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Copyright Issues in Cyberspace: Indian Legal Position and Judicial Pronouncement

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ABSTRACT

The protection of copyright in the cyberspace is not as easy as in the physical space, many issues and challenges are there before the statute and the courts of law to give effective protection to the interest of the copyright holder in this new world. The laws when drafted they are not aware about such unique issues and challenges, so laws were not much efficient to restrict the violation in the cyberspace, it also create problem for the court that in the absence of any laws how they can protect the interest of the owner of the copyright. By the time passed the law maker make laws in this regard and addressed the issues w.r.t. violation in cyber world, then court also gave so many decisions which become the land mark and leading one.

This paper aims to study the issues and challenges related to the copyright protection in the virtual world as well as the legal frame work and the judicial opinion. The study is limited to the Indian scenario only. The issues like the P2P sharing, online licensing of software, framing, catching, issues of jurisdiction in digital space has been discussed in the paradigm of leading judicial pronouncement and legislative frame work. The paper adopts the doctrinal & analytical method of study to analyze the legislation and the decisions of the courts.

Keywords: *copyright, cyberspace, p2p sharing, jurisdiction, catching, framing.*

I. INTRODUCTION

“Information Technology is growing faster than any other communication vehicle in the history of mankind”². Digital technology innovation was the most important breakthrough of the past century. Emerging innovations have a huge effect on information technology. Today's thousand years are passing into a new world that is an Internet culture. This transforms our way of operating by modern e-commerce and our way of living. Originally Internet³ restricted to

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² S Shushaanth & Prakash Aswathy A Study on Copyright Infringement in Cyberspace with Special Reference to the Liability of the Internet Service Provider for Infringement (March 13, 2020). International Journal of Pure and Applied Mathematics Volume 119 No. 17 2018, 1503-1516. SSRN: <https://ssrn.com/abstract=3553588> (20/05/2022).

³ The Term Internet is defined as a set of computer network –possibly dissimilar joined together by means of gateways that handle data transfer and the conversion of messages from sending network to the protocols used by receiving networks. See. Microsoft computer press dictionary 200. (2nd 1994).

the military establishment only, it has considerable capacity to spread knowledge through territorial frontiers because of its magnitude, intercreativity and flexibility. The Web is now used not just for training but also for corporate purposes.

Since the advent of the internet and the use of the worldwide system with copyright breaches, unrestricted online connectivity and the opportunity for downloading, modern copyright breaches have been occurred because of this. Taking substance from one site, transforming it or only replicating it on another platform, present day media has been made conceivable, and this has raised new dangers to the traditional meaning of copyrights and security. Any individual with a Laptop and having web association may turn into a publisher. Downloading, transferring, saving changing or making a subsidiary work is only a mouse click away.

The copyright issues in cyberspace is not as the issues in the physical world, copyright violation in cyberspace or on internet is easier. Though India not the member of WIPO treaty, being the member of WTO and implementation of TRIPS member country has mandatorily to changes its law as per the recommendation of this agreement. India brought amendment in its copyright law to protect the exclusive right of the copyright holder on digital platform. India did many changes in its law by Copyright (Amendment) Act 2012.

In this paper the issues and challenges related to the copyright protection in cyberspace in India will be discussed in detail. The author will go through the all laws and rules pertaining to these issues. The author will also discuss the case laws as pronounced by the constitutional courts and by such judicial pronouncement any changes occur in the statutory laws also discussed. The issues will be discussed in this chapter like peer to peer sharing of files and document, software piracy, jurisdictional issues, linking, framing, and caching etc.

II. PEER TO PEER SHARING AND INDIAN LEGAL LANDSCAPE

Peer to Peer (P2P) is a software-connected network that allows connected computers to transmit files or data to other computers connected. It defines software for consumers to access the Internet directly or through a mediating service to share data. Therefore, this is a sort of transitory internet network that allows a group of users with the same networking program to connect each other and access files directly from the hard drives of each other. Such communication is a direct link and the file is transmitted immediately and does not move through a mediating system from one device to another. Examples of this type of P2P software are Napster and Gnutella.

