

IPR IN DIGITAL ENVIRONMENT : ISSUES OF CONCERN TO LIBRARY COMMUNITY

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ABSTRACT

A brief review of the recent Indian Publications on IPR in digital environment is given. The basic concepts explained in the literature are enumerated. The Internet resources on the topic have been identified. Several issues of concern to library community have been raised and discussed.

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0. Introduction

Basic Terms

The Oxford Concise Dictionary gives meaning of the terms act, law and right as follows:

Act: A written ordinance of a parliament or other legislative body.

Law: A rule enacted or customary in a community and recognized as enjoining or prohibiting certain actions and enforced by the imposition of penalty.

Right: A thing one may legally or morally claim; the state of being entitled to a privilege or immunity or authority to act (A right of reply, human rights).

The other related fundamental terms defined in the concerned literature are:

Information Technology Act-2000

The Parliament of India has passed the Information Technology Act-2000 which provides the legal infrastructure for e-commerce in India. This act has received the assent from the President of India and has become the law of the land in India. It is the first Cyber Law of the country.

1. Laws

1.1 Cyber Law

Cyber Law is a term which refers to all the legal and regulatory aspects of Internet and the world wide web. Anything that concerns with or related to or emanating from any legal aspects or issues concerning any activity of netizens and others, on Internet in cyber space comes within the ambit of cyber law.

1.2 Intellectual Property

Every human being is endowed with certain but varying degree of intellect. Each individual is uniquely gifted. The word intellect originates from the root “intellectus” in Latin which means the power of knowing as distinguished from the power to feel. Man has the capacity to acquire knowledge and increase his knowledge bank by gathering more and utilizing it as and when required throughout his life time. An intellectual makes his living by selling the product intellect, which is nothing but the brain child of his original idea, creative thought, which forms a special kind of property known as intellectual property. The intellectual property is ownership of something intangible. A right as we know is legally protected interest and object of the right is the thing in which the owner has this interest. The object in intellectual property right is immaterial property. Hence, we cannot neatly fit it into either of the two conventionally dichotomized categories of personal or real property.

1.3 Intellectual Property Right (IPR)

IPR connotes the right to literary, artistic and scientific work; performances of performing artists; phonographs and broad-cast; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks; service marks and commercial names and designations, and all other products resulting from intellectual activity in the industrial, scientific, literary and artistic fields. It is a generic term covering patents; registered design; trademark; copyright; layout of integrated circuits, trade secrets; geographical indicators and anti-competitive practices in contractual licenses.

1.4 Copyright

Copyright protects the labour, skill and judgement of some one author, artist or some other creator, expender in the creation of original piece of work. It may be given for creators of literacy; dramatic; musical and other artistic work and producers of cinematographs and sound recordings. In fact, it is a bundle of rights, including inter-alia, rights of reproduction, communication to the public adaptation and translation of work. A copyright is a set of exclusive legal rights, authors have over their works for a limited period of time. In the United States, U.S. Copyright Office works “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries”.

2. Two Events

Recently, in Bangalore two important events took place regarding the IPR particularly, in the context of digital/virtual/electronic libraries, and library community.

The first one was a panel discussion on “Cyber Laws” in electronic media organized at the time of ITT-2000, Information Today and Tomorrow – 2000, on the theme of “Media Convergence and Knowledge Management” organized by National Aerospace Laboratory (NAL), Bangalore on November 24th, 2000. Very eminent scholars and experts on the cyber law participated, including Prof.N.L.Mitra, Former Director, National Law School of India University, Bangalore, Dr.Gulshan Rai, Senior Director, Ministry of Information Technology, New Delhi, Mr.Pavan Duggal, advocate Supreme Court, New Delhi and others. The panel discussion was very informative and thought provoking. The discussion can be accessed on the following site:

<http://www.cmmacs.ernet.in/nal/icast>

The second almost immediately followed was a National Seminar on “Information policies and cyber laws” organized by Sarada Ranganathan Endowment of Library Science at the Institute of Information Studies, Bangalore from 4th to 6th December 2000. The papers discussed various facets of IPR including IPR in India and overview, freedom of information, copyright and data protection, IPR in informatic policies; UNESCO FID survey; copyright; fair use and database in digital network environment ; cyber law issues; E-commerce; Indian IT bill and Internet; etc. This document perhaps fulfils the requirement of library community in India to understand, implement and use the IPR and copyright in the digital environment [1].

At the time of panel discussion at NAL, Mr. Pavan Duggal, advocate of Supreme Court of India distributed a pamphlet entitled, “Cyber Law in India: An analysis”, which examines the Information Technology Act-2000 and presents the strong and weak points of the IT act. More information may be obtained from the following URL’s:

[http:// www.cyberlaws. Net](http://www.cyberlaws.Net)
[http:// www.cyberlawindia.com](http://www.cyberlawindia.com)
[http:// www.cyberlawconsultancy.com](http://www.cyberlawconsultancy.com)
[http:// www.cyberlawassociation.com](http://www.cyberlawassociation.com)
[http:// www.cyberlawasia.com](http://www.cyberlawasia.com)
[http:// www.cyberlawarbitration. Net](http://www.cyberlawarbitration.Net)

3. Literature Review

Some of the recent Indian publications on the topic are briefly reviewed here.

