

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 6 | Issue 2

---

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Digitalization of Copyright: Remedies on Infringement

---

DR. CHANDRIKA MEHTA<sup>1</sup>

## ABSTRACT

*The digitalization of creative content poses a more serious threat to copyright law than did earlier episodes of technological advancements. A particularly significant aspect of that challenge is that digital technologies continue to increase the ways in which individual can consume and enjoy creative works-for example, by “ripping” music files from a CD to store on a computer or portable music device- despite the fact that copyright law does not explicitly permit those uses without authorization of the copyright owner. At the same time, advancements in digital technology provide copyright owners with growing capacity to either restrict or charge for subsequent use of creative work. Furthermore, copyrighted works in digitalized form can be flawlessly and inexpensively be copied, reproduced and instantaneously be distributed worldwide.*

*The present paper seeks to study, observe and analyze the changing contexts of digital world vis-à-vis copyright laws. The research is further devoted to the study of the Indian scenario as regards applicability of copyright law to the digital world. The Copyright amendment Act, 2012 has introduced significant changes with regards to the copyright law and internet. The same is reflected through this research paper. Apart from the studying the Indian position, emphasis has also been laid on systems prevalent in the global world of intellectual property rights, dominated by WIPO treaties, various international conventions and the likes of it. The researcher aims to obtain certain objectives through the conduction of the present research so as to have a broader perspective of the subject and recent developments in law.*

*The research is limited to the study of internet work and copyright laws. The present work deals with issues of copyright over internet work, for instance, excessive and unlimited use of materials available over the internet such as research studies, songs, works of art etc... Furthermore, the research also deals with the remedies available on such infringement and contains suggestions as regards the same. An attempt has been made to take into account the laws of a few other countries on the subject and a comparative analysis of the same with India.*

**Keywords:** *Copyright infringement; internet; law.*

---

<sup>1</sup> Author is an Assistant Professor at Bennett University, India.

## I. INTRODUCTION

The term ‘information’, in its most loose sense, may be defined as systematically arranged data which is available in a synchronized form and exists in a relatable context. Conceptualizing certain patterns in information and making out distinctive relations among them, thus understanding the patterns can be said to be knowledge.

The concept of ‘information’ has significantly changed in the modern digitalized world. The belief that we stand on the threshold of a new stage of human existence, best described as an information society or the information age, has become almost universal<sup>2</sup>. Information is probably the main commodity of the emerging digital economy, and it is commonplace to say that information is the new petroleum of our societies<sup>3</sup>. Absence of the same is detrimental to a pragmatic, dynamic or progressive society. Accordingly, the construction and development of “information society” has been put forward as a major task in the coming decades. The edification/culture/world of a global information infrastructure is underway.

With rapid technological advancements, acquisition of information has become the buzz word. This entire world of ‘information society’ or ‘global information village’ is often referred to as ‘*Digitalia*’, in the present age of information technology. The petroleum of *Digitalia* is information, and the information is everything that can be digitized. The information could be a free good like oxygen. The founders of cybernetics, namely, Wiener<sup>4</sup>, have argued that the free flow of information is of vital interest to human societies. The digital revolution could be of unprecedented contribution to this ideal.

However, it must not be forgotten that with certain benefits, come certain obscurity/complicatedness. While relating to the technological advancements, we must also be aware of, and accustomed to, the demands of cyber world. For information owners, a technologically self-ruled cyberspace could be nothing but an anarchist vision. The concept of property comes into play and has a major role to play in the modern digitized world. Rapid technological progress in information technology poses new issues in copyright law. Today, a digital file can be copied and instantaneously be distributed worldwide, through the internet, thus, potentially depriving the copyright holder of revenue from licensed sale. As digital processing grows more powerful and high-speed, distribution of digital content becomes more

---

<sup>2</sup> Burell Robert, *The Information society: chances and challenges*, compiled by Heath, Sanders, Intellectual Property in the digital age: Challenges for Asia, p.3

<sup>3</sup> Pereira A, ‘*Copyright issues of techno-digital property*’, compiled by Heath, Sanders, Intellectual Property in the digital age: Challenges for Asia,

<sup>4</sup> Wiener, *Cybernetic or the control or communication in the animal and the machine*, 1948

pervasive, the debate over copyright issues is likely to intensify.

