
AN ANALYSIS ON COPYRIGHT INFRINGEMENT OVER INTERNET WITH REFERENCE TO THE IT ACT AND THE COPYRIGHT

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ABSTRACT

Technology and the internet are regarded as both a boon and a bane. As the use of technology grew, various legal concerns arose before the copyright laws that were unresolved, novel, and difficult. Copyright is a set of rights aimed at encouraging creation. In the historical day, creative people used to work for fame and recognition rather than for a living. Copying and sharing digital information, as well as copying and pasting from a web page and sharing files, has never been easier. The Copyright Act now has to deal with business models that are gaining traction on the internet, where users are actively participating and companies are earning solely from internet services and search engines by employing sophisticated technologies that allow users to share their appealing content. As a result, it is now important for the Copyright Act to address issues of online copyright infringement and other relevant issues. as a result of copyright infringement. Although the internet has become the primary battleground for copyright protection, the amended provisions of the Copyright Act attempt to address some practical issues, such as the inclusion of a fair use policy and other aspects of transient and incidental storage of work or performance, as well as providing links for such links. Copyright infringement is one of the most serious cyber security issues. Thus, this paper examines infringement from the perspectives of liabilities, search engines, and intermediaries, taking into account the Information Technology Act of 2000 and the Copyright Act of 1957, as well as the differences between the Indian and US scenarios, before offering suggestions and drawing a conclusion.

Keywords: Copyright, Infringement, Internet, Liabilities, Search Engines, Technology.

1. INTRODUCTION

Copyright rights make it illegal for others to use the works that have been copyrighted. Because of the development of new technologies, the traditional concept of copyright has undergone a significant transformation, and its scope has been greatly expanded. Musical works, cinematograph works, computer programs, performer's rights, and broadcasting rights are now covered by copyright law. Competition, innovation, and creativity are all hampered when copyright protection is overly strong. A balance should be maintained between copyright owners' interests in receiving a fair payment for their efforts and copyright users' interests in having reasonable access to copyright materials.

According to a survey there are 2, 39,611,111 websites on the Internet ready to supply online users with a variety of information¹. Since most of the copyright -protected works were offline, copyright violation was difficult. It goes a long way, especially with the increasing technology of content sharing, whereby the original established and protected work can be used for one's own gain. The use of content by people who are not the original owners is illegal and goes against the goal of intellectual property, negatively impacting online culture.

Since electronic communications become widespread and accessible to the majority of people around the world, governmental and regulatory authorities have been attempting to determine the most appropriate and effective approach to manage the new cyberspace.² New technologies have always had an impact on copyright law. Digital technology provides for the speedy, global, "one-to-many" distribution of copyrighted works, as well as the easy, inexpensive, and faultless duplication of those works. However, there are a number of ways that copyright can be harmed by infringing on it and posing a threat to cyber security.

1.1 RESEARCH METHODOLOGY:

Descriptive and analytical methodology has been followed by the researcher throughout the research paper. Books, articles and websites as the secondary sources for the research have been

¹ Netcraft web server survey Report (July 2009)

² Dong Elaine and Wang Bob, (2002)

referred by the researcher for the accomplishment of the research paper

1.2 SCOPE OF THE STUDY:

The scope of the study includes the basic understanding of certain legal terms used in this paper majorly. This paper will also discuss the infringement liabilities as to the search engines, intermediaries, including a glimpse of exceptions as to infringement. We can also say that the paper revolves around (hypothesis) that in the current scenario the provisions given under IT Act And The Copyright Act is considered to be sufficient for not the offline infringement of copyright but the online copy right infringement also. We will be able to find an answer to this hypothetical statement while reading this paper as infringement in general will also be discussed in this research paper by highlighting the Indian Scenario and U.S. scenario and suggestions for reducing this cyber threat of the online copyright infringement followed by conclusion.

2. LEGAL TERMS IN LAYMAN'S LANGUAGE:

COPYRIGHT: refers to a collection of rights intended at promoting the production of new things. This form of intellectual property is regulated by the Copyright Act of 1957. (Property being created by using human intellect). It is an automatic right that allows the owner the sole right to reproduce, generate copies, alter, adapt, and show his or her work even if the owner does not apply for it. As a result, copyright, unlike patents, protects the expression of ideas rather than the concept itself.

