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DIGITAL COPYRIGHT LAWS IN INDIA

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Introduction

What is copyright?

Copyright refers to the right of the owner of Intellectual property. In less complicated terms, copyright is that the right to copy which suggests that the initial creators of Intellectual property and anyone they offer authorization to are the sole persons with the right to recreate the work.

According to WIPO, Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.

What can be protected using copyright?

Exhaustive lists of works covered by copyright are typically not to be found in legislation. still, generally, works usually protected by copyright throughout the globe include:

- ✓ literary works such as novels, poems, plays, reference works, newspaper articles.
- ✓ computer programs, databases.
- ✓ films, musical compositions, and choreography.
- ✓ artistic works such as paintings, drawings, photographs, and sculpture.
- ✓ architecture; and
- ✓ advertisements, maps, and technical drawings.

Copyright protection extends solely to expressions, and to not concepts, procedures, ways of operation or mathematical ideas per se. Copyright might or might not be accessible for variety of objects like titles, slogans, or logos, depending on whether they contain adequate authorship.

Two types of rights under copyright

There are two types of rights available to the copyright owner under copyright law:

1. **Economic rights**, which allow the rights owner to derive financial reward from the use of their works by others; and
2. **Moral rights**, which protect the non-economic interests of the author.

Most copyright laws state that the rights owner has the economic right to authorize or stop bound uses regarding a piece or, in some cases, to receive remuneration for the utilization of their work (such as through collective management).

The economic rights owner of a work will disallow or authorize:

- ✓ its copy in varied forms, like written publication or sound recording.
- ✓ its public performance like in a play or musical work.
- ✓ its recording, for instance, within the type of compact discs or DVDs.
- ✓ its broadcasting, by radio, cable, or satellite.
- ✓ its translation into alternative languages; and
- ✓ its adaptation, like a unique into a movie script

What are digital copyrights?

The advancement in technology postured new challenges to this copyright laws because the law was primarily developed within the regime of print media that slowly evolved its protecting works to incorporate artistic works, paintings, drawings,sculptures, that later expanded to photography and cinema similarly. The age-old legislations and their core ideas in copyright law had to be reentered, therefore, as to create digital social record progress.

The technical copiers or recorders created the digital information simply accessible with the rise in use of the web, which may lead to manipulation of the work vis a vis a free flow of data in society, because the moment this digital record is placed within the public domain on the web the author loses all management.

In India, the Copyright Act does not fix a liability on the ISPs for infringement of Digital Copyright. Therefore, as an initiative the Information Technology Act 2000 redressed the problem of fixing liability on the ISPs for infringement.

It states that “no Service supplier was liable for an offence committed or for violations happening without his information, if the service supplier has exercised all due diligence to stop the violations.”

Indian law resembles the provisions of the US Home Recording Act 1992, as section 52 of the Indian copyrights Act 1957 describes the thought of use exception. It exempts works done for personal use or for criticizing or reviewing of the work.

However, the main disadvantage in Indian law is that the Indian Copyright Law does not implement the opposed evasion provisions underneath the WCT and WPPT, as US and UK have done. There are not any provisions that forbid evasion of digital rights management systems in India. Therefore, there's piracy happening benefiting the users, who have gotten copyrighted material at half the value. On the contrary the owners have gotten promotion, fame, and prosperity vis a vis losing out on opportunity to sell their original works that may have yielded them smart revenue. the sole remedy at the instant is to initiate legal proceeding under the Copyright Act to stop piracy.

Digital copyright regime in USA and UK

USA was the primary to implement the provisions of the WCT (WIPO Copyright treaty) and WPPT (WIPO Performances and Phonograms Treaty). It enacted the Digital Millennium Copyright Act 1998 that mentioned protection of technological measures by dividing it into 2 classes being a measure that prevent unauthorized access of data and measures

that stop unauthorized copying. therefore, it prohibits circumvention of technological measures controlling access the second limb of the DMCA 1998 was it addressed the technological measures utilized by authors to safeguard their copyright.

However, this was severely criticized by the critics who state that this legislation prevented scientific research and educational development; though the DMCA had an honest impact in updating copyright law for the digital atmosphere, because it was the primary legislation of its kind.

In the UK ,the Digital Economy Act 2010 (c. 24) was enacted by the Parliament to control digital media and was Introduced by Lord Felix Mendelssohn, it received Royal Assent on 8 April 2010, and came into force on 8 June 2010. However, the Open Rights cluster, privacy and consumer rights organizations criticized the online infringement of copyright provisions viz section three to eighteen of the Act, because it partially had a proposal of a graduated response scheme, which might eventually disconnect net accounts used for persistent infringement of copyright. The cluster took their issues to the House of Lords and raised problems concerning the impact on businesses providing net access to their customers, like libraries and universities.



Case law relating to digital copyright in India.

