

# Issues and challenges of Copyright in the Internet World

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## Abstract

The invention of digital technology changed the world completely. The internet world or cyberspace had grown tremendously in the last decades. All the works and jobs were shifted from the traditional form of work culture to the technology. The technology proved itself as the most needed thing of the time and gradually we relied on the technology for everything. The world is facing the biggest problem in the name of coronavirus (COVID-19) due to which many of the countries had to go for lockdown, where everything is closed and we are facing many problems from education to the jobs. But thanks to technology and the internet we haven't stopped, people switched from the traditional methods of work to the work through the Internet. Colleges and schools are running online where students are taking virtual classes through the internet, the service sectors have gone virtual, even the judiciary has gone virtual from the Honourable Supreme Court to the lower courts the hearings are done through the virtual mode where again the internet and the technology proved it as the boon for the humanity and world. Technology always creates new opportunities and also creates challenges. Copyright infringement is one of the challenges that is faced in the internet world. Intellectual property rights are the legal rights that are granted to the people from their intellectual creativity come out with something new. The creator or inventor of the property shall get an exclusive right against any misuse or used without his or her consent.

In this paper the author analyses all the problems related to the copyright in cyberspace.

**Keywords:** - Intellectual property, Copyright, Technology, Cyberspace, Internet

## INTRODUCTION

The Internet has become one of the most important parts of the people nowadays. From the source of entertainment to the knowledge and from work to other social activities, the internet has taken an important place in all of them. It has become the lifesaving of people nowadays. We cannot expect a single day without the internet. In the current scenario, we rely on the internet/technology for almost everything from virtual classes to virtual hearings of cases in the honourable Supreme Court to the lower Courts. The people who were not familiar with the technology or the internet now started learning and using it because of the Coronavirus pandemic that the world is facing right now.

The intellectual property rights protected material in the internet world, including literary works, songs, computer programs, databases, can be easily reproduced and pirated by instantaneous means of replication, a publication that causes the real owner's significant financial loss. The effect of intellectual property rights-related losses is greater since the internet is borderless and can enter various geographical regions within a few seconds. In the case of Intellectual Property Rights, identifying the breach is a very difficult job in both the online and offline environments. Even if somehow the infringements are detected there are jurisdictional issues to invoke legal actions and financial implications.

The infringement of the intellectual property rights of another person constitutes the unauthorized use of individuals, literature, words, trademarks, service marks, photographs, music, etc. In the virtual world, the standard or conventional rules of Intellectual Property Law that apply to the physical world still apply. Infringements such as referencing, framing, etc. have also increased on the internet as the latest ways of infringement of intellectual property in the internet world. One of the key reasons for extreme online theft of intellectual property is that copying proprietary and intellectual property protected materials is very simple and the privacy that exists in cyberspace does not prohibit a party from using the protected materials without the owner's due permission.<sup>[1]</sup>

The main objective of the Intellectual Property Law is to protect the original forms of expressions and includes the protection of literary work, artistic work, music, computer software, sound recordings, etc.

### **Easy Infringement of IPR in the Internet Age**

With the growth of Information Technology, the internet is used for transacting business as well as for entertainment purposes. It is very much easy to replicate data in the electronic form and piracy of music through CD Rom. In one of the recent judgments in India, **CIT vs Oracle**

**Software India ltd[2]**. The court held that duplicating a CD at home may amount to piracy and violation of section 14 of the Copyright Act 1957. According to the report of the Indian Federation of Phonographic Industry (IFPI) INDIA, CHINA, BRAZIL, INDONESIA, and PAKISTAN are among the top ten countries where music piracy has reached unacceptable levels [3]. The literary works of the authors are also easily accessible through the Internet and it can be copied and can be misused. A reproduction of the work itself may denote the digital representation of the work. It is a misconception that any work published online brings with it the owner's implied consent that it can be replicated, changed, or transmitted to others. Under Indian law, the 1957 Copyright Act grants the creator of works, including literary, creative, and cinematographic works, and the right to prohibit a party from improperly reproducing, altering, or transmitting the copyrighted work and the web page if the artistic work combined with the literary work can be protected as unique designs. Because the internet has no restrictions, copyrighted works can easily be infringed because the defence of copyright is territorially specific. However, to implement this right in the Member States, conventions and treaties such as the TRIPS Agreement and the Convention on the Protection of Copyrights do not require compulsory copyright registration. As long as the country is a signatory to the copyright protection conventions or treaty, it can be legally applied if rights are violated in another member country.

