

Intellectual Property Rights with special reference to Copyright Laws in India

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Abstract: *This paper gives an overview of intellectual property rights (IPR) issues with special reference to copyright in India. The paper deals with the digital technology and copyright law as well as the role of librarians in the protection of copyright literature. Such protection ensures owners the control and participation in the proceeds of the commercial exploitation of the work. Librarians need to play appropriate role to the balance between the users' right as well as creators' right with regard to copyright and copyright enforcement. Paper concluded that in the age of information communication technology, library and information professionals have more responsibility to protect the copyright of creators. They have to discourage library users from copyright infringement. Finally, the paper suggests some solutions that will reduce the copyright infringement.*

Keywords: Digital Technology, Copyright, Intellectual Property Rights, IPR, Librarian, India

1. Introduction

Intellectual property includes Patents, Designs, Trade Marks, Copyright, Confidential Information, Trade Secrets and know-how. It plays crucial role in the development of industry, commerce and trade and in the growth of creative effort in almost every field of human endeavour. The scope of intellectual property is expanding very fast and attempts are being made by persons who create new creative ideas to seek protection under the umbrella of intellectual property rights. In case of Copyright, in ancient times authors, painters, musicians, scientists, etc. (creators of intellectual property) i.e. people involved in intellectual exercises were state sponsored; i.e. they worked and prospered under the patronage of the King (Matthews, 2003). Their honour, valour and property depended upon the king. All the products of their intellectual cultivation were the property of the state.

In a modern welfare democratic state, as they say, the common man is the king. So the need for all creative persons to fend for themselves arose. Since they were no longer sponsored by anybody, logically the rights in the produce of their intellectual exercise now vest in them rather than with the State. It was to protect this right that the need for a law of copyright arose. This need for the law of Copyright became more pressing after the invention of the printing press which made mass reproduction of the original content easily possible.

2. About Copyright

World Intellectual Property Organisation (WIPO), defined Copyright as "a legal term describing rights given to creators for their literary and artistic works". Copyright is the legal protection extended to the owner of the rights in an original work that he has created. It comprises two main sets of rights: the economic rights and the moral rights. Copyright essentially relates to those acts which the creator reserves to himself or his near and dear ones in his creative works. These include right to reproduce, right to modify, right to commit for translation, right to transmutation, right to

commit to other forms like cinematographic reproduction, etc.

An important thing about copyright is that, though designed in part to protect authors, the control it was designed to create was never to be perfect. Copyright protection has never accorded the copyright owner complete control over all possible uses of his work. Almost since the inception of copyright regulation, there have always been limitations to copyright (Lessig, 1999). Perfect control is not the control that law has given owners of intellectual property. Historically, the copyright has been focused mainly on commercial life, i.e. it has laid down the rules according to which for profit exploitation of intellectual property is permissible and doable. Most exceptions to the rules for commercial exploitation of intellectual property, namely the restrictions to intellectual property regulation are triggered by the idea of copyright's commercial use. Most of these restrictions make provisions for permissible noncommercial use of intellectual property in the sense that all other non-commercial uses of intellectual property aside from these provided and allowed by law, are not permissible without the prior consent of the intellectual property right-holder.

3. Copyright law & Technology

The advent of digital technologies has radically posed the challenges to the copyright regime from regulating a small portion of human life to regulating absolutely every bit of life lived through a computer. Though, in a way the emergence of digital and information technologies have promised the copyright owners with a widening market, but on the other side the same technologies have sounded a threat to the copyright owners with a loss of control over their own property. As newer digital products enter the market, efficient management and controlled of such products is become a major concern. The copyright owners are under a constant threat of losing control over their copyrighted work. To protect their works against the splurge of digital goods in the information superhighway, they are using technology to retain control.

