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Copyright Issues in Cyberspace

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ABSTRACT

The world of cyberspace exists only in computer memory, but its outreach is far. It has a life. Connecting with new people, reading, researching, listening to music, uploading data, watching videos accessing public documents, buying tickets, purchase and sell things, sending mail, downloading files are just the common known activities that a normal person would do on the internet every day. The future of copyright is unpredictable and it is obvious that our present day actions would affect it in several ways which calls for more caution and precision. Copyright is a very specific bundle of rights designed to foster creativity for the public interest, rather than granting to its holders exclusive control of their works. While new frontiers opens up, the law tends to slow down a bit and lag behind and then find an appropriate resolution in good time. This article deals with the very question that whether our legislations are equipped to cop up with the exponential growth of the cyberspace and the concerns that come with it.

I. INTRODUCTION

“Hacked By #GOP,” Sony Employees were greeted by this text on their desktop screens on a 2014 November Monday Morning. GOP didn't stand for the Republican party instead represented a darknet organisation called Guardians of Peace. This was just the beginning. The entire Sony Network went dark, the malware took out half of Sony's global digital network. It scrapped 3,262 of Sony's 6,797 PCs and 837 of its 1,555 servers. Sony was sent back to the Rock and Roll age where the studio shops had to accept cash and the employees actually started using stationeries instead of electronics. Borrowing the words of Mark Twain, the worst was yet to come. It was found that the hackers had actually been inside the network for some time. They released several confidential files onto the public internet including in-progress film scripts and some unreleased movies like *Annie* and *Fury*. All these hacked mails were later published by Wiki Leaks. It would be pure ignorance to limit copyright threats to few blockbusters and leaked scripts. The blatant violations of copyrights is just the beginning of a much more pressing matter, i.e., Intellectual Property Rights (IPR) threats in the Internet.

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Connecting with new people, reading, researching, listening to music, uploading data, watching videos accessing public documents, buying tickets, purchase and sell things, sending mail, downloading files are just the common known activities that a normal person would do on the internet every day. Portraying the cyberspace as a living organism was not just a eulogy. It is ever-changing. As we feed it more information, as more people becomes part of this virtual world, the cyberspace becomes much more dynamic and unpredictable.

Our legislations are way behind in coping up with this exponential growth that we have seen over the years. This is a usual scenario. While new frontiers opens up, the law tends to slow down a bit and lag behind and then find an appropriate resolution in good time. But as the said organism is literally becoming a part of our lives, controlling us, it is high time that law finds amicable resolutions to the issues, impasses and deadlocks that the cyberspace disgorge.

II. THE BACKDROP

The origin of copyright was during the era of printing press. People who chose to pirate books using their printing presses made good profit, but was easily traced as not many people owned printing press then. So it was not recognised as a widespread infringement, Not everyone were able duplicate the works and sell it to the public. But as years went by, the advent of new technologies transformed the relationship between a copyright owner and a potential infringer. Suddenly everyone who had access to a Walkman, VCR, Tape recorder, Xerox Machines etc., were plagiarising articles, recording albums, television shows. The ease of replication has allowed anyone on the face of this planet to save and modify the very document that I'm typing if he chooses to do so and could make as many copies as he like.

Another factor would be non-degradation in consecutive replication. When the digital audio tapes (DAT) (using which anyone could make an exact copy of an audio file) were invented, the creators after being threatened by the recording industry decided to cripple the technology by not allowing second-generation recordings to be duplicated from those tapes. Also, a royalty sum had to be paid to the record companies in order to compensate for lost sales.

The ease of transmission along with the option of multiple uses is another factor. We always lend books to our friends, there is no legislation which prohibits this. Our friend can do whatever he wants with that book, he may resell it without infringing any copyright (first sale doctrine). The same can be done with the soft copies of our works that is stored in our hard drives by emailing it to a friend. However, there is a difference: we can send it without relinquishing control the original copy. Meaning, the original copy is retained in our hard-drive. The problem regarding this factor surfaces when our friend decides to share the

document on a public platform by uploading it to a network so that others could have access to it at once. Now it became difficult to keep track of the copies that exist.

III. FUNDAMENTAL COPYRIGHT ISSUES IN CYBERSPACE

1) Determination of Public and Private Use

When we move on to the copyright issues of cyberspace the most important one we should discuss is the determination of public use and private use. The petering out of the very thin line that separates public and private territories, would be a sign for new set of norms to be imparted. There are certain concepts which constantly makes the cut for debate regarding the topic for discussion. One of them is the matter of publishing.

