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**ISSUES OF INTELLECTUAL PROPERTY
RIGHTS WITH DIGITALIZATION AND RISING
USAGE OF INTERNET**

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ABSTRACT

This article includes increasing issues of Intellectual property Rights which are related to digitalization and rising utilisation of the internet. The internet presents two basic difficulties for an Intellectual property right administrator: What to manage and how to manage. The expanded use of the internet is presumed to be a bigger challenge to Intellectual Property Rights protection in the future. While the Internet is ready to go for a colossal jump in the nation, there are no efficient and possible solutions for Intellectual Property Rights issues of the internet since empirical know-how and education regarding such issues are very restricted and extremely confined. This article deals with the current scenarios and issues related to Intellectual property rights which are rising due to the increasing usage of the internet in the country.

INTRODUCTION

The rising utilisation of the internet and web leads to issues pertaining to Intellectual Property Rights assurance and safety which are extensively vital in the present scenario. Today the country is indomitable with the enormous project and effort of infrastructural development for the accessibility of the internet and thus demand can be taken into account in a period few years. Access of the Internet will get possible at each and every place or sight of India. Lying of fast national media communications foundation and arrangement of sufficient and suitable phone lines are some issues of greatest importance.

Private internet services will give India a huge exposure to becoming a superior and considerable internet user in the world. The developing and expanding use of the internet in India is supposed to bring greater challenges to the field of IPR protection. While the Internet is ready to go for a colossal jump in the nation, there are no efficient and possible solutions for Intellectual Property Rights issues of the internet since empirical know-how and education regarding such issues are very restricted and extremely confined. Issues related to Intellectual property rights are still there but they are present in the theoretical field not in the field of practicality. This article deals with the current scenarios and issues related to Intellectual property rights which are rising due to the increasing usage of internet in the country.

PRESENT ISSUES OF IPR IN INDIA

The copyright law is the utmost adequate and effective instrument that is available nowadays for dealing with the issues of Intellectual property rights on the Internet. The Indian Copyright Act which was enforced in 1957 was drastically changed and amended in 1994. Due to such amendments, the Copyright Act is considered to be an act of parliament that is capable enough to handle the persistent copyright issues of digital technologies including those issues also which are related to the internet. By evacuating certain prohibitive clauses and phrases and by extending the explanation and interpretation of works like cinematograph films and sound recordings to include such works in “any medium” within their scope, the copyright act has adjusted and altered itself in the digital age. However, it may, has not included all the facets or aspects of issues related to digitalization that are arising at present times.

One of the main copyright issues on the internet is creating an edge in the middle of public use and private use. Like all copyright laws of the world, the Indian copyright act likewise makes a discrepancy between the reproduction of public use and private use. Reproduction for public use can only be done after the owner’s permission. however, there is one exception to this right given to the owner i.e., fair dealing which is certainly allowed by law. This edge becomes insignificant and immaterial since it gives an ability to an individual to send copyrighted work or material to plenty of users through the internet from his/her home and users are perfectly capable to download simultaneously a perfect copy of work sent to their homes through the internet. The eroding difference between public use and private use is the main reason why several people feel to have the requirement of a new set of norms and laws in copyright.

Another issue at present is publishing. With the increasing industrial revolution and era of mass production, creators and publishers of books and music have made their quality and existence felt. Their presence has become so meaningful and significant that writers could not think of a world without them. The Internet basically has become that substantial medium that has eliminated or evacuated the intermediary between the writer and his/her reader. whatever the author puts on the internet can be easily and readily accessible to the readers. The arrival of the printing press gave birth to the publishing industry i.e. the internet, by giving the ability of publishing to every writer, and it is certainly a warning bell for that industry. This fact raises the issue that whether making work accessible on the internet directly is publication or not. As per the Indian Copyright Act, publication means “*Making work available to the public by issue of copies or by communicating the work to the public.*” This definition by ideals of its non-

limitation can be interpreted as covering electronic publishing and in this manner, publication on the internet.

The issue that communication over the internet is communication to the public is still an unanswered and undecided issue. According to Indian copyright act “ *Communication to the public*” means work accessible for being seen or heard or in any way enjoyed by the public directly or using any of the means to show or diffusion other than giving duplicates of such work whether or not any individual from people in general really observes, hears or in any case appreciates the work so made accessible”. This definition is pretty clear and detailed enough to understand that communication over the internet is within its scope or framework. Considering this angle, the internet access providers in our country are going to have a difficult time understanding and analysing the copyright over the content of the internet.

Distribution right represents another issue. In most copyright laws including Indian laws also, the distribution right ceases or ends after its first sale. In the current scenario, a student has an option now to sell his / her second-hand textbooks or Library do have an option to circulate its books which the library has purchased among its members. In the world of the internet, the distribution gets confined to reproduction as not even a single copy can be shared without reproduction.