P2P is a networking paradigm in which all participants will start a communication session and each participant has the same power. The client / server model and the master / slave model can also be related to other frameworks. Often P2P conversations are carried out by including server and client functionality for each contact node. This model is essentially available in three distinct modes: the file-download functions which have gained popularity recently with the music-downloads offered by Napster; the underground extension of this capability found on sites like Gnutella.

- **Substantial Infringers & Nature of Liability**

In particular situation of copyright violations by P2P file sharing mode, three major groups done infringement of right of copyright holder.

First, those categories who produce and distribute programs in file sharing, but this technology in itself is neutral, for both good and bad applications. Anyone who makes and distributes P2P programs and doesn't promote them for acts of infringement is not breaking, as in the *Grokster*⁴ case also held.

The second category comprises of separate ISP suppliers, offering network connectivity. Those are the key beneficiaries of P2P, since the growth of internet infrastructure is related to P2P traffic in several nations. Although court used to embrace the concept of Napster to keep ISP accountable at that period, other requirements remain in the grounds for the avoidance of liability. The ISP's were required to forestall the copyright encroachment of the film which implies they should effectively police their clients and guarantee that no one is getting to or sharing duplicates of the film "3" over the systems.⁵ This could have become a pattern in Indian Copyright statute for the copyright proprietors, which began with the instance of *Tej Television*⁶ in any case, post this case just hardly any others have tried to profit this measure, to be specific Thank you, Singham, Bodyguard, Speedy Singhs, Don-2, Gangs of Wasseypur and so forth in which court conceded interim injunction ex-parte in favour of production houses like Reliance, Viacom 18 films and others against some of ISP's and obscure people for copyright violation.⁷

This puts the P2P users behind the third party. The copyright protection of consumers is undeniably broken without authorisation / license from the right holders. Yet how do we

⁴ MGM v. Grokster, 545 U.S. 913 (2005, Supreme Court of the United States).

⁵ Madras High Court passes its first ever 'John Doe' order, Spicy IP – De-coding Indian Intellectual Property Law, <http://spicyip.com/2012/03/madras-high-court-passes-its-first-ever.html>, (12/07/2020).

⁶ Tej Television Limited v. Rajan Mandal, (2003) FSR 22.

⁷ Payel Chatterjee, 'what's in a name...John Doe arrives in India', 12 Journal of Intellectual Property Rights 488, 494 (2007).

classify these consumers and bring legal action against them? The short response is by supplying the ISP with subscriber details to recognize individuals via their Internet protocol, plus contact dates and times.

In other words, the infringing groups can be found in two distinct categories i.e. Primary and Secondary infringing groups.

The essence of the accountability for vicarious infringement provides a strong reason to control users' actions. That is because the vicarious responsibility for the breach does not include knowledge regarding the act done. An individual can therefore be named a vicarious violator even if he has no knowledge of the offences committed by his assistants.

- **Statutory Provisions**

The Copyright Act of 1957, The Copyright Rules, 1958 and the International Copyright Order, 1999. Section 14 of the copyright Act defines the term “copyright”. Section 13⁸ addresses the field where copyright exists. Provided that the dead or living author should be a citizen of India, whether in India or outside India, at the first publication of the work. Moreover, Section 51⁹ talks about when an act is said to infringe the copyright. In the present case downloading will fall under 51 a (i)¹⁰. However, the exception of this provision given in section 51b(iv) specifies that if anyone imports / downloads a copy for private or domestic usage, the download is legitimate. This provision is a legitimate protection for downloaders worldwide, as the content stored on servers beyond India was downloaded. This is therefore a type of import of copyright-protected work. Furthermore, the downloader is not copied more than twice and it is authorised under Section 51b (iv) to be a single copy of the document being used and copied. Section 2 (dd) of copyright Act defines broadcast and Section 39 (a) talks about recording audio / video for private purposes and which does not, then, infringe any broadcast reproduction right or right of the performer. If we choose to use this section, the file is an upload of the server records and is accessed for private usage for teaching or testing purposes. It is also a legal download of the work.

