

**PRESENT TREND OF COPYRIGHT PROTECTION IN DIGITAL WORLD: AN  
ANALYSIS**

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**Abstract**

*Intellectual property is consider as the creation of human mind. Intellectual property is dealt with Patent, Trade mark, Copyright, Industrial design, Geographical Indication, Plant variety, Semiconductor integrated circuits. Digital is present to almost everywhere and this is revolution in 21<sup>st</sup> century that what was not possible earlier is all right now possible by virtual digital information technology. In present scenario of digital era copyright is in the trap of infringement through the internet. The new technologies and digitalization poses various issues and challenges to the copyright protection. The present paper highlights present trend of copyright protection in digital world.*

**Key words:** Copyright Protection, Digital World.

**1.1 INTRODUCTION**

Under traditional principles of intellectual property protection, copyright law has served as the principal source of legal protection for original works of authorship, such as literary works, music, dramatic works, pantomimes and choreographic works, sculptural, pictorial, and graphic works, sound recordings, artistic works, architectural works and computer programme. The copyright issues and challenges in digital world is a problem which is very easy to touch or to observe it with a naked eye.

The basic object of copyright Act is to give property rights over your creation. To protect the author of the copyright work from an unlawful reproduction or exploitation of his work by others.<sup>1</sup> The copyright protects only creative works.<sup>2</sup> In the present Era of Digital world where the whole world is connected through internet, copyright laws play an important role regarding Data sharing, Data Integration, unethical data utilization and unauthorized public disclosure.<sup>3</sup>

**1.2 MRANING AND DEFINITION OF COPYRIGHT**

Section 14 of the Copyright Act 1957 provide the meaning of copyright as well as Subject matter of copyrights. These are as follows-

1. All kinds of original –literary , dramatic, musical, artistic
2. Cinematograph film
3. Sound recording
4. Performers rights
5. Broadcasting rights.<sup>4</sup>

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<sup>1</sup> Justine Paul, *International Business* 69 (PHI Learning Private Limited 5<sup>th</sup> edn, New Delhi, 2011).

<sup>2</sup> Yug Bhatia, *Intellectual Property Rights and The Digital World IJLSI VOLUME 1 ISSUE 3, 2019* available at <https://www.ijlsi.com/intellectual-property-rights-and-the-digital-world-3/>

<sup>3</sup> Ibid.

<sup>4</sup> Section 14 in the Copyright Act, 1957

1[14. Meaning of copyright.-For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

(a) in the case of a literary, dramatic or musical work, not being a computer programme,-  
(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;  
(ii) to issue copies of the work to the public not being copies already in circulation;  
(iii) to perform the work in public, or communicate it to the public;  
(iv) to make any cinematograph film or sound recording in respect of the work;

Digital copyright means the protection of copyright which is connected with digitalized content on the internet. These digital rights are further managed by a system known as Digital Rights Management<sup>5</sup>, which usually means the management of technologies for the restriction of the use of copyrighted works in digital media. DRM permits the copyright owners to prevent unauthorized copying, editing, sharing, printing, etc. of their work and letting them know who and when accessed their work.<sup>6</sup>

The provisions of the Digital copyrights has been incorporated under Chapter XIII Sections 65A, 65B of the Copyright Act, 2012 read with Chapter XVII Rule 80 of Copyright Rules, 2013.

### **1.3 NATIONAL LEGAL FRAME WORK: AN ANALYSIS**

The first copyright law has been enacted by the British parliament in 1911, which became the founding stone of the later versions of the Copyright Act. The Copyright Act, 1957 was enacted after Indian independence, with the passes of the time there were six amendments in the years 1983, 1984, 1992, 1994, 1999, and 2012 has been done respectively.<sup>7</sup>

The main aim of the act is to protect the works of the creators and owners of the copyright against unauthorised use of the copyrighted work. It has been noted that recently the Copyright (Amendment) Act, 2012 was enacted which is considered to be more substantial in nature providing safeguard to the digital copyright.<sup>8</sup>

The Copyright Amendment Act of 2012 extended its provisions for the protection of copyright in work in present trend of digitalization of copyright. This amendment also provide provisions for the penalties against the infringer of the copyright work, rights of management information, the liability

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(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,-

(i) to do any of the acts specified in clause (a); 2[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: 2[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme\:" Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.]

