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# "Intellectual Property Law Challenges posed by Digitalisation in Copyright System"

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**Abstract**

This research paper introduces the discussion of legal response to the challenges posed by digitalisation and the internet in the context of copyright system. Its main objective is to examine and critically analyse emerging issues regarding copyright protection in digitalisation. First it discusses the challenges occur in copyright protection then it focuses on the different legal remedies provided for the copyright infringement. The paper present example of cases for the legal awareness regarding the challenges occurs in the copyright system posed by the internet.

## Introduction

Law is response to social challenges, law while responding answers, such challenges and in the process develops itself. Copyright is the finest example one reaches when one delving upon the relationship between law and management. The internet is the one big library. It is made up of several computer and devices which are connected together and carry data which can be transmitted to the other computers in the database. It has all the information that everyone virtually needs. Books, music, photos, and many other kinds of information can be found on the internet. Some for free and some for fee. It is one big library without a librarian. And here it is where the one big problem lies. Nobody actually monitors what information you get from the internet and how you intent to use it. The internet not being owned by anyone nor controlled by anyone is thus considered as a public domain. Everybody can have access to digital information which is usually free and available for all.

With the internet, the privacy of millions is threatened. This privacy policy compounded in the areas of intellectual property. Copyright is one of the areas covered by intellectual property laws. According to the world intellectual property organization, copyright refers to that system of legal protection an author's enjoys in the form of expression of ideas. This coversprotection given to the authors with regards to his scientific, educational, literary or other works, musical composition of a composer, painters and other artist with respect to their works of arts and many other not limited to such enumeration.

Before the era of internet and digitalisation these copyrighted materials on exist in printed form, usually on paper or on canvas. These works have specific laws which protect their use from infringement. Any unauthorized reproduction, distribution, display, or derivatives can be considered infringement. However as we reached the digital age, these works has been made available through the internet also. Due to this, the problem has been arisen, problem which have not been copyright most of the laws. Hence the copyright system is not effectively responding to the challenges posed by the digitalisation.

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**Digital technology and copyright issues**

The decentralized nature of internet makes it possible for any user to disseminate a work, thereby its gives arisen to global piracy. The internet in a way presents a troublesome situation for copyright holders as the users become mass disseminator of others copyright materials and creates disequilibrium between the authors and the users[1]. As the legislators should expand or modify the existing old media notions or redefined the catalogue of restricted act.

**The Right of Reproduction**

Since the adoption of statute of Anne, the mother copyright law, the reproduction right has been at the heart of copyright law for than three hundred years. Though recognized as a seminal right accorded to authors. Under article 19(1) of the Berne convention, copyright owners are granted the exclusive right of authorizing the reproduction of these works, in any manner or form.

The advent of the internet makes the delimitation of the reproduction right more problematic in the digital age. To provide protection for the copyright infringement. The owners should have granted the rights over all temporary reproductions and decentralized nature of the internet.

**The Right of Communication to the Public**

The author shall have the exclusive right to communicate and make available to the public works by any means of communication. Article-3(1) of the InfoSoc directives does not define the concept of communication to the public. These provision in fact only states that EU member state shall provide authors with the exclusive rights to authorise or prohibit any communication to the public of their works by wire, or wireless means, including to the making of available to the public of their works in such a way that members of the public may access them from a place and at a time chosen by them.

Prior the Berne convention has become an incomplete and out-dated international instrument for the protection of the right of communication to the public, unable to respond to the challenges posed by the shift in the ways of exploiting works. Firstly the right of communication to the public is regulated in a fragmented manner by Berne convention in the terms of the means of communication. Secondly it has been observed that the scope of the right of the communication to the public does not cover all the categories of copyrightable subject matter, including computer programmes, photographic works, works of pictorial arts, and graphic works.

[1] Gulla R.K. (2007) digital transformation of copyright laws.

