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Digital Copyright Law: Challenges and Remedies

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ABSTRACT

There has been a tremendous change in the distribution of copyright content by internet and the digital technology. In the three-digital age, copyright owners who were controlling the markets are facing uncontrolled dissemination of copyrighted content on the internet platform. They are at large threat so the challenges in the digital domain were understood and legal and technological protection measures were developed. The United States Copyright Law is that it balances society's need for the free exchange of ideas with the intellectual property interest of authors, publishers and also copyright owners. It believes that the benefits of new technology must flow to the copyright proprietors and the public.

A copyright is basically the exclusive rights which are granted to the 'authors' under the United States Copyright Act to adapt, copy, distribute, publicly perform and display the works of authorship which can be in databases, sound recordings, literary works, musical works, photographs, motion pictures, audio-visual works and still images. The protection of rights means an assurance that not more than some copying of their works will take place once the work is being published.

In this research issues, challenges and the main legal and technological measures are dealt with. This research describes the legal and technological measures which are currently available for protecting the copyright owners or creators work. The research paper attempts to distinguish the internet from the traditional venues of the copyrighted material and at the same time, it suggests protection and remedies for the work of the owners and the creators.

I. INTRODUCTION

The advancement of digital technology has opened up a wide horizon in various fields like entertainment, advertisements, media, education, communication, etc. the human mind has brought about a lot of creation in these fields. Now all the materials are easily assessable on the internet as a result the infringement of copyright has become a great concern. All work can be digitalized whether they comprise sound, texts, images or diagrams. Once digitalized they can be merged, manipulated, transformed or mixed to give a variety of new work. Intellectual Property Right is the rights which a creator possess for his artistic works and literary work.

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With the development of technology, the area of law which has been evolved is Intellectual Property Right. In Intellectual Property Right, Copyright is very important. Nowadays computers and communication technology has increased to a large extent that it has given rights to the digital economy. Some qualities of the digital medium have given rise to challenging legal issues so Intellectual Property Rights has come to be recognized as a very important tool for economic dominance.

With the advancement of digital technology, it has become very easy to replicate copy and sell the hard work of copyright owner without taking his consent. The detection of this is very difficult and has caused a great threat to the right of the creators or the owners.

II. CHALLENGES FACED BY DIGITAL LAW IN COPYRIGHT

The most common challenges faced by digital law in copyright are²:

1. Social Media

Nowadays the social media is the best platform for connecting people nationally and internationally. On this platform works of people are being shared which maybe copyrighted. There is a practice of sharing materials like photographs, write ups, thoughts, etc. in social media which has resulted in a lot of infringement of copyrights. The violation of copyright on the platform of social media is of the form of.

- The works which are protected under Copyright Law are reposted and shared with others.
- The rights of creations of the protected work of the other person are reposted and claim to be theirs.
- Without taking permission from the owner the content of the other person available in the social media platform is used.

2. Multimedia Work

Now when we use the term multimedia it involves many categories of materials that is graphics, text, sounds, images, audios, videos, etc. In multimedia also copyright protection is given under the subtopics that are dramatic (plays), literary (software program), photographs, cinematographic films (films or videos), artistic (images) and sound recording (musical work). Under the ambit of multimedia, a large number of rights are given to copyright owners. It has become very difficult to protect the owner's copyright and the rights of creators. In India, the

² "Copyright in the Digital World – Selvam & Selvam," available at: <https://selvams.com/blog/copyright-in-the-digital-world/> (last visited June 19, 2021).

law distinguishes between different classes of work in matters of rights. For example, the rights of the cinematographic film are different from rights and literary work. The literary work does not have the rental right but the cinematographic film³ has rental rights.

The multimedia involves a large amount of violation. They are:

- Distributing products of multimedia apart from the ones which are used for education.
- Selling and dubbing multimedia products without taking permission from the creator or the owner.
- The artistic work and literary prints are taken without the permission of the creator.

3. Software

Computer software consists of a large number of computer programs, documentation procedure which performs tasks on a computer system. The piracy of software is a major reason for copyright violation. The piracy of software involves renting software, dubbing a copy and selling it, etc.