An exception to this clause provided in section 51 b(iv), stated that importation or download done by any person for his private or domestic use then such activity considered as valid downloading? This clause is a valid defence with downloaders across the globe as they are downloading the material stored in the servers outside India. Hence, it's a kind of importing,

⁸ The Copyright Act, 1957

⁹ Id.

¹⁰Id.

the work protected under copyright. Furthermore, the downloader is not copied more than twice and it is authorised under Section 51b (iv) to be a single copy of the document being used and copied.

Napster in Indian Context: According to Indian rule, Napster 's actions will not constitute a clear breach of copyright since they are not:

- (1) Reproducing the copyright works, or storing them
- (2) Selling or hiring works;
- (3) Issuing copies of the works to the public;
- (4) Performing the works in public or communicating them to the public;
- (5) Making any translations or adaptations of the works.

The Indian courts have held in *Garware Plastic and Polyester Ltd. v. Telelink*¹¹ in A case relating to the displaying of video films on a wire network, which considered as broadcasting or communicating to an audience. The Supreme Court also stated that such broadcast of media affected the author 's earnings and violated his intellectual property rights. The case also held that helping the infringement would be the infringement of the copyright, Garware case, distinct from Napster 'broadcasts' the music to any of its customers, can be distinguished from Napster case. It provides simply software for the location of songs for copying on the internet.

III. ONLINE LICENSING OF COMPUTER SOFTWARE: AN INDIAN VIEW

The piracy in computer program is just duplicating and distribution of computer programs without the copyright holder's authorization. The business of software, by and large, comprises of creation and distribution of such computer programs. Authorizing is a typical practice in computer software businesses. The distributor of a product by and large approves its end clients through the component of the shrink wrap license system contained in the bundle. Software piracy often takes place on computer networks when more users access the software than a licence allows. In recent years, software piracy has dramatically expanded with the advent of the Internet and the increasing use of the internet. Programme, which can also be downloaded or sent by e-mail to persons that do not hold licence to use them, are uploaded via the Internet to newsletter board systems or commercial online services..

In India, from the beginning of the 21st century even without specific legislation regarding Internet piracy, courts began giving proper protection of intellectual property rights on

¹¹ Garware Plastic and Polyester Ltd. v. Telelink AIR 1989 Bom 331, 1989 (2).

computer programmes.

Judicial Opinion:

*Microsoft Corporation v. Deepak Rawal*¹² Here Microsoft India Private Ltd. is a Microsoft corporation subsidiary entity. The company provided the programming system and the applications. Deepak Rawal and its company, who were carrying out the Microsoft product selling by their business without consent of the company, After receiving the information, In 2002, Microsoft complained that Deepak Rawal had pirated his product with the Internet to reproduce and sell the software and to disguise the customer as real, which causing a huge loss. Since the court had established that the defendants breached the applicant's copyright over Microsoft Windows 98, Microsoft Office 2000, Microsoft Visual Studio 6.0 and in various ways Windows 99 Advanced Edition, the court investigated the legal situation of countries such as the United States, Australia, the UK and Chinese over damages. On the basis of the case law, after reviewing current legal situations, the Court stated as-

*"Coming to the legal position in India, a positive trend has started. Here also as Courts are becoming sensitive to the growing menace of piracy and have started granting punitive damages even in cases where due to absence-of-the defendant's exact figures of sales by the defendants under the infringing copyright and/or trade mark, exact damages are not available."*¹³

The court in this case has formulated total damages at Rs. 1,28,23,200 on the basis of three categories namely actual damages, exemplary damages and damage to goodwill and reputation. In India, no specific lawsuit has been put before courts for the authorisation by service providers of software piracy. In the case of *Super Cassettes Industries v. Yahoo Inc.*¹⁴ The applicant, owner of the T-series label Indian music company, brought a case against the defendant claiming that his copyrighted work has been infringed via his portal video.yahoo.com. An interim order was granted to defendants who were not allowed to reproduce the film, the sound of the claimant, transmitted in any way on their website.¹⁵ The same petitioner brought a separate lawsuit against YouTube and court granted injunction.

