



Database protection under copyright law

M Mahisha Malar

Assistant Professor, Prist School of Law, Madurai Campus, Tamil Nadu, India

Abstract

Copyright Law is the branch of Intellectual Rights and it gives the legal rights to the author for his/her Intellectual work. The law give protection of their works if someone infringe the rights of the creator they are punished. The study of this paper is based on the overview of the existing laws in India for the protection of Database, the various amendments of existing laws for the protection of database Internet work, the infringement through technologies, the provisions of remedies, the difficulties in enforcement the creators rights.

Keywords: copyright, protection, branch, Internet work

Introduction

The concept of intellectual property is not novel in India. From the ancient period the education and knowledge is considered as “wealth” of the society. The knowledge is considered as a divine gift and property of the society. Later, with the changes that took place in the society the concept of properties, business, social living and the objectives also got transformed with the new adaption of life style, the focus on the ownership and the enjoyment of the property is changing. Eventually, today the knowledge is consider as the personal property and people started attributing in commercial terms. Law also on equal footing considering for protection of the people’s knowledge enacted intellectual property rights for the protection of labor, skill, intelligence and effort ^[1]. India is also a signatory to various international agreements and conventions. As such it modified its domestic law to meet the international standard in which copyright law is one among them. Later, with the advancement of technology and the dawn of the information society, intellectual property law has been adopted to fit a new way of life. This modernized way of life has been reached through internet. Even today the knowledge is considered as a personal property and the people started attributing in commercial terms ^[2]. The internet users have increased day by day and “DIGITAL INDIA” initiatives made by Prime Minister Narendra Modi also connected people at large scale ^[3]. The increased proposition demands for the protection of intellectual property of innovators. The recent statistical record ¹by INTERNET WORLD STATS held that world population in 2018 is 7,634,758,428 and the internet users is 4,208,571,287 ^[4]. The reason for the growth of virtual world is easy to access and thus digital world touches the lives of every human being. We cannot undermine the benefits. In

Intellectual Property it protects Trademark, Industrial Design, Layouts etc in which the Copyright is an old concept which protect literary works with the advancement of technology that paved the way for the creation of database. Large amount of data can be created in, or converted into digital formats. The term database, broadly, includes both electronic and non-electronic compilation of information. The digitalization of data in turn reduces the storage costs. This expanded capacity of storage data is complimented by an increased capacity of access and usage. It is facilitated by computer programs that enable quick and reliable searching and retrieval of data. Database plays an important role in the development of information market and its products. Every new invention in the field of technology experiences a variety of threats by which data can be watched, read, sends through emails and printed as a original work with the few clicks of the mouse. So the need for copyright is the key issue in IPR in this commercial world ^[5]. Copyright is mostly intangible but it manifest ultimately in the form of tangible property. It is a property right that subsists in certain types of works provided under sec 14 of the Copyright Act, 1957. It is a right which grants exclusive right to or authorize others to do certain acts in relation to

1. literary, dramatic, musical, and artistic work
2. cinematography film and
3. Sound recordings ^[6].

The modern technology brought in a great importance to IP and Copyright particular, which is cropped up in new concept such as computer programs, computer database, computer software, websites etc. In India the Copyright Act, 1957(Act No.14 of 1957) ^[7] sec 2(o) literary work” includes tables, compilation and computer programs and computer database. The Copyright Law did not give proper definition for the term database but in Information technology Act, 2000 for the first time explains database under sec 43 with explanation (ii) as a representation of information,

¹ Intellectual property -<http://en.wikipedia.org/wiki/intellectual-property> accessed on February 11,2019 at 8.15am

² Akdeniz, Y., Walker, C. and Wall, D. (2000) The Internet: Law and Society, London: Parsons Longman p.45

³ <https://www.internetworldstats.com/stats.htm>- Internet users statics accessed on Feb. 11,20119 at 8.20am

⁴ Digital in 2018:<http://wearesocial.com/2018/01/global-digital-report-2018> referred at feb 11, 2019 at 4:13p.m

⁵ <http://www.internetworldstats.htm> accessed on feb 12,219 at 8.0oam

⁶ David Bainbridge, intellectual property,5th edition.p.35

⁷<https://www.wipo.int/edocs/lexdocs/laws/en/in/in107en.pdf> access on feb 12,2019 at 8.00 am

knowledge, facts, concepts or instructions in text, images, audio, video data being prepared or have been prepared in formalized manner or have been produced by the computer, computer system or computer network ^[8]

Definitions of copyright under copyright law

The Copyright ACT, 1957 “Literary work” [Sec. 2(0)] Copyright Law has been developed to give legal protection to ‘copyright’. Right to “copyright” has become a statutory right under the copyright law. The key objective of copyright law is to prevent the reproduction, sale or any other act with respect of work if it is done without the consent of the owner of the copyright in that work. This concept also protected electronic database i.e. compilation of data under copyright law.