The ability of law to deal with this brave new world of electronic communications was questioned ever since the evolution of the technological world. 'Cyber-Ethics' has often been considered as a question of vital significance so far as it relates to the law on the subject. But in this process, something else is happening. The question is not only of enforcing traditional rights in the digital environment. Law in the technological world went further and deeper. The purpose of constructing an information society has served to create new legal forms of private and public appropriation of information. The question of whether there would be room left in the "brave new world of technical systems", or whether it could be "unimportant on the internet"<sup>5</sup> seems to have been answered already. The fact is that internet is a global marketplace.

The digitalization of creative content poses a more serious threat to copyright law than did earlier episodes of technological advancements. A particularly significant aspect of that challenge is that digital technologies continue to increase the ways in which individual can consume and enjoy creative works—for example, by "ripping" music files from a CD to store on a computer or portable music device—despite the fact that copyright law does not explicitly permit those uses without authorization of the copyright owner. At the same time, advancements in digital technology provide copyright owners with growing capacity to either restrict or charge for subsequent use of creative work. Furthermore, copyrighted works in digitalized form can be flawlessly and inexpensively be copied, reproduced and instantaneously be distributed worldwide.

Several interests of various persons have been protected under copyright, concerning the digital world, such as individual creators, copyright owners, and users, service providers, computer software, music, broadcasting, electronics and the like. The emerging digital law is supposed to serve the creation of information society. Nevertheless, it can reasonably be said that in this emerging digital law, it is of greater importance to begin with establishing property rights in Digitalia. In short, to clarify, who owns what in cyberspace, in particular who owns information? Technological changes are placing new strains on copyright law today, and it must cope with the demands of the present day 'E-world'.

It is understood that a common search for technical measures to protect works and to provide the necessary information on rights are essential insofar as the ultimate aim of these measures is to give effect to principles and guarantees laid down in law. It means that technological protection measures and information management systems are not meant to create a sort of

---

<sup>5</sup> See Vinje, EIPR 1996, p. 431; Schlachter, BTLJ 1997, p. 15

technological or digital property<sup>6</sup> that would grant right holders more power than recognized by copyright law.

The present paper seeks to study, observe and analyze the changing contexts of digital world vis-à-vis copyright laws. The research is further devoted to the study of the Indian scenario as regards applicability of copyright law to the digital world. The Copyright amendment act, 2012 has introduced significant changes with regards to the copyright law and internet. The same is reflected through this research paper. Apart from the studying the Indian position, emphasis has also been laid on systems prevalent in the global world of intellectual property rights, dominated by WIPO treaties, various international conventions and the likes of it. The researcher aims to obtain certain objectives through the conduction of the present research so as to have a broader perspective of the subject and recent developments in law.

The research is limited to the study of internet work and copyright laws. The present work deals with issues of copyright over internet work, for instance, excessive and unlimited use of materials available over the internet such as research studies, songs, works of art etc...

Furthermore, the research also deals with the remedies available on such infringement and contains suggestions as regards the same. An attempt has been made to take into account the laws of a few other countries on the subject and a comparative analysis of the same with India.

For the sake of clarity and convenience the paper has been divided into several distinct heads which have been discussed in detail.

## **II. COPYRIGHT: AN OVERVIEW**

Copyright is an intellectual property right granted to a person for original work of authorship in various works of art, literature, dramatic, musical work and the likes of it. It refers to the bundle of rights vested in the owner. Ever since the origin of copyright laws, its scope has been widened to include not just literary or artistic works but several other rights too. Moreover, in present times, the global world of information technology calls for more and to some extent has been brought within the domains of copyright.

