

IP Flavors

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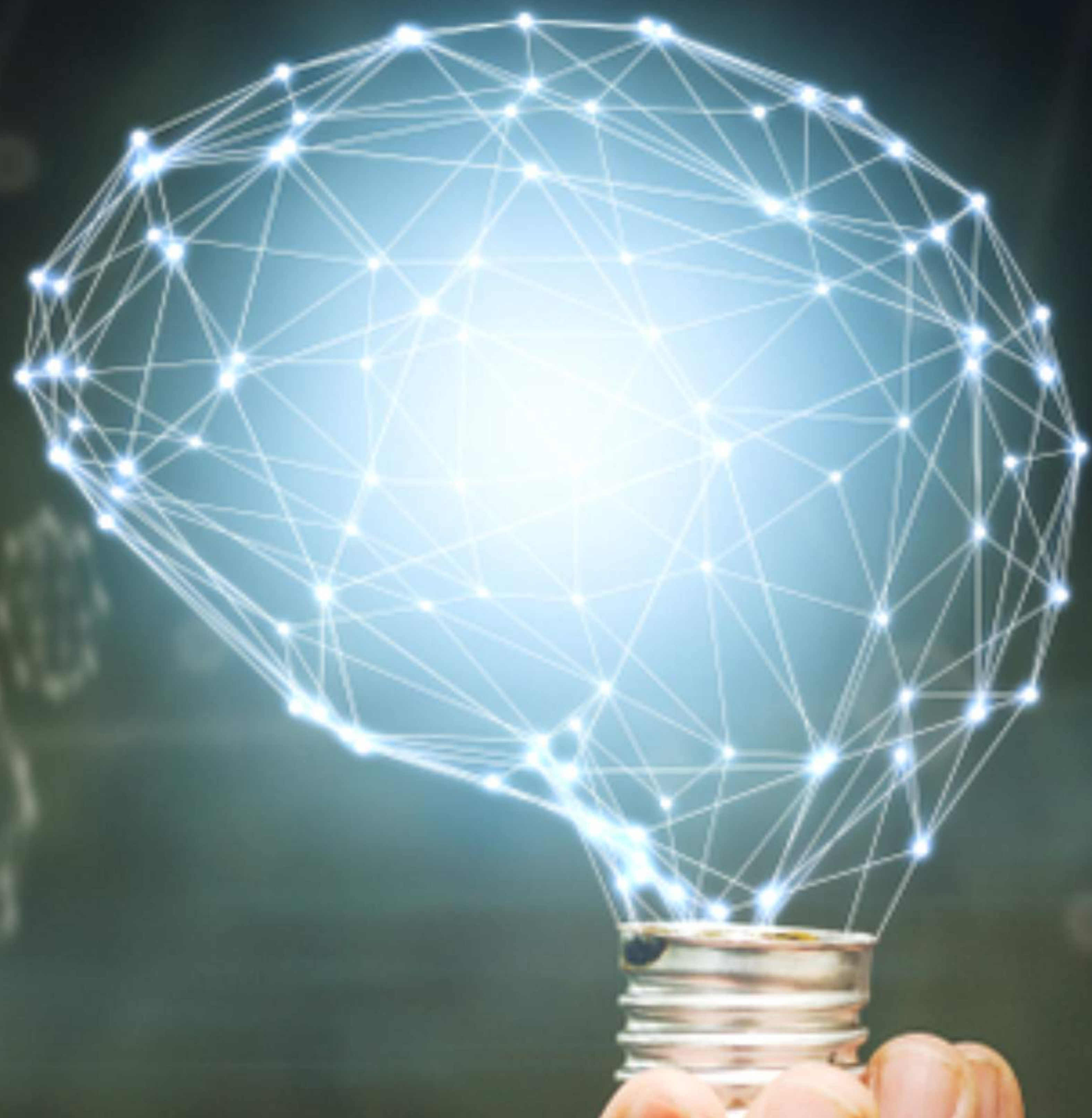


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CAN TRADEMARK PROTECTION BE EXTENDED TO CRYPTOCURRENCY?



Trademark

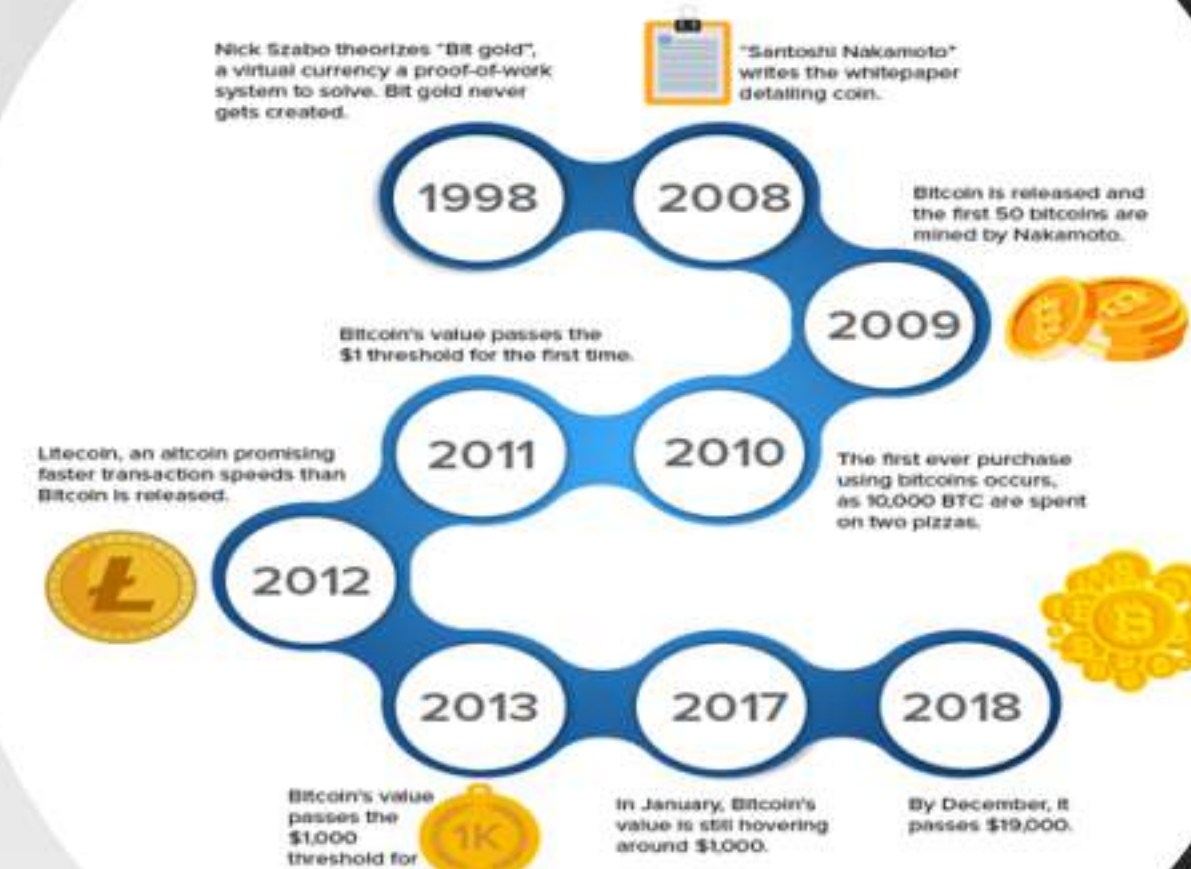
Cryptocurrency has been subjected to constant attention in the past few years for its revolutionary nature. The presence of cryptocurrency is constantly growing, and therefore, it needs the law to transform along with it to address its administration and execution. Several courts have had trouble in applying substantive Trademark Law to this field of technology. It may also be a proactive threat to trademark owners; thus, this article delves into the question of whether or not a name or logo of a cryptocurrency can function as a legitimate trademark.