(c) in the case of an artistic work,-

(i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film,-

(i) to make a copy of the film including a photograph of any image forming part thereof;

(ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the film to the public;

(e) in the case of a sound recording,-

(i) to make any other sound recording embodying it;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the sound recording to the public. Explanation.- For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.]

<sup>5</sup> Hereinafter referred to as 'DRM'

<sup>6</sup> Digital Copyright and The Issues In Tackling Unauthorized Digital Copying available at <https://knowlaw.in/index.php/2021/04/12/digital-copyright-issues-tackling-unauthorized-digital-copying/> (Last visited on October 17, 2022).

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

of internet service providers and introduction of statutory licenses for cover version and broadcasting organizer.<sup>9</sup>

#### **1.4 INTERNATIONAL LEGAL FRAME WORK**

To protect the present trend of copyright in digital world tremendous technology connecting the world on an international platform, it is required to ensure some guidelines in regards to international digital copyright issue and challenges. On this point India is also a signatory of some international conventions and treaties. They are as follows-

1. Trade Related Aspect of Intellectual Property Right (TRIPS), 1994
2. World Intellectual Property Organization (WIPO), 1996
3. Berne Convention for the protection of literary and artistic works, 1880
4. WIPO Performances and Phonograms Treaty (WPPT), 1996
5. UCC Geneva, 1952
6. UCC Paris 1971

#### **5. ADVANTAGES OF DIGITAL TECHNOLOGIES IN COPYRIGHT REGIME<sup>10</sup>**

It is very advantage of the present trend of digitalization is that Ease of Dissemination of the information through the online mode for the more and more recipients. Another advantage is Faster Access to Digital Material at the digital platform. Due to the digitalization Ease of Storage of copyrighted content in CD, Pen Drives or hard disks etc. another magnificent advancement of technology render the Easy Reproduction of the digital contents through the software and high speed internet. Digitalization is available at just a single click, which is also saved within a movement of Time and it very Cost Effective. The digital medium offers an open platform to the authors to directly disseminate their contributed works without intervention in the form of the traditional publishers. with the advent of digital technologies has given a rise to completely a new set of 'works' like 'multimedia works, computer software, databases' etc. adding such stars to the entertainment industry and revolutionizing the work culture of the almost all fields using such information and communication technologies.

#### **1.6 CHALLENGES OF COPYRIGHT PROTECTION IN DIGITAL WORLD**

In Indian scenario under Section 13 of the Copyright Act of 1957 provides a list of protected works. Now a days, The Internet has been one of the most challenging hurdles that Copyright has faced in the present digital era.<sup>11</sup> There are many issues and challenges that the regime of digital copyright protection faces. Some of those challenges are in the fields of Copyright protection and involvement of the internet, Audio-visual work infringement, Hyperlinked text, Software and social media, etc.<sup>12</sup>

The Copyright protection varies depending on the information available on the internet. On the web, copyrighted works comprise news, articles, graphics, photographs, screenplays, and videos, among other things. Because of the vast amount of information available on the internet, determining whether a work is a duplicate or a copy of a protected work is challenging.

In India the Copyright Act does not make ISPs liable for infringement of Digital Copyright. As a result, the Information Technology Act of 2000 was enacted to address the problem of ISP responsibility for infringement. 'No Service Provider was liable for an infraction committed or for

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<sup>9</sup> Ibid.

<sup>10</sup> A Reflection Upon the Digital Copyright Laws in India available at <https://samistilegal.in/a-reflection-upon-the-digital-copyright-laws-in-india/> (Last visited on October 17, 2022).

<sup>11</sup> Kanika Dawar , Ashwin Sudarshan , Dr. Chitra B T Copyright Protection in Digital Era *IARJSET* Vol. 8, Issue 6, June 2021 available at <https://iarjset.com/wp-content/uploads/2021/07/IARJSET.2021.86105.pdf> (Last visited on October 17, 2022).