The issue of the right to reproduction gives certain elemental problems. This appears out of the foundation of internet transmission. Reproduction happens at each progression of transmission. Temporary copying is also known as caching is an indispensable part of the transmission process through the internet without which messages will not be able to travel through the networks and reach their destinations. In any event, when a user just needs to browse through, impermanent duplicating happens on the user’s PC. Inclusion of the transitory multiplications and temporary reproductions was an intensely discussed issue in the World Intellectual Property Organization (WIPO) Diplomatic Conference of December 1996 and has stayed uncertain and inconclusive to date. When a reproduction happens over the span of approved utilization of the work and whose object is exclusively to make the work recognizable or where the multiplication is of a transient or accidental nature, should it be restricted? According to the Indian law, “*reproduction must be in a material structure however includes storing it in any medium by electronic methods.*” Case laws are yet to explain whether the multiplications occurring in the Internet communication go under the domain of the right of reproduction given

by the law and until that is done, sentiments will fluctuate on the legality of temporary reproduction.

One of the most vital and significant issues from the facet of copyright enforcement is a liability. There is the issue of liability for acts that happens over the span of transmission of a lawful (as unmistakable from an encroached) duplicate of a work. As mentioned earlier this issue depends certainly a lot on the interpretation by the judiciary of various rights given by law. At any time, the judiciary considers that reproduction, etc that occur in transit is a violation of copyright, then at that point, a query will arise regarding fixation of liability. Who is to be considered answerable and responsible? The party who sends or transmits the work or party who gets it or the internet access provider? It will be a difficult question to find out.

Another important point in this issue is whether an internet access provider will be held accountable and answerable for the copyright infringement made by the reader even though he is not at all aware of the actions of the reader. While analysing this kind of situation, the considerate point is Indian copyright act makes the assumption that infringement or even abetment of infringement has to be made knowingly by a person. Now since internet access providers may not have any awareness of subscriber actions, and essential part in the Indian copyright act regarding infringement and abatement of an infringement is 'knowingly' by a person, Internet service provider may be absolved or acquitted from the liability and escapes punishment.

The previously mentioned angle, in any case, brings up another issue. That regardless of whether the Internet service provider isn't sentenced under the Indian law, he may at present be indicted under the national law of another country. Internet by its tendency is worldwide and can't be confined in national limits, how can one manage this? Since the systems are generally spread everywhere throughout the world and a message or data gets transmitted through any number of nations before it at long last arrives at its ultimate destination. The Internet service provider might not have any liability in the nation of cause and in the nation of goal yet may have risk in some nation in travel. This is a genuinely worldwide issue. In the consistent universe of the Internet, the implementation of national IPR laws which are limited by regional purviews hurls issues difficult to tackle.

Henceforth this zone on a direness premise requires global coordination of laws; if not done than the danger of risk in specific nations may make it necessary for the Internet service providers to inspect the material being transmitted for copyright clearance, which thus could

prompt a postponement in the entire procedure. The test isn't to hinder the progression of data however to quicken it. Each major mechanical improvement brings about a move in its example and the Internet is no exclusion. Better standards must be developed to fix obligations on the people concerned; a facilitator of Internet service may not necessarily be an abettor of copyright infringement.

CONCLUSION

Hence, we can conclude by saying that the Internet as a medium is an exceptionally unique medium. Its utilization additionally expected to be widespread in India with the legislature having goal-oriented plans of making it accessible all through the length and expansiveness of the nation. The private Internet service providers have taken on this task very earnestly.

The increasing usage of the internet will represent a significant danger to the Copyright Act as more up to date technologies and increasing digitalization will bring more complex difficulties in society. Protecting the interests of service providers, the originator of the main content and consumers is a significant test and a task. We get a reasonable understanding that the Indian copyright act alongside the amended copyright act is in a situation to confront the previously mentioned issues to a huge degree however there is a scope for additional to be done on this perspective.

The IPR administrator's uncommon test is the way to adjust the privileges of various players on the Internet like the content creators, the service providers, the access providers, etc. This must be managed without risking the free progression of data and information and simultaneously guaranteeing that the certifiable economic interests of the creators of intellectual property are not unfavourably influenced. The IPR rights on the Internet are dependent on this. When the IPRs on the Internet are chosen, at that point the test for the IPR administrator is the way to uphold them in the most cost-effective way.

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.
- Challenges to Intellectual Property Rights in Cyberspace by Subhasis Saha.

- 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
- Intellectual Property Rights (IPR) Disputes in Cyberspace: U.S. Hegemony and Chinese Resistance.
- Law and Internet Cultures by Kathy Bowrey.