

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 5 | Issue 1

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at the **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Copyright Infringement in The Era of Digital World

SANCHITA JAIN¹ AND AYUSHI SRIVASTAVA²

ABSTRACT

The right given to the creators of the original work is termed as copyright. Copyrights laws are made in order to protect these original creators, authors etc. however as everything comes with certain drawbacks the drawback to copyrights is copyright infringement i.e. when someone tries to copy, duplicate, distribute the original work of another person without said consent of the creator. Now the chances of this infringement increases drastically in the digital world. The cyber space is more prone to infringements and thereby depriving these creators of their rights. In this paper the potential risk in cyber space for copyrights infringement as well the ways to protect the creators have been discussed. Furthermore some latest techniques which are being used have been elaborated to get an insight about its potential use. Although the laws mostly fail to protect these original creators but there are certain other ways or techniques to ensure that no infringement takes place which is also mentioned in this paper.

Keywords: Copyright Infringement, Cyber Space, ECMS, Techniques, Digital Rights Management, Originality.

I. INTRODUCTION

Copyright is a right which is given to the creators of the original work. It includes literary, music, cinematography, dramatic, artistic work etc. copyright laws protect the rights of the authors, or the creators of the intellectual property. So if anyone tries to copy, duplicate or distribute an original work of other, it is said to be an copyright infringement and when this happen in a digital environment which is more prevalent these days it is said to be copyright infringement in a digital world.³

There are number of issues and concerns which are related with the use of computerized or digital data. It is simple to make advanced or digitized duplicate copies of material including content, picture, sound and video; and this digital data or information can be dispersed over the

¹ Author is a Student at ICFAI University, Dehradun, India.

² Author is a Student at ICFAI University, Dehradun, India

³ Fisher, William Weston. "copyright". Encyclopedia Britannica, 29 Oct. 2021, <https://www.britannica.com/topic/copyright>. Accessed 11 January 2022.

world through email, electronic boards or sheets, websites, networks and other systems. The expanding utilization of primary and secondary mass media made it very easy to download, store, show and print at just a matter of a click. Further, the downloaded data can be altered or again sent to others without the knowledge of its righteous owner or author. In contrast with printed data, electronic data isn't so long lasting as it is available for any alterations, revisions manipulations or other modifications in such a manner that it becomes almost impossible to detect as it leaves no resembles or hard for recognition.

In comparison to the instance of printed documents, close checking and limitation of utilization of electronic documents is troublesome. Digitalization contributes to making the issues related to copyright law difficult, as just component in information society has not changed with new technological advancements.

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. The government of India by passing IT (Information Technology) Act 2000 and further amending it on 27th October 2009 has given a fillip to cyber law. But various issues are not specifically covered by the Act, such as copyright, payment issues, media convergence, domain name, cyber squatting and jurisdiction. The Copyright Amendment Act, 2012 has laid down certain provisions for the protection of copyrighted work on the digital platform. It also mentions the penalties to be awarded against the infringer, the liability of internet service providers etc. It also aimed at ensuring proper distribution of royalties amongst the creators and owners of the work. The Indian Judiciary has also played a vital role in protecting the rights of Copyright owners in the era of digitalization.

II. MAJOR DRAWBACKS OR ISSUES OF DIGITAL TECHNOLOGIES WITH COPYRIGHT IMPLICATIONS

The technologies related to digital storage and transmission of works are the ones which are currently raising issues for copyright laws.

(A) Ease of Reproduction

When a document or data or any other form of work is digitalized, it can be easily copied and reproduced with very little cost that too without any significant loss of quality. Then these copies also can be further reproduced. In this manner millions of users get access to a single copy in the digital form.

(B) Ease of Dissemination

The rise of global digital systems adds to the quick and rapid spread of works worldwide in digital form. Digital networking means that thousands of copies of a single document can be produced and distributed all over the world within fraction of hours. At the point when transmitted through rapid transmission lines, as coaxial link organizes or even fiber optic lines, the procedure is significantly quicker, and the limit with respect to the transmission of works develops too.

