CHALLENGES OF COPYRIGHTS & CYBER SPACE

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"Instantaneous global communications have given us a window on the world through which can be seen both the wonder of it all and the things that make us wonder about it all"

John Naisbitt

Introduction

Telecommunications and the "information superhighway" facilitate instantaneous mobility of literary and artistic works in the form of text, video, and audio recordings. Almost anyone with a computer and a telephone can get vast quantities of information and data from almost anywhere on the sphere of the globe with the single click of mouse. These conditions pose a formidable challenge to the international protection of intellectual property. Copyrighted works, which include films, novels, musical works and other forms of expression, are especially vulnerable to piracy. The infringement of patented designs and trademarks requires the use of a patent or trademark in commerce. Potential customer for a free copy of a work protected under copyright can be any consumer or customer. Illegal copies can easily be produced out of copyrighted material. For example anyone with the help of computer and a laser printer can easily reproduce the printed material.

With the advancement of information technology and the dawn of the information society, intellectual property law has to be adapted to fit the new way of life. Computer is the key business of the Internet.

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It is undoubtedly the largest and the most efficient and effective distribution mechanism that has existed till date and also at the same time it plays host to the largest number of piracy websites, and has become one stop destination from where one can download software, movies, music. Since, books are reproduced easily with a few clicks of the mouse. over and over again making it difficult to distinguish an original from a copy. The extent to which communications software and computer programmes are growing in market size and with great economic value copyright protection is extremely essential and vital. Still, copyright has been supported by the judges who have usually been sympathetic to the principle of protecting the result of a person 'skill or talent'.

David Bainbridge in one of his book related to computer law stated that:

"…what is worth copying is prima facie worth protecting."

With the help of internet and by sophisticated copying methods, dissemination of work over the internet is easily possible: it become almost impossible for the copyright owner to control further diffusion of work without adequate safety. There are always two side of a coin Everything which come with the benefits to the user may also come with drawbacks. Electronic Copyright Management Systems (ECMS) is the tool by which copyright owner can further control the dissemination and copying of work.

The users fear two consequences will flow from this enhanced control exerted by copyright owners.

1. The public domain will be locked away by the internet service provider (ISP), accessible and usable only at the request of the copyright owner.
2. Original works will only be accessible on a pay-per-view business model.

Those who can afford to pay will be granted access. As a result, without any iota of doubt, the balance between the private property rights and the public interest has seems to be tilted in favor of the former.

Feautres of copyright

Copyright protection gives the author of work a certain 'bundle of rights' this means that the copyrights holder has certain rights that are vested in him. As well as the exclusive right to reproduce the work in copies, to prepare unoriginal works based on the copyright work and to perform or display the work in public. In present there are numerous others rights and privileged also, which the author is not going into like literary work, dramatics, etc. All these rights come under the preview of a network environment. It should be noted that the principles governing copyright state that these rights are the same irrespective of the work being digital in nature.

1. **Right of Reproduction**

When it comes to the category of works that are protected by copyright legislation then the right of reproduction play the most vital role .The question that is raised here is whether infringement can be constitutes when the Internet user's copying of the author's work over the internet? The test of 'substantial similarity' test is not a problem in the case of software, because if copied, will be identical to the software of the author. The Court of Appeals for the Federal Circuit in America in Atari Games Corporation v. Nintendo of America Inc., very clearly stated that "even for works that warrant limited copyright"

Therefore, in the light of this judgment, stated that copyright over computer software has been easily infringed. The American Copyright Act, does not give protection to them non-literal aspects of the computer programme .

2. Public Performance and Display Rights

When one is taking consideration about computer software the issue of public performance and display rights does not come into the picture. The right to display is the one which never gets affected. Mostly, software that is downloaded from the Internet gets displayed in public, thus violating the regulation of copyright holder's right to display the work publicly. By making copies which are subsequently, retailed or lent out the display of the work is also done, this also falls under the right to display, which the holder of the copyright has. The term 'display' is not defined under the American law. One has to look at the meaning of the terms 'communication to the public' and 'public performance'. Therefore, under the statute, if anyone displays the computer software or the operation of the computer software over the Internet, it infringes the right of copyright holder rights to display.

