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## Protecting Online Copyright Infringements: The Emerging Legal Issues and Challenges

**Dr. G. Mallikarjun**

Assistant Professor

NALSAR University of Law, Hyderabad

### *Abstract*

*Copyright infringement is the primary problem in intellectual property rights in the present digital era as with the emergence of new technology, newer concepts called computer databases, computer related programs, computer software, computer layout and other works on the internet, specifically the cyberspace has come to light. The copyright infringements take place online due to the ease of replication as there is no degradation of the original copy with successive copying. The copyright law is the most powerful tool today to address and tackle the Intellectual Property Right issues based communication and information. While it is universally accepted that the main aim of copyright law is the promotion of individual interest, it also incentivizes authors to allow them in creating new works by providing recognition and economic returns through the law. However with the enhanced technology, legal issues have emanated, distorting the very principle of copyright law and making it very critical to apply the copyright law to the digital or online information. Hence, in this paper the author intended to discuss the issues relating to copyrights in relation to computer programs, computer databases in the cyber space and the related issues vis-à-vis protecting the rights of the authors in general.*

**Key Words:** *Cyber Space, Computer Database and Copyright Issues*

### **Introduction**

Intellectual Property Rights (IPRs) include copyrights, trademarks, patents, etc., are more vulnerable in the present day of digital world, while violation of copyright is more vulnerable compared to other IPRs. To manipulate, distribute and reproduce any copy righted work in the digital world is very easy. “Digital content can be combined, altered, mixed, manipulated and perfect copies can be made for little cost, thus the digital technology undermining the distribution systems and increase unauthorized use of copyright works”<sup>1</sup>. Therefore, due to the innovation of technology, there will always be a change in the society which is dynamic in nature and thereby facilitate the internet technology to grow at a faster pace. Simultaneously, the said technology may be used for the exploitation in the form of infringement of copyright when there are no proper checks and balances. Any work that is copyrighted may be circulated by using some basic tools of technology on cyber space to disseminate or store or use a copyrighted work, namely, ‘**Packet Switching**’, ‘**Caching**’, ‘**Framing Technology**’, ‘**Linking**’ and ‘**Email**’<sup>2</sup> which is nothing but a severe violation of copyrights.

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<sup>1</sup> Burgess, J. (1993). Internet Creates a Computer Culture of Remote Intimacy, *The Washington Post*, A1, A8, quoted by Fareed Ahmad Rafiqi in his article “ Copyright Protection in Digital Environment: Emerging Issues”, available at [www.ijhssi.org](http://www.ijhssi.org) Volume 2 Issue 4, April 2013, PP.06-15.

<sup>2</sup> a) ‘Packet Switching’ technology: In this technology information that is transmitted through Internet is broken into small units (as packets). Once the packets reach their final destination, the broken units reassemble and are thereby stored in the hard disk or RAM as per their sequential order and makes a temporary copy of the same and transfers ‘copies’ that it has received and same will be resulted in to the saving of the unauthorized copy.

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## Protection of Copy Rights in Cyber Space: Legal Framework for India

The main object of copyright law is to promote and protect the individual author's interest by providing recognition and economic returns through the law so that they can be encouraged to create new innovative works. However with the emerging technology, the printing by copying has been increased more particularly in the cyber world with anonymity thereby fixing the liability on any one. Under Copyright Act 1957, any creative words, literary works etc., are protected from being copied without prior permission from the copyright holder. Information that flows through the internet entails numerous practical problems as it can be modified, distributed and passed on as the cyber world is not limited by geographical boundaries, hence the internet permits rampant copyright infringements online. Preventing the copyright violations in the cyber space is very difficult as the Information Technology Act 2000 (Act 2000) was designed and formulated in the pre-digital technology period; therefore it could be said that the I.T Act 2000 has not adequately tackled and curb the copy right violations in the cyber space. While technology is moving in an amazed pace, it is the need of the hour to come up with the new and innovative digital technology to restrain unauthorized use of any copy righted work in the cyberspace.