Sec. 2(0) of the Copyright Act, 1957 defines ‘literary work’ as follows

“Literary work” includes computer programmes, tables and compilations including computer database.

Whereas Copyright Act, 1957 also defines “COMPUTER” under sec. 2 (ffb) as any electronic or similar device having information processing capabilities.

In *Fetch Singh Mehta v. O.P. Singhal* ^[9], the Rajasthan High Court held that the ‘literary work’ includes “dissertation” submitted by a student. The definition of literary work given in sec 2(o) of the Copyright Law, 1957 is an inclusive definition and therefore not exhaustive. “Literary work” includes table and compilations.

In *Satsang v. Kiran Chandra Mukhopodhy* ^[10], The Calcutta High Court held that writing, sermons and saying of a religious preacher fall within the definition of literary work. A recent decision of the Federal Court, *Telstra Corporation Ltd v Desktop Marketing Systems Private Ltd* ^[11], has clarified that in Australia only a low level of creativity and originality is required for protection. Data bases can be protected under the Copyright Act as literary works. For the purpose of the Copyright Act a literary work includes "a table, or compilation, expressed in words, figures or symbols". In this case, the literary works under consideration were the White Pages and Yellow Pages published by Telstra and various unpublished Telstra headings books.

Database

The term "database" is used in two senses. One refers to the organized collection of data that is created, maintained, and searched. The other refers to the software that is used to create and maintain the data. Database management systems are often simply called "databases." This entry concentrates on large, publicly available databases, together with the services that make them available.

The term "data" refers to facts, numbers, letters, and symbols that describe an object, idea, condition, and situation and so on. Data elements which are the smallest units of information to which reference is made are combined to create records. Data elements in a bibliographic

reference include the names of the author or authors, the title of referenced work, the journal name, the pagination, the volume number, the issue number, and the date of publication. A data set is a collection of similar and related data records or data points that have not yet been organized for computer processing. A data file is an aggregation of data sets or records treated as a unit. While databases are also collections of related data and information, the difference between a data file and a database is that a database is organized (by a database management system) to permit the user to search and retrieve or process and reorganize the data.

The data in a database may be predominantly

- word oriented (e.g., textual, bibliographic, directory, dictionary, full text),
- numeric (e.g., properties, statistics, time series, experimental values),
- image—both fixed images (e.g., photographs, drawings, graphics) and moving images (e.g., a film of microbes under magnification or time-lapse photography of a flower opening), or
- Sound (e.g., a recording of the sound of a tornado, wave action, or an explosion).

Information Technology ACT, 2000

Sec 2(o) defines ‘data’ as a representation of information, knowledge, facts, concepts or instruction which are being prepared or have been prepared in a formalized manner and is intended to be processed, is being processed or has been processed in a computer, computer system or computer network and may be in any form (including) computer printouts, magnetic or optical storage, media, punched cards. Sec 43 (ii) of Information Act defines "computer data base" means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalized manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network.

History of database

Protection of database in India ^[12]

Copyright laws grant authors, artists and other creators protection for their literary and artistic works (e.g. books, movies, music, paintings, photographs, and software) and give a copyright holder the exclusive right to control reproduction or adaptation of such works for a certain period of time i.e. life of the author plus several decades. The Indian Copyright Act to meet the challenge posted by the digital technology for the first time amended in 1994, provides protection for databases as ‘literary works’, which amongst others include works such as computer programmes, tables and compilations, and computer databases (The Copyright Amendment Act, 1994) ^[13]. It is the skill, labour, and judgment of the author that is protected, irrespective of the form in which the product appears. Indian Copyright Act, 1957 protects “Databases” as ‘literary works’ under Section 13 (1) (a) of the Act which says that Copyright shall subsists throughout India in

