

COMPLEXITIES IN ENSURING CYBER SECURITY TO AVOID SEO INFRINGEMENTS

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Abstract:

This paper tries to primarily analyse the risks involved in cyber security and secondly the possible defence and protection that could be made in this regard and thirdly the investment made in cyber security of a website. SEO involves infringement of trade mark and hacking. The cyber security that should be maintained will have to cover the hacking in advance and also maintain a user friendly website which is highly impossible to handle. This paper also analyses the difficulties involved in having a user friendly website security as it is obvious that only severe security can stop hacking of websites. But on the other hand, a user friendly website cannot assure the use of authorized users alone. On this regard comes the investment in cyber security by the websites in order to control SEO risks. Thus the view of professionals is also discussed in this paper in order to bring a clear view of the approach towards it in the recent times.

I INTRODUCTION

The SEO (Search engine Optimization) is the basic element that a website conducting business online should take into consideration for improved trade. This is done by the usage of Meta Tags that works along with the key words used in the search in every search engine. Meta tags are used in the source code by which the users cannot see it which is also copyrightable under the copyrights act.¹ Every website tries to hold a good rank in the SERP (Search engine result page) for which the SEO really matters. At the same time, the online traffic existing due to the high demand on both user and seller sides, the chances of one website overriding the SEO techniques of others is rising. In order to protect one's website from such infringements, the website hires SEO experts who sets the SEO in such a

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¹ Indian Copyright Act, 1957.

manner that its techniques and IP is protected to the farthest extent. This also involves investment in the SEO to improve the trade especially by the websites that run fully online. This paper analyzes the same by looking into the ways in which the infringement happens, what all infringements takes place, the SEO security that should be implemented by the website owners/ IT teams to prevent such infringement. Also the effect of such security on the users and search engine. This paper analyzes the same from the legal point of view as well as in the perspective of the SEO experts.

II BASIC UNDERSTANDING OF SEO DEFINITIONS:

Search Engine Optimization in general refers to the methods involved in increasing the users towards a particular website by improving its search engine rank. But SEO is not restricted to the above definition. Various SEO experts have defines the same based on the use and need for the same. Few definitions are analyzed below.

- *“SEO today is about making the right choices based on tons of accurate SEO data, the latest Google trends, and common sense. Simple but not easy! There’s also this tendency for SEO to merge with performance marketing and lose its role as a standalone discipline.”²*
- *“SEO is the process of helping search crawlers and algorithms gain maximized access, understanding, and formulaic confidence that “this page is the best choice for this search query.””³*
- *“SEO is all about providing end users with a positive content experience at the right moment in their user journey across different platforms and devices.”⁴*
- *“SEO is the science of getting eyeballs to the page through search. It’s a multi-discipline approach to helping web pages get found by humans and search engines.”⁵*

By the above definitions, it could be understood that the SEO purely involves techniques by which a website tries to improve its rank in the SERP. SEO has not been defined in any legislations in India so far.

² Aleh Barysevich / Founder & CMO, Link Assistant

³ Alan Bleiweiss / Alan Bleiweiss Consulting

⁴ Winston Burton / VP of SEO, Acronym Media

⁵ Christine Churchill / President & CEO, KeyRelevance

III USAGE OF META TAGS:

Meta tags are not defined under the Indian laws including the IT Act. So in general, Meta tags are invisible tags that could be in the form of words or symbols or numbers which is invisible to the users. Only the search engine with the help of the Meta data can view the Meta tags of the particular websites. It appears in the HTML of the website that lists out the contents of the website. Basically when a user does a Google search with the keywords and reaches the SERP these Meta tag of the website guides the user to their site. Meta tags was first defined by the Indian courts in a 2014 judgment⁶ by the Bombay HC as *“Special lines of code embedded in web pages. All HTML (hypertext markup language), used in coding web pages, uses tags. Meta tags are a special type of tag. They do not affect page display. Instead, they provide additional information: the author of the web page, the frequency of updating, a general description of the contents, keywords, copyright notices and so on. They provide structured data (actually, meta-data) about the web page in question. Meta tags are always used in web-pages ‘<head>...</head>’ section, before the display section that begins with the tag ‘<body>...</body>’.”* Going by this definition, it is clear even by the courts that the Meta tags are not restricted to the usage of keywords but any content that might be of other websites’. As the tags exist in HTML, the users won’t be aware of the infringement it would be carrying out such as the usage of domain names of other websites, trademarks of others or copyrighted content of others. Thus the meta tags are at a higher risk of being easily infringed since only search engines can have access to their meta data unless or otherwise it is available in public domain which does not happen in most cases. Most of the SEO infringements takes place through the Meta tags in spite of advertisements and other social media marketing.

IV DOCTRINE OF INITIAL INTEREST CONFUSION AND FAIR USE EXCEPTION:

The doctrine of initial interest confusion states that confusion exists for purposes of the Lanham Act when potential customers initially are attracted to a junior user’s mark by virtue of its similarity to a senior user’s mark, even though these consumers are not actually confused at the time of purchase.⁷

⁶ *People Interactive (I) Pvt. Ltd. v. Gaurav Jerry & ors.*, NMS (I) NO. 1504 of 2014 in SUIT (I) NO. 622 OF 2014

⁷ Lanham Act, also known as the Trademark Act of 1946.

This doctrine acts as a defense for the plaintiff even if the Meta tags of the infringing website is likely to cause confusion in the minds of the users. This doctrine was later applied in the case of *Grotrian v Steinway & Sons*⁸, where the Court believed that the advertisements in the defendant's name of "Steinway" would mislead the consumer into "*an initial interest, a potential Steinway buyer may satisfy himself that the less expensive Grotrian-Steinweg is at least as good, if not better, than a Steinway*". This doctrine was proposed with the sole intention to be applied for trademarks law but later it is used in the Meta Tags infringements too.⁹ This doctrine is more controversial since the keywords entered during the search is totally in the hands of the user and not the liability of the website owners. Secondly this doctrine not only applies to the same Meta tags but also the similar ones that increases the chance of more accusations. This doctrine was firstly used by the courts¹⁰ in the internet context in the year 1999 where the trademark infringement was confirmed by the courts as both the plaintiff's and the defendant's links to pop up in the search result thus causing confusions. This case gave a wider ambit to the doctrine in the usage of Meta tags but it was narrowed down in another case.¹¹ This case thus introduced an exception to the doctrine by the term *fair use*. The court thus held that "*while a finding of initial interest confusion can be a basis for finding a likelihood of confusion, initial interest confusion does not lead ipso facto to a finding of likelihood of confusion.*"¹² By this the doctrine's usage in Meta tags was narrowed down and thus not all confusions could be identified as infringement before the courts if they appear to fall within the ambit of fair use which was held in other cases also.¹³

V INFRINGEMENT OF DOMAIN NAME, TRADEMARK AND COPYRIGHT THROUGH META TAGS:

The Meta tags of the website thus enjoys the chance of infringing the trademarks, copyrights and domain names of other websites. The very first case that discussed infringement by usage of Meta tags in 1997 "*stopped the defendants from using the said terms in their Meta tags without authorization as it resulted to unfair us.*"¹⁴ In this case the defendants used terms that was the trademark of the plaintiff in their Meta

⁸ *Grotrian v Steinway & Sons*, 365 F. Supp. 707 (1973)

⁹ See also *Reconsidering initial interest confusions on the internet* by David M. Klein and Daniel C. Glazier, Vol 93 TMR.

¹⁰ *Brookfield Communications v. West Coast Entertainment*, 174 F.3d 1036 (9th Cir. 1999).

¹¹ *Playboy Enterprises v. Welles*, 78 F. Supp. 2d 1066 (S.D. Cal. 1999).

¹² *Id* at 1094.

