

LEGISLATIVE AND NON-LEGISLATIVE FRAMEWORK FOR DEALING WITH ONLINE PIRACY IN INDIA AT THE INTERNATIONAL LEVEL

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ABSTRACT

Internet or cyberspace as it is sometimes called is a borderless environment with no visible lines demarcating the jurisdiction. Even though it is indispensable as a knowledge bank, it is an ideal tool for someone with a criminal bent of mind who can use this environment to his/her maximum advantage. Cyber-crimes like hacking, cyber stalking, spamming, Online Piracy of films, music etc. are on the rise. Copyright is the term we use for the bundle of 'exclusive rights' which the laws of most countries confer on authors to exploit the works which they create. When we say someone has an exclusive right to do something, we mean that no one else can lawfully do it without the permission of the holder of right. Copyright is therefore a negative right as it confers upon the holder a right to enjoy the intellectual property in the work, to the exclusion of the rest of the world. The whole purpose behind granting of these rights in the intellectual property is so that their owners may utilise or exploit them for their gain. It may be succinctly put as this, that the authors are being rewarded for the hard work that they put in composing that piece of art. The basic idea behind Copyright protection is the premise that innovations require incentives. Copyright recognises this need and gives it a legal sanction. Moreover, the commercial exploitation of copyright yields income to the creators and thus gives pecuniary rewards to individual's creativity.

KEY WORDS:

Copyright, License Etc.

INTRODUCTION

Online copyright piracy is a menace prevalent worldwide. Piracy means "unauthorised reproduction, importing or distribution of whole or of a substantial part of works protected by copyright." The Copyright piracy leads to loss to the owners of the property. Besides, economic loss, piracy also adversely affects the creative potential of a society as it denies creative people such as authors and artists their legitimate dues. The nature and extent of piracy also vary across the segments of the Copyright industry. The computer- aided communication technologies such as email and internet have added altogether a new dimension to today's communication process by making it more speedy, informative and economical. The ways through which different types of information can be communicated have also undergone a sea change. While all these have made communication among people more effective and efficient both in terms of time and cost, they pose the greatest threat to the copyright world. Modern communication channels, being intensively relying on a variety of copyrighted products, are liable to be pirated in large scale, if adequate precautions are not exercised.

LEGAL FRAMEWORK TO DEAL WITH ONLINE PIRACY IN INDIA

(a) Brief History Of Copyright Law: National And International

Today, almost all nations have copyright law and, in most cases, are standardized to some extent by international and regional agreements, such as the Berne Convention and the European copyright law. But when we look back, we realize that copyright law has a unique history. The first copyright case goes back to Ireland, where there was a dispute over the ownership of the Irish Cathach manuscript. The Cathach is the oldest surviving Irish manuscript of the Psalter. It contains a Vulgate version of Psalms XXX (10) to CV (13) with a heading or interpretive title in front of each psalm. Traditionally, it is attributed to San Columba the copy, made at night, in a hurry by a miraculous light, of a psalter loaned to Columba by San Finniano. A dispute broke out over the ownership of the copy and King Diarmait Mac Cerbhaill dictated the judgment: "To every cow belongs her calf; therefore, to every

book belongs its copy.” The real need for copyright law was only felt after the invention of printers and copiers. Before the invention of printers, writing could only be created once. It was very laborious and the process of manual copying by a scribe involved a risk of error. Curiously, even in such a situation, Europe had an elaborate system of censorship and control of the scribes. During the 15th and 16th Century, the printing press was invented and widely established in Europe. The copies of the Bibles were the first to be printed. The government had allowed printing without restriction, but this had led to the release of a large amount of government information. Subsequently, the government began issuing licenses for printing. The Republic of Venice was the first to grant the privilege of printing books. It was for his story 'Rerum venetarum ab urbe condita opus', written by Marco Antonio Cécilius Sabellicus. From 1492, Venice began to grant privileges to books regularly. In 1518, the first copyright privilege was granted in England. It was handed over to Richard Pynson, King's Printer, and to William Caxton's successor. The privilege granted a monopoly for a period of two years. These copyright privileges have been qualified as monopolies. Later, in 1701, the parliaments of England and Scotland united in the wake of the Anglo-Scottish Union. The new parliament was able to amend the laws of both countries and an important law was the 1709 Copyright Act, also known as Anne's Statute, in honor of Queen Anne. The law came into force in 1710 and was the first copyright statute.¹

