

Copyright Infringement and Copyrights Acts in India and USA

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Abstract – Information Technology is becoming quicker than some other communication vehicle in the history humanity. Innovation of digital technology was the most significant revolution in the only remaining century. The impact of digital technology on information technology is wonderful. The present thousand years is seeing another culture that is internet culture. It is changing our way of life and method for working together structure conventional commerce to web based business. Copyright in a work is infringed when the work is copied without the assent of the copyright owner. In an infringement, it must be built up that the litigant has copied the offended party type of articulation and not his thoughts. A copyright law manages the structure wherein the work is communicated. It doesn't imposing business models the possibility of information. In this manner computer program, the articulation is ensured. This incorporates the code lines of the program as well as the structure. With the rise of the internet and expanding utilization of the worldwide web conceivable outcomes of infringement of copyright have become marvelous free and simple access on the web together with potential outcomes of down stacking has made new given in copyright infringement. Taking content from one site, altering it or simply replicating it on another site has been made conceivable by digital technology and this has presented new difficulties for the customary translation of individual rights and protection. The paper aims at understanding the laws of two countries-USA and India in the light of copyright protection.

Keywords: Information Technology, Copyright Infringement, Rights and Protection, etc.

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I. INTRODUCTION

Copyright law concedes the owner restrictive right to approve reproduction of the copy righted works arrangement of derivative works, distribution and so on. Anyway use of this idea on the internet can't be carefully applied to copyright. Duplication of the information is a basic advance in the transmission of information on the internet and even plain perusing information at a computer terminal (which is proportionate to perusing a book or a magazine at book shop) may bring about the making of an unauthorized copy since a temporary copy of the work is made in the RAM of the client's computer with the end goal of access. The law regarding the matter developing and the general view is that all the more getting to a web page would not be an infringement as the copy made is temporary or vaporous. Another regular issue among web webpage owners is to make links to different sites inside the structure of their own web pages. Would such connecting be viewed as a copy right infringement as these links offer access to other copy righted sites? Albeit carefully it might be an infringement of copyright. In any case, there is an inferred precept of public access for connecting to other web pages. The Internet was made on the fundamental of having the option to join hypertext links to some other area and it is accepted that once a page

is put on the net, inferred assent is given, except if explicitly precluded by the web website owner.

II. INDIAN DIGITAL DOMAIN PRIVACY

Change is the law of nature and procedure of progress is exceptionally natural; the greatest change in the present period is in digital space. In twentieth century, protection of work by copyright has become a significant test on account of the development of new class and sort of work, for example, software, digital music and recordings, and so forth. The related issues in the digital area are related with the distribution and measure of substance that must be distributed. In the digital area, copyright infringement can be done effortlessly, no sweat and additionally without bargaining with the quality of work. Other than this, major gives that are coming up incorporate counterfeit websites and web based business, illicit downloading of melodies and recordings are probably the greatest worry of this time. Copying content and presenting another website has become another misrepresentation in the digital space that causes high revenue loss to the owner and a tremendous benefit to infringer as each snap on the phony web page benefits the infringer. There are a few reasons of infringement practice yet significantly watched purpose for piracy is the simple use of internet and

simple accessibility of the internet. The internet then again is answerable for completing business online which is named as web based business. Quick speed, straightforwardness and adaptabilities of digital technology have caused individuals to work online as the information past land boundaries to can be gathered without breaking a sweat. Copyrighted material is effectively transmitted and distributed utilizing cutting edge innovation around the world utilizing internet without authentication and authorization of the owner; consequently there is a genuine requirement for the protection of the work with no boundaries. Digitization has brought a revolution and likewise has helped individuals for working on the web as it gives straightforwardness to completing business, entertainment area and training and so forth. Advantages of digitization have likewise carried a few drawbacks with it. The most concerning issue experienced in the digital space is piracy. In India pilfered items, for example, pilfered delicate products, recordings, motion pictures CDs, pen drives, music CDs are effectively accessible in the market at an a lot less expensive rate.¹⁴ Other than piracy there is a major issue of downloading of databases and other helpful information from the internet. In our everyday life we see numerous street side slows down and providers who sell pilfered DVDs, CDs on demand. They have all the new discharges with them that barely cost 30-40 rupees for every movie, here and there these pilfered CDs are accessible on procure additionally and there is no doubt and protest on the quality of the video and sound. This straightforwardness in the accessibility of pilfered movies and games, advances piracy and therefore impacts "Business".

