

CYBER CRIME AND SOCIAL MEDIA MARKETING

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Abstract

This research paper attempts to describe the evolution of internet and its ubiquitous presence. This cyber space has grown its feet around each corner of the world like moulds. Each and every Homo sapiens is willingly or unwillingly, undeviatingly or indirectly connected to this super highway. But sin & virtue are two sides of same coin internet too, has its positive as well as negative effect on the civilization. In this research paper we will focus on the antagonistic effect that this online network has on the civilization which has emerged and developed by the name of cyber crime.

Here, in this research paper will discuss about the adverse effect of cyber crime on social media marketing and intellectual property right. Social media marketing can play the dual being either the victim or the gizmo. In both cases the intellectual property rights of either a person or a business are being infringed. It will also discuss, the havoc created by cyber crimes in India, it is positioning regarding the protection against cyber crime in comparison to other nations. This research paper also put up a light on the currently enacting cyber law through the information technology act, 2000 and its progressive amendment in the field.

Introduction

The internet or the superhighway has stretched its foot from one pole to another and touching lives of every human being. In this article we discuss about the contradictory effect of the internet also keeping in mind, its benefits and power.

Internet is nowadays synonymous to World Wide Web (abbreviated as WWW), which is the functional unit of internet. World Wide Web is a complex network which involves communication amongst various people, software & services. It relies on the various communication devices and networks and data distribution for its effective functioning.

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Due to its ease because of superfast progress in the technology, the information superhighway has become a necessity for every person. Its services are utilized in every section like business, military, common citizen and government. Like The transparency that ARPANET (The Advanced Research Projects Agency Network) provides has made it difficult for organizations and individuals to maintain privacy and security and as this transparency and accessibility grows it will lead to increase in cyber crime case.

Cyber Crime

Cyber crime has become one of the most complex issues global in the legal framework, which can be committed without the need of being physically involved. It can be committed from any software device like a computer or a small bar phone. This has given immunity for cyber criminals and made it easy for them to hide their identity. Technology serves as both the means, to assist cyber crime and to prevent it. It provides opportunities for both offenders as well as crime preventers.

Cyber crime also includes all negative activities, misuse or corruptions that are conducted in the cyber world either with the help of computer or against it. Cyber crimes are unlawful act where the computer serves as an appliance and this indulges a change in the usual way of crime by using computer.

“Any illegal behavior directed by means of electronic operations that targets the security of computer systems and the data processed by them is termed cyber crime.”¹

Cyber crimes are right now the latest and the highly functional amiss having the same equipment as tool and its victim. Some examples are Computer hacking, spoofing, e-mail bombing, internet time theft, web hacking, cyber stalking, pornography, software piracy and cyber terrorism etc.

Rise in Cyber Crime

According to a recent rough count the rate, at which incident of cyber crimes are increasing, is about 107% per year.² This rate of increase in cyber crime in India is fearsome. Even though the rate of growth of cybercrime and user base of web is not same but the data tell that they seem to follow a definite, similar pattern while the increase in cyber crime in both the year 2013 & 2014 is

¹ R.P. Kataria & S.K.P. Srinivasan, *Cyber Crimes Law, Practice & Procedure along with Cyber Evidence and Information Technology Act, 2000 with Allied Rules* (New ed. 2014).

greater than 65%;² the internet benefactor base has rose to about 18% & 27% in 2013 & 2014 respectively.² In India, there were 7210 case registered under Information Technology Act and out of which only 4246 were taken under custody in the year from 2013 – 2014.² A rapid and constant increase has been observed in the number of cases registered under Information Technology Act. The union has also accepted that with the new technologies coming up every day and advancement in devices, cyber crimes are on hike in the country.

Social Media

Social Media can be called as the third party tool that provides platform for public and business organizations to create exchange and communicate various forms of information and ideas in virtual group and networks. to define social media is a challenging task because of its unsteadiness since its emergence, but it has been a boon to mankind because of the way it includes internet based application which allow the user to connect to the rest of the world, create and share information.