⁸ [http://indiankanon.org/search/?forminput=section%202%20\(o\)%20copyri ght%2act](http://indiankanon.org/search/?forminput=section%202%20(o)%20copyri ght%2act) accessed on feb 12,2019 at 9.00pm

⁹ *Fetch Singh Mehta v. O.P. Singhal and others-AIR 1990 Raj 8*

¹⁰ *Satsang v. Kiran Chandra Mukhopodhy AIR 1972*

¹¹ *Telstra Corporation Ltd v Desktop Marketing Systems Pty Ltd [2000] FCA 612*

¹² Originality test – copyright- intellectual property in www.lawyersclubindia.com › Forum › Intellectual Property Rights › Copyrights accessed at feb 16,2019

¹³ copyright (Amendment)Act,1994(Act No.38 of 1994)

original literary, dramatic, musical and artistic works. The definition of literary works “as defined under Section 2(o) of Copyright Act, 1957 includes computer programmes, tables and compilations including computer data basis. In India the database on electronic is protected under copyright law.

Copyright amendment act, 2012 ^[14]

The Indian Copyright Law mainly consists of the Copyright Act 1957 (The latest amendment being, Act 27 of 2012 that came into force on 21 June, 2012). The amendments in 1994 were a response to technological changes in the means of communication like broadcasting and telecasting and the emergence of new technology like computer software. The 1999 Amendments have made the copyright fully compatible with Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The Amendments introduced by the Copyright Amendment Act, 2012 are significant in terms of range as they address the challenges posed by the Internet and go beyond these challenges in their scope. The latest Amendment harmonizes the Copyright Act, 1957 with WCT and WPPT. With these amendments, the Indian Copyright Law has become a forward-looking piece of legislation and the general opinion is that, barring a few aspects, the amended Act is capable of facing copyright challenges of digital technologies including those of Internet.

Requirement for a copyright protection ^[15]

In order to enjoy the protection of copyright of the work, the following conditions are to be satisfied. They are:

1. The subject matter of the copyright must be one of the works mentioned under section 13;
2. There must be originality in the work;
3. A copyright to subsist in a literary, dramatic, musical and artistic work, it must qualify as a work;
4. The work must be in tangible form;
5. The work should have been first published in India or the author must be a citizen of India.

Originality in India

It is currently unclear what standard of originality is followed in India, as Indian courts have not made any clear pronouncements on the concept of originality.¹⁶ Through judicial pronouncements, the following tests of originality have been developed:

1. Sweat of the Brow Test
2. Modicum of Creativity Test
3. Skill and Judgment Test

Sweat of the Brow Test

This test was originally propounded in *University London Press v. University Tutorial Press* ^[17], which conferred copyrights on work merely because time, energy, skill and labor were expended (i.e., originality of skill and labor) ^[18].

The Privy Council had approved this principle in the case of *Macmillan & Company Ltd. v. Cooper* ^[19], wherein it was held that the product of the labor, skill and capital of one man which must not be appropriated by another. This approach developed in U.K. and had been followed by the Indian Courts before the test of ‘modicum of creativity’ came into scene. The approach of the courts as above is often referred to as the “sweat of the brow” doctrine where more importance is given as to how much labor and diligence it took to create a work, rather than how original a work is ^[20].

Modicum of Creativity

This approach was developed by the U.S. Courts through the case of *Feist Publications Inc. v. Rural Telephone Service Co* It acknowledges that not every effort or industry, or expending of skill, results in copyrightable work, but only those activities which create works that are somewhat different in character, involve some intellectual effort, and involve a certain degree of creativity. According to this test, for a work to be original and copyrightable, it should contain a ‘minimal degree of creativity’. Earlier the Courts in India followed the ‘sweat of the brow’ test, however the approach of the Court changed after the introduction of modicum of creativity test. The focus of this approach was on the creativity rendered to the work of a person for it to be considered original. Eventually, the need of balancing the efforts and creative element in a work was realized for it to be rendered as original.

Skill and Judgment Test

This test provides for the Indian approach to determine whether the ‘work’ in question is ‘original work’ or not. In order to ascertain this, the author should have applied his ‘skill and judgment’ in creating the work and such work created should have the minimal element of creativity thereby leading the work to be original. Thus, it is observed that India adopts a middle path between the two extreme approaches i.e. the U.K. approach (sweat of the brow doctrine) and U.S. approach (modicum of creativity).