Copyright, as an intellectual property right is gaining much significance with changing times. The conferment of such right on a person is a moral boost for creation of good, commendable and original work. It is essential and instrumental in the development of an individual as a person of appreciable intellect, the society and most importantly, a nation, for it is through the works of an author that the nation is credited with being the producer of brain power. The

---

<sup>6</sup> On the so-called "digital property rights" see Stefik, BTLJ 1997, p. 137

enrichment of the national cultural heritage depends directly on the level of protection afforded to literary, dramatic, musical and artistic works, cinematograph films and sound recordings<sup>7</sup>. The higher the level, the greater the encouragement for authors to create, the greater the number of a country's intellectual creations, the higher its renown; in the final analysis the encouragement of intellectual creation is recognized as one of the basic pre-requisites of all social, economic and cultural development<sup>8</sup>.

The scope of copyright laws has been expanded to newer dimensions. One reason that can be attributed to the fast and significant development of copyright laws is the rapid technological growth. Advancements in technology poses challenges, and therefore, need to be brought within the sphere of copyright laws, and need to be dealt with.

#### **(A) Origin/historical background/development of copyright laws:**

The contemporary copyright laws are a result and outcome of a long evolutionary process that originated with the invention of the printing press<sup>9</sup>. Following Gunterberg's invention of printing press in 1436 in Germany, the necessity of protecting printers and booksellers was recognized there<sup>10</sup>. Gradually, and with the passage of time, copyright assumed greater importance, and significant developments took place.

The first copyright law was passed in 1709, in the United Kingdom, and came to be known as the Act of Queen Anne. The Act laid down three basic rules<sup>11</sup>:

- Firstly, the authors of books not yet printed were to have sole right of printing for 14 years from the date of publication. After the expiry of the term of 14 years, the sole right of printing returned to the author, if then living, for another term of 14 years.
- Secondly, infringers would forfeit the infringed books found in their custody, and pay a fine of a penny for every sheet. Half went to the crown and the other half to the plaintiff or any person who sued for it.
- Thirdly, no suit could be brought unless the title of the book had been entered before publication in the 'Register Book' of the Company of Stationers.

Subsequently, the Copyright Act, 1911 was enacted which repealed some twenty legislations on the subject. The Act of 1911 also abolished the copyright common laws.

---

<sup>7</sup> Ahuja V K, '*Intellectual property rights in India*', Lexis Nexis Butterworths Wadhwa, Nagpur, Vol I, 2009

<sup>8</sup> Ibid

<sup>9</sup> Makeen F M, '*Copyright in a global information society: The scope of copyright protection under international, US, UK and French law*', Kluwer Law International, The Hague, Vol 5, 2000

<sup>10</sup> Ahuja V K, '*Intellectual property rights in India*', Lexis Nexis Butterworths Wadhwa, Nagpur, Vol I, 2009

<sup>11</sup> Ibid

In the United States, the Copyright Act was enacted in 1790, and was much influenced by the English system.

India had its first copyright law in the year 1847, and came to be known as the Indian Copyright Act, 1847. The Act passed by the Governor-General of India affirmed the applicability of English copyright law to India<sup>12</sup>. Subsequently, Act of 1847 was replaced by Acts of 1911, 1914, and 1957.

### **(B) Subject matter of copyright:**

Considering the Indian legal system and the Indian Copyright Act, 1957, copyright, as a right subsists in original works. Section 13 of the Copyright Act, states these works to be as understated:

- Original literary, dramatic, musical and artistic works;
- Cinematograph films; and
- Sound recordings

However, copyright shall not subsist in any work, other than a work to which the provisions of section 40 or 41 apply<sup>13</sup>, unless:

- In the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was, at the time of his death, a citizen of India;
- In case of an unpublished work, other than a work of architecture, the author is at the date of making of the work a citizen of India, or domiciled in India; and
- In the case of a work of architecture, the work is located in India.

The said section stipulates that the right is a creation of statute and there can be no right found to exist beyond/outside the provisions of the Act.