Understanding Cryptocurrency

Cryptocurrency is a virtual currency that utilizes cryptography for security along with a decentralized ledger to record transactions. Unlike a physical bill or coin issued by the government, it exists only in a digital medium. It is represented in a computer code that can be programmed to embrace a variety of different rights and obligations to perform different functions other than acting primarily as a mode of payment or exchange only. It can be used to provide digital access to a good, an application, or a service, while it also represents interests in real-world assets.

Also, unlike the conventional currency, cryptocurrency is not centrally created and

The History of Cryptocurrency



distributed. Instead, it is a network of computers, which maintains a digital record of transactions while performing the computational work. This, in turn, is rewarded with the newly created cryptocurrency.

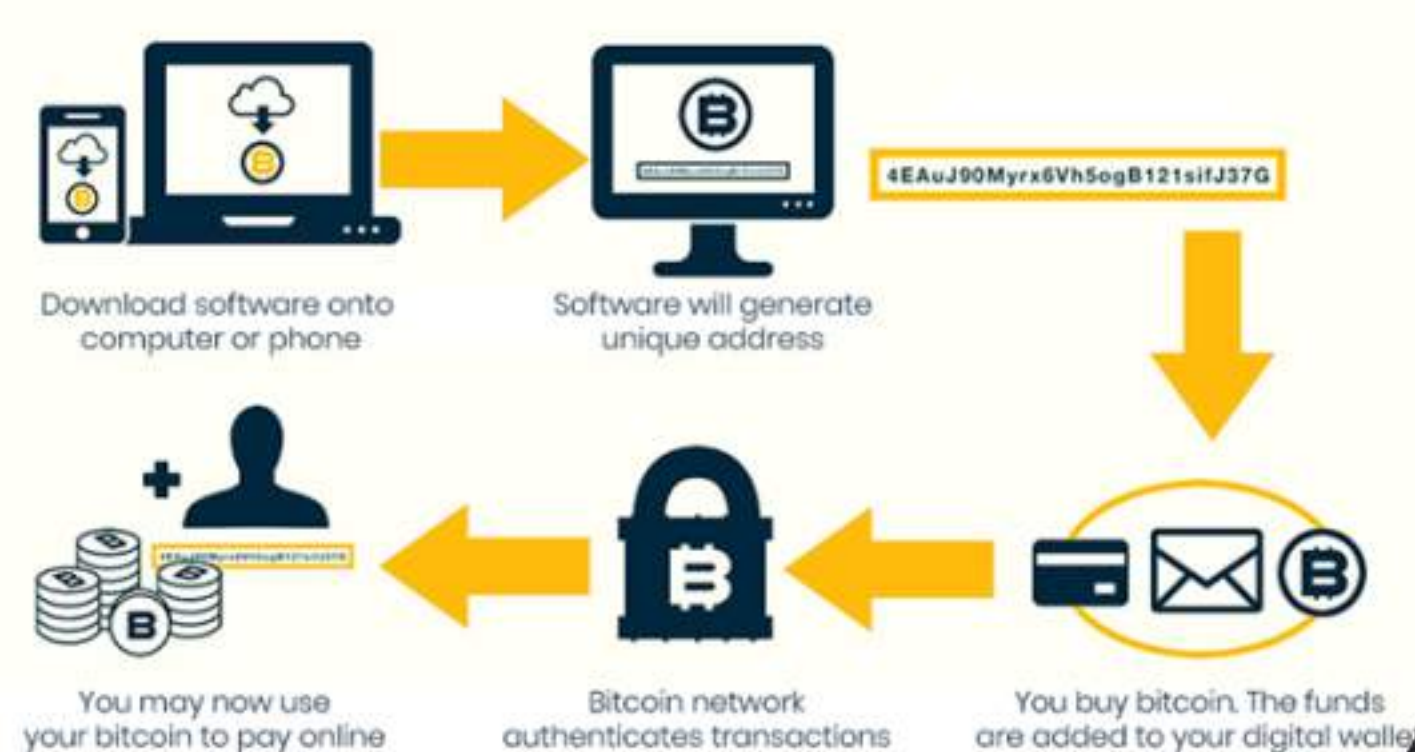
In the age of cryptocurrency, the first move was advanced by the introduction of Bitcoin, which was introduced in a white paper in 2008, and then it came to be launched in 2009. Since then, there have been more than 2500 cryptocurrencies. A few commonly known cryptocurrencies are Ethereum, Litecoin, Ripple, Zcash, Dash, and Monero - all of which have distinct trademarks.

Can Cryptocurrencies be Protected under the Trademark Law?

A trademark is a word, label, symbol, etc., which is capable of being represented graphically to distinguish the goods and services of one from that of another. While the law in the United States with

utmost certainty includes 'cryptocurrency' in its Trademark ID Manual for bringing under its purview different classes of goods and service like within Class 9 (cryptocurrency hardware wallets, hardware for cryptocurrency mining, etc.), Class 36 (financial exchange, such as cryptocurrency payment processing, cryptocurrency trading service, etc.), Class 42 (online cryptocurrency wallet, etc.), other jurisdictions suffer from being able to provide a concrete provision for cryptocurrency.

HOW DO "BITCOINS" WORK?



Therefore, for bringing cryptocurrency the ambit of any trademark legislation, a few questions have to be answered in the affirmative:

1. Can cryptocurrency be considered a good or service?
2. Does it utilize logos, words, symbols, or any combination thereof to establish a certain degree of distinctiveness?
3. Does the name of the cryptocurrency act as an identifier of the source of its origin?

The question to the first answer may be subjective. Let us consider the case of Alibaba Grp. Holding Ltd. vs. Alibabacoin Foundation, where the Federal District Court held that a cryptocurrency could be considered as a good capable of bearing its own trademark. However, it is pertinent to note that where cryptocurrency is used for the like purpose of traditional currency, it may not be regarded as a good or service as it will act only as a medium of exchange for the value it holds. If the same is used for a rather specific purpose other than what currency can provide for, it may function as a good or service. Where it is determined that a particular form of cryptocurrency is capable of being accounted as a good or service, the answer to the next two questions

may be considered. Where the cryptocurrency helps identify the single source from which it emanates by associating to a particular symbol, logo, or name, it can function as a trademark. Bitcoin is an example of a decentralized cryptocurrency, which does not emanate from a single source; therefore, it may not qualify as a trademark. However, where a currency is centralized, the chances of it being considered as a trademark may increase since it is originated and distributed by a single known source.

Furthermore, to be able to create a distinct image in the mind of the ordinary consuming public, it should not be generic to the category of goods or services being pursued. It is for this reason that in the case of Telegram Messenger Inc. vs. Lantah LLC, the US District Court restricted the defendants from using the term 'gram' for their cryptocurrency brand since it was similar to the plaintiff's trademark of the 'Gram' wordmark and icon. Consider, for example, if the identity of the cryptocurrency is conceived in the minds of the consuming public in terms of only the type of cryptocurrency that can be used to buy real estate in Australia (a fictional 'AusieCoin'), then in that case, instead of identifying the source of the company distributing the 'AusieCoin,' it may be at risk of being deemed the generic name of that type of digital currency. Therefore, terms like Bitcoin have been identified as a generic mark by the USPTO (US Patent and Trademark Office). However, since this is up for subjective analysis, some countries have registered 'Bitcoin' as a legitimate trademark, like the United Kingdom Patent Office (TM No. UK00003279106) and the Spanish Patent and Trademark Office (Trademark Number: M4046141).