¹² Microsoft Corporation v. Deepak Raval, MIPR 2007 (1) 72.

¹³ Id.

¹⁴ Super Cassettes Industries V. Yahoo Inc CS(OS) No. 1124 of 2008.

¹⁵ Order dated May 30, 2008.

In case of *Autodesk Inc. and Anr. v. A.V.T. Shankardas and Anr.*¹⁶ and *Microsoft Corporation v. Mr. Kiran & Anr.*¹⁷ the High Court Delhi granted permanent injunction for software piracy, court also said that “*piracy is a menace and needs to be put down with a heavy hand*”.

Regarding the responsibilities of service providers, the Delhi High Court in *Reliance Big Entertainment Pvt. Ltd. v. Multivision Network & Ors.*¹⁸ has granted an injunction order restricts the defendant websites from upload, downloading or showing plaintiffs copyrighted contents on the internet. As a consequence of this directive, Reliance Telecom, an ISP with various clients and a claimant's sister firm in this situation, has disabled multiple file-sharing websites in fear of posting copyrighted material on such pages. Their reason is based on the nature of the order of "john doe," which is fundamentally an order issued by courts to disclose their identification if the court finds the defendant to be seriously involved in the copyright infringement.¹⁹

IV. THE INDIAN LEGISLATIVE AND JUDICIAL VIEW ON LINKING, CACHING AND FRAMING

Copyright Legislation allows for rights in the digital environment as well as in the physical world with regard to digital content, computer systems, multimedia, etc. Unlawful copying, file transfer, linking, framing or the usage in cyberspace of some sort of copyrighted work is a violation of copyright by law. The usefulness of the Indian Copyright Act to address infringements in cyberspace will be analysed here.

Article 51 of the Copyright Act 1957 establishes the provisions concerning copyright infringements. It does not specifically formulate that a certain violation occurred in cyberspace or in the physical world. In case of linking or in-lining there is no reproduction of any copyrighted work. When the end user visiting the linked site via the link then reproduction takes place. Let us explain the infringement of copyright in connexion with the linking, framing and in-line by the application of Indian Copyright Act 1957.

Linking:

Link implies link of the two Web pages on the web sites. A linkage is a built-in electronic address that points to and takes the user to another location. A link could lead to a file on the

¹⁶ Autodesk Inc. and Anr. v. A.V.T. Shankardas and Anr. FAO(OS) No. 116 of 2008.

¹⁷ Microsoft Corporation v. Mr. Kiran & Anr. 39 2007 (35) PTC 748 Del.

¹⁸ Reliance Big Entertainment Pvt. Ltd. v. Multivision Network & Ors. CS (OS) No. 3207 of 2011.

¹⁹ Sameer Kujur and Reshma Tigga, Copyright Enforcement in Internet - Specific to Music Industry an International Perspective Source: www.manupatra.com.

website or to a file on a computer.²⁰ located somewhere else on the Internet. A variety of links can be shown on a single web page. There may be two types of linking the deep linking and the surface linking.

For the Surface Linking, no entity or individual objects usually are connected to the home page of either platform whenever anyone places a surface linked to the website. When anyone explicitly links to an internal website or text, it is considered a deep link. This opposition arises. It means the website is bypassed and the website is linked to the internal sites. Deep linking can lead to a claim for withdrawal.

Section 2(ff)²¹ of the Indian Copyright Act, 1957 defines the term “communication to public”. The explanation 1 to this section “further provides to include any communication through satellite or cable”. The description also encompasses ‘by any means of display’ the material of a website on the internet. Linking thus comes under the Indian copyright rules. If any link is established to detriment the of any site, its owner may resort to an Indian Copyright Act of 1957 to seek legal remedies. It is prudent to take the permission of the website owner before linking deeply to any site. On the other hand, in order to avoid undesirable linking the originator of web site should enclosure a prohibition clause in its terms of use as “*do not link to this site without any express consent of copyright holder of this site.*”²²

Framing:

The validity of framing may be checked by applying the provisions of Section 51 as referred and read it with the Section 14 of the Indian Copyright Act of 1957. In the case of framing, the other website's framer does not make duplicate copy or create copies of the licensed material, but instead of this they give guidance for a visiting user to access the contents of the other website in frames Website. Accordingly, the web framer will not, in breach of the copyrights right of the copying owner of the work, be responsible for any unauthorized copyright or duplication or copying under the Indian Copyright Act but may be trapped under section 57(1) of the Act.

