

## Copyright Protection over Internet

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Downloading a movie or reading a book over internet is nothing new for people using the world wide web today but people seldom care about that impact of these downloads on the rights of the people whose work they are going to read, hear or see. Works like cinematograph films, sound recordings, books, novels, dramatic work, architectural works, and photographs etc. are protected by the copyright laws.

In Legal glossary Published by the Government of India Copyright is defined as the exclusive right given by law to an author, composer etc. (or his assignee or heirs) to print, publish and sell the copies of his original work or translation thereof. Since Internet makes the copyrighted work easily accessible without even giving the knowledge of such accessibility to the owner of such work, internet has posed large number of challenges in front of the governments and the copyright owners. Talk about any form of protected work and you will find it available on the internet and that to for free.

Legality of the material available on the internet is an issue to which common people give a least thought and there is even no reason why they should care about something like this. School curriculum, newspaper, magazines, journals rarely talks about copyright and the Internet. For most of us even today cybercrime or piracy means nothing more than hacking of someone's bank account or emails etc. How copyright and internet are related is a question even today for many well educated people who watch movies, read books, and listen songs over the internet.

Due to lack of knowledge some people unintentionally break the copyright law that govern the internet and some intentionally provide them the means to do so for their own benefits. Keeping in view the rapid use of internet technologies and increasing number of copyright infringement over internet, it has become extremely important to relook at the laws governing internet and copyright protection. Using Internet has large number of economic and social benefits. Since there are less number of intermediaries involved the cost of the article is considerably reduced. Thereby making it more accessible to general public. Copyright can be infringed via internet in the following ways:

1. **Posting or uploading materials on the website:** Copyright in a work can be infringed if it is uploaded on any website without the permission of the copyright owner. In *Playboy Enterprises Inc. v. Frena*,<sup>1</sup> the court held that digitized photographs from the adult magazine appearing on Frena's bulletin board service infringed the magazine's public distribution and display rights. The court reasoned that at the end of the exercise, the user had a copy of the

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<sup>1</sup>839 F. Supp. 1552 (M.D. Fla. 1993)

work: thus, someone had infringed the reproduction right, either the user or Frena. It is an interesting question whether Frena might be liable for contributory infringement if the user was the infringer. The court did not deal with the infringement of the reproduction right.<sup>2</sup>

2. **Linking:** Linking means joining of any two web pages over the internet. Linking is generally referred to a feature which allows user to move from site to site. In linking original site automatically connects the user to linked site without typing the URL. The exclusive right given to the author of the copyrighted work to communicate their work to public is infringed by this method.<sup>3</sup>
3. **Framing:** Framing allows the website to incorporate the contents from another website into a window or frame of its own in a manner wherein the framing site seems to be the original website.<sup>4</sup>
4. **Caching:** Cache is a place where something is stored temporarily. In caching the computer stores the copyrighted material from the original source in a cache, so that the material could be easily available when required.<sup>5</sup>
5. **Archiving:** Archiving is the process of downloading and storing the material of one website in another So that the second website can provide the users the material of first website without hyperlinks.<sup>6</sup>
6. **File Sharing :** The peer to peer software allows computers connected to a network to communicate both ways with other computers on the network without those communications necessarily being routed through a central server. In *MGM Studios vGorkster*,<sup>7</sup> court held :

“... in peer-to peer distribution networks, the information available for access does not reside on a central server...each computer makes information available to every other computer in the peer to peer network.”

The peer to peer file sharing has posed greatest threat to copyright protection in all countries.<sup>8</sup>

Till 2012 there was no provision in the Indian Copyright Act, 1957 dealing with infringement of copyright over internet. The Copyright Amendment Act keeping in view the emerging technological developments decided to change this scenario and inserted 3 provisions dealing with Digital Rights Management (Section 2 (xa), 65A and 65B). DRM is basically an umbrella term which includes any technology used by the owner/ author of copyright to restrict/allow access to and use of works protected by copyright which are embodied in media such as CDs or can be communicated to public via digital means. DRMs can broadly be

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<sup>2</sup> Ahuja V.K, Intellectual Property Rights in India, Lexis Nexis, 2<sup>nd</sup> Edition, Pg 190

<sup>3</sup> *Id* at 191

<sup>4</sup> *Id* at 192

<sup>5</sup> *Id* at 193

<sup>6</sup> *Id* at 193

<sup>7</sup> 545 US 193

<sup>8</sup> *Id* at 193-194

classified into Rights Management Information (RMI) and Technological Protection Measures (TPMs).<sup>9</sup>

DRMs as such have few negative impacts on consumers. DRM technology creates a situation where consumers do not buy but are merely leased or rented products on the terms and conditions of the service provider, despite having to pay exorbitant price. They cannot and does not differentiate between fair use and illegal use. Moreover DRMs seem to protect only that what our Copyright Law protects in an inexpensive manner. Moreover DRMs prevent consumers to use the work which a consumer can lawfully use under the Copyright Act.<sup>10</sup> The provisions incorporated in our Copyright Act are more Industry oriented.

Let us now analyse how the various provisions included in the Copyright Act affect the consumers. In Section 2 of the Copyright Act a definition clause has been added which defines Rights Management Information. The provision 2(xa)) says that Rights Management Information means

- a) title or any other information identifying the work or performance;
- b) the name or address of the author or performer;
- c) the name and address of the owner of rights;
- d) Term and condition regard the use of right; and
- e) Any number or code that represents the information referred to in sub cause (a) to (d)), but does not include any device or procedure intended to identify the user.

