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Emerging Trends in Digital Copyright Law

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Abstract

In this digital world, our lives are incomplete without the use of multimedia, technology through phones, tablets, or computers. The advancement of digital technology is the finest creations by the human mind and with the increasing importance of electronic and digital media, there is easy access for everything that is provided on a digital platform which leads to copyright infringement. Thus, the importance of electronic and digital media needs laws to protect the owner of the copyright. Copyright is the main intellectual property rights that contains the rights possessed by the creators of literary or artistic work. The Copyright Act 1957 does not specify about the copyrighted work in the digital work but with the emergence of the use of technology in day to day lives the Copyright Amendment was done by the Copyright Amendment Act 2012 which gave attention to the copyright issues in the electronic and digital media, this protects different multimedia contents such as videos, photos, websites, memes, operating systems and many more.

Therefore, in the following paper we will be discussing about the laws that deal with copyright issues with special indication to digital exploitation in copyright, issues faced before the amendment of the Copyright Act in 2012, the digital Millennium Copyright Act, and issues of digital copyright laws, and how the copyright act has adopted new trends with the technological advancements and digital world.

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CHAPTER 1

Introduction

In general terms, Copyright is the type of intellectual property that protects creative work Such as songs, books, movies, sound-recording, sculptures and software, etc Copyright is the right to copy, it refers to the legal right of the Owner or creator of the intellectual property. Copyright laws Safeguards the rights of authors over their creation and protection of their creativity. The copyright protects the efforts of the Writers, musicians, designers, artists, and every other individual involved in the atmosphere of creativity. The symbol of copyright is © whereas for sound recording copyright symbol is p in circle. This symbol indicates that somebody legally owns the right to make and distribute copies of a particular work. Whereas in the legal world the intellectual rights are created

which are granted to a person for creative work, for any invention or discovery. The owners of Intellectual Property are granted exclusive legal rights to use their property without any violation and misuse of any kind. Intellectual property in India is governed under the Patents Act, 1970; Trademarks Act, 1999; Indian Copyright Act, 1957; Designs Act, 2001, etc. thus, copyright in legal terms though not defined in the Copyright Act 1957, generally means the “right to copy” which is available only to the author or the creator, or any other individual having the right to copy such. Thus, any other person who copies the original work of the author, creator, etc will amount to violate or infringement under the Indian Copyright Act, 1957. But under CHAPTER III, Section 13 of the Copyright Act, states some work in which copyright subsists:

1. Literary work including computer programs, including computer literary databases
2. Dramatic works
3. Musical works
- 4 Artistic work, sound recording, and Cinematograph films

The copyright law helps to regulate the creative artistic work and there use and exploitation of creative labor as well. It protects and promotes the authors, artists, composers, etc in the creation of original work a provision is made which provides the exclusive right to the original owner to do certain acts. The main principle of copyright law is that if anyone creates any

kind of original work by his skill, capital or labor shall for a limited period can enjoy an exclusive right to reproduce such work.

CHAPTER 2

Copyright and the Digital World

In the 20th century where technology is the utmost need in the lives of people and with the rapid growth in advancement in the digital world. Nowadays all the technological advancement is done for gaining economic benefit. And intellectual property rights have given a right over the property of the individual but the issue came up that whether the intellectual property gave the right to protect the digital work or not. The emergence of digital copyright came after the amendment in 2012 wherein the cinematographic work, lyricist of music, and many other digitalized works came into recognition. The adoption of digital copyright lead to piracy of digital work. Due to the Digitization, Now it easier to manipulate, reproduce, and distribute the protected works which means the content that is online on a digital platform can be altered, mixed and manipulated and combined easily as the internet is an open structure model and this technology enables the user to actively search and manipulated the information provided on the internet and by this users are becoming the authors. The item can be downloaded at any time and any place which eventually leads to the infringement of the real owner or the creator of the copyright as the contract made between the consumer and the owner are not able to restrain the infringement made under the digital world. At the time of the enactment of the Copyright Act,1957 there was not much advancement in the technology and thus the agreement for rights and exploitation was not made. Therefore, it becomes difficult for the copyright owners to protect their rights generally in multimedia. Thus, there was a need for Digital Right Management (DRM) which is used to reduce the level of risk and protect the copyright in a digital environment with the advancement of the technology. These DRM schemes are known as the control technologies, which enable authorized access to digital contents and restrict unauthorized duplication, modification of Copyrighted work such as software, music, videos, and movies⁹¹.