### **(C) Objectives of copyright:**

Copyright law has several objectives. Some essential and central objectives of such a law may be stated as:

- To reward the authors of original works of art, literature ,drama and the likes of it, as being a subject matter of copyright.

---

<sup>12</sup> Kala Thairani, '*How copyright works in practice*', Bombay, 1996,p.2

<sup>13</sup> Section 13(2), Copyright Act, 1957

- To confer certain rights upon the owner of copyright works.
- To encourage, promote and applaud such works
- To ensure protection to the owner over such works as a matter of his rights.
- To promote human intellect through exhibit of such works.
- To make available the copyright material to the public.
- To strike a balance between the interests of copyright owner and society at large.

#### **(D) Nature of copyright:**

As stated above, copyright is an exclusive bundle of rights over a wide range of works ranging from literary and artistic works to cinematographs etc...It is an intangible right which is vested in the owner/creator of such works. It is also a negative right in the sense that it confers upon the owner, the right to exclude others from making use of his work. However, copyright for works cannot be granted for a lifetime. They can be protected only for a certain period of time, on the expiration of which the work passes into the 'public domain, i.e., it becomes public property and can be accessed by the society without any hindrance. The exclusive rights in copyrighted work for a limited period, thus serve public interest.

With the advancements in technology, certain other rights have also come to be recognized as being 'neighbouring rights' or 'related rights' to copyright. Broadly speaking, there are three main and distinct rights that come under this category –

- Rights of performing artists in their performances;
- The rights of producers of phonograms in their phonograms;
- The rights of broadcasting organizations in their radio and television programmes

It can therefore be said that the nature and scope of copyright as a right is wide enough to include within its ambit, a variety of rights, keeping consonance with the recent technological advances in the fast changing world.

### **III. THE INTERNET**

The 1980s and 1990s saw the digital revolution sweeping the world and the advent of internet over the World Wide Web. The internet is an invention and a wonderful gift of science and, the most astonishing example of technological innovation. Internet is a global network of interconnected computers and computer networks. . It is the fastest growing communication phenomenon of all time. Generally, for computers over the internet to communicate, a standard



protocol must be followed. In case of internet, this protocol is called TCP/IP or Transmission Control Protocol/Internet Protocol. It is essentially a set of two communication protocols that an application program can use to package its information for sending across the internet<sup>14</sup>. The TCP/IP is a collection of application protocols for performing tasks such as e-mail, file transfers, and terminal emulation<sup>15</sup>.

The World Wide Web (www) is the fastest growing multimedia-ready subset of the internet<sup>16</sup> is a system of linking millions of documents on thousands of computers together across the internet using HTML or hypertext links<sup>17</sup>. In simple terms, it is a type of data service running on many computers on the internet. These computers have a type of software that allows text and graphics to have cross links to other information stored on other web servers thousands of miles away. The internet comprises not just of the World Wide Web, but also search engines and various facilities such as gopher, telnet, e-mail, etc... gopher service allows user to access information over internet through text oriented menu. Telnet is a way to allow the user internet access and also to a remote computer. Electronic mail, better known as E-mail is a point to point communication as in it allows user to communicate freely and most effectively.

The internet has a wide network of services available. It is one of the most useful, most informative tools in the present age. It has brought about a digital revolution in the world of communication technology and has made easier the task of communication by making it faster, cheaper and convenient.

#### **(A) Legal issues and the internet:**

Every good thing must have its negative implications too. Man can use as well abuse his own invention for his own selfish motives. So is the case of internet. The advent of internet has raised and brought into picture, a host of legal issues. Since it allows the free flow of information, it has made easier the task of copying, manipulation, storage, distribution etc...

More specifically, while dealing with copyright, it has been used to challenge the traditional concepts of copyright such as moral rights, individual's rights and the enforcement thereof.