(C) Ease of Storage

It is very easy to store a lot of content in the digital store due to its vast storage capacity or memory. As a result of which more and more pirated copies can be easily created and stored.

(D) The Major Question Which Arises In The Mind Of The People Is If I Paid For It, Why Can't I Use It?

The answer to this is that when u purchase something it is not always necessary that the right of resale is given with it. Also one cannot use a product for earning monetary gains by reselling it or making its duplicates. So while purchasing any collections, database or software etc. terms and conditions, limitations on its use and other agreement provided should be carefully read to avoid any instances of copyright infringement.

III. COPYRIGHT AND CYBER SPACE

One of the major threats to copyright for a long time is the internet or the cyber space. There are different copyright protections for different information available on the internet. Copyright work available on internet can be published or unpublished in the form of stories, articles, images, videos, graphics, e-books etc. The pool of information which is available on the internet makes it very difficult to identify whether a particular document is copied of any protected work or is in its original form.

Discussions at the Uruguay Round⁴ of multilateral Trade Negotiations finally put a seal on these debates when the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)⁵ incorporated the provision that the computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention. It also protects databases

⁴ The Uruguay Round was the 8th round of multilateral trade negotiations (MTN) conducted within the framework of the General Agreement on Tariffs and Trade (GATT), spanning from 1986 to 1993 and embracing 123 countries as "contracting parties".

⁵ The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO).

and other programs which are such that they fall under the category of intellectual creation.

This was subsequently reiterated in WCT⁶ when it stated that protection applies to computer programs whatever may be the mode or form of their expression.⁷

Nowadays, some Computer technologies like the MP3, peer-to-peer (“P2P”) file sharing software like Grokster, Kazaa, and eDonkey, blogging, podcasting and streaming and other new ways of distributing content to listeners and viewers via the Internet etc. have been making waves in the digital world.

These technologies have dramatically altered the structure and economics of the business models under which copyrighted works are published and distributed to the public.⁸

The main objective of the law of copyright is to maintain a balance between the holder of copyright and the general public. In order to maintain this, the legislature has amended the laws related to copyright from time to time so as to fulfill the loopholes created by the technological advancements. With the increasing use of the digital environment, it has become really easy to duplicate or modify the original work as it is very easy to access. Also, networking over internet is technique to cost effectively distributing the original work to millions of people which pose a serious threat to the interest of the copyright holder or the original creator.

In a recent case⁹, the court appointed amicus curiae¹⁰ in order to assist the court in regarding the case. The plaintiffs in the case are companies which are engaged in creating, producing and distributing content across the world and in India also. The plaintiff accused the defendant, which were around 30 websites including John Doe website, the Ministry of Electronic and Information Technology, Department of Telecom and various ISP`s, that the defendants websites hosted and provided unauthorized access to their copyright protected work that amounts to copyright infringement of the plaintiff.

The court in this case said that the crime committed in the digital world is also a crime as it is in the physical world and there is no distinction made between the two even in the laws. Further the court was of the view that the major issue is where the appropriate lines should be drawn regarding the free and fair use of digital technology. Henceforth, the court passed an order of

⁶ The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention which deals with the protection of works and the rights of their authors in the digital environment.

⁷ T C James, Indian Copyright Law and Digital Technologies, Journal of Intellectual Property Rights Vol 7, pp 423-435, (2002)

⁸ Susanna H.S. LEONG, Intellectual Property in the Digital Economy (2013), https://www.wipo.int/edocs/mdocs/sme/en/wipo_smes_uln_13/wipo_smes_uln_13_q_leong.pdf

⁹ UTV Software Communication Ltd v. 1337x and ors, Delhi HC, (2019)

¹⁰ An amicus curiae often referred to as amicus brief is defined as the legal brief where someone who is not a party to a case assists a court by offering information, expertise, or insight that has a bearing on the issues in the case.

permanent injunction against the defendants. Also the ISP's¹¹ were ordered to block access to the defendants' websites.

