



COPYRIGHT IN CYBERSPACE

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Abstract

Intellectual property rights plays very important role in the socio-economic,cultrual development of the country. The evolution of internet is greatest technological achievement of human being. The unique capabilities of internet to exchange knowledge, ideas, information in the form of pictures graphs, videos within a second to every corner of the world in same quality. With increasing use of internet IPR infringement is increased. Copyright issues involved in the practices of linking, deep linking, uploading-downloading, copy-paste, P2P file sharing technologies which are normally used on the internet. To protect copyright in cyberspace is great challenge before us because our copyright law, Information Technology Act does not adapt itself in changing digital environment and in cyberspace it is difficult to trace out offender due to extra territorial jurisdiction of internet. India is signatory member of the WIPO Internet Treaty & to meet international requirement Copyright Act was amended in 2002,2012 which cover internet issues. But this amendment was not adequate to deals with issue of copyright protection in cyberspace. Copyright infringement causes a great risk to all industrial sector like copyright,software,music,film industry etc.& this is not only effect on owners right but also on economy of nation. So it is highly important to check online piracy by providing strong copyright protection in cyberspace, which wills automatically encouraging creativity of mankind. At the same time public education & awareness about copyright is also important. This paper discusses meaning, ways to infringe copyright in cyberspace & challenges before protecting copyright in digital environment, copyright law in India.

Keywords: *IPR, Copyright, WIPO, Information Technology Act, internet*



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Introduction

The term intellectual property is internationally recognized concept and it includes patents, trademarks, and industrial design, copyright& confidential information. In all types of intellectual property rights copyright is very important right because it prevent unlawful reproduction of original work. Invention of digital technology was brought a revolutionary changes in the present century. The internet due to its qualities like storing capacity, speed, intercreativity, inter connection and function beyond the geographical boundary create many opportunities and challenges before enforcement of copyright in the cyberspace. In the cyberspaceit is very easy to take content from one site & modify and reproduce it on other site without disclosing identity.For the protection of copyright Copyright Act, 1957 is

amended from time to time, 2012 Amendment which is recent one for to meet national & international requirement¹. And Information Technology Act, 2002 is in existing but both laws are inadequate to protect copyright in cyberspace.

Meaning

1) Intellectual Property(IP) –

- Intellectual property means property created by using intellectual, skill and labour of author which have both commercial & moral value & it is legally protected by law.
- According to WIPO (World Intellectual Property Organization), Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce.

2) Intellectual Property Rights(IPR) –

- IPR is right possessed by person or corporation has exclusive right to use its own plans or ideas or other intangible assets without the worry of competition, at least for a specific period of time.²

3) Copyright –

- According to Sec.13 of Copyright Act, copyright subsists in the work of original literary, dramatic, and musical, artistic works, cinematography films and sound recording etc.
- According to Oxford English Dictionary copyright means, the exclusive right given by law for certain term of years to an author, composer to print, to publish and sell copies of his original work.

4) Cyberspace –

- Cyberspace is virtual world, which technically exists only in computer memory, but it is interactive and pulsing with life.³

Characteristics of Copyright

- It is very important IPR for progress & improvement of intellectual & culture of the society.

¹ Journal of Intellectual Property Rights, Vol 17, Jul 2012, pp 324, Overview Changes to The Indian Copyright Law, Zakir Thomas.

² <http://www.businessdictionary.com>

³ Darrrel Menthe. Jurisdiction in Cyberspace : A theory of international space, Journal of Intellectual Property Rights, Vol 13, Jan 2008, pp 35 Challenges to copyrightable work in Cyberspace, Subhasis Saha & Sourav Keshri.

- Copyright is the intangible property right which requires originality and creativity in the work and it encourages & motivates the creativity of authors. Author's right was born immediately when work was created.
- Copyright is legal and moral right & which protect expression of idea and not idea itself.
- It is bundle of exclusive rights means it includes right to reproduction, communication, adaptation, translation and sell the creative work for certain period of time.
- It consists neighboring rights which includes right of performer, producers of phonograms & broadcasting organization.
- It is heritable, transferable and automatic right means it does not require any formality of registration.
- It maintains a balance between social & personal interest by including some exceptions like fair use it does not amount to infringement.
- Civil & criminal remedies available against the infringement of copyright. Copyright law not only punishes those who copy, distribute, download but also person who enables copying, download or communication with public is called as secondary infringer.

