

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 4 | Issue 5**

---

**2021**

© 2021 *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 International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Copyright Piracy in the Digital Age with Special Reference to Napster's Case

---

DR. ATUL JAYBHAYE<sup>1</sup> AND MS. BARKHA DODAI<sup>2</sup>

## ABSTRACT

*Copyright, Patent, Trademark, Designs are some of the types of Intellectual Properties. These are creations of the human mind and hence called Intellectual Property. The term Cyberspace relates to the transactions carried through e-commerce. Web-based technology through the internet has increased our capacity to access it easily with rapid speed which is very useful for e-commerce and having quick electronic business transactions. The challenge that the law has faced in the recent years is how to tackle the development of Intellectual property on the Internet while preventing its unauthorised exploitation. And the most important of the many legal issues raised by the internet is the protection of the copyright. The author in this paper has tried to discuss copyright piracy in the digital age. Further, the landmark Napster's case has also been discussed which was first major case to address the application of copyright laws to peer-to-peer file-sharing.*

**Keywords:** *Copyright, Cyberspace, Digital piracy, Napster's case, DRM technology.*

## I. INTRODUCTION

Copyright is known as one of the types of Intellectual properties. Before going into details of the copyright and related issues in cyberspace, we need to know the concept of Intellectual property and its importance. To go home is to enter a place built & filled with human creativity & invention. From a carpet to a sofa, from the washing machine, the refrigerator and the telephone, to the music, the books, the paintings, family photographs, everything which we live is a product of human creativity. These things are creations of the human mind and hence called Intellectual property. Today, the internet is not only used for educational purposes but also for business. The availability of radio, telephone, television and computer made it possible to carry out most of the business activities on-line, through the information technology and communication network. The government of India by passing IT (Information Technology) Act 2000 and further amending it on 27th October 2009 has given fillip to cyber law. But various issues are not specifically covered by the Act, such as copyright, payment issues, media

---

<sup>1</sup> Author is an Assistant Professor at Hidayatullah National Law University, Raipur, India.

<sup>2</sup> Author is an Assistant Professor at Hidayatullah National Law University, Raipur, India.

convergence, domain name, cybersquatting and jurisdiction. While these have wide ranging ramifications for the growth of e-commerce of India.<sup>3</sup>

Intellectual property can be categorised into two categories i.e., Industrial property and Copyright. Industrial property deals with patents, trademarks, geographical indications, designs and semiconductors layout design. On the other hand, Copyright covers literary, dramatic, artistic, musical, cinematographic films and sound recording etc. The primary legislations regulating Intellectual property in India are: The Patents Act 1970, The Trade Marks Act 1999, The Geographical Indications of goods (Registration and Protection) Act 1999, The Design Act 2000, The Semiconductor Integrated Circuits Layout-Design Act 2000 and the Copyright Act 1957.<sup>4</sup>

Copyright infringement could possibly be defined only in terms of statutorily prohibited exclusive rights of activities as respect the copyrighted work. Since the prohibited exclusive right of activities may vary from jurisdiction to jurisdiction, so the definition of copyright infringement may also vary from jurisdiction to jurisdiction. Hence, there is no uniform definition of copyright infringement that could be followed by each and every country's legal system of copyright. Taken as such it could be said that though copyright infringement is always meaningful to each and every copyright legal systems of the countries but what constitute copyright infringement in one country, say here in India, may or may not constitute copyright infringement in other countries.<sup>5</sup>

Taking content from one site, modifying it or just reproducing it on another site has been made possible by digital technology and this has posed new challenges for the traditional interpretation of individual rights and protection. Any person with a PC (Personal Computers) and a modem can become a publisher. Downloading, uploading saving transforming or creating a derivative work is just a mouse click away. A web page is not much different than a book or a magazine or a multimedia CD-Rom and will be eligible for copyright protection, as it contains text graphics and even audio and videos. Copyright law grants the owner exclusive right to authorize reproduction of the copy righted works preparation of derivative works, distribution etc.<sup>6</sup>

---

<sup>3</sup> Harish Chander, *Cyber Laws and IT Protection* 5-6 (PHI learning Private Ltd. Publication 2012).

<sup>4</sup> *Id.*

<sup>5</sup> S.Z. Amani, *Secondary Copyright Infringement Under the Indian Copyright Act, 1957- A Critique*, 24 ALJ, 79 (2016-17).

<sup>6</sup> Tabrez Ahmad, *Cyber Law and E-Commerce* 25 (APH Publishing Corp. 2003).