To define “social media” for our current purposes, we synthesize definitions present in literature and identify the following commonalities among current social media services:

- 1) Social media services are (currently) Web 2.0 Internet-based applications,
- 2) User-generated content is the lifeblood of social media,
- 3) Individuals and groups create user-specific profiles for a site or app designed and maintained by a social media service,
- 4) Social media services facilitate the development of social networks online by connecting a profile with those of other individuals and/or groups.³

The development of social media was done actually to serve as a base for storing memory, learning and exploring new information, advertising and promoting oneself and connecting to the world. This has helped many people emerge in their businesses, getting connected with their family and friends, getting acquainted to new idea across the globe and many other such.

² <https://data.gov.in> (Government of India initiative under digital India movement).

³ Obar, J.A. and Wildman, S. (2015). *Social media definition and the governance challenge: An introduction to the special issue*. TELECOMMUNICATIONS POLICY, 39(9), 745-750.

According to a survey in America, all of the superhighway users make use of at least one social networking site. The rate has increased from 7% to 65% without any gender discrimination. As the women have been observed to be more active on social media than men the difference ranging from 68% to 62% for women and men respectively⁴ but as a well known fact, negative and positive are two sides of the same coin. So even though, it was developed for positive usage. Social media too has its negative aspect which is highly criticized, example of which can be stated as privacy issues, cyber crime, internet fraud, data overload, etc. This can lead to miscommunication and leakage of private information.

Social Media Marketing

Social media marketing (SMM) is a form of internet marketing that utilizes social networking websites as a marketing tool. The goal of SMM is to produce content that users will share with their social network to help a company increase brand exposure and broaden customer reach.⁵

Modern day businesses are benefitting from social media as it gives a great platform to advertise, it also allows connecting with the customers helping business to analyze customer review about a product or their services.

Social Media Marketing provides a lots of useful market information. It also benefits the user as it helps them to be updated about new product, new services, new technologies and thus giving them freedom to make better choices users also share their individual reviews on the superhighway about a brand, company or product by means of blog, forums and various social networking sites. The all kind businesses weather small or large also use social network as communication channel. The companies use Facebook, Twitter, and LinkedIn as the major platform for interacting directly with their customers. Entrepreneurs like-Justin Wise of Think Digital and Dr. Oh-Hyun Kwon of Samsung are very active on social media and post regularly. These boost their customers to interact and give more suggestions and reviews about the product.

Like, Domino's #EasyOrder Domino's *really* wants to make it easy to order pizza. Beginning in May 2015, the company let customers request delivery of their favorite pizza by tweeting a pizza emoji to the @Dominos Twitter account, or by using the hashtag

⁴ Pew Research Center Surveys, 2005-2006, 2008-2015.

⁵ www.whatis.techtarget.com.

#EasyOrder. Today more than 50 percent of Domino's orders come from digital channels⁶.

The Effect of Cyber Crime on Social Media Marketing

150 of the top senior marketing executives in the UK met at the IDM (The Institute of Direct Marketing is Europe's leading body for the professional development of direct, data and digital marketing) perceive social media as a risk rather than an opportunity.⁷

A SWOT analysis done on social media by a website records its threats as:

- Reveal your location
- Having Your Identity Stolen
- Online marketing's slow growth rate
- Weak business model
- Getting negative comments⁸

Social media does appear amusing and captivating as everyone desires popularity. It's very easy to achieve fame nowadays just by a click, but all that glitters is not gold. Advertising and profit gaining is easy through social media marketing but it has its own risks.

Social media provides obscurity which has attracted a large crowd and thus large amount of people around the world are using it due to which advertisements which are fake and make deceptive, promises for soliciting investment and loans or trade of forged or counterfeit securities. Investors are fooled to put their money in such fake and fraudulent schemes by being promised of unbelievably high profit.

The Information Technology Act, 2000: Emergence and Its Need

The way people carry out business has changed remarkably through new networking protocol and digital technology creation, transmittance and storage of data in the electric, portable data format, keeping the traditional way paper documentation of data aside. But information in electronic form is vulnerable and has many privacy and security issues but it is widely used due to its advantages of being cheap and eases in storage and communication to be safe from cyber crime and not being the reason behind it is also a great responsibility to be looked upon.

