

## CHANGING DIMENSIONS OF COPYRIGHT LAWS IN DIGITAL ERA

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### INTRODUCTION:

**A Copyright is a branch of Intellectual Property Rights which can be legally characterized to be a right which gives rise to “various other bundle of rights”, such as Right to Reproduce, right to Distribute, Right to Sell etc. The focus of the law is upon preserving the ‘original works’ and the provisions ensure that the authors, creators, inventors are protected from every angle. On the other hand, the Indian Government also seeks to maintain a balance between the societal need vis-à-vis individual profits, due to which some provisions like using the work for criticism, fair use like disseminating the work for other non-profitable or for example educational purpose is exempted. But if we see the objective of copyright on the whole, it is that no other person will get the right to replicate the same work on which the Copyright has been granted, subject to some conditions which are also provided therein.**

The Copyright law not only protects the creator or owner of the work but also gives the right to transfer his work for all or some specific purposes or on certain conditions. The extent of such conditions for use can be freely determined by the owner within the legal paradigms. The owner may further decide to which extent it can be exploited commercially. Overall, in respect of one’s own work, the owners have been given a wide array of rights and privileges. The above is true for both digitally generated content as well as non-digital content. We are recently seeing rapid and significant changes in the world due to advent of

internet. There is a boom in content generated online and even for content which is actually physically available, there is also an online form of that same thing. Say for example a painting, which has an obvious copyright in its physical form but if a video of that is made and uploaded on Youtube, it becomes available in digital form too and further becomes accessible worldwide. A thing has to be noted here which is that the original painting the chances of copying which would have been miniscule due to it being available in a specific area to a small number of persons multiplies manifolds with it being available online because now it can be seen by anyone in the world at large. Therefore, the old law which already protects such works would now have to be made such so that the event of any misuse or in fact a fair use can get covered. Due to this, the legislators have also been making rapid changes and there have been a lot of developments in IPR laws lately, the recent one in Copyright being the introduction of Copyright Amendment Rules, 2021. As a society progresses, it becomes the need of the hour to amend the laws and to make necessary changes so that the statute can be relied upon for most, if not all situations and to provide an effective and prompt solutions to them. Talking about copyright specifically, the works have been on a rapid increase and so is the advancement in technology. A country with proper and balanced IPR protection can welcome much more new innovations in the form of inventions or investments which will in turn contribute positively to the economy. It can likewise be derived from the situation of **Eastern Book Company v. D.B. Modak**, wherein the Supreme

Court believed that copyright guarantees author the right to their original articulation yet urges others to construct openly upon the thoughts and data passed on by a work.

There are plenty of decisions given by the Indian Judiciary featuring the significance of the copyright laws. For example, in **Holy Faith International v. Dr. Shiv K. Kumar**, the High court of Andhra Pradesh held that, the essential capacity of a copyright law is to ensure the product of a man's work, work, ability or test from extension by others. In another case, **S. Mahalingam v. Vasan Publications Pvt. Ltd**, the Madras High court held that the object of the copyright act to shield the creator of the work from the conceivable fake generation of the work without his consent. the creator being the maker of the work, by utilizing his gifts, ability and information should be in a situation to appreciate the advantages of such creation.

If we talk about the last 20 years, there have been quick developments in the domain of information technology and with the innovations of computer programming, etc. and the rise of digital media, it witnessed a significant rise in the copyright issues. There have been various instances where there are cases related to theft or copyright infringement, that infringes the legal rights of the copyright holder. However, it is also true in today's scenario, that copyright laws don't only guarantee protection to the creator of the work but it also guarantees that proper licensing and transfer of rights are there when it comes to the ambit of exception of copyright laws, such as fair use.

Copyright laws traces back to the initial laws that were enacted in the year 1957 in the form of Copyright Act, 1957. It can be said that this act was governing and was sufficient to provide the protection to the creator of the work as well as to ideal with all the issues that may arise related to the copyright. This was one of the primary legislations enacted for the issues

related to copyright after the independence of India. Since then, the law has been amended multiple times. Talking about pre 1957 era, then also the British had two enactments related to copyright laws. The first was the British Copyright Act, 1911 which was a brief law compared to the existing law. Second was the one enacted by the Indian legislature taking the standard of the British Act in 1914 and was named as the Indian Copyright Act, 1914. This act was different from the past one and had accommodated the burden of criminal responsibility in case of any occurrence of encroachment of the copyright. The act that came after that in the year 1957 was keeping in mind the arrangements of the Berne Convention for the security of literary and artistic works of 1886 and furthermore defended the work made and ensured under the act of 1914.