## II. IP: SOURCE OF VALUE AND WEALTH GENERATION

The term “intellectual property” which was hardly known to the CEOs in early ‘90s has become one of the most significant parts of their business strategy.<sup>7</sup> Intellectual property has great significance for any large scale, medium scale or even a small start-up as it has become an important source of revenue generation. In this age of knowledge and technology, generation of revenue is through creation of intellectual wealth. The intellectual wealth so generated requires strategic and structured approach towards identification, protection and exploitation for revenue generation. The source of value and wealth generation has moved from tangible to intangible assets. Intangible assets as recognised to be intellectual property are nothing less than potent weapons in the age of global competition. Intellectual property rights are not mere legal instruments but are tools of business. Thus, the area of management of intellectual property rights (IPRs) has great significance in the present world of explosive technological developments. With the rapid growth in diversified fields of technology, with the new scientific inventions and innovations, IPR protection and IPR exploitation is the key to commercialisation for any organisation.<sup>8</sup>

The concept of Intellectual property can be traced back to the Byzantine Empire where monopolies were granted. For instance, in Greece a one-year monopoly was given to cooks to exploit their recipes. A statutory legislation in the Senate of Venice provided exclusive privileges to people who invented any machine or process to speed up silk making. Thus, from Intellectual property being totally alien to the nomadic community came an era where every new idea was given protection under the category of Intellectual Property Rights.<sup>9</sup>

## III. THE LOCKEAN JUSTIFICATION FOR INTELLECTUAL PROPERTY

“Reference to Locke's two treatises of Government is almost obligatory in essays on the constitutional aspects of property. For Locke, property was a foundation for an elaborate vision that opposed an absolute and irresponsible monarchy. The Lockean justification for property is embodied in his ‘Labour Theory’. According to Locke, there existed a nature in which goods were held in common through a God-given grant. God granted these bounties for the enjoyment of humans, but they could not be enjoyed in their natural state. Some labour had to be exerted on them so that they could be converted into a state for the use and

---

<sup>7</sup> Jain Karuna, *Intellectual Property Management System: An Organisational Perspective*, Journal of Intellectual Property Rights, 330-333 (2006).

<sup>8</sup> Vaishali Singh, *Adding Economic Value to Knowledge through Strategic Management of Intellectual Property*, PL (IPR) January 93, (2018).

<sup>9</sup> Rohas Nagpal, *Intellectual Property Issues and Cyberspace 3* (Asian School of Cyber Law Publication 2008).

enjoyment of human beings. It is this labour that adds value to the goods, making it a product of whoever exerts that labour. Thus, they are converted into private property.”<sup>10</sup>

Article 300-A of the Constitution grants the right to property in India, which is as follows:

“Persons not to be deprived of property save by authority of law :- *No person shall be deprived of his property save by authority of law.*”<sup>11</sup>

This clearly means that no one can be deprived of his property, thereby granting the owner absolute rights over his property. The 5th Amendment in the American Constitution has a similar clause. It states: “*No person shall be held to..... not be deprived of life, liberty, or property, without due process of law....*”<sup>12</sup> Both these clauses protecting the right to property can be justified using Locke's theory. Locke believed that the very existence of the Government was to protect basic rights such as life, liberty and property. According to Locke, consent-based civil society governments are established so that individual rights to liberty, life and property can be safeguarded. Thus, individuals can obtain security in producing and possessing the fruits of their own labour, consistent with respect for equal rights of others.<sup>13</sup>

#### IV. MEANING OF CYBERSPACE AND COPYRIGHT

The term Cyberspace relates to the transactions carried through e-commerce. Web-based technology through the internet has increased our capacity to access it easily with rapid speed which is very useful for e-commerce and having quick electronic business transactions. Information stored in electronic form is cheaper, easy to store, retrieve and speedier to communicate. The advantages of the Internet have naturally attracted many business people to conduct the business through e-commerce. All the facets of business transactions with which we are accustomed in physical environment can be now executed over the Internet. These transactions include among others online advertising, online ordering, publishing, banking, investment, auction and also professional services. Internet has made it possible to replace traditional paper-based communications by paperless communication which does not know physical or geographical boundaries and is possible in any part and from any part of the globe between the parties known or unknown to each other.<sup>14</sup> The challenge that the law has faced in the recent years is how to tackle the development of Intellectual property on the Internet while preventing its unauthorised exploitation. And the most important of the many legal issues

---

<sup>10</sup> Suktika P. Banerjee and Sharngan Aravindakshan, *Cut from the Same Cloth: the Philosophies of Intellectual Property Rights and the Indian Constitution*, 4.2 NLIU LR 160 (2015).

