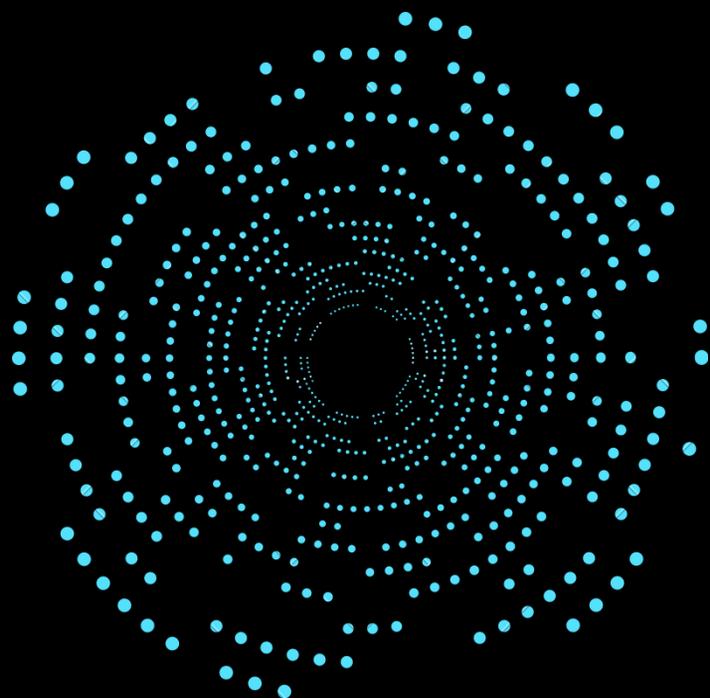


INTERNATIONAL JOURNAL ON CYBERSPACE LAW AND POLICY



VOLUME 1 AND ISSUE 1 OF 2023



INSTITUTE OF LEGAL EDUCATION



International Journal on Cyberspace Law and Policy

(Free Publication and Open Access Journal)

Journal's Home Page – <https://ijclp.iledu.in/>

Journal's Editorial Page – <https://ijclp.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://ijclp.iledu.in/category/volume-1-and-issue-1-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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The challenges and violation of Copyright in cyberspace

Author - Akash G, Student at Sastra deemed to be university, Tamilnadu

Best Citation - Akash G, The challenges and violation of Copyright in cyberspace, *International Journal on Cyberspace Law and Policy*, 1 (1) of 2023, Pg. 15, ISBN - 978-81-960677-4-8.

Abstract:

Technologies that are currently raising questions for copyright law are those that allow for the digital storage and transfer of works. The technological components in copyright law are reproducibility, dissemination of work, easy storage. And the basic challenges or issues in copyright in cyber space are 1) Determination of Public and Private Use of the copyrighted work, 2) Distribution and Reproduction Rights of the copyrighted work 3) enforcement of liability if infringement happens. These are some fundamental issues of copyright in cyberspace. In cyberspace infringement is happening widely due to the technological component mentioned above. Some violation of the copyright in the cyberspace includes linking and framing of website which may infringe creator's right and revenue and uploading and downloading of the copyrighted work with the authorisation is also an infringement under copyright laws. Peer to peer transmission is software network which allows any computer connected in that software can upload, download ay digital work. This may infringe the interest of the copyright holder. In Napster case the court held the landmark judgement regarding peer to peer sharing software namely 'Napster' against the defendant for violating the copyright. Thus the technological development which is the reason for the raise of issues in the cyberspace and violation of the copyright in the cyber space will be discussed in wide in this article.

I. Introduction:

In this digital era of globalization, the copyright plays an important role in protecting the interest of the creator. The copyright gives the creator a monopoly right to reproduce, distribute and translate the copyrighted work.

The Internet is an ideal platform for artists and authors to advertise their work, for the reason that of how easily information can be transmitted from creator to viewer and then from viewer to viewer. But with the development of the technology viewers can infringe his monopoly right the work of the creator without his permission.

In this digital era the use and accessibility of internet has widely increased. With the development of technology, everyone now has the right to share information and access the internet. The protection of copyrighted work in this digital era brings a fresh challenge in protection of the copyright. The advent use of the internet has increased the issue in copyright, since the copyright issue in cyberspace are more frequent and easier to do than in physical world.

This article tries to throw light on the issues and challenges of copyright in the cyberspace with the relevant provisions and landmark cases.

II. Technological issue that affects the copyright:

Any work, whether it contains text, images, photographs, or animation, can now be digitalized. The technologies that are currently raising questions for copyright law are those that allow for the digital storage and transfer of works. Some of these technologies' components that are significant for copyright law include the following:

A. Reproducibility:



When the work is uploaded in the digital form it can be duplicated quickly, in low-cost without decreasing the quality. The indefinite copy of the work can be made with duplicate without affecting the quality. Thus a single digital copy of a movie or song or book can be served to the thousands of people.