In the case of **Dhiraj Dharamdas Dewani vs M/s Sonal Info systems pvt.ltd [4]** *“the court took the view that the copyright Act 1957 denotes that in the absence of registration under section 44 of the Copyright Act 1957, by the owner of the copyright it would be impossible to enforce the remedies under the provisions of the Copyright Act 1957 against the person who infringed the copyright under the section 51 of the Copyright Act 1957”*, which means that to claim the remedies under the act is very much necessary for the owner to have the registration. Apart from the conventional infringement of the intellectual property hybrid infringements such as framing, deep linking, sale of pirated products possesses high challenges to the law enforcement authorities.[5]

### **The doctrine of Fair use**

The writers shall retain the exclusive right to use their works for a limited period, subject to the right to fair use. Copyright works are available in the public domain until the term of security expires and the author's right terminates. The concept of equal usage varies from one jurisdiction to another. In the case of **Authors Guild Vs Google[6]**, the honourable Supreme Court held that Google providing access to snippets of approx. 4 million copyrighted books

through Google books is non-infringing and amount to fair use. In the case of **American Geophysical Union vs Texaco Inc**, the issue was whether fair use defence to copyright infringement applies to the photocopying of articles in a scientific journal. The court held that Dr. Chickering photocopying of isolated journal articles to assist his research inquiries is fair use. In **Sony corp of America vs Universal City Studios [7]** popularly known as the Betamax case, the supreme court of the United States ruled that the making of individual copies of the television shows to achieve time-shifting is not copyright infringement and can be considered as the fair use. In **Salinger vs Random House[8]** application of copyright to unpublished work was considered as the court ruled the copyright owners right to control the method of the first publishing his unpublished work is greater than the right of others to publish the work under the fair use doctrine. However, the congress in the US had amended the copyright act in 1992 explicitly allowed for the fair use in copying unpublished work.

## **International Organisation Protecting Intellectual Property**

### **WIPO**

Throughout several countries, WIPO has been instrumental in harmonizing copyright problems. An international body founded in 1893 to oversee the implementation of the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property was the United International Bureaux for the Protection of Intellectual Property (BIRPI). It was the World Intellectual Property Organization (WIPO)'s, precursor. The two landmark treaties covering intellectual property concerns are the 1996 WIPO Copyright Treaty and the 1996 WIPO Performances and Phonograms Treaty. These treaties set down the guiding principles for signatory members to form legislation in the offline world to protect intellectual property, but more remains to be done to protect intellectual property in the world of the internet.

### **WIPO Copyright Treaty**

A special arrangement under the Berne Convention is the WIPO Copyright Treaty 1996. Any member nation including those not bound by the Berne Convention is required to comply with the substantive provisions of the 1971 (Paris) Act of the Berne Convention for the Protection of Literary and Artistic work Compliance with the substantive provisions of the 1971 (Paris) Act of the Berne Convention for the Preservation of Literary and Artistic Work shall be

expected of every Member State, including those not bound by the Berne Convention. The treaty came into effect on 6 March 2002.

India is a party to, but not a party to, the Berne Convention under the WIPO Copyright Treaty. The WIPO copyright treaty clarifies that original expressions are protected by copyright and excludes concepts, business practices, or mathematical algorithms and formulas from its scope. According to Article 4 of the Treaty, computer programs are protected as literary works, and Article 5 states that data or database compilations are also protected as intellectual property under copyright. It also envisages the need to draught new legislation and clarify the interpretation of existing copyright laws, particularly in the digital world.

The Treaty provides for the right of reproduction of electronic documents or digital works accessible to the author and its expectations, as defined in the Berne Conventions, are also applicable in the online world. The WIPO Copyright Treaty deals with the right of distribution, the right to rent, and the right to speak to the general public, which are the exclusive rights of the author.

Regarding the right of communication, authors, according to the provisions of the Berne Convention, have the exclusive right to communicate their copyrighted works to the public, whether by wire or wireless means. It requires public contact so that members of the public can access the work from a location and at a time when the public can decide individually. On-demand services and digital communication using the internet are expressed in this clause. Article 10 of the Treaty allows the signatory countries the flexibility to impose other limits or restrictions which can be easily expanded beyond acceptable boundaries and to dilute the rights of the intellectual property open to the authors. Some countries have used this flexibility implemented under Article 10 of the Treaty to enforce digital copyright laws in their respective countries. The Treaty provides that enforcement teams to act against the infringement of copyrighted works should be set up by the signatory countries.

