Chapter 5
Emerging Legal Trends on Hyperlinks and Meta-Tags: A Discourse

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ABSTRACT

Hyperlinks and meta-tags form two primary tools for Website designs. They are a convenient way to generate easy and faster connectivity on the World Wide Web. Hyperlinking techniques allow a quick retrieval of information, whereas meta-tags present a summarized understanding of the content and subject matter of the Website, thereby facilitating a more accurate list for search engines. That said, content is often hyperlinked or meta-tagged without permission or for abusive purpose. This has led to an increasing scale of litigation on grounds of unfair competition, anti-trade practices, and most recently, intellectual property infringement. Whether it is the dilution of a mark or a copyright violation through an unauthorized use of a meta-tag, the Internet, for its entire boon, has invoked an unprecedented era of technological misuse for commercial exploitation. The current chapter speaks on this facet from Indian and international perspectives.

INTRODUCTION

The Internet today has grown from a few hundred Websites to hundreds and thousands of them. Practically every new business, semi-commercial, or private venture that comes up, has a Website to allow greater exposure to the growing netizen population. Given the unending expanse of the World Wide Web, hypertext linking is possibly a unique, modern, and efficacious tool to surf the Web and allow this vast pool of information to be accessed with considerable ease. It is the paramount tool used for Website designing and development of the Internet (Bodard, Lic, & Lic, 2004). Another tool found in common usage for Webpage designing is meta-tags. By definition, meta-tags can be understood as certain words or phrases, which, though not visible to the ordinary surfer, reflect on the content and subject matter of the Website. They hence, facilitate an easier and more organized indexing of Web pages via search engines (Kuester & Nieves, n.d.).

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Internet linking has improved Web surfing capacity of an individual and created a comprehensive plane of connectivity and accessibility. However, it has simultaneously resulted in the advent of a plethora of liability cases. Most formats of Internet linking are considered not only lawful, but also necessary for the growth of the World Wide Web, yet some tools, like deep linking, framing etc. have roused enough controversy with their usage to require some sort of regulation over them. Beginning from the unprecedented stance taken in the Scottish court’s judgment in Shetland Times (Kuester & Nieves, n.d.), the area of liability for Web linking has now transcended across multiple jurisdictions. This chapter seeks to elaborate on this debate. Before highlighting the various legal arguments which have been forwarded in several high profile cases, let us identify how hyperlinks and meta-tags are used in Web designing.

UNDERSTANDING WEB SITE DESIGNING

1. **Hypertext Linking:** Hyperlinking can aptly be described as the foundation on which the intangible superstructure of the Internet rests. In a convenient manner, it allows a user to click on a particular link and be transported from one page to another (Castro, 1998). Hyperlinks are primarily of two types – surface links and deep links (Elgison & Jordan, 1997). Of the two, the former is primarily engaged for Web designing and is considered legitimate and acceptable; the controversy arises with the use of deep links. Surface links are addresses or hyperlinks linking to the outermost page, i.e. homepage, of another Website (Elgison & Jordan, 1997). They allow a quick search and free flow of information from one page to another for the Internet surfer. Deep links however, transfer a Web surfer deeper inside a Website, rather than simply linking to the homepage. Since deep linking allows skipping homepages and information/advertisements on it, the same has generated a significant amount of controversy. It has become a burgeoning ground for litigation with a myriad of legal issues involved (Elgison & Jordan, 1997). Crucial legal concerns emerging from the use of deep links range from Web-linking to illegal pages supplying banned contents like pirated music or movies or, the dilution of reputable marks by a source site, and engaging unfair trade practices by linking deeper into another Website (Forder, n.d.).

2. **Meta-Tags:** A meta-tag can be defined as a label used by a Website designer, by choosing descriptor or keywords, to identify the subject matter and content available on the Web page (Chancey, n.d.). The objective behind the use of such labels is to allow search engines to index the particular Website. Once indexed, it allows the Website to be matched to pertinent search queries (Sullivan, n.d.). Meta-tagging, however, becomes a more complex and contentious phenomenon when increasing a Website’s exposure, to meet both commercial as well as personal goals, is to be achieved. Usually most search engines, like Google, index and locate Websites based on the meta-tags. Certain tactics like spamming¹ and unfair usage of trademarks or trade-names as keywords can cause several legal liability issues. Website designers will embed descriptors or keywords utterly irrelevant to the content of a Website, or will spam the Web page script with the same keywords in order to gain a priority listing with search engines (Oppendahl & Larson, n.d.). As a consequence, meta-tagging becomes an unabashed use of unrelated descriptors just to grab the surfers’ attention (Kuester & Nieves, n.d.).

Given the complexity with which the use of these technologies has enhanced, the following portions
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