

Contents

Social and Commercial Forces:.....	2
Current Privacy Law:	3
Critically analyze legal cases:	9
Recommendations	10
Conclusion	11
References.....	12

Social and Commercial Forces:

Social Forces:

The legal value has been extended in order to prohibit the attempts to the bodily injury by the various sources such as smoke, excessive vibration, offensive odor or noise and dust, this lead to the development of the law of the nuisance. Soon the emotions of the human were extended to the personal felling that was implemented in the new legal conception. The growth and the development of the legal laws took place to the incorporeal right from the corporeal property. It further leads to the development and commencement of the widely open and broad intangible property rights in the various products and the work of art and the literature. These intangible products can have trade secret and have trademark. The law was extended from the protecting the physical property to the conditions that have become quintessential for the success and prosperity. The changing ambience and culture lead to the development of the law that recognizes the essence for compensation for the mental harassment or the sufferings inflicted.

Commercial Forces:

1. Privacy Technologies

Commercial development of the matter and the security protection has moved and developed drastically. The various physical application and internet can use various systems and programs to provide varied security and privacy to the users.

2. Data Protection Evolution

With the advancement of the information technology the right to privacy has become cozy. The various protection laws have been implemented to safeguard the privacy laws. The various privacy laws such as German law in 1970, The Council of Europe's Convention 1981 help in defining and implementing the privacy laws. The personal information has been defined as data that can be managed at each stage from data accumulation to dissemination of the data in the form of various declarations and legal obligations.

Current Privacy Law:

Intellectual Property Rights

Preservation of Intellectual property

The area which takes the periphery of the preservation of the rights of intellectual property of people comprise of the Intellectual Property Laws. Nowadays the governments and other general public are getting more and more concerned about the personal information threats are shared between other people. Man private organizations are also coming up with new measures to protect privacy. The IPR laws regulate the kind of information which is availed and the medium of its storage and preservation. Expectation of privacy is referred to as the scope of applicability of the privacy laws.

There are many fields in which intellectual property law comes into the picture can be effectively implemented such as-

1. Health
2. Financial
3. Internet
4. Informational
5. Communication

Health Sector

Information technology is booming rapidly in the health sector and has a great potential to improve health care and cost reduction is now taking place. Patients are being empowered to take greater care of themselves through automated systems. However, the new technology also poses some threats of privacy related to personal health information. If the privacy issues are unaddressed, they can just stand as obstacles in the way of attaining benefits from health IT.

Financial Sector

Financial privacy relates to the information that is flown within financial institutions as well as outside them. Complete financial privacy prohibits the distribution of information of consumers to companies whose purpose is to use that information for the sake of telemarketing, or soliciting consumers without their assent. Moreover, it prevents the sharing of the client information to affiliates of the institution.

Informational Issues

Well, informational privacy includes the setting up of protocols regarding the collection and handling of personal data and information. It is basically referred to as data protection.

Communication issues

Communication Privacy is a critical topic in the present scenario. Computer networks have raised new ethical dilemmas concerning privacy as a large amount of personal information passes onto computer networks each day. To protect a person's privacy, technologies like cryptography, authentication, and digital signatures have been developed, which have various algorithms and protocols in order to make secure access to the information.

Copyright infringement

Copyright infringement is the usage of copyrighted works through unauthorized or prohibited means. Thus, it infringes the exclusive rights of the holder of the copyright by producing similar works or derivatives of the works.

Digital Economy Bill- Salient Features

The digital economy bill of 2009-2010, is an effect of the shift in the copyrights relating to telecommunications, broadcasting brought about by the tremendous growth and penetration by digital technologies. Its objective is to implement many of the policies explained in the Digital Britain white paper.

It calls for the intervention of the secretary of state in the management of internet domain name registries in order to provide the surety of reliability and safety of e-commerce. The internet would also be included several times in the amendments to the Communications Act 2003, giving Ofcom a handful of responsibilities. Among all the measures in the Bill, the most controversial has been the omen related to the online infringement of copyright.