One of the foremost issues that calls for attention is the protection of databases under copyright law. Database is a collection of data arranged in a systematic way to allow for the easy and

---

<sup>14</sup> Gringras C, '*the laws of the internet*', Butterworths, London, 1997 at p.2

<sup>15</sup> Makeen F M, '*Copyright in a global information society: The scope of copyright protection under international, US, UK and French law*', Kluwer Law International, The Hague, Vol 5, 2000, at p.281

<sup>16</sup> Ibid, at p.283

<sup>17</sup> Terett A, "A lawyer's introduction to the internet", in '*Law and the internet*', L. Edwards and C. Waelde, eds., Oxford, Hart Publishing, 1997, at p.19

efficient retrieval of information. It is usually in an electronic form<sup>18</sup>. Database can generally be looked at as being a collection of *records*, each of which contains one or more *fields* (i.e., pieces of data) about some *entity* (i.e., object), such as a person, organization, city, product, work of art, recipe, chemical, or sequence of DNA. For example, the fields for a database that is about people who work for a specific company might include the name, employee identification number, address, telephone number, date employment started, position and salary for each worker. In principle, the facts themselves cannot be protected but the order and organization can, if they show a certain level of creativity on the part of the author. When referring to databases it is necessary to distinguish between creative and non-creative databases because each is dealt with under a different set of legal rules. According to Lord Atkinson, for the subsistence of copyright, 'it is necessary that labour, skill and capital should be expended sufficiently to impart to the product some quality or character which the raw material does not possess and which differentiate the product from the material<sup>19</sup>.

#### IV. COPYRIGHT AND INTERNET

Internet has no doubt created a different world of its own for the society and has benefited us, in this age of information technology in a more promising manner. It comes with vast information on different subject matters, it provides entertainment, it educates, it provides a platform to interact with the world and it enables a person to develop and progress in all spheres of life. Technological progress has exacerbated conflicts over control of copyrighted works. The allocation of rights between copyright owners and consumers over subsequent uses of creative works, always a relatively indeterminate area of copyright law has become even more unsettled as a result of digital technology. Advances in digital technology have increased the potential gains that either copyright owners or consumers might realize from exercising control over subsequent uses of legally acquired copyrighted works in digital form<sup>20</sup>.

However, internet services have been misused ever since we have been introduced to them. Internet has served as a platform to display talents, but the same has been found to be distorted the most. Copyright owners perceive internet as a threat to their exclusive rights on account of various obvious reasons, few of which are:

- Wide distribution of copyrightable material has been made so much more easier through the massive use of internet services

---

<sup>18</sup> <http://www.oznetlaw.net/FactSheets/DatabaseProtection/tabid/930/Default.aspx>

<sup>19</sup> Macmillan & Co. Ltd v Cooper, (1924) 40 TLR 186 at p. 188

<sup>20</sup> Nathan Musick. 2004. "Copyright issues in digital media" Congress of the United states, Congress Budget Office

- Distribution to mass audience is made possible and can be done in seconds
- Sometimes, one cannot distinguish the copy from the original work
- It is most cost efficient, in fact it won't be exaggeration to say that it is costless
- Work can be easily disseminated on the network through a number of channels/ways

Copyright infringement has become a commonplace on internet, since it is easier, takes less effort and is difficult to tackle and keep track of, as an offence. Almost all information including songs, movies, pictures, other musical works, software, multi-media works etc., is a subject matter of copyright. All the above mentioned can be easily accessed by downloading the same and can be altered and distributed as one desires.

#### **(A) Infringement of copyrighted works on internet:**

As discussed above copyright infringement on internet is very common and frequent. People may do it for certain reasons. They may take advantage out of a situation by making use of copyrighted material in such a manner as to cause harm to the reputation of the original author of the work and making commercial gains. Sometimes, it may happen that there are no malicious intentions when a person copies a work for their own use, however, it still, is a violation of the copyright law.