A few sections in the Indian Copyright Act manage the issues of copyright infringement of digital matter other than giving the right to control its use. In the digital space, the Copyright Act needs to manage questions worried about illegal downloading of movies, music, games, and so forth. The arrangements of the Copyright Act likewise apply legitimately to different items, for example, computer software, move of records or sharing of documents among the PCs by peer to peer networks.¹⁵ As a general rule it has gotten hard to secure the digital material which is on the internet and simultaneously it is likewise hard to limit the entrance of the information/material which is being ensured.

III. INFRINGEMENT OF COPYRIGHT AND SOFTWARE PIRACY JUDICIAL APPROACH

The Indian Copyright Act can't secure the unauthorized distribution and utilization of work over internet. Infringement over internet and piracy representing a danger to inventive works worldwide

and along these lines the development of the internet, the online business and the digital economy. Copyright owners selective right of distribution applies to email appended or sent. In *Play Boy Enter Inc v/s Frena*¹⁶ Defendant's supporters downloaded unauthorized photos of playboy enterprises to a notice board system. US Court held that the offended party's selective right of distribution was infringed by clients of respondent. This makes a commitment on the announcement board administrators to guarantee that its framework isn't being utilized to display and download copyrighted materials by its clients.

In *Michael v/s Internet - Group Inc.*¹⁷ Court held that it is violation of copyright owner's selective statutory right of display by making accessible tape over the internet without authorization and posting unauthorized copies of electronic clipart on web pages. In the event that a web fashioner makes a website by joining some extraordinary highlights of different web sites. This may add up to unauthorized adjustment of the offended party software and violation of offended party's copyright. In digital media one can make about interminable number of copies without loss of quality. So the moving information starting with one computer then onto the next abuse the reproduction rights of creators. Unauthorized reproduction or "scanning" a copy righted printed archive into a digital document, and transferring, downloading copyrighted record to an announcement board system is copyright infringement.¹⁸

In *MAI System Corp, v. Is Peak Computers Inc*, it was held that the temporary copies made into a computer RAM are copies. But in year 1995 in *Religious Technology v/a Netcom*¹⁹ US Region court held that temporary copying engaged with perusing is what could be compared to perusing and doesn't ensnare the copy right laws. So as respects perusing one must reach the resolution that it doesn't add up to violation and can be beguiled to be a reasonable managing

In *Feist publication v/s Rural Telephone Service Co. Inc*. It was held that there must be probably some negligible level of inventiveness and what ought to be secured by copyright were the products of intellectual work and not simply sweat of the temples. In India databases are ensured as abstract works. In US if creator is imaginative in choosing and organizing the information and doesn't just display the information as facts will be enrolled. In UK a database which needs imaginative info and requires just unassuming skill and work gain the right of unreasonable extraction for a time of 15 years as it were. While information made by full inventiveness copyright protection is given for example life of creator in addition to 70 years. Gathering of

¹⁴ <http://economictimes.indiatimes.com/definition/piracy>

¹⁵ The Congress of the United States, Congressional Budget Office, Copyright Issues In Digital Media, <https://www.cbo.gov/sites/default/files/108th-congress-2003-2004/reports/08-09-copyright.pdf>

¹⁶ 839 F. Supp. 1552 (M D Fla 1993)

¹⁷ F. Supp. 2d C.D. Lal 1988

¹⁸ Tabrez Ahmad: Cybcrlaw e-commerce & m-commerce, APH Publishing Corp. New Delhi, 2003.

¹⁹ 907 F. Supp. 1361 (N.D Cal 1995)

information are themselves not protectable can be the subject of protection when there is the vital determination coordination and course of action and consolidated it with the abstraction, filtration and comparison test. Through internet crafted by creators can be displayed in various purviews and which is very hard to identify. So the display rights can be effectively damaged over Internet. Software can be effectively conveyed to the public without authorization by downloading the software from computer and unauthorized copies made might be retailed or leased.

IV. INTERNATIONAL AND INDIAN COPYRIGHT LAW IN DIGITAL DOMAIN

With the innovative improvements and revolution in digital technology, different digital issues have cropped up. To manage the use of a copyrighted material, a few international treaties have been confined including the degree of utilization of copyrighted work, constraints and special cases. World Intellectual Property Organization (WIPO) oversees these international copyright treaties other than numerous different organizations. Here and there it is required to replicate or introduce a similar original work for explicit non-profitable purposes. For such reasons, there are a few exemptions which exist in the Indian Copyright Act for explicit work, for example, for survey or analysis, for research and study (Section 52 of Indian Copyright Act), for revealing recent developments, in purview procedures, and so forth.

