

PROTECTING DIGITAL INTELLECTUAL PROPERTY: AN INDIAN SCENARIO

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ABSTRACT

Developments in information communication technologies has brought about an accelerated information explosion and huge change in how information is being produced, processed, stored and communicated. Information is now being made available in digital format accessed via electronic networks such as the Internet, and being stored or preserved in digital archives or collections. In addition, digital information can be manipulated and disseminated very easily. Such forms of development have resulted in major concerns in the protection of digital information sources under existing copyright and other related laws and regulations. This Paper examines the efforts being made to revise copyright laws in order to include the protection of digital information sources, and the role library and information professionals and institutions around the world, can play to ensure that revised copyright laws do not have a negative impact on the free flow of information and access to digital information sources. The situation regarding copyright laws, digital information and libraries in India is discussed and numbers of observations are made. Also discusses the role of IFLA for protecting electronic Intellectual Property Right. It focuses on various categories of Intellectual Property Rights viz. Patent, Design, Trade Marks and Copyright in the light of utility of information related to Indian scenario.

Keywords: Intellectual Property Rights, Digital Information – IPR, Copyright – Digital Information

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0 Introduction

Developments in information and communication technologies have brought about new methods of producing and disseminating information in a new format i.e., digital format. Information is being produced, processed, stored n digital form and distributed over electronic networks, such as the Internet and on CD-ROM's. Digital bibliographic and full text databases can be accessed over electronic networks and on DC-ROM's. The Internet's World Wide Web, a multimedia and hypertext tool, provides a new and technologically advanced way of generating, publishing and distributing digital information to a wider community within the shortest possible time. Web-based information can be accessed anywhere in the world, where access to the Internet is available. Information on the web can integrate text, sound, video and images all in one digital document. Digital information sources available on the internet include electronic journals, books, conference proceedings, software, speeches, music, videos and films, works of art research reports, photographs,

museum objects and many others, most of which are versions of works already protected under copyright works, while others are just being created.

Creation and dissemination of digital information has resulted in new challenges and concerns regarding the protection of intellectual property rights works. Creators of digital works, governments, publishers and even information professionals are all concerned about the possible misuse or exploitation of digital information sources. These sources can easily be accessed, reproduced or printed on computers connected to networks. In addition, the quality never goes down, and can be copied, edited and transmitted to another platform with upgraded quality. For example, WWW provides access to huge amounts of digital information, however, the uses of web browsing software allow users to have a complete copy of the web document on their computer screens. The digital version of the document can be copied or printed several times, or stored on a computer diskette or hard disc for future use, without permission from the intellectual property right holder. Hence, the need to protect digital information sources cannot be over-emphasised. In this circumstances, authors and publishers are not willing to put their works on electronic networks unless a system is in place to protect their works.

1 Intellectual Property Rights

Intellectual Property Rights (IPRs) is a legal system of Industrial Property (i.e. Patents for invention, designs for industrial designs and trade marks for marketing a product) together with copyright in literary work. This term however, is now used to include all properties 'resulting from the exercise of human intellect'.

Intellectual property rights in form of copyright, patents, designs and trade marks are mechanisms to establish their ownership and to prevent illegal copying of intellectual creations. The underlying principle of the IPRs system is to encourage the creators for inventing activity. This system restricts the utility of information, as their laws basically deal with ownership.

2 India's Intellectual Property Rights

The rights in Intellectual Property are protected by the appropriate legislations of the concerned country. In India, the protection of it is governed by the following legislations^{1&2}:

1. Patents Act of 1970:

The Patents Act 1970 was amended in 1999 passed by the Indian Parliament on March 10, 1999 to amend the Patents Act of 1970 that provides for establishment of a mail box system to file patents and accords exclusive marketing rights for 5 years. The Patent (second amendment) Bill 1999, further amend the Patent Act 1970 and make it Trade-Related Intellectual Property (TRIP) compliant was introduced in December 1999.

2. Trade Marks Act 1958:

The Trade Marks Bill 1999, which repeals and replaces the Trade and Merchandise Marks Act, 1958 passed by Indian parliament in December 1999.

3. Industrial Designs Bill 1911:

The Industrial Designs Bill 1999, which replaces the Designs Act 1911 (modified in 1970) was passed in Upper House of Indian Parliament in December 1999.

4. Copyright Act 1957:

The Copyright Act 1957 was enforced to protect the IPR in the print-publishing era. It was amended in 1983, 1984, 1991, 1992, 1994 to keep pace with the expanding needs due to fast growth of electronic media and information technology. Further, more advances in technologies have given rise to new amendment, i.e., the Copyright (Amendment) Act 1999, passed by the Parliament of India on 30th December 1999.

The Above Patents, Trade Marks and Designs Act are under the control and supervision of the Ministry of Industry, Department of Industrial Development, Government of India, whereas Copyright Act is under the control and supervision of the Ministry of Human Resource Development, Department of Education and are administered by the Controller General of Patents, Designs and Trade Marks.

3 Impact of GATT on Intellectual Property Rights in India

General Agreement on Tariffs and Trade (GATT)³ accord was signed in 1994 at Marrakesh and Uruguay round of talks was completed in 1993. The World Trade Organisation (WTO) is the successor organisation to the GATT with effect from January 1, 1995. WTO established a council for TRIP, which provides the norms and standards about the IPRs. Since TRIPS allows product patents and eliminated pure process, it would create the need of radical changes in legislation concerning Intellectual Property Rights.

