

Introduction

The advancement of Digital Technology has been one of the finest creations of the human mind. Technology has opened its gates to a wide range of possibilities in various areas like media, entertainment, communication, advertisements and education. However, the easy access to materials available on the Internet has posed a great concern for Copyright infringement. Copyright is one of the most important Intellectual Property Right which denotes the rights possessed by the creators for literary and artistic works. It includes works from books, paintings, computer programs, films, database and maps, to name a few. Digitalisation has made it considerably easy to copy, replicate and sell the works of a copyright owner without his permission and detection of such infringement becomes difficult. This has posed a great threat to the right of the copyright owners or creators.

Challenges faced by Copyright in Digital World

- Copyright & Internet
- Multimedia Work
- Software
- Social Media

Copyright and Internet

The Internet has been one of the major threats to copyright for a long time. The information available on the internet has varying degrees of copyright protection. Copyrighted works on the internet include news, stories, images, graphics, e-books, screenplay, videos etc. The ocean of information available on the internet makes it difficult to determine whether the work is duplication or copy of the protected work. It is a common myth that the information accessed via the internet on a public domain can be copied freely. However it not so, unless the information has been made available by the government, or the term for copyright has expired, or the holder of the copyright has surrendered his right.

Infringement of Copyright in Cyberspace includes

Downloading and uploading

Internet has been a medium of downloading software or files to the hard disk of one`s computer. Downloading involves creating a copy or reproducing the copy of the material available on the internet. However, there are certain restrictions which have to be complied with and the failure of which might result in offence.

Derivative work

If two or more programmes are compiled to create a derivative work then in such cases it amounts to infringement or violation of Copyright.

Hot-linking

It involves displaying an image on the website by linking to website hosting that image. This process of hot-linking or linking can also tend to violate the rights of a copyright owner.

Audio-video works

Copying an audio or video file through companies that are involved in Peer to Peer file sharing (P2P) of any digital music shall also amount to a violation.

Multimedia work

The concept of multimedia is extremely wide and encompasses within itself several categories of material which includes text, sounds, audio, video, images, graphics, presentations, live videos of speech and performances and so on.

Generally, Copyright protection is available to multimedia under literary (software program), artistic (images), cinematographic films (films or videos), dramatic (plays), sound recording (musical works) and photographs. Protection of rights of the creators and owner of the Copyright becomes difficult due to the variety of rights available to copyright owners under the ambit of multimedia.

- Infringement in multimedia involves
- Copying the works of a creator without his permission
- Distributing multimedia product other than for educational purposes
- Creating prints of literary or artistic works without prior permission of the creators
- Dubbing and selling, through any of multimedia products a sound recording without the prior permission of its creator.

Software

Computer Software consists of a collection of computer programmes, procedure, documentation that perform tasks on a computer system. Software piracy is one of the major reasons for copyright infringement. It involves unauthorised copying, distributing of copyrighted software. Software Piracy involves:

- Creating a copy and selling it
- Creating a copy and exporting the same
- Renting the software
- Selling of computer hardware machines with pre-installed or per-loaded pirated software
- Copying of software programs using CD-R technology

Social Media

These days Social Media platforms have become one of the prominent modes of connecting people across the globe. These platforms involve sharing of works which may be copyrighted. The widespread practice of sharing materials such as images, photographs on Social Media has resulted in gross infringements of copyrights. The false notion that all material posted on social media is free, fed by an ignorance of the presence of copyright in such works is a major cause of such infringements. Copyright violations on Social media platforms can be in the form of:

- Re-posting, saving or sharing of works protected under Copyright
- Re-posting and claiming ownership or creation rights of already protected work
- Using the content available on the platform without the owner`s prior permission

Fair Dealing in Digital Environment

The protection sought to be given to the creator or the owner of copyright must be in conformity with the public rights. The human rights of a person should not be used to curtail those of another. It is because of this that the concepts of Fair Dealing or Fair Use have evolved in Copyright. The most important convention in this domain has been the Berne Convention 1883, according to Art 9 (2) of which "It shall be the matter of legislation in the countries of the union to permit the reproduction of such work in certain cases, provided that such reproduction does not conflict with normal exploitation of the work and does not legitimate the interest of the author." Similarly, Article 13 of the TRIPS agreement states, "Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interest of the right holder." Different countries across the globe have different laws on copyright exception. In the United States of America, Copyright exception is known as "**FAIR USE**" is engrained in section 107 of the Copyright Act. It reads that Fair Use of Copyright does not amount to infringement. Similarly European Union Directive, 2001/29/EU has laid down a list of compulsory and optional exceptions and directives, while 2012/28/EU provides for principles of orphan works (the works the owner of which is not identified). In India section 52 of the Copyright Act, 1957 lays down provisions relating to acts which would not constitute a Copyright infringement. Listed below are some acts which shall not be considered as an infringement in Digital World:

- Conducting Research or study and making copies of the material available on the internet for the sole purpose of studying
- A teacher making use of content from a film to make certain satirical points during class
- Access to a journal from University website or library
- To make backup copies on Hard Drive as temporary protection against any loss, destruction or damage
- The observation study or test of the functioning of a computer programme in order to determine the ideas and principle which underline any elements of the programme in order to determine the ideas or principles which underlies the element of the programme while performing acts that are necessary for the functioning of a computer programme
- Making copies or adaption of computer programme from a personally legally occupied copies for non-commercial purposes
- Using CD, DVD, pen drive or any multimedia devise for playing songs in an enclosed room or hall meant for the common use of residents in any residential premises or as a part of any club activity for non-profit purposes
- Publication of any speech delivered in public
- Reproduction or publication of any electronic reports of any committee, council, body or institution established by an Act of the legislature or by state or central government.

Remedies against infringement of Copyright in Digital Domain

The threats of infringement of Copyright in the digital domain have given rise to certain preventive measures which ensure that the rights and interest of the owner or creators are protected. Some of the important remedies available are:

Blockchain Technology

It is highly secured decentralised public ledger that is used to record peer to peer transaction. In each transaction that occurs, the parties agree to details to encode it into the block of digital data which is uniquely signed or identified. It is due to its functioning that it is considered an excellent technology to resolve the problem of copyright in Digital Domain

Digital Watermarks

One of the easiest ways to protect the work of the creator of Copyright as it helps the owner to trace his work and prevent it from duplication. In this technique, a watermark is embedded in the original work of the author in this way the unauthorised copying of the work can be detected.

Access control and copy control

It is a software which enables a user to check the creator on free or illegal use of his work.

International Treaties and Conventions protecting Copyright in Digital Domain

Digitalisation has a great impact on society. But as it is rightly said that with great inventions comes a great threat, similarly digitalisation, while having played a major role in changing the dynamics of society, has also given rise to several other problems like infringement of rights of an creator or owner of the work(in copyright context) through various means in digital world. In order to keep a check against infringement of these rights, International organisations like World Intellectual Property Organisation (WIPO) have played a major role.

Listed below are some of the important International treaties and conventions-

World Copyright Treaty 1996

It is a special agreement under the Berne Convention that deals with the protection of works in the Digital environment. In addition to the rights recognised by the Berne Convention 1885 they are granted three economic rights namely, right to distribution, right to rental and right to communication to the public. It assures protection for any work in the digital world for a period of at least 50 years. The treaty also deals with two subject matters that shall be protected by Copyright and they are

- Computer Programs
- Compilation of data or material (databases)

WIPO Performance of Phonogram treaty 1996

This treaty deals with two kinds of beneficiaries in the digital world, firstly the performers namely actors, singers, musicians etc., secondly producers of phonograms. It also lays down the economic rights of distribution, renting and communication by the performers with the public and for the producers of phonograms the economic rights of reproduction, right of distribution, right of rental and right of making available. The

treaty assures protection to the performers and producer of phonograms for a period of at least 50 years.

Copyright in Digital Era with special reference to India

Copyright in India is protected under Copyright Act, 1957 since then several amendments have been made from time to time to suit the changing needs of the society and to ensure protection to the creators of the work. The main aim of the act is to protect the works of the creators and owners of the copyright against unauthorised use. Recently the Copyright (Amendment) Act, 2012 was enacted which is considered to be more substantial. The main reason behind this enactment was to bring the act in conformity with World Copyright Treaty 1996 and WIPO Performance and Phonogram Treaty 1996.

The Copyright Amendment Act of 2012 extended its provisions for the protection of copyright in work in the field of digitalisation. It also laid down provisions for penalties to be awarded against the infringer, rights of management information, the liability of internet service providers and introduction of statutory licenses for cover version and broadcasting organiser. It also aimed at ensuring proper distribution of royalties amongst the creators and owners of the work. The law also aimed at creating certain acts as exceptions, which means that certain acts shall not amount to infringement. Section 52 of the act lays down certain acts which shall fall under the heading of Doctrine of Fair Use. This section is enacted in conformity with the Berne Convention 1885, TRIPS Agreement 1995. The Indian Judiciary has also played a pivotal role in protecting the rights of Copyright owners in the era of digitalisation. Latest judicial pronouncements in a matter pertaining to the protection of copyright in the digital world are listed below-

UTV Software Communication Ltd v/s 1337x and ors on 10th April 2019-Delhi HC

Facts of the Case-

In this case, the plaintiff including UTV software communication Ltd are the companies engaged in creating content, producing and distributing cinematographic films all over the world including India. The defendants were 30 websites including some John Doe websites, the Ministry of Electronic and Information Technology, Department of Telecom and various ISP`s. It was contented by the plaintiff that defendants` websites hosted and provided access to their copyrighted work which resulted in infringement of Copyright of the plaintiff.

The Court, in this case, appointed Mr Hemant Singh as '**amicus curiae**' to assist the court in determining the questions of law in the instant case.

