



COPYRIGHT & DIGITAL RIGHTS MANAGEMENT

By Zaya Firdaus
From Faculty of Law, Aligarh Muslim University, Aligarh

INTRODUCTION

The digital platform offers ample opportunity for the infringement of copyrights. It is quite natural for copyright holders to react panicky and uproar for proper regulation of the copyright market. The virtual world is more like a ball game where standard rules fail to achieve the intended objective. Digital Rights Management (hereinafter referred to as **DRM**) thus became a mechanism which was developed to counter the unauthorized use and give control to the copyright holders over the accessible categories and the type of modification and usage allowed. Digital rights management is a term which refers to various technologies that are used by software and hardware manufacturers, copyright holders and individuals to control the use of digital content.

The proposal came through the WIPO Performers and Phonograms Treaty (**WPPT**) and the **WIPO** Internet treaties of **WIPO** Cooperation Treaty (**WCT**) to provide a flexible enforceable mechanism for governing digital copyrights. Fair use means using the copyrighted work for the purposes of a search engines, commentary, parody, criticism news reporting, research, library archiving etc.

COPY PROTECTION

DRM also operates through copy protection. It prevents the user from making copy of the

original work. **Encryption** is yet another commonly encountered forms of copy protection. Digital content is written in a code which can only be read by software or devices with proper key to unlock the code. **Scrambling** is a form of encryption that DRM uses, in which the key to decrypting the content is hardwired into the computer that reads the content.¹

PROVISIONS OF DRM IN THE INDIAN COPYRIGHT ACT

India has consistently resisted becoming a contracting party to the **TRIPS** treaties, but the incorporation of digital regulatory provisions indicates an alteration to this position. **Clause 2(a) of section 65A clearly specifies that nothing in the provision shall prevent the doing of anything referred to therein for the purpose that is not expressly prohibited by the Copyright Act, 2012.** The provision also exempts circumvention of technological measures for the purpose of certain activities like encryption, research, security testing of a computer system or a computer network with the authorization of the owner, protection of privacy and measures necessary in the interest of national security.² The Indian copyright law permits circumvention with the help of third parties provided certain procedural conditions are

¹. Dingley, Fred and Matamoros, Alex Berrio, "What is Digital Rights Management?" (2016). Library Staff Publications. Paper 122., Available at-<http://scholarship.law.wm.edu/libpubs/122> (Last accessed 28th Nov 2018)

². Indian Copyright Act, S.65 A (2)(b) to 65A (2)(g)(1957).



satisfied. **Section 65A of the Indian Copyright Act provides for a criminal penalty of imprisonment for 2 years and a fine, for violation of this provision.**³

COPYRIGHT AMENDMENT 2012

By the Amendment Act of 2012, the Copyright Law of India incorporates the provision of Digital Rights Management in the legal regime of copyright protection⁴, India is not a signatory to WIPO Copyright Treaty or World Intellectual Property Organization Performances and Phonograms Treaty, but it still incorporates the provisions of these international documents to be in line with the International standards of copyright law, these provisions of Digital Rights Management in Indian Copyright regimes are in consonance with the European Union and Digital Millennium Copyright Law of the United States.

Indian provisions of Digital Rights Management are not as harsh as the other adaptations of International Standard, but still in spite of not having any obligation there arises a question that what actually compelled the Indian legal regime to incorporate these provisions in the Indian legal system. The recognition of these third generation rights in Indian legal system has both Positive and Negative effects.

LEGAL PROVISIONS

³. Arul George Scaria, 'Does India needs Digital Rights Management Provisions or Better Digital Business Management Strategies?' 17 JIPR 464. 463-477 (September 2012).

⁴. Sections 65A to 65B of the Indian Copyright Act, which was inserted by the Copyright (Amendment) Act, 2012. The Copyright (Amendment) Act, 2012 came into force on 21 June 2012.

Article 11⁵ of WIPO Copyright Treaty and Article 18⁶ of WIPO Performers and Phonograms Treaty obliges parties to have 'adequate and effective' legal remedies to prevent the circumvention against applied effectively⁷ technological protection measures.

The advantage of digital copies as compared to analog copies of the copyrighted work is more identical and easy to copy. Faster copying is the major factor which boosted the infringement of copyrights over the virtual world. With the emergence of such problems, WIPO came up with the

⁵. Article 11: Obligations concerning Technological Measures "Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law."

⁶. Article 18: Obligations concerning Technological Measures "Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law."