Under section 14(a)(vi) of the Indian Copyright Act of 1957, the copyright owner alone shall be qualified for making adaptation. The framing method is negatively influenced by this right, because the website builds up those components from the graphical settings of the presented

²⁰ G.D. Khosla, Know Your Copyright, Eastern Law House Publication, Calcutta, 1986, at page.2199

²¹ Communication to public means making any words available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member actually sees, hears or otherwise enjoys the work so made available.

²² www.org/wiki/Copyright_aspects_of_hyperlinking_and_framing (22.05.2022).

location(s). Now, it is our primary task to examine the intention of the framer to test the legality of the framing.

Case laws:

*Super Cassettes Industries v. Yahoo Inc.*²³ is the best example of the controversy in which the Yahoo Inc. and its Indian affiliate Yahoo Web Services (India) Pvt. received notification from the Honourable High Court of Delhi. For the violation of copyright arising from unlicensed broadcasting of SCIL 's copyright on Yahoo's video. yahoo site, on the basis of a lawsuit lodged by Super Cassette Industries Limited, owner of "T-Series" Company. The complainant lodged a petition for permanent injunction, prohibition of copyright infringement, etc. The appellant claimed that it has a robust copyright policy under the 'System for TPPL', which regularly gives licences for the usage of licensed works to certain music exploiters, such as restaurants , hotels, malls, shopping centres , retail stores, discotheques / nightclubs, airlines, FM stations, TV broadcasters, etc. The plaintiff then found that by hosting and streaming the songs, in part and in full, videos and audio-visual songs, in which the complainant have copyright, the defendants infringed the copyright of a plaintiff. Legal notice provided, but it was found that the company did not remove copyrighted works even after serving the notice. The order of court restricted the defendants or their officers, employees, from reproduction of the videos, sound recording and/or the plaintiff's underlying literary or musical plays, in some manner infringing or otherwise, on their websites, 'www.video.yahoo.com' and also infringe copyright in cinematograph films, sound recording, literary work or musical work in which plaintiff claim copyright done by the defendant without proper license.²⁴

*In another case Super Cassettes Industries Limited v. YouTube & Google*²⁵ SCIL claimed that YouTube Business Model enables the usage of licensed works on the internet, promotes the revenues it will create without any authorisation from the legitimate owners of copyrights and without offering any royalties. In order passed against YouTube and Google, by the High Court and ruled that they either avoid reproduction, adaptation, distribution, communication, transmission, dissemination or display on their websites otherwise it will be considered as infringement of any audio-visual work of the exclusive, legitimate and sustaining copyright of the plaintiff [SCIL].

²³ Super Cassettes Industries v. Yahoo Inc CS(OS) 1124/2008

²⁴ Super Cassettes Industries Ltd. V Yahoo Inc. & Anr., CS(OS) No. 1124 of 2008 [Delhi High Court].

²⁵ Super Cassettes Industries Limited v. YouTube & Google SCIL LLC CS(OS) No. 2192 of 2007 (Delhi High Court).

In 2010, police authorities initiated a criminal complaint against guruji.com' for an alleged breach of copyright, which was pending before the Court of Justice and there is a related lawsuit in that respect. Guruji.com is a local search engine, established in 2006 that allows users to search like Googly; an Indian online business search service has been known by its reputation as the popular music search engine. If a user is searching for some particular song, he / she will list the songs to listen and download after that, though these songs were not stored on the servers of Guruji. The T-series music production limited issued various notice to guruji.com a number of copyright violations notices in music files by the plaintiff.²⁶ The police officers detained the Guruji. Com administrators and officials in Bangalore in April 2010 and the matter is actually before the District Subordinate Court at a trial. The T-series main argument is that the guruji.com. has breached the right by the search engine 's rights and should punished by ICA under section 14 and 63. It is responsible for the penalty. In addition to the out-of-door organizations, the ISP Association of India has formulated its own rules and regulations, with certain legal obligations, and includes all ISPs within the countries.²⁷ This organization has updated the code for all legislation concerning copyright infringements for respect to ISPs' latest IT rules (guides) released by the government, and a new chart code is still not written.

