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Copyright Law in the Digital Environment: Issues and Challenges in India

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The advancement in the field of technology has provided numerous ways in which information can be accessed easily by anyone A huge amount of data and information is available in digital form, networks are connected throughout the globe and a convenient framework has been created via the world wide web making the accessibility of almost all nature of data easily possible. However, where on one hand this revolution in information technology has enhanced accessibility, on the other hand, it has also raised issues regarding intellectual property in the cyber world. Because a framework which is allowing easy access. is also facilitating copying-legal as well as illegal. As a result. many of the intellectual property rules and practices that evolved in the world of physical artifacts do not work well in the digital environment The issues associated with computerization are also amplified by the rise of the internet and more pervasive networking. This paper begins by explaining the importance of intellectual property protection in the digital age followed by a discussion on the impact of technological change on different intellectual rights. The paper also addresses the rising concerns and the key challenges regarding Intellectual property rights in cyberspace and a brief analysis of the existing laws prevailing for the protection of IP Rights in cyberspace and the drawbacks leading to the failure of effective enforcement of laws. The paper concludes with an emphasis on IPR awareness in the digital environment and the need for modifications in the existing IP Laws.

Keywords: *information technology, ipr, data accessibility, infringement.*

INTRODUCTION

The rapid advancement and revolutionary changes have led to exponential growth in the field of information technology. However, with the advancements comes challenges especially when it comes to protecting intellectual property rights in the digitized world. Intellectual property rights have branched out to cover a host of elements including the intangible assets of your brand. This chapter explains the importance of intellectual property in the digital age along with the challenges faced in cyberspace.

In the digital world, the information or the objects available are in the intangible form of digital information, e.g., computer software, trade secrets, literary works, etc. However, this valuable form of digital information is subject to a high risk of being misused. The World wide web service has provided easy access to the information available online, thereby creating a misconception that since the data or information is available in the public domain, therefore the same can be reproduced again. The instances of the creation of fake domains increased after the lockdown. These domains had copyrighted protected information.[1]

Further, a case was seen wherein a journalist was accused by a British news Website 'The Guardian' of copying the passages from their article. The competition in the market is such that everyone aims to be among the top searches in the top search engine irrespective of the way that would lead them to achieve this. An instance of the same was of a brand-named North Face, which was among the top in the searches planned to interchange the images of Wikipedia with theirs to be among the top in the Google search. However, this was noticed by Wikipedia and allegations were put on North Face for illegally using the educational platform for free advertisement. The instance mentioned above clearly highlights the need for the protection of Intellectual property Rights and effective enforcement of Copyright law in Cyberspace.

[1] 'Importance of protecting Intellectual Property in the Digital Age' (*Abou Naja*, 11 January 2021) <https://abounaja.com/blogs/importance-of-intellectual-property-protection> accessed 05 March 2023

INTERNATIONAL LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS

The Universal Declaration of Human Rights has recognized the right to protect the moral and material interest arising from scientific, literary, or artistic production as a fundamental human right.[2] The intellectual property rights concerning this have been broadly classified by the World Trade Organization as follows:

Industrial Property: Rights in industrial property are granted to encourage research and development in the field of technology, and to provide a means of incentive and finance for new projects. It consists firstly of distinctive signs used to distinguish or identify an object, such as trademarks and geographical indications. Secondly, it consists of nights that encourage inventions, like patents, industrial designs, and trade secrets. Digital information which may be the subject of a trademark includes domain names, while patents may apply to certain computer software, etc.

Among the first international treaties recognizing intellectual property was the Paris Convention for the Industrial Property, 1883. This convention was the one whitehat legal recognition of intellectual property arising from industry and commerce, such as patents, unity models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and protection from unfair competition.[3] Along with the recognition of IPRS, the need to make the recognition of a given mark international and extend its protection worldwide was felt. To this end, the Madrid Agreement Concerning the International Registration of Marks, 1891, established for the first time an international registry for trademarks.[4] The Madrid system provides one single procedure for the registration of a mark in multiple jurisdictions, and a mark registered here will have validity in all the contracting states of the Madrid Agreement and Paris Convention. Similar international registration systems have been set up for industrial designs and patents under the Hague Agreement Concerning the