⁷. According to the Information Society Directive, a technological protection is deemed to be 'effective', where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective, Article 6(3) of the Information Society Directive.



regulation related to digital copying in 1996 with two Internet treaties⁸.

Similarly Article 12⁹ of WIPO Copyright Treaty and Article 19¹⁰ of WIPO Performers and Phonograms Treaty provides for contracting parties to have adequate and

⁸. While these two treaties were adopted in the year 1996, they came into force in 2002. The full text of the WIPO Copyright Treaty is available online at: http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html (15 March 2012).

⁹. According to the Information Society Directive, a technological protection is deemed to be 'effective', where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective, Article 6(3) of the Information Directive.

¹⁰. Article 12: Obligations concerning Rights Management Information "(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:

- (i) to remove or alter any electronic rights management information without authority;
- (ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, "rights management information" means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public."

effective legal remedies against the unauthorised tampering of rights management information.

DOCTRINE OF FIRST SALE

Doctrine of First Sale, which is in other words the Doctrine of exhaustion of rights on the first sale. It implies that all the rights of the owner are exhausted as the first sale is made by him, which means that the owner of copyright have no control over the subsequent sales made of what is to be done after the first sale is done, but due to this new protection measures owners tends to have a grip over the rights and products even after the first sale is done, and the buyer have more licensee rights rather than having full ownership rights. So DRM basically provides for an additional protection to a work, which is anyway protected by the Copyright law.

E-BOOKS AND ONLINE JOURNALS

DRM appears in many e-books and online subscription journals. With e-books., it often takes the form of specialized software and hardware. In order to read a book in Amazon's AZW or KF8 formats, it requires a Kindle standalone e-reader, Amazon's web browser plugin or Amazon's Kindle program for computers. Apple's iBooks are protected by Apple's FairPlay technology; iBooks can only be read on Apple devices¹¹.

An Israeli hacker claims to have broken the copyright protection on Amazon's Kindle software for PCs, reports say. The hack will allow the ebooks to be transferred as pdf files to other devices. Labba, the

¹¹. Dingley, supra note 1.



hacker, responded to a challenge posted on Israeli hacking forum, hacking.org.

"DRM is not an effective way of preventing copying nor is it a good way of making sales. There isn't a customer out there saying 'what I need is an electronic book that does less,'" novelist and co-editor of the Boing blog Cory Doctorow told the BBC at the time when the Kindle was launched. Hackers begin to try and break as soon as a new DRM system is active. Most famously Jon Lech Johansen, known as DVD Jon, cracked the copy protection on DVDs in 1999. He went on to break the copyright protection on iTunes, leading Apple to offer DRM-free music¹².

DRM AND LOW NET NEUTRALITY: THE UNHOLY ALLIANCE

DRM generally makes legal things illegal, as a consequence of which the innocent downloaders who are free-loaders at best, are prosecuted under the prevailing laws whereas the real threat continue to operate. Though India has not adopted overly draconian enforcement mechanisms, it is stated that the inclusion of DRM provisions in the Indian Copyright Act has not been founded on any rational basis.¹³

DRM is largely used by many major content producers, software and hardware vendors. Some of the examples include:

- **Apple** – Until recently, iTunes's FairPlay DRM software prevented iTunes customers from using music purchased directly from iTunes on any portable music player beside iPod, the iPhone, and a few authorized cell phone models.
- **Sony** – MiniDisc player usage is restricted by the company's proprietary MagicGate DRM software.
- **Microsoft** – Microsoft's 3-play technology, which is integrated into its Zune portable music players, restricts music files received from other Zunes to a maximum of three plays. Also the received music files cannot be re-send to other users¹⁴.

There's a very controversial example of such digital rights management (DRM) protection. The security researchers in 2005 discovered that Sony had installed rootkits on CDs that made it impossible to copy music. But made it possible to report back to Sony about listener habits. After public lawsuits and outcry, Sony recalled some of the CDs and stopped installing rootkits for future releases.

COMPARATIVE STUDY OF DRM

Under the United States law, the Digital Millennium Copyright Act (DMCA) of 1995 banned the development and distribution of technology designed to sidestep DRM, as

¹². BBC News, Amazon's Kindle has copyright protection hacked, Available at: <http://news.bbc.co.uk/2/hi/technology/8428126.stm>, (Last updated at 8:40 GMT, Tuesday, 29 December, 2009).

¹³. Charles Bailey, 'Strong Copyright + DRM + Weak Net Neutrality = Digital Dystopia' Information Technology and libraries 116-139 (September 2006).