¹³ *Bally Total Fitness v. Faber*, 29 F.Supp.2d 1161 (C.D. Cal. 1998)

¹⁴ *Oppedahl & Larson v. Advanced Concepts*, Civ. No. 97-Z-1592 (D.C. Colo., July 23, 1997)

tags by which the infringement happened. The infringement of trade mark happened in various cases such as the *North American Medical Corp. v. Axion*¹⁵, where the court stated that “evidence in this case indicated that, before Axion removed these Meta tags from its website, if a computer user entered the trademarked terms into Google's Internet search engine, Google listed Axion's website as the second most relevant search result. In addition, Google provided the searcher with a brief description of Axion's website, and the description included these terms and highlighted them” and accordingly ruled that “this was trademark infringement because using a trademark in Meta tags to influence engines was a “use in commerce” and likely to cause consumer confusion.” The infringement of domain names in Meta tags was discussed in the case *People Interactive (I) Pvt. Ltd. v. Gaurav Jerry & ors.*¹⁶, where a Single Judge Bench at the Bombay High Court found that the defendant was using “Shadi.com”, which was the Plaintiff's domain name. The Hon'ble Court while addressing a domain name infringement of the plaintiff's domain name “Shadi.com” by the defendants’ “ShadiHiShadi.com”, used meta-tags to identify malafide intention. The copyright infringement by the usage of meta tags was also decided by the federal court in the case of *Red Label Vacations Inc. (redtag.ca) v. 411 Travel Buys Limited*¹⁷. In this case the issue was the copying of Meta tags of one website by the other. Since Meta tags belong to the source code, it is copyrightable under law. But in this case, the court held that the Meta tags infringement was not copyrightable as the contents of the plaintiff's website was not entirely copyrightable. But this case made it clear that any website with entirely original work will be copyrightable for its Meta tag usage.

VI USER FRIENDLY WEBSITES:

By analyzing the user friendly websites, we should look into how easy the access to the website happens when a user looks for a product or any service online. Thus the websites are in the need of enhancing their SEO techniques by which they hold a higher rank in the SERP to attract the users. Though in most cases the SEO techniques involve proper means, there are likely to infringe the IP of others by ignorance which is discussed earlier under fair use exception. But on a similar note, the websites are also expected to SEO friendly in nature so that the search engine which is used by them find it easy to evaluate the trade carried out and their SEO data by which their ranks in SERP is also

¹⁵ 2008 WL 918411 (11th Cir. April 7, 2008)

¹⁶ See Supra 6.

¹⁷ Red Label Vacations Inc. (redtag.ca) v. 411 Travel Buys Limited (411 travelbuys.ca), 2015 FC19

made. It is not only for the search engines but also to the users to whom the website should be friendly to use. A website in order to be SEO friendly should be essentially user friendly too. But the very concept of being both is conflicting. Not just the complexities with regard to being both, but it involves other elements that makes it SEO friendly such as quicker access, separate pages for each products, holding a brand credibility, unique content, inclusion of images, well formatted URLs and meaningful structures.¹⁸ Only when a website could ensure these elements in it, the possibility of it being SEO friendly could be achieved. But this is not easy, as it also involves providing data of the website to a limited extent which will surely cause a danger of infringement of the same that should be regulated only by the website.

VII TAKE OF SEO PROFESSIONALS ON INVESTMENT IN SEO SECURITY:

Basically”clients that have either newer sites, penalized sites, or sites that are underperforming should leverage paid search marketing (which we manage). Paid search, or PPC, is typically the most effective in any campaign-driven program or product/model-based campaign.¹⁹”Websites are usually attacked in the following ways, blacklisting, hacking, crawling errors and SEO spam. Blacklisting is when a website is targeted for an attack, direct financial loss is not the only cause for concern for the search engine. A compromised website can distort SERPs and be subject to a range of manual penalties from Google.²⁰ Thus the search engine ends up blacklisting the website. Hacking is when a website is hacked by individual or a group and the data of the website ends up being stolen. Crawling errors occurs due to the traffic in the website that keeps using the data at a very frequent basis.²¹ But on the other hand most major search engines also provide a way to control the rate at which their bots crawl the website, so as not to overwhelm the servers’ capabilities. This does not control how often a bot will crawl the site, but the level of resources consumed when they do.”SEO spam“could be an act of deliberate sabotage, or an indiscriminate attempt to scrape, deface, or capitalize upon an authoritative website.