[2] Universal Declaration of Human Rights 1948, art 27(2)
[3] Paris Convention for the Industrial Property 1883, art 1
[4] 'Paris Convention for the Protection of Industrial Property' (*WIPO*) <https://www.wipo.int/treaties/en/ip/paris/#:~:text=The%20Paris%20Convention%2C%20adopted%20in,the%20repression%20of%20unfair%20competition.> accessed 05 March 2023

International Deposit of Industrial Design 1960, which established the Hague system, and the Patent Co-operation Treaty 1970 respectively.[5]

Copyrights and related rights: Copyrights are given to the authors of literary, scientific, and artistic works, to reward and encourage creative work. It covers works like books and other writings, musical compositions, paintings, computer programs, and films. Related rights include the rights of performers, broadcasters, etc. Digital information which may be the subject of copyright includes articles, photographs, etc. which are published online, computer software, computer databases, computer object codes, etc.

Around the same time as the Paris Convention, the Berne Convention for the Protection of Literary and Artistic Works, 1886, gave recognition to the intellectual property arising from creative works, i.e., copyright.[6] It included every production in the literary, scientific, and artistic domain, in any mode of expression, such as a book, pamphlets, lectures, dramatic or musical works, cinematographic works, photographic works, illustrations, maps, etc.[7] The Berne Convention did not find favor with many countries, notably Russia and China, which primarily objected to the Europe- centric nature of the Convention and the higher level of minimum protection as compared to their national laws. In 1952, the Universal Copyright Convention was adopted by UNESCO to provide an alternative means of international registration of copyright to states that were not in agreement with the Berne Convention. This Convention was additionally responsible for the creation of the symbol.

Copyright protection according to the authors of literary and artistic works was extended to the performers, producers of phonograms, and broadcasters involved by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961. The WIPO Copyright Treaty, 1996, given the profound impact of information and

[5] 'Summary of the Hague Agreement Concerning the International Registration of Industrial Designs (1925)' (*WIPO*) <https://www.wipo.int/treaties/en/registration/hague/summary_hague.html> accessed 05 March 2023

[6] 'Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)' (*WIPO*) <https://www.wipo.int/treaties/en/ip/berne/summary_berne.html> accessed 05 March 2023

[7] Berne Convention for the Protection of Literary and Artistic Works 1886, art 1

communication technologies on the creation and use of literary and artistic works,[8] extended the provisions of the Berne Convention to computer programs,[9] computer databases[10] and established rights of distribution, rental computer and communication to the public concerning the copyrighted works.

OTHER TREATIES ON IPR INCLUDE

1. The Nice Agreement Concerning the International Classification of Goods and Services for the Registration of Marks, 1957.

2. The Locarno Agreement Establishing an International Classification for Industrial Designs, 1968.

3. The Strasbourg Agreement Concerning the International Patent Classification, 1971.

4. The Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, 1973.

5. The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958, which recognizes and protects appellations of origin, or geographical indications.

6. The Washington Treaty on Intellectual Property in Respect of Integrated Circuits, 1989, which established intellectual property rights for integrated circuits

7. The WIPO Performances and Phonograms Treaty, 1996, was entered to maintain a balance between the rights of performers and producers of phonograms and larger public interests like education research, etc.

[8] WIPO Copyright Treaty 1996
[9] WIPO Copyright Treaty 1996, art 4
[10] WIPO Copyright Treaty 1996, art 5

OVERVIEW OF INDIAN LAW RELATING TO IP

India became a member of the WTO and the TRIPS Agreement in 1995. The following laws were enacted to lay down the minimum standards for the protection of IPR, in fulfillment of India's obligations under the TRIPS Agreement:

Statute	Enacted for	Term of Protection
Copyright Act, 1957	Exclusive rights to use, reproduce and publish copies of original literary, dramatic, artistic, and musical works	Life of Author + 60 years
Patents Act, 1970	The exclusive right to prevent unauthorized use, production, sale, and import of an invention	20 years
Trademarks Act, 1999	Protects a mark capable of being represented graphically and which is capable of distinguishing the goods or services, their packaging, and combination of colors	10 years