#### **DIGITIZATION OF COPYRIGHT:**

Now a day, everything that we can possibly think of is been digitalized and we can safely say that copyright is the finest example wherein there is a solid relationship between law and technology. There is a dual-relationship as on one hand, technology is considered one of the major sources of copyrighted works and the industry on the whole and on the other hand technology itself is the biggest hazard for these works. The copyright industry has put the many of the new inventions to use to broaden its market base and to inflate the profits. To top it all the widespread accessibility with digitization has made it much easier to exploit, mold and disseminate protected works. The content available digitally can be consolidated, modified, blended, and controlled effectively by empowering the creation of ideal duplicates of protected works for little expense, computerized innovation takes steps to subvert the distribution frameworks and increase unapproved utilization of copyright works.

The web is organized as an “open stage model” rather than the “broadcasting model” of most existing media on the web creators may uninhibitedly distribute their works and thus may publish the works without there being absolutely no involvement of the original authors whatsoever. One more important thing is that the users can effectively look and control data accessible on the network as a result of which they are becoming creators. Moreover, places like college libraries, may take on new role as data suppliers delegates are becoming distributors too. This meddling of roles may ultimately influence the current arrangement of rights portion in copyright and other related IPR laws.

Thus, in a way we can say that the technology and digitization has scrambled the organized distribution of rights related to copyright and otherwise under the Berne Convention. Anything in digital form which is available is prone to be used in any form by the users which primarily runs the risk of misuse. Therefore, the situation arisen is such that Legislature will have to inevitably accommodate the existing law by introducing amendments or changes so that the objective of the law in place is not lost in the pace of changed society.

After taking into consideration all the above points it can evidently be said that digitalization results into the reproduction of the original work of the owner of the work without taking consent, and hence it is creating a scenario wherein there is unlawful utilization is the copyrighted work.

#### **THE EXISTING COPYRIGHT TREATIES AND DIGITIZATION:**

The Berne Convention, which provides for the provisions that appropriately characterized a scenario where the articles provide for the situation where the original work can be replicated and the rights of the

lower also gets satisfied, either by way of giving the owner monetary benefit or otherwise. Since there were disagreements amongst the members on what the reproduction rights should be and how far the scope could be limited or increased, the original text for the Berne Convention did not include any provision that expressly protected the reproduction right. It is interesting to note that Under Article 9(1) of the Berne Convention, copyright owners are granted the “exclusive right of authorizing the reproduction of these works, in any manner or form.” But this is a vague definition and due to the absence of clarity there were rifts between the countries over what the scope should be. If we see this in digital context, it becomes all the more accommodative which in turn could be a complication in practical use of this right.

WIPO also played an important role in protecting and governing the provisions that specifically relates to the copyright laws in digital era. However, WIPO, in contrast with the Berne Convention, in its treaty called, the “WIPO Performances and Phonograms Treaty, 1996” contains two articles (Articles 7 and 11) for the protection of the reproduction right enjoyed by “Performers and Phonogram Producers” (hereinafter PPP) respectively. Under the WPPT the PPPs are vested with “the exclusive right of authorizing the direct or indirect reproduction of their irrespective protected subjects in any manner or form.” It is to be however agreed that what it comes to the copyright laws in digital era, article 19 of the Berne Convention shall apply mutatis mutandis to the protection of the reproduction right.

#### **THE CONCEPT OF RIGHTS MANAGEMENT INFORMATION:**

To curb the differences that arise due to the digitalization there comes the concept of right management information. There are various legal protections that are provided to govern the RMI. The basic principle on which

the concept of Right Management information is governed is whatever copyrighted matter is published online in any digitalized form, there must be some guidelines that are provided then and there on the same page that can restrict its abuse, and in case the owner of the work has consented to use his work in return of some momentary gain then, for that purpose also proper channel must be provided to the user of the work to transfer the amount in result of use the original work. Proper credit apart from monetary transfer should also be given to the author of the copyrighted work. For the necessary feedback, there are many ways and technologies available these days. We can put to use these along with the technology, for instance a watermark is basically used to identify a work but it can be made a compulsory element for person for authorized use of a copyrighted work. It can further be used to facilitate online licensing. However, a technology will have to be devised wherein such information cannot be distorted or removed altogether.

WIPO treaty of 1996 also provides a set of some minimum requirements that needs to be fulfilled before the other person takes the authorization to use the copyrighted work and such requirements should be construed in such a way that there exists a balance between the rights of the owner of the copyrighted work and the person who is going to use the work with due license.

#### **THE INDIAN SCENARIO AND THE LATEST DEVELOPMENTS:**

Now, after taking an idea about the changing dimensions of the copyright laws over a period of time and looking in depth the provisions that are there in the international regime, let's look at the Indian scenario related to the same. Talking about the scope and ambit of Indian Copyright laws, it can be said that it consists majorly of the Indian Copyright Act of

1957. In the amendment of 1994, the 1957 act has undergone various changes keeping in mind the technological changes such as means of communication that relates to the broadcasting rights, etc. Later on the 1957 act was amended in the year 1999, and that amendment specifically talked about the provisions that are there in the TRIPS. The amendments which were introduced by the "Copyright Amendment Act, 2012" were important in terms of range as they addressed the challenges imposed by the internet and went beyond these challenges in their scope. These amendments harmonized with the Copyright Act, 1957 with WCT and WPPT.