Cryptocurrency has taken diverse forms due to its tendency to evolve. Ever since bitcoins were introduced, newer versions have been witnessed like that in the form of 'alt-coins,' which are alternatives of varying degrees and can take up various other forms. The realm of cryptocurrency gets far more complicated with new generation blockchains like Neo and Ethereum. Since cryptocurrency is diverse and it is difficult to exercise control over it, no individual or entity can claim ownership or responsibility; hence, there appears to be a meager possibility to protect any Intellectual Property Rights (IPRs) in community-based blockchains.

A few Examples of Registered Cryptocurrency

<u>Trademark for Cryptocurrency</u>	<u>Classification</u>	<u>Goods/Services</u>
Omnicoïn	Class 36	Cryptocurrency, namely, providing a virtual currency for use by members of an online community via a global computer network; cryptocurrency, namely, a peer-to-peer digital currency, incorporating cryptographic protocols, operating through the internet, and used as a method of payment for goods and services.
Concoïn	Class 36	Cryptocurrency, namely, a peer-to-peer digital currency, incorporating cryptographic protocols, operating through the internet, and used as a method of payment for goods and services.
Quiq	Class 36	Cryptocurrency, namely, providing a virtual currency for use by members of an online community via a global computer network; cryptocurrency, namely, a peer-to-peer digital currency, incorporating cryptographic protocols, operating through the internet, and used as a method of payment for goods and services.

Disadvantage of not Attributing Trademark Protection to Cryptocurrency

The ramifications of not attributing trademark ownership could lead to multiple issues arising from the unsound use of such technology. Consider an example of an ordinary consumer surfing the internet who is intrigued about cryptocurrency and wishes to buy the same. After considering the option of buying the bitcoins, he finally decides to buy them from a person who is extensively promoting the sale of such currency while acting as a fraudulent investor. Since the said cryptocurrency is not owned and protected under the trademark law, the proprietor cannot withhold anyone acting in such fraudulent capacity to undo the harm to the reputation of the brand of cryptocurrency.

In failing to prevent the said action, the consumer may have to face difficulties that were uncalled for due to a lack of remedies that could have been resorted



to. In addition to the same, terms like 'Bitcoin' and 'Blockchain' have gained much popularity, and it is easy to use such terms for other goods or services without being legally restrained. Therefore, it is imperative to determine the method of granting protection to cryptocurrencies to safeguard users from being deceived by different cryptocurrency providers and withhold the reputation of authorized providers.

Therefore, another alternative to sole proprietorship over such technologies can be found in the attribution of collective authorship to proprietors in the form of 'collective marks.' The same would act as a safety net against consumers being misled and also overcome the paradox of de-centralized control. However, this is also not a problem-free route as determining true ownership may be difficult to trace the origin of the proprietor of trademarks.

Concluding Remarks

Many giants are willing to enter the race for cryptocurrencies like Facebook, Samsung, and Nike to provide for their cryptocurrency avenues. Therefore, as observed, the advancement of technology in the field of cryptocurrency has brought in new challenges and issues, which need to be addressed through the introduction of regulatory and legal changes.



First and foremost, it is imperative to allocate a place within the Nice Classification to cryptocurrencies and the many kinds a cryptocurrency can develop into probably. Therefore, the recognition has to come in the form of legislation to develop a new jurisprudence. Furthermore, cryptocurrencies should seek Trademark Protection in countries that offer such provision to strengthen their claim over the use of a particular mark or work or logo until a proper framework in the desired member state is established. Lastly, seeking reformation of trademark laws may seem ambitious in countries where the cryptocurrency has been banned altogether (for instance, India) due to its adverse effects on morality and in favor of the public policy. Such countries will not afford protection from misrepresentation and deception through the actions of third parties. Therefore, such technology would have to survive the test of time for us to analyze the appropriate route that should be resorted to for addressing the adversaries arising out of the use of cryptocurrency.



NEWS ARTICLE 1

**YOUTUBE COMES UP WITH NEW TOOLS TO
DETECT AND BLOCK COPYRIGHT VIOLATIONS**



YouTube is adding new options on its platform to give the users more capacity for stopping Copyright Violations in uploads and detecting potential Intellectual Property (IP) infringements.

First and foremost, the American online video sharing and social media platform is rolling out a new element in the copyright claim process, using which the content creators shall be able to tick a new box in the event of reporting a copyright violation. This new tick box, which says, "Prevent copies of these videos appearing on YouTube going forward," can be found in the detection/removal options on the platform. Once this box is checked in a successful copyright claim, YouTube shall start working towards stopping other users on its platform from uploading the same video by using its video matching and copyright ID detection technologies. Furthermore, this process shall enable YouTube to alert the content creators when any similar content is uploaded if this box is ticked, along with the additional potential violations then displayed in the 'Copyright Match' tab within YouTube Studio.

YouTube notes that the content creators must ensure owning exclusive worldwide rights to any content claimed in the previously-mentioned process. If a person does own the content and is willing to stop

others from uploading different versions of his or her content or re-using the same, then this new process will offer other ways of preventing the misuse.

For providing insight into how systematically and efficiently the entire process works for the claimed content, YouTube is also adding a new listing, which shall depict the number of videos that were blocked from being uploaded due to the claimed content. It is indeed a brilliant way for the owners to protect their IP as they can stop others from even uploading a copy of their content on the platform in the first place, which, in turn, would help YouTube in reducing the issues and disputes that arise because of the revenue generated from the same.

One can't deny the fact that this new process can also be misused through fraudulent content claims for different purposes. In the scenarios where the tool is used based on a false content claim, YouTube shall remove the option altogether from such channels or may also delete such channels entirely in response.

According to YouTube, the new update has now rolled out; however, it shall be implemented in a staged manner and take some time to be available fully.

YouTube has also stated that its Copyright Match tool, which has so far only been made available to creators in the YouTube Partner Program, shall now be available to any content creator who issues a valid takedown request.

Copyright Protection for the content creators on YouTube. It is a matter of fact that yes - copyright strikes have created problems for the platform in the past; therefore, it is now working towards improving its detection systems and reducing the burden on the content creators for managing the same.

NEWS ARTICLE 2

POPULAR E-COMMERCE SITE SHEIN FACES TRADEMARK INFRINGEMENT COMPLAINTS



Widely known Chinese E-Commerce site Shein, which has propelled to the top of app download charts because of its big data-driven designs, is being hit by apparel brands claiming that it has infringed their Intellectual Property (IP).

Ever since being founded in 2008, Shein, according to its platform, has emerged as a global Gen Z staple, popularly recognized for selling on-trend, cheap clothing online.

As per various reports and data, in May 2021, Shein reached the top of the app download charts in the shopping category on both Google and Apple stores and was even valued at \$15 billion in its most recent known funding round held last year in August. However, several big and small brands believe that Shein's success is driven by calculated and deliberate Trademark Infringement.

AirWair International, a British footwear and clothing brand (makers of the iconic Dr. Martens boot), is suing Shein, pointing to a 'Martin boot' listed on the site by describing it as a clear intent to sell counterfeits. It also stated that there are even more than 20 other styles available on the platform being sold at a fraction of the cost involved in the making of a genuine Dr. Martens shoe. Shein denied these claims in a follow-up filing, and a hearing for the case is scheduled later this year.