<sup>12</sup> Ibid.

violations that occurred without his knowledge provided the service provider used all reasonable care to prevent the violations,' it says.<sup>13</sup>

The internet allows certain information to be linked facilities, with hypertext or a hyperlinked reference within the sites. It is also challenge to the protection of the copyright. The phrase "embedded hyperlink," also referred to as in-line links, alludes to content from some other webpage so that the secondary material seems to be information from the primary website.<sup>14</sup> One of the most common causes of copyright infringement is software piracy.

Copyright infringements on social networking platforms might consist of the following: Materials that are copyright-protected should not be re-posted, stored, or redistributed. Re-posting and easing ownership or creator rights of previously copyrighted work, as well as using the platform's material without the owner's authorization.<sup>15</sup>

Piracy is defined as the act of producing unauthorised or pirated copies and distributing or selling them. When work is pirated and distributed or sold, the authors, performers, phonogram and FDM producers' right to make copies is violated.<sup>16</sup>

The copyright law is that it prohibits profiting from and appropriating the labour, expertise, and capital of others. The creator of a work has exclusive privileges to particular forbidden acts at all stages of copyrighted and performance rights legislation. The person violates the copyright in that material if these acts are performed even without the permission of the publisher. Section 2(m) of the Copyright Act of 1957 defines infringement as:

1. Replication of a literary work, drama, musical, or artwork that is not a cinematographic film;
2. In the case containing sound recordings, any other recording made by any means embodying the same sound recording;
3. Under the scope of this Act, voice recordings or cinematic films of a broadcast or concert for which a broadcast reproduction right or an artist policy exists.

## **1.7 WAYS TO PROTECTION OF COPYRIGHT IN DIGITAL WORLD**

Digital Rights Management (DRM) technologies ensure copyright through identifying and protecting the content, controlling access of the work, protecting the integrity of the work and ensuing payment for the access. DRM technologies prevent illegal users in accessing the content. Access is protected through user ID and password, licensing agreements.<sup>17</sup> Another way to protect digital content is through Technical Protection Measures (TPM).<sup>18</sup> These technologies allow publishing companies in securing and protecting content such as music, text, and video from unauthorized use. If another wishes to collect fee for use of his or her work, then DRM technology can be used.<sup>19</sup>

## **1.8 JUDICIAL RESPONSE AND PRESENT TREND OF THE COPYRIGHT PROTECTION**

The Indian Judiciary has also has played a pivotal role in protecting the rights of Copyright owners in present trend of digitalization. Latest judicial pronouncements in a matter pertaining to the protection of copyright in the digital world are listed below-

In case of *Syed Asifuddin and ord v. The State of Andhra Pradesh & Anr*<sup>20</sup> the brief fact is that the Employees of Tata Indicom got indicted on suspicion of trying to hack a computer source code under Section 65 of the Information Technology Act, 2000, which were only for use on the internet

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Yug Bhatia, Intellectual Property Rights and The Digital World *IJLSI* VOLUME 1 ISSUE 3, 2019 available at <https://www.ijlsi.com/intellectual-property-rights-and-the-digital-world-3/> (Last visited on October 17, 2022).

<sup>18</sup> <https://www.businessgoing.digital/enforcing-ip-rights-in-a-digital-environment/> (Last visited on October 17, 2022).

<sup>19</sup> Ibid.

<sup>20</sup> [2005 CRLJ 4314]

services of Reliance Infocomm. According to the the tribunal, this code modification is indeed a felony offence. According to the court, a computer programme is a work of literature covered by copyright under Section 2(o), (ff), sections 13 and 14, and any infringement of a computer programme is penalized under Section 63. The judge specifically stated, nevertheless, that once the material has already been provided, the question will be decided by the trial judge. Nonetheless, such change must not be deemed fair use under Section 52 of the Copyright Act 1957 as it was not back manufactured for any of the exemptions specified in Section 65A of the Copyright Amendment Act, 2012.