V. CYBER JURISDICTION UNDER INDIAN LAW

Jurisdiction is a question of State authority which applies to the independence of the courts, legislation which administrative. Although it is a sovereignty dimension, authority is not co-extensive. The rules of a nation can have an outside effect that stretches authority outside the nation's constitutional and territorial limits. This is particularly so where the medium of Internet is used which recognizes no sovereignty and territorial limitations. The Indian jurisprudence regarding jurisdiction over Internet is in its early stages and is developing and maturing in a systematic manner²⁸. The rights conferred by the copyright law can be enjoyed and protected only if the same can be enforced through the court of law. The enforcement of these rights presupposes the existence of in the courts, tribunals or other authorities trying the matter. This jurisdictional capacity can arise in relation to the violations in real and (online issues). The copyright law 's rights can only be exercised and protected when the same can be applied by the court. The enforcement of these rights presupposes by the courts, or other authorities which

²⁶ Notices were also issued to sites like YouTube, google, and yahoo.

²⁷ Code of Conduct for ISPs. Code 5.1.2.

²⁸ Dalal Praveen, E-commerce and jurisdictional issues in India

deal with it have jurisdiction²⁹. The power of jurisdiction will emerge in relation to physical space³⁰, and cyber space³¹ (online issues) abuses.

In absence of any statutory mandate regarding the jurisdictional competence of the court where intellectual property violated in cyberspace particularly in the case of copyright violation in cyberspace. The issues arise regarding the jurisdiction when the matter is of two jurisdiction or more than two court may have jurisdiction on that subject. In such cases there is no any provision given in the statute one has to rely on the words and principles laid down by the courts on different times. There are some important cases regarding such jurisdictional issues.

The case dealing with the extended jurisdiction of the courts for entertaining a suit of infringement was discussed in *Banyan Tree Holdings Limited v. M. Murali Krishna Reddy and Anr*³² (Banyan Tree Case). It was a case where the applicant was from Singapore and the defendant were from Hyderabad and where the complainant approached the Delhi Higher Court for requesting an injunction against them. It was a case where domain names were breached. This addressed many events, both in the United States, the United Kingdom and other nations. To understand the issue in full, the following paragraphs were included in the case law itself.

The court referred to the first decided case, concerning exercise of jurisdiction, which was related to online infringement of Trade mark and was based upon a defendant offering products or services on its web site. In *Casio India Co. Limited v. Ashita Tele Systems Pvt. Limited*³³ this case, it was urged there that the circumstance of the defendant's web site being capable of being accessed from Delhi, was sufficient to invoke the territorial jurisdiction of this Court. Neither the plaintiff nor the defendant was residents of Delhi. The Court, through a single judge (Sarin, J) in *Casio* relied on the judgment of the High Court of Australia in *Dow Jones and Co. Inc. v. Gutnic*³⁴ That ruled that every matter affiliated with it had global authority due to the omnipresence, universality, and functionality of the Internet and Worldwide Web apps.

In the para 9 of the Banyan Tree case judgement, the Court considered a different opinion that was taken in *India TV Independent News Service Pvt. Ltd. v. India Broadcast Live Llc and*

²⁹ The expression 'jurisdictional capacity' is limited only to 'territorial jurisdictional capacity' for the purposes of this article.

³⁰ The concept of real space signifies that the act or omission occurred in a physical form and without the use or involvement of means of information technology.

³¹ The concept of cyber space signifies that the act or omission occurred due to the use of information technology (Internet), which generally is intangible in nature.

³² *Banyan Tree Holdings Limited v. M. Murali Krishna Reddy and Anr* 2008(38) PTC288(Del).