Geographical Indications of Goods (Registration and Protection) Act, 1999	Protects indication which identifies goods like agricultural goods, natural goods, or manufactured goods	10 years
Designs Act, 2000	Exclusive right over the features of the shape, configuration, etc.	10 years

ONLINE COPYRIGHT INFRINGEMENT

Online copyright infringement may occur concerning any material that is copyrighted (and not computer programs or works) For example, the printing of copyrighted material can lead to the creation of unauthorized physical copies, while acts like scanning create unauthorized digital copies. Both acts amount to the reproduction of the copyrighted work, which is the author s exclusive night and constitutes infringement For example, in India, the Copyright Act of 1957 permits reproduction done only for a judicial proceeding, for use by the Legislature or under a law for the time being in force Reproduction for any other purpose would constitute infringement.[11] Similarly, the posting of copyrighted material on a networking site will amount to unauthorized publication, another exclusive right of the author

LAW ON COPYRIGHT IN INDIA

The Indian law on copyright, the Copyright Act was enacted in 1957 The Act is compliant with most international copyright conventions, including the Convention for the Protection of Rights of Producers and Phonograms.

[11] Copyright Act 1957, s 52

SUMMARY OF IMPORTANT PROVISIONS OF THE COPYRIGHT ACT 1957

The Copyright Act of India defines copyright as an exclusive right created by this act to reproduce, publish, perform, produce, adapt, or translate. a literary musical or artistic work. or any cinematographic film or record.[12] Further, it will not be provided for work unless it was first published in India, is by an Indian citizen, or is located in India,[13] except for International Copyright.[14]

The Act further provides that the author of a work shall be the first owner of the copyright[15], who may assign or license the copyright to another.[16] The term of the copyright is provided for under Section 22-29 of the Act. For a literary, dramatic, or artistic work, the term is 60 years after the author's death,[17] for anonymous and pseudonymous publications,[18] photographs, cinematograph films, and records, the term is 60 years from the date of publication. Sections 44 to 50 of the Act provide for the registration of copyright and establish the Register of Copyrights. Registration is, however, not compulsory in India.

Under Section 51 of the Act, a copyrighted work will be infringed if any person does any of the acts which constitute an exclusive right of the author under Section 14 of the Act. If any person makes, sells, lets for hire, distributes, exhibits, or imports copies of an author's work, he will also be liable for infringement. Several exceptions to this section have been provided under Section 52 of the Act such as fair dealing for research, criticism for reporting of current events (newspaper/ radio), reproduction for a judicial proceeding, or in any work of the legislature or under the requirements of any law, the reading or reciting of a work in public and publication for any bona fide educational purposes. Chapter XII of the Act provides for civil remedies by

[12] Copyright Act 1957, s 14
[13] Copyright Act 1957, s 13
[14] Copyright Act 1957, s 40
[15] Copyright Act 1957, s 17
[16] Copyright Act 1957, s 40
[17] Copyright Act 1957, s 22
[18] Copyright Act 1957, s 23

way of injunction, damages, accounts, and otherwise for copyright infringement, and Chapter XIII of the Act provides for criminal remedies

NO CONFLICT BETWEEN IT ACT AND THE COPYRIGHT ACT

The IT Act provides an overriding effect over other laws in force in India.[19] However, this would not restrict the rights of any persons provided by the Copyright Act of 1957, and Patents Act of 1970. The proviso to this section prevents the usage of the provisions of the IT Act in a way that restricts a person from exercising statutory nights conferred under the Copyright Act or the Patent Act. The effect of this proviso on the liability of an intermediary for copyright was dealt with by the Delhi High Court wherein it was held that in cases where intermediaries have involved provisions of Section 79 of the IT Act had no impact on the copyright infringement about online wrongs,[20] and hence the proviso to Section 81 of the IT Act[21] would not have an impact on the rights of the copyright owner. Therefore, even if an intermediary had protection under Section 79 of the IT Act. the copyright owner could still proceed against the intermediary under the Copyright Act.

