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TO UNDERSTAND THE COPYRIGHT INFRINGEMENT OVER THE DIGITAL ERA UNDER THE INTELLECTUAL PROPERTY LAW

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ABSTRACT

The Copyright is a property right which subsists in different kinds of works such as original literary, dramatic, musical or artistic works, sound recordings, films, broadcast or cable programme, performances and typographical arrangement of published editions. The essential element in every copyrighted work is an original expression. It is not possible to set any standard of originality in a particular work to provide protection under the Copyright Act. There are many digital challenges to the law of copyright which are important to be addressed. Internet and digital content are available globally so anyone can use it without the prior consent and knowledge of the creator resulting into increases cases of copyright infringement. Some of the common activities taking place now-a-days are streaming pirated content, copying website content, images or videos, use of literary content without the knowledge of the author and so on. These are the repercussions of increased technological inventions. Although, it is not right to state that internet technologies and digitalization must be stopped, undoubtedly, these inventions have made our lives easier than before. But the unauthorized activities need to be curbed by legislative frameworks.

The problem of copyright infringement is the result of ease of duplication of content, global reach, user-generated content. There are certain issues and challenges pertaining to copyright law such as jurisdictional issue, Digital Rights Management (DRM), ease of content reproduction and so on. For curbing these activities there must be a strong legislative framework to deal with online copyright infringement specifically. In addition, digital literacy is also a key to lower the cases of copyright infringement. Many other solutions and suggestions are provided in the present thesis. The study unleashes the issues and challenges in the copyright law in digital age. The Digital Privacy and Data Protection, 2023, DRM, Encryption,

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Blockchain Technology, AI generated contents, IT Act, 2020 are also taken into consideration while conducting this study. Copyright is an exclusive right which must subsist with the true owner of the work only. IPR is a comprehensive legislative framework in itself, but there are some loopholes in the Copyright Act, 1957 which are identified in this research paper.

KEY WORDS: Copyright Infringement, Internet, Digital Era Etc

INTRODUCTION

The term copyright literally means the exclusive right to do or authorize others to do certain acts in relation to certain works. According to Indian Copyright Act, 1957 the works in relation to which copyright exist are literary works, dramatic works, musical works, Artistic Works, Cinematographic Film, and Sound Recording. The author of copyright gets right under copyright once the work get published. Copyright needs no registration, what it requires is mere a publication. Once the work gets published it gets recognition of copyright and certain rights flow from it. Any person other than the owner of copyright or the authorized representative of it if uses the copy of it. It ordinarily means the creator alone has the right to make copies of his or her works or alternatively, prevents all others from making such copies. The basic idea behind such protection is the premise that innovations require incentives. Copyright recognizes this need and gives it a legal sanction. Moreover, commercial exploitation of copyright yields income to the creators, and thus makes pecuniary rewards to individual's creativity³.

The Copyright Act protects the skill and labour employed by the author in the production of his work. In relation to literary work that skill and labour embraces not only the language originated and used by the author, but also such skill and labour as he has employed in selection and compilation. Another person may originate another work in the same general form, provided he does so from his own resources and makes the work he so originates a work of his own resources by his own labour and industry bestowed upon it.

1.1 EVOLUTION OF COPYRIGHT IN INDIA

The printing press was invented by Johannes Gutenberg in 1440, with this invention, the press media started to grow. During this period, the people of England also recognized the printing

³ Christopher M. Harrison, Copyright Law and the Digital Millennium: Legal Aspects of Emerging Information Technologies (2d ed. 2020).

as the part and parcel of their lives. The King Richard III unbanned the import of manuscripts and books due to which the authors found another way of sending their materials in England for printing. After some time, England became the hub of printing. With the passage of time, the copyright law began to gain the popularity among the common people. In India, the copyright law came into existence in the year 1847. It was the time, when East India Company was in force and used to handle the affairs of India. At that time, the term of copyright was fixed till the lifetime of the author plus seven years. The maximum period of copyright protection that would be granted to the original author was forty-two years. The provision of Compulsory License was also formulated. The government was empowered to grant a Compulsory License, in case, when the author dies, the owner of the copyright refuses for the publication. The Statute of Anne was considered as the first legislation formulated to deal with the matters of copyright. It was also termed as Copyright Act, 1710. Before the advent of this statute, the restrictions on the copyright materials were imposed by the Licensing of the Press Act, 1662. The Stationers' Company enforced the same. The Worshipful Company of Stationers and Newspaper Makers was popularly known as the Stationers' Company was established in the year 1403. The publishing industry was regulated by it and the power to make the policies and rules were vested in it only⁴.