4. Copyright law & Open Access (OA)

According to Budapest Open Access Initiative, the literature which is free availability 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 term Open Access was coined to typify the open access to information or material resources needed for projects; openness to contributions from a diverse range of users, producers, contributors, flat hierarchies, and a fluid organizational structure. The appeal of openness has become so great that it is sometimes difficult to recognize that limits on openness are not only necessary but desirable. The virtues of an open environment are undeniable; what is more difficult is negotiating the proper levels of openness for a given realm of online life.

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. After all, the general public is their most important stakeholder of any library. Librarians, who have had the opportunity through their undergraduate and graduate studies in academic institutions to get a grasp of what 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.

5. The Copyright Piracy in India

Copyright piracy is a global phenomenon prevalent worldwide. Piracy means unauthorized reproduction, importing or distribution either of the whole or of a substantial part of works protected by copyright. The author of a copyrighted work, being the owner, enjoys certain exclusive rights with respect to his or her works. These include right to reproduce, to publish, to adopt, to translate and to perform in public. The owner can also sell, assign, license or bequeath the copyright to another party if he wishes so. If any person other than the copyright owner or his authorized party undertakes any of the above mentioned activities with respect to a copyrighted product, it amounts to infringement of the copyright. Copyright piracy is thus like any other theft which leads to loss to the owners of the property. Besides economic loss, piracy also adversely affects the creative potential of a society as it denies creative people such as authors and artists their legitimate dues.

A study was conducted by National Productivity Council (NPC) sponsored by Department of Education, Ministry of Human Resource Development, Government of India to study the issue of piracy in India. The study shows that the piracy in India is worth £ 41 million(USD 82 million)

consisting of 23% of total sales of recorded copyright products which is about 4% of world trade and these products include books, movies, soundtracks, computer programmes, internet, cable television and illegal copying.

6. The Indian Copyright Act, 1957

The copyright in India has travelled a long way since it was introduced during the British rule. The Copyright Act, 1957, as amended in 1999 governs the copyright law in India. It came into force on January 15, 2000. It has established a copyright office, under the immediate control of the Registrar of Copyrights, to facilitate registration of copyright. It has also established a Copyright Board with Registrar of copyrights as its Secretary under the Act. The Act defines various categories of works in which copyright subsists, and has internal provisions for determination of first ownership of copyright, the scope of rights conferred; assignment and licensing of copyright; compulsory licensing and the circumstances in which it could be granted; performing rights of societies broadcasting rights; authors special rights; international copyrights. The Act sets out in detail what constitutes infringement and what does not; civil and criminal remedies against infringement and remedies against threat of legal proceedings without any ground.

The Indian copyright law is in conformity with the provisions of the TRIPS Agreement of the WTO. It is also in line with the provisions of the Berne Convention for the Protection of Literary and Artistic Works (Brussels Text, 1948). The act has been amended five times in the years 1983, 1984, 1992, 1993, and 1999 to meet the national and international requirement (Thomas, 2012).

7. The Copyright (Amendment) Act, 2012

made to strengthen the rights of the authors, streamline the process of assignment and grant of licence, facilitate better access to works, and extend the fair use provisions, in general and particular to the Internet. There are some changes made in the provision of the assignment and licensing and copyright societies are exempted to streamline business practices but has an underlying concern about protecting authors' interest. The reforms made in the administration of the copyright societies and the copyright board. Overall amendments have the signature of a reformist approach.

8. Role of Librarians in Copyright Protection

In any educational institute librarian plays a key role in many spheres, including copyright. The main role of librarian is to make available of library collections to students and faculty in support of teaching, learning, research and scholarship. Libraries are creatures of the historical and statutory balance in copyright law. Libraries lend materials based on the First Sale doctrine. Libraries share materials and preserve works under specific provisions for libraries in the Act. Libraries are often the only entities that provide access to the vast majority of copyrighted works that lose market vitality long before the expiration of the copyrights, and are often the only entities that preserve

public domain materials. From the above perspective, it is clear and reasonable that the role of librarians is very important for the following reasons:

- i. To enable users to access copyrighted and public domain works and to exercise their rights under the exceptions and limitations to creators' rights in the law. The creation of new intellectual property building on the old is stimulated as a result of the existence of libraries. Libraries are places where public and the proprietary meet.
- ii. To work for library as social organizations address the balance in the law and are shaped by it. The institutional roles of libraries, librarians and their associations necessitate paying close attention to that balance and promote users' rights as well as creators' rights. Libraries are a small but significant market for published works. The vast majority of copyrighted works in library collections were purchased or acquired through license agreements. Often libraries pay more for copyrighted works than works of an individual. This is especially true of subscriptions to periodicals, to ongoing research works, and to electronic information. Hence, there is the need for library staff and users to know about copyright, their limitations and benefits, when making use of any of the materials on the library shelves, either in open or closed access in order to safeguard anti-piracy legislation. Libraries have an important role to play in caring for and providing access to other people's copyrighted work.
- iii. To recognize about copyrighted materials to the library users who are not aware of their dependence on balanced law and policy for access to information and for gaining knowledge. Members of the public take their rights for granted and generally exercise common-sense, but do not usually get involved in policy deliberations.
- iv. To play a role as advocates for individual users of copyrighted materials. Librarians need to ensure that the rights and privileges of their customers are safeguarded i.e. they must assure the library users of uninhibited access to available collection in aid of research. Any user that is unsure if the material to be copied is protected by copyright needs to seek advice from the library staff.
- v. To give the knowledge to the library users regarding "fair use legislation". This means that they can copy a very small amount of a work for educational purposes and not for commercial purposes. It may be possible to get permission to copy or use copyright material by contacting the copyright owner. Any copying now carried out for a commercial purpose requires prior permission from the copyright owner or payment of a copyright fee.
- vi. To give the orientation about rule of copyright infringement is the concept known as *fair use*. Under this principle, the law permits the use of portions of copyrighted works for such purposes as criticism, comment, teaching, and research, even without permission of the copyright owner. In deciding whether a use is a fair use, courts consider such factors as the purpose of the use, the nature of the work, the amount of the work taken, and the effect it will have on the value of the original work. Some examples of fair use include quoting excerpts from a book in a review, scholarly article, or term paper; copying and distributing a

newspaper article to illustrate an educational lesson; and using portions of a work in a parody of that work, such as a spoof version of a song.

- vii. There is a need for all the librarians in India to have copyright education in order to familiarize with the basic principles and concept of copyright laws in India. This will enable them to render their services without violating copyright laws. With adequate education in copyright, librarians will be able to know the risk involved in copying from copyright-protected material and operate within the laws. Above all, they will be able to make use of the 'fair use' principle which means that one can copy a very small amount of a work thereby catering for the interests of the owner of the work and that of the user. Copyright warnings should be displayed by librarians in conspicuous locations in the libraries so as to pass the message across to the users. There is no doubt that libraries and Librarians in India have a lot of functions, very vital ones indeed, to play in the protection of author's rights. Firstly, they must provide the right guidance to their library users on how to make use of the library stock without infringing on the copyright of the authors of such works. The librarians can provide the following assistance to library users in order to properly enforce the copyright laws in the library. Research projects in the library should be made available to researchers for consultation only. Photocopying the entire work should not be allowed, and if there is the need to photocopy, the principle of fair use should be strictly adhered to. Also, the librarians should ensure that precise citation is done by any researcher for any piece of information collected from a given source in the Library. Librarians through their body, Indian Library Association (ILA) need to draw the attention of the Government through the Ministry of Education to the present non-inclusion of the Indian Libraries on the Board of the India Copyright Commission.

9. Conclusion

The socio-economic development of a country depends to a large extent on the creativity of her people and creative works cannot be encouraged without effective administration of copyright laws. Librarians as the custodians of most of the intellectual property cannot be left out in the successful implementation of copyright laws. Violation of copyright laws can easily be carried out in the library. In order to have books, author and creators of literary and artistic works, there should be adequate reward commensurate with the work. Hence, to encourage creativity the enactment of copyright law is essential. Librarian community needs to carry out the war against violation of copyright laws.

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