4. Copyright and Internet

It is been observed that the internet has been a major threat to copyright. The information which is available on the internet is so wide that it is very difficult to determine whether the work is the original protected work or it is a duplicate work.

- The process of hot-linking violates the copyrights of the owner as it involves displaying the image on the website by connecting it to the website which is hosting that image.
- The video and audio files through companies are copied this involves Peer to Peer file sharing. This generally happens in the music which is digitalized and this also is a violation of copyrights.

III. HONEST DEALING IN THE DIGITAL ENVIRONMENT

No person's human rights must be cut down as it is the right of the owner or the creator to have his work protected. So therefore honest dealing has been evolved in copyright.

- As per Article 9(2) of Berne Convention⁴, 1883, it is in the matter of Legislation in the countries of the Union to allow to reproduce work in some cases provided there is no

³WIPO Document No. CRNR/DC/4

⁴Stewart S.M, *International Copyright and Neighboring Rights*, 2nd ed., 1989

difference of opinion in reproduction with the normal exploitation of the work and it is not justifying the author's interest.

- Article 13 of the TRIPS Agreement confines members to the limitations or exceptions to exclusive rights in some certain cases which is not having a difference of opinion with the normal exploitation of work and is not reasonably prejudiced against the legitimate interest of the right holder.

Internationally different countries have different laws regarding the copyright exception.

- Section 52 of the Copyright Act, 1957⁵ of India has laid down provisions regarding Acts which does not constitute copyright violation.
- The European Directive, 2001/29/EU laid down a list of optional and compulsory exceptions and the European Union Directive 2012/28/EU provides for principles of works of unidentified owners.
- United State, copyright expression is known as fair use. Which is mentioned in section 107 of the Copyright Act, which says that fair use of copyright does not mean infringement.

Some acts which are not considered as Digital World Infringement are:

- A teacher using YouTube video's to explain certain concepts while teaching in the class to make the concept more clear.
- The journals of Universities website or library is being used for clarification of doubt or for research work.
- For the purpose of studying, research is being conducted and copies of the material are made available on the internet.
- Backup copies as temporary protection are made on the Hard Drive to prevent destruction, damage or loss.
- Publication of speech delivered in public or any electronic report of institution or committee established by an Act of State or Central Government.

As per the case of Super Cassette Industries Ltd. V. Yahoo Inc. and Anr⁶, the suit for permanent injunction were restraining the infringement of copyright caused by streaming of unlicensed Super Cassette Industries Ltd.'s copyright work on the Yahoos portal. The refuge was taken by

⁵Act XIV of 1957

⁶CS (OS) 1124/2008

Yahoo under the Digital Millennium Copyright Act (DMCA) saying that they would remove the infringing material if the copyright owners notify it, which is not applicable in India. The Court passed an order which restrained defendants and its officers, agents, representatives and servants from adapting, reproducing, distributing or transmitting in any way on their website or infringing in any way the sound recording, cinematograph films and also underline the musical works of the plaintiff or literary, in which plaintiff claims the copyright without getting appropriate licenses from the plaintiff.

IV. REMEDIES OF DIGITAL COPYRIGHT

To ensure the rights and interest of creators or the owners some remedies have been made which are:

1. Blockchain Technology

This technology is a system of recording any information in such a manner that it is very difficult to change, cheat or hack the system. It is the digital ledger's transactions which is duplicated and distributed across the computer systems network on the blockchain. This is a decentralized public ledger which records peer to peer transaction. In every transaction that takes place, a record of the transaction is being made in every participant's ledger is uniquely signed or identified. This is considered the best method to resolve copyright problem in the digital domain.

2. Encryption Schemes

Encryption Schemes allows the owners or creators to prevent any unauthorized access to their original work. It involves digital scrambling of bits which makes up to prevent the content from being observed clearly until it has been decrypted. Authorized users only have the key to decrypt the work.

3. Digital Watermarks

This is another method to protect the creator's work of copyright. It helps to verify the authenticity and integrity and also show the identity of its owner, which prevents it from duplication.