In the case of *The Chancellor, Masters & Scholars of the University of Oxford & Ors. V. Rameshwari Photocopy Services & Anr.*<sup>21</sup> In this case, five plaintiffs The Oxford University Press, Cambridge University Press U.K., Cambridge University Press India Pvt Ltd., Taylor & Francis Group U.K., And Taylor & Francis Books India Pvt. Ltd. filed a suit against Rameshwari Photocopy Service and University of Delhi for the relief of permanent injunction from infringing the copyright of the plaintiffs in their publications by photocopying, reproduction and distribution of copies of plaintiffs' publications on a large scale and circulating the same and by sale of unauthorised compilations of substantial extracts from the plaintiffs' publications by compiling them into course packs / anthologies for sale. Amongst other arguments, defendant replied with claiming that their activities fall under section 52 of the Copyright Act, 1962 and hence do not constitute infringement.

Ultimately, court held defendants not liable of infringement. Court observed that if students were not having access to course packs provided by the defendants, it would not have resulted students buying books, rather it would have resulted in students sitting in libraries taking notes by hand. That would have been injustice in the age of modern technologies. Court also held that declaring acts of defendants as infringement would result in such interpretation of law that results in regression of the evolvement of the human being for the better.

However this judgement did not deal with the cover-to-cover copying of the books as that was not a fact in issue. We will have to wait till we get verdict dealing with such issue.

In another landmark case of *Myspace Inc. v. Super cassata industries Ltd*<sup>22</sup> pronounced progressive ruling, which strengthens the safe harbor immunity enjoyed by Internet intermediaries in India. It interprets the provisions of the IT Act, 2000 and the Copyright Act, 1957 to restore safe harbor immunity to intermediaries even in the case of copyright claims. It also relieves MySpace from pre-screening user-uploaded content, endeavouring to strike a balance between free speech and censorship. CIS was one of the interveners in the case, and has been duly acknowledged in the judgment.

In 2007, Super Cassettes Industries Limited (SCIL) filed a suit against MySpace, a social networking platform, alleging copyright infringement against MySpace. The platform allowed users to upload and share media files, inter alia, and it was discovered that users were sharing SCIL's copyrighted works sans authorisation. SCIL promptly proceeded to file a civil suit against MySpace for primary infringement under section 51(a)(i) of the Copyright Act as well as secondary infringement under section 51(a)(ii).

The 2012 order was extremely worrisome as it had turned the clock several decades back on concepts of internet intermediary liability. The court had held MySpace liable for copyright infringement despite it having shown no knowledge about specific instances of infringement; that it removed infringing content upon complaints; and that Super Cassettes had failed to submit songs to MySpace's song ID database. The most impractical burden of duty that the court pronounced was that MySpace was required to pre-screen content, rather than relying on post-infringement measures to remove infringing content. This was a result of interpreting due diligence to include pre-screening.

The court enjoined MySpace from permitting any uploads of SCIL's copyrighted content, and directed to expeditiously execute content removal requests.

The Court also setting aside the Single Judge's order aside, the Court directed SCIL to provide a specific catalogue of infringing works which also pointed to the URL of the files. Upon receiving

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<sup>21</sup> *The Chancellor, Masters & Scholars of the University of Oxford & Ors v. Rameshwari Photocopy Services & Anr* 2016 [unreported].

<sup>22</sup> *Myspace Inc. v. Super cassata industries Ltd*, 2017 (69) PTC1 (Del)



such specific knowledge, MySpace has been directed to remove the content within 36 hours of the issued notice. MySpace will also keep an account of the removals, and the revenues earned from ads placed for calculating damages at the trial stage.

## **1.9 CONCLUSION AND SUGGESTIONS**

The widespread use of the internet has triggered a sea-change in copyright law giving rise to the new challenges in the field. As in India the digital content has been studied by the users such as students, researchers, as it facilitated knowledge of the discovery, retrieval, and creation of new Data in every field to every person. The present trend of digitalization increased access to the Website, which has also led to the mass publication of digital content through individuals in the form of eBooks, blog posts, and even Facebook posts, etc. Due to increase in access of digital content, people start doing misuse of such facility and violating the right of the copyright holders. For the protection of copyright in present trend of digital era some suggestions are as follows-

1. To protect the original author it is required to provide original contents which are available on internet.
2. For the protection of copyright and to check the online piracy users are required to go for license/ permitted use of any electronic documents only.
3. Last but not least we need more specific and comprehensive legislation to tackle the issues and challenges posed by new trend of digitalization.