



**Usage of Internet and the Evolving Challenges of
IPR Issues in India: A Review**

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ABSTRACT

This paper deals with raising issues of intellectual property rights with the rising usage of internet. The Internet poses two basic challenges for an intellectual property right administrator: what to administer and how to administer. The augmented use of Internet is supposed to result in a bigger challenge to IPR protection than at present. While Internet is all set for a huge leap in the country, there are no practical solutions to the intellectual property right issues of Internet, as empirical knowledge of such issues is very restricted. Intellectual property rights issues are already there but they are more in the area of theory than in practicality. Some of the major issues are highlighted in the present paper. This paper deals with the present issues in the area of IPR rising with the usage of internet in India.

Key words: IPR issues in India, Internet usage and copyright issues



Introduction

The increasing usage of internet brings with it, the issues pertaining to intellectual property rights (IPR) protection which are of immense importance in the present scenario. Presently the country is undaunted with the massive task of infrastructural development for the availability of Internet and hence this demand can be catered to, within a span of few years. Internet can be accessible throughout the length and breadth of the country. Laying of high-speed national telecommunications infrastructure and provision of adequate telephone lines are priority issues.

Huge number of nodes has been commissioned in over two dozen cities in various parts of the country to make possible Internet services. To accelerate the process of availability of this sophisticated and fast medium of communication network, the government has given adequate permission to private companies to make available the Internet services.

The admission of private Internet service providers will enable India to become a major Internet user in the world, as was the case in cable television service sector. The augmented use of Internet is supposed to result in a bigger challenge to IPR protection than at present. While Internet is all set for a huge leap in the country, there are no practical solutions to the intellectual property right issues of Internet, as empirical knowledge of such issues is very restricted. Intellectual property rights issues are already there but they are more in the area of theory than in practicality. This paper deals with the present issues in the area of IPR rising with the usage of internet in India.

Objective of the Study

1. To review the existing literature on IPR issues in India and Abroad..
2. To study the existing IPR issues evolving from unawareness of cyber laws.
3. To evaluate whether increased usage of internet shall create new IPR issues in India.



Research methodology

The paper is divided into three major sections. 1st Section deals with review of present literature on the subject. The second section consists of the challenges present in front of the country today and third section concludes the paper with future guidelines.

The IPR issues in internet usage in India is in nascent stage therefore the study is exploratory in nature and the data collected for the purpose of the paper is qualitative in nature.

Literature review

There is plethora of literature emerging on usage and misuse of internet among youth. A review of some of the research papers from journals has been given below to understand the debate going around the issue-

Barlow, John Perry (1995) states that the existing system of copyright is not a good way to assure payment for digital expression. The immaterial context of cyberspace breaks that system irretrievably since copyright is based on the physical copy and not its ethereal content. Moreover, copyright law has so far appeared to work because it was supported by inconvenience. The property model is wrong for defining, protecting, or even thinking about mental goods. Any time there is an economy in which the principal articles of commerce look so much like speech as to be indistinguishable from it, efforts to control such goods as though they were physical - regulating them toward scarcity - will endanger freedom of expression.

Cohen, Jodi B (1996) discussed about the problems of copyrights in cyberspace. Newspaper lawyers are finding themselves in more and more lawsuits over copyrights and trademarks in cyberspace, where the law is evolving as rapidly as online media.



Maloney, Marilyn C (1997) suggest that the rules governing intellectual property in cyberspace must be totally revised. It is, however, clear that cases dealing with intellectual property in cyberspace are pushing the envelope of traditional notions of intellectual property protection and enforcement.

Tanenbaum, William A (1998) talks about the cyberspace developments and the challenges to the existing intellectual property law regime. This will again result in an evolution of the law, this time to respond to online publishing, electronic commerce, and other types of Internet business. In the meantime, these challenges will be addressed by lawyers in the drafting of private contracts.

JACKSONVILLE, Fla.--(BUSINESS WIRE FEATURES)--April 7, 1998— discussed a milestone case in Atlanta, Georgia, put the issue of intellectual property rights on the Internet to the test. In a rare trial by jury, SuperStock, an international stock photo agency based in Jacksonville, Florida, was awarded \$10,500 for its complaint against Atlantis New Media, Inc.

Posch, Robert J, Jr (1999) discussed the debate of US and European countries and their cyber regulations. Europe lags further behind in Internet technology because of its regulatory, cultural and technological hurdles to free speech yet continues to assault the success of the US through the subterfuge of privacy. If the US acquiesces to EC dictates on privacy in lieu of its own First Amendment tradition of public speech, there is no guarantee that there will be a sustained commitment to protect commercial exploitation of speech. If the US loses intellectual property leadership, it loses the ecological foundation of its economy. Elsmore, Matthew J(2000) and Nadel, Mark S(2000) discussed about the current protection afforded to brand owners within the realms of cyberspace, specifically the World Wide Web.