Even on the famous social media platforms, many western designers and artists have pointed a pattern of IP theft involving smaller brands by Shein.

Last month, Kikay (an LA-based brand selling affordable earrings and accessories) was alerted by one of its customers corresponding to its designs being sold on Shein. Kikay's Co-founder, Quinn Jones, took to Instagram a post that showed the product on Shein alongside one of its original designs. The post received many comments, some of which were even from small fashion designers and retailers facing similar issues.

The reason behind Shein's popularity lies in its use of data analytics to turn emerging fashion trends into exceptionally cheap and affordable products quickly. The products are manufactured by a huge network of Chinese vendors but sold only to the rest of the world. The site offers shipping to even more than 200 countries.

In a statement delivered, Shein said that it has a deep respect for every designer and artist out there. It further mentioned that it takes every complaint related to IP infringement seriously, carries out in-depth investigations, and takes action against the suppliers who violate its IP policies. However, some industry experts and analysts believe that such disputes have now become synonymous with fast fashion. They feel that as long as Shein has the support of its audience, it would consider worth its time and energy to move products as quickly as possible - even if some of those products violate the IP policies and norms.



1.

DOMAIN NAME DISPUTE SETTLEMENT

In the internet era, domain names are increasingly becoming a crucial conveyance of brand messages and brand image. Domain names are granted on a 'first come, first served' basis, and the registration is inexpensive and convenient. Rampant domain name squatting and website counterfeits have given rise to domain name disputes now and then.

The dispute of domain name is a conflict that arises when more than one individual or group believes that they have the right to register a particular domain name. Most frequently, a domain name dispute would arise when a domain name comparable to a registered trademark is registered by an individual or association who or that is not the trademark holder. All domain name registrars must follow the ICANN's Uniform Domain-Name Dispute-Resolution Policy (UDRP).

Uniform Domain Name Dispute Resolution Mechanism

Uniform domain name dispute resolution mechanism is carried out according to the Uniform Domain Name Dispute Resolution Policy and its supporting implementation rules. Article 4(a) of the policy allows the complainant to demand the transfer or cancellation of the controversial domain name if the complainant can prove that the following three conditions are met:

- The controversial domain name is the same as or misleadingly resembling the trademark or logo first enjoyed by the complainant;

- The respondent does not enjoy the rights and interests related to the controversial domain name; and
- The domain name is registered or used maliciously.

The respondent in the dispute is entitled to a plea. Article 4(c) of the policy lays down some conditions under which the respondent enjoys rights or legitimate interests in the controversial domain name, including, but not limited to:

- The respondent has been using the controversial domain name, or the corresponding name, for honest goods or services;
- Although without trademark or service logo, the respondent is widely known for the controversial domain name; and
- The domain name is being used legally or reasonably, not for profit, and without the intent of misleading.

In practice, the respondent might also be a trademark squatter, countering the complainant on the plea that the trademark is a legitimate right.

Requirements to Initiate Action under UDRP

(1) Identical to or confusingly similar: The domain that is in question must be identical to or confusingly similar to a name, trademark, or service mark in which you have rights. Note that this can cover unregistered trademarks such as names of well-known personalities.

(2) No legitimate rights or interests: The registrant must not have any legitimate right or interest of his own in the questioned domain name. Legitimate use is roughly when the domain name is being used (or planned to be used) in connection with a bona fide offering of goods and services before the registrant of the trademark is aware of such a dispute.

Lawful distributors or licensees have been said to have legitimate rights, with unlawful users or those claiming to be an authorized site not having legitimate interests. Other tricky domains concerning legitimate interests are fan sites for celebs. These are usually considered to be legitimate except the ones that are being used for commercial advantage.

(3) Bad faith: The rival domain must have been registered and used in bad faith. Both these essentials of bad faith must be established. The UDRP has set out a non-exhaustive list of what constitutes bad faith. These consist of redirecting users to other websites by creating an opportunity for confusion; if the registrant has several domains registered (a means of demanding money from the party that would be interested in the domain name and demanding excess money for it); passive holding of a domain was held to establish bad faith if the impression that the domain was being open for sale was given and boards are progressively concluding that the domains are being held for sale; offering to sell the domain on an auction site has been interpreted as being in bad faith. However, occasionally, the fact that a registrant has offered to trade the domain by auction or accepted to negotiate a price when communicated about the dispute does not by itself establish bad faith for UDRP - being difficult to interact with or untraceable has been interpreted as bad faith.

The Process

An appellant in a UDRP proceeding must establish the following three elements to succeed:

- The domain name is indistinguishable or confusingly similar to a trademark or service mark in which the appellant has rights;

- The registrant does not have rights or legitimate interests in the domain name;
- The domain name has been registered and is being used in 'bad faith.'

In a UDRP proceeding, a board will consider numerous non-exclusive aspects to assess bad faith, such as:

- Whether the registrant registered the domain name mainly for selling, leasing, or otherwise handing over the domain name registration to the appellant who is the holder of the trademark or service mark;
- Whether the registrant registered the domain name to avoid the owner of the trademark or service mark from imitating the mark in a corresponding domain name, if the domain name holder has involved in an arrangement of such conduct;
- Whether the registrant registered the domain name chiefly to disturb the business of an opponent;
- Whether by using the domain name, the registrant has deliberately attempted to draw, for commercial improvement, internet operators to the registrant's website by generating a probability of confusion with the plaintiff's mark.

The objective of the UDRP is to create an efficient process for the resolution of such disputes. It was intended that this process should be faster and more economical than a typical lawful challenge. The costs to hire a UDRP supplier to handle a complaint are between US\$1,000 to 2,000.

If a party loses a UDRP proceeding, in many jurisdictions, it may still get a claim against the domain name registrant under local law. If the registrant of a domain name loses a UDRP proceeding, he or she must file a complaint against the trademark owner within ten days to avoid ICANN from transferring the domain name.

Conclusion

Due to the expansion of business over the internet, it has become exceedingly crucial to safeguard the trademark of a business on the internet. Domain name disputes have evolved like internet Trademark Infringement. At the same time, it has become easier to identify trademark infringement over the internet for the proprietors of the trademark rather than identifying physical infringement as the website can be accessed across the globe. UDRP enables the complainant to obtain a favorable decision in a short amount of time. It is not only reinforcement for the confidence of the rights owner but also a practical and effective way to battle the infringers.

COPYRIGHT ISSUES ENCOUNTERED BY DIGITAL LIBRARIES



Digitization of different literary works like books, photographs, paintings, and even letters has come to be preserved through the efforts of museums, archives, and libraries to enable access for every common man. It helps to preserve literature along with cultivating an attitude of making information accessible, ensuring the progression of information as well as entertainment of the masses. The internet itself has become a source of such new forms of authorship. The digital avenue, despite its many positives, suffers from the inhibition of inevitable copying. Some works are copied, some are lost due to removal, replacement, etc., while others remain accessible.

Fundamental Copyright Exceptions

Like all rights, copyright is also not an absolute right. The right comes along with certain limitations and exceptions coupled with a fixed term. The relevant copyright exceptions to digital archives and libraries are usually those dealing with fair dealing/fair use, which may depend on a case-to-case basis. For evaluating fair dealing, the following factors are to be considered:

- **Purpose and Character of Use:** This implies whether a copyright object is made for personal, educational use (non-profit), or economic use (commercial).

- **Nature of Use:** The scope of fair use is broadened when it utilizes fact-based works, while it is narrowed in the case of fanciful works. Similarly, published works entail a broader interpretation of the fair use provision, while unpublished works entail a narrow understanding of fair use.



