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CROSS-BORDER COPYRIGHT INFRINGEMENT IN CYBERSPACE

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ABSTRACT

The global reach of the internet and the proliferation of digital content have created immense difficulties for copyright enforcement in cyberspace. Copyright violations in the digital sphere, such as unauthorised distribution and digital piracy, are dangerous to content creators and rights holders. There is continuous concern regarding this violation and how it affects content industries' creative and economic incentives. There is a need to make new regulations because the interpretation and execution of the fair use doctrines in the digital sphere continue to be unresolved and controversial.

The international domain of copyright protection cannot be ignored as the internet transcends geographical boundaries. The development of international norms is necessary to address the transnational nature of the digital content distribution. An overview of the complex problems with copyright protection in the digital era is given in this abstract, along with some possible solutions. Moreover, copyright protection in cyberspace also intersects with technological advancements. Emerging technologies such as blockchain and artificial intelligence make developing an effective copyright enforcement regime necessary. The methodology used in this article is doctrinal.

This abstract emphasises copyright protection in cyberspace as an evolving research domain, including economic, legal, technological, and cultural aspects. To address these challenges, a concerted effort is required by researchers and policymakers to strike a balance between protecting copyright holder's rights and respecting user rights in the changing digital landscape.

KEYWORDS: Cyberspace, Digital Rights Management, Blockchain technology, Copyright Infringement, Intellectual Property.

INTRODUCTION

Cross-border copyright infringement in cyberspace is a complex issue at the intersection of law, technology, and globalisation. The rapid expansion of the internet has blurred the boundaries that once defined the reach of copyright protection. Therefore, intellectual property violations, including piracy, unauthorised distribution, and derivative works, are happening beyond geographical boundaries. This challenge tests the efficiency of copyright laws and portrays the need to develop and enforce new legal rights for creators and content owners¹.

Information and communication technologies are developing each day at a rate unprecedented in human history. Modern copyright violations result from the proliferation of the internet and easy access to it, giving users a significant possibility of downloading. Due to the increased usage, the ability to copy content from one platform and paste it in another has caused security concerns.

¹ Hemant Kumar, *Cyberspace Copyright Violations and the Indian Legal System's Response*, 3 INDIAN J. INTEGRATED Rsch. L. 1 (2023).

Anyone with a computer and internet access can start publishing their work². It only takes a few seconds to download anything, move it, save it, edit it, or create a derivative work.

India is not a party to the WIPO treaty, but as a member of the World Trade Organisation and TRIPS agreement, it has to make certain amendments to comply with the terms of the agreement. India updated its copyright legislation to safeguard copyright owners' status further. The Copyright Amendment Act of 2012 brought certain amendments to the act³.

This article will deal with the problems and solutions related to copyright protection in cyberspace.

RESEARCH PROBLEM

The research problem in cross-border copyright infringement in cyberspace is multi-dimensional. It has its own set of challenges: technological advancement, privacy and data protection, international jurisdictions and legal framework.

- **Technological advancement** -Rapid technological development, such as artificial intelligence and blockchain technology, can enhance copyright protection while ensuring data protection and security.
- **International Jurisdiction** - The global nature of the internet poses questions regarding jurisdiction and the applicability of copyright laws across different countries. Research is required to develop an international framework for copyright protection that can be enforced effectively.
- **Privacy and Data Protection** - Balancing copyright enforcement with privacy and data protection is challenging. Moreover, research is required to protect copyrighted content without compromising individual privacy.
- **Legal Framework**- The legal framework needs to adapt to the digital age. Research can assess the adequacy of present laws and make amendments according to the digital era.

There is a need to address the emerging issues in copyright protection in cyberspace.

RESEARCH OBJECTIVES

1. To assess the impact of digital piracy in cyberspace.
2. To evaluate the impact of Copyright Laws and policies in cyberspace.
3. To analyse user behaviour in the context of copyright infringement.

RESEARCH QUESTIONS

1. How can technological advancements help protect copyright laws in cyberspace?
2. What are the new international laws that can be brought for the protection of copyright laws in cyberspace?
3. How can we protect copyrighted content without compromising individual privacy?

