
Intellectual Property Rights in Changing Scenario

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Abstract

The copyright protection is not merely confined to books but extends to sound recordings, computer programs, films, radio, broadcast etc. The Indian copyright act was passed in 1957 and amended in 1994, 1999 to include computer generating works. Intellectual Property Right in Indian scenario is less known by the people due to extreme illiteracy in context to patent system, copyright etc. included under TRIP (Trade Related Intellectual Property Rights). Librarians play an important role in protecting the rights of copyright holders, patent holders, trademarks, industrial design etc. The Librarians/information officers should keep themselves aware with latest changes in the Intellectual Property Right and Information Technology Act and their implementation. It is an obligation of the Librarian to keep the user aware about copyright.

Keywords : Copyright, Intellectual Property Rights, Universal Copyright Convention, Cyber Space, Cyber Crime, Trade Related Intellectual Property Rights

0. Introduction

The Intellectual Property Rights covers almost all walks of life such as agriculture, biotechnology, industries and library sciences while the copyright mainly relates to authors, publishers, librarians etc. The Intellectual Property Right and copyright cover printed matter, patents, industrial design, trademarks, trade secrets etc. 'IPR' is the creation of human mind. Potential efforts of human beings lead to intellectual outcomes, which in turn have considerable value in economy. Right associated with intellectual property which gives legal protection is referred to as IPR.¹ The copyright is an old concept. We are all aware of the nature of copyright. After the advent of printing and multimedia technology for storage and communication, the concept of copyright has changed and become more complex and important. Librarians and information scientists are deeply concerned with copyright issue as it has direct impact on their work and services such as acquisition, storage, and dissemination of information.

1. Intellectual Property Right

The brain of human is very inventive and is never taking rest. It continuously creates intellectual output in the form of new designs, inventions, trademarks and other new-fangled things etc. When these entities appear intangible then it takes a form of property (Intellectual Property). IPR can be divided in two following divisions:

- a. Intellectual Property
 1. Inventions
 2. Trademarks
 3. Industrial design
 4. Geographical indications

b. Copyright

1. Writings
2. paintings
3. Musical works
4. Dramatics works
5. Audiovisual works
6. Sound recordings
7. Photographic works
8. Broadcast
9. Sculpture
10. Drawings
11. Architectural works etc.

Copyright is a protection that covers published and unpublished literary, scientific and artistic works, whatever the form of expression, provided such works are fixed in a tangible or material form. This means that if we can see it, hear it and/or touch it - it may be protected. Copyright laws grant the creator the exclusive right to reproduce, prepare derivative works, distribute, perform and display the work publicly. Exclusive means only the creator of such work, not anybody who has access to it and decides to grab it. Some of the definitions of copyright are given below:

“The ownership of and legal right to control all possible ways of producing a copy of an original piece of work, such as a book, play, film, photograph or piece of music”²

“The exclusive legal right, given to the organizer or their assignee for a fixed number of years, to publish, perform, film or record literary, artistic or musical material, and to authorize others to do the same”³

All things are smoothly running in the printed world, but the application of information technology in printed world has created the problems for the writer to protect their work. The physical shape of books, journals, periodicals, etc. has changed to digital form in CD, DVD etc. In the age of Internet any paper can be distributed or duplicated speedily to the users as the law of copyright is permits to downloaded material. To protect the individual efforts and to allow benefit to the author, USA has enacted copyright law where the work of the author does meet following three requirements.

1. The work must be original and not copied from other’s work.
2. The work must be in a “tangible” form that is, either written down or record on tape, videotape disk, CD and so on. The spoken word is no ©
3. The work must be more than just on idea: an idea is not copyrightable although a particular expression of idea is.⁴

The UK allows protection of the following subject matters.

1. Original literary, dramatic, musical and artists work.
2. The typographical arrangement of published editions of literary, dramatic or musical works.
3. Sound recordings.
4. Broadcasts.
5. Cable Programs.

In India, during the period of East India Company, the copyright act 1847 was enacted. The copyright act 1847 was followed by Indian copyright act 1914, which was influenced by British Copyright Act. After independence, comprehensive copyright act was enacted in India in 1957. The term of "copyright" holds to a period 25 years after author's death. The Indian copyright act 1957 was amended in 1983, 1984, 1994 and in 1999. In 1999 some of the following amendments were incorporated:

1. Increased term of copyright of performers from 25 to 50 years.
2. Amendment definition of literary works.
3. Meaning of copyright in respect of computer programs.
4. New provisions pertaining to power of Govt. of India to apply the Provision relating to Broadcasting organization and performers of Broadcasting organization.

2. IT Act of India

In the age of electronics many new features of sharing information and knowledge have to be put into use. To control these, special protection is required. These matters are being discussed globally by the international organization like World Intellectual Property Organization (WIPO) and WTO.