Panda; K C and others examined copyright law in the electronic age and noted proliferation of electronic information creating interest in the minds of authors, publishers, users and intermediators regarding the copyright law. Discussed the role of IFLA in the protection of copy right in the global scenario and concluded that there is a urgent need to reconsider the existing copyright law to make it suitable in electronic age [2].

Lakshmana Moorthy, A and Karisiddappa, C.R.while discussing copyright and electronic information, observed the main objectives of copyright law as promoting the access and the use for information and protecting the work from infringement and for encouraging the authors for pursuit of knowledge. They discussed the Indian Copyright law 1957 and its amendments, mentioned major world wide projects to protect copy right of electronic information and concluded that the library professional should negotiate few electro-copying privileges for legitimate non-commercial usage of electronic information similar to the kind of fair use as in the case of printed materials [3].

Bomanwar studied intellectual property rights in the context of new information society, noted the thrust area of economic activity shifted to knowledge based industries and intellectual goods, described impact of piracy of intellectual property act viz. viopiracy, geopiracy and IT products of new information society. He noted that developed countries demand protection against piracy while developing countries feel that such protection will prevent entry of new comers and felt that in the freeflow of information IPR was hurdle to it [4].

Murthy, T.A.V. and Jain, S.P. dealt with network access to electronic document and its copyright implications to developing countries. They found the present copyright law which was framed after the invention of the printing press as by and large being forced on the existing electronic environment and felt that there is need to modify the IPR which confers exclusive right to the author to exploit the work created by him/her for monitory gains in compensation of labour, skill and capital investment in generating information. On the contrary, the IPR should not give undue benefit to the author and should not allow him to make excessive profit and should not become a barrier in the free flow of information. The need for well thought out licensing strategies are required to serve the interest of authors, publishers, and libraries, [5].

Lakshmana Moorthy, A. and Karisiddappa, C.R. studied IPR and virtual libraries and described the nature of copyright violations in digital environment including databases and pointed out the disparities in legislation and explained techniques like cryptography, digital water markers and digital signatures for effective control of infringement of rights in various environment and security of information over networks and multimedia work [7].

In another paper, the same authors reviewed electronic publishing and its impact and implications on library and information centers and critically examined the IPR issues relating to e-Journals and other electronic publishing [11].

Thushar Kanti Saha- studied IPR in the context of science and the intellectual products created by the scientist as intellectual property. Described the Indian entry in to the World Trade Organization (WTO) and General Agreement on Trade and Tariff (GATT) which calls for sweeping changes in the municipal legal regime governing the intellectual property right in India. The codes inter-alia include an Agreement on Trade Related Intellectual property Right (TRIPS) and discussed issue of divergent between Indian Patent Law [8].

Tripathy, R.C. and others discussed IPR in electronics and information technology, observed, after the sensitization of IPR the world over particularly, after establishment of the World Trade Organization (WTO) and the Agreement of Trade Related Intellectual Property Rights (TRIPS) India is heading towards a new IPR regime of opportunity as well as pit falls. They emphasized the responsibility of various departments of the Government of India to popularize the awareness provide effective and efficient framework for protection of the IPR of the Indian nationals and the organizations in the present day competitive world. The authors outlined the efforts of Department of Electronics in setting up a IPR cell for promoting the IPR protection in its public sector undertakings, scientific societies and institutions in the area of electronics and information technology [9].

Srividya G.S. discussed IPR issues in databases where the term database constitutes data scored in the world wide web, CD, multimedia products, networks and so on. The IPR issues for protection of database were described including copy right, trade marks, domain names, trade secrets, patentability of databases and civil law issues, and various methods of protecting the database through various mechanism were listed, [10].

The 11 references cited here gave a total of 335 citations. Authors' further analysis identified quite a good number of journals containing one or more articles on IPR and related subjects.

4. Basic Concepts

The brief literature review of some of the recent Indian publications given above helps the authors to avoid duplication of explaining basic concepts related to IPR. For example:

- ? What is IPR?
- ? What are technicalities of patent protection?
- ? How it ensures that the inventors get their due for their efforts?
- ? Scope and coverage of various concepts connected with IPR, such as intellectual property, intellectual property rights, patents, copyright, images, designs, trademarks, computer software, databases, Internet, and cyber laws.
- ? Why India is concerned about the manner in which multinational companies and the western countries casually appropriate intellectual property?
- ? Possibilities of making intellectual property as the main factor in India's competitive advantage in the 21st century.