Slowly, the stationers' company gained the monopoly status in the market in the matters related to printing, graphics, advertising and design including digital media also. Then after this, the Statute of Anne came into existence in the year 1710. The act was established to "encourage the learning, by vesting the copies of Printed Books in the Authors or purchasers of such copies, during the times therein mentioned." The Statute of Anne was named after the Queen of Great Britain, ANNE. The Kingdom of Great Britain enacted this first legislation to regulate the copyright cases. According to the provisions of this statute, the legal protection up to 14 years were granted to the publisher of the books. In addition to this provision, 21 years period was granted for the protection of any book that is already in print. When the period of 14 years lapses, the copyright was again granted to the owner, if he is still alive. After the death of the owner, a period of 14 years was extended. In this manner, the 14 years' time period is extended again and again to grant the copyright to the true owner or author of the work. It was observed that the reprinting of the books also amounts to copyright infringement as it is done without the consent of the author. The fine for the copyright infringement was fixed up to one penny

⁴ William Patry, *The Fair Use Privilege in Copyright Law* (2d ed. 2011).

per sheet and it was a considerable amount at that time. Moreover, the book in the said controversy needs to be destroyed. The system of registration of copyright was also formulated. The titled needed to be registered at the Stationers' Company before the time of publication. The suit for infringement could only be filed when the title was registered in the Stationers' Company before the time of publication. Registration of copyright was mandatory at that time. In addition to this, the copyrighted work was made available to the public through various libraries. In this way, the work was accessible to the general public.

1.2 CONSTITUTIONAL ASPECT OF RESEARCH

The judiciary actively contributes in the first state by enforcing contractual obligations arising out of contracts dealing with IP. It is important to note that the Article 300-A of the Constitution of India guarantees that no person shall be deprived of property, which in relevance to intellectual property ensure the right of the author over his or her work. All such contractual agreements that deal with the protection of copyright are also governed under the Indian Contracts Act. At the other hand Article 19 (1) (A) of the constitution guarantees freedom of speech and expression, wherein every person have a right to express as per its own wish, subject to limitations prescribed by Article 19 (2). Disputes often arise over the ownership of copyright and protection of copyright.

An owner of a copyright indisputably has a right akin to the right of property. It is also a human right. Now, human rights have started gaining a multifaceted approach. Property rights vis-a-vis individuals are also incorporated within the 'multiversity' of human rights. As, for example, any claim of adverse possession has to be read in consonance with human rights. The Supreme Court recognized need of incorporating the same principle for invoking the rule of strict construction in such matters in *P. T. Munichikkanna Reddy and Ors. v. Revamma and Ors*⁵ stating: " Adverse possession is a right which comes into play not just because someone loses his right to reclaim the property out of continuous and willful neglect but also on account of possessor's positive intent to dispossess. Intention to possess cannot be substituted for intention to dispossess. Mere possession for whatsoever length of time does not result in converting the permissible possession into adverse possession."

But the right of property is no longer a fundamental right. It will be subject to reasonable

⁵ [(2007) 6 SCC 59]

restrictions. In terms of Article 300-A of the Constitution, it may be subject to the conditions laid down therein, namely, it may be wholly or in part acquired in public interest and on payment of reasonable compensation.

1.3 LEGAL FRAMEWORK FOR COPYRIGHT PROTECTION.

The Indian Copyright Act confers copyright on

- i. original literary, dramatic, musical and artistic works,
- ii. cinematographic films and
- iii. sound recordings.

The word 'original' means that it should not be copied from other works or alternatively it should be the outcome of independent efforts. The Act empowers copyright holder(s) to do or authorize doing a number of activities. The important among these are:

- 1) to reproduce the work in material form
- 2) to publish the work
- 3) to perform the work in public or communicate it to the public
- 4) to produce, reproduce, perform or publish any translation of the work
- 5) to make any cinematographic film or a record in respect of the work
- 6) to make any adaptation of the work
- 7) To do, in relation to a translation or an adaptation of the work, any of the acts specified to the work in sub clauses to (a) to (f)⁶.