<sup>11</sup> INDIA CONST. art. 300 A.

<sup>12</sup> USA CONST. 5<sup>th</sup> Amendment.

<sup>13</sup> Rohas Nagpal, *supra* note 9.

<sup>14</sup> Dr. Georgios Zekos, *Issues of Cyberspace and E-Commerce* 8 (ICFAI University Press 2008).

raised by the internet is the protection of the copyright.<sup>15</sup>

In India 'Copyright' means the exclusive right subject to the provisions of the law to do or authorise the doing of act in respect of work or any substantial part thereof namely:

(a) In the case of literary, dramatic or musical work not being a computer programme to reproduce the work in any material form including the storing of it in any medium by electronic means, to issue copies, to perform the work in the public, to make any cinematographic film, or sound recording, to make any translation or to make any adaptation.

(b) In the case of Computer programme to -

i. do any of the acts specified in clause (a); and

ii. sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental. ....<sup>16</sup>

In relation to computer programmes 'literary work' includes computer programmes, tables and compilations including computer databases and an 'author' means in relation to a literary work or dramatic work the author of the work, in relation to a musical work, the composer and in relation to any literary, dramatic, musical or artistic work which is computer generated, the person who cause, the work to be created.<sup>17</sup>

The above relevant provisions relating to the Copyright Law in India clearly suggest the interpretation that the copyright in computer software would subsist in case the computer software produced entity only if the computer produced entity is 'original' and a copyright subsists only in an original literary work. However, a computer programme which only produces the multiplications tables or the alphabet cannot claim a copyright protection as the skill or effort used is very little.<sup>18</sup>

## V. PROTECTION OF COPYRIGHT IN THE DIGITAL AGE

The new technology which is multi-functional IT or the Internet poses number of challenges for laws to protect copyrights. Copyright, being an intellectual property gives rights to the authors in literary, artistic, dramatic and musical works. As in other intellectual property rights

---

<sup>15</sup> *Id.*

<sup>16</sup> The Copyright Act, 1957, S.14, No.14, Acts of Parliament, 1957 (India).

<sup>17</sup> Rohas Nagpal, *supra* note 9.

<sup>18</sup> Rohas Nagpal, *supra* note 9.

available under the copyright are essentially negative in nature, similarly these are basically the rights to prevent others from doing certain things as for example, right to stop piracy, counterfeit, copying or imitations. The copyright even enables the holder to stop even the third parties who might independently reach the same idea from exploiting them without the permission of the copyright owner. It means that the copyright holder has a right to control the activities of others. Therefore, copyright is rightly called as 'bundle of rights' such as right to reproduce work in copies, right to make an adaptation of the copyrighted work, right to perform or display the work in public etc. However, it may be pointed out that copyright does not exist in an idea but is available only when it is in some form or expression. Therefore, no person can have a copyright merely on having idea of story which is only in mind. But once a person has written or published it, he will have the copyright.

Since its inception, copyright law has responded to technological change. Today, the changes that are grabbing all the headlines relate to digital technology and digital communications networks, such as the Internet and personal computers. These technologies, like many innovations, are both promising and potentially harmful to various parties interested in the use and exploitation of works of authorship- from books and music to films and web pages. There is no doubt that the issues related to achieving the right balance between these interests in light of recent developments are daunting and justifiably can be described as "new" or "unique." But, at the same time, they are merely one step in a journey of continual and successful adaptation that characterizes the history of copyright law.<sup>19</sup>

## VI. NAPSTER'S CASE – AN ANALYSIS

### (A) Introduction

The Napster case, *A& M Records Inc. v. Napster Inc.*<sup>20</sup> is a lawsuit that has gained international attention and comment. It is not simply a challenging case for United States intellectual property attorneys; rather, the entire global community has watched the *Napster* legal saga closely, although no clear legal or technological solutions have yet emerged. Napster is currently enjoined from operating its file-sharing service until it can remove all infringing material from the service.<sup>21</sup>

As the recording industry tries to nail the coffin shut on the Napster case, it is clear that Pandora's box remains wide open. Napster has forever changed the landscape of the music and

---

<sup>19</sup> Marybeth Peters, *The Challenge of Copyright in the Digital Age*, 9 REV. PROP. INMATERIAL, 59 (2006).

