

ISSUES IN RESPECT OF COPYRIGHT PROTECTION IN DIGITAL WORLD

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Abstract: The copyright law is a fairly modern and historically revolutionary legislation that has overtime secured the interest of creative works and has safeguarded innovation and ingenuity. Its main drive is to balance itself between the need to award the creator and the desirability of making such works public. With Internet's unique ability as a global outreach medium, the protection of copyright works has become a serious concern for all the involved stakeholders. The internet enables the nearly-instantaneous, original quality reproduction of and world-wide, lightening-speed dissemination of copyrighted works. Thus making it "the world's biggest copy machine" The dilemma of digital copyright protection lies in the dichotomy between the freedom of information and the demands for stronger proprietary control of information in the digital environment. Given this backdrop, this paper shall critically analyse the emerging issues regarding copyright protection in digital environment and how the indivisible and fairly ambiguous structure of the internet demands a firmer, coherent stance for copyright protection.

I. INTRODUCTION

It is said that when an artist's interests are protected, his art thrives and the cultural cauldron of the world keeps stirring on. It was probably with this intention that the world's first copyright law, the Statute of Anne, was enacted in England in 1710. Since then the amendment has undergone a massive overhaul and evolution. The existing copyright laws were initially developed in the regime of print media that slowly brought under its protective realm creative works, paintings, drawings, sculptures, which later expanded to photography and cinema as well. The core concepts in copyright law and legislations under them gradually had to be revisited, so as to make digital societal record progress. The enactment of copyright law in digital domain is still a work in progress, a difficult one at that.

Copyright law is a fine example of the confluence of law and technology. On the one hand technology was the progenitor of copyright and copyright based industries; on the other hand, every new technology has posed a potential threat to the copyright-based industries. The industry consequently has put every new invention to its advantage in terms of creating newer forms of exploitation of art, widening markets and increasing profits [1].

II. CORE ISSUES IN DIGITAL COPYRIGHT PROTECTION

The internet has spread its tentacles in every modern domain and this factor is the biggest influence in the enforcement of laws with regards to copyright and protection of creative entities. There is tremendous surge in digital usage caused by easy availability and low cost of the internet services and spike in ownership of cell phones and similar gadgets. In this day and age, it is very rare to find a person who doesn't own a mobile gadget. In the current scenario the protection of creative works has become increasingly challenging owing to the digital format of most work. In the digital realm copyright infringement is a low cost business without compromising on the quality of material. Pirated data transmission, with a quality as good as or similar to the original content happens across boundaries without owner authorization. This advanced technology used by infringers to make content available unchecked has caused massive setback to creators and owners of data. In digital domain, the Copyright Act has to deal with the menace of illegal downloading of movies, music, games etc.

One can make a general observation that one of the key factors of the raging piracy is the high cost of the original content, cost of subscription memberships of streaming services as opposed to the minimal to negligible pricing of pirated versions of the same. Illegal web links of all such content available freely on the internet is major hurdle in curbing the menace of global piracy. One of the profit based business modules of the creators and corporations engaging in content creation is to give rights of broadcast of their works to certain digital platforms or satellite channels. Signal piracy is a kind of loot that eats into this profit module by obtaining unauthorized access to data or material which is to be broadcast on legitimate platforms. Herein lies the dual issue of digital copyright protection. It is become increasingly difficult to protect digital content and to restrict unauthorized access to protected data.

The Internet experience demonstrates that traditional actors in the communications process (information producer, provider, publisher, intermediary user) take on new roles in the digital networked environment. The Internet is structured as an 'open platform model' as opposed to the 'broadcasting model' of most existing media. On the Internet authors may freely disseminate their works without the intervention of traditional publishers: authors are becoming 'publishers'. Moreover, digital technology enables users to actively search and manipulate information available on the network: users are becoming 'authors'. Furthermore, traditional intermediaries, such as university libraries, may take on new roles as information providers: intermediaries are becoming publishers as well. This convergence of roles may eventually affect the existing system of rights allocation in copyright and neighbouring rights legislation [2]. Thus, in a way the Internet has scrambled the beautifully arranged, dogmatically duly characterized and justified picture of copy-related and non-copy related rights under the Berne Convention [3].

Ever since the Statute of Anne was adopted for copyright protection, the reproduction right has been at its heart for more than three hundred years. The original text for the Berne Convention did not protect this right up front, however, under Article 9(1) of the Berne Convention, copyright owners are granted "the exclusive right of authorizing the reproduction of these works, in any manner or form". This particular phrase "in any manner or form" in Article 9(1) has an ambivalent tone and thereby has resulted in an international rift over the scope of the reproduction right. The advent of the Internet makes the definition of the reproduction right more problematic in the digital age. When any protected work is transmitted over the Internet, it involves the

reproductions transiently stored in the connected computers' RAM. The core question remains whether right owners should be granted with the control over all temporary reproductions considering the decentralized nature of the Internet.

