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EMERGING ISSUES OF INDIAN DIGITAL COPYRIGHTS LAW : AN ANALYTICAL STUDY

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ABSTRACT

The industry consequently has put every new invention to its advantage in terms of creating newer forms of exploitation of art, widening markets and increasing profits. Digital technology is the latest one in the field at the international scale. The digital Age being the hallmark of the present millennium is a witness to yet another epoch unfurled by the Internet and this junction is, in many ways, a defining moment in the long and chequered history of copyright. The digital technology is a phenomenal impact on copyright works- its creation, dissemination, and protection. Digitization has made it much easier to manipulate, reproduce, and distribute protected works. Digital content can be combined, altered, mixed, and manipulated easily. By enabling the making of perfect copies of copyrighted works for little cost, digital technology threatens to undermine the distribution systems and increase unauthorized use of copyright works. The Internet experience demonstrates that traditional actors in the communications process (information producer, provider, publisher, intermediary user) take on new roles in the digital networked environment.

INTRODUCTION

The industry consequently has put every new invention to its advantage in terms of creating newer forms of exploitation of art, widening markets and increasing profits. Digital technology is the latest one in the field at the international scale. The digital Age being the hallmark of the present millennium is a witness to yet another epoch unfurled by the Internet and this junction is, in many ways, a defining moment in the long and chequered history of copyright. The digital technology is a phenomenal impact on copyright works- its creation, dissemination, and protection. Digitization has made it much easier to manipulate, reproduce, and distribute protected works. Digital content can be combined, altered, mixed, and manipulated easily. By enabling the making of perfect

copies of copyrighted works for little cost, digital technology threatens to undermine the distribution systems and increase unauthorized use of copyright works. The Internet experience demonstrates that traditional actors in the communications process (information producer, provider, publisher, intermediary user) take on new roles in the digital networked environment. The Internet is structured as an 'open platform model' as opposed to the 'broadcasting model' of most existing media. On the Internet authors may freely disseminate their works without the intervention of traditional publishers: authors are becoming 'publishers'. Moreover, digital technology enables users to actively search and manipulate information available on the network: users are becoming 'authors'. Furthermore, traditional

intermediaries, such as university libraries, may take on new roles as information providers: intermediaries are becoming publishers as well. This convergence of roles may eventually affect the existing system of rights allocation in copyright and neighbouring rights legislation. Thus, in a way the Internet has scrambled the beautifully arranged, dogmatically duly characterized and justified picture of copy-related and non-copy related rights under the Berne Convention. Digital interactive transmissions produce a certain hybrid form of making available to an unidentified number of individuals and let them consume the content at any time as they desire

LEGAL FRAME WORK OF INDIAN COPYRIGHTS LAW

Legal framework of Indian copyright law envisage penal and civil provisions to safeguard the interests of the creators, however, it is not free from hassles and hurdles which need to be eliminated. The enforcement aspect of the provisions is a matter of great concern and there is an urgent need of building better administrative machinery for the enforcement of the provisions of the legislation which requires well-oiled enforcement machinery. There is a need for trained and well-equipped specialized police force for detection and enforcement of provisions relating to violation of copyright and there is also a need for change of the judicial mindset in dealing with copyright violations. There are still misconceptions, difficulties of access to courts, slow growth of copyright bar and delay in disposal of whatever cases reach the courts. It is submitted that redress and access to the adjudicatory machinery must be improved and this can be done in a better manner, if copyright or intellectual property tribunals manned by specialists in the areas are set up throughout the country. The ubiquitous nature of Internet necessitates the consideration of multinational enforcement, which will to some degree require the harmonization of domestic laws concerning enforcement measures and facilitate the cross-border protection of copyright in the digital age. Diversities in basic theories and in the practice of national systems protecting copyright and related rights create obstacles to effective international and national implementation of protection of authors and other right owners.

The experience and achievements of the harmonization programme of the European Community demonstrate the possibilities of bringing together important provisions of diverse national systems. The unity of legislative approach will, it is submitted, be the only effective way of dealing with the problems posed for the exercise of copyright and related rights in the borderless environment created by the Internet and other international communication

systems. The provisions of the Berne Convention taken in conjunction with those of other relevant international instruments and the relevant regional instruments can, it is suggested, provide the basis for a unified global system of copyright, and, to be effective, future planning should be based on moves towards a world copyright regulation which will incorporate harmonized rules on all fundamental issues. Last but not the least, since, the pirate is using new technologies in the digital environment to infringe on the copyright and related rights, so in the same vein, the holders of these rights should use the very means to counter such actions of infringer. As renowned novelist Chinua Achebe once said the Engel bird says 'since man has learnt to shoot without missing, I have also learnt to fly without perching'. The recent Amendments to the Indian copyright law have certainly given room for using creative lawyering skills to develop and structure innovative business models to help the industries effectively deal with the changes.

INDIAN LAW – DIGITAL COPYRIGHTS

The Copyright Act 1957 (The latest amendment being, Act 27 of 2012 that came into force on 21 June, 2012). The amendments in 1994 were a response to technological changes in the means of communication like broadcasting and telecasting and the emergence of new technology like computer software. The 1999 Amendments have made the copyright fully compatible with Trade-Related Aspects of Intellectual Property Rights Agreement. The Amendments introduced by the Copyright Amendment Act, 2012 are significant in terms of range as they address the challenges posed by the Internet and go beyond these challenges in their scope. With these amendments, the Indian Copyright Law has become a forward-looking piece of legislation and the general opinion is that, barring a few aspects, the amended Act is capable of facing copyright challenges of digital technologies including those of Internet. According to the Indian Act, 'publication' for purposes of copyright means, "making a work available to the public by issue of copies or by communicating the work to the public". This definition, by virtue of its non-restrictiveness, can be construed as covering electronic publishing and, thereby, 'publication' on the Internet.