COPYRIGHT LAW IN INDIA

Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. Looking at the Copyright Law in India, we can observe that India's copyright law conforms to the international standards set out in the TRIPS Agreement. The Indian Copyright Act of 1957 fully reflects the Berne Convention for the Protection of Literary and Artistic Works of 1886 and the Universal Copyrights Convention, of which India is a party. The Indian Copyright Act, 1957 which came into effect from January 1958 was modified almost six times i.e., in 1983, 1984, 1992, 1994, 1999 and 2012. The Indian Copyright Act, 1957 as amended from time to time and the Indian Copyright Rules, 2013 governs the system of copyrights in India. However, the Department for Promotion of Industry and Internal Trade notified the Draft Copyright (Amendment) Rules on 30th May 2019 and the same draft is open for suggestions and comments from public. Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematographic films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work².

“WORK” PROTECTED IN INDIA

Under the 1957 Copyright Act, the term “work” includes an artistic work consisting of a painting, a sculpture, a drawing (including a diagram, a map, a painting or a plan), an engraving, a photograph, works of architecture or arts and crafts, dramatic work, literary work (including computer programs, tables, compilations and computer databases), musical work (including musical notes and graphics), sound recording and cinema. Under the Indian Copyright Act copyright protection is conferred on literary works, dramatic works, musical works, artistic works, cinematograph films and sound recording. Moreover books, computer programs are protected under the act as literary works. Copyright refers to a bundle of exclusive rights vested in the owner of copyright. These rights can be exercised only by the owner of copyright or by any other person who is duly licensed in this regard by the owner of copyright. These rights include the right of adaptation, right of reproduction, right of publication, right to make translations, communication to public etc.

¹ Charu Dureja, Historical Development of Copyright Law in India, International Journal of Advanced Research in Management and Social Sciences, ISSN: 2278-6236,

² Study On Copyright Piracy in India, Sponsored By Ministry Of Human Resource Development Government Of India, (Aug. 18, 2018,

COPYRIGHT ENFORCEMENT IN INDIA

The Indian copyright law provides three major types of remedies and they are civil remedies, criminal remedies and administrative remedies. Moreover, in order to take action against copyright infringement following are required i.e the proof of ownership, substantial similarity between the original and the infringed copy and that the copying amounts to improper appropriation. The civil actions against copyright infringement can be initiated in which the court can grant various reliefs like injunction, damages and account of profits. Under the Copyright Act, 1957, criminal action against copyright infringement can also be taken. Moreover, the amendments made to the Copyright Law in 1984 had increased the severity of punishments for addressing the issue of piracy in India. The person found guilty of copyright infringement would be liable for punishment for imprisonment for not less than 6 months and up to 3 years along with a fine of at least Rs. 50,000 to Rs. 2 lakhs It is worthwhile to mention here a very notable case of Time Warner Entertainment v. RPG Netcom Ltd that illustrates the usefulness of the injunctions in India in the context of Piracy.

The Plaintiff in this case Time Warner Entertainment was a leading US-based movie production house and the defendants were engaged in the business of providing cable television services. The investigations conducted by the plaintiff revealed that the defendant was exhibiting the copyrighted movies of the plaintiff in their cable television network without the consent from the plaintiff. The Plaintiff approached the High Court of Delhi seeking a perpetual injunction against the defendant so as to restrain it from committing infringements. Interestingly, the plaintiff in this case submitted that their claims in the petition for injunction were not just limited to existing movies in which copyright subsisted but also to their future works. After going through the facts of the case, the court granted permanent injunction against the defendants to prevent violation of copyright in the existing works of the plaintiff. The permanent injunction restrained the defendants from transmission of signals and broadcasting of movies and other works mentioned in the petition without taking a license from the plaintiff³.