#### **COPYRIGHT AMENDMENT RULES 2021:**

Recently there have been many amendments introduced in the Copyright Act so that it becomes even more transparent and equipped with the rapid developments. There are certain major developments which are discussed below:

1. Detailed provisions on payment of royalty- The new rule 19 talks about copyright societies wherein the collection and distribution of royalty will be done electronically through electronic modes and it has been mandated that all payments should be traceable. The important thing to be noted here is that it is focused upon switching to electronic mode which in turn will promote the digitization and its overall goal.
2. Annual Transparency Report- it has been introduced through wherein the copyright societies are supposed to make an Annual Transparency Report in every financial year within six months following the end of that particular year. Further it is mandated to publish the report on website and also to make it available for at least three years. The following are to be contained in the report "(a) report on the activities in the financial

year; (b) number of refusals to grant a license; (c) financial information on total royalties collected; (d) the total royalties paid to author and other owners; (e) the total royalties collected but not yet attributed to author and other owners; (f) the total administrative deductions made from royalty collected; (g) the details and use of the amounts deducted for the activities conducted under the welfare scheme as provided under rule 67; and (h) Information on amounts received from and paid to the foreign societies or organization.”

Digitization isn't just concerned with the creations but equally with other things such as the above example. With the publication of annual transparency report by copyright societies which will contain the financial aspects and details about royalties, it will be a lot easier to identify and mitigate the area of concerns and possible infringements and fair uses.

3. Online database of Copyright Societies- This is a significant development as the maintenance of online database and the ability to search from that would make it a lot easier to identify works as well as with the instructions on maintaining the annual transparency report will take care of the financial aspects related to it. With all of it being mandated to be maintained online, it further promotes digitization.
4. Mode of Communication- Through this the digital mode of communication has been yet again recognized. This will bring a lot of ease in procedures, as along with the substantial provisions, if the procedure is not updated accordingly, it will create an impasse. Recognizing electronic modes is not only a faster mode but will also reduce the cumbersome procedures associated with bringing the parties together.

## CONCLUSION:

With these chain of amendments in the Indian Copyright laws, it can evidently be said that Indian Copyright Act 1957 had undergone a series of changes and has now become a futuristic legislation, having the provisions related the issues that may arise in the digital environment including those of internet. According to the Indian law, publication for purposes of copyright means, “making a work available to the public by issue of copies or by communicating the work to the public”. Since this definition is non-restrictive in nature hence we can safely construe that it covers electronic publishing and thereby publications on internet. Therefore, it can very well be concluded that the Indian Copyright act provides the provisions that are capable enough to regulate the copyright laws in digital environment and barring a few exceptions that can be worked upon and we can make the Indian Copyright law a standard statute dealing with the issues that is arising in the online platform as a result of the digitalization.

However, in today's scenario, it is not enough to look into the matter of any individual country, because as a result of digitalization of copyrighted work and expansion of intellectual property regime, the subject matter of the IPR may and is transferring interstate, and for such cross border transfers it must be checked that there is a proper harmony between the inactions of the world. As the internet has no boundaries and can transmit the works almost at a lightning speed, copyright protection has become progressively troublesome.

Therefore, it can be concluded that with the evolution of copyright there has been close and parallel technological development. Whereas most of the technologies made copyright protection more difficult, new statutes and amendment in the copyright laws embark a solution-based approach. Digitalization in copyright comes with great prospects as well as

challenges and these have emerged at a time what the share of copyright in national economies is preaching at unprecedented levels. It becomes extremely important 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 the technological and other developments in our country. This will maintain balance between the stakeholders be it users or creators for the public interest. It is the need of the hour to maintain a harmonious balance between the rights of the owner of the copyrighted matter and the user of the same, and for that matter right management information and provisions contained in WIPO can be construed accordingly for greater benefit.

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- 2) (2008) 1 SCC 1
- 3) 2007 (34) PTC 668 (Del) (DB)
- 4) Appl. No. 661 of 2012
- 5) The Copyright Act of 1914, which was essentially the extension of the British Copyright Act, 1911 to India.
- 6) "Emerging Trends in Digital Copyright Law in India"  
<https://www.intepat.com/blog/copyright/emerging-trends-digital-copyright-law-india/>
- 7) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.
- 8) Right of Rental
- 9) Obligations concerning Technological Measures
- 10) WIPO Performances and Phonograms Treaty
- 11) The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.
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