Internet service providers would have to cooperate with copyright owners to help check the sharing or downloading of material which is found to be illegal, initially using a system of notification associated with repeated infringement. Now on copyright owners would be able to apply to a court in order to indentify the persons breaching this law and thereby undertaking legal actions against them. If these changes are not that effective at reducing online piracy the bill would introduce technical measures such as internet disconnection , generally used as the last ditch punishment for the most serious cases.

The Bill also recognizes an important trend in broadcasting services to include on demand viewing and the distribution network on the internet platform. The licensing schemes of commercial public service broadcasters would be made more generous to succumb to the pressure of multi-channel world.

The OFcom would be provided with flexibility in the licensing and allocation of spectrum to aid the development of next generation wireless networks- particularly relevant to the mobile telephony.

The Digital Economy Bill mainly comprises of following items-

1. The extension in the role of Ofcom to reporting to the UK communications and media center.
2. Making obligatory for the ISPs to reduce the online copyright infringement, which initially involved notification to the consumers?
3. To allow intervention of Secretary of State in the management of registering the domain names.
4. Provision of public service content on a range of media platforms by channel four.
5. Modification in the present licensing regime to switch over to digital radio.
6. To strengthen Ofcom by providing additional power related to the spectrum used by other mobile phones.

Ofcom- General Duties

Ofcom is the regulator for the UK communications industries and was established in 2002 by the merger of 5 regulators. It has a range of responsibilities across television, radio, telecommunications and wireless communication services.

These comprise from controlling and monitoring the media variety and providing consumers to ensure the efficient use of radio spectrum. Apart from this, its main duties are-

(a) To motivate the citizens' interests in relation to the issues of communications;

And

(b) To inspire the interests of consumers in relevant markets and promote competition.

Online Infringement of copyright

One of the most controversial parts the act is all about creating a procedure for dealing with online copyright infringement like pirated books, music, films etc.

Basically the copyright owners after identifying the cases of copyright infringements compile lists of internet protocol addresses at which the copyright has been infringed. After that they send an infringement report to the ISP with proper evidence in this regard. The ISP reviews it and if infringement is found, it sends a notification letter to the subscriber identified. It also keeps a track of frequencies of notification or infringement. After that the name is entered into copyright infringement list CIL. It is obvious that a copyright owner can go to the court to seek for the legal remedies and ISP can be identified which are held responsible for the infringement of the laws.

These strict implications have received a lot criticism and many societies have raised a voice against it.

A code will be drafted by Ofcom that is the regulator of UK communications industry in which the operational details of the online infringement would be entered and they dealt with. For this a draft consultation was to be finalized by 8th January 2011. The code was supposed to contain provisions related to the kind of evidence, the process of notification and other procedures of appeal. A number of smaller ISPs which are not finding this policy pretty good are taking the burden of this new regime and hence Ofcom has finalized a minimum of at least 400,000 users for fixed ISPs that can be penalized.

Ofcom wants to play a moderating role. There is a hope that it would be way difficult to completely block the internet access for the defaulters. Ofcom is trying for a balancing act. The hope is that the code will contain enough hurdles before internet access is blocked to satisfy internet libertarians, while not having so many hurdles as to neuter the act from the point of view of rights holders. The stage is set for an autumn of debate.

Implications to IT companies

A condition is sometimes encountered by some practitioners which is called contract blindness. According to this condition when the signatories fail to see what exactly the words they say in the page of the contract.

Hence the parties tend to give little focus on the minuteness of the headings, clauses, protocols paragraphs and thus they tend to sign the papers without complete information given in the contract which results in many problems.

Contract blindness is a major concern in the IT field and risks of failing to properly checking the contract leads to contract blindness.

One of its examples is about Redsky Company whose area of operation was to deliver software package to Kingsway Hotel chain. It was basically a hotel management system which enabled it to manage day to day operations related to reservations, billing and checkout check in frequency. After buying the software from Red Sky, Kingsway was stuck as the software did not prove to be not worthy of use as it failed to provide many features which were expected out of it. Though they were in a contract with the terms and conditions laid down in it.

Kingsway sought the rejection of software after a series of litigations from both the parties, the judge agreed with Kingsway that some clause of exclusion did not apply and hence were unreasonable.