Copyright in Cyberspace-

Copyright is similar to other property right like land which is based on the principle of owner of land owns everything on land from sky to down earth. Same principle is followed in copyright with subject to certain limitations.⁴The use of computer, internet and downloading, uploading, copy-cut-paste, deep linking, peer to peer file sharing create obstacle in the enforcement of copyright in the cyberspace. The issues raised in protection of copyright in cyberspace as follows:

Uploading & Downloading

If a person uploads copyrighted content without authorization is infringement of copyright. Illegally downloading music, movies, video games has poor quality and it attracts punishment under Copyright Act in India. That person uploaded content is liable for that even if he has not received any financial gain. In case of uploading liability arises when uploader uses his creativity for to update, change or alter copyrighted material. Illegal downloading is mostly done in sectors like movie, video, music, games or software etc. Piracy is a big problem for

⁴<http://nopr.niscair.res.in/Journal> of Intellectual Property Rights, Vol.19, Sep.2014, pp307, Exploring Sovereign Immunity in Copyright Infringement: How India can learn from the Global Experience)

India's media and entertainment industry, causing losses of about \$4 billion every year due to copyright infringement⁵. Justice Gautam Patel of the Bombay High Court ruled that, 'only when user prejudicial distributes, exhibit or letting for sale or hire without appropriate permission copyrighted material then only he or she committing an offence.'

Linking

Today's world is world wide web world. Web site consist huge of information in the form of words, pictures ,graphics, audio & videos etc. So web site is protected by copyright law. The subject matter of site is electronic publication of this content⁶. Designing or producing web site require a lot of skill, labour, time, money & intellectual. So protecting content of web site from infringement is very important. Linking allow its users to move from one site to other & quickly access information within short time. It inform the people about existence of work by giving simple address of the site. Linking means a facility to access third party website only by click on location on linking site and without input any location information or search engine.⁷ Links usually appear as highlighted, underlined, prominent text or picture. Linking is two types⁸ :

1. Surface linking : When the home page of site is linked, is called as Surface linking.
2. Deep linking : When link bypasses the home page & goes straight to an internal page within linked site is called as deep linking.

Legal issues arises only with respect to 'Deep linking' because this technology helps in distributing creative material of other. According to Sec.14,51 reproducing, issuing, communicating work to public without authority or permission amount to copyright infringement. Deep linking site is not directly liable for infringement because in deep linking reproduction of work is not made by linking site but by user who visit linked page via link. Under Sec.2(ff) making any work available for being seen or heard or enjoyed by public directly or by any means of display amount to communication to the public. Copyright Act directly not ban deep linking but by straching provision under above Sec.2(ff),the term 'by any means of display' include communication of contents of web site on internet. Under Sec.51 communication of work without permission is amount to copyright infringement. It means making deep linking without permission of owner is amount to copyright

⁵ <http://blogs.wsj.com/The> Wall Street Journal

⁶ International Journal of scientific & Engineering Research Vol 3,issue 6,June 2012,Copyright & Trade Mark in Cyberspace,Muragendra B.T.

⁷ Lw relating to computers Internet & E-commerce,Universla Law Publishing Co.New Delhi-India,Author-Nandan Kamat,pp197

⁸ Legal Dimensions of Cyberspace,Edited by S.K.Verma& Raman Mittal,Indian Law Institute,New Delhi,pp-119.

infringement. When someone create link is likely to promote unauthorized copying of copyrighted material, then it will constitute Contributory Copyright Infringement, if the party created link had reason to know of the unauthorized copying⁹. However some website welcome linking or deep linking because it increases traffic, advertising rates, and revenue¹⁰ like Amzon.com. Linking or deep linking is generally used for to quick access information.

In the case of Naukari.com, Bixee.com, without permission of Naukari.com permitted user to view these jobs directly on its website bypassing home page of naukar.com, which resulted in financial losses to Naukari.com. The Indian Court restrained Bixee.com from deep-linking, copying, downloading and reproducing contents from Naukri.com's website on the basis of copyright infringement. In short deep linking without authority means electronically publication of contents, copying, communicating to public without permission is amount to the copyright infringement.

Peer to peer(P2P) file sharing –

Generally file sharing means to share digital files(music, audio recording, movies, T.V. shows, games & computer software etc.) electronically. Peer-to peer is method to exchange the files directly or through mediating server. Originally P2P technology was not created to facilitated copyright infringement but unfortunately it is used to download illegally copyrighted mterials. Some P2P technology like Napster, Gnutella, and Kazaa etc. are very famous & are allow to share, transmit & download files on internet without any change in quality.MP3 technology is the reduction of sound files in small size & distribute it on internet within short time. The growth of MP3 required a system to transfer the files over the internet, which lead to birth of Napster.¹¹Napster was related only to music files especially mp3 files. After downloading Napster software you automatically conncted to Napster's central server which contain only list of music files available on Napsters members computer. By simple typing the name of song or artist ,receive list of what was available & then download music form another users computer who is online within a second. Court take action against Napster as a secondary infringer and order to stop distribution of copyrighted music & shut down its site.In India any person running a network like Napsteris liable under Sec.14,51(a)(ii) and Sec.63 of Copyright Act,1957.It cause the death of Napster & birth of better P2P

⁹<http://smallbusiness.findlaw.com>

¹⁰ Legal Dimensions of Cyberspace, Edited by S.K.Verma& Raman Mittal, Indian Law Institute, New Delhi, pp-119.