DISTRIBUTION OF COPYRIGHTED MATERIAL

The digital distribution of copyrighted material such as copyright infringement. The primary mode of distribution is through peer-to-peer file-sharing sites and online bulletin board services

Peer-to-Peer File Sharing (Napster case): Peer-to-peer file sharing or P2P file sharing, allows users to access and share media files such as music, movies books games, etc. over the internet using P2P software The P2P site enables the users to search for and locate the desired file on the computer of other users which are interconnected through the P2P software. The file can then be directly downloaded from the other users. computer. Several copyright issues that arise through the P2P file-sharing system were discussed in the Napster case in the US, including:

[19] Information Technology Act 2000, s 81 proviso
[20] *Super Cassettes Industries Ltd v Myspace Inc. and Anr* (2011) (48) PTC 49 Del
[21] Information Technology Act 2000, s 81 proviso

a. Direct Copyright Infringement by the Users

b. Use of the Fair Use Defence

c. Contributory Copyright Infringement by the Intermediary

d. Vicarious Infringement

e. Applicability of Safe Harbor Provisions by the Copyright Intermediary.

The Napster Case - The United States Court of Appeals in the Ninth Circuit gave a landmark judgment on peer-to-peer file sharing in The Napster case[22] In this case, a P2P file sharing system was designed and operated by Napster which permitted the transmission and retention of sound recordings employing digital technology. The system facilitated the transmission of MP3 files, which were created through a process colloquially called ripping', between and among its users. Napster's Music Share software made the MP3 files freely accessible from Napster's Internet site Through a process commonly called "peer-to-peer" file sharing, Napster allows its users to:

a. creates MP3 music files that were saved on individual computer hard drives and could be easily accessed and copied by the Napster users.

b. explore for MP3 music files that were saved on other users' computers and

c. transmit the copies with the same contents of other users' MP3 files from one computer to another via the Internet.

The findings of the Court affirming the decision of the United States District Cart for the Northern District of California, which found Napster liable for copyright infringement, are given below

Direct Infringement of Copyright: The first finding of the District Court that was upheld in the appeal was that those who were the using Napster website were involved in reproducing and

[22] *A&M Records, Inc. v Napster, Inc.* [2001] 239 F.3d.1004 (9th Cir.)

distributing the copyrighted work, all constituting direct infringement. To establish direct infringement. following requirements need to be fulfilled by the plaintiff:

- The ownership of the alleged infringed material should be shown, and
- The alleged infringer should have violated at least one right provided to copyright holders.

The Court found that the plaintiffs had sufficiently demonstrated ownership of the material. It was also found that the Napster users violated at least two of the exclusive rights of a copyright holder- the Napster users who had uploaded file names to the search index for others to copy violated plaintiffs' distribution rights, while the Napster users who had downloaded files containing copyrighted music violated the plaintiff's reproduction rights.

Defense of Fair Use: Napster took the defense of fair use, stating that since its users were engaged in fair use of material, therefore, there was no direct infringement of the copyright of the plaintiff. For the determination of whether the Napster users were engaged in fair use, firstly, the factors, as listed in 17 USC. $ 107 were taken into consideration, and secondly, the fair uses alleged by Napster were considered Factors under 17 U.S.C. $ 107.

Fair Uses Alleged by Napster: The following fair uses were alleged by Napster:

- Sampling Napster took the defense of sampling, stating that, the MP3 files were downloaded by the users so that they could sample and take a decision regarding the purchasing of the recording. It was held that sampling remains a commercial use even if some users eventually purchase the music. The Court also took into consideration that the plaintiff collected royalties for their 36-second long song samples available on retail Internet sites, which were self-programmed to time out. In comparison, Napster users could download a fully free and permanent copy of the recording
- Space-shifting Napster alleged that space-shifting of musical compositions and sound recordings was previously 106 held to be fair use.[23] Space-shifting happens once a

[23] *Recoding Indus Assn of Am v Diamond Multimedia Sys. Inc.* [1999] 180 F.3d.1072, 1079 (9th Cir.)