COPYRIGHT ACT (1957): This act primarily aids in the provision of copyright intellectual property and, in some ways, its protection. The act's main goal is to safeguard the creators of original works of authorship. Copyright prevails in original literary, dramatic, musical, artistic, cinematograph films, and sound recordings, according to Section 13³. This act also provides a package of exclusive rights that are conferred on the owner of the copyright and can only be exercised by virtue of being duly licensed and registered as per the Act, such as the right to reproduce, the right to communicate to the public (economic rights), as well as the right of paternity

³ The Copyright Act 1957

and the right of integrity (moral rights), to ensure that the creator's work is not exploited for monetary gain.

INFRINGEMENT: When a copyrighted work is reproduced, disseminated, publicly displayed, or used without the permission of the rightful copyright owner, it is called copyright infringement. Ownership of a legitimate copyright, as well as infringement of his or her exclusive rights under statutory restrictions, are regarded grounds for copyright infringement. Anyone who, without the permission of the copyright owner, exercises any of the copyright owner's exclusive rights, as granted and limited by the Copyright Act 1957, which has been revised several times in response to the changing needs of society, is considered a copyright infringer. Copyright infringement is determined regardless of the infringer's purpose or state of mind.

INFORMATION TECHNOLOGY ACT (2000): It is India's major cybercrime law, and it recognizes transactions made via electronic data interchange and other electronic means of communication, as well as electronic commerce transactions. The IT Act of 2000 has been amended multiple times in response to society's desire to update obsolete laws and provide solutions to cyber-crime. We need such rules so that individuals can use credit cards to make purchases over the Internet without fear of fraud. This Act also imposes a fine under Section 65⁴, which states that anybody who tampers, conceals, destroys, or alters any computer source document intentionally faces a penalty of up to Rs. 2,00,000 or a sentence of up to three years in prison.

LIABILITIES: (in a broad sense): the responsibility that someone bears for their conduct, such as the obligation to compensate another person for hurt or damage caused by such activities. Liable in law refers to someone who is "responsible or responsive in law; legally compelled." It can take the form of both civil and criminal culpability. A civil liability example is: General damages are compensation for physical and emotional pain and suffering caused by the accident, and they can only be collected through a personal injury civil case. Criminal culpability, for example, occurs when the government believes you have done a criminal conduct and prosecutes the matter in court.

⁴ Information Technology Act 2000

3. INFRINGEMENT LIABILITIES:

Article 27 paragraph 2⁵ "Everyone has the right to the preservation of moral and material interests arising from any scientific, literary, or creative output of which he is the author," explains the basic right. As a result, it ensures that copyright infringement is avoided. Copyright is regarded as a fundamental right of property in several countries. Infringement liabilities come in a variety of shapes and sizes. They are:

- a) **Direct Liability:** In order for a claim of copyright infringement to be successful, the plaintiff must pursue two goals. These are: (1) the copyright owner's exclusive rights must be violated by the defendant. (2) when the defendant attempts to obtain ownership of copyrighted material. The most common kind of direct infringement is unauthorized copying. Direct infringement occurs when the author's work is performed or adapted without his or her authorization.
- b) **Vicarious Liability:** It is imposed by the court when the parties have the right and ability to control or oversee infringement as well as the financial benefits derived as a result of copyright infringement. Vicarious copyright infringement was originally conceived as a result of respondent superior's agency principles. The court ruled a Bulletin Board Service (BBS) operator vicariously liable in *Playboy Enterprises, Inc. v. Frena*⁶ for allowing the unauthorized posting of photos from the plaintiff's publication to the Internet for commercial advantage.
- c) **Contributory Liability:** The principle of enterprise liability gives rise to the doctrine of contributory infringement. It states that when a person knowingly contributes to another's illegal activity, they should be held liable. "Contributory responsibility will apply if a party knows, or reasonably should know, of infringing conduct occurring on the party's website, and the party materially contributes to the infringement," according to the Internet world. Contributory liability in the context of copyright infringement on the Internet can be used to define the parameters for contributory liability when an intermediary with knowledge of the infringing activity promotes, causes, or materially contributes to another's infringing action.