- **Amount of Use:** When substantial use of the copyrighted work is made, there is a lesser chance of it falling within the ambit of it being fairly used, and conversely, the lesser work is copied, the more are its chances to be fair.

- **Market Potential of the Copyrighted Work:** A use that supplants the market for the original is unlikely to qualify as being fair.

Other than the previously-mentioned criteria to determine fair dealing, the legislation usually incorporates a provision to allow criticism, comments, news reporting, teaching (including the making of multiple copies for classroom use), scholarship, and research, which is also to be considered as fair use. There is a great degree of uncertainty in the legal frameworks that have been adopted by different nations, which affects the predictability of whether a work shall be considered making fair use of another work.

What are the Copyright Issues in Preserving and Facilitating Digital Copyright Content?

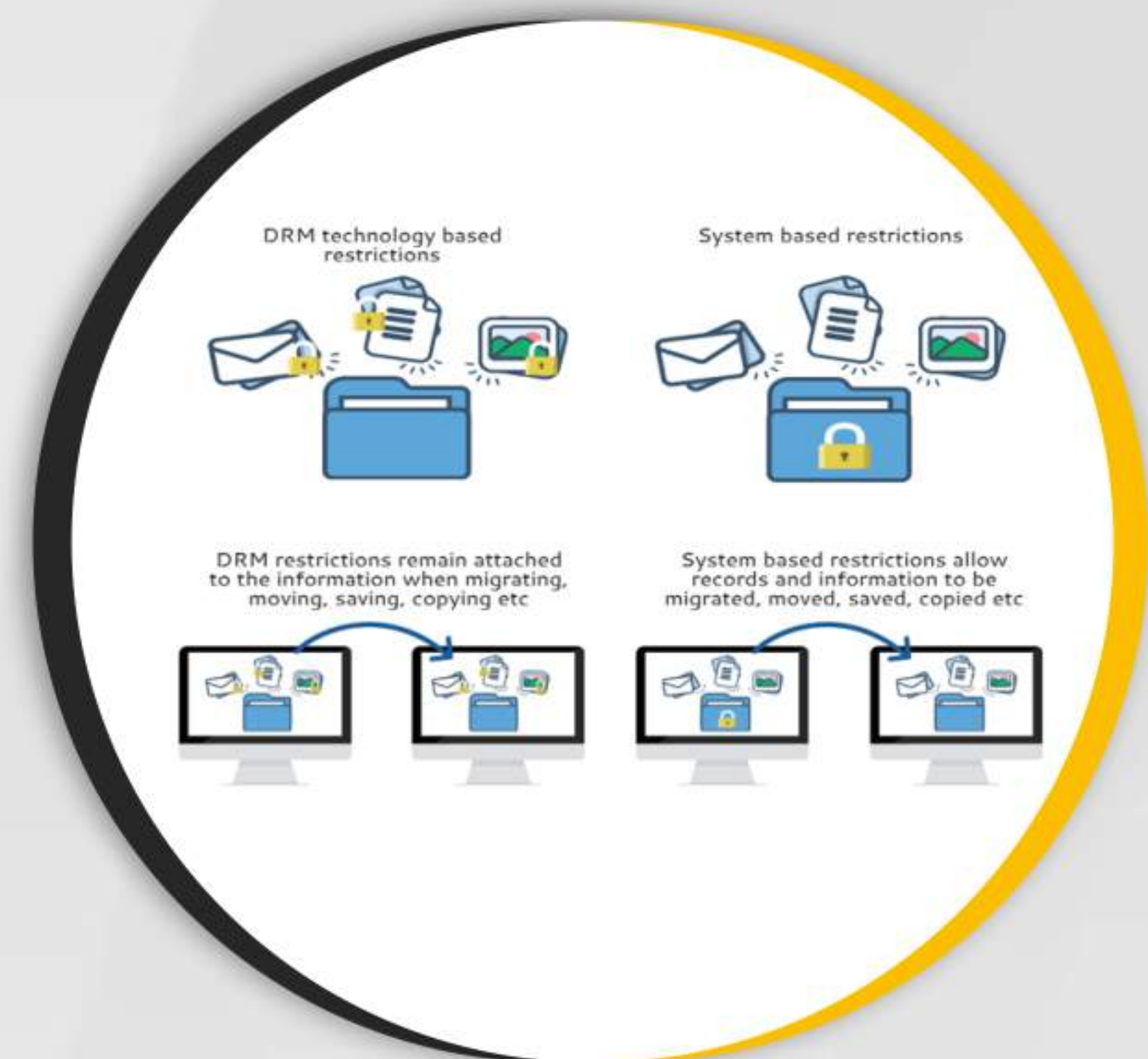
The idea behind the digitalization of copyrighted works was to preserve the content thereof. Therefore, as a passive mode of action, digitization was preferred to recover data where such works were either deteriorated, destroyed, or needed restoration due to any other reason. However, the idea has evolved to facilitate and increase public outreach of such materials.

As most of the domestic pieces of legislation providing exceptions for libraries, archives, and other preservation institutions were created in the earlier times, they often have limitations that are unworkable when applied to digital works. An example of this is that some national laws allow these institutions to make up to three copies of a work for preservation and replacement, but three copies may be insufficient to ensure digital preservations since such laws usually require a library to wait until there is perceptible degradation of the work before making the replacement (for instance, the USA). In the case of digital works, by the time the damage is perceptible, the work may be irretrievably lost as these works may lead to variants and edited works during cataloging, maintenance, etc. The same is especially true when we speak of content that is generally available for online viewing and streaming where the author does not permit retention of copies. It is also observed in the case of user-generated content like blogs. Here, since preservation institutions cannot acquire these materials for preservation, the opportunity to study and learn from them is lost forever.

As has been mentioned above, the key issue lies in the fact that the prevalent legislative does not sufficiently deal with the intricacies of computer-based, networked systems, resulting in many grey areas. Also, since digital content has no territorial boundaries as to who accesses it, it may lead to disputes and infringements abroad for which there is no dispute redressal mechanism. Another issue lies in the fact that while addressing these no-cost copying and infringement issues, a certain balance has to be created. A much stringent and harsh law might result in the elimination of advantages introduced by a particular technology. Furthermore, another issue lies

in seeking and acquiring copyright permissions. It has been observed that a majority of the organizations lack the required Intellectual Property Right (IPR) or the adjacent authorization concerning the literature they hold.

Different Routes to Cater to the Issue of Copyright for Digital Libraries



A) Digital Right Management (DRM): DRM technologies are those access control technologies that are utilized by publishers, copyright holders, and other individuals to limit the use of their digital content and devices beyond the authorized boundaries by utilizing encryptions and restrictive licensing agreements. For example, Adobe, Amazon, and Microsoft have developed DRM measures to prevent the printing and copying of documents. It helps to secure a return on investment without undermining the author's work. While this may be a useful method to capture the benefits accruing to the author and permit an adequate functioning of the libraries, and like the institution, in instances where DRM is strictly applied, it may limit the access to libraries as well. The same would mean that a substantial part of the knowledge held in work may not be preserved for the greater good of mankind. Furthermore, DRM measures require constant updating to adapt to the concurrent needs of the evolving technology. Failure to do so may distort or block access as it may no longer be available if not made compatible with the prevalent digital framework.

