

Infringement of IPR in Race of Information Technology

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Abstract: *Information Technology is growing faster than any other communication vehicle in the history of mankind. Invention of digital technology was the most important revolution in the last century. The influence of digital technology on information technology is phenomenal. The present millennium is witnessing a new culture that is internet culture. It is changing our life style and way of doing business form traditional commerce to e-commerce. Therefore, In today's world not only does information technology make almost all kinds of human creativity available in the Internet networked public sphere, but also it enables the creation of new forms of art, creative expression, and distribution of knowledge. More often than not, the rapid pace in the evolution of information technology causes friction with Law in as much as Regulators' foresightedness could not have ruled to cope with new social trends, socio-political and economic phenomena in the market. Hence this paper will be focusing on the legal loopholes tat can be seen in policies regulating such affairs with special reference to IT Act, 2000 and will try to answer some basic questions like whether this race of information technology leads to infringement of IPR's and will discuss the issue which are arising because of untamed development in Digital Technology.*

Keywords: Information Technology, Digital Technology, Internet, Legal Loopholes, IT Act, 2000, IPR and Copyright.

1. Introduction

Information Technology is growing faster than any other communication vehicle in the history mankind. Invention of digital technology was the most important revolution in the last century. The influence of digital technology on information technology is phenomenal. The present millennium is witnessing a new culture that is internet culture. It is changing our life style and way of doing business form traditional commerce to e-commerce. Originally confined to military establishment internet has due to its speed, intercreativity and flexibility, tremendous potential to disseminated information beyond the geographical boundaries.[1] Today the internet is

not only used for educational purposes but also for business. The availability of radio, telephone, television and computer made it possible to carry out most of the business activities on-line, through the information technology and communication network. Therefore, In today's world not only does information technology make almost all kinds of human creativity available in the Internet networked public sphere, but also it enables the creation of new forms of art, creative expression, and distribution of knowledge. More often than not, the rapid pace in the evolution of information technology causes friction with Law in as much as Regulators' foresightedness could not have ruled to cope with new social trends, socio-political and economic phenomena in the market [2].

The government of India by passing IT (Information Technology) Act 2000 and further amending it on 27th October 2009 has given fillip to cyber law. But various issues are not specifically covered by the Act, such as copyright, payment issues, media convergence, domain name, cybersquatting and jurisdiction. While these have wide ranging ramifications for the growth of e-commerce of India. The continued rapid evolution of a number key technologies and convergence of broadcasting media, communication media, home electronics, and publishing on computers creating a lot of legal issues. Thus important

attributes like data text images and voice are combined by the computers in the form of multimedia which raise the issue of neighbouring rights. Since, technology creates new opportunities it also poses new challenges. Copyright is most complicated area of cyberlaw and facing greatest challenge.

2. Copyright

Copyright compliance is both a legal and an ethical issue. An information professional need to ensure that his activities remain on the right side of the law and that his conduct is ethical. Thus, defining copyright in much simpler language, Copyright is a form of intellectual property that gives the author of an original work exclusive right for a certain time period in relation to that work, including its publication, distribution and adaptation, after which time the work is said to enter the public domain. Copyright applies to any expressible form of an idea or information that is substantive and discrete and fixed in a medium. Some jurisdictions also recognize "moral rights" of the creator of a work, such as the right to be credited for the work. Copyright is described under the umbrella term intellectual property along with patents and trademarks [3].

2.1 Nature of Copyright Infringement on Internet

With the emergence of the internet and increasing use of the worldwide web possibilities of infringement of copyright have become mind boggling free and easy access on the web together with possibilities of down loading has created new issued in copyright infringement. Taking content from one site, modifying it or just reproducing it on another site has been made possible by digital technology and this has posed new challenges for the traditional interpretation of individual rights and protection. Any person with a PC (Personal Computers) and a modem can become a publisher. Downloading, uploading saving transforming or crating a derivative work is just a mouse click away. To this there arises two basic questions whether mere using internet can be termed as infringing.[4]

a. Whether mere accessing a web page is infringement?

Duplication of the information is an essential step in the transmission of information on the internet and even plain browsing information at a computer terminal (which is equivalent to reading a book or a magazine at book store) may result in the creation of an unauthorized copy since a temporary copy of the work is created in the RAM of the user's computer for the purpose of access. The law on the subject evolving and the general view is that mere accessing a web page would not be an infringement as the copy created is temporary or ephemeral.

b. Whether creating links to other sites should be considered a copy right violation as these links give access to other copy righted sites?

Although strictly speaking it may be a violation of copyright. But there is an implied doctrine of public access for linking to other web pages. The Internet was created on the basic of being able to attach hypertext links to any other location and it is assumed that once a page is put on the net, implied consent is given, unless specifically prohibited by the web site owner.

3. Computer Software and Internet Piracy

Software is defined as a set of instructions which when incorporated in a machine readable form or in capable of causing a computer to perform a particular task. To put it simply, it is a series of commands which can be understood by the machine.

There are three essential types of software which help to function the computer, micro code it is a programme which controls the details of execution, the operating system software which control the sources of a computer and manages routine tasks and is a necessary requirement for a computer to function and the third is a application software which is designed to perform a particular task.

Piracy occurs when copyrighted software is made available to users to download without the express permission of the copyright owner. Such illegal software is offered over online sources such as online advertisements newsgroups bulletin board service and auction sites. Piracy hampers creativity, hinders the development of new software and local software industry and ultimately effects e-commerce. A piracy harms consumers and has negative impact on local and national economy. Consumers run the risk of viruses and having corrupted and defective programs.