⁵ Universal Declaration of Human Rights (UDHR)

⁶ 839 F Supp 1552 (M.D. Fla. 1993)

- d) As a result, courts defined contributory infringement as making a major contribution to an infringement while knowing about it. The United States Supreme Court, however, declared in *MGM v. Grokster*⁷ that "one infringes contributorily by willfully promoting or facilitating direct infringement."

4. INFRINGEMENT OVER INTERNET:

Before delving into the topic at hand, one of the first things to consider is whether the Internet is a weapon for destroying intellectual property. The intensity of invention and the introduction of new technologies merely enabled unparalleled distribution of knowledge and information. As a result of these technical advancements, there has been an increase in demand for stronger intellectual property protection. The enormous growth of the internet user base had resulted in an unforeseen development of the internet. With such a growth, policing intellectual property has become one of the most difficult tasks to complete.

Concerns regarding an individual's right to privacy, reputation, and copyright have developed as internet use has increased. Most legal systems throughout the world have struggled to keep up with the pace of technology while still respecting the rights of the holder. The internet has sparked debate in international conventions and on existing accords such as the Berne Convention, which protects literary and artistic works, and the Rome Convention, which protects performers and producers of broadcasting organisations. These conventions and treaties are in place to guide the structuring of domestic legal systems in order to preserve owners' copyrights while maintaining a balance with the digital economy and the rights related to the internet intermediaries.

The Government of India enacted the National Intellectual Property Rights Policy in 2016 to encourage creativity and innovation and to emphasise the importance of intellectual property rights (IPR) in developing countries. The policy's first goal⁸ is to raise awareness of the economic, social, and cultural benefits of IPR by incorporating studies into student curricula to help students comprehend the importance of IP rights and how infringement of IP rights affects not just the owner but also the country's economy.

⁷ 125 S. Ct. 2764, 2776 (2005)

⁸ National Intellectual Property Rights Policy (2016)

This policy defines "pirated copyright goods" in accordance with Article 51⁹ of the TRIPS Agreement, which states that "goods made without the consent of the right holder or a person duly authorised by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation" Even though it deals with immaterial creations of thinking, copyright law necessitates fixing. Fixed copies of the original thing could formerly be examined, given away, traded, and so forth. The digital items, on the other hand, are not the same. They can, however, be given away or shared in various ways without losing access to the relevance of originality of the content.

The digital copies are exactly the same. This is not the same as tangible objects. When a book is handed away, for example, the giver loses access to the book. On the other hand, a digital book can be given away while the owner preserves an exact 17 copy. This concept has had a significant impact on debates regarding the original work, its connection to copies, and the first sale in the digital age. Digital media, such as CDs or software applications on a hard drive, are considered fixed formats when deciding whether a creation is eligible for copyright protection.

5.1 INDIAN SCENARIO:

With the use of a case law, the situation in India with respect to copyright infringement can be examined; Myspace Inc v. Super Cassettes Industries Ltd. (2015)¹⁰ SCIL is a well-known T-series in India; its business includes audio and video cassette recording, and it has grown to become one of the country's major music companies. Myspace, on the other hand, is an Internet Service Provider (ISP) that also claims to be an internet middleman and operates in the sphere of social networking and entertainment websites (referred to as 'defendant' or 'appellant'). The issues at hand are whether or not copyright is involved with intermediaries, as well as the status of copyright in relation to intermediaries.

Myspace did not commit a direct infringement, according to the court, and the Single Judge's judgement of secondary infringement was overturned. The following conclusions were reached:

⁹ TRIPS Agreement, 1995

¹⁰ 2017 (69) PTC1 (Del)

The IT Act's Sections 79 (no legal action will be taken against any social media intermediary for any third-party information, data, or communication link made available or hosted by him) and 81 (talks about the overriding effect) and the Copyright Act's Section 51(a)(ii) (when copyright is infringed) should be read together. In the case of internet intermediaries, Section 51(a)(ii) of the Copyright Act specifies actual knowledge rather than general awareness. Furthermore, the requirement of Section 79 of the IT Act to impose liability on an intermediary must be met.