Further intruding into one's copyrighted work would certainly cause a huge economic loss as well as it is a grave violation of the copy right law. Therefore, to tackle this issue, the Technological Protection Measures (TPM) was introduced in the international level, to provide extensive safety to the proprietary works from digital piracy via cryptography and passwords. It adopts two measures; one is Access Control Technology (ACT) and the other is Copy Control Technology (CCT). However, there is a downside to this as well as it enables unauthorized users to frame technical solutions, which can counter TPM. As a response to the same, the World Intellectual Property Organization (WIPO) has formulated two crucial treaties; they are 1) WIPO Copyright Treaty (WCT), 2) WIPO Performances and Phonograms Treaty (WPPT)<sup>3</sup>, which mandates its member countries to extend adequate legal protection for effective TPM, in its national copyright legislations.<sup>4</sup> Several countries, such as the US, Japan, Australia and Germany have adhered to this mandate. Therefore, to

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b) 'Caching': In this method mirroring will happen in the CPU of a computer and is a fast storage buffer that permits the computer to temporarily store data in the RAM or hard disk and in this process the Proxy Caching happens at server level.<sup>2</sup> It also maintains an unauthorized copy of the work.

c) Framing technology: In this technology a webpage or site is framed within another website or its URL or domain name and the content of the target site is appeared within this border and original site is not displayed<sup>2</sup>. Thus, committing any copyright infringement by reproducing or creating a derivative work of the original, the framing site owner does not redirect user to the linked site; rather, he creates a new page within his frame. This amounts to copyright of the original site owner.<sup>2</sup>

d) Linking: This is a method of reproducing a work. It allows the user to gain his/her desired information that is available online by connecting the user to pages within the website. A webpage in the cyberspace is linked without the permission of the owner. While Surface framing does not create much problem, the deep linking create an issue of copyright because it provides the user access to the inner pages of another website through the links on one site, without accessing the home page of the site linked.<sup>2</sup>As linking happens without the knowledge and permission of the copyright owner of the online information therefore results in to copyright infringement.

e) Email: It is the electronic version of mail system and does not dilute the quality of information leaving a copy at both the sender as well as the receivers place. For further information see [http://shodhganga.inflibnet.ac.in/bitstream/10603/13638/8/08\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/13638/8/08_chapter%201.pdf).

<sup>3</sup> "The purpose of the two treaties is to update and supplement the major existing WIPO treaties on copyright and related rights, namely the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention), primarily in order to respond to developments in technology and in the marketplace".

<sup>4</sup> Retrieved from, [https://www.nalsar.ac.in/pdf/Journals/IJPL\\_2013\\_Final.pdf](https://www.nalsar.ac.in/pdf/Journals/IJPL_2013_Final.pdf)

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bring it in consonance with the WIPO Internet Treaties- WCT and WPPT<sup>5</sup>the Indian Copyright Act1957 was amended in the year 2012

The Indian Copyright Act 1957 was initially enacted in 1957 and was later amended in 1994 and in 2012. The amended Act of 2012 is more conclusive and forward-looking in terms of tackling copyright challenges of digital technologies especially those in the cyberspace. By removing certain restrictive clauses and phrases, and by expanding the definitions of works like cinematograph films (motion pictures) and sound recordings (phonograms) to include such works in any medium within their purview, the Act has adapted itself to the digital era.<sup>6</sup> To protect copyrighted works in cyberspace, a technical measure like fair use provisions for works online has been introduced. Moreover Section 14 of the Indian Copyright Act of 1957 was amended to include 'hire' to bring it in compliance with Article 7 of WCT and Article 9 of the WPPT, which provide for 'commercial rental' rights for computer programs and cinematograph films. However, in Section 14(d) and (e) of the said Act 1957, the term 'hire' was replaced by 'commercial rental' to narrow down the scope of hire to only commercial rentals and not non-commercial ones. The definition of the term commercial rental was also introduced under Section 2(fa) of the Amended Act2012. Fair use provisions are now extended to digital works as well as per Section 52 the Copyright (Amendment) Act 2012 provides that the work which is not a computer programme for purposes of private or personal use, including research, criticism or review of any work.<sup>7</sup> Making of copies or adaptation of computer programme from a legal copy for non-commercial personal use is also fair use.<sup>8</sup>