3.1 Digital (Copy) Rights

Intellectual Property in our legal system, which is belongs to the Continental System, is addressed by two, distinctive and absolute rights, i.e. the moral right and the economic right. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of Copyright and related rights in the information society has introduced the so called "Digital Rights" in Copyright, namely the right for reproduction of copyrighted material, the right for distribution of

copyrighted works, the right for communication of the work to the public in addition to the other known economic rights of copyright with which the creator and/or right-holder is empowered to permit or forbid the use of his/her work. These "Digital Rights" of the Copyright are of vital importance for the operation of DL. They are also cause of friction between DL and Collecting Societies More specifically [5]

a) Reproduction of copyrighted material

A user and/or a DL are not allowed to reproduce or communicate copyrighted material unless permission is granted by the intellectual property right-holder. Unauthorized reproduction of such material leads to civil liability in the form of damages and criminal responsibility remedied through fines or potential imprisonment. One of the most important legal issues related to copyright is the need of DL to make copies for preservation purposes and/or for future use. It is more than common in the non-profit environment, where either the fragility of the infrastructure per se or the obsolescence of the equipment to direct a depository institution to reproduce the material. Given that the copyright law gives the author the exclusive right to authorize the reproduction and dissemination of his work, such activities can be performed legally only by the copyright right-holder. Although the copyright legislation in many countries, Greece among others, provides the right of libraries to reproduce protected works, that have been lost or damaged and are no longer available in the market, no legislation provides permission to make backup copies of all kinds of material deposited in a library.

Reproduction of a copyrighted work is allowed if;

1. It is made by a non profit library or archiving organization,
2. The work belongs to a copy in the library or archive's permanent collection,
3. The reproduction aims at retaining that additional copy or at transferring it to another non-profit library or archive, and
4. The reproduction is deemed necessary since it is not possible for the library or archive to obtain an additional copy from the market promptly and on reasonable terms.

b) The Right to Distribute & the Rental and Lending Right

The right to distribute is a sine-qua-non service of the operation of libraries, moreover of DL. The rental and lending right is also understood as a necessary service in the operation of DL.

c) The Right to communicate the work to the public

According to national and international law, the copyright owner has also the exclusive right to communicate his work to the public. Traditionally, one of the main reasons for the existence of public libraries is the provision of access to their collections to the public without any financial demand on the part of the author and/or publisher. That is to say, to make the works of culture, arts,

and sciences hosted in copies in public libraries available to the public in its quest to access cultural, artistic, and scientific resources.

4. Copyright & Openness (Open Access)

Open Access means the free availability of literature and works of authorship audiovisual works etc on the public Internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the Internet itself. The only constraint on reproduction and distribution, and the only role for copyright in this domain, should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited.

The Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities seem to agree that for a work to be considered for Open Access, the copyright holder must consent in advance to let users copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship. With Open Access individuals can take projects in their own direction without necessarily hindering the progress of others. Openness is being put forward to facilitate the growth of the open source and free software programming communities, and may involve the consumption and production of free content.[7]

The Internet and the Open Access movement has inevitably altered the way in which librarians see their own profession, and their role in saving, archiving, and distributing knowledge, art, and culture to the general public. The general public is the most important stakeholder of any public and/or private library. Librarians, and especially the younger generations of them who have had the opportunity through their undergraduate and graduate studies in academic institutions to get a grasp of what a DL might be and/or could evolve to become, usually strive to develop strategies favouring the outcomes best corresponding to the deepest values of their profession, in particular the desire to overcome barriers in the open access of knowledge, art, and culture saved, archived, and distributed through libraries. From that perspective, it is clear and reasonable that librarians throw all of their weight to the Open Access movement for the following reasons [6]

1. It is the only alternative to present publishing that has a chance to develop without the economic penalties associated with present, digital publications peddled in the form of site licenses.
2. It is the only alternative that, although relying on some external, public support, has a chance to withstand the competition of the large publishers over the middle and long term, unlike most learned societies and similar, generally irreproachable, institutions.
3. It is the only way for librarians to recover responsibility over traditional concerns such as classification and

conservation. In this manner, they can also get involved with the elaboration of various tools that add values to any collection of scientific articles.

4. It is the only way to ensure that powerful panoptic effects, either already identified or to be discovered, do not remain the exclusive preserve of private, unaccountable, profit-driven companies, many of them operating offshore.
5. Open libraries and archives provide a very good way to develop new and positive relationships with scientists, particularly gatekeepers, and administrators to review in depth the processes of scientists' evaluation now that these questions can be treated independently of print-related constraints.

5. Conclusion

In the digital world, every single act triggers the law of copyright. The emergence of digital technologies has radically increased the domain of copyright law from regulating a small portion of human life to regulating absolutely every bit of life lived through a computer. In consideration of the conflicting relationship between Copyright and Technology one wonders upon the essence of the threat that Copyright is met with in the era of digital information technologies which we all have been living in during the last two decades, at least. Is Copyright at stake because of the nature of its conflict to Technology? The answer is definitely No! We are not entering a time when copyright is more threatened than it is in real space.

But, it is also true that, The Indian Copyright Act is unable to protect the unauthorized distribution and use of work over internet. Infringement over internet and piracy posing a threat to creative works worldwide and thus the growth of the internet, the e-commerce and the digital economy. Copyright owners exclusive right of distribution applies to e-mail attached or forwarded. Indian Government has taken a remarkable step ahead in right direction by enforcing the Information Technology Amendment Act 2008, on 27th October 2009, but which does not mention a single word about copyright. While the copy right is one of the most complicated areas of cyber law, Jurisdiction, cybersquatting, trademark, patent, domain name, media convergence, taxation, payment issues are also not covered by the said Amendment Act. While these are essential for the growth of e-commerce.

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