<sup>20</sup> 239 F.3d 1004 [ hereinafter Napster Appellate Court Decision].

<sup>21</sup> Grace J. Bergen, *The Napster Case: The Whole World is Listening*, 15 Transnat'l LAW. 259 (2002).

media industries. Nineteen-year-old Sean Fanning's Napster program opened the door to a significant shift in power away from the recording industry and towards the music-buying consumer. Now, the recording industry is losing its grip on the technology that it exclusively controlled for so long.<sup>22</sup>

### **(B) The Birth of Napster**

Napster is the brainchild of 19 year old computer-science student Shawn Fanning, who wanted to facilitate music-swapping on the Internet with his roommate.<sup>23</sup> In 1998, Fanning came up with a solution for fellow college students to swap MP3 files over the Internet by enabling people to share their hard drives with one another, using a centralised database and specialised software which converts each user into a server.<sup>24</sup> MP3 is a method of compressing digital information so that it takes up less space when stored (one tenth of its original size), whilst retaining a high sound quality.

Officially founded in May 1999, Napster Inc is the designer and operator of a file sharing system that permits PC users to transmit and retain copyrighted sound recordings based on MP3 technology. Napster provides the proprietary software, search engine and means of establishing a connection between two users' computers so as to enable the infringing activity to take place. Once a user finds on the Napster index a music file he or she wishes to download, Napster provides the Internet address of the user with that file, allowing that user to download the file from the other user's hard disk directly through the Internet. At the peak of its operations, Napster had hundreds of millions of users and an estimated value of \$US80million.<sup>25</sup>

## **VII. THE DISTRICT COURT DECISION**

On December 6, 1999, A & M Records, along with seventeen other record companies, filed suit against Napster, alleging contributory and vicarious copyright infringement.<sup>26</sup> The record companies sought to enjoin Napster from "engaging in or assisting others in copying, downloading, uploading, transmitting, or distributing copyrighted music without the express permission of the rights owner."<sup>27</sup> In response, Napster asserted that its conduct was defensible

---

<sup>22</sup> *Id.*

<sup>23</sup> *A & M Records, Inc. v. Napster, Inc.*, 114 F. Supp. 2d 896, 900 (N.D. Cal. 2000) [hereinafter *Napster District Court Decision*].

<sup>24</sup> Berschadsky, P., *RIAA v. Napster: A Window onto the Future of Copyright Law in the Internet Age*, 18 *Journal of Computer and Information Law*, 755 (2000).

<sup>25</sup> *Napster District Court Decision*, *supra* note 23.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*



under the Digital Millennium Copyright Act (DMCA), and also constituted "fair use."<sup>28</sup>

#### **(A) Napster's "Safe Harbor" Arguments**

“In the first round of the Napster case, District Court Judge Marilyn Patel held that Napster was not eligible for the safe harbor provision of Section 512(a) of the DMCA.<sup>29</sup> This particular provision of the DMCA provides Internet Service Providers (ISPs) with an exemption or safe harbor from liability if they can meet certain requirements.”<sup>30</sup> To qualify as a "service provider," an entity must offer "the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.”<sup>31</sup> Judge Patel found that Napster did not meet this definition of a "service provider," and denied Napster's bid for a summary judgment.”<sup>32</sup>

“Napster argued it was merely acting as a conduit-in essence, a road where its users were speeding-and thus was not responsible for the conduct of its users.<sup>33</sup> The Napster website contained a clear statement of policy, warning its users that Napster did not promote illegal actions and that if users were found to be violating any copyrights, they would be removed from the service. Napster argued that it did not copy any of the material that came through its service; it simply had a directory and a program that permitted peer-to-peer use.”<sup>34</sup>

The court distinguished enabling connections between Napster's users from "acting as a passive conduit," finding that Napster "supplies the proprietary software, search engine, servers, and means of establishing a connection between users' computers.”<sup>35</sup> As a result, the court determined that Napster could not escape liability under the ISP exemption of the DMCA.<sup>36</sup>

### **VIII. THE NINTH CIRCUIT COURT OF APPEALS DECISION**

On appeal to the Ninth Circuit, plaintiffs continued to argue that Napster was liable for both contributory and vicarious copyright infringement.<sup>37</sup>

#### **(A) Contributory Infringement**

Finding in favor of the plaintiffs on the issue of contributory copyright infringement, the United

---

<sup>28</sup> *Id.* at 900-901.

