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Protection of Copyright in Cyberspace

NIKITA SHARMA¹

ABSTRACT

"A copyright is a collection of rights that automatically vest to someone who creates an original work of authorship – like a literary work, song, movie or software." This article deals with the protection of our original art, literature and cultural work in the cyberspace. The article makes a tingling remark on fair use of copyrights in the virtual world, giving the possibilities of how they can be infringed and what are the laws for it. It also talks about what is the scope of copyright protection, how countries are affected by it, and the laws governing it.

Keywords: Copyright, Cyberspace, Copyright laws, Digital Copyrights

I. INTRODUCTION

The development of information technology has led to the advancement of e-businesses with its cost effectiveness, convenience and its broad user base. The internet has played a major role in increase in start-up enterprises and the e-business on internet which also showcase its product and services. Now the digital age, have all awareness about Software, Icon, Trademark, Copyright and all the other advantages. But the other side of the case has never been looked before. As the easiest way to get anyone's information and later copying it without anyone's permission and using it for any purpose even to make money, is a continuous threat to our intellectual property in this digital age.

The evolution of intellectual property rights has given us some site of relief for our information and ideas as they have earned legal protection. Copyright is one of those rights that gives the owner all the right even the right of economic benefit and keeps the idea and information protected. To keep an eye over dissemination and copying of works the owner of copyrighted works have started developing protection measures like Electronic Copyright Management System (ECMS). This system gives a right to copyright owner to keep an eye over when and who can access his work. Other legislations (DMCA and EUCD) are also in support of protecting measures used to control access to work.

II. COLLIGATION OF COPYRIGHT IN CYBERSPACE

Information Technology is growing rapidly and now it is considered the most needed human

¹ Author is a LL.M. Student at UILS, Chandigarh University, India.

invention for mankind. As we are entering into the emerging era of the internet, protection of information and intellectual property (especially copyright) has taken centre-stage². In this digital era, information is just a click away. The Internet has captured the physical world and turned it into a virtual space. So, there is an urgent need to know more about software, computer-based programs, literary and other works in cyberspace. If the technology offers new opportunities, then it also poses some hindrances. The possibility of infringement has increased as information is easily accessible on the internet.

- **Copyright in Cyberspace**

Copyright is a kind of intellectual property that confers a bundle of exclusive rights on the creator. It is a legal term used to describe the rights to publish, reproduce, sell, communicate it to the public and redistribute the work created by the owner at his own will. The copyright owner is also authorized by monopoly right which enables the owner to prevent anyone from copying and exercising the rights conferred exclusively by the owner.

According to *Section 13 of The Copyright Act, 1957*³, the copyright subsists in the following:

1. *Original literary, dramatic, musical, and artistic works.*
2. *Cinematograph films; and*
3. *Sound recording.*

Copyright is an essential element for the development of a country. The advancement of national cultural bequest depends directly upon the level of protection given to literary, artistic, musical, and dramatic work. The evolution of cyberspace has made information easily accessible through numerous blogs, articles, journals, etc. Cyberspace is a virtual world that is managed through computer programs. It is like an interconnection of humans through electronic medium used to exchange information and data. Today every kind of information is available on the internet that has its own pros and cons. The digital age has multiple advantages which can attract fame, popularity, and appreciation which can give creator encouragement to work more. But the flip side is that it could also lead to infringement of one's exclusive rights too.

Earlier the international intellectual property law was based upon the Berne Convention and TRIPS (Trade-Related Aspects of Intellectual Property Rights) of 1995. Since 1974, a special agency of UN named WIPO managed all the international copyright instruments. The objective behind WIPO's treaty was to promote the protection of intellectual property rights throughout

² Saha, S. and Keshri, S., 2022. *Challenges to Copyrightable Work in Cyberspace*. 13 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS (1) 33-52, <http://14.139.47.15/handle/123456789/405> [Accessed 19 August 2022].

³ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

the world in collaboration with participating states. Then infringement of copyright in cyberspace came into the picture. This introduced two treaties that deal with the protection of copyright on the digital platform as well. The Copyright Treaty 1996 and Performances and Phonograms Treaty 1996 are two treaties related to cyberspace that are backed by WIPO. WIPO's Copyright Treaty reveals the scope and shortcoming of the protection of digital copyright. The Treaty also deals with the issue of Rights Management Information (R.M.I) which is linked to the popular Digital Rights Management (D.R.M).

The available information in cyberspace poses two challenges for copyright – what to administer and how to administer information. One of the basic challenges posed was determining the border between public use and private use. Stringent copyright laws were needed as The Information Technology Act, 2000 fails to cover issues related to the piracy of data. The Indian Copyright Act, 1957 (amended in 1994, 2012) provides a difference between reproduction for public use can be done only if the owner permits so whereas, on the other hand, it offers a provision of fair dealing for private use. Hence, Cyberspace and Copyright are interlinked with each other.