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**Legal Protection of Technological measures**

The advent of internet facilities the manufacture and trafficking of circumvention of devices and the subsequent dissemination of copies of works whose technological protection measures have been circumvented, at a global scale, posing formidable challenges for the effective protection of copyrights owners interest. Therefore, an ambitious agenda to provide an effective and adequate protection for technological measures deployed by copyright owners was adopted at the WIPO diplomatic conference 1996. Article 11 of the WCT provides that:

"Contracting parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technology measures that are used by authors in connection with the exercise of their rights under this treaty or the Berne convention and that restricts acts, in respect of their works, which are not authorized by the authors concerned or permitted by law".

**Circumvention of digital copyright material**

Under the WIPO treaties, contracting parties are duty bound to provide "adequate and effective" legal protection against the "circumvention" of effective technological measures. The legal protection of technological measures can hardly be enforced in an effective manner if it focuses exclusively on the act of circumvention. In terms of the required effective and adequate protection of the technological measures, contracting parties are therefore obligated to outlaw preparatory activities in the national anti-circumvention regulation.

Given that the acts of circumvention are not amenable to detection and control in the digital environment[2], the legal protection of the technological measures can hardly be enforce in an effective measures can hardly be enforce in an effective manner if it focuses exclusively on the act of circumvention provisions[3]. The absence of an effective oversight of the downstream supply of circumvention devices in the market place would result in considerable difficulties to deter the acts of circumvention thereby puts the rights of owners interest to serious prejudice.

**Limitations and exception**

From the earliest time in the history of copyright, it has been recognised that in certain cases limitations or exception should be place on the exercise or scope of established rights and may be termed as internal restrictions i.e. they are actual or potential restriction resulting from the provision of the instrument itself. The reasons given for imposing such restriction may be based on consideration of public interest, prevention of monopoly control, etc. The limitations on copyright are necessary to keep the balance between two conflicting public interest; the public interest rewarding creators and the public interest in widest dissemination

[2]Reinbothe, J. and Lewinski, S. (2002). The WIPO Treaties 1996:The WIPO Copyright Treaty

[3]Marks, D. S. &Turnball, B. H. (2000). Technical Protection Measures: The Intersection of Technology, Law and Commercial Licences, European Intellectual Property Review, 22 at 198-218.

of their works, which is also the interest of user of such work. The statutory may come in the form of compulsory and statutory licences (often involving procedural requisites, and payment of remuneration to the right owner), or (more frequently) permitted uses, not subject to the formal procedural or payment, but in respect of which may conditions apply (e.g. statement of source). The limitations on the author's exclusive right may be imposed in order to facilitate the works contribution to intellectual and enrichment community. However the limitations must not be such as to dampen the will to create and disseminate the work.

**Copyright In digital media- position under Indian law**

The Indian copyright law fundamental comprises of The Copyright Act 1957 (the most recent alteration being, Act 27 of 2012 that came into constrain on 21 June 2102). The alterations in 1994 were a reaction to innovative in the methods for correspondence like telecom and broadcasting and the development of new innovation like PC programming. The 1999 revisions have made the copyright completely good with exchange related parts of scholarly copyright (TRIPS) understanding. The corrections presented by the copyright revision act, 2012 are noteworthy as far as range as they address the difficulties postured by web and goes past these difficulties in their extension. The most recent revision blends The Copyright Act 1957 with WCT and WPPT. With these corrections, the Indian copyright law has turned into a forward looking bit of enactment and the general sentiment is that, excepting a couple of angle, the altered demonstration is fit for confronting the copyright difficulties of computerized innovations including those of web. As per the Indian Act, 'distribution' with the end goal of copyright signifies, "making a work accessible to the general population by issue of duplicates and by imparting the work to people in general". This definition by ideals of its non-limitation, can be developed as covering electronic distributing and, along these lines, 'production' on the web. Under the 2012 Amendment the meaning of term "correspondence to the general population". Has been changed. The recent definition was just pertinent enemy "works". On the off chance that the work or execution is made accessible, regardless of whether at the same time or at a spots and times picked independently, this would likewise be considered as correspondence to 'general society'. In this way on request benefit (video on request music o request); will unmistakably considered as "correspondence to the general population".