The union Govt. of India on 16th Dec. 1999 introduced Cyber Law Legislation to provide the legal framework for electronic commerce. The IT Bill 1999 was re-introduced on 16th May 2000. After some important modifications, it got approval from the Rajya Sabha on 17th May, 2000 and the President assented to it.

India IT Act covers almost all the aspects of cyber world but it is incomplete in some areas. The Indian IT act does not cover the technological advancement and changes like biometric signature, watermarks, smart cards, and transaction on the Net on credit card not using digital signature but using passwords like PKN etc. The act should cover as many things as possible. Cyber theft, especially of Internet hours will be very difficult to prove in a court of Law. The IT act does not talk about electronic hand transfer or payments. There is no law in the country, which legalizes credit card payments.⁵

3. Expirations of Copyright Protection

If a copyright statement reads, "© Copyright 2003 J.K. Khanna." does mean that Khanna's copyright expired in 2003? The dates that we see in a copyright statement do not refer to the dates that the owner's material will expire and become public domain - they actually refer to the dates that the material was created.

When we see several dates in a copyright statement, it simply means that certain things were created in one year and modified later. It could also mean that new things were created and added in a later year.

The Berne Convention establishes a general and minimum period that lasts the life of the author and fifty years after his (or her) death. Cinematographic works and photographic works have a minimum period of protection of 50 and 25 years upon the date of creation, respectively. This applies to any country that has signed the Berne Convention, and these are just the minimum periods of protection.

4. Copyright and Internet

Display, downloading, copying or printing of copyright works in electronic form have to be performed under control license since copyright violation leads to revenue loss for publisher. ISI electronic library project is developing a security and rights management system, which will take care at the client, both at local and central server levels. The system will use password, secure printing through encryption and watermarks and guaranteed authenticity with the use of digital signature.⁶

William Gibson, the science-fiction author, has invented this term “Cyberspace” that would grow into many dimensional experiences- where sound and speech are heard and you can also view and Internet with 3-D objects. ⁷

Cyberspace is the imaginary place where electronic messages, pictures, etc. exist while they are being sent between computers.⁸

On web site, it is so easy to click and save with a mouse button when one sees a graphic image that one likes, or to view the source code and copy part of or all of the HTML coding because one “likes the way this or that was done” or one “wants a similar layout”, or to copy original writings because “that person expresses this or that so well”. The general (and incorrect) notion is that anything that is on the internet is public domain and may be taken without permission from the creator/owner. Some people actually think (incorrectly) that just because bits of web pages may be stored in one’s cache or because certain browsers allow one to do “files save as” moves or anything similar one may use such material as one wishes.

Material found on the web may be copied freely only if the information is created by the:

- (i) Federal government,
- (ii) If the copyright has expired; or
- (iii) The copyright has been abandoned by the holder.

Therefore, “Internet” and “public domain” are not synonymous. Any work published on the internet is **not** automatically placed in the public domain, unless the material in question complies with one or more of the characteristics mentioned.

5. International Copyrights (WIPO)

In 1886 a meeting was held on international agreement on the copyright issue in Berne Convention. USA opposed this convention and agreed to it in the 1998 convention. The UCC (Universal Copyright Convention) has provided some protection of foreign works as for domestic work and translation rights up to 7 years. The TRIPs (Trade Related Intellectual Property Rights) is the outcome of eight rounds of discussion of GATT (General Agreement and Tariffs and Trade) which was adopted by WTO (World Trade Organisation)

The Berne Convention and the Universal Copyright Convention (UCC) protect our works in countries of which we are not a citizen or national. Under these treaties, the following works may be protected:

- (i) Both unpublished and published works of an author who is a national or resident of a country that is a member of these treaties; or
- (ii) Published works, with permission, of an author who is not a national or resident of a country that is a member of these treaties. In this case a work may be considered simultaneously published in several countries if it has been published in two or more Berne Union countries within 30 days of its first publication.

To benefit from the above protection, there are no formal requirements established in the Berne Convention other than having the author’s name on the work. Under the UCC, a copyright notice is required. This notice should consist of the copyright symbol “©” accompanied by the year of first publication and the name of the copyright owner.

6. Fair Use

Fair use term has not been defined in the law and left to the court (in the event of a dispute) to decide (what may be fair use and what amounts to infringement), fair use term is popular in UK and USA. Fair use or fair practice is utilization of a portion of a copyrighted work “as is” for purposes of parody, news reporting, research and education about such copyrighted work without the permission of the author. Use of copyrighted works or portions thereof, for any other purpose is not deemed fair use. We still have to credit our source by naming the author of the work on the same page. In any event, it is always safer to take the time and effort to contact the owner and request permission to use the owner’s work, and more likely than not the owner will be very appreciative and give you a favorable response.

Many have opinions that one may take someone else’s work, whether it is writings, graphic images, midis and the like and use it in an “educational” work without obtaining the author’s permission or giving credit because it is “fair use”. When you wrote a term paper in school, didn’t you credit your sources? Even if you paraphrased the author’s original words, or if you feel that you don’t need the author’s permission because it falls in this vague concept of fair use you must credit your source’s hard work by naming your source as a reference. This is a requirement under copyright legislation. If not, you’d be committing bootlegging.