This provision merely gives a list to be included in the Rights Management Information. Presumably in the interest of privacy rights, it explicitly excludes any devices or procedures intended to identify the user. This seems to be a balanced provision which allows only for the communicating of information and doesn't include any TPMs through it.<sup>11</sup>

Other sections added to the Copyright Act dealing with internet by the amendment of 2012 are Section 65 A and 65 B. Section 65 A of the Copyright Act say deals with Protection of Technological measures. A protection measure in general sense is a device or technological measure which when applied to a copyright prevents or restricts acts which are not authorized by the owner of copyright. It is of two categories the first is "access control" where the access of the work is controlled usually by encrypting it. The second is "Copy Control", where the extent and nature of copying of the work is controlled.<sup>12</sup>

The next provision added in the Copyright Act deals with Rights Management Information (Section 65 B). The provision says any person who knowingly:

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<sup>9</sup> <http://copyright.lawmatters.in/2010/06/drm-and-other-implications-of-copyright.html>

<sup>10</sup> <http://spicyip.com/2010/03/guest-post-note-on-proposed-amendments.html>

<sup>11</sup> <https://spicyip.com/2010/03/drms-in-draft-copyright-amendments.html>

<sup>12</sup> Davies Gillian, Garnet Kevin, Harbottle Gwilyan, Copinger and Skoone James, (Sweet and Maxwell, 16<sup>th</sup> edition 2011) P. 864 to 887

“ i) Removes or alters any rights management information without authority; or  
ii) Distributes, imports for distribution, broadcasts or communicate to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority,

shall be punishable with imprisonment which may extend to two years and shall also be liable to fine;

provided that if the rights management information has been tampered with in any work, the owner of copyright in such work may also avail of the civil remedies provided in Chapter XII against the person indulging in such acts.”

Rights Management Information covers any information including the name of the author, copyright information or an ISBN number which is used to identify or authenticate copies of a work or performance. The wording of this section is quite narrow and provides no exceptions such as those present in regard to TPMs.<sup>13</sup>

The provisions introduced by the amendment in our Copyright Act seem to be fair and balanced. The provisions are seemingly consumer friendly but leave many questions unanswered especially with those relating to enforcement. The terms used like “trivial circumvention” and effective measures are vague and may lead to large number of cases being filed in the long run.

### **Copyright and Information Technology Act**

To deal with the threats posed by and to regulate the electronic marketplace, India passed its Information Technology Act in 2000. The IT Act does not lay down any concrete framework or dealing with specific copyright violations on the internet. The inability of the Act to address copyright issues has been criticized as its one of the most glaring lacunas.

However there are some provisions that seem to deal with copyright issues as is apparent from Section 43 that relates to penalty for damage to computer, computer system etc. Besides this, Section 79 of IT Act provides for the limited liability of the Network Service Providers for violations committed by their clients, so long as there is absence of knowledge and due diligence on the part of Service provider.

Let us discuss these provisions in some detail. Section 43 of IT ACT reads:

“If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network:

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<sup>13</sup> <http://jiplp.blogspot.in/2012/12/indias-new-copyright-law-good-bad-and.html>

(a) accesses or secures access to such computer, computer system or computer network [or computer resource];

(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;.....

He shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.”

Thus the section in effect says that downloading of files from internet is punishable with fine. The section imposes liability in two ways.

First is when the user of a web site downloads the copyrighted material downloads the material from the site and uses it without authorisation. Second is more subtle form of liability arises when a viewer only views the website but does not download any material from the site. This is because whenever a viewer views a webpage a copy of the contents are saved in his cache memory involuntarily.<sup>14</sup>

The next important provision of the IT Act is Section 79. As per this provision the intermediaries such as ISPs cannot be forced to enter into agreement contrary to the provisions, or contracts that increase the level of responsibility cast on them by the provision. Any such agreement will be void ab initio. Thus normal principle laid down is that ISPs are responsible for any third party information and data made available by them.<sup>15</sup>

Section 81 gives IT Act overriding effect. The proviso however provides that nothing contained in IT Act shall restrict any person from exercising any rights conferred under the Copyright Act 1957.

In *Super Cassettes Industries Ltd. v Myspace and Another*,<sup>16</sup> court stated:

“Section 79 is, thus, meant for all other internet wrongs wherein intermediaries may be involved including auctioning, networking servicing, news dissemination, uploading of

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<sup>14</sup> Mohd. Salman Waris, Indian Information Act 2000 and Copyright Issues, Supreme Court Journal (2002)

<sup>15</sup> Mohd. Salman Waris, Indian Information Act 2000 and Copyright Issues, Supreme Court Journal (2002) 4 SCJ (j) pg 14 -26

<sup>16</sup> 2011(47)PTC 49 (Del)

pornographic content but not certainly relating to the copyright infringement or patent infringement which has been specifically excluded by way of proviso to Section 81.

This can be only possible harmonious construction between the two Acts which makes both the Acts workable.”<sup>17</sup>

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<sup>17</sup>Ahuja V.K, Intellectual Property Rights in India, Lexis Nexis, 2<sup>nd</sup> Edition, Pg 130