B) Open Achieves Initiative (OAI): It enables

easier dissemination of content as it enhances access to e-print archives. This initiative aims to facilitate a broader spectrum of availability of digital materials to promote scholarly communications. This initiative can be realized in one of the many ways, out of which a few are mentioned below:

- **OAI-Protocol for Metadata Harvesting:** It ensures that the data secured by data providers in the form of structured data can be utilized by service providers by requesting to harvest that metadata.
- **OAI-Object Reuse and Exchange:** This initiative provides for standards for the exchange of aggregations of the web resources for mutual benefits of both parties in a transaction. Here, an author can be one party while the library maybe another.
- **Open-Source Initiative:** This is usually used by commercial software companies. It helps in peer production by bartering and collaboration, with the end-product, source material, blueprints, and documentation available at no cost to the public.

These initiatives can also help reform the current scenario by enabling libraries to utilize such initiatives to support preservation as well as the exchange of digital content.

Maintaining the Sanctity of the Digital Content

In the benefit of the public at large and to secure information for further utilization, the following steps may be taken:

- The copyright exceptions should be revised and be extended to information in the electronic medium, likewise as it is protected in print. The first step should be to alter the premise laid under the WIPO treaty and conventions dealing with IPR.
- Those members of a library or digital institutions willing to access digital content should not be charged an additional fee or require special permission to browse publicly available copyright material, to read/view/listen to publicly marketed copyright material for private/limited use, or to copy a reasonable portion of the copyrighted work for personal, educational or research use.

- The lending of published materials in physical-digital formats like CDs, pen drives, etc., should not be prohibited by any legislation.
- Contractual agreements, which may override reasonable lending of electronic or digital content, should be restrained.
- Legislations should give libraries and archives the permission to convert copyright-protected materials into digital formats for their preservation and conservation-related purposes.
- Domestic copyright legislation should aim to strike a balance between the rights of copyright owners to protect their interests through technical means and the rights of users to circumvent such measures for legitimate, non-infringing purposes.

Other than these measures, a few other steps can be personally opted for until a legislative change is introduced concerning the subject matter. Libraries should ensure keeping records or a collective dataset of records to keep track of who utilized, when, and for what purpose a particular piece of information. Using watermarks would also ensure that the digital copy is not utilized in furtherance of unfair objectives. Digital libraries should secure their servers by using Intellectual Property (IP) authentication or generation of user login credentials and passwords. Libraries should not authorize more than a single copy to assure that no unfair use of the 'fair dealing' provision is made.

Conclusion

Copyright issues are multiplying with the transforming nature of technology, and for adapting to the same, either reliance may be paid on legislations or private initiatives. While the digitization of copyrighted material and the digital content may be appropriate for maintaining a balance between public use and private utilization of ancillary rights emanating from copyright, it may lead to hurdles in securing return on investments for rights holders. Therefore, policymakers should consider advancing the right step towards digital preservation programs while addressing copyright issues. Cooperative efforts and arrangements should be promoted to enable harmony between preservation institutions and rights holders. Until then, it would be interesting to observe how different nations undertake different routes to realize the fine balance in the light of the current realizes.

3.

A GUIDE TO PROTECTING YOUR APP WITH INTELLECTUAL PROPERTY

Protecting a unique app idea is required for safeguarding it from the copycats in the marketplace as they might seek a chance to steal it. However, your app idea should be new and exclusive to be subject to protection under Intellectual Property (IP) laws. An app maker's efforts will go in vain if it is a clone of other applications. Fortunately, IP laws - particularly patent, trademark, and copyright laws - provide robust protection for apps and developers who plan well in advance.

Utility Patent Protection

Utility patents protect inventions for a term of twenty years from filing. The good news is that apps are treated no differently than other types of software inventions and can thus be protected by utility patents. The disadvantage sometimes is that apps are treated no differently than other types of software and are therefore subject to the same undefined and poorly understood 'abstract idea' exception to patentability (especially in the United States) created in the case of *Alice Corporation Pty. Ltd. vs. CLS Bank International*. However, not all software inventions are abstract ideas, and applications on software continue to be allowed, and software patents continue to be sustained.

The patentability of apps depends partly on the nature of the invention and partly on the skill of the patent drafter. Apps that implement fundamental economic practices, merely collect and display data, or simply automate well-known processes, are the kind of inventions likely to be found to be unpatentable abstract ideas. However, apps that do something new, that cause a change in the real world, or that improve the operation of computers are the kind of inventions likely to be found to be the patentable subject matter.

Assuming that your app is a patentable subject matter, it must clear two more criteria: the app must be novel (different from what was previously known) and non-obvious (more than an obvious variation of what was previously known). You may be sufficiently familiar with the current state of the art, or you might consider a search to determine how the app differs from what was previously known and assess the chances of obtaining Patent Protection.

It usually takes more than two years to get a patent on an app and costs between \$10,000 and- \$15,000. An app developer must consider whether the commercial prospects for the app justify this cost and whether the anticipated life of the app will outlast the application process. Whatever the decision be, one must file the Patent Application within one year of the first public disclosure or sale of the app, and to avoid any complications, one should file before any public disclosure of the app.

Design Patent Protection

In addition to the protection of the function of an app offered by a utility patent, another type of patent - a design patent - safeguards the appearance of the app's icon and its user interface. A design patent has a term of fifteen years from issuance and allows its owner to stop others from using an icon or interface that is confusingly similar in appearance to the patented design, seeing which a consumer would be confused.

Design patents, comprising mostly drawings of the design, are significantly less expensive than utility patents. It normally takes less than two years to get a design patent, and the total cost is often under \$2,500. While the protection provided by a design patent is narrower than that provided by a utility patent, this scope is perfect for protecting an app's icon as well as various elements of the app's graphical user interface. These can be significant to customers and prospective customers and are often a key reason for the success of the app.

Trademark Protection

Trademark Protection extends to an app's name, the appearance of its icon, and the appearance of its user interface.

Trademark Rights are established through the use of the mark, but an app developer can get the process started early by applying to register its marks based upon the intention to use them. Before adopting a mark, the developer should conduct a trademark clearance search. It not only helps to avoid infringement claims but also saves one from wasting time and resources in building the rights in a mark that will later have to be changed. Searching pending applications and issued registrations is relatively straightforward on most countries' IP databases. The obvious benefits of Trademark Registration are a presumption of ownership of the mark, a presumption of the exclusive right to use the mark, and the right to use the ® symbol. A less obvious but important benefit is the fact that registration makes your mark easy for other developers to find and avoid.

Copyright Protection

Copyright safeguards the app's code, as well as pictorial and graphic works included in the app. Copyright should be a preferred form of protection for an app developer because it is automatic and essentially free. Copyright automatically arises from the moment the app is fixed in tangible form,

for instance, saved to your hard drive. Although Copyright Protection is automatic, two steps will give you the strongest possible copyright: (1) Put a copyright notice on the work, and (2) register the copyright. Copyright notice is the word 'copyright' or the © symbol, the name of the copyright owner, and the year the work was first published. For example, for a work first published in 2021, the notice would read © App Developer 2021. Copyright exists even without registration, but in some countries, such as the United States, registration is a prerequisite for an infringement action.

Final Thoughts

App developers should prepare an IP plan to ensure the protection of their hard work. There should be written agreements in place with parties such as employees, consultants, etc., to protect confidentiality and ownership. Before publishing the app, one should identify any patentable inventions and designs and file utility patent applications on the inventions and design patent applications on the designs. Any protectable trademarks should be identified, including the name of the app, logo, etc. Finally, a copyright notice should be included in the software code. Thus, it is easy to obtain IP Protection for your app with the help of a proper plan.