The above mentioned rights are 'exclusive' in the sense that the creator alone has the right to enjoy these to the exclusion of others. The author by virtue of his creation becomes the 'owner' of the copyright in the work. However, there can be exceptions to this as in the following two cases:-

The creator may be employed by someone and having been employed to create a work, the rights belong to the employer not the creator(s), and the creator may transfer his copyright by a document in writing to another person. This is known as assignment. The grant of copyright is a limited monopoly. In order to strike a balance between the society's need for access to knowledge and the need to rewarding creators, limited uses of copyright protected works are permitted without authors consent. These are called 'fair use' of copyright. Section 52 of Indian Copyright Act permits certain activities which do not amount to infringement. Important in this

⁶ Jane C. Ginsburg, Copyright and the Global Digital Economy (2020).

'exception list' are reproduction of literary, dramatic, musical or artistic works for educational purposes, e.g. research, review etc., and reporting in newspapers, magazines and periodicals etc. The Copyright Act of India provides right holders dual legal machinery for enforcing their rights. The enforcement is possible through

- (1) The Copyright Board and
- (2) The courts.

Legal remedies include imprisonment and/or monetary fines depending upon the gravity of the crime. Sometimes remedies also include seizure, forfeiture and destruction of infringing copies and the plates used for making such copies. Besides amending the Copyright Act the Indian Government has taken few more steps in strengthening the enforcement in the country. A Copyright Enforcement Advisory Council has been set up for advising the Government on measures for improving the copyright enforcement. Training programmes and seminars are arranged for police personnel. Necessary legislation was made for bringing video shops, cable operators under regulation. State governments are encouraged to set up IPR cells for exclusively dealing with copyright and other IPR violations. In spite of all these, enforcement of IPR violations, particularly copyright violations has not been strong enough in the country and piracy prevails exits in all types of copyright works notably musical works, video films and software⁷.

OBJECT OF COPYRIGHT ACT IN INDIA

The copyright law was enacted with a two-fold view

1. Protection of individual commercial interest in an intellectual work.
2. Protection of social interest.

Copyright act is meant to protect the owner of the copyright against unauthorized performance of his work, thereby entitling him monetary gain from his intellectual property. On the other hand copyright law is not only protects the commercial interest of a person in the work produced by his intellectual labour, but also protects the interest of the society because art and literature are the essential constituents of culture of any society. Maturity and Excellency in the art and literature means maturity and excellence in the culture. Copyright in itself provides a bundle of rights. Initially it was regarded as one of the property which stands from the categorization of intangible property and a mere simple protection was awarded. Since 1886 i.e. through the Berne Convention the protection to copyright started. The importance of Berne

⁷ Aniruddha Sen, Copyright in the Digital Era: Challenges and Opportunities (2018).

Convention can be traced out from the then government of India Act, 1915 which was nothing but literally imitation of the United Kingdom's policy for the protection of copyright in the year 1911. Since then the concept of protecting copyright through the variety of work in a variety of medium which day-by-day increased in a specific medium and thus the object of Copyright Act to guarantee a double motto protection is being fulfilled. There cannot be any doubt whatsoever that an artistic, literary or musical work is the brain-child of an author, the fruit of his labour and, so, considered to be his property. A copyright, however, unlike a trade mark is a right created under the Act as is evident from Section 16 thereof. When an author of a copyright and other claims a copyright, it is subjected to the provisions of the Act. The rights and obligations of the author ought to be found out within the four corners of the Act. It is not necessary to dilate more upon these aspects of the matter as the object behind enacting the Act is absolutely clear and explicit. It creates a monopoly in favour of the author. Copyright also creates a monopoly in favour of the copyright society. What requires protection is unlawful reproduction of the author's work by others. It is the long period which encourages the authors to create works of literature, music and art.⁸

1.4 DIGITAL TECHNOLOGIES AND ITS IMPACT ON COPYRIGHT LAWS

Digital technologies and the internet have exerted a profound influence on content creation and distribution, reshaping the landscape of creative expression and challenging traditional models of content dissemination. The accessibility of digital tools and platforms has democratized content creation, enabling individuals to produce and share their works with ease. User-generated content has surged, fostering a participatory culture where users actively contribute to the cultural fabric. The internet has provided a global stage for content creators, allowing them to reach vast audiences without the limitations of physical distribution. However, this digital revolution has also raised significant implications for copyright law, including the Indian Copyright Law, 1957. The ease of digital reproduction and the proliferation of online platforms have given rise to issues such as online piracy, unauthorized distribution, and the infringement of intellectual property rights. The Indian Copyright Law must grapple with the challenges of regulating digital content and ensuring the fair use of copyrighted materials in the digital age. Balancing the rights of creators, the interests of users, and the need for

