



**THE COPYRIGHT SYSTEM IS
UNABLE TO EFFECTIVELY
RESPOND TO THE CHALLENGES
POSED BY DIGITALIZATION AND
THE INTERNET**

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Chapter 1: Introduction

With the increase of the use of technology in our daily lives the importance of intellectual property in the field of digitalization and internet has also increased¹. The pandemic has made the virtual world the mode of living. From the field of education to the concept of work from home technology has overpowered most fields. But with the increase of technology as part of our daily lives comes in the question of whether the laws governing is in consistency with the era of digitalization and introduction of internet in all aspects? Whether the laws of intellectual property are effective to respond to the era of digitalization? Whether the objective of the laws in command can be fulfilled in this era of internet as well?

Copyright is one of those important intellectual property rights which protects original work of an author in field of literary work which includes databases of computers and compilations as well². In India the copyright laws are governed under the Copyright Act 1957 where the concepts of first owner of the copyright, the exclusive

rights of the copyright's owner are described. But this protection of copyright is available in countries outside India as well and have been introduced in one of the first and most important convention on Intellectual property, that of Berne Convention.

In terms of copyright from an Indian perspective, it can be divided into two broad forms:-

(a) economic rights which can be seen under section 14 of the Copyrights Act 1957. Under this section the exclusive rights are given to authorize certain acts with respect to a said work. Such certain acts would include making a copy of cinematographic film for instance, the right to sale or give on hire the copy of computer program.

(b) the moral rights of the author as under section 57 of the Act³. Under such moral rights there is the Right of paternity which means that the first original author shall have the right to claim authorship over the work and the Right of integrity which means that the author has the right to prevent others from making any changes or alterations or distortion in the work.

As stated above copyright law protects the rights of the owners of the property in literary or artistic works and an infringement of copyright would be unauthorized usage of such works. The growth of internet and digitalization has put many challenges in the ways by which copyrighted works can be

¹ UKEssays. (November 2018). The Challenges Posed By Digitalization And The Internet Media Essay, <https://www.ukessays.com/essays/media/the-challenges-posed-by-digitalization-and-the-internet-media-essay.php?vref=1>

² Mahendra Kumar Sunkar, Copyright Law in India, Legalserviceindia, <https://www.legalserviceindia.com/article/I195-Copyright-Law-in-India.html>

³ Id at 2.



protected and in this paper the author would be discussing about the same.⁴

Chapter 2: Challenges faced by copyright laws in the Digital world.

In the new era of digitalization and internet, the enforcement of the copyright law will be difficult because the laws that are in existence are not friendly with such a technologically advanced era. There can be problems related to copyright infringements, the scope of copyrights that changes with everything being easily accessible on the internet, the limitations and exceptions that step in with such changes.

- a. Downloading and uploading of work in digital platforms- With the increase of usage of internet and it being the medium for getting most work done today downloading software or files has become very easy. Downloading would mean creating a copy or reproducing the copy of the work of the author.⁵ Under copyright one of the major rights given to the author in case of literary or dramatic or musical work is to authorize the act of issuing copies of the work to the public.⁶ Earlier it was easier to keep a track on infringement of such rights of copyright as the works of author were available in hard copy format but with the increase of availability of any kind of information or work of an author it is difficult to track down people who cause infringement of copyright as per section 51 of the said Act. Here, under this section there is said to be an infringement

of copyrights when the author of the work or the registrar does not give out a license to the any person to commit the acts which are rights reserved to the author only are done by the other person. The explanation of this section makes it very clear that reproduction of any work of artistic, literary, musical, dramatic is considered to be an infringing copy.

With such an explanation of the section how can downloading of various kinds of original works of the authors be stopped or how can we hold such people responsible for infringement of copyright? Because this problem goes down in the grassroot level of people downloading content at their homes which means creating a copy or reproducing the copy of the original work without the permission of the original author.

- b. The work of multimedia- The concept of multimedia would include categories such as audio, video, images, graphics, presentations, videos of speeches to name a few. Such categories of multimedia are protected under the literary, artistic, dramatic and musical work under this act⁷. But doesn't the protection of such rights of the authors become difficult due to the easy accessibility and the capabilities of the digital recorders to extremely and accurately reproduce the work.⁸ The digital era has failed to carve out a distinction between the process of using a work for reading and acquiring knowledge and copying the work of the original author. With such easy access to the original works the copyright owners see themselves under

⁴ Irina Atanasova, Copyright Infringement in Digital Environment, The journal of Law and Economic, (November 2019), https://www.researchgate.net/publication/339077032_COPYRIGHT_INFRINGEMENT_IN_DIGITAL_ENVIRONMENT

⁵ Nehal Wagle, Copyright in Digital Era, Ipleaders, (May 12, 2019)

<https://blog.ipleaders.in/copyright-digital-era/>

⁶ Section 14(a)(ii) of The Copyrights Act 1957

⁷ Id at 5.

⁸ The Impact of Digital Technology on Copyright Law, Page 5, Volume 8, Issue 1, 5-6, (1987),



immense pressure and threat of cheap, altered and copied works of their original work.