The most intricate task of all is to establish whether data transferred through the networks is 'copied', so as to bring it well within the ambit of copyright law. Moreover, it is also to be established that the copyrighted work exists in the network and whether the digital copy could actually be considered as the original copy. Copyright infringement in cyberspace may be categorized as:

- Posting or uploading of materials on websites
- Linking
- Framing
- Caching; and
- Archiving<sup>21</sup>

#### **(B) Posting or uploading of materials on websites**

Uploading or posting other's work on the internet without prior permission/consent of the author is violation of copyright. For instance, uploading and exploitation of musical works on the

---

<sup>21</sup> Supra n. 9 at p. 337

internet is the most common copyright infringement. Again, there can be different ways of doing this. It can be done through ‘webcasting’, whereby, a broadcaster transmits programmes of his own choice to be received in “real time” by public geographically dispersed. Moreover, there are interactive services whereby musical works are made available through websites. Musical works can be easily downloaded, copied through a process known as Musical Instrument Digital Interface (MIDI), which allows musical work to be stored on computers. The work in the form of a sound file is consequently uploaded to a computer host or number of computer hosts to be made accessible to the public<sup>22</sup>. Hence in this manner, one can download songs and other musical works from the World Wide Web. Because Frena supplied a product containing unauthorized copy of copyrighted work, he has violated the distribution right. Moreover, because Frena, publicly displayed Playboy’s copyrighted photographs to the subscribers, he violated the display right. The court concluded that Frena was liable for direct infringement though Frena himself never placed infringing material on BBS and despite his arguments that he was unaware of the infringement, he was liable. In *Sega Enterprises Ltd. V MAPHIA*<sup>23</sup>, the court granted permanent injunction against the defendant, which was a BBS operator and has solicited the uploading and downloading of plaintiff’s videogames on to the BBS. The downloading of videogames was allowed either in exchange for the uploading of videogames or payment. While holding the defendant liable, the court observed that the defendant had knowledge of the infringement and encouraged infringement knowingly and also derived a profit<sup>24</sup>. In *Playboy Enterprises Inc v Webb World Inc*<sup>25</sup>, while holding the Webb World liable, the court held that vicarious copyright infringement arose where a defendant had a direct financial interest in the infringing activity and the right and ability to supervise the activity<sup>26</sup>. In *Religious technology centre v Netcom online communication services Inc*<sup>27</sup>, however, the Court required something more than mere creations of the forum in order to impose liability. In this case, Netcom subscriber posted some copyright material of Religious Technology centre on the bulletin board without its permission. The Religious Technology filed a suit against the Netcom, and Internet Service Provider, BBS operator and the Netcom subscriber for the alleged infringement of its copyright. The court did not hold the Netcom and the BBS operator liable of the infringement of copyright as neither of them had performed any affirmative conduct except for providing access to the internet and thereby, to the news group on BBS. The court also

---

<sup>22</sup> Supra n.14 at p. 284

<sup>23</sup> 857 F Supp 679 (ND Cal 1994)

<sup>24</sup> Ibid, p686-87

<sup>25</sup> 986 F Supp 1171 (ND tax 1997)

<sup>26</sup> Ibid, p 1176-77

<sup>27</sup> 907 F Supp 1361 (ND Cal 1995)

observed that the direct copyright infringement needed the presence of some element of violation and causation and that condition did not exist in that case as Netcom was merely creating, storing and transmitting copies of material posted by third party<sup>28</sup>.

## **V. BRACING UP WITH INTERNATIONAL TREATIES: AMENDING THE INDIAN COPYRIGHT ACT**

The Indian Copyright act, 1957 is one of the oldest Intellectual Property legislations in the country. The act has been amended four times. The year 1994 saw the most extensive amendment to the Act, wherein the digitization of works on the internet was an important phase of amendment.

The Copyright (Amendment) Act, 2012, introduced amendments to harmonize the existing legislation with the ‘Internet treaties’<sup>29</sup>. The Digital Rights Management provides for an effective protection for copyrighted material in the digital environment. For a better understanding and appreciation of the prevalent amendment in the Act, one may consider the efficacy of the reform in the light of sections so amended.

