

E-COMMERCE & INSURANCE LAW

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ABSTRACT

Property risks are those that affect either personal or real property. For an average individual, property such as their own house involves a lot of investment. The same goes for others who invest large amount of money in commercial property and businesses.

In modern times, because of the increased use of internet, web and computers, there has been a growing significance in the field of e-commerce property risks. Businesses with a web presence offer professional services online and they are open to a lot of security risks in the form of hardware/software thefts, trademark infringements, domain name hijacking, cyber-squatting, web-site hijacking etc. The increased frequency and severity of e-commerce property risks has given rise to specialised fields of insurance coverage to safeguard and protect these property rights such as *Intellectual Property Insurance*.

Intellectual Property coverage protects an individual, company or business (an idea, innovation etc) from losses that may arise from copyright, trademark or patent infringement. It also intends protection from libel, slander, unfair competition and misappropriation of advertising ideas¹.

In current scenario, when the provisions of intellectual property insurance is only in its beginning stage and gaining momentum, it is not shocking to discover that when it comes to providing clear coverage for trademark infringement claims, the insurance industry is doing a poor job. It is an important field which needs more attention and development since internet marketing and branding is on rapid rise and comes with a lot of benefits both to consumers and business owners in today's fast paced world.

¹ Rahul Sinha, 'Patent Insurance, A Road Map', www.manupatra.com/article

Insurance for trademark is generally covered by a company's Commercial General Liability (CGL) insurance policy. Sometimes it falls under 'Advertisement Injury'.

Keywords: Property risks, Intellectual Property insurance, E-commerce property risks, copyright, trademark and patent infringement, Cyber- squatting, Service mark, Commercial General Liability (CGL), Cover cause of loss, Advertisement Injury

INTRODUCTION

Property risks are those that affect either personal or real property. For an average individual, property such as their own house involves a lot of investment. The same goes for others who invest large amount of money in commercial property and businesses.

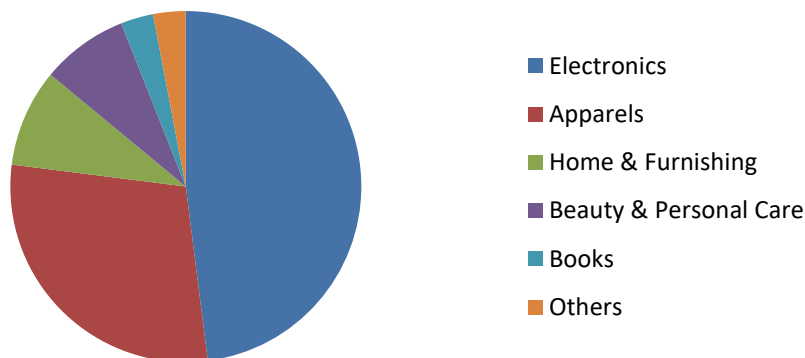
Electronic Commerce (E-commerce) is the process or activity of using internet for selling or buying products through online portals. It relates to the commercial transactions conducted online to derive revenue. Because of growing technology, its significance, advantages and convenience, e-commerce has grown by leaps and bounds in the last few years. India has a huge internet user base amounting to 40% of the population (470 million as of July 2017).² According to a study by Internet & Mobile Association of India (IMAI), India's e-commerce sector was estimated to cross Rs. 211005 cr. during December 2016.³ On 4th July 2018, India agreed to sign the WIPO Copyright Treaty, 1996 (WCT) & WIPO Performers and Phonograms Treaty, 1996 (WPPT). The main objective behind these treaties was to provide copyright owners an additional protection in the highly sensitive digital and internet environment. It has enabled India to take forward the objectives laid down by the National Intellectual Property Rights (IPR) Policy adopted by the Government of India in 2016 to guide and support IP users in India regarding the commercial opportunities through Internet⁴.

² Et Bureau, 'India's Internet User Base to cross 450 million: IMAI', TOI, March 01,2017

³ IMAI Annual Reports, 2015-16, Oct 20, 2017 pp.12.

⁴ Sumati Chandrashekar, 'Towards stronger Copyright in Digital Environment', Lexology, paragraph 1.

E-commerce Sector Composition



* IBEF

India Brand Equity Foundation December 2017. www.ibef.org

In modern times, because of the increased use of internet, web and computers, there has been a growing significance in the field of e-commerce property risks. Businesses with a web presence offer professional services online and they are open to a lot of security risks in the form of hardware/software thefts, trademark infringements, domain name hijacking, cyber-squatting, web-site hijacking etc. The increased frequency and severity of e-commerce property risks has given rise to specialised fields of insurance coverage to safeguard and protect these property rights such as *Intellectual Property Insurance*.