¹⁸ See also, <https://www.reliablessoft.net/what-is-a-seo-friendly-website-and-why-do-you-need-one/> accessed on 12th October, 2019.

¹⁹ See, <https://www.searchenginejournal.com/the-epic-rise-of-seo-how-why-and-where-to-make-an-investment/194215/> accessed on 12th October, 2019.

²⁰ See also, <https://www.searchenginewatch.com/2019/02/07/how-website-security-affects-seo/> accessed on 12th October, 2019.

²¹ See generally, <https://www.reliablessoft.net/what-is-a-seo-friendly-website-and-why-do-you-need-one/> accessed on 12th October, 2019.

Generally, malicious actors load sites with spam to discourage legitimate visits, turn them into link farms, and bait unsuspecting visitors with malware or phishing links.”In order to protect a website from all these SEO security should be in place. SEO security is the use of SEO metrics to identify flaws in a site’s security, to act to solve those issues and to monitor site activity with security in mind. Good SEO practitioners follow security news closely and should increase their clients’ site security by a significant factor. They’re best-placed to notice unusual activity on clients’ sites, and they can also act to rectify problems relating to brand management should a security lapse occur.²² Basically the investments made in SEO security is not restricted to protect one’s data but also to receive data of others. Thus people are willing to invest to receive data in return. The problem lies only when most of the people in the cyber security field are hackers who could take away the data of a website just for the sake of it and not even have the intentions to infringe or whatsoever. So the website owners are under pressure to save one’s data in order to exist in the field irrespective of the investments. But for the outsiders such as the search engines, that’s not a big deal, so their tendency towards this investment is comparatively low.

VIII CONCLUSION

The SEO professionals do not have a definite say on either the investments on SEO or the security which clearly proves that it is an unsure take. The cyber security that is ought to protect the IP in the internet should be more focused in order to bring a clear picture for the users as well as the owners. India lacking such clear legislations in this regard is in a place where it should totally rely on the precedents²³ that are not so clear²⁴ when it comes to SEO infringements²⁵ put forth in spite of the changing situations in the cyber space. SEO infringements does not only affect the IP but also puts the cyber space in danger as it creates the fear of one’s registered contents being used by others. While looking into the investment aspect, only the large business online consider the SEO investment and not the other ones.²⁶ As this paper suggests, the SEO security is still a dilemma as it does not and

²² See also, <https://www.overtthetopseo.com/seo-security-cybersecurity-seo-perspective/> accessed on 13th October, 2019.

²³ *Mattel, Inc. and Others vs. Jayant Agarmalla and Others*, 2008 (38) PTC 416;

²⁴ *Consim Info Pvt. Ltd. Vs. Google India Pvt. Ltd. & Ors*, 2013(54)PTC578(Mad);

²⁵ *Samsung Electronics Company Limited & Anr. vs. Kapil Wadhwa & Ors.*, C.S. (OS). No.1155/2011

²⁶ See generally, <https://clutch.co/seo-firms/resources/small-business-seo-investments-benefits-2018> accessed on 13th October, 2019.

cannot favor both sides for an expected end result that is the improved business. This dilemma cannot be ignored by the legislations as it is important for the users to get access to legitimate websites which eventually brings down the data of the website accessible, that is totally risky for the website as it creates a huge chance for the infringement of data. Thus a clear and proper legislation is the only viable option for the courts as well the cyber users to go ahead with the SEO infringements.

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