³³ *Casio India Co. Limited vs Ashita Tele Systems Pvt. Limited* 106 (2003) DLT 554, 2003.

³⁴ *Dow Jones and Co. Inc. v. Gutnic* (2002) HCA 56.

Ors.³⁵ In this case, it considered the opinion of the Federal District Court in *Zippo Mfr. Co. v. Zippo Dot Com, Inc.*³⁶(Zippo case) and other decisions of the courts of the United States. The court held that:

*“As regards the exercise of personal jurisdiction in cases involving Internet activities...personal jurisdiction cannot be exercised over non-residents merely because their website is accessible within the jurisdiction of the Court. There has to be something more to indicate purposeful direction of activity to the forum state in a substantial way”*³⁷

Copyright Cases:

Though, in *Super Cassettes Industries Ltd. v. Myspace Inc. and Anr.*³⁸ the High Court of Delhi solved an issue relating to jurisdiction where a social networking site, operating in U.S had infringed copyright of the plaintiff by allowing the users of the site to upload cinematograph films, songs etc. of the plaintiff and allowing others to easily download them. It was held in para 55.8 of the judgment that the website of the Defendants is one which is engaged in the online business of providing and exhibiting the songs and cinematograph films worldwide including India. The said website is usually accessed by Indians for downloading the songs of upcoming movies from the website of the Defendants. The Plaintiff has substantiated the cause of action by showing some instances of infringements which has been caused in relation to the specific works. Thus, the said commission of the tort has occurred or occurs in India wherein the Indian user goes to the website, the Defendants through its search engine exhibits the said works and the work is communicated to the public by sending the work to him and facilitating downloading or reaching to the computer of Indian user. Hence a part of cause of action had arisen by virtue of Section 20(c) of the Code of Civil Procedure. If that was of no help, then also by virtue of Section 62(2) of the copyright Act, the plaintiff could still sue at his jurisdiction. The court also found that the Banyan Tree ruling was unsuccessful since it deals with the discharge and not the breach of the proceeding. In contrast to the defendant's argument that the Court is not allowed to exercise extra territorial authority as in this situation, the extra territorial independence of the Court will be exercised as categorically stated in paragraph 58 of the ruling held as under³⁹:

a) *Firstly, “this Court has already arrived at the finding that the court has assumed the jurisdiction on the basis of the part of cause of action which has arisen in India and the*

³⁵ India TV Independent News Service Pvt. Ltd. v. India Broadcast Live Llc and Ors.145 (2007) DLT 521.

³⁶ *Zippo Mfr. Co. v. Zippo Dot Com, Inc.*952 F. Supp. 1119 (W.D. Pa. 1997).

³⁷ Para 9, *Banyan Tree Holdings Limited v. M. Murali Krishna Reddy and Anr*

³⁸ *Super Cassetes Industries Ltd. v. Myspace Inc. and Anr.*, 2010 (42) PTC 361 (Del).

³⁹ Para 58 *Super Cassettes Industries Ltd. v. Myspace Inc. and Anr.* 2010 (42) PTC 361 (Del).

infringement is being caused in India. Thus, this Court would have jurisdiction to entertain and try the proceedings for infringements which has been caused in India”.

b) *Secondly “it is merely the apprehension of the Defendants that there will be some effect of extra territorial for which this Court is not concerned, it is neither the case of the Plaintiff to give this as an extra territorial effect and nor this Court is giving any such effect as contended by the Defendants. Rather, the court is exercising the jurisdiction on the basis of the law of the land which is Copyright Act of India, 1957”.*

c) *Thirdly, “it has already been observed that the commission of tort of infringement has occurred in India which is prima facie infringing in nature, the said acts are prohibited under the Copyright Act and thus this Court is proceeding to do what is permissible under the law. This Court is not concerned with any incidental effects which the Defendants are apprehensive of due to the exercise of the jurisdiction of the Court and that cannot come in the way of exercise of jurisdiction of this Court”.*

d) *“There are lots of cases cited on Article 245 of the Indian Constitution wherein it has been observed about the parliamentary power to enact the extra territorial laws. The said reliance of judgments is equally misplaced as in the present case, this Court is not concerned with the legislative competence of the any extra territorial laws. The said judgments are not applicable to the present case as the court is exercising the jurisdiction on the basis of Indian law having force in India and thus the concerns are mere apprehensions of the Defendants which this Court cannot take care of”.*