- c. The liability of internet service providers- In India there are no specific laws in regard to infringement of copyrights by internet service providers. To understand how the cause infringement, it is important to understand what are internet service providers? Internet service providers can be referred to as a company giving access to internet to both personal and business customers⁹. Sometimes these internet service providers give its clients the access to not just the internet but also give them the right to upload, download files from publicly accessible servers. These files then maybe copied, reproduced, distorted causing infringement of copyright on various levels. It is then when the question of who should be held responsible for infringement of copyright arises. In reality it is very difficult to find the person who is directly responsible for making such infringements and in today's era such activities take place in numerous numbers throughout the day. With the individual being difficult to find it's the internet service providers that are much easier to find and held responsible. The internet service providers contain so much information on their servers that it is impossible for them to find the copyrighted information. As per section 51(a)(ii) of the Copyright Act an infringement is said to be caused when there is financial profit made, but there is absence of specific laws which determine the liability of internet service providers¹⁰ in case of infringement of

copyright and it is the need of the hour to address this issue as internet and internet access has entered every aspect of an individual's life. Concepts such as that of contributory infringement, vicarious liability in case of internet service providers should be considered for better protection of the rights of the copyright owners.¹¹

The case of *Myspace Inc V. Super Cassettes Industries Ltd(SCIL)*¹², can be discussed under this topic where the question of copyright infringement by intermediary was done or not was discussed. In this case Myspace was an internet service provider and the defendant whereas the SCIL was a well-known business company of recording audio and video cassettes. In this case the court had observed that the defendant owned a website where it gave access to the third parties to upload as well as view content which in turn gave them huge profit generating revenue. But the court also observed that the defendant lacked the specific knowledge which was required to prove infringement and hence did not hold Myspace liable for direct infringement. Cases such as these make us realize the need for specific laws in regard to infringement of copyrights.

- d. Which copyright system is to be put into application where the case is of infringement taking place in one country and the country of origin (where the original work of the author belongs to) is different from the place where the infringement took place- The international copyright system is very complicated and the decision of which country's copyright law should be applicable

⁹ Vernita Jain, Copyright infringement and the liability of internet service providers, Ipleaders, (March 12, 2016) <https://blog.ipleaders.in/copyright-infringement-liability-internet-service-providers/>

¹⁰ Id at 9.

¹¹ Cyber.harvard.edu, <https://cyber.harvard.edu/property99/liability/main.html>

¹² MySpace Inc V. Super Cassettes Industries Ltd, 2016, Delhi High Court.



is a question of great importance. Which courts would have the power to hear and resolve the international copyright dispute? brings us to the question of jurisdictions as well. Such difficulties are not faced with when the activities of infringement do not take place on the internet. In such situations, it is the domestic law which is applied as the infringing action takes place in the physical world and not on the internet where it is the borderless world, and the infringing action can occur at any place. Country like USA makes an exception to the liability for copyright infringement on the doctrine of *fair use*¹³ whereas countries like UK, Canada and other commonwealth countries has narrower set of exceptions. Hence, such differences also make it difficult for the application of copyright infringement cases in the international sphere of internet.¹⁴

Chapter 3: International Treaties in regard to copyright in digital domain.

There have been some important international treaties and conventions in the past years which has tried to address the protection of works in the digital sphere according to their time stamp.

1. World copyright treaty 1996- This was a special agreement formulized under the Berne Convention. This treaty deals in protecting the works of authors in the digital sphere and gives protection for a term of 50 years for any work in the digital world. The two important subject that this treaty deals

with is- computer programs and compilations of data and other materials. India had joined this treaty back then.

2. WIPO performance of phonogram treaty 1996- This treaty was made to deal with two kinds of beneficiaries in the digital environment. The first kind being that of actors, singers, and the second were the producers of the phonograms. This treaty also discussed and lay down the economic rights such as that of distribution, renting and communication of the performers. This means that the treat laid down protection for the performers and the producers of the phonograms.

Both these treaties were signed together by India and was known together as the *Internet Treaties*. Both these treaties provide a framework of the rights which allows the creators to control and be compensated for their creations and ensure their rights being protected with the advancement of new technologies and communication systems of the internet.¹⁵

These treaties led to protecting and taking technical measures for making the Indian Copyright Law compliant with them. The 2012 amendment made to the Indian Copyright Act has added the provisions of fair use, where exceptions have been accepted for storing of the particular work in electronic medium for specific purposes¹⁶.

¹³ The doctrine of fair use means that it permits a person to use the work which is protected under the Copyright Act with limited usage so that the sanctity and the originality of the work in maintained.

¹⁴ Id at 3.

¹⁵ World Intellectual Property Organization, IP Services, WIPO Internet Treaties,

https://www.wipo.int/copyright/en/activities/internet_treaties.html

¹⁶ Abhai Pandey, Inside View: Development In Indian IP law: The Copyright Act 2012, Property Watch, (22 January 2013), <https://www.ip-watch.org/2013/01/22/development-in-indian-ip-law-the-copyright-amendment-act-2012/>,



The addition of section 65A in the said Act portrays the measures taken for protecting the rights of a copyright owner on his/her works. This section helps prevent the possibility of digital piracy by making circumvention a criminal offence punishable by law. This amended law also allows circumvention on certain exception situations.

intellectual property rights in the era of digitalization and internet.

Chapter 4: Conclusion

The era of analog where the copyright protection was extensive should be matched with the era of digitalization to protect the rights of the copyright owners and overcome and respond to the challenged faced by the introduction of internet in every sphere of life. In many aspects there is a need for more specific laws of copyright infringement and criminalization of such infringing acts.

Copyright ensures the quality of the work of the author and tends to protect the rights of the copyright owners. To understand the importance of copyright it would be right to quote Laura Gasaway (2001) who believed that *'Neither users of copyrights works nor copyright holders would benefit from the death of copyright.'*

The copyright should not disappear in the new digitalization era and for that the existing copyright law should be revised and adjusted according to the new needs of the era. The existing laws may not only be amended but can also be supplemented with new and better adapted ones. The loopholes in regard to the new concepts should be done away with and the rights of the authors which was the basic objective behind the introduction of copyright law should be protected. Such amendments and changes would bring in a strong legal base for protecting the