The Copyright Act, 1957 has provided remedies against copyright infringement are:

- a) **Civil Remedies:** These remedies provide for injunctions, delivery, rendition of accounts, damages and destruction of infringing copies and also damages for conversion.

- b) **Criminal Remedies:** These remedies provide for fines, seizure of infringing copies, imprisonment and delivery of infringing copies to the owners.
- c) **Border Enforcement:** It provides for the prohibition of import and destruction of imported goods that infringe the copyright of the person with the assistance of the customs authority of India.

The Copyright Amendment Act, 2012 has brought many changes to prepare for ground for copyright protection in the digital domain which are:

- Exceptions that were applicable only in relation to certain types of work has now been made available in all types of work.
- The fair dealing exception is extended to reporting of current events, a lecture delivered in public. Storing of any work in electronic medium for private or personal use for research, criticism or review will not be considered as an infringement.

V. INTERNATIONAL TREATIES PROTECTING COPYRIGHT IN DIGITAL DOMAIN

Many International Organizations like World Intellectual Property Organization is playing a very important role in checking against infringement of copyrights in the digital domains.

(A) World Intellectual Property Organization Performance of Phonogram Treaty, 1996

In this treaty, two kinds of beneficiaries of the digital domain are dealt with.

- The Performers are singers, actors, musicians, etc.
- The producers of phonogram are people or legal entities who are taking initiatives and also are having the responsibility of fixation of sounds.

This treaty grants the economic rights and moral rights to the performers in their performances fixed in phonograms which are the rights of distribution, making them available to the public, reproduction and renting.

(B) World Copyright Treaty, 1996

This agreement is under the Berne Convention, 1885 dealing with the protection of works in the digital domain. Apart from rights recognized by the Berne Convention, 1885, three economic rights were granted which are:

- Right to distribution
- Right to rental

- Right to communication to the public

This treaty gives assurance of protection of any digital world work for a long period. It deals with two subject matters which are protected under Copyright Law and they are Computer Programs and compilation of material (databases) or data.

VI. INDIAN SCENARIO

There are many techniques that have been developed to protect original work like Blockchain Technology, Encryption Schemes, Digital Watermark, etc. Even though these techniques have been incorporated in the legislation for regulation and protection of original works in the digital domains yet the goal has to be achieved.

Under the Copyright Act, 1957 the Copyright in India is protected. From time to time many amendments have been made to suit the requirements of the society and also to ensure the protection of the work of the creators. The Copyright Act, 1957 aims at protecting the works of owners and the creators. The Copyright Amendment Act of 2012 provides provisions for:

- Protection of the Copyright in work in the digital domain
- Penalties which are awarded against the infringer, liability of service providers of internet, rights of management information and introduction of statutory licenses for cover version and broadcasting organization.
- Ensuring proper distribution of royalties amongst the owners of the work and creators.
- Creating exceptions to certain acts which will not amount to infringement.

Section 52 of the Copyright Act lays down certain acts falling under the heading of Doctrine of Fair use. The judiciary of India has also played an important role in protecting the owner's rights of the copyright in the digital domain. The Acts allow the Indian law in fair dealing with musical, dramatic, literary or artistic work excluding computer program for private and personal use for research review or criticism.

As per the case of *Chancellor, Master and Scholars of the University Of Oxford and Ors. V. Rameshwari Photocopying Services and Anr*⁷, Court analyzed the legality of copying extracts from the books. As per Section 52 of the Indian Copyright Act using/distributing/reproducing copyright work without paying to the copyright holder is permissible and it is an essence of 'fair dealing'. But the Court passed an interim injunction which restrained Rameshwari Photocopying Services and Delhi University for reproducing substantial extracts of the works

⁷CS (OS) 2439/2012

of Cambridge University Press, Taylor and Francis and Oxford University Press which had launched legal suit on making course material by photocopying was not considered under the fair dealing for the purpose of research or private use.