Section 53, dealing with importation of infringing copies, has been substituted with a new section providing detailed border measures to strengthen enforcement of rights by making provision to control import of infringing copies by the Customs Department, disposal of infringing copies and presumption of authorship under civil remedies<sup>30</sup>.

In addition, section 65 A assures technological protection measure. Based on this, any person circumventing any effective technological measure, with the intention of infringing upon the rights of others shall be punishable with imprisonment which may extend to two years and shall also be liable to fine. The newly incorporated section aims at preventing acts of digital piracy.

Sub section 2 provides for certain exceptions. The prohibition shall not prevent doing anything for a purpose not expressly prohibited by the Act (enabling exercise of Fair use as under the Act). However, any person facilitating circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such a person. This provision sub-serves the need for digital locks, commonly known as Technological Protection Measures. It derives inspiration from Article 11 of WCT and Article 18 of WPPT. Thus, sub-section 2, as a matter of fact, permits circumvention for certain specified uses.

---

<sup>28</sup> Ibid, p1373

<sup>29</sup> WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty are together known as the ‘Internet Treaties’

<sup>30</sup> Zakir Thomas, “Overview of changes to the Indian Copyright law”, *Journal Of Intellectual Property Rights* Vol 17 8 (July, 2012)

Another very significant change has been made by way of bringing into picture the much needed Digital Rights Management protection system. Section 65 B provides for such protection and thus is an essential part of the recently amended legislation on the law of copyright. The amendment emanates and seeks stimulation from Article 12 of WCT and Article 19 of WPPT. The aim is to prevent the removal of rights management information without authority and distribution of any work, fixed performance or phonogram, after removal of rights management information.

The introduction of sections 65A and 65B is intended to be beneficial to the film, music and publishing industry in fighting piracy.

### **(A) WIPO Copyright Treaty (WCT), 1996:**

The WCT was adopted in 1996. It came into being, mainly to deal with the challenges posed by the technological era of digitalized global world. The treaty has been a successful outcome in so far it comes up and deals efficiently with the digital environment.

WIPO adopted a strategy of guided development, according to which all the important questions raised by the various new technologies were discussed by groups of experts and national legislators and governments were offered the results of these discussions in the form of recommendations, guiding principles and modern provisions.

As regards the liability of Internet Service Providers, WCT enables/allows the contracting parties to fix such liability for ISPs, if they are found to be involved in any infringing activities.

#### **a. Liability of Internet Service Providers (ISPs)**

Internet service providers provide online access to users. Different countries have differently fixed the liability for ISPs. In USA, the “service provider”, has been defined as an ‘entity’, providing a range of services from transmission, routing to providing connections for network communications. In India, a “network service provider”, has been defined under the provisions of Information Technology Act, 2000<sup>31</sup>. Broadly speaking, liability of ISPs has been determined on the following three basis:

- Direct liability (arises when an exclusive right of a copyright owner has been infringed/ violated by a person).
- Vicarious liability (arises on omission of a duty to prevent such infringement, whereby a person is benefited by such omission of duty, which constitutes an infringement)

---

<sup>31</sup> Section 79, Information Technology Act, 2000

- Contributory liability (arises on participation, by a person in direct infringement)

In India, the Copyright act, 1957 does not deal with liability of Service providers. The liability of ISPs is dealt with, under the relevant provisions of the Information Technology Act, 2000. Section 79 exempts the ISPs from liability in certain cases. The provider will be exempted if he proves that the infringement was without his knowledge, or that he had exercised all due care and diligence to prevent commission of such offence.

The Digital Millennium Copyright Act (USA), was amended to change Title 11 as Online Copyright Infringement Liability Limitation Act (OCILLA ), which amended Chapter 5 of the DMCA by incorporating section 512. The said section lists down five categories whereby liability of ISPs has been limited. They may be stated as under:

- Digital networks communications
- System caching
- Storage of information on system
- Information location tools; and
- Disabling of access to, or removal of infringing material.

