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PROTECTION OF COPYRIGHT IN INDIA : CHALLENGES AND PERSPECTIVES IN DIGITAL ERA

Dr. Kashinath S. Neharkar

1.0 Introduction

The Copy right is recognized as basic form of intellectual property. The intellectual property is equally important like any form of traditional tangible property. Therefor effective protection intellectual property is sin quo non in new era of information and technology. The copyright is supreme right of creator. It is his inherent right as he is creator of such work. The copy right provides right of reproduction to author. It provides bundle of rights like multiplication, right to publish, right to sale, to give on hire, adaptation right etc. It further economic and moral rights to author to exploit his work more effectively. This right is available for limited period; therefore, author should be provided with effective protection to save his labour and fruits of his labour from unauthorized dealing of his work by infringers. The copy right is easily prone to infringement. The Author of copyrightable work need more effective protection.

The 21st century witnessed dynamic advancement in information and technology. The world is really becoming as global village. The technology brought all the information of the world on palm of human hands. The copy right infringement with help of xerox and typing became outdated concept. The infringers can infringe copy right with help of new tools and techniques. The researcher has made this attempt to analyze and discuss the problems and perspectives relating to protection of copyright. It further tried to explore the new challenges posed by information and technology in protection of copy right.

2 Significance of Research

The Intellectual property is property created by human being with help of nothing but human intellect. These are immaterial creations of human brain. It played very important role for development in all spheres of human life. It helped for scientific, technological, industrial, medical and medicinal development. The human being is enabled to live life with all comforts and leisure only due intellectual property.

The copy right is related to creation of knowledge. This right is created when idea is expressed in the recognized forms as like literature, artistic, dramatic work etc. on

tangible medium or digital medium. The protection of copy right gives exclusive rights to author or owner to exploit his work to fullest extent through all modes and methods known to him. The infringement of copy right causes huge economic loss to author by illegal competition by infringer and discourages author from creating new knowledge. Therefore, the copy right must be effectively protected.

3 Literature Review

The infringement of copy right is burning topic of debate and discussion. followings are the relevant books and articles which are focused on problems and perspectives of copy right infringement. Mr. Roger Mwangi Gachago in his article Effect of technology on copy right[1] expressed that.... the current digital era poses the biggest challenge copyright legislation has had to face in its history with technology enabling copyright infringements of a scale that by far exceeds all other periods combined. It means the increased infringement in digital era is global concern.

Juhi Saraswat and Rekha Chaturvedi, in their research article Copy right in Digital Environment: An Indian Perspective and International Obligations, expressed their concern over unfair use and illegal downloading copy righted material from internet.[2]

Fareed Ahmad Rafiqi & Iftikhar Hussian Bhat in their significant work entitled Copyright Protection in Digital Environment: Emerging Issues, published in International Journal of Humanities and Social Science Invention, expressed their opinion that The Internet enables the nearly-instantaneous, original quality reproduction of and world-wide, lightening-speed dissemination of copyrighted works. The above arresting features of Internet make itself emerge as "the world's biggest copy machine"[3]

4 Objectives of Research

1 to analyze the problem of copy right infringement in the era of information and technology.

2 to explain new techniques or instances of copy right infringement.

3 to find out solutions for effective protection of copy right in India.

5 Hypothesis

The researcher has framed following hypothesis for conduct of present research :

1) The copy right is easily infringed due to technological advancement

2) The strict implementation of Copy right Act is needed for better protection of

copy right.

6 Research Methodology

The research methodology plays vital role in conduct of any research. The present research conducted with the help of doctrinal research methodology.

Discussion

Concept of Copy right

The concept of copy right is related to legal rights of author of work. This right is inherent right of author as he is creator of work. The regime of national and international laws recognized this right as supreme right of author. The copy right is right related to multiplication of copies of work. The Copy right is bundle of rights. It provides economic and moral rights for author.

According to Merriam-Webster Dictionary[4] copyright is the exclusive legal right to reproduce, publish, sell, or distribute the matter and form of something (such as a literary, musical, or artistic work). It means the copy right includes multiple rights like reproduction, publication, to sale, to distribute the work like literary, musical or artistic work.

According to Section 14 of The Copy Right Act, 1957, the Copy right means exclusive rights to do or to authorize to doing different acts in respect of different works as mentioned under Clauses a to e of Section 14. These acts include reproduction, to sell or give on hire or its adaption from one form to another form etc.[5]

International instruments for protection Copy right

The Statutory protection provided to copy right is limited to territory of legislating nation. E.g. The Provisions of copy right Act 1957 is applicable to Indian Territory only. The Scope of copy right is not limited to territory of particular nation only. It can be worked in any nation irrespective nation where the work is created.

The international instruments for protection of copy rights are nothing but treating and agreements entered between contracting nations for providing mutual protection to copy right work of authors from contracting nations. The Berne Convention, 1886 was the first convention providing literary and artistic work. This convention provides for recognition and protection of copy right of authors from member states.

The Universal copy right Convention, 1952 was entered to introduced universal copy right system to facilitate wider dissemination and increase international

understanding for protection of copy right.[6] The TRIPS Agreement, 1994 is another vital instrument protecting copy right or trade related intellectual properties of authors. Another important instrument made for protection of copy right is World Intellectual Property Organization copy right treaty.