The amendment act 2012, the definition of the term "communication to the public" has been amended. The erstwhile definition was applicable only to "works". The work or performance is made available, whether simultaneously or at places and times chosen individually, this would also be considered as communication to public on demand

services (video on demand, music on demand); will clearly be considered as “communication to public”.

Section 52 of the Copyright Act, 1957 includes in itself the principle of limitation and exception as envisaged under Article 10. The acts expressly allowed under Indian law include fair dealing with a literary, dramatic, musical or artistic work (not including a computer program) for the purpose of private and personal use including research, criticism or review, the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy in order to (1) utilize the computer programme for the purposes for which it was supplied; or (2) make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilize the computer programme for the purpose for which it was supplied.

Section 57 of the Act recognizes special rights of the author of the work, also known as “moral rights”. Right to claim authorship of the work; and Right to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. The said section also provided that such moral rights could be exercised by legal representatives of the author Pursuant to the 2012 Amendment, the exclusion has been removed and the right to claim authorship can now be exercised by legal representatives of the author as well. Therefore, post death of the author, if he is not given credit for his work, then legal representatives, may take necessary action to remedy such breach. As per the Amendment, the right against distortion is available even after the expiry of the term of copyright. Earlier, it was available only against distortion, mutilation etc. one during the term of copyright of the work.

EMERGING ISSUES OF COPYRIGHTS IN INDIA

The latest Copyright Amendment Act 2012 has introduced the changes to prepare ground for copyright protection in the emerging digital environment briefly stated as under: Some of the exceptions (such as fair dealing, use for education purpose) which were earlier applicable only in relation to certain types of work e.g. literary, dramatic and musical works, have been made applicable to all types of work; □ A fair dealing exception has been extended to the reporting of current events, including the reporting of a lecture delivered in public. Earlier, fair dealing exception was limited for private or personal use, including research, and criticism or review, whether of that work or of any other work. Further, it has been clarified that the storing of any work in any

electronic medium for the purposes mentioned in this clause, including the incidental storage of any computer programme which is not an infringing copy, does not constitute infringement. □ The transient and incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public.

The transient and incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy: Provided that if the person responsible for the storage of a copy, on a complaint from which any person has been prevented, he may require such person to produce an order within fourteen days from the competent court for the continued prevention of such storage;

WE NEED FOR HARMONIZATION NATIONAL AND INTERNATIONAL LEVEL

Given the borderless nature of the Internet and its ability of transmitting works almost at a lightning speed, copyright protection has become increasingly difficult. The problems created by recent technological developments cannot be solved by the decisions of individual countries. With the Internet, copyrighted works remain vulnerable to outside piracy even if protected in the home country. Therefore, it is necessary to balance between easy infringement and expensive enforcement; it is also important to address the uncertainties involved in international litigation. No doubt, to some extent these uncertainties are common to all law suits, but in most other contexts there is, at least, a greater amount of precedent for successful results. The more uncertainty there is about the procedures of enforcement, applicable laws, or the likely results, the more unwilling copyright holders will be to try to enforce their rights abroad. The problem for a copyright holder is not only the potential loss of earnings due to infringement, but also the additional costs spent in unsuccessful litigation. Enforcing judgments would be easy if all the defendants were residents of the country of the court that rendered the judgment. In the case of foreign defendants, it would also be straightforward if they had assets within that country. However, foreign defendants with no assets in the forum country create a problem. It can be difficult to have national judgments enforced in the foreign country where the defendant resides or has assets, and it is also difficult, costly, and time consuming to need to pursue additional copyright litigation abroad.

The ubiquitous nature of online delivery systems necessitates the consideration of multinational enforcement, which will to some degree require the harmonization of domestic laws concerning enforcement measures and facilitate the cross-border protection of copyright in the digital age. Clear rules about the enforcement of preliminary injunctions and monetary judgments will diminish the inconvenience of dealing with the unknowns of how foreign judges apply their own substantive and procedural laws. Even if the cost of international litigation would only be marginally reduced, the increased certainty and probability of success would improve the balance between unfettered infringement and expensive enforcement.

CONCLUSION

These challenges to copyright industry have emerged at a time when the share of copyright in national economies is reaching unprecedented levels. It becomes critical to adjust the legal system to respond to the new technological developments in an effective and appropriate way, keeping in view the speed and pace of these developments. This will maintain balance between the stakeholders be it users or creators for the public interest. In order to do so the focus of the anti-circumvention regulation should be to target at the technologically sophisticated persons who have the potential to become circumventors, and the manufacturers and distributors of circumvention-enabling devices. In most circumstances, technologically sophisticated persons, albeit relatively small in number, have the technological know-how to bypass technological measures. On the contrary, ordinary users are by no means equipped with the sufficient technological know-how to make protection-defeating devices in order to circumvent technological measures.

Digital technology has made copyright enforcement difficult to achieve. It is necessary to balance between easy infringement and expensive enforcement, and to address the uncertainties involved in international litigation. As technology allows copyrighted materials to be transmitted easily around the globe without the authorization of the copyright owner, there is an increased need for protection without borders.

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