Term of Copyright

Section 22 of the Copyright Act deals with the duration of copyright. The copyright law confers protection only for a specific period and after the expiry of that period, the copyrighted work passes into the public domain. The interest of the public is served by recognizing the ‘principle of fair dealing’ where the use of the copyright work by a person other than the author does not constitute infringement of the copyright ^[21].

The term of copyright in published literary, dramatic, musical and artistic works, the duration is lifetime of author plus 60 years after his death. In case of a work of joint authorship, the period of sixty years will commence after the death of author who dies last ^[22].

¹⁴ <http://www.legalservicesindia.com/article/1638/Protection-Of-Copyright-In-The-Digital-Age-The-Role-And-Liabilities-Of-ISPs-In-India.html> Accessed on April 19, 2019 at 9.47 am

¹⁵ Intellectual property law, prof. A. Chandrasekaran, 2th edition p.130 referred on feb 18,2019

¹⁶ Ranjit Kumar, Database Protection: The European Way and the Impact on India, 45 IDEA

¹⁷ *University London Press v. University Tutorial Press*, [1916] 2 Ch 601

¹⁸ BEN Allgrove, international copyright law: A practical global guide (2013)

¹⁹ *Macmillan & Company Ltd. v. Cooper*, (1924) 26 BOMLR 292

²⁰ Mini Gautam, originality under copyright law is there any definite standard?

<http://www.legalservicesindia.com/article/article/originality-under-copyright-law-is-there-any-definite-standard-970-1.html> Access at march 1,2019 2.00pm

²¹ Dr. B.L. Wadehra, Law Relating to patents, Trade Marks, Copyright, Designns and Geographical Indications 2nd Ed.p. 332

²² Section 22

International Scenerio in Protection of Database

Internationally, copyright protection of original databases is well established and harmonized through international treaties to that effect, such as the Berne Convention for the Protection of Literary and Artistic Works, 1886 (Berne Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994 (TRIPS Agreement) and the WIPO Copyright Treaty, 1996 (WCT). Article 2(5) of the Berne Convention provides as follows: "Collections of literary and artistic works such as encyclopedia and anthologies which, by reason of the selection and arrangements of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections." So, the Berne Convention limits its scope to original collections of literary and artistic works. Does this mean that there is no basis in the Berne Convention for the protection of original collections of other material, such as mere data? In recent years, a general consensus seems to have emerged that collections of material other than literary and artistic works are indeed subject to copyright protection under the Berne Convention, provided, of course, that they can be considered "works," that is, that they are original. Article 10(2) of the TRIPS Agreement states, "Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself."

WIPO Copyright Treaty, 1996 ^[23]

The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention that deals with the protection of works and the rights of their authors in the digital environment. Any Contracting Party (even if it is not bound by the Berne Convention) must comply with the substantive provisions of the 1971 (Paris) Act of the Berne Convention for the Protection of Literary and Artistic Works (1886). Furthermore, the WCT mentions two subject matters to be protected by copyright:

1. computer programs, whatever the mode or form of their expression; and
2. Compilations of data or other material ("databases"), in any form, which, by reason of the selection or arrangement of their contents, constitute intellectual creations. (Where a database does not constitute such a creation, it is outside the scope of this Treaty.) ^[24]

The Provision of the Wct Relating to the Agenda Covers under the Issue ^[25].

a. Storage of Works in Digital Form in an Electronic Medium

The WIPO recognized that the storage of works in an electronic medium is reproduction. The reproduction right rest in Article 9 of BREN Convention and the exceptions permitted there under in exacting to the use of works in

digital form. The WCT adapt a specific solution for the transmission on digital Networks, limitations and exceptions in the digital environment.

b. Transmission on the Digital Networks

The WCT is a convention emerged that the broadcasting of work on the internet and in similar network must be the object of an exclusive right of the authorization of the author or the copyright owner, with appropriate exceptions ^[26]. There was no convention concerning the right of communication to the public and distribution was recognized as the two major possibilities ^[27], even BERN Convention does not offer full coverage for those rights. One of the most important issues had been solved by the WCT when, it realized that the right of communication to the public and the right of distribution should be covered. This solution was referred to as the "umbrella solution" by extending applicability of the right of communication to the public to all categories of works, and clarifies that right also covers transmissions in interactive systems described in a manner free of legal characterization. Other rights are provided by the WCT like the right of distribution and the right to make works available to the public.

Subject matter and the Scope of Protection ^[28].