Napster user downloads MP3 music files to pay attention to the music he already owns on CD The Court. however, refused to use the selections on space shifting to the Napster case, since the time or space-shifting mentioned within the previous judgment didn't conjointly at the same time involve the distribution of the copyrighted material to the public, in general, it exposed the copyrighted material solely to the initial user.

The District Court's observation that Napster users do not have a fair use defense was upheld by the Appellate Court.

Contributory and Vicarious Copyright Infringement: Napster was found to be secondarily liable for the direct infringement under two doctrines of copyright law: contributory copyright infringement and vicarious copyright infringement.

Contributory Copyright Infringement: To establish Contributory copyright infringement following elements need to be fulfilled**:**

- **Knowledge:** one who, with knowledge of the infringing activity, induced, causes, or materially contributes to the infringing conduct of another, may be held liable as a contributory infringer.[24]
- **Material Contribution:** It is necessary that the secondary infringer should know or should have sufficient reason to know about the direct infringement. It was observed by the Court that

Napster materially contributed to the infringing activity. It was concluded that without the support services, the defendant provides. Napster users could not find and download the music they want in the case which the defendant boasts. Thus, the Court found that Napster had knowledge of and had materially contributed to the infringement, and was, therefore, liable under the doctrine of contributory copyright infringement.

Vicarious Copyright Infringement: The concept of vicarious liability goes on far in employer/employee relationship in the context of copyright law, to cases within which a

[24] *Gershwin Publ'g Corp. v Columbia Artists Mgmt. Inc.* [1971] 443 F.2d.1159 (2nd Cir.)

defendant has the right and skill to supervise the infringing activity and conjointly incorporates a direct monetary interest in such activities.

Safe Harbor Provisions under Copyright Law: It was acknowledged by The District Court that the preliminary injunction granted against the participation in copyright infringement by Napster was not only warranted but required. Napster in defense of the injunction granted against it resorted to the protection available under the safe harbor rules of the Audio Home Recording Act and the Digital Millennium Copyright Act as defenses for the injunction that was granted against it.

[US] Digital Millennium Copyright Act: In this case, the statutory limitation on liability was also contended by Napster by affirming the protections available under "the safe harbor clause from copyright infringement suits for "Internet service providers" as mentioned under DMCA. The statutory limitation as contended was not given any weightage by the District Court and further favored the denial of temporary injunctive relief. The court concluded that Napster "has failed to persuade this court that subsection 512(d) shelters contributory infringers."

BULLETIN BOARD SYSTEMS

Bulletin board systems are similar to P2P File sharing systems, where the software allows users to connect and log into a computer system using a terminal program. The users can upload and download software, and data, share news, e-mail or chat with other users, and even play online games. In a case,[25] the defendant opened a subscription BBS, where photographs copyrighted by the plaintiff were uploaded without the required permission The BBS was accessible for a fee via telephone modem to customers. Once logged in the users could browse through the pictures as well as download them onto their home computers. The US District Court for the Middle District of Florida held that the defendant had violated the plaintiff's exclusive right to distribute and display its copyrighted works. The defendant's argument that the images had not been uploaded by him but were by the subscribers to his system. was rejected. The Court found that neither knowledge nor intention was an essential ingredient of infringement under the US.

[25] *Playboy Enterprises Inc v George Frena* [1993] 839 F. Supp. 1552

Copyright Act and the defendant had supplied a product that contains unauthorized material. The Court further rejected the fair use of defense.

CONCLUSION

The cultural and creative industries and Internet Service Industries to survive and develop require Digital copyrights. Although, the advancement in the digital world has created numerous opportunities for creators to present their work and talent but with has brought serious concerns regarding the infringement of rights. Although several steps have been taken on both platforms i.e. International and National levels, to protect the copyrights in the digital environment the same is not sufficient and requires more efforts and an effective legislative framework These challenges can be overcome by putting efforts at the basic level, the countries among themselves can spread awareness about their existing rights in their fields, further, the enforcement agencies can be trained, and effective and efficient mechanism can be created to prevent infringement. Along with this, at the international level, it is required that the relevant international treaties and the related provisions are being followed to facilitate the efficient and effective management and protection of copyright in the era of digitization.