IV. GOOGLE V. ORACLE¹²

This is the case concerning Google's use of Oracle's Java Application Programming Interface (APIs) in the Android platform. The Court of Appeals for the Federal Circuit, reversing the lower court, held that Google's use did not constitute fair use as a matter of law, and remanded the case for a trial on damages. The Court rejected Google's argument that using the APIs in a Smartphone context was transformative enough while on the fourth factor; the Court held that Google effectively prevented Oracle from accessing the potential mobile devices market for the APIs. The Court stated that "there is nothing fair about taking a copyrighted work verbatim and using it for the same purpose and function as the original in a competing platform," and that Google's "superseding use is inherently unfair." Google plans to file a petition for certiorari with the Supreme Court and the Supreme Court recently extended its deadline for doing so to January 2019.

The Court issued its decision on April 5, 2021. In a 6–2 majority, the Court ruled that Google's use of the Java APIs was within the bounds of fair use, reversing the Federal Circuit Appeals Court ruling and remanding the case for further hearing.

V. PREVENTIVE MEASURES OR TECHNIQUES

The challenge in the era of internet is the protection of intellectual property. It is still unclear as to how copyright law governs or will govern these materials (literary works, pictures and other creative works) as they appear on the internet. The Copyright Act, 197 does not specifically cater to or govern the infringements in the digital space. It just talks about computer software etc. or section 4 lists out acts for which copyright is provided so it covers authors, creators etc. However under certain circumstances IT act 2000 can be looked upon to. Section 79 of the I.T. Act 2000 provides for the liability of I.S.P's "Network Service Providers not to be liable in certain case." Section 79 of the I.T. Act exempts I.S.P's from liability for third party information.

The threats which the digital environment poses to the original creators of the copyrighted work are way more grave and difficult to eliminate in contrast to the normal course of physical work. Hence in order to overcome these threats many techniques have been developed overtime to

¹¹ An Internet service provider (ISP) is an organization that provides a myriad of services for accessing, using, or participating in the Internet.

¹² Google LLC v. Oracle America, Inc., 141 S. Ct. 1183, (2021)

make the digital platform safe and digital documents difficult to copy or duplicate and spread over without taking the adequate permission of the rightful owner. All these techniques are grouped as Digital Rights Management (DRM)¹³.

The techniques included under Digital Rights Management are developed as to prevent or control copying, duplication, modification, or distribution of the original works. The creators of the original content have been pleased by these techniques as they think that Digital Rights Management techniques are necessary in order to prevent duplication or free distribution and mass copying of their original work and henceforth protect their work. But on the other side there are few of them who are of the opinion that these techniques create an unnecessary hurdle for the general public at large and also come in the way of innovation and creativity and then people do not get motivated by the original work of others.

Some of the techniques under Digital Rights Management are as follows:

(A) Access and Copy Control Software

In this technique software enables the creator to keep a check on any free distribution and other illegal exploitation of their original work. In order to ensure that only those who paid must enjoy the right of the work, this technique is very useful

Access control software is designed so as to prevent a user from getting a first copy of a original work unless they have a right or license to do so. Copy control software try to prevent the public from duplication or reproducing the original work once they have obtained a copy of the same.

Access control software's are comparatively easy to use and implement. The copy control software's help to prevent any further manipulations of the original work.

Example of this can be any software website or article that requires a user to pay a fee before being able to download it.