Present Issues of IPR in India

The copyright law is the most effective instrument presently available for tackling the IPR issues on the Internet. The Indian Copyright Act, originally enacted in 1957, was widely amended in 1994. With these amendments, the Copyright Act is considered as a piece of legislation and the overall outlook is that the amended Act is quite capable of enduring the copyright issues of digital technologies including those of Internet. By removing certain restrictive clauses and phrases, and by expanding the definitions of works like cinematograph films (motion pictures) and sound recordings (phonograms) to include such works in 'any medium' within their purview, the Act has adapted itself to the digital era. It, however, has not incorporated all the aspects of the digital issues which are arising today.

One of the primary copyright issues in Internet is establishing the periphery between private use and public use. Like all copyright laws of the world, the Indian Copyright Act also makes a distinction between reproduction for public use and private use. Reproduction for public use can be done only with the right holder's permission, whereas a fair dealing for the purpose of private use, research, criticism or review is allowed by the law. This differentiation becomes negligible with the capability of an individual to send out over the Internet any copyrightable work to myriads of users simultaneously from the privacy of his/her home and users being able to download simultaneously a perfect copy of the material transmitted, in their homes. The eroding of the fine distinction that separates the public and private territories has been the reason why many feel that a new set of norms is required in copyright.

Another case in point is that of publishing. With the incoming of the industrial revolution and the age of mass production, publishers of books and music have made their presence felt. The presence has become so vital that writers could not think of a world without them. The Internet has become a strong medium which has removed the middleman between a writer and his/her reader. The work of an author is put on the Internet and the reader accesses it directly. The advent of printing press had given birth to publishing industry, the Internet, by empowering



every writer to be a publisher, has again been the cause of a warning bell, if not the death knell, of that industry. This very fact again raises the issue whether making a work available on Internet is ‘publication’ or not. According to the Indian Act, ‘publication’ for purposes of copyright means “making a work available to the public by issue of copies or by communicating the work to the public.” This definition, by virtue of its non-restrictiveness, can be construed as covering electronic publishing and, thereby, ‘publication’ on the Internet. It may, however, take a few years before electronic publishing in India really makes a big mark.

The aspect that communication over the Internet is ‘communication to the public’ is still an unresolved issue. The Indian Act has provided for an exhaustive definition of ‘communication to the public.’ The Act states that, “‘communication to the public’ means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.” This definition is quite descriptive enough to take into account communication over the Internet within its framework. Considering this aspect the Internet service providers in India are going to have a tough time figuring out copyright over the content of the Internet.

Distribution right poses another problem. As in most copyright laws, in the Indian law too, the distribution right also gets terminated after the first sale. In the present scenario, a student can actually sell a second hand textbook or a library can circulate among its member’s books it purchased. In the Internet, distribution gets restricted to reproduction since not a single copy can be distributed without reproduction.

The issue of right to reproduction presents certain basic problems over the Internet. This arises out of the very core nature of Internet transmission. Reproduction takes place at every stage of transmission. Temporary copying (known as caching) is an integral part of the transmission process through Internet without which messages cannot travel through the networks and reach



their destinations. Even when a user only wants to browse through, temporary copying takes place on the user's computer. Coverage of the temporary reproductions was an intensely debated issue in the World Intellectual Property Organization (WIPO) Diplomatic Conference of December 1996 and has remained inconclusive till date. When a reproduction takes place in the course of authorized use of the work and whose purpose is solely to make the work perceptible or where the reproduction is of a transient or incidental nature, should it be restricted? As per the Indian law, reproduction has to be in a material form but includes "storing of it in any medium by electronic means." Case laws are yet to clarify whether the reproductions taking place in the Internet communications come under the purview of the right of reproduction given by the law and until that is done, opinions will vary on temporary reproduction and permanent reproduction and on the legality of the temporary reproduction.