Copy Right Protection in India

India being signatory to international instruments like TRIPS, WIPO, WTO is under obligation to protect copy right of authors. The Copy Right Act 1957 is first full-fledged law for protection of copy right in India. The Act provides protection to expression to original literary, scientific, musical, artistic work. Chapter II of the Act provides registration mechanism for registration and recognition of original work.[7] Chapter III of the Act deals with definition and subject matter of copy right. Chapter IV of the Act deals with determination of ownership and rights of owner. Chapter V of the Act deals with determination of term of copy right protection. Chapter VI deals with provisions relating to issuing of compulsory and voluntary licenses. Chapter VII of the Act deals with creation of copy right societies and their rights and their obligations. The Chapter VIII deals with rights of broadcasting organizations and performers. Chapter IX of the Act deals with concept of international copy right. Chapter X of the Act deals with mechanism for registration of copy right and procedure for registration.

Chapter XI and XII of the Act is very crucial for protection of copy right in India. Chapter XI deals with concept of infringement copy right and acts which can be termed as infringement and acts which are exempted from infringement. In brief infringement of copy right is unauthorized use of exclusive right of authors. The Chapter provides various modes through which copy right can be infringed. The concept of fair use is one of the exceptions to infringement. The Chapter XII of the Act provides civil remedies for protection copy right. This chapter provides provisions conferring remedies to author to enforce his rights. Chapter XIII provides offences and penalties to deter the potential infringers and try to keep them away from violating rights of authors.

Copy right in Information and Technology Era

The Copy right is right relating to making copies of work. This include production, reproduction, adaption, distribution, to sell and to give the copies on hire. The work of making copies before information and technology era was quite difficult. The xerox machines, typewriter etc. were the devices used for making copies whether legal or illegal. The work was published through programmes making work available through printed and published copies.

The present century is known as century of information and technology. The

inventions in the field of information and technology opened new horizons for communication. The world really became as global village. The information can be communicated within fraction of seconds through email, social media like WhatsApp, telegram, Instagram etc. The multimedia devices like mobile, digital camera, scanning apps reduced difficulties of making copies of work. It is very easy to infringe copy right by unauthorized dealing with work of author.

Constitutional Right to use information and technology vis-a-vis infringement of copy right

Indian Constitution is supreme law of land. It provides constitutional mechanism for governance. It provides rights and liabilities of many institutions established under it. The Part III of Indian Constitution provides Fundamental rights of peoples. The basic right of subjects like food, shelter, clothing, education, medical treatments are recognized and protected through constitutional rights. The liberal interpretation of Article 21 by supreme Court of India is evident of protection of rights. The right to information is declared as fundamental right under Article 19 (1)(a) of Indian Constitution and Consequently Right to Information Act was enacted in 2005 to impose obligation on government and public authorities to provide access to information.

The continuous advancement internet technology witnessed launching of fifth generation of information and technology. It became inseparable part of life of human life. The use of internet and information and technology is on verge of becoming fundamental right. This development introduced many opportunities for copy right infringement whether intentional or innocent. The devices used in the course of information and technology can be misused for infringement of copy right.

New challenges of copy right infringement in Information and Technology Era

Infringement of copy right is unauthorized exercise of any right out of bundle of copy rights conferred on author. Gone the days, where making copies of work was cumbersome task. Initially copy of literary, scientific work or artistic work was made by employing persons acquainted with skill of making copies. It was manual work. In some cases, carbon papers were used to make copies. The typewriter is invented first in 1868 by American inventor Christopher Latham Sholes[8]. The first xerox machine was invented by Chester Carlson in 1938 and came in to market in 1959[9]. These two events proved land mark development in work or copying. The Copy Right Laws enacted at contemporary time tried to prevent misuse of such machines for infringement of work.

Now with the advent of information and technology, internet base social media and communication, the work of copying is drastically changed. It extended easy access to work and provided opportunity to everyone to deals with work. This era created new problems and challenges to tackle the problem of copy right infringement. The researcher is trying to analyze some of these problems and challenges with help of following instances.

Use of Advanced Computer devices for piracy or duplication

The invention of computer is magic machine that eased many works many spheres of human activities. Computer is machine which can perform the activities with help programmes and direction. There are many advanced computer devices that are used for making unauthorized copies, its sell or its distribution. The Coping and writing device of computer is usually used for making pirated copies of books and movies. The Compact Disks called as CDs, Digital Versatile Discs Called as DVDs, Pen Drive the mostly used device are some of advanced computer devices which can be easily misused for making unauthorized copies. The computer devices are used to adapt the copy right work from one form to another. The soft copy made with help of computer can be used for infringement.

There is huge hue and cry in Bollywood and film industry against piracy of movies and television serials. As per the news cited by news website[10] the Bollywood is facing huge loss due pirated CDs and DVDs. As per the study cited in news at above website .... India's entertainment industry loses $4 billion, and 800,000 jobs, each year, because of piracy[11]. The Indian Government with response to demands for protection amended the Cinematograph Act 1952 to make piracy as punishable offence with three-year imprisonment.