<sup>29</sup> *Id.* at 919 n.24.

<sup>30</sup> Digital Millennium Copyright Act, 1998, §512(a), United States Code, 1998 (USA).

<sup>31</sup> *Id.* §512(k)(1)(A).

<sup>32</sup> Napster District Court Decision, *supra* note 26, at 919 n.24.

<sup>33</sup> *Id.* at 919.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 920.

<sup>36</sup> *Id.*

<sup>37</sup> Napster Appellate Court Decision, *supra* note 20, at 1010-11.

States Court of Appeals for the Ninth Circuit upheld the district court's determination that the primary purpose of the Napster service was to infringe.<sup>38</sup> Based on the analysis of *Religious Technology Center v. NetCom Online Communications Services*,<sup>39</sup> the appellate court stated that, "if a computer system operator learns of specific infringing material available on his system and fails to purge such material from the system, the operator knows of and contributes to direct infringement."<sup>40</sup> Although the appellate court disagreed with the lower court's finding that "specific acts of infringement" did not have to be shown, the appellate court nevertheless concluded that "sufficient knowledge exists to impose contributory liability when linked to demonstrated infringing use of the Napster system."<sup>41</sup>

The appellate court also found that Napster had both actual and constructive notice of copyright infringement on their site.<sup>42</sup> Actual knowledge was evidenced by one of Napster's internal documents, which stated that Napster needed to remain ignorant of its users real names and IP addresses because the users were exchanging pirated music.<sup>43</sup> In addition, the Recording Industry Association of America (RIAA) notified Napster of the existence of over twelve thousand infringing files on its service.<sup>44</sup> Constructive knowledge was shown by proof that Napster's executives had recording industry experience, yet these same executives downloaded copyrighted songs; that Napster enforced its own intellectual property rights and displayed a copyright notice on its website; and that Napster promoted its service with screen shots that listed infringing files.<sup>45</sup>

Finally, the court of appeals distinguished its holding from the district court's finding that the Napster system was not capable of substantial non-infringing uses.<sup>46</sup> The appellate court admitted that there could be some non-infringing uses of Napster, but it concluded ultimately that they were not significant enough to outweigh harms wrought on the recording industry.<sup>47</sup> Thus, the appellate court effectively sealed Napster's death. Procedurally however, the appellate court remanded the case back to the district court for a more detailed clarification of what constitutes an infringing versus a non-infringing use.<sup>48</sup>

---

<sup>38</sup> *Id.* at 1020,1028.

<sup>39</sup> 907 F.Supp. 1361 (N.D. Cal. 1995).

<sup>40</sup> Napster Appellate Court Decision, *supra* note 20, at 1021.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 1020.

<sup>43</sup> *Id.* at 1020 n.5.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 1020-21.

<sup>47</sup> *Id.* at 1021.

<sup>48</sup> *Id.*

**(B) Vicarious Liability**

On the issue of vicarious liability, the appellate court determined that there was a strong likelihood that Napster would be found liable because Napster had (1) a financial interest in the infringing activity, and (2) had the right and ability to supervise its users. The court found that although Napster did not charge a fee for its service, Napster's future revenues were dependent on increasing its user base. The court also noted that Napster's ability to block user access for any reason was evidence of its right and ability to supervise the infringing conduct of its users.<sup>49</sup>

**(C) Injunction**

Finally, the appellate court ordered the district court to modify the original injunction to require that contributory infringement could only be established where Napster received reasonable notice of the specific infringing files (i.e., Napster knew or should have known that the files were available on its service), and failed to act to prevent the distribution of infringing files. The court found that the mere existence of file sharing on Napster's service without the actual notice of infringement was insufficient.<sup>50</sup>

**IX. ON REMAND TO THE DISTRICT COURT**

On remand, District Court Judge Patel enjoined Napster from engaging in or facilitating others in "copying, downloading, uploading, transmitting, or distributing copyrighted sound recordings." The judge ordered that plaintiff RIAA must provide Napster with specific notice of their copyrighted sound recordings, including title of the work, name of the featured artist, certification that plaintiff owns or controls the rights in the sound recording, and the name or names of alleged infringing files available on Napster system.<sup>51</sup>

**X. ULTIMATE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS**

Ultimately, on March 25, 2002, the U.S. Court of Appeals for the Ninth Circuit ordered that Napster could not resume its free online file-sharing service, upholding the district court's original July 2000 order that Napster remain offline until it could fully comply with the injunction to remove all infringing material from its site.<sup>52</sup>

---

<sup>49</sup> *Id.* at 1023.