⁹¹ Editorial Staff. (2017, February 28). Copyright in the Digital World. Selvam & Selvam. <https://selvams.com/blog/copyright-in-the-digital>

Thus, the importance of electronic and digital media requires the laws which can protect the copyright owners and the creators, which was made after the amendment in 2012. Further, we will be discussing how these digital copyright laws came into effect broadly.

CHAPTER 3

Copyright Act, 1957 Amendments before 2012

The copyright Act, 1957 is the oldest legislation in the IPR in India and it has been amended five times before the amendment in 2012, each in the year 1983, 1984, 1992, 1994, and 1995 to meet the national as well as the international needs.

A few amendments were made in 1983 and 1984. However, keeping in view the latest developments in technology, especially in the field of computer and digital technologies, there was a new comprehensive Copyright Act. To bring in a new act the work commenced in 1987 and in 1990-91 a group was set up by the Ministry of Human Resource Development. The recommendations were given by the group were introduced in the Parliament and in August 1992, a motion for reference of the Bill to the Joint committee of both houses was adopted. On 24th August 1993, The Report of the Joint Committee and Bill along with the changes recommended by it were presented to the Parliament. The Joint committee had the views on various clauses of the Bill of a wide cross-section of members of public no-official organizations concerned with Copyright matters and experts. The Copyright Second Amendment Bill 1992 as amended and on 11th May 1994 it was passed by the House of parliament and on 13th May 1994⁹².

The Copyright Amendment Act, 1994

Now, focusing on the current scenario which is digitalized and according to Peter S Menell, digital uprising is the third of the technological invention which heralded considerable effects

⁹² Kumar, A. (1997). Problems of Copyright Enforcement in India (pp. 14–18).
[https://www.niscair.res.in/jinfo/JIPR/JIPR%202\(1\)%20\(Copyright%20Enforcement%20in%20India\).pdf](https://www.niscair.res.in/jinfo/JIPR/JIPR%202(1)%20(Copyright%20Enforcement%20in%20India).pdf)

on copyright protection. The first was the printing press which brought in the methods of "mechanically storing and reproducing works of authorship, such as photography, motion pictures and sound recordings. Second was the advent of broadcasting, where it enabled to perform the work of an author at different locations. The "Digital Media is the new mode of expressing the creative work. This is made possible by computer programming and digital sampling. This has empowered anyone with a computer and an internet connection to flawlessly, inexpensively, and instantaneously copy or reproduce and distribute the work. This technological change is the greatest challenge to the copyright law.

CHAPTER 4

Gist of The Copyright Amendment Act, 2012

In May 2012, the Indian Parliament unanimously placed their seal on the Copyright Amendment Bill, 2012, and enacted the Indian copyright law into compliance with the World Intellectual Property Organization "Internet Treaties".

The 2012 amendments make Indian Copyright Law with the Internet Treaties – the WIPO Copyright Treaty and Performances and Phonograms Treaty WPPT⁹³.

1. **WIPO Copyright Treaty:** The WIPO Copyright Treaty is an agreement that is covered under the Berne Convention which deals with digital environment protection of works and their authors right in it. Any Contracting Party must adhere to the substantive provisions of the 1971 Act of Paris of the Berne Convention to protect the artistic and literary work.