***KerdaIP** is a robust online portal for Intellectual Property (IP) Management, which enables clients to manage their IP Portfolios efficaciously and safeguard their business interests. As a customized, innovative, and easy-to-use IP platform, KerdaIP assists the clients in maintaining and operating their case files and reports while maintaining confidentiality. Its specifically designed modules and unmatched functionality facilitate better finance management, offer a complete case workflow process, and reduce time. Furthermore, KerdaIP allows the clients to track pending submissions and deadlines.



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IP LEGISLATIVE CHANGES FROM AROUND THE WORLD - FEATURING CHILE



The Chilean Chamber of Deputies has approved the draft Intellectual Property (IP) Law (known as the 'Short Law') after more than two years of being processed in the National Congress. The new law introduces several fundamental changes to the current law No. 19,039 (Industrial Property Law) to improve the ongoing IP system, allow enhanced protection and compliance with the Intellectual Property Rights (IPRs), and establish more systematic and expeditious IP registration procedures to make the process convenient for users. To be specific, the prime objectives of the new IP law, which updates the national IP system, include:

- Facilitating processing;
- Modernizing processes; and
- Contributing to the harmonization of international standards.

The new draft will now be sent to the Executive Branch and become effective once its implementing regulations are published in the Official Gazette, six months after it has been passed.

According to Loreto Bresky, the Director at INAPI (National Institute of Industrial Property in Chile), the new Chilean IP Law constitutes a qualitative leap,

which shall help the country in becoming an increasingly relevant actor in the aspects of innovation and creativity at the international level.

Exploring the Main Changes & Features

The new draft incorporates amendments concerning different categories of IPRs, which are as follows:

1. Non-Conventional Trademarks - The first change or exclusive feature involves the recognition of non-conventional trademarks or non-traditional trademarks, which shall allow the registration of three-dimensional (3D) marks, tactile marks, olfactory marks, moving marks, etc., in Chile.

2. Compulsory Use of Trademarks - Another change brought about by the new law involves around the expiry of trademarks due to the lack of use. The current law doesn't provide for the compulsory use of trademarks, which leads to a situation of saturation of trademarks in the market. The new draft looks forward to solving this issue by incorporating the action for invalidation of a registered trademark on the grounds of non-use (lack of real and effective use) for a period of five years.

3. Introduction of Trademark Counterfeiting -

The crime of 'trademark counterfeiting' is introduced in the new IP legislation, which makes the same punishable by a custodial sentence of up to three years. There is also a new sui generis compensation system that makes it possible to replace the compensation for damages caused by a single 'compensatory' sum determined as per the seriousness of the counterfeiting, which can reach up to 130,000 dollars.

4. No Trademark Registration for Commercial and Industrial Establishments - The new draft removes the possibility of registering trademarks for commercial and industrial establishments in Chile. Therefore, only trademarks for goods and services shall be maintained. The owners of trademarks for establishments seeking renewal must do so as trademarks for goods or services to respect the rights already acquired by their owners.

5. Limitations on Trademark Rights - Once the draft gets approved, the IP law will allow some specific legitimate uses of other people's trademarks. To be specific, the right of a trademark owner may no longer prevent any person from using (in the course of trade) his or her name or pseudonym or the name of his or her predecessor in business, unless that name is likely to create confusion in the minds of people or mislead them. This is more permissive than what has so far been prohibited.

Likewise, if a trademark incorporates geographical, generic, or descriptive concepts, then his or her owner may not prevent such concepts from being used when the sole purpose in such a scenario is to provide information on the geographical origin, genre, or other descriptive characteristics of the product or service in question, unless, the same leads to error or confusion among the common public.

6. Provisional Patents - When it comes to patents, provisional patent applications are incorporated in the new law, which shall allow universities, inventors, companies, and research centers that initiate proceedings to have twelve months for gathering all the required, necessary information. Consequently, during this period, it will be possible to evaluate the viability of an application, along with its scalability and protection, without losing priority.

7. Industrial Designs - The new regulation makes it possible to choose a shortened procedure for registering designs and drawings without the need for substantive examination, which may be conducted at a later stage in the event of a dispute, if any.

*Kindly note that these are only some of the prime amendments which, together with the improvements to the procedure, look forward to enhancing the IP system in Chile.

INDIAN SUB-CONTINENT - TRADEMARK REGISTRATION & PROTECTION

The importance given to Intellectual Property Rights (IPRs) in the Indian Sub-Continent countries has skyrocketed in the past few years, with nations, including Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka, paying due regard to international agreements such as TRIPS, Paris Convention, Madrid Protocol, etc.

The highly experienced trademark attorneys at **Kashishipr** provide value-added trademark services in the Indian Sub-Continent to help clients maximize business value from their trademarks.

TRADEMARK REGISTRATION & PROTECTION IN THE INDIAN SUB-CONTINENT

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DETAILED EXPERT ANALYSIS: DESIGN VS. TRADE DRESS PROTECTION - WHICH ONE SHOULD YOU CHOOSE?



Well-known brands utilize more than just catchy names and visually appealing logos for instant, invaluable customer recognition. They also develop brand recognition through proprietary product designs and trade dress, such as unique color combinations, product shapes, and themes for product lines. When protecting innovative three-dimensional designs, many often consider two distinct options: design and trade dress.

Design and trade dress serve different purposes within Intellectual Property (IP) law. The purpose of Design Protection is to encourage innovation by protecting the ornamental design for a product. Many companies use designs to provide a period of exclusivity when they can recoup their investment in the design. In contrast, trade dress, a subset of Trademark Law, serves two slightly different purposes: to protect property rights in a mark and to prevent consumer confusion. On the one hand, trade dress also protects an owner's investment in the marketing of his or her product to create awareness of the design, and in this regard, it is similar to a design. But, on the other hand, trade dress registration promotes consumer protection by allowing consumers to associate a product with a particular source, and therefore, consumers purchase products

with the confidence that the product desired is the product purchased.

Designs

Designs protect the novel ornamental features of an article of manufacture and not its utilitarian characteristics. They cover the visual, non-functional features in the product, extending to the shape of the product, surface ornamentation, or the combination of both. Design protection extends only to the appearance of the product and not its functionality. If the design is necessary for the product to operate or work, it is considered functional, and therefore ineligible for protection.

Trade Dress

Trade dress is a type of trademark. As with all forms of trademark, a trade dress is used to identify the source of a good and/or service as well as the goodwill associated with that source. Trade dress refers to the overall appearance and image of a product. Trade dress may include the design of a product or its packaging. If a product design is identifiable with a company or source, trade dress rights prevent other products from appearing confusingly similar to a consumer. Examples of trade dress include the look and feel of a restaurant or retail store, the packaging of a product, and the design of a product.

When to Choose Design Protection

For obtaining Design Registration, the design must be an article of manufacture, ornamental, novel, and non-obvious over existing designs. Although the article can provide functionality, the portion of the design to be protected cannot be purely functional. If the design is the only way to maintain the functionality of the article, then the design is not eligible for design protection.

If an article embodying the design has been publicly disclosed before filing the Design Application, it may not be available. Design protection can be sought before even beginning manufacturing. Therefore, ideally, an application should be filed as early as possible, before sales or other disclosure.

When to Choose Trade Dress

For obtaining Trade Dress Rights, the design must be non-functional and must have acquired 'secondary meaning' such that the design is identifiable with the source. If the design involves product packaging, trade dress rights may arise from 'inherent distinctiveness.' Trade Dress Protection can only be obtained for non-functional designs. The shape of a Gibson guitar was deemed too functional because it was advertised to have acoustical advantages.