3. Distribution Right

Copyright law grants the holder of the copyright the exclusive right to distribute copies of the work to the public by sale or by the transfer of ownership. As explained above, the Internet by its very nature of being digital, facilitates the making of infinite number of copies without any loss of quality.

The conundrum is that, under statutory law, disseminating a work on a digital network may not only comprise a public performance or display by means of transmission, rather may also be considered a distribution of the copies, for all those who access the network receive a copy of the work. The other difficulty that one faces when dealing with the distribution of computer software is that the person who distributes the copy does not strictly 'transfer the ownership' of the copy, as it is understood when one deals with a physical copy. Therefore, a person can pass on infinite number

of copies, which of course are digital in nature and still retain the original copy. Hence, the difference between public performance or display and distribution is mostly blurred when it comes to software.

Basic copyright problems with regard to cyberspace

The term was coined by Sci-Fi writer William Gibson in his 1982 short story “Burning Chrome” but was ultimately launched into popular usage by his 1984 novel Neuromancer: Cyberspace. Cyberspace is "the notional environment in which communication over computer networks occurs." The word came into vogue in the 1990s when the uses of the Internet, networking, and digital communication were all growing dramatically and the term "cyberspace" was able to represent the many new ideas and phenomena that were emerging.

The origin of word ‘cyberspace’ is from parent term “cybernetics" which is itself derived from the Ancient Greek κυβερνήτης (kybernētēs, steersman, governor, pilot, or rudder), a word introduced by Norbert Wiener for his pioneering work in electronic communication and control science.

As per the Chip Morningstar and F. Randall Farmer, cyberspace is defined more by the social interactions involved rather than its technical implementation.

One of the indispensable copyright issues in Internet is determining the margin between private use and public use. Unlike all copyright laws of the globe, the Indian Copyright Act also makes a distinction between reproduction for public use and private use. Reproduction for public use can be done only with the right holder’s permission, whereas the law allows a fair dealing for the purpose of research, criticism, review or private use. This difference is bruised away with the ability of an individual to transmit over the Internet which has copyright work to multitude of users simultaneously

from the privacy of his/her home and users being able to download simultaneously a perfect copy of the material transmitted, in their homes.

Issue and trends related to copyright in cyberspace:

Cyberspace

With the term cyberspace, general masses means the sum total of all electronic information system and messaging which including numerous things like E-mail system network nodes, commercial data services, electronic publishing, research data networks, and network nodes, electronic funds transfer systems and electronic data interchange systems. In general, the compilations and database are protected and secured under the copyright laws even if these enter the cyberspace, the fact that they are easily accessible and traceable tends to make such protection rather worthless and insignificant. The no difficulty of copying and distribution make such copyright enforcement tricky.

Issue of Downloading

Downloading is the electronic transfer of information from one database to another including that from an online database service through one's own local microcomputer. Generally, copyright infringement occur when internet user download anything from database. It started for the dire greed of internet user wanting to record permanently into their local device; this is the focus area where such attention should be given.

Timely and cost effective information needed by the internet user. From the perspective of the user ‘downloading is considered a way of life’. Reasonable payment for the use and reuse of the author work is one of the possible ways to minimize the loss.

Protecting Personal Information in Databases

In the modern era there are many databases are set up which contain the personal information about individuals for example membership of a library or business card holders. These types of databases have raised issues concerning protection and misuse of personal information of individuals. When the unwanted mail is cast off to individuals whose addresses are obtained from the computerized databases then the chances of misuse will increases. Many countries have responded to privacy concerns of such databases by introducing data protection legislation. The legislation allows individuals who are the subject of such databases the right to know what records there are about them and the contents of those records. Now a days leading libraries like British Council Library obtains a affirmation from the members to the effect whether their personal information can be made available to other databases or not.