The WCT has two subject matters to be protected by copyright for the digital era

- (i) computer programs
- (ii) compilations of data or databases

Treaty also grants:

⁹³ Panday, Abhay. (2013, January 22). Development In Indian IP Law: The Copyright (Amendment) Act 2012. <https://www.ip-watch.org/2013/01/22/development-in-indian-ip-law-the-copyright-amendment-act-2012>

- (i) the distribution rights – is the right to give authority to the public by distributing the right of the original and copies of a work through sale;
- (ii) the rental rights – it includes the right to ensure commercial rent to the public for the original and copies of the work of three kinds such as computer programs, cinematographic works;
- (iii) broader communication rights to the public – to communicate to the public, through various means such as wired or wireless mode.
 - (i) **Treaty WPPT** - The Performances and Phonograms Treaty deals in the rights concerned with digital environment which are basically of two kinds performers such as actors, singers, musicians, etc; and
 - (ii) Producers of an individual or any legal entity that have the responsibility for the fixation of sounds.

Treaty grants performers economic rights in their performances such as:

- (i) the right of reproduction - is the right to provide direct or indirect reproduction of the phonogram in any form.
- (ii) the right of distribution- is the right to give authority to the public by distributing the right of the original and copies of a phonogram through sale.
- (iii) the right of rental- it includes the right to ensure commercial rent to the public for the phonogram.

CHAPTER 5

The Copyright Amendment Act, 2012

The amendments introduced through the Copyright (Amendment) Act 2012 are:

1. **Amendments in rights in artistic works, cinematograph films, and sound recordings**⁹⁴: These amendments were particularly made to address the technological issues particularly the issue of storing and challenges the digital era. 14th section of the

⁹⁴ Development In Indian IP Law: The Copyright (Amendment) Act 2012. (2013, January 22). Intellectual Property Watch. <https://www.ip-watch.org/2013/01/22/development-in-indian-ip-law-the-copyright-amendment-act-2012/#:~:text=In%20May%202012%2C%20both%20houses>

Act has been amended which provides the exclusive rights in respect of work and by this amendment is clarifies the rights in relation with the artistic work, sound recordings, and the cinematograph films which provides the right to reproduce or to make a copy of the artistic work and cinematograph films or to store a sound recording by any electronic medium. The definition section was also amended, **2(f)** the definition of cinematograph films has been amended and the amendment also introduces a new definition of visual recording in the **clause xxa**.

2. **WCT and WPPT related amendment to rights:** The amendment is made under section 14 which related to the meaning of copyright which provides the right of commercial rent to sound recordings and cinematograph films by amending the word hire by replacing it with commercial rent and further providing the right to sell or renting the copy of the sound recording of the film.

The Amendment has also introduced the definition of ‘commercial rental’ which clarifies that the right does not apply to activities that are non-commercial, giving ‘hire’ which includes the activities of educational institutions such as libraries. These amendments also focus on the performers rights by amending section 38 which guaranteed negative rights and thus section 38A was introduced which provides an exclusive right to:

- a. Make sound recording or visual recording for performances
- b. Reproduce or store it in any electronic medium or form
- c. Issue copies to the public if not already circulated
- d. Sell or give as a commercial rent

These rights enable the performer to earn royalty and thus by these amendments these negative rights have been changed into a positive one.

3. **Author-friendly mode of Assignment and Licenses:** The main focus in this part is given on the assignment of rights, in this amendment a second proviso is inserted under section 18(1) which states that no assignment shall apply to any mode of exploitation that was not in commercial use when it was made. Another proviso was also made **for the authors of literary or musical work that are incorporated in sound recordings or cinematograph films shall not receive royalties in any other form apart from there**

part of a film or recording. Thus, the main objective of this amendment is to strengthen the authors from any kind of exploitation from work that exists in any mode or form⁹⁵.

