerce are not readily apparent, despite its great worth and significance, it is frequently disregarded or overlooked. IP and E-commerce are, nevertheless, completely intertwined. E-commerce often entails the sale of goods or services based on licensed intellectual property. Music, photos, graphics, software, content, and so many other sorts of intellectual property can all be transferred through an e-commerce platform in the realm of digital goods. IPR is extremely critical in each of these situations since it's important to safeguard the items' worth. Tools like intellectual property laws and technology security measures are used to provide the protection. IPR in e-commerce is particularly important since IP theft can potentially kill an online firm if it is prevalent.<sup>5</sup>

The two fundamental areas related to intellectual property that need to be addressed are—

### 1. Protection of one's own intellectual property

One of the most common mistakes made by intellectual property owners is disclosing their assets before seeking legal protection for them. Similar to this, in many jurisdictions, disclosing trade secrets nullifies any protection.<sup>6</sup>

### 2. Infringing on another person's intellectual property

E-commerce websites that deal in the purchasing and selling of goods frequently violate intellectual property rules by displaying product descriptions and photographs. The following are some requirements that must be met in order to avoid violating intellectual property laws—

- It needs to be one's own original work.
- The author has given his or her consent for use.
- It must fall under the public domain's purview.
- It is protected by fair usage.<sup>7</sup>

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<sup>5</sup> IPTSE, Exploring the role of IPR in E-Commerce, <https://iptse.com/exploring-the-role-of-ipr-in-e-commerce/#:~:text=IPR%20in%20e%2Dcommerce%20is,market%20leadership%2C%20over%20its%20competitors> ." (last visited on Nov. 14, 2022)

<sup>6</sup> Ajeet Khurana, Intellectual Property in Ecommerce: Your Greatest Asset, THE BALANCE (28.02.2017), [www.balance.com/intellectual-property-in-ecommerce-your-greatest-asset-1141708](http://www.balance.com/intellectual-property-in-ecommerce-your-greatest-asset-1141708) ." (last visited on Nov. 14, 2022)

<sup>7</sup> *Ibid.*

## Role of IPR in E-Commerce

Understanding the function of intellectual property in e-commerce is more crucial than ever thanks to ongoing advancements in the internet's technological infrastructure. IPR can be used in e-commerce in four different ways<sup>8</sup>:

### 1. Protection of business interests of an entity

In essence, intellectual property laws protect a company's and its entities' business interests from unfair competition. Particularly in this digital economy, the absence of IP practises and rules can lead to a number of IPR infractions. As a result, everything from software to design to music could be stolen, copied, and distributed everywhere, and the creators may not be compensated for their original works. However, businesses can protect their rights by adhering to IPR regulations in e-commerce.

### 2. Protecting important elements

A company's vital digital and technical assets are protected by intellectual property law in e-commerce. These could include networks, routers, plans, programmes, semiconductors, and other things. These elements are all distinct types of intellectual property that need to be protected in order for the internet to work properly. IPR in e-commerce also protects crucial elements with this in mind.

### 3. Safeguarding products and patent licenses

Patent and product licensing is the normal foundation for all online and e-commerce firms. The majority of internet businesses opt to outsource the creation of a few components or share their technologies through license agreements because it requires numerous distinct technologies to generate a single product. The agreement is basically a set of rules and guidelines for IPR protection.

### 4. Protection of trademarks and IP Portfolios

The most important asset for a company operating in the e-commerce industry is intellectual property. A portfolio of patents and trademarks that they normally possess adds to their

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<sup>8</sup> IPTSE, Exploring the role of IPR in E-Commerce, <https://iptse.com/exploring-the-role-of-ipr-in-e-commerce/#:~:text=IPR%20in%20e%2Dcommerce%20is,market%20leadership%2C%20over%20its%20competitors,> ." (last visited on Nov. 14, 2022)

company's worth. Thus, these patents, portfolios, and trademarks are protected by IPR rules in e-commerce.

## **Elements covered by IPR in E-commerce, under various models and laws**

IPR in retail and e-commerce pertains to the purchasing and selling of goods via a physical store and an online store, respectively. Owners of retail and online businesses must thus safeguard a variety of intellectual assets. The following are components of IPR in e-commerce that are protected by various models and regulations<sup>9</sup>—

1. Patents and utility models safeguard key internet technologies like search engines and e-commerce systems.
2. Websites frequently contain a number of hidden components that are protected by various trade secret laws, including secret visuals, object and source codes, algorithms, and programmes, technical descriptions, logic and data flow charts, user manuals, and the contents of their databases.
3. An e-commerce website's entire design is likewise shielded by copyright law.
4. Under the appropriate Industrial Design law in their jurisdiction, businesses are also allowed to protect their computer-generated displays, visual signals, websites, and graphical user interfaces.
5. Depending on the country's IPR rules, specific software, including the text-based HTML code used by websites, is protected under the Patent Law or the Copyrights Act.
6. The Copyright Law protects all of the information on the website, including any written or visual materials, films, images, or other visuals.
7. Companies can use the Trademark Law to protect their brand names, product names, logos, domain names, and other similar identifying indications posted on their websites with reference to both IPR in retail and e-commerce.
8. Companies can use copyright laws or country-specific database legislation to protect their databases under e-commerce under IPR.