In addition of this further , the Court noted that, in view of the loosely worded provision which is ‘anywhere’ it could be granted the accused a wider connotation to include the internet place, which would not be contained only in a place of entertainment but also extended to other places, such as website, in defence of section 79 of the IT Act and of the Indian Act. That is when it appears that under the Act there is a clear clause banning an individual from having a position for benefit, including internet, unless the individual is ignorant or fairly convinced of a violation of the work.

VI. CONCLUSION

As we have analysed the issues in the digital medium to protect copyright under the Indian scenario in this paper. Here I have analysed the statutory provisions and case laws regarding the protection of copyright in digital medium. The issues studied in this paper are not exhaustive in protecting copyright in cyberspace is not the exhaustive list of issues and problem. To protect copyright content in digital space the Indian parliament made amendment

in its existing legislation to make the law effective after the adaptation of WIPO Treaty and TRIPS Agreement, in this regard the amendment made in the year 1999, 2005 and the final major amendment made in the year 2012 which updated the copyright law. In protecting copyright several issues occurred when it comes to the matter of protection in cyberspace, the various issues are there which are completely different from the violation of copyright in the physical world.

The issues related to peer to peer sharing is a typical type of violation which has not been addressed separately by the Indian copyright law and no any case laws has been discussed by the courts in this regard. The issues related with p2p sharing settled by the court of US in case of *Grokster*⁴⁰, where the US Supreme Court considered that the sharing of the files over the internet through P2P network is complete violation of the exclusive right of the copyright holder in the cyberspace. The next issue on the internet which has been analysed here in this research work is the online licensing of Computer Software, the unauthorised making and distribution of software on internet is a major concern to restrict the violation of copyright. The issues here are the reproduction and making copies of the software is the encroachment of the exclusive right of the copyright owner. For such reproduction and distribution of the software on internet the owner of the copyright grant license to the person who wants to do so. But sometimes such reproduction, uploading and downloading of software in digital medium done without any licence or permission of the owner of the software, the court decided that such reproduction and distribution of the computer software in online medium is the infringement of the exclusive right of the owner in digital space. Another important issue of having jurisdiction in case of violation of IP in the cyberspace is one of the major problems because to decide the case regarding the infringement of IP on the internet it is to decide that which court have the jurisdiction to decide the case. To decide this issue US court, derive some tests to decide the jurisdiction like 'Zippo Sliding test' 'Minimum Contact Test' 'Purposeful Availment Test' etc. By these tests court provided the principal by which the jurisdiction issue can be decide. India also follow these cases in decide of which court have jurisdiction to decide the matter of infringement of IP in cyberspace. Some copyright case also has been discussed but they give no any new precedent, just follow the principal decided by the court.

Discussion here of all the related provisions and courts decision that how copyright can be protected on the internet and how the issues and problem should be addressed that how the infringement of the exclusive right of the owner of the copyright in the cyberspace minimized.

⁴⁰ *Metro-Goldwyn-Mayer Studios Inc., et al. v. Grokster, Ltd., et al.* 545 U.S. 913 (2005).

Thus, after going through this discussion we may conclude that the legislations are much competent to protect, only thing should be done is the enforcement of this law. The approach of the court to protect the copyright in cyberspace is also not trivial on many occasions in the issues which not clearly mentioned in the court of law which deal with it very smartly that the interest of owner of the copyright not affected.

VII. SUGGESTIONS

1. The law on jurisdiction need to be victim centric rather than object centric to protect copyright in cyberspace.
2. Framing, In-lining and deep linking other than linking should be declared as an exclusive right of the author under section 14 of the Indian Copyright Act 1957.
3. The world of cyberspace should be recognized as completely separate entity to address issues of copyright in cyberspace.
4. The protection through technological measures should be more stringent and punishment should also harder for the circumvention of this technique.