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Transit Insurance is an important aspect of e-commerce where online businesses rely heavily upon third parties to assist with shipping and delivery. (Food delivery applications like Swiggy and Zomato rely upon individual delivery agents on commission). International products which offer shipping in foreign countries also depend upon domestic delivery agents of that specific country (example: for cosmetic products like JOLEN or ST.IVES which are US based cosmetic companies; electronic goods like Harry Josh electronics etc).

⁵ Rahul Sinha, 'Patent Insurance, A Road Map', www.manupatra.com/article

A *Commercial Property Policy* is an insurance policy offered by insurance companies for businesses and other organisations to protect their physical assets like building from the forces of nature (natural calamities, perils etc.) and human factors like theft. When a company conducts its business predominantly through online portals and internet their online web presence (website, internet domain, online portals) forms an invaluable asset of the company which needs protection from theft, hijacking, cyber-squatting and other online dangers. That is when a specialised insurance such as 'Intellectual Property Insurance' gains its importance.

While a standard 'Business Owner's Policy' might cover most risks for small business owners, it might do little for business which conducts themselves predominantly online (Amazon, Flipkart, Snap deal, e-Bay etc). Businesses that work with intangible property like software, data and encryptions must rely on Intellectual Property insurances (I P Insurances) to protect their assets from harm and to secure data protection. Online business store sensitive customer data and important business information on secure databases and because of their important nature itself it is prone to breaches. When this highly sensitive information of personal details of the customers and their financial information are viewed, copied, stolen or transmitted to third parties (hackers) or even competitors and rival of the company, it would amount to data breach. The Equifax Breach in America in 2017 that leaked 145.5 million customer accounts including social security numbers was because of not implementing a server security patch⁶. Therefore these businesses must look for provisions to prevent their information from being exposed and insurance schemes to cover the losses.

These online portals are also subject to DDOA (Distributed Denial of Service) attacks, meaning websites becoming inaccessible due to overload or crashing when hackers use 'botnets' to flood a targeted website with a number of requests. These attacks will have a direct impact upon the revenues and also customer trust that the company has built over the years. This will even shut down the website itself. On October 2016, the DDOA attack against Twitter, Netflix, Spotify, New York Times and many other caused an estimated loss of US \$110,000,000 in Interrupted Business (IB) and most of it was borne by insured policyholders with the coverage deductible.⁷

⁶ Wrary, Darren, 'What can re-insurers learn from the Equifax Breach', 14 Dec 2017, <http://www.globalreinsurance.com>

⁷ Mindy Pollack, 'Cyber Insurance Products- What does your policy say', Jan 5,2017, <https://www.genere.com>

Thereby, e-commerce businesses have a good insurable interest to protect their web portals to safeguard their business interests and profits.

Cyber Insurance is another concept that evolved with the changing world of digitalisation. The recent ransomware attacks (WannaCry ransomware attacks-May 2017) that surfaced have inclined more Indian companies to take the protection of cyber insurance. Insurance companies such as ICICI Lombard and Bajaj Allianz have scaled up their cyber insurance policies including new solutions with the latter introducing insurance covers for individuals between Rs 1 Lakh and 1 Cr.⁸ Although cyber liability insurance is well familiar in the International markets, Indian markets have only just broken into the area. The current size of cyber insurance premium is expected to grow to 400cr from 200 cr in the coming years. The telecom revolution backed by the huge demand for cyber insurance and other initiatives from the government has pushed digitisation in the county⁹. Risk management in this area is by ensuring that an organisation has assessed its vulnerability to cyber attacks by creating cyber risk profiles and practice the best steps possible (threat intelligence, ethical hacking services, encryptions, firewalls, digital signatures, system audits etc) to enable defences and controls to protect against risks.

Some insurance companies have started to offer customised e-commerce insurance policies that expand the area of coverage. Some of them even have an e-commerce endorsement where the insurer accepts to pay for the cost to replace or restore electronic data including the cost of data re-entry, re-programming and computer consulting services¹⁰.

In current scenario, when the provisions of intellectual property insurance is only in its beginning stage and gaining momentum, it is not especially shocking to discover that when it comes to providing clear coverage for trademark infringement claims, the insurance industry is doing a poor job. It is an important field which needs more attention and development since internet marketing and branding is on rapid rise and comes with a lot of benefits both to consumers and business owners in today's fast paced world.