We have already seen the articulation of how the publishing industry, both printed and digital, has made tremendous gains in the digital era. They have become so important that a whole new business is built around them and the authors and artists cannot imagine a world devoid of them. Any work, be it music, novel, article, or any other work of art can be published by the author/creator on the internet. This would just help them get away with the middleman, the publishers, a dagger into their hearts. Before digging a hole for the publishing industry we have to answer the question as to whether the act of ‘publication on the internet’ would amount to ‘publishing’. The Indian Copyright Act says, ‘publication’ for purpose of copyright means, ‘making a work available to the public by issue of copies or by communicating the work to the public.’ This definition aptly covers the electronic publication in its purview.

Also according to the Act ‘communication to the public’ means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.’ Thus it can be deduced that electronic communication is a mode of communication to the public. If this view is adopted by the courts in our country, the ISPs would be having a difficult time finding out copyright content over the Internet.

2) Distribution and Reproduction Rights

The problem of Distribution and Reproduction Rights deserves a space in this discussion. In cyberspace the distribution right gets extinguished with the first sale/upload. In the Internet, distribution and reproduction are not clearly demarcated since no copy can be distributed without reproduction, meaning reproduction of the work on every single transmission. Also caching, (Temporary copying) in which temporary copying takes place on the PC, even when

a user is merely browsing, adds to this problem. This case of temporary reproductions was a topic of debate in the World Intellectual Property Organization (WIPO) Diplomatic Conference of December 1996. In the Indian legislations, reproduced work has to be in a material form but includes ‘storing of it in any medium by electronic means.’ We still have different opinions regarding reproduction, and on its legality (be it temporary or permanent), but still it remains inconclusive.

3) Enforcement of Liability

Another significant problem in copyright enforcement is that of liability. For starters, there is the matter of liability for acts that take place during the course of transmission of a legal (different from infringed) copy of a work. It always depends upon the interpretation and angle that the judiciary gives to it. If the interpretation is that acts like reproduction, etc., during transmission stage is violation of a copyright, then fixation of liability has to be determined. Whom do we fix the liability on? Who can be held responsible? The one who initiates the transmission by dispatching the work or the one who acquire it or the Internet service provider (ISP)?

Then we have to weigh up the issue of transmission of an infringed copy of a work. The moot point is again the question of liability, who has the liability in this case, the Internet service provider or a subscriber/user because the ISP, for most part, do not know the infringement made by the subscriber/user. According to Section 79 of the IT Act, 2000, an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him. Also, the Indian Copyright Act states that the infringement or abetment of the infringement has to be made ‘knowingly’ by a person. Taking that into consideration, an ISP without any knowledge of the copyright infringement by the user (third party), may be vindicated from liability. But since Internet is global in nature and the possibility that an ISP might be punished under laws of another nation poses different questions regarding regulation. They can potentially be held liable for copyright infringement based on the secondary liability.

IV. CONCLUSION – WHAT IS AHEAD?

The world of Internet is ever evolving and dynamic. It would be a long time from now that we’d be able to see a saturation in cyberspace. The future of copyright is unpredictable and it is obvious that our present day actions would affect it in several ways which calls for more caution and precision. Copyright is a very specific bundle of rights designed to foster creativity for the public interest, rather than granting to its holders exclusive control of their works. A more palatable alternative would be to interpret fair use broadly to preclude infringement by

unharmful, non-commercial uses.

Regardless of how copyright issues are resolved, it is clear that other systems of compensation to authors can co-exist on the Internet. Service Providers offer 'live' performances, where well-known people visit chat rooms and interact with the customers. Software companies provide technical support. Free intellectual works abound on the Internet, with express indications of the conditions under which they can be copied or used. For example, this paper can be published in any form if properly credited and not sold for profit. Eventually, new forms of compensation might dethrone copyright.

Laws are presumably meant to reflect public opinion, not control it. People follow rules that they believe are reasonable. As John Perry Barlow noted in reference to encryption, "a social over-reliance on protection by barricades rather than conscience will eventually wither the latter by turning intrusion and theft into a sport, rather than a crime." People's basic concept of what is fair and equitable might best determine the future of copyright in cyberspace.