Segment 57 of the Act perceives exceptional privileges of the creator of the work, otherwise called "moral rights" viz.

(i) Right to guarantee origin of the work; and

(ii) Right to limit or claim harms in regard of any contortion, mutilation, alteration or other act in connection to the said work if such bending, mutilation, adjustment or other act would be biased to his respect or notoriety ("Right Against Distortion"). The said segment likewise gave that such good rights (with the exception of the privilege to assert creation) could be practiced by lawful delegates of the creator Pursuant to the 2012 Amendment, the rejection has been evacuated and the privilege to guarantee origin would now be able to be

practiced by lawful agents of the creator also. Along these lines, post demise of the creator, on the off chance that he isn't given kudos for his work, at that point legitimate agents, may make important move to cure such break. According to the Amendment, the privilege against contortion is accessible even after the expiry of the term of copyright. Prior, it was accessible just against twisting, mutilation and so forth one amid the term of copyright of the work.

Area 52 of the Copyright Act, 1957 incorporates into itself the guideline of impediment and special case as imagined under Article 10 of WCT. The demonstrations explicitly permitted under Indian law incorporate reasonable managing a scholarly, emotional, melodic or aesthetic work (excluding a PC program) with the end goal of private and individual utilize including examination, feedback or audit, the making of duplicates or adjustment of a PC program by the legal holder of a duplicate of such PC program, from such duplicate so as to (1) use the PC program for the reasons for which it was provided; or (2) make move down duplicates absolutely as a brief insurance against misfortune, annihilation or harm all together just to use the PC program for the reason for which it was provided.

**Case laws:-**

**Copying incidental to use of the Internet**

***Religious Technology Centre v. Netcom On-Line Communication Services[4],***

Web perusing held not to constitute encroachment, despite the fact that a duplicate is made of the website page on RAM or screen memory. The Netcom court saw in dicta that a lot of web perusing is most likely a reasonable utilize or a blameless encroachment:

Truant a business or benefit denying use, computerized perusing is most likely a reasonable use; there could barely be a business opportunity for authorizing the transitory replicating of advanced works onto PC screens to permit perusing. Except if such an utilization is business, for example, where somebody peruses a copyrighted work on the web and in this manner chooses not to buy a duplicate from the copyright proprietor, reasonable utilize is likely. Until perusing a work online moves toward becoming as simple and advantageous as perusing soft cover, copyright proprietors don't have much to fear from computerized perusing and there won't almost certainly be much market impact.

***Hogan Systems, Inc. v. Cybresource Internet[5]***

Reviewing copyrighted software from a remote location does not constitute copying under federal copyright law. A dispute arose between a software owner and a company that licensed the software over a third party's access to the software. The court dismissed the software owner's claim that the third-party contractor's off-site access to the software required copying and removing the software from the licensee's server, and was an act of copyright infringement. Instead, the court accepted the third party contractor's argument that all it did

[4]Inc. 907 F. Supp. 1361 (N.D. Cal. 1995)
[5]Inc.158 F. 3d 319 (5th Cir. 1998)

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was remotely view materials displayed from the licensee's mainframe. The court found that the conduct did not substantially differ from routine access to a computer program and found that that the use did not constitute copying under the Copyright Act. Defendant's motion for summary judgment affirmed.

## Conclusion and Suggestion

The evolution of copyright has been closely linked to technological development. Whereas, most of the technologies made copyright protection more difficult, digital computers managed to alter the fundamental concept behind the copyright. These challenges which provide to copyright industry have emerged at a time when the share in copyright economies has been reached on unprecedented levels. It becomes critical to adjust the legal system to respond to the new technological developments in an effective and appropriate way, keeping in view the speed and pace of these developments.

Digital technology has made copyright enforcement difficult to achieve. It is necessary to maintain the balance between easy infringement and expensive enforcement, and to address the uncertainties involved in international litigation