⁸ Shilpa Sinha, 'Demand for Cyber insurance covers jumps 50%', The Economic Times, <https://economictimes.com>

⁹ Shailna Pillai, 'Indians company on Cyber-insurance', Times of India, <https://timesofindia.com>

¹⁰ Gauntlett, David A 'RECENT DEVELOPMENTS IN INTELLECTUAL PROPERTY INSURANCE'. Tort & Insurance Law Journal, JSTOR pp 220- 223.

Insurance for trademark is generally covered by a company's Commercial General Liability (CGL) insurance policy. Sometimes it falls under 'Advertisement Injury'. Companies usually purchase CGL policies to insure themselves against legal actions including an infringement of another's right through advertising (infringement upon another person's intellectual property).

In India, no company offers patent infringement insurance policies despite the growth in the number of patents registered and applied in India after the TRIPS agreement. A patent insurance has huge risk involved and because it is not mandatory for a patent holder to get an insurance policy for it, an insurance policy is only considered by those who hold a patent which is in a highly competitive market or by those who possess an intellectual property which is infringed regularly¹¹.

CONCLUSION

Does India require a national e-commerce insurance policy?

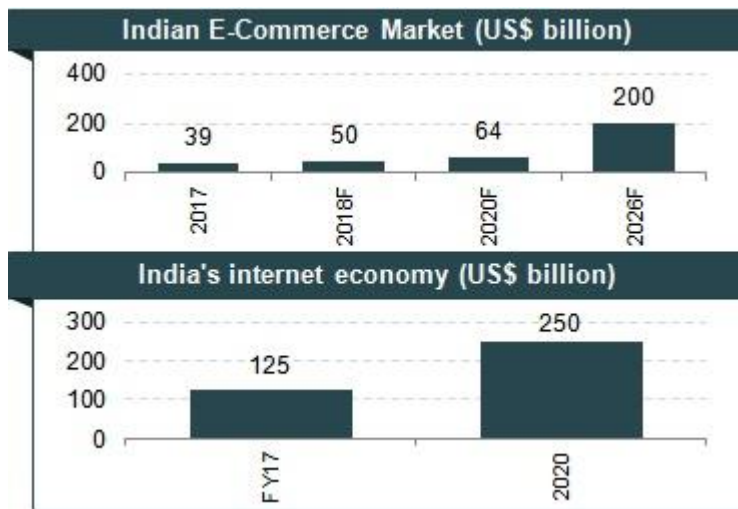
With respect to considerable shift in Indian consumer behaviour, improved digital literacy and pro-digital approach owing to various national policies with demonetisation (especially with regard to online transfer of money and digital payment portals such as Paytm and other e-wallet portals) online B2C (Business to Consumer) transactions are gaining momentum. The digital space of India has crossed a huge threshold of \$1.9 trillion accounting 8.27% of the gross retail spending.¹²

With increased usage of smart phone and other digital equipments, growth of consumer wealth and introduction of 4G networks, India's e-commerce market is expected to grow to US \$200 billion by 2016. The Indian commerce industry has rose 40% fuels by huge deals and good price offered by huge e-commerce companies¹³.

¹¹ Rahul Sinha, 'Patent Insurance, A Road Map', www.manupatra.com/article

¹² Ranabir Bhattachariya, 'Does India need a National e-commerce policy?', May 3, 2018, Policy Bazaar, <https://policybazaar.com>.

¹³ India Brand Equity Foundation (IBEF), June 2018.



*IBEF, June 2018

In July 2017, the IRDAI proposed methods and norms in selling e-commerce policies and recommended an introduction of an 'Insurance Self- Network Platform' to undertake e-commerce insurance activities in India including selling and servicing of insurance products.¹⁴

Indian Insurance sector should also move with the fast-paced digital world. It should also develop and strengthen its Intellectual Property Insurance sector especially because of the fact that owing to post-TRIPS agreement, patent registration in India has risen and most of it is granted to pharmaceutical and information technology (IT) sector¹⁵.

¹⁴ Rohan Mathur, 'IRDAI'S E-commerce proposal to boost online insurance sales', Business Standard, June 11, 2016, <https://business-standards.com>.

¹⁵ Ashish Patel, 'Insurance vis-a-vis Patent Infringement Litigation', MANUPATRA, www.manupatra.com

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