IT companies can get a lesson from this is to refrain from believing that a standard term will offer them protection regardless of the nature of transaction. At the same time the lesson the recipients should take this to read the contract carefully as it it's really important to avoid any future litigations and problems.

Technical measures – a correct solution or not

For limiting internet access- Obligations

According to section 9 provided in the 124G of the 2003 Act, it provides a discretionary power to the state secretary to direct Ofcom to analyze whether an obligation is to be made on the ISPs to take technical measures against certain subscribers or the power should be directed towards Ofcom to take action regarding the technical obligations. It may happen that ofcom may be

required to offer a consultation or to measure the efficiency of different kinds of technical measures and reporting back. Determining which technical measure should be valid and fair in this fast changing technological world is difficult.

For a subscriber who has been linked to sufficient CIRs, a technical measure may not be applied against a relevant subscriber.

Critically analyze legal cases:

1. Case No. HQ08X0101303

MAX MOSLEY Climate and NEWS GROUP NEWSPAPERS LIMITED Defendant

Claimant: Mr. Max Mosley

The nature of the case:

Mr. Max Mosley sued News Group Newspaper for the 30 March 2008 issue under heading: "BOSS HAS SICK NAZI ORGY WITH 5 HOOKERS." He also registered the complaint for alongside published images.

The law provides the secrecy which provides the privilege to the powerful people to conceal their immoral and criminal activities. It further adds that powerful people can law of confidence. It would have been better if parliament would have said something in detail about privacy.

2. Case No HC0100644

The basic facts:

Mr. Douglas and Ms Zeta-Zones were to get married. OK and Hello magazine approached them to have exclusive right for the coverage of wedding. OK won the contract.

The issues in relation to confidence and privacy principle:

The right that was invoked was personal right that was of privacy right in nature. The rights were non transferable. Hello magazine breached the contract between the couple and OK magazine and published their photographs.

The conclusion was that unauthorized photo in the newspapers were the breach of contract and Hello Ltd was made liable and hence pay damages.

Recommendations

1. DIGITAL SIGNATURES

Digital signatures are used to identify the identity of a person. It's been a great necessity to put signatures on the documents and with the help of digital signatures the physical form can be replaced by the digital form and can be sent along with the document. There is a need of implementing the authentication of the sender to replace handwritten signatures.

This is to protect companies against fraudulent conduct. If the digital purchase of shares is final and if the value of share goes down then the customer may deny the purchase of shares hence companies have to take a proof of the purchase of shares at that prices stating the share are being purchased by the specific customer. Hence to increase the privacy digital signatures can be a good mechanism for the IT firms to protect the information sharing among others.

Thus in order to avoid problems, where digital signatures can be used with the help of either uses a secret key signatures or public key signatures when signing digitally.

2. Authentication

Communication happening online can be secured by a process called authentication. It is a technique used to verify the identity of the communicating parties.

It is a complex task to bypass authentication without permission.

These authentication protocols often utilize what is known as a public key cryptography to establish a session key. However, for data encryption a private is utilized.

Conclusion

Thus the digital economy bill has some social objections as well as the technical measures suggested by it are not socially acceptable for the society at large. Hence some measure has to be drawn to find a middle level solution so that the social benefits are also preserved and the online privacy is also maintained. Some of the recommended suggestions can be effective and fruitful for the companies. The society at large can be benefitted by sharing of information which is secure and no content is misplaced or misrepresented. Nowadays the ISPs would have to cooperate with copyright owners to help check the sharing or downloading the material which is found to be illegal. Now on copyright owners would be find it possible to apply in order to indentify the persons who are breaching this law and thereby undertaking legal implications against them. If these measures are not that effective at alleviating online piracy the bill would introduce technical measures such as internet disconnection.

References

- ✓ Jacques Ellul, *The Technological Society*
- ✓ See Lord Nicholls [17] - [18] and Lord Hoffman [50] in *Campbell v MGN* [2004]
- ✓ "[Programmes | Law in Action | Mosley v UK](#)". BBC News. 2009-02-24
- ✓ "[UK | Is it farewell for Kiss and Tell?](#)". BBC News. 2009-06-15. .
- ✓ 4 Harvard Law Review 1890.
- ✓ Right to privacy case laws.