4. **Amendments related to Access to Works:** These amendments include Grant of Compulsory Licenses, Grant of Statutory Licenses, Administration of Copyright Societies, Fair Use Provisions, Access to copyrighted works by the Disabled Relinquishment of copyright. Under the compulsory licenses the amendment was made under section 31 and by this amendment amplifies applicability from the Indian work to any work and license can be granted to such person as the board may decide. Statutory licenses were included which provide a license to any person who desires to make a cover of a sound recording in respect of any literary, musical, or artistic work by inserting a new section 31C, but it also stated that the person making such cover version shall give prior notice to the owner in the prescribed manner. Administration of Copyright Societies, sections 33, 34, and 35 deals with such societies Which focused on their functioning. All these societies have registered themselves fresh for 5 years. Also, there are specific amendments made to protect and favor the authors under section 35. The amendment made under the provision of fair use will not lead to infringement of copyright under section 52 and with this amendment the provision of fair use has been extended to the sound recordings and the cinematograph films as well as it is extended to the digital environment and this provision ensures that the technological advancements will also be covered under this context.
5. **Strengthening enforcement and protecting against Internet piracy:** Under these three main concepts were focused namely Strengthening of Border Measures, Protection of Technological Measures, and Digital Rights Management Information The amendment under Strengthening of Border Measures includes section 53 which deals with the importation of infringing copies by restricting control over the imports by the custom department. Under the Protection of Technological Measure, a new section was introduced section 65A, this measure is used by the owner or the creator of

⁹⁵ Ghosh, J. (2018). Emerging Trends in “Digital Environment” Under The Indian Copyright Regime’ Impact of Social Welfare Schemes among the PVTG’s in West Bengal View project Rule of law Vis-a-vis Human Rights in India with Special Reference to child View project.

the copyright to protect the right in relation to the work. under Digital Rights Management Information, section 65B has been introduced to provide protection for RMI which is defined under section 2 clause (xa) these were introduced in WCT and WPPT as an effective measure to prevent infringement of copyright in the digital world. Sections 65A and B came into effect to help the music, film, and publishing industry to fight against piracy⁹⁶.

6. **Reform of Copyright Board and other minor amendments:** Section 11 was also Amended which relates to the board's constitution which earlier comprises members up to 14 which now consist of a chairman and two members also a provision was also introduced in the areas of payments and salaries too.

Thus, all the amendments that were in 2012 were best possibly made for the digital environment and with this present amendments, India is among a few countries which have extended the fair use provision and rights to the digital era.

CHAPTER 6

Challenges faced by Copyright in the Digital World

The four main challenges that are faced in the digital world include copyright and internet, multimedia work, social media, and software.

1. **Copyright and internet:** The Internet is the major threats to copyright for a long time. Copyrighted works on the internet include many things such as news, stories, images, graphics, e-books, videos, and many more. The ocean of information available on the internet makes it difficult to determine whether the work is a duplication or copy of the protected work. It is a myth that the information extracted by the internet can be copied freely. But it is not so, unless the information is made available by the government, or the term for copyright has expired, or the holder of the copyright has surrendered his right.

⁹⁶ Meeta. (2012, May 23). Analysis of the Copyright (Amendment) Bill 2012 — The Centre for Internet and Society. Cis-India.Org. <https://cis-india.org/a2k/blogs/analysis-copyright-amendment-bill-2012>

2. **Multimedia Work:** The concept of multimedia is wide and within itself and consists of several categories which include text, sounds, audio, images, graphics, presentations, live videos and performances, and many more.

The Copyright protection is available to multimedia under literary work under software program, artistic work that includes images, cinematographic films which means films or videos, dramatic plays, sound recording which includes musical works and photographs and thus the Protection of rights of the creators of the Copyright becomes difficult due to the variety of rights available to copyright owners under the ambit of multimedia.

3. **Social Media:** Social Media platforms have the prominent modes which connect people across the globe. This platform involves the sharing of work which may be copyrighted. The practice of sharing materials such as images, photographs on Social Media has resulted in infringements of copyrights. All the false material that is posted and available on social media is free, fed by an ignorance of the presence of copyright in such works is a major cause of such infringements. Copyright violations on Social media platforms can be in the form of: Re-posting, saving, or sharing of works protected under Copyright which is done without the owner's permission.