¹⁴. NCL Staff, Copyright Laws and Digital Rights Management, Available at: <http://www.nclnet.org/drm>, (Last accessed, 27 November 2018).



well as dodging DRM to access works that are under copyright. Since computer software can be copyrighted, the concept of DRM expanded to products that contain software. For instance, in 2015 the tractor company John Deere claimed that circumventing a tractor's diagnostic software would be illegal under the DMCA. The claim conflicted with some of the farmers, who felt that they should be able to repair their own tractors. This conflict reflected the larger controversy over DRM, with the pro-DRM side claiming that such measures protect intellectual property and the anti-DRM side which claimed that such measures clearly negate the rights consumers have over their own property.¹⁵

PERMISSION MANAGEMENT

User Authentication- It is a technology which ensures that the person reading, viewing, or using the product is really the person who is supposed to have access to it, either through purchase or belonging to an identified class of users. Some traditional ways are there to authenticate a user. The first way is described as "something you know," it is usually a password or question based on your unique personal history for instance what street you grew up on or it may be the name of your first pet. For library users, it is often their library card number and related PIN which provide access to the subscription database. Second is "something you have," like a cell phone to which the software maker will text an access code. The final method is "something you

¹⁵. The Editors of Encyclopaedia Britannica, Digital Rights Management, Available at: <https://www.britannica.com/topic/digital-rights-management>, (Last updated: November 13, 2018)

are," which might be a fingerprint or retinal scan.¹⁶

HOW DOES DRM AFFECT DVDs ?

DRM affects consumers most often through their inability to transfer content from one medium (a DVD, for example) to another (a computer hard drive). In a recent survey commissioned by NCL, 4% of consumers have reported that they had tried to save the content of a DVD to their hard drives, but failed because of DRM restrictions.

DVDs have come encoded with DRM technology called CSS (Content Scrambling System) since 1996. HD-DVDs and Blu-ray discs are controlled by DRM software called Advanced Access Content System (AACS)

In order to copy a DVD to their hard drives legally, consumers must purchase an "expanded pack" edition of a DVD at an additional fee. These "expanded packs" usually contain a separate "DRM-free" disc that allows the copying of the disc's contents¹⁷.

ANOTHER TYPE OF PERMISSION MANAGEMENT

It is known as **Regional Restriction** (also known as **geoblocking**). Many entertainment companies have the contractual right to sell a movie or TV show only in certain parts of the world. The purpose of adding regional restrictions to

¹⁶. What is Digital Rights Management?, Available at: <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1121&context=libpubs>, (Last accessed: 27 November 2018).

¹⁷. NCL, supra note 14.



digital content is to ensure that only those users can access and view the content who are living within the identified region. When you log in to Netflix, they will check the IP address that your computer is using. If the address is not from the U.S., Netflix will not allow to access their streaming videos. The DVD Consortium, a group of ten companies (JVC, Hitachi, Matsushita, Mitsubishi, Pioneer, Philips Sony, Thomson, Time Warner, and Toshiba) that created the DVD standard, divided the world into seven regions. The United States comes in Region 1, Japan in Region 2, etc. Most DVDs and DVD players are encoded with the region they are connected to, hence a DVD player sold in Region 2 cannot play a DVD sold in Region 1.

Modern copying has made technology comparatively easier. A person living in the nineteenth century who wanted to make a copy of Moby Dick needed access to a printing press. Likewise, manufacturing and reproducing music required photograph cylinders. The duplication of a song, such as "Oh! Susanna," it required musicians to perform the song multiple times to make multiple copies. With the help of evolving technology, mimeographs and photocopiers allowed for easier duplication of written works. VHS and audiocassette tapes also allowed for easy at-home copying of movies and TV shows. But as a consequence, the quality degraded as copies were made from earlier copies. Fast-forwarding to today. You can get a free digital copy of a work with a few clicks of a mouse. Within eight hours of airing, 1.5 million pirated copies of

the Game of thrones fifth season finale were downloaded¹⁸.

CONCLUSION

Technological advances have made it easier for the artists to reach audiences they could have only reached in previous eras after facing great difficulties. That same technology also makes it easier to make unauthorized copies of artists works, whether pure copies or modified versions. DRM is one of the tools that content owners, artists and content distributors use to reduce unauthorized access, copying, and distribution. At the same time, it is a tool that comes with substantial costs to the end users of that content. This debate over DRM is an important one.

¹⁸. Dingley, supra note 1.