⁶ www.cio.com.

⁷ www.jeffbullas.com.

⁸ www.adweek.com.

The United Nations Commission on International Trade Laws (UNCITRAL) adopted the model laws on electronic commerce in 1996. To prevent and protect general public and businesses from this evil The General Assembly of United Nations by its Resolute No. 51/162, dated January 30, 1997, gave recommendations to all state to provide for favorable considerations for the proposed model. Whenever they enforce or revise their existing laws the model law provides for equal legal treatment of users of electronic communication and paper based communication. After which, considering the model law necessary and urgent in 2000 the government of India enacted The Information Technology Act, 2000.

The Information Technology Act, 2000 & Social Media

In general, the Information Technology Act, 2000 but parts of social media in a word that has been described under section 2(w) as, “intermediary”, with respect to any particular electronic records, means any person who on behalf of another person receives, stores, or transmit that record or provide any service with respect to that record and includes telecom service providers, network service providers, web-hosting service providers, search engines, online payment sites, online auction sites, online market places and cyber cafes.⁹ In the capacity of this definition the government includes social media websites such as *Facebook*, *Twitter*, *LinkedIn*, *Instagram* etc. under the provision of this act have tried to camouflage every other such wrongs happening through these websites. Crimes through social media are also included in other provisions which are introduced with the Informative Technology Amendment Act, 2008.

Intellectual Property Rights

“A right that is had by a person or by a company to have exclusive rights to use its own plans, ideas, or other intangible assets without the worry of competition, at least for a specific period of time. These rights can include copyrights, patents, trademarks, and trade secrets. These rights may be enforced by a court via a lawsuit. The reasoning for intellectual property is to encourage innovation without the fear that a competitor will steal the idea and/or take the credit for it.”¹⁰

⁹ As substituted by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 4(H), for clause (w).

¹⁰ www.businessdictionary.com.

It is mainly because of the intellectual property issue that affect social media marketing by cyber crime, piracy is the major problem faced. The criminals are trying to cheat the public widely using the social media without hesitation. By selling cloned products under the name of big brands, the superhighway has changed the traditional physical market into the virtual market place. To create effective and collaborative intellectual property management and safe guard strategy is the very difficult task for each and every business organization or else the every threat expected in the virtual world can be monitored and prevented. The law makers are making several approaches and designing new laws to remit a secured configuration against these cyber attacks.

Beachbody, LLC v. Cornel Ungureanu/Cyberland LLC

Here, the Respondent's use of the Domain Name is commercial, and there is no assertion that the Respondent or its business has been known by a corresponding name. While the Respondent may well engage in an Internet and social media marketing business, the use of a misleading Domain Name exploiting another party's trademark should not be considered a use “in connection with a *bona fide* offering of goods or services” for purposes of the second element of the Complaint. The offering cannot be considered to be made in “good faith” if it is deliberately mislabeled ,misleading, and apparently infringing, a point explored further below in connection with the “bad faith” element of the Complaint.¹¹

Since, there has been a thrashing increase in such cases. So for handling such case India has amended the Information Technology Act, in 2008 adding some of the cyber laws for amelioration of the social media marketing.