In the case of internet intermediaries, remedy should be explicit and state the specific content that the other is infringing on. It is difficult for IP owners to identify infringers and take action against online pirates because of the anonymity of online piracy. A John Doe order, to clarify, is an injunction sought against a person whose name is unknown at the time the order is issued. It allows right holders to provide notice and take action against anyone who infringes on their intellectual property rights. The case *Taj Television Limited v Rajan Mandal* [2003]¹¹ established the jurisprudence of John Doe orders in India, when the Delhi High Court issued a John Doe order against cable companies, preventing unauthorized broadcasting of the World Cup football tournament. Following this ruling, obtaining a John Doe injunction before the release of any major film or athletic event became standard procedure. The Hon'ble court also directed the Ministry of Electronics and Information Technology of the Government of India to investigate the possibility of a technologically feasible method to warn viewers of infringing content to refrain from viewing/downloading such infringing content, because website blocking is a cumbersome exercise and the majority of young viewers/subscribers may not realise they are accessing, viewing, and/or downloading infringing content needs to be liable for the fines.

5.2 U. S. SCENARIO:

The US Supreme Court has also taken notice of copyright infringement in software or internet service provider content that had a significant risk of infringing usage. In *MGM Studios Inc v. Grokster* (2005)¹², the court established a standard to evaluate whether software is accountable for acts of infringement by third parties if it displays a clear statement or other positive efforts designed to encourage infringement.

¹¹ F.S.R 24

¹² 125 S.Ct. 2764, 2776 (2005)

The US Digital Millennium Copyright Act (DMCA) (1998) establishes intermediary laws that must be followed by US-based businesses. It specifies the format for the notice and removal process. According to this Act, the copyright owner must notify the infringement and indicate the infringing content on its website, and the unauthorised party must then take appropriate action to remove it. There is a "red flag" test in this Act that stipulates both the subjective and objective factors that must be met in order to determine whether or not there has been an infringement. To determine an infringement, objective standards would be applied to the facts and circumstances of a reasonable observer.

Viacom asserted copyright infringement against YouTube for its works in the US judgment *Viacom v. Youtube*¹³ (2007). Even if the infringing work in the suit is in a small fraction of the works posted by others on the internet service platform, the Court stated that it is impossible to "determine whether the user has been licenced by the owner, or whether its posting is a "fair use" of the material" or if it is the content of the copyright owner licence." As a result, the owner bears the responsibility of identifying the infringement.

1. SEARCH ENGINE AND THE COPY RIGHT ACT:

This has been taken into account because when the term "internet" is mentioned, the majority of the time is spent on a search engine. The Act's Section 51 (when copyright is violated) defines behaviours that constitute copyright infringement, whereas Section 52 (exceptions to copyright infringement) defines conduct that does not constitute infringement. Unauthorized duplication, alteration, distribution, performance, broadcast, and so on are all prohibited under Section 51. Although there are no precedents in India. The decision in *Perfect v. Amazon.Com*¹⁴, in which the Ninth Circuit court concluded that - "HTML instructions do not produce infringement visuals on the user's computer screen." The HTML just tells the user's browser the image's address. After that, the browser communicates with the computer that holds the infringing image. An illegal image appears on the user's computer screen as a result of this interaction."

As a result, an Indian search engine cannot be held accountable for direct copyright infringement. The Honorable High Court of Delhi heard the case of *Super Cassettes Industries Ltd. v. Yahoo*

¹³ No. 07 Civ. 2103, 2010, WL 2532404 (S.D.N.Y. 2010)

¹⁴ Case no. C404-9484 United States District Court, Central District of California, February 21, 2006

Inc. & Anr. On Friday, May 30th 2008¹⁵, issued notice to Yahoo Inc. and its Indian subsidiary Yahoo Web Services (India) Pvt. Ltd on a suit filed by Super Cassettes Industries Limited (SCIL), owner of India's largest music label "T-Series," for infringement of their copyright caused by unlicensed streaming of SCIL's copyright works on Yahoo's portal video.yahoo.com, and passed an order prohibiting the defendants and/or their officers, servants, agents, and or otherwise infringing in any manner, the cinematograph films, sound recordings and/or the underlying literary or musical works of the plaintiff, in which the plaintiff claims copyright, without obtaining an appropriate license from the plaintiff. Similar case was filed against Youtube.Com by the plaintiff and injunctive orders were issued by the court.