PROTECTION OF FOREIGN WORKS IN INDIA

The copyright of foreign works is also protected in India. Copyright as provided by the Indian Copyright Act is valid only within the borders of the country. To secure protection to Indian works in foreign countries, India has become a member of the following international conventions on copyright and neighbouring (related) rights i.e the Berne Convention for the Protection of Literary and Artistic works, Universal Copyright Convention, Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms and Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement. Indian courts have also been proactive in protecting the copyright of authors, foreign owners, including software, animated images, including motion picture reproduction and databases.

LICENSING AND ASSIGNMENT OF COPYRIGHT

The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof. A right to assign work under the Copyright Act 1957 arises naturally when the work comes into existence. However, certain rights are specific to certain types of subject work. Further an author/owner is entitled to multiple rights broadly categorised as Economic rights and Moral rights. The owner of a copyright may grant an interest in the copyright by a License. The Act prescribes that a prospective owner of a copyright in future work may assign the copyright, to any person, either wholly or partially, although the assignment shall take effect only when the work comes into existence. The copyright owner may grant a license and transfer some or all of his rights to others to exploit his work for monetary benefits. A license is different from an assignment as licensee gets certain rights subject to the conditions specified in the license agreement, but the ownership of those rights is not vested with him while in case of an

³ Stephen M. Stewart, International Copyright and Neighbouring Rights, 1983, at 20.

assignment the assignee becomes the owner of the interest assigned to him. A license may be exclusive or of nonexclusive type.⁴

PROVISIONS RELATING TO PIRACY UNDER THE CURRENT COPYRIGHT REGIME

The use of technology as printing watermarks enables producers to control the use and movement of each print in the world. However, even these measures have failed to solve the problem of online piracy in India. With the costs associated with converting impressions to digital copies reduced with the advent of technology, online piracy has multiplied at a rapid pace around the world. In India, the Copyright Act 1957 protects all types of literary, artistic, musical and dramatic works, including the works of producers and directors of photography. The rise of online piracy has pushed the Indian government to take strong measures to protect the interests of filmmakers and distributors. The amendment to the copyright law is one of those measures taken by governments to combat the growing threat of online piracy in India. As stated earlier, the Copyright Act, 1957 went through a major change in 2012. The amendments basically harmonised the copyright law with the “Internet Treaties” the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) thus made the Copyright law capable of facing challenges posed by digital technologies. The Copyright Amendment Act, 2012 added new Sections 65A and 65B for protection against dodging of technological measures and protection of rights management information respectively. The provision under Section 65A sets out that any person who circumvents an effective technological measure applied for protecting any of the rights conferred in the Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine. However, this section also provides exceptions which allow third parties to facilitate circumvention, provided s/he maintains a complete record of the details of the person and the purpose for which circumvention was facilitated. The objective of this provision was to cut down the high rate of unauthorised accessing and copying of copyrighted products and digital infringement of Copyright. The amendment also provided for protection of rights management information, such as the name of the performer, copyright information or an ISBN number which is used for authentication. It states that if any person who knowingly removes or alters any rights management information without authority or distributes, imports for distribution, broadcast or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority shall be punishable with imprisonment which may extend to two years and shall also be liable to fine⁵.

INDIAN CASE LAWS ON ONLINE PIRACY

In India, Indian judiciary has actively accepted John Doe’s decision as a principle to protect copyright issues from time to time. This quickly gained popularity in Bollywood due to the prevention of unauthorized copying and piracy. The case of Viacom Motion Pictures v. Jyoti Cable Network and Ors is noteworthy in this regard. This is the case filed by Viacom Motion Pictures, producer of movie ‘Players’ against Jyoti Cable Network and other unknown cable operators restraining them from infringing their copyrights and the Court granted an interim injunction called 'john doe' order under Order 39 Rule 1 and Rule 3 of CPC, 1908. For example, the John Doe order issued by the Internet service providers of the above-mentioned courts will obtain the power and will remain bound to block websites at the request of the content owners, namely Viacom. This is without the need to validate each block of said yard. This was also meant to block entire websites instead of blocking the URL. Pretty interesting how long this block will be valid According to this decision, the court, contrary to the decision of the Bombay Superior Court in the EROS application, in which it was published to block the website in July, stated that John Doe orders they only apply to a URL or subsections of that website that may infringe or have infringed the copyright at an earlier time. Here, it is important to understand that blocking specific URLs increases the chances that piracy copies will reoccur on the same website

⁴ E.P. Skone James, et al, Copinger and Skone James on Copyright, 1991, para 1-24.