In one of the recent digital copyright infringement cases of *Gramophone Company of India V. Super Cassette Industries*⁴, it was held by the court that the plaintiff had infringed the copyright of the plaintiff as a remix version of the song was sold by him on the internet or as a mobile tune. Therefore, the copyright regime adopted by India safeguards the copyright rights of creators both in the offline and online world.

- **Fair Use of Copyright in Cyberspace**⁵

Fair dealing is used as a defence against a copyright infringement suit. **Section 52(a) of The Copyright Act, 1957** provides an exception for copyright infringement. Under copyright law, the fair use of protected work is for free. Fair dealing is permitted for private use. Free uses can be a review, criticism, personal research, educational purpose, reporting the current events, etc. Then it will not come under the purview of copyright infringement. Fair use of copyright can be used as a defence in the digital world as well. Fair use is not a license but a privilege that can be enjoyed by people. In the recent amendment of 2012, musical and cinematographic works were also included under the scope of fair dealing. In *India TV Independent News Series Pvt Ltd. V. Yash raj Films Pvt Ltd.*⁶, it was held by the court that the plaintiff cannot use the defence

⁴ 2010 (44) PTC 541

⁵ Seth, K., 2022. *Protecting copyright in cyberspace*. Available at: <<http://www.karnikaseth.com/protecting-copyright-in-the-cyberspace.html>> [Accessed 19 August 2022].

⁶ India Tv Independent News Service vs Yashraj Films Pvt. Ltd., <https://indiankanoon.org/doc/115992789/>

of fair use as it was not used for private use but broadcasting purposes. In this case, the plaintiff used certain movie clips of the defendant in his broadcasting channel. Hence, fair use has certain limitations also.

III. INFRINGEMENT OF COPYRIGHT IN CYBERSPACE

Infringement of copyright is done or performed when a person without the authority, consent or permission of the copyright owner copies, duplicates, adapts, translates, public performance of communication even when the work has been licenced or assigned, any violation even to those conditions are known as copyright infringement⁷. Even the import and export of work outside India can infringe copyright. The copyright act provides various rights to protect our idea and expression. The owner of copyrighted works can file civil as well as criminal remedies. The infringement of copyright is a cognizable offence which is punishable by imprisonment from 6 months to 3 years with fines ranging from 50,000 to 2,00,000. Civil remedy includes injunction and damages. The district court has all the jurisdiction to file a suit relating to copyright infringement⁸.

❖ Right of Reproduction

This right of reproduction is an important right which had to be covered by copyright legislation. This issue was where the works of the author have been copied by the internet user and his right got infringed. In the case of the digital world source copied by someone from an author's work gets identified easily and shows us copied work. The court of America in the case *Atari Games Corporation V. Nintendo Of America INC*⁹. stated that the works which have limited copyright after the expiration of the right if they get copied by someone are also an infringement but section 102 [b] of the American Copyright Act, they do not give protection to the known little aspect of computer software or program.

❖ Distributive Right

This right is an exclusive right of copyright given to the owner for distributing copies of the work to the public by sale or by transfer of ownership. As in the cyber world, an infinite number of copies can be made easily and that too without any quality loss. If a person passes on an infinite number of copies and uses it for sale or economic benefits, then it is an infringement of copyright as it is done without the consent or permission of the owner.

⁷ Delich, C., 2022. *What Is Internet Copyright Infringement?*. [online] Wisegeek. Available at: <<https://www.wisegeek.com/what-is-internet-copyright-infringement.htm>> [Accessed 19 August 2022].

⁸ iPleaders. 2022. *COPYRIGHT INFRINGEMENT ON THE INTERNET - iPleaders*. [online] Available at: <<https://blog.ipleaders.in/copyright-infringement-on-the-internet/>> [Accessed 19 August 2022].

⁹ Atari Games Corp. v. Nintendo of Am. Inc., 975 F. 2d 832 (Fed. Cir. 1992)

❖ Derivative Works

Derivative works are different types of work or right as it deals with patches or updates which can be made by single programmers for the company which also publish software. These involve cases where some programmers take two or three programs and combine them to make their original work. But this is also a case of infringement as this is copying 2 to 3 programs and not creating the original one. The use of someone's software is not an infringement but the combining of 2 to 3 software and producing it as original work is an infringement of copyright.