The WCT contains specific provision on computer program and databases. The WCT scope of the subject matter covered by copyright, mainly in relation to the computer programs and databases was explored in the WCT. Moreover the WCT explanation concerning the protection of computer programs as literary works and of compilations of data (databases), which are similar to those included in Article 10 of the TRIPS Agreement. Furthermore, Article 4 and 5 of the WCT specify that countries that are contracting parties of the WCT and that are not members of TRIPs will accord protection to software and databases to the same extent as countries that do already adhere to TRIPs. The scope of protection in the world copyright treaty is based on three factors, rights have to be protected, duration of protection, and limitations.

Infringement on the Internet

The first step in enforcing Copyright rights is detecting infringement. But on the Internet this is a difficult matter. As some experts have argued, "The technologies of the digital system allow users to duplicate, manipulate and morph content – perfectly, instantly and infinitely – in ways that may be largely undetectable, thereby greatly expanding opportunities for confusion, fraud and infringement of Copyright rights" For example, in the case of copyright infringement, it is very easy for everyone to infringe copyright on the Internet but it is very difficult for a copyright owner to detect the infringement and identify the

²³ World Intellectual Property Organization (WIPO)

²⁴ https://www.wipo.int/treaties/en/ip/wct/summary_wct.html -Summary of the WIPO Copyright Treaty (WCT) (1996) accessed on Feb. 24, 2019 at 2.30pm

²⁵ http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#P86_11561, The advantages of adherence to the WIPO copyright treaty(WCT) accessed on Feb. 27,2019 at 11.30pm

²⁶ The WIPO Copyright Treaty (WCT)," International Treaties and Conventions on Intellectual Property" chapter 269.

²⁷ The WIPO Copyright Treaty (WCT)," International Treaties and Conventions on Intellectual Property" Without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii) and 14bis(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

²⁸ https://www.bilaterals.org/IMG/pdf/intellectual_property_WIPO_1_.pdf accessed at feb 28,2019 at 9.00pm

infringer. First, it can be difficult to pinpoint the precise point where something has happened as between the original uploading of information and its eventual display on a screen in another country.

In dealing with copyright rights on internet, we should bear in the mind that copyright does not protect novelty but only originality. Copyright protects only the expression and not the idea. Therefore, if it is the only method of expressing the work, it cannot be protected. Best example would be the Telephone Directory wherein the Name, Address, Phone No. are given and also given in alphabetical order. There can be no other way of expressing the same. Therefore, this would not amount to copyright infringement. This is popularly referred to as Idea-Expression Dichotomy.

The key factors required for initiating any infringement case are ^[29]

- Prove ownership of Copyright
- Infringer has copied (Substantially Similar)

Once the rights of the owner have been established, the next step is to prove the following

- a. The defendant copied directly from the plaintiff's work, and
- b. The elements copied, when taken together, amounts to an improper appropriation.

Therefore, to summaries the Condition to prove infringement can be summarized as follows:

- a. Closely Similarity
- b. Unlawful
- c. Some connection between original & copied work
- d. Access to original work

Various Technologies Violate Copyright on Internrt P2P File Sharing Technology ^[30]

Peer to peer distribution network makes data transfer in the internet easier. It is defined as two or more computers connected by software which enables the connected computers to transmit data to other connected computers.

Downloading for Viewing Content on the Internet ^[31]

There has been some controversy on the issue of whether the downloading of a webpage on the computer of the user while on the Internet, amounts to violation of copyright or not. A view has been expressed that since for accessing a page on the World Wide Web, the user actually downloads a copy of that web page on to his own computer in order to view it, it amounts to reproduction of the work. And if such work enjoys copyright, then such downloading amounts to infringement thereof.

Framing

Framing is a link to another site whereby such a site is displayed within a window or frame. Framing is distinct from hyper-linking. In framing, the Internet user remains at

the framing site and views the contents of the framed site within a window or a frame

Position in India ^[32]

Copyright ACT, 1957

The Copyright Act, 1957 was obviously drafted in complete oblivion of the phenomenon called internet. Even after its amendment in 1994 and 1999 it does not contain any express provision for determining or limiting ISP liability. However, some provisions' in the Act could be interpreted to have some bearing on the liability of ISPs. As per section 51 (a) (ii) of the Copyright Act: "Copyright in a work shall be deemed to be infringed, when any person, without a license granted by owner of copyright or the registrar of copyright under this Act or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority under this Act... permits for profit any place to be used for the communication of the work to the public where such communication constitute an infringement of copyright in the work, unless he was not aware and had no reasonable grounds for believing that such communication to the public would be an infringement of copyright." ISPs allow their services and telecommunication facilities for storing and transmitting user's material. The servers are located within their premises and they also charge for their services. Even if they don't charge, they make profit through the advertisements; they exhibit along with the transmitted material which is infringing copyright of the author.