7. Violation of Copyright

The real worlds of new technology in Internet reflect well the pleasant side of life as well as evil side of the life. Today the physical shape of books, magazines, newspapers, pictures, images etc have changed to CD, DVD etc. and are providing all the commercial information on Internet. The purpose of all such developments is to generate the income for author of the original work. Obtaining an unauthorized access to any system for modification or deletion or theft of original work of the author is cyber crime or violation of the copyright.

The following are the cyber crime and violation of the copyright act in the Internet age.

1. Hacking
2. Virus attack
3. Spreading misinformation
4. Cutting of communication
5. Violation of privacy
6. Cracking
7. Data fiddling
8. E-mail security destruction
9. Pornography
10. Alteration of information

Brad Templeton has written many articles about intellectual property rights on the web. His Article, entitled ‘the biggest myths about copyright’, gives a good overview on the issue with copyright. The copyright law is mostly civil law where the special rights of criminal defendants you bear so much about don’t apply.

IT Act ,clause 66, defines hacking as “likely to wrongful loss or damages to the public or any person destroy or delete or alter any information residing in a computer resource or diminishes its value or utility or affect it injuriously by any means, commits hacking.”⁹

Virus attack on the system is a major problem today as anyone who is living is living anywhere can create the virus through any connected system to Internet. A virus attack on a software making company can create a big problem for the customer of that company.

Data fiddling is moving the data files , modifying the data and making the unusable database unusable lock system is cyber crime.

The copyright notice at the bottom of a website only pertains to the content that one has actually created, not to what was created by another and is being used with permission. Owner's terms may vary, but it is always best to include text on the same page where the material on loan is being used to specify who the real owner is, and that it is being used with permission.

If we see a certain page layout and like the way it looks, we could "legally" reproduce something similar if we write the coding all by ourself without copying any of the source code from the original page. The actual intangible idea may not be copyrighted. What is copyrighted is the tangible result of the idea, which would be the layout written out in HTML coding and saved to a hard drive. That means *no* copying and pasting of another person's source code.

If anyone translates anyone copyright page into another language, he doesn't need permission, and he owns the "new" work! The Berne Convention states, "Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works."

If it is merely translated an existing work into another language, it is not really a new work. We own the full copyright to the translation only, and even if we have owner's permission to translate it, we still need to credit the owner within the translation as author of the original work.

8. Copyright and Libraries

Now, all the Libraries are providing reprographic service to their users, especially Academic, Research and special Libraries. It is a clear violation of the Copyright Act for this a permission of the concerned authority (Creator of work) is essential. Sometime the photocopying is done not for the readers but for Library itself for fulfill the additional requirement of the Library. But the Section 52, Clause (0) of Copyright Act provide certain exceptions to infringement as three copies of a book under the direction of public Library Librarian, for use of the Library if the books are not available in India, would not be infringement, this protection is available for public Library Librarians only.

S.R. Rangnathan's Laws are (books are for use, books are for all, all books have its readers) in total contravention. A Library is a place where there should be free transfer of information and knowledge should be meant for learning not for selling/buying purpose. But the Copyright Law has put these fundamental principles of Library in doubt. Section 52 (a) provides a fair dealing with a literary dramatic, musical or artistic work not being a computer program for the purpose of, 1) Private use including research, 2) Criticism of review but the act has not defined the fair dealing. In the new digital era, the Libraries and readers have been enjoying with the recent technology but they have positively understand the concept of IPR and Information Officers should keep themselves up to date about the IPR & Copyright Act, and there should be a provision of short term courses/training for the purposes . It is an obligation of the Librarian to keep aware the user about copyright.¹⁰

9. Conclusion

Intellectual Property Right in Indian scenario is less known by the people due to extreme illiteracy in context to patent system, copyright etc., that are included under TRIP (Trade Related Intellectual Property

Rights). Indian people do not take seriously and timely these issues; as a result the products using Turmeric, Neem, and the Basmati Rice are patented abroad by foreigners. It is our duty to know about these laws and Govt. should organize such programs from time to time to familiar the people.

In India the software companies are not taking much interest to spend the money on security option. The Government should make powerful Act to prevent the cyber crime keeping in view user's interest. Many corporates, who had put off their plans for formulation their security have now started to deploy them in wake of the September 11 attack. Indian Software Companies are slowly realizing the need for a comprehensive security solution.

Librarians play an important role in protecting the rights of copyright holders, patent holders, trademarks, industrial design etc. The Librarians, information officer should keep themselves aware with latest changes in the Intellectual Property Right and Information Technology Act and their implementation. It is an obligation of the Librarian to keep the user aware about copyright. Library science curriculum should include the IPR related issues. All these steps will be helpful to the society to protect infringement and cyber crimes.

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