❖ Copy Paste

The word copy paste is so common for us as we all have done this once in a lifetime. This is the most common copyright infringement that takes place daily in the cyberspace world. When the work is created or shifted into an electronic form it becomes way too easier to copy and make a profit from that copied work. This infringement is the most happening in cyberspace. literary works had to be protected not only in paper but even in electronic mode in the cyberspace world. Copyright flows not only from the nib of a pen but also from the keyboard of the word processor. Sometimes copying text feels harmless as copying saves a lot of time, expenses, and work and trying to gain economic advantages.

IV. LEGISLATION RELATED TO COPYRIGHT IN CYBERSPACE

➤ Legal aspects involved in E.C.M.S.

Copyright Protection via Technology: Electronic Copyright Management Systems (ECMS)¹⁰, The trouble is that there are extra pirated copies on the Internet of any given software program than there are originals that might be downloaded from the publisher's hope. That sets the scene for lots of active studies inside the discipline recognized extensively as Electronic Copyright Management Systems (ECMS) and are trying to find a criminal framework to guard against 1/3 parties circumventing those systems. The copyright proprietors have an alternative for technology safety measures. In a few cases, technology safety measures might also additionally manage both to get entry and copying or they will be used at the side of regulations or conditions. Imposed with the aid of using contracts, or with or as a part of an electronic copyright management system (ECMS), that is, a technology that is developed to allow copyright proprietors to track, control, or save you copying in their virtual work, which includes the virtual watermarking system. Much extra state-of-the-art is the ECMS which saves you get

¹⁰ Rao, K., 2022. *Challenges of Copy Right And Cyber Space*. [online] Legalservicesindia. Available at: <<http://www.legalservicesindia.com/article/2394/Challenges-of-Copy-Right-And-Cyber-Space.html>> [Accessed 19 August 2022].

entry to being acquired to a piece in the primary location if authorization is not given, and which thereafter can license using that work on certain phrases and conditions. Several factors are worried about inside the composition of those ECMS. Legal Protection - ECMS There are numerous clusters of troubles that are hindering the improvement of ECMS solutions. They are normally 3 predominant areas: legal, standards related, technology, and privacy. Despite uncertainty from many observers, ECMS had been the problem of a raft of legislative measures at an international, countrywide and regional level.

➤ Indian Cyber Jurisdiction

In India, diverse legal guidelines address Laws associated with Copyright in Cyberspace. They are- The Copyright Act, of 1957, The Information and Technology Act of 2000¹¹, the Civil Procedure Code, of 1908, and many others.

Under the Copyright Act, a wide variety and varieties of creative, literary, and dramatic work are protected. Before 2012 there have been now no longer many provisions that could have covered copyrighted work on the internet however with the modification of 2012 in The Copyright Act, 1957 diverse provisions had been carried out to punish the doers of virtual piracy.

Section 14¹²: It offers the safety to the writer to reproduce, make a duplicate, or document the creative work, cinematographic films, and many others and it additionally offers extra safety of the proper to save the work in any digital or any other medium.

Section 52¹³- It exempts certain acts from infringement specifically honest managing literary, creative work, and many others.

Section 65A¹⁴: The Section is amended to guard the Technological Protection Measures utilized by copyright holders to protect their work from unlawful copying or use. The Section punishes the man or woman or infringer who circumvents the copyright of the covered work to infringe the proper of the proprietor with up to two years of imprisonment and is also held answerable for a fine.

Section 65B- It makes getting rid of rights control information without permission a crook offence.

¹¹ Pereira, G., 2022. *Copyright Protection in the Cyberspace within the IT Act, 2000*. [online] Legal Bites - Law And Beyond. Available at: <<https://www.legalbites.in/copyright-protection-in-the-cyberspace-within-the-information-technology-act-2000/>> [Accessed 19 August 2022].

¹² The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

¹³ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

¹⁴ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

Section 43- Information Technology Act 2000¹⁵ presents compensation to the aggrieved party up to 1cr. from a person who violates the copyright and cyberspace norms.

Section 66- Information Technology Act 2000 provides penal liabilities in such cases.

Section 79- Information Technology Act 2000 presents that no network provider company could be held answerable for any act if it proves that such offence changed into dedicated without his understanding or that he acted in all due diligence to save you the fee of an offence.

The judiciary properly has taken diverse steps to prevent piracy and offer safety to the authors online along with bypassing John Doe Orders - This form of order is used while the identification of the infringer or defendant is unknown. The order is made in opposition to such someone with a positive description. The court troubles orders while the utility has already been filed through the makers of the film or every other work, after which in case of online piracy of the work the judicial intervention may be made.

V. PROTECTING COPYRIGHTED WORK IN CYBERSPACE WITH EMERGING TECHNOLOGIES

✓ Digital Copyright and Legality of Control¹⁶

The word itself incorporates an inherent contradiction. Digital technologies make close to ideal duplicates easy and affordable. Copyright legal guidelines make diverse unauthorized sorts of duplicates illegal. Copyright holders need to apply the virtual era to supply their precious belongings to a much broader audience. But also, they need the value in their belongings preserved in surroundings that make safety difficult. But the era which makes price-delivered offerings feasible also can be misappropriated to make copyright infringement a particular possibility.