Judgement

The Judgement in the instant case can be understood with reference to the issues involved in this case

Whether an infringer of Copyright on the Internet is to be treated differently from Infringer in the physical world?

The court answering it negatively held that there is no reason why crime in the physical world is not a crime in the digital world especially when the Copyright Act does not make any such distinction.

Whether seeking blocking of a website dedicated to piracy makes one an opponent of free and open internet?

The court opined that key issue about Internet freedom, therefore is not whether the internet is and should be completely free or whether the government should have unlimited censorship authority, but rather where the appropriate lines should be drawn, how they are drawn and how they are implemented.



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What is a Rogue Website?

These are the websites which primarily and predominantly share infringing/pirated content or illegal work. Either these websites, themselves allow streaming of content or provide a searchable database with links to the third party. Even the Ad Networks employed on these websites are not run-of-the-mill popular networks, but obscure Ad Networks, with equally anonymized credentials. These websites invite consumers for watching free movies/contents. Although, some of these websites feebly claim to only provide links to third- party websites and not host content on their servers, yet their entire module/interface is premised on allowing users to watch pirated releases/movies by way of links, and which account for all the content available on their sites.

Whether the test for determining a 'Rogue Website is Qualitative or Quantitative?

The court in this matter took into consideration two countervailing approaches. On one hand, it is considered to apply Quantitative test for blocking injunctions. Here the

reference was made to a judgement delivered by learned Single Judge of the Bombay High Court in case of Eros International Media Ltd v/s Bharat Sanchar Nigam Ltd suit no. 751/2016. The Learned Judge held that for blocking the entire website, the burden of proof is on the plaintiff to bring to the notice of the court that the website of the defendant in its entirety is indulged in illicit, infringing and illegal material. In this case, the court formulated three-step verification:

- Verification and assessment by the external agency of web links and URLs that have been alleged to be infringing
- Level of verification by deponent of affidavit along with the plaintiffs` and advocates
- The said affidavit is on oath

On another hand in the case of Department of Electronics and Information Technology v/s Star India Pvt Ltd, FAO (OS) 57/2015, the division bench of Delhi High Court, in this case, adopted a qualitative approach. by observing that rogue websites are overwhelmingly infringing and therefore prima facie stringent measures to block the website was justified. It further held that blocking of specific URLs will not be sufficient due to which URL can be changed or blocked.

Whether the defendants' website falls within the category of 'Rogue Website'?

The Court held, that after considering all the facts it can be said that the website belonging to the defendant falls within the ambit of Rogue websites.

Whether this court would be justified to pass directions to block the 'ROGUE WEBSITES' in entirety?

The Court held that "This Court is of the view that while passing a website blocking injunction order, it would have to also consider whether disabling access to the online location is in the public interest and a proportionate response in the circumstances and the impact on any person or class of persons likely to be affected by the grant of injunction. The Court order must be effective, proportionate and dissuasive, but must not create barriers to legitimate trade. The measures must also be fair and must not excessively costly." The Court further noted that any website blocking must be necessary and in proportionate and commensurate with the nature of the infringement, as well as whether legitimate content is being blocked.

How Should the court deal with the hydra-headed 'Rogue Websites who being blocked, actually multiply and resurface as redirect or mirror or alphanumeric websites?

Finally the most significant part of the Judgement was that it aims to create a new procedure to extend the website blocking injunctions beyond the websites specified in the order and this injunction is known as 'DYNAMIC INJUNCTION' shall extend even to websites which are mirror/alphanumeric/ redirect websites that have been created subsequent to the injunction orders. The court pointed out that the decision relating to Dynamic Injunction is stemmed from the decision given Singapore Court in Disney enterprise v/s MI Ltd, (2018) SGHC 206. The court further held that awarding such an injunction is well within the inherent powers of the court under section 151 of Civil Procedure Code and a similar injunction can be sought by the plaintiff under Order 1 Rule 10 of Civil Procedure Code.

Relief

A decree of Permanent Injunction was passed against the defendants restraining the defendant websites- their owners, proprietors, officers, servants, employees or anyone claiming through or under it from streaming, reproducing or making available to the public or communicating to the public or through any other mode a work, content, program or any work belonging to the plaintiff in which copyright subsists. An order was also issued against the ISPs to block access to the defendant's website. The plaintiffs were permitted to implead the mirror/redirect/alphanumeric website under Order 1 Rule 10 of CPC in cases where the new means of accessing the same primary websites have been enjoined.

Conclusion

Even though digitalisation has given opportunities to the creators to show cause their work and creations effectively it has at the same time also raised concerns for infringement of the rights belonging to owners. However, even though several efforts have been made at both International and national level to overcome the obstacles so as to ensure the protection of copyrights in the digital arena still a lot is to be done. At the national level, there is a necessity to create awareness among the people, to train the enforcement agencies and develop proper mechanisms to prevent infringement. At the International level, there is a need to ensure that the provisions and principles enriched under International treaties and conventions have been complied with so as to ensure effective management for protection of copyright in the digital world.