- ? What is “fair use” in the context of print medium and is it applicable to electronic medium?
- ? Historical development of IPR, copyright and patent law.
- ? Objectives of copyright law
- ? Legal rights of authors
- ? Exceptions to copyright infringement
- ? Copyright enforcement-establishment of CCC-Copyright Clearance Center, Inc in 1977.

5. Internet Resources

Several Internet resources and web sites on IPR are available.

A simple search by the authors on Internet for articles on IPR listed some 478 web sites. Following are few illustrations to demonstrate the depth and vastness of Information on IPR available on the Internet.

<http://sunsite.berkeley.edu/copyright/>

Gives a list of references on copy right, intellectual property right and licensing issue. It is possible to click on any or all of them to get hundreds of articles and also full text.

A click on the item “New horizons in scholarly communication”, a publication of the Librarians Association of the University of California, showed some 103 items indicating various web sites.

Further, a click on “Copy Right Resources on Internet” listed a large number of references on US Copyright Office and various efforts made in USA. Further search on

<http://www.ala.org/washoft/primer.html>

allowed us to download, “Primer on the digital millennium.”-What the digital millennium copyright Act and the copyright extension act mean for the library community by – Arnold P. Lutzker (arnie@lutzker.com).

An Indian Website on IPR is maintained by the National Law School of India University, Bangalore. It answers several basic questions related to IPR.

<http://www.iprlawindia.org>

It is not the purpose of this paper to list or review the several publications accessible on Internet . But we surely want to highlight the recent Indian publications on the subject and some of them have been briefly described earlier as these are not easily accessible and available to large number of our colleagues.

6. IPR in digital context

Deming Zhou [6] while discussing Chinese copyright protection system has raised specific issues of IPR in digital context. These are also relevant in the Indian context.

The advent of digital technology has greatly accelerated the dissemination and distribution of information with great speed and accuracy never seen before. It is much easier to disseminate literary, artistic and scientific work to a very large community of Internet users and users of electronic media. At the same time poses some problems and issues for consideration. The major issues are,

- ? Is digitization to be considered as similar to reproduction, for example using Xerox machine?
- ? Is digitization a deductive activity such as translation from one language to another?
- ? Can transmission of digitized documents through Internet be considered as commercial distribution or public communication similar to broadcasting?
- ? Is the principle of exhaustion of the distribution right still effective in the digital age?
- ? Can we consider a database as a special collected work that should be protected by the copyright law or it can be considered as a special work requiring specific legislation for its protection?
- ? What can be considered as “Faire use” in the Internet environment?
- ? What are the concerns of the library community?
- ? In the digital context if access could be technologically restricted by the copyright owner, how could the public exercise fair use with regard to those work?
- ? Whether libraries should be prevented from employing digital technology to preserve work by making three copies-an archival copy, a master copy and a use copy?
- ? Whether Internet Service Providers (including libraries and educational institutions) should be liable for copyright infringement merely because they facilitated the transmission of digital data (Zeroes and Ones) that translated into another party’s copyrighted work.

The issues mentioned above are specific to the library community. The libraries as a service have allowed their users to read a document, to browse through the whole collection; to search through the library catalogue; to supply Xerox copy for specific individual research and education purpose; to procure photocopies of articles from other libraries or clearing centers; to widely distribute the re-produced copies of documents requiring public awareness and to provide inter library loan service. Whether all these activities will continue in the digital age? If digitization is considered as reproduction, it is clear that in digitization the initial work is merely changed into the digital form and the process of changing is accomplished by a machine, without any creativity. At the same time if it is considered as a translation from one language to another, the digitization is also a change from natural language of humans in to binary language of machine. In digitization however, there is no creativity involved and it could be considered as an activity similar to reprography. The copyright protects creative works. Simply transformation in to the digital form of an original document cannot be considered as creative.

The transmission of information on Internet can be considered similar to broad casting and copyright law cannot be applied. Internet transmission is global in nature. A tangible object carrying a traditional work distributed lawfully comes under the principle of exhaustion of distribution right. It is not appropriate to apply this right to a work transmitted on Internet. The transmission on Internet is different from any tangible object fixing of the work.

7. Conclusion

A database is normally defined as the structured storage of data in a computer system. As the selection of data and arrangement of data in a structured way could be considered as intellectual creation, database, accordingly should be protected by copyright law. The fair use of print material by allowing reproduction in a reasonable way for private study, research or education is well understood. But in the context of digital information, because it is distributed to a larger community, it is difficult to judge, comprehend “fair use”, access and control the infringement of copyright law. It is almost impossible for a copyright owner to know which person used his/her work. It is also impossible for copyright owner to give permission to use and receive remuneration. In this context it is necessary to modify the copyright law. The librarians in the digital environment have the same responsibility to collect information and help the readers by giving it even if the form is electronic information. The role of librarian is to be protected and enhanced. The copyright protection should be encouraging the use of information for creativity and not for creating hurdles in the use of information. The Librarians should continue to work as catalyst for the free flow of information between the owners of copyright and the users of the information.

8. Acknowledgment

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