COPYRIGHT AND CYBERSPACE

The internet and cyberspace are the greatest dangers to copyright⁴. Different types of online information are covered by different copyright protections. Online works protected by copyright can be published or unpublished and take the form of narratives, essays, pictures, videos, graphics, e-books, and more⁵. Due to the abundance of online information, it can be challenging to determine if a given document is an original work or a copy of a protected work.

The Uruguay Round of multilateral trade negotiations brought debates to a close when the Berne Convention's provision that computer programs, whether in source or object code, shall be protected as literary works was incorporated into the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Additionally, databases and other programs that qualify as intellectual creations are protected by it.

² *Id.*

³ *Id.*

⁴ Sanchita Jain & Ayushi Srivastava, 'Copyright Infringement in the Era of the Digital World', VOL.5 (INT'L J.L. MGMT. & HUMAN), Pg. 1333, Pg. 1335 (2022).

⁵ *Id.*

MP3, peer-to-peer ("P2P") file-sharing apps like Grokster, Kazaa, and eDonkey, blogging, podcasting, streaming, and other novel methods of delivering material to viewers and listeners online, among other computer technologies, are currently creating waves in the digital world⁶. These technologies have completely altered the way people do business.

Maintaining a balance between copyright holders and the public is the primary goal of copyright law. Keeping this in mind, the legislature has periodically updated the copyright rules to close the gaps brought about by technological improvements. With the growing digital environment, copying or modifying the original work has become straightforward because it is so simple to access. Additionally, networking over the internet is a method of reaching millions of people with the original work, which jeopardises the interests of the original creator or copyright holder.

In a recent case⁷, court-appointed amicus curiae, to assist the court regarding the case. Companies that create, produce, and distribute material globally, including in India, are the plaintiffs in this lawsuit. The plaintiff accused the defendants, which included the John Doe website, the Ministry of Electronic and Information Technology, the Department of Telecom, and several ISPs, of hosting and granting unauthorised access to their copyright-protected works on their websites, which amounted to copyright infringement on the plaintiff's part⁸. The defendants' websites comprised approximately thirty websites.

The court held that no distinction is created between crimes done in the physical and digital realm, as all crimes are crimes regardless of where they occur. Furthermore, the court believed that defining the proper boundaries for the fair and unrestricted use of digital technology is the main point of contention. Hence, the court passed an order of permanent injunction against the defendant. Also, an internet service provider was used to block the defendant's website.

GOOGLE v. ORACLE⁹

This concerns Google's use of Oracle's Java Application Programming Interface (APIs) in the Android platform¹⁰. Reversing the lower court, the Court of Appeals for the Federal Circuit determined that Google's use did not legally qualify as fair use and remanded the case for a damages trial. On the fourth point, the Court determined that Google had effectively barred Oracle from entering the prospective mobile devices market for the APIs, rejecting Google's claim that employing the APIs in a smartphone context was sufficiently transformative. The Supreme Court ruled that "there is nothing fair about taking a copyrighted work verbatim and using it for the same purpose and function as the original in a competing platform," and that Google's "superseding use is inherently unfair." Thus, Google plans to file a writ for certiorari with the Supreme Court. The Court released the ruling on April 5, 2021. By a 6-2 margin, the Court overturned the Federal Circuit Appeals Court's decision. It remanded the matter for further consideration, finding that Google's usage of the Java APIs was within the parameters of fair use.

DISTRIBUTION OF COPYRIGHTED MATERIAL

The digital dissemination of content protected by copyright, including copyright infringement. Online bulletin board services and peer-to-peer file-sharing websites are the main means of distribution¹¹.

PEER-TO-PEER file sharing is a software network that allows computers and networks to share files and data with other computers connected¹². It describes software that users can use to transfer data on the Internet either directly or via a mediating service. Consequently, this temporary internet network enables users of the same networking program to connect and access files straight from one another's hard drives. This type of

⁶ *Id* at 5.

⁷ *UTV Software Communication Ltd v. 1337x and Others*, Delhi HC, (2019)

⁸ *Id* at 5.