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<sup>9</sup> *Ibid.*

# Important Intellectual Property Issues Caused by E-Commerce

## 1. Liability of ISPs (Internet Service Provider) under the Copyright law

The effective transmission of works of intellectual property onto the internet has been made possible by digitization of technology. An E-Commerce business mainly relies on online sales, which leverages a substantial database of book, movie, and music titles and an easy-to-use purchase system to draw customers.<sup>10</sup> These products are all examples of copyright works. The E-Commerce businesses run the danger of violating copyright and associated rights as the internet service providers that offer transit, content access, and hosting services.

## 2. Patents

With a valid patent, the owner has the exclusive right to prevent anybody else from creating, offering for sale, or utilizing the invention within a specific time frame and geographical area. Because e-commerce is closely related to fields that have lately seen active patent activity, such as telecommunications, semiconductors, business techniques and software, etc., patents are particularly significant for e-commerce businesses. The development of patents allows E-Commerce companies to expand their markets and create a platform where licensees can develop and differentiate their products. Additionally, it enables E-Commerce companies to form strategic alliances with other businesses through licensing and thereby enhance their portfolios of patents.

## 3. Trademarks and Domain Names

A trademark, which may be the most valuable asset a company owns, serves as the "front desk" of a company from the standpoint of marketing and is used to promote its products. Since the domain name is a common tool for contact with clients and aids in identifying the source of goods and services, in the context of ECommerce, it can be the most distinguishing trademark of a business. However, the growth of online commerce has also given rise to a new type of trademark infringement known as "cybersquatting"—the unauthorized use of a domain name.

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<sup>10</sup> KE-XIN YANG AND JING-JING ZHENG, "Intellectual Property Management of E-commerce Enterprises—From a Policy Driven Perspective", *Advances in Economics, Business and Management Research (AEBMR)*, Vol. 54, file:///C:/Users/LENOVO/Downloads/25897859.pdf (last visited on Nov. 14, 2022)

<sup>11</sup> The Interpretation of the PRC Supreme People's Court Concerning the Application of Laws in the Trial of Trademark Disputes (2002), Article 1: registering a domain name which is identical or similar to the registered

According to the World Intellectual Property Organization ("WIPO") report, 109 nations submitted 3036 complaints about cybersquatting to its arbitration center in 2016. In domain name disputes, trademark owners have filed more than 36,000 lawsuits with WIPO between 1999 and 2016.<sup>12</sup>

Francis Gurry, the Director General of the WIPO, has advised trademark owners to maintain their vigilance due to the rapid rise of e-commerce and the rising number of cybersquatting cases around the world.<sup>13</sup>

## Methods of Countering IP Rights Infringements<sup>14</sup>

Owners of e-commerce businesses can enforce their intellectual property rights through a variety of techniques. For instance, they might decide to deploy artificial intelligence and other techniques to find such infringement. Many of the top e-commerce corporations in the world are currently engaging in this practice; when such violations are discovered, the offending products will be removed right once, and punitive action will be taken.

### 1. Intellectual Property Audits

An IP audit is an audit of all the intellectual property owned by a business. It covers everything that an owner owns, including trademarks, copyrights, designs, and any other kind of intangible asset. Trade secrets with commercial significance, such as plans for development or technical advancement, must be included. All agreements that can affect currently owned intellectual property should be in writing. Such contracts include non-disclosure agreements, contracts with design firms, and agreements with employees.<sup>15</sup>

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trademark of another person and engaging in E-Commerce via this domain name, if possible to cause the confusion of consumers, it constitutes trademark infringement.

<sup>12</sup> Annexes to WIPO Press Release PR/2017/805, available at: [http://www.wipo.int/export/sites/www/pressroom/en/documents/pr\\_2017\\_805\\_annexes.pdf](http://www.wipo.int/export/sites/www/pressroom/en/documents/pr_2017_805_annexes.pdf) (last visited Nov. 14, 2022).

<sup>13</sup> WIPO Cybersquatting Cases Hit Record in 2016, Driven by New Top-Level Domain Names, Geneva, March 16, 2017, PR/2017/805, available at: [http://www.wipo.int/pressroom/en/articles/2017/article\\_0003.html](http://www.wipo.int/pressroom/en/articles/2017/article_0003.html) (last visited Nov. 14, 2022).

<sup>14</sup> E-Commerce and Intellectual Property, exy intellectual property, <https://www.exyip.com/2021/02/23/e-commerce-and-intellectual-property-rights/> (last visited Nov. 14, 2022).

<sup>15</sup> E-Commerce and Intellectual Property, exy intellectual property, <https://www.exyip.com/2021/02/23/e-commerce-and-intellectual-property-rights/> (last visited Nov. 14, 2022).

## 2. Intellectual Property Rights and E-Commerce Business Sale/ Investment<sup>16</sup>

Anybody who intends to sell their online store must make sure their IP rights are completely safeguarded. Due to the importance of IP rights in the world of e-commerce, a company that has all of its rights in order will draw in more customers. Similarly, having one's IP rights protected will help in attracting investors for e-commerce businesses. Investors will be slightly demotivated if a company's intellectual property rights are not sufficiently protected. A company with protected intellectual property rights will, nevertheless, attract investors who will provide it with a new source of income.

### Conclusion

Therefore, there is an undisputed interface between E-Commerce and Intellectual Property Rights. Protecting IP rights in today's fast-moving world that is highly dependent on E-commerce entities on a day-to-day basis becomes extremely significant in order to avoid infringement issues failing which, a massive loss one of the most valuable assets of any business entity, their Intellectual Property Protection would occur. With business entities making their ways into the internet world by way of digitalization and advancement of technology, it becomes even more critical to safeguard an e-commerce entity's IP—ranging all the way from website protection to brands, designs and inventions.

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<sup>16</sup> *Ibid.*