

CHALLENGES IN PROPOSED INDIAN SPACE BILL WITHOUT STRONG IP LAW

-VISHALAKSHY GUPTA

Socrates, as the great ancient Greek philosopher had once remarked that *“Man must rise above the Earth – to the top of the atmosphere and beyond – for only thus will he fully understand the world in which he lives”*.¹ Dating back to 1957, beginning with the Space Race, when Russia launched its unmanned space satellite Sputnik- I , a new era had seemed to begun with technological advancements and bilateral discussions taking place between USA and USSR. Later on, the creation of UNCOPOUS for the peaceful use of outer space and the ratification of 5 international treaties by several countries, namely the Outer Space Treaty of 1967 had marked the advent of a new “Space Age” which was brimming with space activities that were largely controlled by the government. Now, however, we have reached the precipice of an era where the use of a space shuttle in outer space is no longer restricted to the government. With the entry of private players in this field, the outer space activities have become more or less commercialized and it is imperative that such undertakings be protected for one’s success. Hence, the role of IP Law in understanding the importance of such safeguards has gained insurmountable importance and requires immediate attention as exploration of Space requires huge investments and in such cases, any discovery made by private enterprises must be recognised and given due credit.²

With all these modern day innovations and transformations, India is no way lagging behind. Dating back to its first rocket launch in 1963, India has since then come a long way and today, it stands as a mighty giant superpower, at par with other nations such as Russia and USA.

The only lacuna is the requirement of sufficient state laws and a centralized legal framework which aims to be fulfilled by the Indian Space Act, namely the Draft Space Activities Bill, 2017.

¹ J Vernikos, *Human Exploration of Space: why, where, what for?*(June 16, 2019, 1:04 AM), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2577404/>

²Sakshi Shukla, *IPR in Outer Space:Issues and Challenges*(June 16, 2019, 2:17 PM), <http://iprlawindia.org/wp-content/uploads/2018/01/IPR-and-Outer-Spaces-Activities-final.pdf>

The Bill however, has a limited scope with respect to the IP regime. Section 25 does have a provision for IP Rights and it states that

"Any invention, or other form of intellectual property rights, developed, generated or created during the course of any space activity shall be protected by any law for the time being in force, with the primary objective of safe guarding national security."

The provision goes on to say that: *"Any form of intellectual property right developed, generated or created on board a space object in outer space shall be deemed to be the property of the central government."*

This provision will surely deter the potential participation of the private sector, and in particular, in any future mission where an Indian launch puts a *foreign* space object into space; or a joint Indian and foreign mission that creates intellectual property in space.³

Another difficulty being, there is a need to consolidate the domestic legislation on IP with the International Treaties on Space. The Outer Space Treaty provides for the free exploration and use of space by all the States (Article I) and is not subject to national appropriation by claim of sovereignty (Article II). Other than Article VIII of the treaty which provides for the grant of State jurisdiction to a space craft registered by it, there is no other procedure by which borders could be demarcated in space. Hence, the general method of providing patency which is strictly based on the notion of territoriality becomes simply ineffective. Also, in the case of joint-venture activities, several issues with regards to the jurisdiction of numerous components which have been invented in different territories needs to be addressed. In instances where the same invention could take place in India and in outer space, it becomes uncomplicated for the inventor on Earth to patent his brainchild. Such uncertainties remain to persist unless they could be resolved by a complicit reliable legal framework in the field of patent laws.

As far as Copyrights law is concerned, the transmission and reception of the raw data from satellites which are used in weather forecasting, environmental monitoring, regional mapping etc. embrace enormous value. Yet, a particular kind of spatial database may be granted copyright

³Ran Chakrabarti, *India: India's Draft Space Law: Opening up the Final Frontier?* (June 21, 2019, 7:21 PM), <http://www.mondaq.com/india/x/761766/Aviation/Indias+Draft+Space+Law+Opening+Up+The+Final+Frontier>

protection in some countries, but a similar data would not qualify for copyright protection in other countries. Pertaining to India, as per the provisions of the Copyright Act, 1957, it will be a difficult task to establish the real author of such spatial data collected by Remote Sensing Satellite, a machine that does not involve any human intervention, unlike other literary work creations.⁴ Another issue which needs to be resolved is regarding the claim over these raw geospatial images by a public undertaking like the ISRO which holds the exclusive right over the data acquired through RSS as per the provisions of RSDP, 2011 and the newly drafted Bill. However, if a country like USA aims to acquire such rights with India acting as beneficiary to it, no protection would be provided to the Indian database or its owner as the Indian Copyrights Law pursues to provide protection only to the processed data.

Assuming that cooperation is a preferred goal for the intersection of intellectual property and outer space in the context of remote sensing, the field of intellectual property will have to change to achieve international cooperation and harmony. As a result, either the pure copyright regimes or the database right regime will have to readjust in order to work together, aligning intellectual property with outer space.⁵ The determination of jurisdiction also needs to be worked upon when the invention is registered and protected outside the scope of the domestic laws. Countries like USA and EU have enforced explicit provisions for the flexible applicability of IPR to outer space. Hence, the need of the hour for India is to formulate a harmonious and comprehensive legislation which could overcome the major obstacle of reconciling the Space law with IPR so that it benefits from its own creations and is not outdone by other developed nations.

⁴Pooja Shree, *Outer Space and Intellectual Property Rights*, SELVAM & SELVAM (June 23, 2019, 11:38AM), <https://selvams.com/blog/outer-space-and-intellectual-property-rights/>

⁵COPUOS, Resolution 3234, (1974), *Principles relating to remote sensing of the Earth from Outer Space* (June 23, 2019, 12:26 PM), http://stage.tksc.jaxa.jp/spacelaw/world/1_02/02.E-3.pdf