2. SEARCH ENGINE AND THE INFORMATION TECHNOLOGYACT:

The copying of data, computer databases, or information across a computer, computer system, or computer network is covered by Section 43(b)¹⁶. The 'Network Service Provider' is exempt from certain liabilities under Section 79. Both Sections are insufficiently powerful to include Search Engines in their scope.

The exception offered under Section 79 read with the Information Technology (Intermediaries Guidance) Rules, 2011 is clearly analogous to the safe harbours for internet service providers provided by the DMCA (Digital Millennium Copyright Act) of 1998. Because of the proviso contained under, the Hon'ble Court came to the conclusion that the provisions of Section 79 of The Information Technology Act, 2000 will have no influence on the liability of infringement of Copyright when giving a Prima Facie view on the Injunction¹⁷.

3. INTERMEDIARIES AND COPYRIGHT ACT:

Except for what is indicated in Section 52 of the Copyright Statute, the copyright act does not define internet intermediaries or provide any specific protection. Furthermore, it makes no distinction between virtual and actual physical space. The Information Technology Act of 2000 (IT Act) defines an intermediary as "any person that receives, keeps, or transfers a record on behalf of another person or offers any services related to that data."

¹⁵ CS (OS) 1124/2008

¹⁶ Information Technology Act (2000)

¹⁷ Sec, 81, Information Technology Act (2000)

It includes big websites like Google, YouTube, Facebook, Twitter, and others. Myspace Inc v. Super Cassettes Industries Ltd (2015)¹⁸ was a landmark case on copyright infringement by intermediaries, in which the court overturned a single judge's order in Super Cassettes Industries v. MySpace Inc. (2011). Super Cassettes (referred to as the plaintiff) filed a lawsuit seeking a permanent injunction prohibiting MySpace (referred to as the defendant or the appellant) from infringing on and exploiting intellectual property rights, primarily copyright in cinematograph films, sound recordings, literary and musical works, as well as damages for such exploitation.

However, a fair dealing with any work, not being a computer programme, for the purposes of—

- (i) private or personal use, including research;
- (ii) criticism or review, whether of that work or of any other work; and
- (iii) Reporting of current events and current affairs, including the reporting of a lecture delivered in public, is provided by the proviso provided under Section 52.
- (iv) Sec 52 (c) is another act aimed at bringing the Indian Copyright Act in line with international standards.

A proviso has been added to this paragraph to give internet service providers with a similar provision as safe harbour under international conventions, as they are only carriers of information provided by others. The technique is known as the 'notice and take down procedure.' If the person in charge of the copy's storage receives a written complaint from the work's copyright owner alleging that transient or incidental storage is an infringement, the person in charge of the copy's storage must refrain from facilitating such access for twenty-one days or until he receives an order from the competent court prohibiting such access. If no such order is obtained before the end of the twenty-one-day term, he may continue to provide the access facility.

4. INTERMEDIARIES AND INFORMATION TECHNOLOGY ACT:

The IT Act's Sections 79 and 81, as well as the Copyright Act's Section 51(a)(ii), should be read together. In the case of internet intermediaries, Section 51(a)(ii) of the Copyright Act specifies actual knowledge rather than general awareness. Furthermore, the requirement of Section 79 of the IT Act to impose liability on an intermediary must be met.

¹⁸ 2017 (69) PTC 1 (Del)

In the case of internet intermediaries, remedy should be explicit and state the specific content that the other is infringing on. The Information Technology (Amendment) Act of 2008 gave much-needed relief to the Intermediaries, since Chapter XII of the act exempted the Intermediaries from responsibility. The Central Government, in exercising the powers provided by section 87 read with sub-section (2) of section 79 of the Information Technology Act, 2000 (21 of 2000), issued a gazette notice.