<sup>50</sup> *Id.* at 1027.

<sup>51</sup> *A&M Records, Inc. v. Napster, Inc.*, 2001 WL 227083, at I (N.D.Cal. 2001).

<sup>52</sup> *A&M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir. 2002).

## **XI. THE IMPACT OF THE NAPSTER'S CASE**

### **(A) Why is the Napster Decision So Important?**

Napster is the first case to interpret certain provisions of the DMCA, which was passed in October 1998. The decision also has international significance because the European Union Copyright Directive mirrors many of the DMCA's provisions. Accordingly, the European legal community has closely followed the Napster litigation. Furthermore, the decision has affected other foreign nations due to the proposed solutions to the digital piracy problem.<sup>53</sup>

### **(B) Peer-to-Peer Technology**

In addition, Napster's death has resulted in the birth of a growing peer-to-peer technology," which is one of the latest Internet acronyms-the "P2P" revolution. Peer-to-peer networking is created when several users' PCs communicate directly to each other, rather than through a server. This technology enables the group of users or "peers" to share their resources, including processing power or storage space, with other PCs on the network." P2P technology will have a major impact not just on the music industry, but also on many kinds of businesses, and it will change the Internet landscape forever.<sup>54</sup>

## **XII. USE OF DRM TECHNOLOGY TO CURB PIRACY**

### **(A) What is it and how it works?**

DRM (Digital Rights Management) is a great relief for copyright holders. DRM is specific computer code that works as a protective layer over the Digital Content, allowing Content Owners to limit a consumer's use of that product. To secure content, DRM users (Content Owner) usually takes two approaches: The first is 'containment' (or the wrapper), an approach where the content is encrypted in a shell so that it can only be accessed by authorized users.<sup>55</sup> The second is 'marking' (or using an encrypted header), such as the practice of placing a watermark, flag, XML or XrML tag on content as a signal to a device that the media is copy protected.<sup>56</sup>

### **(B) DRM - a misnomer or not?**

The rights conferred the copyright owner in digital media are called on digital rights. But as these rights are in danger of being violated, so digital management of such rights are called

---

<sup>53</sup> Grace J. Bergen, *supra* note 21.

<sup>54</sup> *Id.*

<sup>55</sup> Nicola Lucchi, *Countering the Unfair play of DRM Technologies*, 16 Tex. Intell. Prop. L.J. 93 (2007-2008).

<sup>56</sup> Digital Rights Management and Privacy, EPIC, March 2007, <http://www.epic.org/privacy/drm/> (last visited May 12, 2021.)

digital rights management. As DRM manages all right and not only the rights applicable to digital content, so the term DRM to be taken as “management of digital rights” will be wrong. So, one can say that DRM is a general term used to prevent unauthorised access or redistribution of copyright work available on digital media. Therefore, digital rights management is a complex technology involving a number of controlling features to provide control on access and on use of such work rather than copying of the same.<sup>57</sup> By this method they are trying to curb the illegitimate actions of distributing the copyrighted work on digital media through the peer-to-peer file sharing network leading to the traditional copyright law obsolete and also regain control over distribution of such matter. So, people think that the term digital rights management is misleading and suggest using the term digital restriction management. But the counter-arguments given in favour of DRM is that the main purpose of DRM is not to prevent rather to enable usage of content through active enforcement of rights of copyright owner.<sup>58</sup>

### **XIII. CONCLUSION**

With the arrival of digital technology, multimedia and internet copyright infringement and software piracy become very easy. Due to weak network security and hacking the problems becomes more grim and posing threat to e-commerce. E-commerce focuses its elements on telephone computer and websites as a basis of deciding competitiveness of a country. India performs badly on these fronts. To be a superpower in the present century it must take lead in all relevant areas. Indian Government has taken a remarkable step ahead in right direction by enforcing the Information Technology Amendment Act 2008, on 27th October 2009, but which does not mention a single word about copyright. While the copyright is one of the most complicated areas of cyber law. Moreover internet, e-commerce and copyright related cases are only being instituted in the western countries, to be more precise USA. Therefore, we should prepare our legal institutions for the production of information superhighway gateway. India has to go a long way to realise the true potential of information technology for conducting e-commerce.

\*\*\*\*\*

---

<sup>57</sup> Anjali Gupta, *Digital Rights Management*, PL November S-37 (2011).

<sup>58</sup> *Id.*