B. Dissemination of work:

The development of international digital networks has made it possible for digital works to be quickly and widely disseminated. Social media platforms and other digital networks make it possible to disseminate content to a large audience from a single location. Although broadcasting and digital work can reach only some people at a time. But each recipient can further distribute the work by the way of digital network.

C. Easy storage:

Digital storage is large and it is increasing with each year passing. Increasingly more material can be held in a smaller and less amount of space.

III. Basic copyright challenges in cyberspace:

A. Determination of Public and Private Use:

The fundamental issue in the copyright in internet is the determination of public and private use. Reproduction for the purpose of public use can only be done with the authorisation of the copyright holder; however the law permits a fair dealing for private use, research, criticism, or review. A new set of norms should be imposed when the razor-thin border dividing public and private territories begins to shrink. There are some concepts that consistently come up in discussions about the subject at hand.

The internet can be medium between the publishers and readers. The Internet is a medium that, in contrast to books, eliminates the intermediary between a writer and his or her reader. The author the upload his work on the internet and the reader can directly access the work. This may lead to question whether publication in the internet comes under the 'publishing'. According to copyright law "Publication" for copyright purposes, is defined as 'making a work available to the public by issue of copies or by communicating the work to the public.'¹¹ This definition effectively includes electronic publications within its ambit.

Also, the communication according to the act will come within the purview of electronic communication. If courts adopt this viewpoint ISPs (internet service providers) will have a tough time locating copyright content on the Internet.

B. Distribution and Reproduction Rights:

The issue of Distribution and Reproduction Rights deserves to be addressed in this context. The first sale or upload in cyberspace results in the extinction of the distribution right. Since no copy can be spread without reproduction, which entails reproducing the work on every transmission, there is no apparent distinction between distribution and reproduction on the Internet.

Over the Internet, the right of reproduction poses some fundamental issues. This results from the fundamental characteristics of Internet transmission. Every stage of transmission involves some form of reproduction. Temporary copying, also referred to as caching, is a crucial step in the Internet transfer

¹¹ Section 3 of Copyright Act, 1957

process that enables messages to move through networks and arrive at their intended destinations. The user's computer makes a temporary copy even if they just intend to browse. The World Intellectual Property Organization (WIPO) Diplomatic Conference in December 1996 saw intense discussion on the topic of coverage of transitory reproductions, but no resolution was established. According to Indian law the Reproduced works must be in material form, although they can also be "stored in any medium through electronic means." We continue to hold divergent views on whether or not reproduction is legal (whether it be temporary or permanent), but the matter is still undecided.

C. Enforcement of liability:

The issue of liability is a serious obstacle to copyright enforcement. Firstly, there is liability for actions committed during the distribution of legal copy (different from infringed) of work. It is always subject to the interpretation and aspect that the judiciary assigns to it. If such interpretation is that acts such as replication, etc., during the transmission stage are a breach of a copyright, then liability must be established. Who should be held liable? The one who starts the distribution of the work or the one who receives it or the ISPs?

Then we must consider the issue of distribution an infringing copy of a work. The question of liability is once again irrelevant; who is liable in this situation, the Internet service provider or the subscriber/user, because the ISP, for the most part, is unaware of the infringement committed by the subscriber/user. Section 79 of Information Technology Act "an intermediary shall not be liable for any third-party information, data, or

communication link made available or hosted by him."¹² A person must deliberately commit an infringement or assist in the commission of an infringement. Taking this into account, an ISP that has no knowledge of the copyright violation by the user (third party) may be exonerated of liability.

IV. Cyber law violations:

A. Peer to peer sharing:

Peer to peer (p2p) sharing is the network that shares digital data among the connected computers. This may lead to violation of the copyright by transmission the copyrighted work without the authorisation of the creators. Peer to peer sharing enables a network among the connected community where they can upload and download digital data without any decrease in the quality. The Napster is one of the landmark judgements in a cyberspace.

Napster allowed its users to: (1) store MP3 music files on individual computer hard drives available for copying by other Napster users; (2) search for MP3 music files stored on other users' computers; and (3) transfer exact copies of the contents of other users' MP3 files from one computer to another via the Internet. These functions were made possible by Napster's Music Share software, available free of charge from Napster's Internet site, and Napster's network servers and server-side software.

District Judge, Marilyn Hall Patel held that ".....the evidence establishes that a majority of Napster users use the service to download and upload copyrighted music..... And by doing

¹² Section 79 of IT act, 2000

that, it constitutes direct infringement of plaintiffs' musical compositions, recordings".¹³

B. Linking and Framing:

There are two forms of Linking hypertext linking and inline linking. 'Linking' is the practice of allowing a user, to move from one web site to another by clicking on a 'link'. Moreover, many a time's websites provide links to other websites or web pages by publishing their URLs. These links often supplement the user with helpful information, or resource related to the product and/or service being offered. The user may reach such websites or web pages by clicking on such URLs. Does one need permission from the website owner before publishing his URL? Would presence of such links violate the copyrights (derivative right) of the said owner? Does framed link create a derivative work?