The Information Technology (Intermediaries Guidelines) Rules, 2011, were released in a notification dated April 11, 2011. The Act made it explicit that in order to be eligible for protection under section 79, intermediaries must comply with the Information Technology (Intermediaries Guidelines) Rules, 2011. As a result, it is obligatory for Intermediaries to conduct such due diligence in order to get protection or exemption under the IT Act, 2000. By evaluating the requirements of Section 79 of the Act read with Section 81, the Intermediaries' protection in copyright and patent infringement proceedings has been revoked.

Thus, despite being exempt under Section 79 of the Information Technology Act of 2000, an intermediary can be sued for online violation of copyright content. The interpretation of Section 79 in conjunction with Section 81 of the Act has resulted in the repeal of the Act's exemption.

5. SUGGESTIONS TO SECURE COPYRIGHT INFRINGEMENT:

1. Intermediaries have been urged to put in place safeguards to prevent the spread of pirated content over the internet. They will also select "trusted entities" whose complaints will be dealt with first and foremost.
2. When a copyright owner notifies a website or e-commerce platform that it is making available, selling, or distributing copyrighted work without the owner's consent, the website or platform shall remove or disable access to the claimed content as soon as possible.
3. One answer is to modify people's incentives. One option is to prosecute all downloading actions carried out without the permission of the concerned copyright owners. A person who uses P2P software to illegally download a song or movie, or who illegally downloads

an article, a photograph, or graphics from the Internet will face criminal charges.

4. The alternative is to penalize only those illicit downloading and file sharing operations that have a direct commercial benefit or are large in size.¹⁹
5. Another alternative proposed in the consultation document is online service providers' (OSPs) support in the battle against Internet piracy. To prevent online piracy, OSPs may be urged to work with copyright owners to produce acceptable recommendations on good industry standards or codes of practice that are binding on all operators.
6. A liability for the online piracy activities undertaken by their clients may arise for the OSPs if an OSP fails to take steps to remove or disable access to the materials been infringed in the platform of their service.

6. CONCLUSION:

With the advancement of technology, India must work to adapt its existing laws and policies in order to protect owners from online copyright infringement. It should, however, strengthen criminality in response to the issues of digital copyright. The availability and efficacy of enforcement tools determine the breadth of copyright protection.

Criminal law is as much a part of copyright crime as it is of copyright law. It is time to enact strong policies or an online copyright protection law to ensure the free flow of speech, opinion, and expression among people in the digital era. "The principle legal issues for the search engines arise out of the increasingly recurring conflict between intellectual property rights on the one hand and the dazzling capacity of Internet Technology to assemble, organise, store, access, and display intellectual property 'content' on the other," according to Perfect 10 V Google.Inc.²⁰

The Internet revolutionized the way information was disseminated. On the one hand, digitalization reduced the cost of creating exact duplicates; on the other, the Internet made their distribution quick, simple, and inexpensive. While several countries have particular legislation concerning digital copyright, India has not.

¹⁹ Criminalization of copyright in digital era – Jstor Article

²⁰ Case no. C404-9484 United States District Court, Central District of California, February 21, 2006

Copyright holders may be able to regulate the dissemination of their material thanks to technological advancements in the digital rights management of intellectual material. The Information Technology Act of 2000 necessitates a fresh perspective and approach that may successfully address the problems brought by concerns like copyright infringement on the Internet. The Act would provide a defined category under which various Search Engines can be lumped Together and held accountable. Both innovation and protection are guaranteed by the law in its beautiful equality.

It does mean, however, that proposals to protect digital copyright through criminal sanctions should be examined through the lens of both criminal and copyright law, as criminal sanctions have a limited capacity to solve complex social problems, particularly those that fall outside the traditional criminal category. As a result, policymakers are left with two options. They can either try to live with the repercussions of digitalization or try to put noncriminal systems in place to avoid violation.²¹

Copyright protects information quality while also combating piracy and bringing order to the electronic publication market. Copyright provides a monetary incentive for people to generate copyrighted content. No one has come up with a better technique to compensate or incentivize creative people in the last 200 years. In the current digital context, copyright is more important than ever before. In the new digital context, copyright will not be lost. At the same time, copyright legislation should be regularly amended and updated to reflect the new digital era.

²¹ (Law Commission of Canada, 2004)

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