### **Protection of Copyrights in Cyberspace in India: The Issues and Challenges**

It is obvious to understand the relationship between the 'information technology' and 'enforcement of copyrights in the cyberspace'. Hence some of the issues and challenges pertaining to digital replication posing to traditional IPR systems and owners are as follows:

**1. Public use Vs Private use:** It is one of the most basic copyright infringement issues in cyberspace and more particularly in India. The Act of 1957 too like the other copyright laws makes a distinction between reproduction for public and private use. Reproducing copies of a copyrighted work when in public use can be done with prior permission of the copyright owner, whereas the law permits fair dealing in cases of private use or review, etc., this however has changed when it comes to the materials in the cyberspace. The distinction has eroded with the emergence of Internet as an individual or user can transfer any copyrighted work over the Internet to multiple users<sup>9</sup>. Hence, there is a rapid need to adopt and implement acceptable norms in international level for protection of copyrights in the net.

**2. Reproduction and distribution rights:** In the cyberspace, distribution gets with reproduction since no copy can be distributed without reproduction<sup>10</sup>. "When data is transmitted through the Internet using a technique known as 'packet switching' will be broken up into smaller units or 'packets' of information. Then the packets are sent through the network as separate or distinct units at different times, at that time each computer makes a

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<sup>5</sup> Abhai Pandey,(January 1, 2013), Inside Views, Development in Indian IP Law: The Copyright (Amendment) Act, 2012, Intellectual Property Watch),: Retrieved from <http://www.ip-watch.org/2013/01/22/development-inindian-ip-law-the-copyright-amendment-act-2012/>

<sup>6</sup> Section 2(y) of the Indian Copyright Act, 1957

<sup>7</sup> Explanation to Section 52 (a) provides even the storing of any work in electronic form also.

<sup>8</sup> Section 52 (ad) Indian Copyright ( amendment)Act, 2012

<sup>9</sup>Subhasis Sah and Sourav Keshri.(2008) "Challenges to Copy Right Work In Cyber Space", Journal of Intellectual Property Rights Vol.3, Pp 35-42

<sup>10</sup> Under Articles 7, 11 and 16 of the WIPO Performances and Phonograms Treaty, 1996 (WPPT), the Performers and Phonogram Producers are vested with "the exclusive right of authorizing the direct or indirect reproduction of their respective protected subjects in any manner or form".

temporary copy of each packet and transmits”<sup>11</sup>. Thus, when the packets of the data being transmitted through the RAM of a computer a copy of the transmitted data may be created or stored at either in the destination computer’s RAM, on its hard disk, or in portions of both. Therefore, reproduction comes with its own issues in the cyberspace due to Internet transmission as reproduction happens at every stage of the transmission. In Indian reproduction has to be done in a material form which includes even ‘storing of it in any medium by electronic means’<sup>12</sup>, however, there is no conclusive proof as to whether reproductions in the cyberspace fall under the category of right of reproduction given by law or not.