⁹ *Google LLC v. Oracle America, Inc.*, 141 S. Ct. 1183, (2021)

¹⁰ *Id* at 5.

¹¹ Gururaj D. Devarhubli & Bushra Sarfaraj Patel, 'Copyright Law in the Digital Environment: Issues and Challenges in India', 3 *Jus Corpus L.J.* 272 (2023).

¹² *Id* at 4.

communication uses a direct link, meaning that the file is sent directly from one device to another without passing via a mediating mechanism. Napster and Gnutella are two instances of P2P software of this kind.

In the peer-to-peer (P2P) networking model, every participant initiates a communication session and has equal power. There may be connections between the master/slave, client/server models, and other frameworks. P2P discussions frequently involve each contact node having both server and client capabilities. This approach is supplied in three different modes: the file-download features that have been more well-known lately due to Napster's music downloads and the unofficial extension of this functionality that may be found on websites such as Gnutella.

BULLETIN BOARD SYSTEM P2P file sharing and bulletin board systems can be compared because the software enables users to connect to and log into a computer system via a terminal program. Users can share news, e-mail or chat with other users, download and upload software, play online games, and exchange data. In one instance, the defendant established a subscription BBS where the plaintiff had copyrighted photos submitted without the necessary authorisation. Customers could access the BBS by telephone modem for a charge. After logging in, users could peruse the photos and download them to their personal computers. According to the US District Court for the Middle District of Florida, the defendant infringed upon the plaintiff's exclusive distribution right. Copyright Act, and the defendant supplied a product containing unauthorised material. The Court further rejected the defence of fair use.

JUDICIAL FRAMEWORK

Microsoft Corporation V. Deepak Rawal¹³- In this case, Microsoft India Private Ltd. is a subsidiary of Microsoft Corporation. The company supplied the software and the programming system. After learning that Deepak Rawal and his company were selling Microsoft products without the company's permission, Microsoft filed a complaint in 2002, alleging that Deepak had used the Internet to pirate the software, resell it, and pass off customers as accurate, resulting in a significant loss.

After the court found that the defendants had violated the applicant's copyright about Microsoft Windows 98, Microsoft Office 2000, Microsoft Visual Studio 6.0, and Windows 99 Advanced Edition in various ways, the court looked into the legal standing of multiple nations regarding damages, including the US, Australia, the UK, and China. After examining the relevant case law and present legal circumstances, the Court declared:

"Coming to the legal position in India, a positive trend has started. Here, as courts are becoming more sensitive to the growing menace of piracy, they have started granting punitive damages even in cases where, due to the absence of the defendant's exact figures of sales by the defendants under the infringing copyright and/or trade mark, exact damages are not available."

Based on three categories-actual damages, exemplary damages, and harm to goodwill and reputation—the court determined the total damages in this case to be Rs. 1,28,23,200.

In the case of **Super Cassettes Industries v. Yahoo Inc.**¹⁴ - The applicant filed a lawsuit against the defendant, alleging that his intellectual work was violated by using his portal, video.yahoo.com. The applicant is the proprietor of the T-series Indian music company. Defendants were given an interim order prohibiting them from reproducing the film or the claimant's sound in any form on their website." The same petitioner sued YouTube in a different case, and the court issued an injunction.

In the case of **Autodesk Inc. and Anr. v. A.V.T. Shankardas and Anr.**¹⁵ and **Microsoft Corporation v. Mr. Kiran and Anr.**¹⁶ the High Court Delhi granted a permanent injunction for software piracy, the court also said that *"piracy is a menace and needs to be put down with a heavy hand"*.¹⁷

¹³ MIPR 2007 (1) 72.

¹⁴ CS (OS) No. 1124 of 2008.

¹⁵ FAO (OS) No. 116 of 2008.

¹⁶ 39 2007 (35) PTC 748 Del.

¹⁷ Ishwar Chandra Roy, *Copyright Issues in Cyberspace: Indian Legal Position and Judicial Pronouncement*, Vol. 5 INT'l J.L. MGMT. & HUMAN. Pg.1748 (2022).