4. **Software:** The Software consists of a collection of computer programs, procedures, and documentation that help in performing the tasks for computer systems. Software piracy is the major reason for copyright infringement which involves the copying and distributing of copyrighted software that is unauthorized.

Software Piracy involves Creating a copy and selling it, Renting the software, selling of computer hardware machines with pre-installed or pre-loaded pirated software, and Copying of software programs using CD-R technology.

CHAPTER 8

Remedies against Infringement in Digital Environment

The infringement under the Copyright in the digital domain has given a boost to preventive measures which ensure the rights and interests of the owner are protected in the digital domain.

Some of the remedies are:

1. **Digital watermarks:** it is the easiest way to protect the work of the creator of Copyright as it helps the owner to trace his work and prevent it from duplication. watermark technique is in the original work of the author in this way the unauthorized copying of the work can be detected.
2. **Blockchain technology:** in this technology, each transaction that occurs, the parties agree to details to encode it into the block of digital data which is uniquely signed or identified. due to its functioning, it is considered as an excellent technology to resolve the problem of copyright in the Digital Domain.
3. **Access control and copy control:** this software enables the user to check the creator or his illegal use of work.

There are also some international treaties and conventions that protect the copyright issues in the digital domain such as the world copyright treaty, 1996, WIPO Performance of Phonogram treaty 1996.

CHAPTER 8

Complications in Relation with the Digital Environment

Numerous factors create complications in association with the digital environment. In our lifestyle, only time and economy are the main areas of concern these days and by the use of technology and the emergency of the digital world both are saved accordingly. Even though all the protection is taken into consideration by the original owner to avoid the infringement of copyright in the digital world but despite this precaution manipulators or the third party manage to infringe the original work. This manipulation leads to a huge amount of the loss over the control of data. This intervention by the third party causes a greater amount of loss in the online or digital media as compared to the offline medium as the internet can provide everything by the third party which can be shared by the people without knowing to the original owner which somehow infringes the real owner's rights.

The same problem is faced at the international levels too, the global copyright networking also faces the same issue, and to overcome these problems copyright, there is the urgency of some substantive laws concerning the copyright law for international jurisdictions.

The copyright laws were first established when it was difficult to make handwritten copies and after the technological advancements such as the printing press lead to infringement at large scale. Thus, the modern copyright law was first affected by the inventions of the photocopy machines and then the audio recording, visual recording, computer, internet came into flow with the digitalization that made the infringement much easier. And with this technological advancement, the infringement can take place even where even a large investment has not been made.

Therefore, the system of sharing files can be a new challenge in the future in copyright law, the legal remedies that are available to the copyright holders are straight forward which gives the owner the right to stop the control of copying the work. In the copyright law, it is said that the idea cannot be protected but only the reproductive work can be protected and this work comes with the involvement of skill, labor, and judgment.

CHAPTER 9

Conclusion

The digital world needs more attention in the copyright laws. The laws and the practical situation create different views in the minds of the creator and the author which is somehow divergent. The advancement in technology is rapidly growing that the infringement cannot be restrained by the laws made. The main contract of reproduction of work and the assignment of work are different. The open-access of the copyright called copyleft doctrine to face the alarming situation to some extent and in the same way the work for hire doctrine has not given the status of assigner and assignee of the work and this led to infringement of work.

The technological advancement leads to supplement the contract between the owner and the author, similarly the provision of fair use limits the scope of copyright work. Thus, the conflicting zone of technology and the legal system has created challenges in the digital era of

advancements and due to this, it can affect both the technology and the legal scenario in the near future.

Therefore, all the problems shall be taken into consideration which will give benefit to the public at large in the digital domain. The main idea is to protect the original work despite the technological advancement and the digitalization this will further help the researchers, students, teachers, authors, etc to ascertain the original work and to take permission from the owner of the copyright.