In *Washington Post v. Total News*¹⁴, where the "Totalnews.com" website used framing technology to set a news story from other website within the overall Total News frame by blocking banner advertisements and other distinguishing features. The case was settled outside the court, since the defendant agrees to stop the framing.

Similarly, in *Shetland Times v Will*¹⁵, wherein the defendant (Wills) started an electronic newspaper, the Shetland News. When the Shetland News website is accessed, a reader would come across a selection of headlines and by clicking them, one may read the full were some hypertext links also, which would take

the reader directly to the story as p in the Shetland Times website, bypassing its home page in the process. Plaintiff claimed that its copyright had been violated. The interim injunction was given for the protection of the copyright.

C. Uploading and Downloading:

- **Uploading of Copyright Material** As it is easy and common for copyright material to be transmitted over the Internet; many Internet users assume that the fact that a material is available electronically entitles them to upload it to their own websites.
- **Downloading of Copyright Material** Once the unauthorized copyright material has been uploaded and made available; the next possible thing is that Internet users will download it from the internet. There is little doubt that users are liable for downloading such material without the authority of the copyright owners.
- However, copyright owners are reluctant to bring actions against millions of individual infringers. Much of the attention has been paid to the possibility of holding liable those parties who provide the equipment or facilities used for infringing activities.

In the case of *West in Kelly v. Arriba Soft Corp*¹⁶ the defendant uses the copyrighted image of the plaintiff in the thumbnail for his search engine. The court will held that using the image for a thumbnail will comes under fair usage. However, the display of bigger image will be a violation to the plaintiff rights.

D. Software Piracy:

¹³ A & M Records v. Napster 239 F.3d 1004

¹⁴ *Washington Post v. Total News* 97 Civ. 1190 (PKL)

¹⁵ *Shetland Times v Will* 1997 SLT 669: (1997) FSR 604

¹⁶ *West in Kelly v. Arriba Soft Corp.* 280 F.3d 934 (9th Cir.2002).

The use or transmission of software is protected under intellectual property laws. Software piracy includes

1. End user piracy- It is illegal to copy or possess software without licensing for each copy. Individual users and companies alike must acquire enough licenses to cover their software installations. Volume licensing applies only to windows Desktop upgrades not to the full windows operating system.
2. Manufacturer piracy- It is illegal for a computer manufacturer to copy software and preinstall it without permission on more than one computer.
3. Internet piracy- It is illegal to offer unauthorized copies of software for download over the Internet. If software is available on the internet, make sure the software publisher has authorized this distribution.
4. Counterfeiting- It is illegal to manufacture unauthorized copies of software and distribute those copies in packaging that reproduces or resembles that of manufacturer. Counterfeit registration cards with unauthorized serial numbers are often included in these packages.
5. Online auction- It is illegal to resell software in violation of the original terms of sale, to resell software marked not for resale

In Microsoft Corporation vs Mr. Yogesh Popat¹⁷ the defendant was selling computers with the pirated version of Microsoft software. The plaintiff made a trap order with the defendant and the computers delivered was preloaded by the pirated Microsoft software. The court held permanent injunction and also damages of Rs.2 crores.

V. Conclusion:

The copyright law has widely changed with the development to technologies and cyberspace. The future of copyright is unforeseeable, and it is evident that our current actions will impact it in a wide range of ways, necessitating greater caution and precision.

Cyberspace is constantly evolving, making it challenging for the law to react rapidly. The most significant and contentious of the Intellectual Property Rights (IPR) in cyberspace appears to be copyright. This has prompted international copyright regimes to urge for more regulation of internet. Increased international cooperation is required to control cyberspace and safeguard copyrights.

Furthermore, it is the responsibility of society to educate people about the value of copyright protection in order to monitor, manage, and prevent any unauthorised usage. Today, many people create digital content that must be safeguarded. Internet users need to be educated more about the value of copyright protection throughout all levels in order to prevent unauthorised use.

VI. Reference:

1. Copyright Act, 1957
2. IT act, 2000
3. A & M Records v. Napster 239 F.3d 1004
4. Washington Post v. Total News 97 Civ. 1190 (PKL)
5. Shetland Times v Will 1997 SLT 669: (1997) FSR 604
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8. 'Information Technology Law and Practice' by Vakul Sharma
9. <https://articles.manupatra.com/>

¹⁷ Microsoft Corporation vs Mr. Yogesh Popat 118 (2005) DLT 580, 2005 (30) PTC 245 Del