ISPs Liability under the Information ACT, 2000 ^[33]

Section 79 of the IT Act exempts ISPs from liability for third party information or data made available by him if the ISP had no knowledge of the offence committed or if the ISP had exercised 'all due diligence' to prevent any infringement. This in turn means that unless the case in hand falls under these two exemptions, ISPs are liable for copyright infringements as well as any other violations that take place in their websites, even if the act is done by their Subscribers.

Where network service providers engage in activities which are indistinguishable from those of common carriers such as telephone companies and post offices, they should be given an assurance that they will be treated in the same way in respect of such activities. It will not affect any obligation founded on contract or any obligation imposed under any written law, by a court to remove, block, or deny access to any material. Network service providers will, of course, continue to be liable for their own content, or third party content that they adopt or approve of.

This Act deals only with cyber offences and crimes but it does not deal with the infringement of rights under the copyright law. Thus India needs legislative provisions to deal with liability issue in case of copyright infringement on Internet.

Remedies

Section 51 of the Copyright Act, 1957 ^[34] deals with the infringement of copyright. Under the law, if anyone without permission from the owner of the copyright holder or the

²⁹ WIPO, 'Primer on electronic commerce and intellectual property issues' (2000)

<<http://ecommerce.wipo.int/primer/index.html>> accessed March 24, 2019.

³⁰

shodhganga.inflibnet.ac.in/bitstream/10603/100920/11/11_chapter%206.pdf accessed at march 24,2019 at 7.0pm

³¹ Raman Mittal, —P2P Networks: Online Piracy of Music, Films and Computer Software, Journal of Intellectual Property Rights 440-46.

³² Ibid 127

³³ Information Technology Act(No 21 of 2000)

³⁴ Sec 51 of copyright Act,1957

Registrar of copyrights does anything that is against the rights of the owner, then copyright shall be deemed to be infringed moreover, the work cannot be created for sale or hired or distributed for trade or for any purpose that will affect the rights of the owner by anyone.

Under the Act, there exist three remedies against the infringement and these are civil, administrative and criminal remedies. The civil remedies include injunction, damages or accounts of profit, delivery of infringing copies and damages for conversion. Administrative remedies provide for a ban on the import of infringing copies into India. Criminal remedies provides imposition of fine or imprisonment of the accused.

Civil Remedies

The most important civil remedy is the grant of interlocutory injunction.

Interlocutory Injunctions

The principles on which interlocutory injunctions should be granted were discussed in detail in the English case of *American Cyanamid v Ethicon Ltd*³⁵. [1975] AC 368 (HL (E))³⁵. After this case, it was believed that the classic requirements for the grant of interim injunction are:

- Prima facie case
- Balance of Convenience; and
- Irreparable injury

In the case of *Software Ltd. v Philip Clarke & Others*³⁶, Laddie J re-examined the principles and took a fresh look at what *Cyanamid* had actually decided. The learned judge held:

- The grant of an interlocutory injunction was a matter of discretion and depended on all the facts of the case;
- there were no fixed rules;
- the court should rarely attempt to resolve complex issues of disputed fact or law;

The major factors the court should bear in mind were

1. the extent to which damages were likely to be an adequate remedy and the ability of the other party to pay
2. the balance of convenience
3. the maintenance of the status quo, and
4. Any clear view the court may reach as to the relative strength of the parties' case.

Thus, this case places emphasis on the merits and the effect may well be to obtain a non-binding view by a judge on the merits. This may lengthen the hearing of application for interlocutory injunction as parties may lead evidence on the merits but it may have the overall effect of putting an early end to the main action.

Pecuniary remedies

Sections 55 and 58 of the Indian Copyright Act, 1957, the plaintiff can seek the following three remedies, namely

- Account of profits
- Compensatory damages and
- Conversion damages which are assessed on the basis of value of the article converted.