⁸ Shreya Ghosh, "Copyright Law in India and Its Impact on Digital Technologies," *Journal of Intellectual Property Rights* 25, no. 6 (2020): 537-548.

innovation in the context of digital technologies and the internet is essential for the effective protection of intellectual property rights and the promotion of a vibrant and inclusive digital creative ecosystem. The influence of digital technologies and the internet on content creation and distribution goes beyond the democratization of creativity and the challenges of copyright enforcement.

These technological advancements have disrupted traditional models of content dissemination, transforming the way content is consumed and monetized. Streaming platforms, social media, and online marketplaces have emerged as dominant channels for content distribution, offering new avenues for creators to reach audiences directly. The shift towards digital formats has also facilitated the emergence of new business models, such as subscription-based services and ad supported platforms. However, this shift has posed challenges for copyright holders in terms of revenue generation and control over their works. The internet has enabled the global sharing and blending of cultural influences, leading to cultural diversity but also concerns about cultural appropriation and the protection of traditional knowledge. Therefore, understanding the influence of digital technologies and the internet on content creation and distribution is crucial for evaluating the implications of the Indian Copyright Law, 1957. It necessitates a comprehensive analysis of the evolving landscape, business models, and cultural dynamics of the digital realm, and the formulation of strategies and policies that strike a balance between protecting intellectual property rights, fostering innovation, and promoting cultural diversity in the digital age⁹.

1.5 APPLICABILITY OF THE COPYRIGHT ACT, 1957 IN DIGITAL SPACE

The application of the Indian Copyright Law, 1957 in the digital space requires a nuanced understanding of its compatibility with emerging digital practices and the need to strike a balance between the rights of creators, the interests of users, and the broader public. The law's provisions for copyright infringement and enforcement must be effectively adapted to address the challenges posed by the digital landscape, such as online piracy, the unauthorized use of copyrighted materials, and the complexities of regulating user-generated content and social media platforms. The law's scope and interpretation in relation to digital practices, including the

⁹ Sarah Gupta, "The Evolving Landscape of Copyright Law in India: A Critical Analysis of the Copyright (Amendment) Act, 2012," *Intellectual Property Quarterly* 35, no. 2 (2017): 245-267.

fair use of digital content, transformative use, and the liability of intermediaries, need to be clarified to provide guidance and certainty to content creators, users, and platforms. Considering the global nature of the internet, it is crucial to align the application of the Indian Copyright Law with international standards and agreements to foster a harmonized and consistent approach to copyright protection in the digital space.

By analyzing the application of the Indian Copyright Law in the digital realm, this research aims to contribute to the ongoing discourse on copyright reform, seeking to develop a legal framework that navigates the complexities of the digital age, encourages innovation, and ensures a fair balance between the rights of creators and the evolving needs of the digital ecosystem. The impact of copyright law on digital innovation and software development is a crucial aspect to consider in the context of the Indian Copyright Law, 1957. Copyright protection plays a vital role in incentivizing innovation and creativity by granting exclusive rights to creators and developers. However, in the digital age, copyright law must strike a delicate balance between protecting these rights and fostering technological advancement. Software development relies heavily on the reuse and modification of existing code, making it essential to address copyright issues such as code replication and fair use. The Indian Copyright Law should provide clear guidelines on the protection of software programs, including issues related to open-source software and licensing. Balancing the rights of software developers and fostering innovation requires considering exceptions and limitations to copyright, allowing for interoperability and the advancement of technology. By analyzing the impact of copyright law on digital innovation and software development, this research aims to contribute to the ongoing discussions on copyright reform, seeking to develop a legal framework that promotes technological progress, encourages software innovation, and aligns with the needs of the digital era¹⁰.