Judicial Interpretation

Indian as well as International Courts from time to time has made judicial pronouncements with respect to copyright in cyberspace. And it is primal to delve deep into the intricacies involved in such domain which is a crucible in itself. Hence, it is imperative to go through some of the landmark judgments. The first one in this list is one related with the Viacom litigation which was decided by United States District Court. In this case Viacom's billion-dollar lawsuit against Google and its video-sharing subsidiary aimed to elucidate the copyright controversy. Founded in February 2005, YouTube is self-described as "a forum for people to connect that acts as a distribution platform for content creators and advertisers."In 2007, episodes and clips of the popular children's program SpongeBob Square pants, shown on Nickelodeon, a Viacom subsidiary, began appearing with increasing frequency on YouTube. While Viacom initially explored a content-sharing

agreement with YouTube, negotiations broke down in March 2007, and Viacom filed suit.

Viacom's claims against Google and YouTube for direct and secondary infringement came as a result of the regular distribution and consumption by YouTube users of copyright-protected materials. In particular, Viacom claimed that tens of thousands of video clips uploaded on the YouTube platform infringed Viacom's copyrights. According to Viacom, business model on which YouTube works is based on building traffic and selling advertising off of unlicensed content, this is clearly illegal and conflicting in nature with copyright regulation.

Viacom further alleged that Google and YouTube:

(1) had actual knowledge of infringing activities but failed to act expeditiously to prevent such infringement;

(2) established a financial benefit and profit from the infringing activity which was done earlier;

(3)YouTube had the right and ability to supervise and regulate the activity of their firm

Viacom claimed "tens of thousands of videos on YouTube, resulting in hundreds of millions of views, were taken unlawfully from Viacom's copyrighted works without authorization."

Judgment

On April 18, 2013, Judge Stanton issued another order granting summary judgment in favor of YouTube. Following the remand from the Second Circuit court of appeals, Stanton ruled on four issues in his decision:

(A) Whether had knowledge or awareness of any specific infringements

(B) Whether YouTube willfully blinded itself;

(C) Whether YouTube had the “right and ability to control” infringing activity; and

(D) Whether any clips were syndicated.

Judge Stanton gave the judgment in favor of YouTube on all four issues finding that YouTube had no actual information of any specific instance of breach of Viacom's works, and therefore could not have "willfully blinded itself". He also ruled that YouTube did not have the “right and ability to control” infringing activity because "there is no evidence that YouTube induced its users to submit infringing videos, provided users with detailed instructions about what content to upload or edited their content, prescreened submissions for quality, steered users to infringing videos, or otherwise interacted with infringing users to a point where it might be said to have participated in their activity. This ruling came despite statements made by YouTube employees that we should grow as aggressively as we can through whatever tactics, however evil the site is out of control with copyrighted material. If we remove the obviously copyright infringing stuff site traffic would drop to maybe 20% steal it all quotations were argued to be taken out of context. The ruling was entered as final on April 29, 2013.

An appeal was begun, but the week before the parties were to appear in the 2nd U.S. Circuit Court of Appeals, a settlement was announced, and it was reported that no money changed hands.

Conclusion

Law is a reactionary art, and this is particularly true where the law’s responses to technology are concerned. While legislators and judges make best efforts at crafting a dynamic body of statutory and case law responsive to the needs of our ever-changing, technology-driven world, oftentimes technology-

facilitated activities particularly infringing activities in the realm of media consumption simply outstrip the legal protections in place. That a certain amount of cyberspace infringement will always exist in the marketplace is more or less inevitable, but the Viacom litigation of "infringement is bad" does not capture the interaction between cyberspace copyright owners and infringing uses. The judiciary should take a more flexible approach toward infringement of cyberspace law, and tackle the problem is more realistic way. Developing an analytical framework that place paramount importance on the copyright issue related to cyberspace defined by the pre-21st century era, Should be more focused on the underlying philosophies of cyberspace copyright—namely, providing copyright owners with economic rights against certain parties to incentivize further production—with the understanding that infringing activities may sometimes be an loss to copyright holder. The fact that the judiciary may not have the best information to make the kinds of sophisticated economic analyses required should not be a barrier to achieving the necessary analytical framework.