Under the terms of the WTO, India is required to implement WTO- standard IPR protection laws by 2005. However, under pressure from its own domestic industry and the US, India strengthened its copyright law in 1999, placing it at par with international practice. Besides, given India's determination to emerge as a power in the global software industry, it is most likely that all IPR protection laws should be instituted and enforced by the year 2005. It must be acknowledge that there has been remarkable progress in IPR protection in the field of software. Protection of intellectual property rights in India continues to be strengthened further. The year 1999 witnessed the consideration and passage of major legislation with regard to protection of intellectual property rights in harmony with international practices and in compliance with India's obligations under TRIP.

4 Intellectual Property Rights Protection in India

India has one of the most modern Intellectual Property Right laws in the world. Major development in the area of copyright during 1999 was the amendment of the copyright Act of 1957 to make it compatible with the provisions of the TRIPS Agreement. For protecting intellectual property rights the Act prescribes a mandatory punishment for piracy of copyrighted matter commensurate with the gravity of the offense with an effect to deter infringement in compliance with the TRIP agreement. The Act provides

punishment with imprisonment from six months to three years and penalty of rupees fifty thousand to two lakh.

In addition to the above legislative changes, the Government of India has taken several measures to streamline and strengthen the intellectual property administration system. As regards to enforcement aspect, Indian enforcement agencies are now working very effectively and there has been a notable decline in the levels of piracy in India. In addition to intensifying raids against copyright infringers, the Government has taken a number of measure to strengthen the enforcement of copyright law⁵. A brief summary of these measures are given below:

1. Special cells for copyright enforcement have so far been set up in 23 States and Union Territories, i.e. Andhra Pradesh, Assam, Andaman & Nicobar, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Orissa, Pondicherry, Punjab, Sikkim, Tamil Nadu, Tripura and West Bengal. States have also been advised to designate a nodal officer for copyright industry organisations and copyright.
2. For collective administration of intellectual property right, copyright societies have been set up for different classes of works. At present there are three registered copyright societies. These are the Society for Copyright Regulations if Indian Producers of Films & Television (SCRIPT) for cinematography films, Indian Performing Rights Society (IPRS) for musical works and Phonographic Performance Limited (PPL) for sound recordings. These societies have been quite active in anti-piracy work.
3. The Department of Education, Ministry of HRD, Government of India has initiated several measures in the past for strengthening the enforcement of copyrights that include Constitution of a Copyright Enforcement Advisory Council (CEAC), creation of separate cells in state police headquarters, encouraging setting up of collective administration societies and organisation of seminars and workshops to create greater awareness about copyright law among the enforcement personnel and the general public.
4. The CEAC is reconstituted from time to time to review periodically the progress of enforcement of the copyright Act and to advise the Government on measures for improving the enforcement. The Additional Secretary, Department of Education is the chairman of the CEAC. The CEAC members include representative of copyright industry organisations and chiefs of state police forces. The CEAC meets at least twice every year. It discusses in detail issues of enforcement, piracy, etc.
5. Several other measures to create general awareness about copyright and for encouraging study of intellectual property rights in the education system, besides modernising the copyright office, are on the anvil.

Consequent to the number of measures initiated by the Government, libraries and information professionals should also realise the importance of access to digital information and the need to protect digital information sources. However, while agreeing that digital information should be protected under copyright laws, they are also equally concerned about the possible consequences new copyright laws may have on the free glow and access to digital information. Therefore, some information scientists are professing for a fair deal in order to ensure those copyright laws that may be put in place are not too restrictive.

5 Role of IFLA for Protecting Intellectual Property Rights

On the international level, the executive and professional boards of the International Federation of Library Association and Institutions (IFLA) in 1996 approved a position paper on copyright in the electronic environment, stating the position on copyright protection of digital information sources, on behalf of librarians and information staff worldwide. In the document⁴, IFLA made a number of statements on the following issues in relation to digital information and libraries: information for all, document delivery, lending of digital information sources, preservation and conservation, and effective international control.

1. **Information for All:** IFLA believes that the benefits of new technologies should be available to all and information should be accessed regardless of format, and in this regard it states:
 “ In national copyright legislations, exceptions, allowed in the Berne convention and other similar right convention, should be revised if necessary to assure that permitted uses apply equally to information in electronic form and to information in print” (IFLA 1996).
2. **Document Delivery:** On the document delivery, IFLA believes:
 “ It should not be seen as an infringement of copyright for libraries to make digital copies of copyright works and store them temporarily as part of an electronic document delivery service” (IFLA).
3. **Lending of digital Information Sources:** Regarding lending of digital documents in libraries, the document states the following two points:
 “ The lending of published electronic resources by libraries for cultural and educational purposes should not be restricted by legislation”;
 “ Legislation should prevent the setting of terms by suppliers of published electronic resources which aim to restrict the reasonable lending of such resources by libraries”(IFLA).
4. **Preservation and Conservation:** On preservation and conservation of electronic information sources, IFLA believes:
 “Legislation should give librarians and archivists permission to covert copyright protected text and images into digital format for preservation conservation related purposes”;
 “ Legislation should also cover the legal deposit of electronic media” (IFLA).

IFLA's position statements on copyright and digital information can only be carried out or implemented in countries revise their copyright laws and information professionals make contributions to the process. In most developed countries this may not a problem. Copyright laws are being revised and information professionals are discussing and making appropriate contributions to the new legislations.

6 Conclusion

Most countries in the world are revising their copyright laws in order to accommodate the protection of digital information sources and also provide for the fair use of such sources. As a signatory to the Uruguay round of GATT including its provision on Trade- Related Intellectual Property Rights, India must introduce a comprehensive system of copyright

protection, not later than 2005. Digital technological environment has created complex barrier situations before the existing intellectual property right systems. The Librarian and Information Scientist should also be aware of the IPR provisions in the exiting laws in their countries and be prepare to make contributions when the laws are revised to ensure that the interests of users are adequately protected in the digital information environment.

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