¹¹P2PNetworks : Online Piracy of Music, Films& Computer Software, Journal of Intellectual Property Rights, Vol9, Sep.2004, pp442 , Author-Raman Mittal (Keith Taylor, Piracy in Cyber space: The battle over digital music on internet, <http://guslaw.gus.edu/lawand/papers/fa02/taylor>)

networks. The Sec.51(a)(ii) says that, any person permits for any place to be used for the communication of the work to the public where such communication constitutes an infringement, he shall be liable for infringement of copyright. The term 'any place' include virtual place as well¹². According to Sec.14 person who issuing copies of work or communicating the same work to public amounts to infringement. In case of Napster in India the person who download that Napster software & implement same means he is making copyrighted work available for any member of the society who installed software in his computer. It means that Napster facilitating communication to public & under Sec.14 communicating copyrighted work to public is amount to infringement. The person who actually downloads the file of copyrighted work means he reproduce the work without consent of copyright owner. So he is guilty for copyright infringement. In short P2P technology creat a threat to copyright industry including music, sound recording, software industry because it enable reproduction & distribution of copyrighted work on internet.

Internet Service Provider Liability (ISP)

The issue of ISP liability for copyright infringement is raised when we started to use the internet. The ISP is a companies or corporations that enable clients to connect to the internet¹³ like Airtel, Idea, Telenor etc. are ISP in India, they provide internet connection & other communication facilities to the user. On the issue of liability of ISP for copyright infringement some questions are raised like, Whether ISP held liable for illegal activities committed by their users? And to what extent it held liable for infringement. Usually copyright owner take action against ISP for enforcing their copyright because it is more capable to pay damages than individual private user & has deterring effect behind to held ISP liable. Practically when any website contain some its user and all are allow to upload or download content to & from that website, if you take action against one of them, then next day other user make infringement. But if you take action against ISP, he removes copyrighted material from website & warns their subscriber not to upload infringing content on this website. So by this way it is very easy to stop copyright infringement by suing ISP directly because he controls that network.¹⁴ The ISP liability is arises under different law like criminal law, tort law, copyright law, trademark law & unfair competition law. No any single

¹² Legal Dimension of Cyberspace, Edited by S.K.Verma & Raman Mittal, Indian Law Institute, New Delhi, pp142.

¹³ <http://jolt.richmond.edu/Internet> Service Providers Liability for Copyright Infringement-How to Clear the Misty Indian Perspective, by: Adv. V.K. Unni, Vol. VIII, Issue 2, Fall 2001

¹⁴ Legal Dimension of Cyberspace, Edited by S.K.Verma & Raman Mittal, Indian Law Institute, New Delhi, pp152.

provision of Copyright Act,1957 which would address the issue of ISP liability¹⁵.As per Sec.51(a)(ii) provides that, if any person permits for profit any place to be used for the communication of work to the public where such communication constitute an infringement of copyright where such communication constitute infringement of copyright unless he was not aware & has no reason to believe that such communication would amount to infringement of copyright.The expression ‘any place’ include cyberspace which contain ISP because computer server & telecommunication facilities comes under ISP which is dimensions of the cyberspace. So in short ‘any place’ include ISP under Sec.51(a)(ii).The another one expression ‘permits for profit’ means that ISP finacialy benefited from infringeing activites. So if ISP charge for their services and if some services are free but they indirectly making profit out of the advertisement. It means that above requirements of ‘permits for profit’is fulfilled by transmitting material or storing infringeing material. The another requirement for to held liable only if they have knowledge that stored or transmitting material from their servers is infringeing material. If above all required conditions are fulfilled by ISP then it is held that he committing copyright infringement. The provisions regarding the liability of ISP is found in Information Technology (IT) Act,2000.The Sec .79(a) of IT Act define intermediary means any person who on behalf of another person receives, stores or transmit that message or provides any service with respect to that message is called as intermediary. The ISP come under concept of intermediary. Again this clause limits the liability of ISP under certain circumstanes. According to this provision if intermediary i.e Network service providers not liable if he proves that offence o r contravention was committed without his knowledge or he had exercised all due diligence to prevent the commission of such offence or contravention. Practically ISP perform different functions in transporting content & their liability cannot uniform but is depending upon what type of function performed by them, otherwise he will be held liable for something on which he never played any role or content over which they have little control. But no any laws make amendment to limit the liability of ISP including Copyright Act. The IT Act provide only filtering facilities for to held liable ISP for copyright infringement.

Conclusion

The relationship between internet & copyright law is complicated one.From the above discussion it is concluded that advent of internet cause a serious threat to copyright owners. Traditionaly copyright is available only for books,music,paintaing,films but digitalization

¹⁵Law Relating to Computers Internet & E-commerce,NandanKamath,Universal Law Publishing Co.New Delhi-India,pp147s

extend its scope which cover computer software, compilation of data. In the cyberspace the nature & style of copyright infringement is totally changed. The negative aspect of digital technology is to cause online theft of copyrighted material. To prevent online infringement is very difficult due to the extra territorial jurisdiction, pseudonymous identity, different user form different country & unique capabilities of internet etc. The present Indian legislation on Copyright & Cyberspace are not sufficient to prevent copyright infringement in cyberspace. So there is need of adequate laws and people awareness about their rights will protect copyright in cyberspace & encourage authors creativity.