### **The Trips Agreement**

Via the TRIPS agreement, the WTO has contributed to the defence of intellectual property rights. The primary purpose of the treaty is to achieve a homogeneous collection of laws supporting intellectual property protection, including trademarks, copyrights, geographical indications, patents, and other types of intellectual property. It seeks to socially and economically support both IPR producers and owners and to promote creativity and innovation. Many countries have changed their domestic laws or enacted new legislation to safeguard intellectual property rights, including copyright, patents, and trademarks since the TRIPS

agreement was enacted. India is a party to the TRIPS Agreement and has a responsibility to enforce its terms under its domestic IPR security legislation. In protecting IPR, it also combines the Most Favored Nation (MFN) and National Treatment. While several legal documents, such as the Paris Convention on Industrial Property 1883, provided for the fundamental principle of the defence of various types of intellectual property, the Berne Convention on Copyright 1886 laid down the fundamental principle. However, there are many disadvantages, as many aspects of IPR security have not been discussed in the legal texts. Besides, these tools still lack methods for the regulation and settlement of conflicts and the imposition of trade sanctions.

The TRIPS regime lays down essential legal standards regulating digital copyright rights. According to Article 10 of the TRIPS Agreement, computer programs qualify as literary works for protection under the Berne Convention, and even databases are protected by copyright.<sup>[9]</sup>

### **Application of TRIPS Agreement in Cyberspace**

The TRIPS Agreement has been generally adopted, but it may have a narrow reach as it may only concern the problem of trade distortion, so attempts to enforce the concept of the TRIPS regime may not be sufficient for Cyberspace.

Whereas the World Intellectual Property Organisation could provide guidelines on the digital copyrights the TRIPS Agreement could be useful for their enforcement. Under the TRIPS Agreement, the WIPO Copyright Treaty could be embodied and provide an effective enforcement environment. TRIPS Agreement should provide a special focus on protecting the different forms of IPR in Cyberspace by framing a new legislation text only for protecting IPR on the Internet. This is because conventional IPR rights vary in their nature, treatment, impact, and territorial interpretation, and requirements for registration and cyberspace have no physical boundaries. Hence both its legislative provisions and enforcement mechanisms need to be different from those designed to protect conventional IPR. Such provision will need to deal with domain name protection, domain hiring, broadband rights, ownership rights, blogging rights, royalty issues for digital music libraries. From an overall perspective, the TRIPS Agreement can provide sound principles for establishing and still building an effective legal framework, for protection and enforcement of all forms of IPR even in Cyberspace.

### **Information Technology Act and the Copyright**

India's Information Technology Act was enacted in the year 2000 to deal with the various issues related to the Cyberspace and Internet world. With specific regard to the tampering of source code, the ITA also provides punishment for tampering of source codes of computer

programs of Government agencies and not necessarily private users since the provision is limited to source codes required to be maintained by law. Additionally, certain other sections may be addressed when reading into the copyright protection within the internet world and the cyberspace such as section 43 of the Information Technology Act talks about the penalty.

While the issues related to the copyright deal with the copyright act, it can be said that the efforts have been made to deal with copyright under the Information Technology Act.

The main issue is that we don't have adequate legislation to deal with copyright in the virtual world. Thus, to protect the copyrights and other forms of the Intellectual Property the countries should come up with the treaties and international guiding principles which can help in regulating the Intellectual Property Right in the right manner.

### **Conclusion**

Copyright is the legal right of the person for his work, which shall not be infringed in any way. Thus, the Copyright Act protects the rights of the owners. After the copyright amendment act 2012, the copyright regime in India strengthens statutory protection available to the authors to safeguard their rights both in the real and internet world. At the same time, it explains the fair dealing exceptions to copyright with much lucidity. New hybrid digital works such as multimedia will bring forth newer issues as technology develops and new laws or clarification of existing laws will be required to address new issues in the protection of copyrights in the dynamic digital world. As discussed by the author earlier we must have to have a strong guiding principles and international legislation to protect the Intellectual Property Right of the owners, and it can only be achieved when all the countries will be the signatories to the TRIPS Agreement and the WIPO who are working in protecting the rights of the people offline as well as online.

[1] Savage, Diane “protecting intellectual property from online infringement”

[2] CIT vs Oracle Software India ltd 2010 (13) SCC 677

[3] “Top 10 countries for Music Piracy “Zdnet research 8th August 2005

[4] Dhiraj Dharamdas Dewani vs M/s Sonal Info systems pvt.ltd 1999 (1) M.P.L.J.33

[5] Hutchison, Cameron “Interpretation & the Internet” 9th December 2009

[6] Authors Guild Vs Google 2d CIR 2015

[7] Sony Corp of America vs Universal City Studios 464 U.S 417 (1984)

[8] Salinger vs Random House (1986) 811 F.2d 90

[9] British Horseracing Board vs William Hill 2001 RPC 612