⁵ , Intellectual Property Right Beyond the Legal Perspective in Law of Copyright: From Gutenberg’s Invention to Internet, viii, Prof. A.K. Koul, Dr. V.K. Ahuja eds., Faculty of Law, University of Delhi (2001).

and ensures minimization of collateral damage. It should be mentioned here that the side effect of the John Doe order is that it has affected many times those who are not really involved in piracy or copyright activities. For example, there was a website called Mad About Movies which was only a supplier of criticism, it was even blocked. This website has had discussions about critics of movies that have even been blocked. The identity of the ISP's e-mail on the blocked websites was mandated by the Hon. Bombay Supreme Court as mandatory when John Doe's orders for movie rentals, namely Dishoom, were issued. Recently, Bollywood has enjoyed an additional benefit of about John Doe, as it began to benefit from the order of John Doe and was considered as an option to fight against piracy. The tendency to use and file petitions to seek an order from John Doe began in July 2011, when several internet service providers blocked access to file sharing, as well as an order approved by the Delhi High Court. ISPs will gain power and will be forced to block websites at the request of content owners. Here, it is important to understand that blocking specific URLs increases the chances that piracy copies will reoccur on the same website and also ensures minimization of collateral damage⁶.

EFFECTIVENESS OF LEGAL MEASURES AGAINST ONLINE PIRACY

As mentioned above, the film industry has always been a powerful lobby group in the legislative process in India, nationally and nationally. While the Indian Constitution confers legislative authority over the copyright of the Indian Parliament, the various industries of Indian regional cinema have succeeded in forcing most state legislatures to legislate on the subject of copyright via indirect paths. A number of state-level anti-piracy laws, including those that allow for the pre-trial detention of alleged perpetrators, illustrate the lobbying power of various regional film industries at the state level in this regard. But the new provisions on digital rights management show the power of the film industry at the national level. The Copyright Act (Amendment) 2012 added two provisions of the DRM. The first provision refers to the protection against circumvention of technological measures. According to this provision, if a person avoids using an effective technical measure for to protect one of the rights conferred by copyright law in order to infringe upon those rights, it will be punished by a prison sentence and it may be extended for up to two years and will also be punishable by a fine. The second provision concerns the protection of news relating to management of the rights. According to this provision, any person who knowingly removes or modifies information relating to the management of rights without authorization is liable to a fine and imprisonment of up to two years. Similar penalties are also provided for those who distribute, import for distribution, broadcast or communicate to the public copies of any work or provision without authorization, knowing that the news Rights Management has been removed or modified without authorization. The new provisions also specify that the planned criminal remedies are in addition to the civil remedies already provided by copyright law for the owners of the copyright in the said works⁷.

CONCLUSION

The protection of software is an open issue worldwide because of the reason that it is attributed with the opensource of internet, rather than having regional regulations, a global regime with stringent laws making mandatory inclusion of the countries can control the bane of the software piracy, but such proposition should be carried out irrespective of the developed and developing nations. For this reason, such step is not made by international enforcement agencies to protect the weaker. Because of internet this problem can be reduced to an extent but cannot be curbed totally and this can be done only from the regional regulations with effective laws and deterrence of the netizens, from the involvement in committing such unlawful acts. it is evidenced that legal efforts have brought software under the literary work for copyright protection and also having no contrary issues within traditional scope of owing right under intellectual property. Though a software program can get protection against piracy under patents, trademarks, designs, and trade secrets but it is accepted that copyright is the most relevant in shielding against piracy and is mostly acceptable. Though copyright can avoid piracy but because of the open world of technology, copyright is unable to give cent percent of accuracy, for this

⁶ Stephen M. Stewart, *International Copyright & Neighboring Rights*, 20, Butterworths, 1983

⁷ William Z. Nasri, *Crisis in Copyright*, 1, Allen Kent ed., Marcel Dekker, Inc., 1976.

reason other means of giving protection were researched (patents) by various countries legal systems including India, but the dynamics in the development of updated versions and feasibility of copyright scope have been examined appropriately.

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