In *Entertainment Pvt. Ltd. v. Multivision Network & Ors.*¹⁸, the Delhi High Court addressed the obligations of service providers by granting an injunction order that prevents the defendant's websites from uploading, downloading, or displaying plaintiffs' copyrighted content online. This directive has caused Reliance Telecom, an ISP with several clients and, in this case, the sister company of the claimant, to disable several file-sharing websites out of concern that users may submit copyrighted content there. Their argument is founded on the nature of the "John Doe" order, which is essentially a court-issued directive to reveal one's identity if the court determines that the defendant was materially responsible for the copyright infringement.

THE INDIAN LEGISLATIVE AND JUDICIAL VIEW ON LINKING, CACHING AND FRAMING

Copyright laws grant rights for digital content, computer systems, multimedia, and other related digital and physical realms. Copyright laws are violated by unauthorised duplication, file sharing, framing, linking, and online use of any protected content. This article will evaluate the Indian Copyright Act's applicability in dealing with online infringements.

Digital content, computer systems, multimedia, and other relevant items in the digital and physical domains are all granted rights by copyright rules. Unauthorised duplication, file sharing, framing, linking, and online usage of any protected work violate copyright laws¹⁹. The suitability of the Indian Copyright Act for handling online infringements will be assessed in this article.

LINKING

A link denotes a connection between the two web pages on the websites. A hyperlink is an integrated electronic address that directs the user to another place. A link may go to a computer file or a file on a website found on the Internet somewhere else. It is possible to display multiple links on a single webpage. Surface connecting and deep linking are the two possible forms of linking.

When someone posts a surface connection to a website, neither an entity nor a single object is often connected to the home page of either platform. A deep link is explicitly made to an inside text or webpage. This resistance emerges. It indicates that the website is linked to internal sites and that it is circumvented. There may be a demand for withdrawal following deep linkage.

The Indian Copyright Act, of 1957 defines **Section 2(ff)** about "communication to public".

This section's first explanation states, "further provided to include any communication through satellite or cable"²⁰. 'By any means of display' refers to displaying a website's content online. Thus, linking is governed by Indian copyright laws. A website owner may pursue legal action under the Indian Copyright Act of 1957 if a link is created that harms the website. It is wise to get the owner of the website's consent before making a deep connection to any website. However, the website's creator should include a ban language in its terms of use to prevent unwanted linking.

FRAMING

The requirements of **Section 51**, when compared with **Section 14** of the **Indian Copyright Act of 1957**, one can verify the validity of framing. When a website frames another website, the framer of the other website does not replicate or make copies of the licenced content; instead, they provide instructions on how a visitor can view the contents of the other website. As a result, the web framer may be subject to Section 57(1) of the Act but will not be held liable for any unauthorised copyright, duplication, or copying under the Indian Copyright Act as long as the copyright owner maintains their copyright.

Under **Section 14(a)(vi)** of the Indian Copyright Act of 1957, the copyright owner is qualified to make adaptation²¹. This right negatively influences the framing method because the website builds up those components from the graphical settings of the presented locations. Our primary task is to examine the framer's intention to test the framing's legality.

¹⁸ CS (OS) No. 3207 of 2011.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

SUGGESTIONS

These are the following suggestions I would like to make:

1. The legal framework should be strengthened. The evolving technologies and challenges in cyberspace should update copyright laws.
2. To simplify taking down infringing content through legal channels.
3. To introduce effective enforcement mechanisms and promote accountability.
4. To facilitate cooperation between copyright holders and law enforcement agencies
5. To find out technical solutions of blockchain technology, artificial intelligence, etc.

CONCLUSION

The emergence of technology is both a boon and a bane for copyright protection. While the emergence of technology provides new tools for development and content tracking, on the other side, it also raises issues regarding data security and privacy. Digital Rights Management (DRM) plays a significant role in protecting copyright. Moreover, the international nature of the internet requires global cooperation and the development of international regulations to look into the problems of cross-border content distribution. Legal and policy frameworks should be put on par with the rapidly changing digital landscape, and there should be a balance between the interests of content creators and users' rights.