To understand the issue and to restrict the use of copyrighted material, Indian Copyright Act was set up in 1957 and got employable since 21 January 1958. A few changes have been joined from that point forward and as of late in the year 2012 to meet the national and international prerequisites. Copyright, a significant IP right, ensures just the articulation yet not a thought, techniques for activity, system or numerical ideas all things considered (Article 9.2 of Berne Convention). Computer programs are ensured under class of scholarly work (Article 10.1 of Berne Convention), aggregation of information or material whether machine readable structure or in some other structure are secured all things considered (Article 10.2 of Berne Convention). Term of copyright relies upon the sort of work tried to be secured²⁰.

In the Indian Copyright Law, there are exemptions on use of the substance, for example, for instruction and for look into purposes, which is allowable, however not for the motivations behind entertainment and business benefits. Since the material on the internet is downloadable effectively and rapidly requiring little to no effort which brings about a speedy distribution of the copyrighted material. Thusly, owners of copyright have a dread of unauthorized distribution of their work

as this causes decrease in the economic returns. Different international copyright treaties have been encircled, for example, Berne Convention, Rome Convention, Beijing Treaty, Geneva Convention, Brussels Convention, Marrakesh Treaty, and so on.

The IP issues turned out to be excessively entangled with the headways in the digital technology and digital revolution. Protection of copyrighted material on the web has become a major issue of the digitization. Distribution of digital substance is credited as genuine motivation of infringement. With the appearance of technology, the current WIPO treaties were seen as lacking to cover all the new issues coming up in the digital space and as there were no genuine decisions and security gauges in then existing treaties to stop the infringement consequently a requirement for adjustments in treaties was felt. This came about into presentation of new treaties, for example, WIPO Copyright Treaty (WCT) and WIPO Phonogram and Performance Treaty (WPPT).

V. COPYRIGHTS ACTS IN INDIA AND USA

5.1 India

The Indian law isn't clear in such manner. Section 62(2) of the Indian Copyright Act, 1957 gives an extra jurisdiction to the courts to take perception of issues of infringement of copyright over the internet by accommodating an additional spot of suing other than the grounds gave under Section 20 of the CPC, 1908.²¹ Hence such infringements can be brought inside the domain of District Courts under Section 62. This again brings up an extremely pivotal issue with regards to the constitutionality of Section 62(2) of the Act as it would mean extraterritorial jurisdiction of the courts which is unmistakably in strife with Article 1(2)²² of the Constitution of India, 1950. Despite the fact that the IT Act accommodates all digital laws, it doesn't especially the issues of intellectual property rights. In this way, provisions don't demonstrate any arrangement. In 2012 the Copyright Act of 1957 was corrected to get it consonance with the World Intellectual Property Organization Internet Treaties- the WCT and WPPT.²³ Alongside accommodating specialized measures to ensure copyrighted works in cyberspace, it additionally accommodates extraordinary reasonable use provisions for works in the internet. The word 'contract' was remembered for Section 14 of the Indian Copyright Act, 1957 in consistence with Article 7 of WCT and Article 9 of the WPPT, which accommodate 'commercial rental'

²¹ Section 62, Copyright Act, 1957

²² Article 1(8), The Constitution of India, 1950

²³ Abhai Pandey, Inside Views, Development in Indian IP Law: The Copyright (Amendment) Act, 2012, Intellectual Property Watch (January 1, 2013), available at <http://www.ip-watch.org/2013/01/22/development-in-indian-ip-law-the-copyright-amendment-act-2012/>

²⁰ Cole A T, International Copyright Law, Part I: The Berne Convention for the Protection of Literary and Artistic Works, 1886, 1-34.

rights for computer programs and cinematograph films. In Section 14(d) and (e) the term 'employ' was supplanted by the term 'commercial rental' so as to limit the extent of contract to just commercial rentals and not non-commercial ones. The meaning of the term commercial rental was likewise presented under Section 2(fa) of the changed Act. Reasonable use provisions are currently stretched out to digital works.

The stand in India is direct inverse to that of USA. There is no clear law or choice which gives rules to such sorts of infringement. A little arrangement can be said to have been made in the Information Technology Act, 2000 by prudence of Section 79 of the Act, which absolves the internet service provider from liability if there should be an occurrence of outsider violations, if due tirelessness is demonstrated.²⁴ Be that as it may, disarray emerges with regards to the particular situation of copyright infringers inside the content of this arrangement. The words „under this Act, rules or regulations made thereunder“ demonstrate just a bar under this Act and not unreasonably of the Copyright Act. In such a circumstance it is imperative to take a gander at different case laws in such manner in India. The legal reaction proposes that the ISPs have been held obligated for acts of contributory infringement, not following the provisions of the IT Act, 2000. In one case of Super Cassettes Ltd v Yahoo Inc and Anr²⁵ the Delhi High Court had issued a notice to the ISP Yahoo Web Services (India) Pvt. Ltd for encroaching copyright of the offended party by gushing one of its recordings in the entrance video.yahoo.com. The Delhi High Court has given comparable notice to different ISPs like Google, Youtube²⁶. A few revisions have additionally been realized in the Act in Section 52(1) (c) for confining liabilities. Yet, there is still no express provision.