The case, *New Delhi Television Ltd. V. ICC Development (International) Ltd and Anr*⁸, deals with the usage of footage of cricket matches by NDTV which consists with the principles of fair dealing expected under section 39(b) and section 52(1)(a)(iii) of the Copyright Act. The Court held that the TV channels have two options that are they can either put it on air, an advertisement which is targeted during the special programs and not to use the footage or choose to use the footage but does not put it on the air any advertisements. Even broadcasters or organizers had the discretion to give something to the TV channels in accordance with the guidelines of ICC, anything which was restrictive in the guidelines and distort the principle laid down would not be protected under the law. The footage used by the TV channels would be strictly in accordance with the principles or they will have to purchase the footage legally from the authorized broadcaster or ICC.

Section 53 of the Copyright Act deals with the Strengthening of border measures. It deals with the importation of infringing copies which has been substituted with a new section giving detailed border measures to strengthen enforcement of rights by making provision to control by the customs department the import of infringing copies, disposal of infringing copies and presumption of authorship under civil remedies.

Section 57 of the Copyright Act recognizes moral rights of the work of the author that is:

- Right to claim work of authorship
- Right to restrain or claim damages in respect of mutilation, distortion, modification or other act in concern to the said work if mutilation, distortion, modification or other act is prejudicial to his honour or reputation. The right against distortion is available even after the expiry of the terms of copyright.

Section 65A of the Copyright Act deals with the protection of technological measures [TPM] used by a copyright owner to protect his right to the work, makes circumvention of it a criminal offence punishable with imprisonment. Due to this any person who circumvents an effective technological measure applied for the protection of any of the rights with the intention of infringing the rights shall be punished with imprisonment, extending to two years and will be liable to a fine. This is to prevent the possibility of a high rate of digital piracy in the digital

⁸FAO (OS) 460/2012

domain.

Section 65B of the Copyright Act deals with digital rights management information. It has been introduced to provide protection of rights management information. The intention of this amendment is to remove rights management information without authority and distributing any work, fixed performance or phonogram, after the removal of rights management information. Due to this any unauthorized and intentionally removing or altering any information regarding rights management is a criminal offence which is punishable with imprisonment which is extending up to two years is also liable to fine and also liable to fine. The technological measures to protect the copyright of the owner or creator and the rights management information was introduced in WCT⁹ and WPPT¹⁰ as effective measures to prevent violation of the copyright in the digital domain.

Section 65A and section 65B were introduced with the intention to help the music, film and publishing industry in fighting piracy.

India is a member of the Berne Conventions and the Universal Copyright Convention. The GATT Negotiations gave rise to Agreement on Trade-Related Intellectual Property Right [TRIPS]. It included provisions regarding the protection of computer software and databases under the Copyright Law. Under the provisions of the Copyright Act, 1957, the Indian Intellectual Property Right for computer software is dealt with. Many amendments were made to Indian Copyright Law introduced in 1994 which came into effect on May 10, 1995. This Copyright Act in India for the first time clearly explain the rights of the copyright owner, the position of software rental and also the rights of users to make backup copies. Heavy punishments and fines were imposed for the infringement of software copyrights¹¹.

VII. CONCLUSION

The Indian Copyright law is equipped with a large number of new challenges posed in the digital domain and new provisions have to be included from time to time to solve the issues. The Copyright Act has to be amended to make it compatible with WCT. Many efforts have been made at the national and international level to overcome the infringement of copyright of owners and creators. They have tried to ensure the protection of copyrights of owners in the digital domain but still, efforts are been made to erase it completely. The Intellectual Property Right is not much known by the people of India due to the high illiteracy rate. They do not have the

⁹WIPO Publication No. 226(E)

¹⁰WIPO Publication No. 227(E)

¹¹Rao, Siriginidi Subba. IPR in the ensuing global digital economy. *Library HiTech*, Vol. 19(2), 2001, pp. 179-184.

knowledge about the patents, copyrights, etc. so government must organize programs from time to time to familiarize the people with these concepts.

To hope that the copyright protection of the author or the creator is logical as there have been many storms. To expect that there will be no change in the copyright legislation is very impractical. The industries must adapt the copyright laws in the digital domain.

At the National level, there is the need to bring awareness among the people and also to recruit train enforcement agencies and develop a proper mechanism to prevent infringements. At the International level, there must be provisions and principles under the international treaties and conventions to ensure the effective management for the protection of copyright in the digital domain.