UTV Software Communication Ltd v/s 1337x and ors on 10th April 2019¹

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 contended by the plaintiff that defendants` websites hosted and provided access to their copyrighted work which resulted in infringement of Copyright of the plaintiff.

¹ Delhi HC 2019 SCC Online Del 8002

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.

1. 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 a crime in the digital world is not especially when the Copyright Act does not make any such distinction.

2. 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.

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.

Case laws relating to digital copyright in the USA.

Cambridge University Press v. Albert²

A case brought by many educational publishers in 2008 that alleged infringement by Georgia State University about its course e-reserve system.

The U.S. Court of Appeals for the Eleventh Circuit held that the district court misinterpreted its previous mandate and misapplied the use test. Specifically, the court in agreement with the publishers' arguments that the district court erred once it created its new findings of fair use when the primary appeal, both once it revisited its issue four analysis and once it again applied a "mathematical formula" for advisement and reconciliation the four factors in its overall calculus of enjoyment for every excerpt. The court conjointly held that the district court erred once it thought of the price of buying licenses to find that the third issue favored fair use. Finally, the Eleventh Circuit vacated the lower court's decision finding GSU a litigator and subsidization its attorneys' fees.

Capitol Records v. ReDigi³

A case involving a service that allowed users to "resell" digital mp3 files. The U.S. Court of Appeals for the Second Circuit published its longanticipated decision affirming the district court's finding that ReDigi infringed the reproduction rights of plaintiffs. The court affirmed the district court's holding that ReDigi's service created a replacement copy of a recording, and the replica right is not subject to the primary sale school of thought, that applies entirely to a selected phonorecord. The court conjointly rejected ReDigi's argument that its technical method of deleting the first copy of the file while reselling a recording does not represent a replica.

Further, the court held that the deletion doesn't nullify the very fact that a replica has been created, which ReDigi's fair use defense (relying heavily on its enjoyment call in TVEyes) does not arise.

²12-14676

³934 F. Supp. 2d 640; 106 U.S.P.Q.2d 1449

Code Revision Commission v. Public.Resource.org⁴

A case regarding whether or not the Official Code of Georgia Annotated (OCGA) was eligible for copyright protection.

The U.S. Court of Appeals for the Eleventh Circuit held that “where the official who created the work is entrusted with delegated sovereign authority, wherever the work carries authoritative weight, and wherever the work was created through the procedural channels within which sovereign power unremarkably flows – it follows that the work would be attributable to the constructive authorship of the folks, and so uncopyrightable,” finding the OCGA uncopyrightable as a result.

Need for digital copyright law in India.

The advancement in technology exhibit new challenges to the prevailing copyright laws because the law was at first developed within the regime of print media that slowly brought beneath its protecting shelter artistic works, paintings, drawings, sculptures, that later expanded to photography and cinema as well. These age-old legislations and their core ideas in copyright law had to be revisited, therefore, as to build digital societal record progress. The technological copiers or recorders build the digital data available offered, that may lead to exploitation of the work vis a vis a free flow of data in society, because the moment this digital record is placed in public domain on the web the author losses all control. Therefore, as Copyright law as such grant's certain negative rights to its owners to stop anyone from doing acts concerning his work, as the Copyright law has currently been changed to suit the new age digitization.

The growth of the net has disrupted the balance between incentives and access to new artistic content. this is often because the digitization of copyright industries, like print and audio-visual media, lowered distribution prices, removed entry barriers to the market and diminished returns on artistic content. while this is often a boon for audiences and customers, it has additionally created it troublesome for creators and to thrive in a more and more competitive

⁴ 18-1150, 590 U.S. ____ (2020)

market. The accessibility of content on the web necessitates a move towards a contemporary copyright regime that reinstates the motivation to make new content.

Conclusion

It is imperative to say that digital copyrights are the way of future, owners of copyrights are shifting to digital modes as it is easier and less cumbersome. Therefore, there is a dire need of digital copyright laws around the world. Developed countries like the USA and UK have already set precedents and developed laws to aid the copyright owners, however, developing countries like India are still behind on this process. There are no precedents set or laws passed which aid in digital copyright, moreover, most of the copyright owners are not even aware of the digital method for their copyrights. For all member countries, WIPO should lay down groundwork and rules for the setup of laws to aid in digital copyrights this would help in having a stable and uniform code for the digital copyrights.

There should also be a strong system of legal protection against circumvention of Digital Right Management (DRM) which would encourage creativity in useful arts. In this age of digitization, everything from a pin to an airplane is available on the internet thus, if there are no laws for the digitization of copyrights then it would only mean that we as humans have failed to speed up with the times. There are several laws related to the usage of Internet and cyber related laws in India but there is no law relating to digital copyrights. Digital copyrights are the way forward in the future as the need for physical offices and officers will reduce drastically.

To conclude, I would like to reiterate the need for digital copyright law in India and the fact that in this fast pace and everchanging world, we as a developing country cannot afford to be left behind because of the lack of digital laws in the country.

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