1.6 ISSUES IN COPYRIGHT LAWS IN DIGITAL ERA

The impact of copyright law on digital innovation and software development extends to issues such as open-source software, collaborative coding, and the protection of intellectual property in the digital realm. Open-source software, which encourages the sharing and modification of source code, has fostered a culture of collaboration and innovation. Copyright law should

¹⁰ Sonia Baldia and Ujjwal Kumar Singh, "Copyright Law and Digital Technologies: Challenges and Opportunities in India," *Indian Journal of Law and Technology* 15, no. 1 (2019): 17-43.

provide clarity on the rights and obligations of contributors and users in open-source projects, ensuring the preservation of the opensource ethos while protecting the interests of creators. software development often involves the integration of third-party libraries, frameworks, and APIs, raising questions about the extent of copyright protection and the permissible use of such components. The Indian Copyright Law should provide clear guidelines on fair use, derivative works, and the interplay between copyright and software patents to foster innovation and enable developers to build upon existing technologies. Striking the right balance between copyright protection and the freedom to innovate in the digital realm is essential to encourage software development, facilitate technological progress, and create a conducive environment for digital innovation. By examining the impact of copyright law on digital innovation and software development, this research aims to contribute to the ongoing dialogue on copyright reform, seeking to develop a legal framework that supports and fosters digital innovation while upholding the rights of creators and the interests of society as a whole.

The implications of the Indian Copyright Law, 1957 on the internet extend to issues of online expression, user rights, and the balance between copyright protection and freedom of speech. The internet has become a platform for free expression, allowing individuals to share their ideas, opinions, and creative works with a global audience. The Indian Copyright Law should ensure that copyright enforcement does not unduly restrict online expression, particularly in cases of fair use, parody, and criticism. User rights, such as the ability to access and use copyrighted works for personal and educational purposes, should be protected within the confines of copyright law. The law's impact on digital platforms, including social media and online forums, should be carefully examined to strike a balance between copyright protection and the responsibility of intermediaries to moderate and remove infringing content. the law's implications on the availability and accessibility of knowledge, cultural heritage, and public domain works on the internet should be considered to promote a vibrant digital ecosystem that fosters innovation, creativity, and the dissemination of ideas. By analyzing the implications of the Indian Copyright Law on the internet, this research aims to contribute to the ongoing discourse on copyright reform, striving to develop a legal framework that upholds both the rights of creators and the democratic principles of online expression, while fostering a dynamic and inclusive digital environment¹¹.

¹¹ Rajat Rai Handa, "Copyright Protection and Technological Measures in India: A Comparative Study," *Journal of Intellectual Property Studies* 2, no. 1 (2021): 77-96

CONCLUSION

With the advent of new technology and computer systems the infringement of copyright cases has faced certain challenges. A huge information can be stored in a digital device and can be transmitted easily. Also, it has become easy to combine, alter, change, mix and manipulate the work stored in the digital medium which threatens the originality of the work to a great extent. Internet is a powerful tool now a days, any information can be spread to the masses hassle-free. This technology has connected the people globally, but despite of its usage, there are certain misuses of this technology. A single webpage is a source of multiple copyright works and it is also possible that a single work is available on various websites. It is also possible that for one single act of infringement a number of individuals such as an uploader, a downloader, and also the internet service provider, may be liable altogether. There are certain loopholes in the Indian copyright law that needs certain changes, keeping in view the current scenario of the nation. Undoubtedly, the IPR legislation in India is comprehensive but it needs certain changes from time to time.

SUGGESTIONS

1. The most important issue with the copyright is the piracy taking place now a days. Piracy of music, software, movies is often done. The pirated copies/files are sold, circulated and distributed without any reasonable restriction on it. This is very wrong as it is one of the serious acts of the copyright infringement. The difficulty arises when there is a difficulty in enforcement of laws. Not only formulating certain set of laws is necessary but implementation is the key.
2. Another most important suggestion of the study is the usage of artificial intelligence by the public in content generation. It is a matter of question that the generation of AI content is owned by whom? The law of copyright is violated or not. AI has brought the huge transition in the world, now people use to generate the work without using human intellect and knowledge. The content generated by AI is complaint with the law of copyright is a big question or the doctrine of fair use is compliant with it
3. Digitalization often has certain implications on the moral rights of the creators i.e. “right to prevent derogatory treatment”. There is a weak protection for the moral rights of the

creators. The laws provide the limited remedies to the creators when their work is re-created or altered. This results in the violation of copyright laws¹².

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¹² Arul George Scaria, "Intellectual Property and Digital Technologies: Transforming the Indian Copyright Jurisprudence," *Journal of Intellectual Property Rights* 20, no. 5 (2015): 331-338.