(B) Encryption of the Documents

Encryption Schemes i.e. encrypting the original work is a great way that helps creators to prevent any unauthorized or illegal access to their original work. An authorized user can be easily distinguished by using this technique. In this technique the document is basically Encrypted i.e. digitally scrambled in bits that make up content to prevent the content from being

¹³ Britannica, The Editors of Encyclopaedia. "digital rights management". Encyclopedia Britannica, 24 Jan. 2020, <https://www.britannica.com/topic/digital-rights-management>. Accessed 19 January 2022.

seen clearly or fully until it is decrypted by authorized access. Thus, only the authorized users have the access to decrypt the work.

(C) Digital Watermarks

In this technique a watermark is embedded on every page of the original document. This watermark can be any text or image etc. according to the wish of the creator and can link the use to their original work. Its unique feature is that the mark is not visible as such but it can be detected using some detection method in order to know whether the content used is authorized or not and the original source of the content. This can provide information about the author etc. Apart from the above mentioned there are numerous other techniques and ways to protect to the interest of the original creators of work and prevent copyright infringement in the digital world. However, everything has a way out and people pose such expertise as to even discover the breakout of these techniques. Even after so many preventive measure or techniques have been developed people still find ways to copy and distribute data in the digital world.

The biggest example of this is the Netflix and other digital platforms series and movies and other content which is easily available on many free apps. These apps are clear infringers of the copyright laws.

Copyright Protection through Technology: Electronic Copyright Management Systems (ECMS) The real issue surrounding copyright and technology is to link identifying, monitoring, control and reward .The ideal is a system which can undertake several different tasks, preferably all at the same time. A system must be able to identify copyright materials, to track usage, to verify users, and to record usage and appropriate compensation. The problem is that there are more pirated copies on the Internet of any given software than there are originals that are downloaded from the publisher's page. That sets the scene for much active research in the field known broadly as Electronic Copyright Management Systems (ECMS) and seeks a legal framework to protect against third parties circumventing these systems. The copyright owners have an option to technology protection measures. Generally, to technology protection measures may be classified broadly as follows: access control measures and copy control measures.¹⁴

The laws and judicial impeachments are although catering a lot to the fact that infringements are more drastic and prone in the world where everyone has access to internet and internet is

¹⁴ Ahmad, Nehaluddin. (2009). Copyright Protection in Cyberspace: A critical study with reference to Electronic Copyright Management Systems (ECMS). Communications of the IBIMA.

cheaper now. But still the laws are lacking behind and no proper outlook is there to provide the safeguard to the original creators, which is very essential now a days.

VI. CONCLUSION

The digital environment poses some serious threats to the copyright laws, despite the fact that numerous techniques like digital watermark, access and copy control software's, encryption etc. are developed to prevent copyright infringement. But still the digital environment remains a goal that is yet to be achieved. On the other hand the flow of creativity to the general public should not be blocked or hampered and ideas should be made available to them.

However, the interest of the original creators should always be kept in mind and should be the primary concern. They should be awarded what they deserve for their original work. Therefore it is very important that while using and implementing any techniques or method to prevent mass copying and distribution interest of both the creators and general public must be considered.

In the year 2012, the Indian Copyright Law was amended and few DRM provisions were introduced. Section 65A and 65B were added to it. But unfortunately these provisions are not as extensive and exhaustive as provided in the US laws. Now it is high time for the legislature to get away with the poor protection and enforcement policies, and make some stringent laws to prevent any copyright infringement in the digital world. However, they should also keep in mind to always strike a balance between the creators or holders of copyright and the users of work.

The increasing potential of digital platform have made it easy to keep work organized what otherwise would have been highly unorganized. This gave rise making piracy or duplication of work easy and cheap, and easier to spread across the global than before.

There is no doubt that the digitalization has provided new platform and opportunities for the creators to showcase their talent and work effectively but at the same time it has also raised concern regarding the infringement of the copyrights of these creators in the cyberspace. Doesn't matter how attractive and easy going the cyber world appears it is always a risky space to work in. Although efforts have been put up at both national and international levels to overcome this issue of copyright infringement in the digital world and to maintain a balance between the creators and users at large but there is still lot to be done in this dynamic digital environment.