Key Takeaways

Trade dress rights do not expire as long as the design is used in commerce as a source identifier. Once a design acquires secondary meaning, future products can also benefit if they use the same protected design feature. Furthermore, a competing product infringes when it is deemed close enough to confuse a

consumer regarding its source. In contrast, infringing a design requires an ordinary observer to find the particular design in question substantially similar to the protected design in the context of prior designs in the field - generally a more difficult bar.

If the product has not yet been commercialized, only a design may be possible because trade dress rights arise only for a commercialized product design. Similarly, if the product has been publicly disclosed for longer than an allotted grace period, only trade dress rights may be available. If the product lifecycle tends to be short, the limited term of a design may provide sufficient protection. However, if various products may be launched under your brand, there could be value in pursuing trade dress protection for distinctive design features, which may be employed throughout the product line.

If the market is prone to copycats, it may be optimal to obtain multiple layers of protection. Designs have a limited term of protection; however, trade dress protection can last as long as the design is being used in commerce, which theoretically could be forever. So, you can start with design protection and finish with trade dress protection. Furthermore, the two types of protection can exist simultaneously; so, it can make sense to secure design protection to develop trade dress rights without interference from competitors during the intervening duration before the design expires. To sum it up, design and trade dress rights should be considered when the visual appearance of a product may contribute to commercial success in the marketplace. These can be vital tools for protecting the distinct ornamentation or design of products, which may become associated with a company. Investment in such protection can enhance its economic benefit to the owner of the rights.

A LOOK AT NON-CONVENTIONAL TRADEMARKS

The term 'trademark' generally refers to a conventional set of marks, for instance, letters, numerals, words, logos, pictures, symbols, or combinations of one or more of these elements, capable of distinguishing the goods and/or services of one individual or entity from another. However, some specific types of non-conventional trademarks have become more widely accepted recently because of legislative changes expanding the definition of a trademark.

Non-conventional trademarks, also widely referred to as **non-traditional trademarks**, are a new type of trademarks, which don't fall into the category of pre-existing conventional trademarks, and therefore, consist of marks based on shape, color, appearance, smell, sound, texture, and taste.

Visit the link given below to know about the different types of non-conventional trademarks.

<https://www.kashishworld.com/non-conventional-trademarks>



IP
FUN & GAMES

MOTIVATIONAL QUOTE OF THE MONTH

“Ideas in your mind have no patent value. They must be expressed or reduced to practice before it is too late.”

- Dr. Kalyan C. Kankanala

QUIZ ON INVENTORS & INVENTIONS

Can you guess the inventors of the inventions given below?

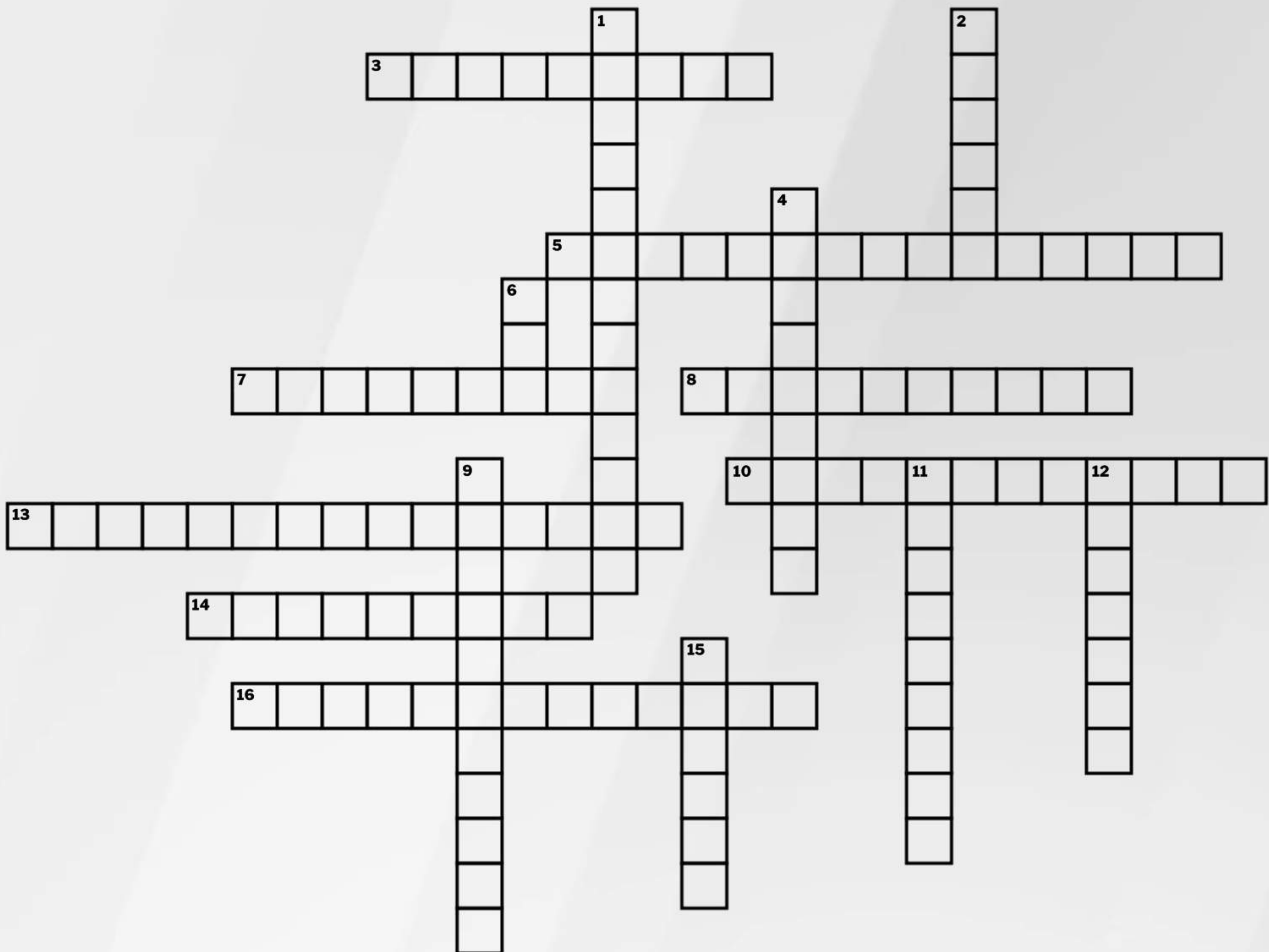
1. Printing Press
2. World's First Vaccine to Cure Smallpox
3. First-Ever Handheld Cellular Phone
4. Bluetooth Technology
5. First Transatlantic Radio Signal
6. World's First Commercially Viable Light Bulb
7. First Working Model of the Airplane
8. Internet
9. Lightning Rod
10. First Home Video Game Console

CLICK TO PLAY

CROSSWORD PUZZLE

Complete the crossword puzzle by filling the geographical location of these Indian Geographical Indications.

GEOGRAPHICAL INDICATIONS



Down:

1. Araku Valley Arabica Coffee
2. Kotpad Handloom Fabric
4. Sangneri Hand Block Print
6. Feni
9. Nashik Valley Wine
11. Nirmal Toys and Crafts
12. Sankheda Furniture
15. Navara Rice

Across:

3. Salem Silk
5. Kani Shawl
7. Khasi Mandarin
8. Darjeeling Tea (word and logo)
10. Bastar Wooden Craft
13. Kangra Tea
14. Mysore Silk
16. Chanderi Sarees

[CLICK TO PLAY](#)



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