One of the most important issues from the aspect of copyright enforcement is that of liability. There is the issue of liability for acts that occurs in the course of transmission of a legal (as distinct from an infringed) copy of a work. As already mentioned, the issue depends a lot on the interpretation that the judiciary takes of various rights given by the law. Whenever the judiciary is of the opinion that reproduction, etc., that occur in transit are violation of a copyright, then questions will arise as to fixation of liability. Who is to be held responsible? The party who dispatches the work or the party who receives it or the Internet service provider? The answer will not be easy to find out. Another aspect is of communication over the Internet of a clearly infringed copy of a work. The important point in this issue is whether an Internet service provider is held responsible for the copyright infringement made by a subscriber even though he is not aware of the subscriber's action. In trying to analyze copyright offence, the Indian Copyright Act makes the assumption that the infringement or abetment of the infringement has to be made "knowingly" by a person. There is a fair chance that by virtue of the expression 'knowingly' an Internet service provider, who may not have any awareness about the copyright infringement by the subscriber, may be absolved from liability and escape punishment.



The above mentioned aspect, however, raises another question. That even if the Internet service provider is not convicted under the Indian law, he may still be convicted under the national law of another country. Internet by its nature is global and cannot be constrained in national boundaries, how does one regulate this? Since the networks are widely spread all over the world and a message or information gets transmitted through any number of countries before it finally reaches its ultimate destination. The Internet service provider may not have any liability in the country of origin and in the country of destination but may have liability in some country in transit. This is a truly global issue. In the seamless world of Internet, the enforcement of national IPR laws which are bound by territorial jurisdictions throws up issues not easy to solve. Hence this area on an urgency basis requires international coordination of laws; if not done than the threat of liability in certain countries may make it compulsory for the Internet service provider to examine the material being transmitted for copyright clearance, which in turn could lead to a delay in the whole process. The challenge is not be to slow down the flow of information but to accelerate it. Every major technological development results in a shift in its pattern and the Internet is no exemption. Better norms have to be cultivated to fix responsibilities on the persons concerned; a facilitator of Internet service may not necessarily be an abettor of copyright infringement.

Conclusion

Hence we can conclude by saying that Internet as a medium is a very dynamic medium. The usage of it also expected to be very wide spread in India with the government having ambitious plans of making it available throughout the length and breadth of the country. The private service providers have taken on this task very earnestly.

The wide spread usage of internet shall also pose a major threat to the existing copyright act as newer technologies brings more complex challenges in the society. The safeguarding of interests of the service providers, the originator of the content produced and the consumers is a major



challenge and task. We get a fair understanding that the Indian copyright act along with the amended copyright act is in a position to face the above mentioned issues to a large extent but there is scope for more to be done on this aspect.

The IPR administrator's special challenge is how to balance the rights of different players on the Internet like the content providers, the service providers, the access providers and so on. This has to be done without jeopardizing the free flow of information and at the same time ensuring that the genuine economic interests of the creators of intellectual property are not adversely affected. The IPR rights on the Internet are dependent on this. Once the IPRs on the Internet are decided, then the challenge for the IPR administrator is how to enforce them in the most cost-effective manner.

References

- Barlow, J. P. (1995). Property and speech: Who owns what you say in cyberspace?, Association for Computing Machinery. Communications of the ACM, 3(12), 19.
- Cohen, J. B. (1996). Dilemma in cyberspace. Editor & Publisher, 129(51), 20-21.
- Maloney, M. C. (1997). Intellectual property in cyberspace. The Business Lawyer, 53(1), 225-249.
- Tanenbaum, W. A. (1998). The challenge of cyberspace intellectual property. The Computer Lawyer, 15(2), 14-18. Features, Design, Photography, Technology, and Publishing Editors. (1998, Apr07).
- Cohen, J. E. (1998). Lochner in cyberspace: The new economic orthodoxy of "rights management". Michigan Law Review, 97(2), 462-563.
- Posch, Robert J., Jr. (1999). Will intellectual property rights diminish in cyberspace? Direct Marketing, 61(9), 29-31.
- Elsmore, M. J. (2000). The implications of intellectual property law for the auditing and



protection of national and international brands: Part I. brands in cyberspace. *Managerial Auditing Journal*, 15(3), 116-132.

- Nadel, M. S. (2000). Computer code vs. legal code: Setting the rules in cyberspace. *Federal Communications Law Journal*, 52(3), 821-836.
- Editors, B. (2001, Feb 21). PricewaterhouseCoopers announces ground-breaking E-product enabling clients to protect their intellectual property assets in cyberspace.
- Wiley, D. L. (2001). Caught in a web: Intellectual property in cyberspace.
- Tian, D., & Chao, C. (2012). Intellectual property rights (IPR) disputes in cyberspace: U.S. hegemony and Chinese resistance. *Journal of Politics and Law*, 5(2), 1-9.
- Dorrain, K. F., & Rubens, J. T. (2012). Trademarks and copyrights in cyberspace: A year in review. *The Business Lawyer*, 68(1), 305-318.