#### **b. Jurisdiction**

Since internet is a global networking service, questions as to infringement of copyright may fall under the jurisdiction of more than one nation. In such a situation, it becomes difficult to determine the jurisdiction, on account of the rights infringed, and the place of infringement. Moreover, choice of law poses a different problem. It becomes difficult to punish the infringer, since it cannot be determined as to what law is applicable (which country's law will be applicable).

#### **(B) Indian position:**

In India, every suit or other civil proceedings for the civil remedies in respect of infringement of copyright in any work or for the infringement of any other right is to be instituted in the district court having jurisdiction<sup>32</sup>. 'District court' having jurisdiction includes a district court within whose jurisdiction, at the time of institution of suit or other proceeding, the person(s) instituting the suit or other proceeding, any of them actually and voluntarily resides and or carries on business or works for personal gain.

---

<sup>32</sup> Section 62, Copyright Act, 1957

In *Yahoo! Inc v Akash Arora*<sup>33</sup>, Delhi HC held that there should be something more than mere accessibility to establish part of cause of action. If the plaintiff has established that the defendant had done business within the local limits of the state, then the courts of such state can enhance the scope of jurisdiction on such out of state dependents.

In a case concerning infringement on the internet, if the defendant carries on business in India by subscribing the Indian net users through his website along with Internet accessibility, it can be said that part cause of action has arisen through the minimum contacts test establishment.

Furthermore, if a suit has been filed in a foreign court, against an Indian, for the infringement of copyright on the internet, on delivery of a judgment, by the foreign court, the same shall be enforced in India by virtue of section 13 of the Code of Civil Procedure.

Therefore, where a foreign national is concerned as regards a copyright infringement, and the case comes up for hearing, the court must satisfy itself as to the exercise of valid jurisdiction in such matters. Unfortunately, the Berne Convention, the WCT and WPPT (WIPO Performances and Phonograms Treaty) do not lay down provisions for the uniform practice of contracting parties to exercise jurisdiction in cases of copyright infringement.

## **VI. SUGGESTIONS & CONCLUSION**

On a close analysis of the provisions of the Indian Copyright law, it can be drawn that the legislation provides for certain effective measure for protection of copyright of owner. Moreover it lays down instances of infringement of copyright and the respective remedy available. As regards issues of copyright infringement over internet, the law on this point is still in a developing state. The liability of Internet Service Providers has not been dealt with under the Copyright Act, and has been defined under the Information Technology Act. With rapid advancements in technology, there have been numerous cases reporting, the infringement of copyright over the internet. To cope up with the present day technological advancements, there has to be efficient laws to tackle the same. The Indian Copyright Act, needs to incorporate the necessary changes within itself to make it compatible with the present times. Liability for infringement of copyright over the internet should be defined and categorized broadly, so as not to leave any room for immunity from such liability. Moreover, one of the major challenges faced, while dealing with copyright infringement on the internet is in regards to the determination of jurisdiction. The jurisdiction issues must be resolved at the international level, and all the nations must come to a consensus on the same. Moreover the member states must

---

<sup>33</sup> (1999) 19 PTC 210 Delhi



make laws, or incorporate certain provisions in their existing laws to effectuate the guidelines of the international community of which they are a part of. This way, it might be easier to embark upon the problem of jurisdiction in an effective manner.

However, the researcher also begs to observe things from a different perspective. Internet has become a tool and technology of modern age. It has come to be regarded as a necessity. It offers a wide platform for gaining information on a variety of subjects; it is, at the same time a source of entertainment for many, it serves as an excellent means of communication and a lot more which has only been made possible through the wide and exclusive use of the World Wide Web. If people are prevented from taking or enjoying the benefits of materials which are meant for the public domain, there would be a stop on free flow of ideas, expressions, information...and probably, this would lead to a stagnant society. As far as copyright infringement is concerned, the researcher personally feels that certain provisions should be incorporated which would seek to define the “intention” of the person making use of copyrighted material. Inclusion of the element of ‘mens rea’, may help to a certain extent.

\*\*\*\*\*