5.2 USA

In USA the Digital Millennium Copyright Act was enacted in 1998 to carry the Copyright Act in consonance with the provisions of WIPO treaties. Section 1201 of the US Copyright Act, 1976 included by Section 103 of DMCA protection against circumvention of technical measures utilized by copyright owners to ensure their works.²⁷ Two sorts of mechanical measures have been perceived: measures that avert unauthorized access to a copyrighted work and measures that anticipate unauthorized copying of the copyrighted work. The circumvention of the first was anticipated however not the second, so as to advance reasonable use. These progressions were made in consonance with Article 11 of WCT and Article 18 of WPPT. In this regard, the US Court has

held in the case of Kelly v Arriba Soft Corp²⁸ that giving thumbnail renditions of pictures and programmed ordering of webpages containing pictures will add up to reasonable use. Essentially, Section 1202 was added to secure the honesty of copyright the executives' information in consonance with Article 19 of WPPT. In US the liability for copyright infringement in cyberspace has been built up with the assistance of case laws. One of the initial cases is that of Sony Corp v Universal Studios²⁹ where the Internet Service Providers were held at risk by goodness of vicarious liability and contributory infringement. Later, in the case of Religious Technology Center v. Netcom Online Communication Services, Inc.³⁰ the Federal District Court of Northern California was suggested with a comparative conversation starter of liability of the ISP for a material posted by the customers. The court pronounced on three primary issues: right off the bat, Netcom couldn't be straightforwardly held subject for the material posted legitimately by its customers. As its would like to think, the ISP is the one which just gave the device and the original encroaching work was finished by the customer who transferred it. This was an unmistakable difference from the past decisions in such manner. Also, the connection between the encroaching activity and Netcom's funds were not adequate to hold Netcom vicariously at risk. Thirdly, however Netcom couldn't be held obligated for direct infringement or even vicariously, it could be unquestionably made at risk for contributory infringement. This anyway must be demonstrated, which was left open for preliminary, and the case was along these lines settled out of the court.

A study shows that software piracy in India is 69% while that in USA is 20%, which demonstrates a gigantic dissimilarity. The explanations behind this distinction incorporate software costs comparative with salary, social frames of mind and in particular the quality of intellectual property protection³¹. Presently, to the extent online piracy in India is worried, there is a colossal increment in its number. In fact India is one of the top need nations in the US watch list in the year 2012³².

VI. CONCLUSION

Infringement has become a significant issue these days particularly with regards to copyright protection in the digital area. Different arrangements are accessible for the communicated rights in the Copyright Act which are legitimately connected with

²⁴ Sec 79, IT ACT, 2000

²⁵ 2009(39)PTC 162(Del) (Delhi High Court)

²⁶ Shrimant Singh and Varnika Singh, Internet Service Provider Liability for Copyright Infringement, (2010) SINGH AND ASSOCIATES available at <http://singhassociates.in/intello-property/2.html>

²⁷ Section 1201, US Copyright Act, 1976

²⁸ 280 F.3d 934 (9th Cir. 2002)(US District Court for the District of California)

²⁹ 464 U.S. 417, 435 (1984)(United States Court of Appeals)

³⁰ 907 F.Supp. 1361 (N.D. Cal. 1995)(US District Court)

³¹ Nation Master, Countries Compared by Crime> Software Piracy Rate (2007) available at <http://www.nationmaster.com/countryinfo/stats/Crime/Software-piracy-rate>

³² Swaraj Paul Barooah, Guest Post: Taking a Look at Online Piracy in India (January 24, 2013), SPICY ZIP, available at <http://spicyip.com/2013/01/guest-posttaking-look-at-online-piracy.html>

the rights of the owners to control the substance which is being communicated. The Indian Copyright Act is skilled enough to determine the issues thinking of the new mechanical headways. To close, this exploration article tends to the upsides of the cures that are accessible in the Indian Copyright Act (corrected) and the international treaties that are accessible to address the difficulties for these issues and to take care of these issues. In spite of the fact that few mechanical measures have been created to control the illegal utilization of the digital material yet at the same time there is a tremendous need of well skilled and prepared police power that can identify infringement and can stop it and authorize the legal protection.

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