Internet

Internet is platform for virtual communication of information, its publication and distribution. It replaced the traditional methods of publication and distribution by through hardcopy of work. With the help of added features like email etc. the copy right work can be sent to others without obtaining permission from author. The are many websites which provide platform for uploading and downloading the infringed work in the form of pdf of books, novels, movies in soft copy, songs in mp3 or mp4 form. The internet technology is best and cherished way for communication but still it is used in illegal form to infringe the copy right.

Social Media

Social media communication is landmark development in communication technology. The social media apps and websites like Facebook, WhatsApp,

Instagram, Snapchat, telegram changed the concept individual communication to mass communication, communication in physical presence to virtual communication. The infringed work can be share to unlimited number of group participants within few seconds. The user can share photocopy of book, video of work or copy right work in soft copy. The user of social media is infringing the copy right work whether innocently or intentionally.

Live coverage features of social media

Live coverage of event comes under broadcasting right of broadcasting right[12] holder. Originally this right vest with author. The broadcasting or live coverage of incident for the purpose of news may not infringe copyright[13]. The task of live coverage before the invention of social media was difficult task. It was the work performed by skilled professionals. The News Channels, sport broad casters or TV channels holding right broadcast. Now the position is totally changed. The use of social media for live coverage is on pick of the time. The social media has live coverage facility. The Facebook has Facebook live feature. The YouTube has YouTube live feature. WhatsApp, Instagram, telegram and the number of available social media apps have live coverage feature which can be easily used for live coverage of performance of copy right work. It may result in infringement. The fact to be noted that this is very serious issue which is very much difficult to control and regulation despite of copy right law in India.

Use of Multimedia Mobile handsets

Gone the days, when one has to visit to photographer to make photo of himself, or copy of photo graph from original. The task of photo graph was skilled professional job and hence protected as copy right. The right was conferred of photographer to use, make copy of such photo graph. In the same manner gone the days, where one has to purchase audio cassettes to listen different types of songs including movie songs that were made by authorized sound recording companies like Tips, Venus, T Series etc. The recording of sound was original skillful, professional work and therefore entitled copy right for work of sound recording[14]. The author could enjoy all economic and special right that are protected by Copy Right Act 1957. The work of making copy of such recording was also difficult and was done by authorized person.

Now with the technological advancement in communication and devices used for such communication like multimedia handsets with features like high resolution camera, sound recording, Bluetooth, Wi-Fi sharing, sharing software etc. has enabled used to perform above task within second at tips of fingers. This is resulting in mass copying or mass infringement of copy right. The rights of author in

these fields are at huge risk.

Scanning Software

The making of copy is basic right of author in the field of literary, scientific, artistic work, photographs. The authors get income in the form of royalty by making, selling or by authorizing others to perform his rights. The publishers of work make the copies of work then makes it available to public to purchase from market. This task includes the work or printing, binding the books etc.

The scanning software is new features available in multimedia devices. This is outcome of advancement in information and communication technology accompanied with fifth generation technology of internet. The scanning software can easily help to scan thousands of pages with multimedia devices or mobile handsets. The copy so scanned can be easily sent to number of persons who desires to get the copy. This massively affected the printing, publishing of books industry. There are thousands of boos available on google search in pdf form, which are made without consent of author.

7 Conclusion

The change is law of nature. The change and development in information and technology brought dynamic changes in legal system also. The Copy right Act 1957 through recent amendments introduced many measures for protection of copy right in the era of information and technology. The prevention of copy right infringement through xerox machines or type writing machines was somewhat easy task, but with introduction of internet, information and communication modes are drastically changed. There are many laws, Acts and treating made for protection, still providing 100 percent guarantee against infringement will herculin task for government. Its total surveillance and prevention of copy right infringement is impossible unless the cooperation from peoples by becoming law abiding peoples. They should learn law relating to copy right. They must respect the creators right.

8 Suggestions

1. There must be effective awareness about infringement of copy right in the course of use of information and technology to avoid innocent infringement.
2. The easy and accessible mechanism must be introduced for creators of work to adapt their work in digital form and make it available to public for economy price.
3. The new tools must be effectively used to prevent digital piracy of work.

Endnotes

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https://www.merriam-webster.com/dictionary/copyright accessed on July 1, 2021.

Section 14 Of the Copyright Act 1957 runs as- Meaning of Copyright. — For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof.....

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Section 10 of Copy right Act.

http://www.smithsonianeducation.org/scitech/carbons/typewriters.html last accessed on July 6, 2021.

https://www.npr.org/2013/10/23/239241106/happy-birthday-copy-machine-happy-birthday-copy-machine last accessed on July 6, 2021

https://www.voanews.com/archive/indian-film-industry-bollywood-steps-fight-against-piracy last accessed on July 6, 2021.

Ibid.

Section 37 of Copy right Act 1957 - Broadcast reproduction right.

Section 39 of Copy right Act 1957 - Acts not infringing broadcast reproduction right or performer's right.

Section 13 of Copy right Act 1957 -Works in which copyright subsists. .....© sound recording.