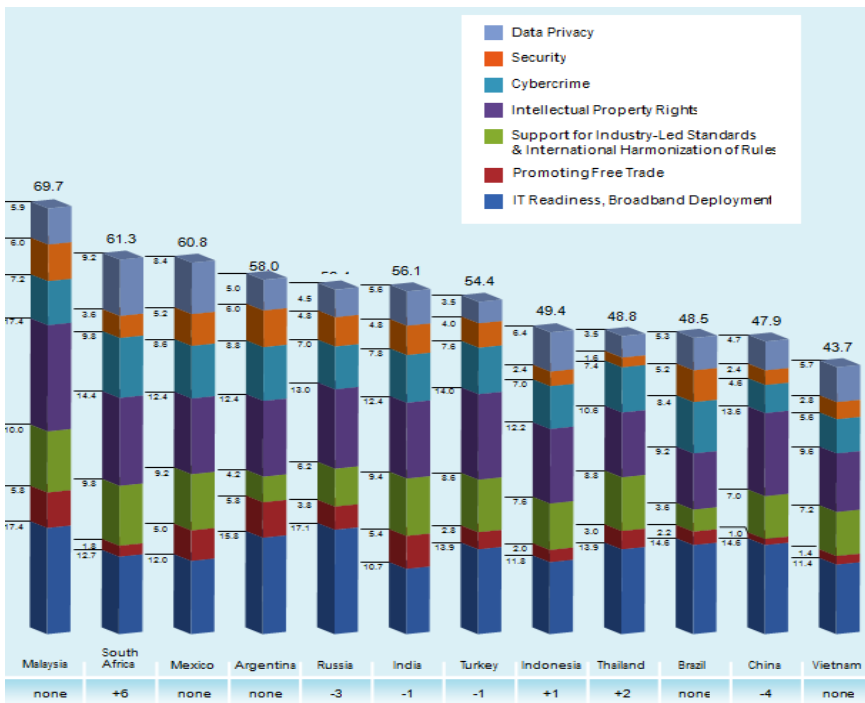
Internet service providers fail to preserve the record belonging to the relevant time due to this failure many of the cyber crimes remain unsolved section 67 C after the amendment is now proving beneficial in cyber crime cases. According to this section the central government has made it mandatory for intermediaries to save and sustain such vital data for a given time period in a prescribed format. If the intermediary does not follow these norms and provision they shall be liable in conviction for imprisonment for a term not exceeding two years or they may charge five more than equal to 1 lack or even both.

¹¹ 2014 SCC Online WIPO 506 *Beach Body, LLC v. Cornel Ungureanu /Cyberland LLC* World Intellectual Property Organization WIPO, Case No. D2014-0361.

After the amendment of 2008 section 69B, gives the central government authority to appoint any agency to keep an eye upon and organize rush data created, received or saved in any computer resource to maintain and enhance its cyber security and makes the intermediary bound to co-operate with the appointed agency and if this is not happening the concerned intermediary will be punished with a term extending to 3 years of imprisonment and fine or both.

The section of IT Act, 2000 before amendments makes a network service providers liable for the third party content only when they fails to prove that the offence was committed without their knowledge or that they have exercised due diligence to prevent the commission of such offences.

India is improving itself to fight from the cyber crimes=India - Score: 56.1 - Change from 2012 Score: +6.11 | Rank: +1



India is an important regional economy, with a strong interest in ICT services development. The law in India has not entirely kept pace with developments in cloud computing, and some gaps exist in key areas of protection; notably, India has not yet implemented effective privacy legislation.

India's cybercrime legislation also requires updating to conform to international models. Some laws and standards in India are not technology neutral (e.g., electronic signatures), and these may be a barrier to interoperability.

However, in 2012, India finally updated its copyright laws to cover modern copyright issues such as rights management information and technical protection measures. The development of India's technology sectors remains challenging, with low levels of broadband and personal computer penetration.

Overall, India's ranking in the 2016 Scorecard improved by one spots-from 19th to 18th-based on its updated intellectual property laws and enhancements to its infrastructure.¹²

Conclusion

The use of superhighway in the 21st century through social media is both a boon and bane which all depends on the way in which it's been used. The relationship between seller and buyer has changed drastically where sellers are no longer sheep searching for hay but they have become hound preying directly upon their customers. As they gain the trust easily and providing customers their desired quality product but as said. But this being said, there is a dark side to every organization or group, community etc. therefore, it is necessary to enforce certain laws to regulate positive affairs of the social media market and to save interests of the users since peace and happy living in the motive of the law givers and the punishment to evil thinkers is the outcome of enforcing such laws. To make the cyberspace more secure, following strategies must be followed:

- Producing a secure cyber eco-system.
- Creation of mechanism for Information Technology Security.
- Protection of Information Infrastructure.
- Uprising of open standard.
- Improvement of enforcement of laws considering Cyber Crimes.



¹² Report-Global Cloud Computing Scorecard (2013).