**3. Enforcing liability:** While enforcing liability, it is crucial to know on whom does the liability fall i.e., the party who receives it or the Internet service provider or the one who transmits the work. Section 79 of the Information Technology Act of 2000 envisages that if the subscriber proves that the breach or offence was committed without the knowledge of a person or that a person had exercised with all due diligence to prevent the commission of such breach or offence then there is no liability under the said Act of 2000.<sup>13</sup> To fix liability on the Internet Service Provider (ISP) for the Infringement or abetment of infringement of copy right of the any one, the ISP should have the Knowledge about any copyright infringement otherwise there would not be any liability on ISP. As the Internet is a global affair a person will be held liable, only if any act on internet is treated as an offence under their respective domestic law and thus, it is very difficult to regulate the same, as the message would travel various countries before reaching its destination. Hence, the ISP may not have liability in the country of destination or country of origin, but may be held liable in some country in transit. Software developers are potentially liable for copyright infringement based on the secondary liability, based on theories of contributory or vicarious infringement.<sup>14</sup> A provider must either commit direct or an indirect infringement i.e. contributory or vicarious copyright infringement.<sup>15</sup>

**3. Implementing domestic/State IPR Laws:** The effective enforcement of any domestic law is very difficult because of the involvement of numerous territorial jurisdictions. Some States are empowered to compel Internet Service Providers (ISPs) to examine the material which is being transferred through the net for copyright clearance under their domestic laws; some States are not, which eventually delays the whole process. Therefore, harmonizations of laws among the States are essential to frame uniform guide lines for the protection of copy rights in the cyber space. Controlling and distilling information flowing in the cyberspace has its own practical issues. The possibility to intercept material that is obscene is already existing<sup>16</sup> which includes the power to block the sites. However, it is not full proof because when once an infringing site is blocked, thousand other new infringing sites would crop up. Censoring is also difficult when the cyber space is universal and accessible to anyone to upload the information without any territorial limits.

## Conclusion

To conclude, it can be said that the so called highly advanced modern technology known as the Internet technology poses a serious threat to IPR led copyright issues and copy right violations in cyber space which has become a common phenomena in these days. To tackle the infringement of copy rights in the cyberspace,

<sup>11</sup> James T. C (1998), “The Internet As A Challenge For Intellectual Property Protection: An Indian Perspective”: Retrieved from [www.wipo.int/edocs/mdocs/mdocs/en/wipo\\_int\\_sin\\_98/wipo\\_int\\_sin\\_98\\_2.doc](http://www.wipo.int/edocs/mdocs/mdocs/en/wipo_int_sin_98/wipo_int_sin_98_2.doc)

<sup>12</sup> Section 52(1) (b) and Section 52(1) (c) of Copy Right (amended) Act, 2012 clarify that the transient or incidental storage of a work purely in technical process of electronic transmission or communication to the public is within the meaning of fair use.

<sup>13</sup> Section 79 of the Information Technology Act, 2000

<sup>14</sup> Secondary liability ‘arises when one party is held legally responsible for the actions of another party.’ And it can be vicarious or contributory liability.

<sup>15</sup> Sony Corp of America v Universal City Studios Inc(US 1984) 104 S Ct 774, 464 U S 417; A&M Records Inc v Napster, 239 F 3d 1004, 1020 (9<sup>th</sup> Cir2001); In re Aimster Copyright Litigation, 2003 Copr L Dec P 28,630,67 USP Q 2d 1233.

<sup>16</sup>Section 69 of the IT Act 2000

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the existing law is inadequate. Therefore, it is the duty of the State to come out with a concrete policy in combating the on-line copy right violations and based on that requisite amendments should be made to the existing law.

For the effective protection of copy rights of the owners on cyber space the possible suggestions are;

1. It is the need of the hour that, at the International level all the States must adhere for a policy framework in tackling the issues of IPR infringements at a global level.
2. Due to the shift in digital technology, libraries are to be upgraded, and modernized with technology by meeting and maintaining the international standards in protecting the rights of all the end-users.
3. Introduction of ECMS<sup>17</sup> in India will be a proper way in tackling the issues emanating from copyright violations of any nature.
4. Like in the US, the Copyright Alert System(it lasts only for four years) can be introduced to stop online copyright infringement in India.

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<sup>17</sup> Electronic Copyright Management Systems would be proper to introduce in India to tackle the copyrights violations, which is a technology that enables owners of a copyrighted work to tract and prevent copying of their digital work, like the digital watermarking system.