Criminal remedies

Criminal remedy includes imprisonment of the infringer and the infringing copies seized. Besides one can get ANTON PILLER order from court, which means that court grants an ex-parte order if it feels that the case is balanced in favor of copyright holder. The owner can claim damages from the infringer. The author can get an order for search of defendant's premises, if there is clear evidence to show the presence of infringing copies in the premises of infringer. The infringer is be liable for imprisonment ranging 6 months to 3 years and/or fine of Rs.50,000/- to Rs. 2 lakhs. For the first time, the punishment would be for a period of 6 months to 3 years and/or Rs.25, 000 to 2 lakhs and for the second Time it would be for 1 to3 years and/or Rs.50,000 to 2 lakhs. And for infringement on computer Program, the punishment may vary from 7 days up to 3 years and/or Rs.50, 000 – 2 lakhs.

Administrative remedies

An application can be made by the owner of copyright in any work or by his duly authorized agent, to the Registrar of Copyrights to ban the import of infringing copies into India and the delivery of infringing copies of copyrighted article which were earlier confiscated from infringer to the owner of the copyright.

Conclusion

The need for copyright protection became important due to the transmission of material, information, videos, and audio data borderless. The protection of database even became difficult due to the technological development. There are various infringement cases all over the world. The rights of the copyright holder are been unable to provide. To regulate this vulnerable situation on Internet India has enacted Copyright Amendment Act, 2012 along with the Copyright Act, 1956. Therefore Indian laws on protection of database is effective than other countries but the applicability of protection is lacking due to the lacuna on awareness among the society on the protection of their Intellectual work. It is suggested that to make awareness among the people in society, their rights, plagiarism and to make a balance on compliance with the domestic law through International treaties so that the protection can be given properly to the individuals.

References

1. Intellectual Property Law, C. Sitaraman & Co. Pvt. Ltd, prof A. Chanrasekaran Karnika seth, Computers, Internet & New Technology Laws”, Lexis Nexis, Nagpur 2nd Edition, 2016.
2. Blayne Haggart. Copyfight: The Global policies of Digital Copyright Reform University of Toronto, 2014.
3. Peter Baldwin Copyright Wars the Three Centuries of Trans-Atlantic Battle Princeton University Press, New Jersey, 2014.
4. Apar Gupta. Commentary on Information Technology Act” LexisNexis, Nagpur 2nd Ed, 2011.
5. Rodney Rider D, Aswin Madhavan. Intellectual Property and Business” SAGE Publication, 2004.
6. SVS Abidha Beegum. Indian Internet Copyright Law partridge, India Gurgaon, 2014.
7. The Copyright Act, 1957.
8. The Copyright (Amendment) Act, 1994.
9. The Copyright (Amendment) Act, 2002.

³⁵ American Cyanamid v Ethicon Ltd31. [1975] AC 368 (HL (E)).

³⁶ Software Ltd. v Philip Clarke & Others

10. Information Act, 2000.
 11. Berne Convention of 1886 as modified at Paris in, 1971.
 12. The Universal Copyright Convention of, 1951.
 13. The Rome Convention of 1961 and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)
 14. The WIPO Copyright Treaty (WCT)
 15. The WIPO Performances and Phonograms Treaty (WPPT).
 16. Copyright, Designs and Patents Act, 1988.
 17. The Digital Millennium Copyright Act (DMCA), 1998.
 18. Moahi KH. Copyright in the Digital Era and some Implications for Indigenous, 2004.
 19. Knowledge. African Journal for Library and Information.
 20. Ginsburg Jane C. The Cyberian Captivity of Copyright: Territoriality and Authors' Rights in a Networked World, Santa Clara Computer & High Technology Law Journal. 1999; 15(2):347-361.
 21. https://www.bodleian.ox.ac.uk/__data/assets/pdf_file/0008/178226/Database-rights.pdf
 22. <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1693&context=caselrev>
 23. <http://www.ijiee.org/papers/127-I150.pdf>
 24. <http://www.aippi.nl/uploads/bestanden/Q182.pdf>
 25. https://steigerlegal.ch/wp-content/uploads/2014/06/intellectual-property-and-the-internet_2014_extract-switzerland.pdf
 26. <https://www.hkreform.gov.hk/en/docs/rcopyright-e.pdf>
 27. <http://eprints.nottingham.ac.uk/27698/1/iic%20derclaye%202005.pdf>
-