Neither treaties nor legislation has but to carry stability to the situation. Perhaps such an expectation is unrealistic, as a minimum for the quick term. Compared to the records era, the regulation movements at a glacial pace. The Internet communications network is running to broaden era equipment that empowers copyright holders to shield their content material to the extent they accept as true with is required.

The modern-day technology which content material vendors can utilize – at diverse levels – to

¹⁵ Rao, K., 2022. *Challenges of Copy Right And Cyber Space*. [online] Legalservicesindia. Available at: <<http://www.legalservicesindia.com/article/2394/Challenges-of-Copy-Right-And-Cyber-Space.html>> [Accessed 19 August 2022].

¹⁶ Locklizard. 2022. *Digital Copyright Protection & Intellectual Property Rights (IPR)*. [online] Available at: <<https://www.locklizard.com/ipr-protection/>> [Accessed 19 August 2022].

shield and permit get entry to vendors to pick out their works encompass virtual envelopes, encrypted sign streams, software program metering techniques and equipment, virtual watermarks, authentication devices, virtual signatures, and copyright control equipment.

✓ **International convention (WIPO copyright treaty of WCT)**

The WIPO Copyright Treaty (WCT)¹⁷ is a unique settlement below the Berne Convention that offers the safety of works and the rights of their authors inside the virtual environment. Any Contracting Party (even though it is not sure via way of means of the Berne Convention) need to observe the substantial provisions of the 1971 (Paris) Act. Furthermore, the WCT mentions situation subjects to be covered via way of means of copyright:

- 1) Computer programs, regardless of the model or shape in their expression
- 2) compilations of facts or different material ("databases"), in any shape, which, due to the choice or association in their contents, represent intellectual creations. (Where a database does now no longer represent this sort of creation, it is far outdoor the scope of this Treaty.)

As to the rights granted to authors, other than the rights identified via way of means of the Berne Convention, the Treaty additionally grants:

- (i) *the right of distribution*
- (ii) *the right of the apartment and*
- (iii) *a broader right of communique to the public.*

As to barriers and exceptions, Article 10 of the WCT consists of the so-called "three-step" take-a-look at to decide boundaries and exceptions, as supplied in Article 9(2) of the Berne Convention, extending its utility to all rights. The Agreed Statement accompanying the WCT presents that such boundaries and exceptions, as set up in countrywide regulation in compliance with the Berne Convention, can be prolonged to the virtual environment.

VI. SCOPE OF COPYRIGHT

The patterns towards the expansion, security, and negotiability of property have been pretty much all-inclusive. States which did not ensure property and agreement did not thrive financially contrasted with states that did. Those states that neglected to seek after the objective of intellectual property rights followed through on the cost as far as diminished development and loss of authority. Property and agreement law has been essential to empowering private

¹⁷ WIPO. 2022. *Summary of the WIPO Copyright Treaty (WCT) (1996)*. [online] Available at: <https://www.wipo.int/treaties/en/ip/wct/summary_wct.html> [Accessed 19 August 2022].

enterprises to take off. While a few states were delayed to get familiar with this, today there is no national system on the globe that has not acknowledged it as an exercise of history¹⁸.

We presently live in a period when industrialist economies, driven by the U.S.A., have continuously become data economies. Licensed innovation systems have moved to the middle phase of exchange guidelines and worldwide markets. The old private enterprise was a free enterprise of products, industrial facilities, and work. Nowadays, production lines and work, even talented work, are plentiful and flexibly. The new free economy is at its core about the control of data and information. It is therefore that issues concerning the structure of intellectual property rights and contracts have gotten so significant and squeezing, defining the scope it carries with itself.

VII. CONCLUSION

There is an immense need for Indian society to be made aware of the necessity of copyright protection on all fronts to prevent any unauthorized use and pilferage of the system. The data analysis of copyright in cyberspace reveals various results of new opportunities and threats. Such threats often outweigh the opportunities offered by cyberspace and the necessity arises for increasing regulations in cyberspace to protect copyrights. And are lack of internationally agreed principles relating to copyrights in cyberspace giving ample room for divergent domestic standards? Therefore, these things are to be kept in mind for further strengthening the Indian Cyber Legislations regarding Intellectual property rights.

¹⁸ Unilex Consultants. 2022. *Scope of Copyright Protection in India*. [online] Available at: <<https://www.unilexconsultants.com/article/scope-of-copyright-protection-what-s-is-it-and-how-does-it-work>> [Accessed 19 August 2022].