Digital technology blurs the line between different categories of copyrightable works [4] and the means of communication to the public as well. The new age Internet experience calls for transmitting works on an on-demand, individual and interactive basis. Thus any member of the public has the full discretion to determine the place and the time one wishes to access these works in digital form. Against this backdrop, a new form of concise technology-neutral right of communication to the public is suggested to be ushered in to replace the fragmented existing right. Ironically, it seems that the Berne Convention has become an outdated international instrument for the protection of the right of communication to the public, unable to respond to the challenges posed by the paradigm shift in the way original works are exploited in the digital realm. After rigorous debate on the WIPO Diplomatic Conference 1996, a broad right of communication to the public was eventually established by the WIPO Treaties 1996. Although the WIPO Treaties 1996 significantly expand the scope of the right of communication to the public, certain issues are unsettled. The term "the public", has not been given a clear cut definition in this context. Given the increased difficulty to draw the line between private and public transmissions, it is understandable that the WIPO Treaties 1996 are silent on the benchmark with which the public-private distinction could be decided and leave the discretion to determine the scope of public communication to each contracting party [5]. Copyright owners in face of an increasing reproduction and illegal dissemination of their works have designed effective technological measures to restrict physical access and use of their copyrighted works. The advent of Internet facilitates the manufacture and trafficking of circumvention devices, and distribution of copies of these works, circumventing the technology used by owners at a global scale, posing formidable challenges for the effective protection of copyright owner's interests.

Where does one begin with enforcement of law in case of an infringement digitally? Our system of international copyright protection historically has been based on the application of national copyright laws with strict territorial effects and on the application of choice-of-law rules to determine which country's copyright laws would apply [6]. This system works efficiently when performance of works or their subsequent dissemination happens within clear identifiable boundaries. In an era where internet cuts across borders, videos, recordings of musical performances, and texts can be posted anywhere in the world or retrieved from databases in foreign countries and made available to online subscribers worldwide. In such a scenario major questions arise.

It is undeniable that the Internet is a legal and jurisdictional "no-man's land." Which domestic law will govern the multiple acts of exploitation and infringement of copyrighted works on the Internet? Which court will have jurisdiction to make decisions as to copyright infringements occurring on the Internet? Should we design new choice of law and jurisdiction rules to decide these issues? Or should we just wait and see how the existing rules, in the hands of courts and lawyers, make their way through the digital network? [7]

With unauthorized use of the work violating owner's rights happening at multiple potential locations at once, whose law should determine whether the transmission or reproduction constitutes infringement? Each location, be it the one where the work was uploaded or where it was downloaded or the owner's country of origin has a viable claim. Without coherent standards to guide, these conflicts will go on in a loop, be hard fought and bitterly resolved.

III. DIGITAL COPYRIGHT PROTECTION UNDER THE INDIAN LAW.

The Indian Copyright Act 1957 was the sole safeguard against infringement up until the evolution of technology called for amendment to the same. The government of India in 1998 passed the Digital Millennium Copyright Act, which updated copyright laws to address the realities of Digital Technology at present. The latest amendment, Act 27 of 2012 came into force on 21 June, 2012. The Amendments introduced by the Act of 2012 are significant in terms of the range of issues they address and that they go beyond these challenges in their scope. The latest Amendment harmonizes the Copyright Act, 1957 with WCT and WPPT. With these amendments, the Indian Copyright Law has become a progressive and dynamic legislation and the general opinion is that, barring a few aspects, the amended Act is capable of facing copyright challenges of digital technologies including those of Internet.

IV. INTERNET HARMONIZATION.

Given the vast expanse of the digital domain, country specific laws bound by territorial constraints won't help anymore to curb the digital infringement that is cutting across borders. The most important aspect to address is the uncertainty involved in international litigation. Uncertainties are common to all law suits, but there isn't a greater percentage of successful precedent set in cases of copyright protection. If the procedures of enforcement and applicable laws are not laid out well, the likely outcome would be unfavorable to copyright holders, thus making them hesitant or unwilling to enforce their rights abroad. The problem for a copyright holder is not only the potential loss of earnings due to infringement, but also the additional costs spent in unsuccessful litigation. Enforcing judgments would be easy if all the defendants were residents of the country of the court that rendered the judgment. In the case of foreign defendants, it would also be straightforward if they had assets within that country. However, foreign defendants with no assets in the forum country create a problem. It can be difficult to have national judgments enforced in the foreign country where the defendant resides or has assets, and it is also difficult, costly, and time consuming to need to pursue additional copyright litigation abroad. [8]

Multinational enforcement with clear rules about the enforcement of preliminary injunctions and monetary judgments will diminish the inconvenience of dealing with the unknowns of how foreign judges apply their own substantive and procedural laws. Although it may not affect the cost international litigation substantially, the increased certainty and probability of success would improve the balance between unrestrained infringement and expensive enforcement.

V. CONCLUSIONS AND SUGGESTIONS

Technological advancements have made copyright protection all the more difficult to achieve. The share of copyright in national economies is at unprecedented levels and hence it is critical to adjust the legal system to respond to the new technological developments in an effective and appropriate way, keeping in view the speed and pace of these developments. This will maintain balance between the stakeholders of the work in question. On account of the indivisible nature of the Internet having different rules for different countries works out to be cumbersome. Therefore, a unified approach, strong legal protection against circumvention of DRM systems and standard procedural mechanism for international litigation would serve to help protect the digital realm better. The internet needs to be used as a facilitator for copyright protection by the authorities as opposed to it benefitting the infringer. One can say that an effective way of protecting digital copyrighted works would be a

fitting triad of possible prevention of the infringement, early detection of infringement if it occurs and appropriate enforcement of legal remedies to assuage the loss of the copyright owner.

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