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## IPR's IN THE DIGITAL ERA: COPYRIGHT INFRINGEMENT IN INDIA

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### Abstract

Many libraries in India acquires information sources in different media, one of which is digital media. The digital form enables the information source to be easily copied and transferred over the network. Digital media requires specific modifications in the Indian Copyright Law or altogether different law to ensure that the creator's rights are protected by fair use of such media.

**Keywords:** Intellectual Property Rights/ Copyright/ Digital Libraries

### 1. Introduction

We are living in the Information Age, where information is a vital resource. There are various means through which a person can gain information. One of the best sources of information is a book. Books are the unparalleled instruments for setting down man's wisdom and knowledge. According to Fasanya, books are a key to a vast array of educational as well as recreational experience, for broadening inter-cultural understanding, for the extension and dissemination of ideas and most important for giving man the insight to understand himself and his relationship to family, group and the world.

Viewed from this perspective, the role of books in education becomes very critical. They have a significant influence in moulding people. The extent of information and ideas garnered from books greatly differentiates one person from another. To produce graduates of high caliber with the best quality requires the availability of relevant books in the chosen disciplines for use by students [1].

### 2. Intellectual Property Rights

Today books and other information resources are available in print as well as non-print form. As more and more information resources are being made available in non-print form, the concept of intellectual property rights and thereby, copyright is gaining importance. Twenty-five years ago, perhaps even 10 years ago, intellectual property law in general and copyright law in particular were of importance to information professionals but were relatively static from legal and policy perspectives. But more

recently, our information age and information economy have propelled this subject to extreme importance and exponential change- in large part because technology has vastly altered the medium of intellectual property. The result has been efforts by millions to gain access to intellectual property on their terms- such as unauthorized electronic sharing of copyrighted music- and, in response, by business to protect their content by increasingly aggressive tactics [2].

Intellectual goods—information and cultural products—often require considerable up-front costs to develop and produce. Once produced, however, they can often be easily replicated and disseminated by others [3].

### **3. Copyright Law**

Copyright laws have been developed to protect the authors' and publishers' rights. Copyrights evolved as a response to the threat posed by copying to the trade in books. It was founded on the notion of the 'author' and the distinctive nature of human creativity. In time, and with the expansion of the publishing enterprise into a global industry and the world-wide growth of culture industries, the locus for the right to 'authorship' shifted from an individual to a corporate right. The Berne Convention (1971) on copyright does give individual authors rights that transcend contractual obligations to their employers. However, this framework is steadily being displaced in favour of one that bestows unconditional 'copy rights' to corporate owners of information. The Trade Related Intellectual property Rights Agreement (TRIPs) which came into effect on 1 January 1995 recognises previous standards such as the Paris and Berne Conventions with the exception of Article 6bis of the Berne Convention that recognizes that "(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to, the said work, which would be prejudicial to his honour or reputation".

Today copyright is being extended to our digitized environment and to all digital products. The industry has been forced to respond to the IP challenges posed by a digitized environment [4].

In a library, an information resource is used by a large number of users. The copyright laws consider, for educational purpose, making copies to some extent as "fair use". Fair use depends upon the percentage of a document that is copied.

### **4. Copyright Law of India**

The Copyright Law of India gives moral rights to the authors of an original literary work. Moral rights under the Indian law have been conferred upon the authors of an original work, and include the combination of three rights, viz. *droit de divulgation* (right of publication); *droit a la paternite* (right of paternity); and *droit au respect de loeuvre* (the right of integrity). It is pertinent to note that moral rights stand independent of the economic rights flowing through authorial creations, and vests with the author even after the transfer of his copyright.

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The aspect of moral rights in India has been upheld as author specific right bestowed upon him rights to prevent mutilation of work in any form [5].

The Indian Copyright Act had evolved over many years to reach its present form. A Copyright Act was passed for the first time in India in 1914. The Copyright Act 1957 adopted several principles of the British Copyright Act 1956 to cope with the emerging problems created by technological advances in communication, broadcasting, microfilming, movies, etc. The Copyright Act 1957 was amended in 1983, 1984, 1992, 1994 to keep it in tune with the changing needs and technological progress, including the challenges posed by the rapid growth of information technology.

The Copyright Act was further amended in 1999 to incorporate features making neighbouring rights including performer's rights and protection of rights of broadcasting organizations [6].

These days more and more books and journals are being printed in electronic form in addition to print form. This had been made possible by the developments in information technology. The rapid advances in the field of information technology (IT) are affecting the society in more than one way. The new technologies have brought in considerable changes in almost all activities of human life be it manufacturing, trade & business, art or culture. The publishing industry is also no exception as we see the traditional printing & publishing activities are fast giving way to electronic publishing. Electronic publishing is a process where activities relating to publication such as submission of manuscript, formatting, editing, printing and even distribution are carried out with the help of computers and telecommunication technologies. In its simplest form electronic publishing describes a situation where use of computers is confined to formatting, editing etc. but the final output is produced in the conventional print forms. The latest trend, however, is towards a paperless publication where the entire flow of information from the author to the readers takes in machine-readable forms. Technologically, electronic publishing is taking two prominent forms viz. optical disk (popularly known as CD-ROM) publishing and network publishing [7].

In India information sources are published in electronic form also. But there is no centralised data on electronic publishing in India [8].

Libraries are the places where an information resource is being used by a large number of users. Users make copies of the documents in the library or after borrowing it from the library. Libraries have an interesting fluctuating role in the history of copying data and information of all kinds, and in relation to protection against, or control of, such copying. When the reproduction of papyri, scrolls, tablets and books were largely a matter of hand copying, libraries must have been centers for copying and the control of copying. There was not much need for the modern type of copyright property: the intangible right to control (by giving or with holding authorization) copying of the abstract expression in writing. This was because physical control of the few books and other physical media for the writings and other expressions in existence meant substantial powers to control copying and terms of access to these contents. With mass reproduction, in the form of printing of various sorts, this became less true [9].

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## 5. Challenges Posed By Digital Media

Digital products can be compressed without losing much information or quality. Thus, digital copies have a technical quality similar to the original [10].

The digital form of a document makes it very easy to copy it any number of times and being transferred over the Internet. The ability to distribute copyrighted works in digital form through high capacity pre recorded disks (CD ROMs, DVDs etc.) and Internet-enabled transmissions have brought new challenges to the protections of such content from unauthorized copying and use. Technological advancements in this regard are reviewed. Despite the ease with which digital content owners can now transfer data, images, music, video and multimedia documents across the Internet, current technology does not let them protect their rights to the works, which has resulted into widespread music and video piracy. In fact, although the Internet permits widespread dissemination of digital content, the easy-to-copy nature of digital data limits content owners' willingness to distribute their documents electronically. Digital Rights Management (DRM) technology is a key enabler for the distribution of digital content. DRM refers to protecting ownership/copyright of electronic content by restricting the extent of usage an authorized recipient is allowed in regard to that content. DRM technology has historically been viewed as the methodology for the protection of digital media copyrights [11].

Digital media has a set of distinct characteristics that makes it easily replicable. The characteristics that influence digital media replication include: ease of replication, ease of transmission, compactness, multiple use, and the fixation of digital and multimedia works [12].

Owing to their unique nature, digital documents need a different set of laws to protect these from copyright infringement. The bundle of rights, which copyright professes to be, has a profound impact in the determination of authorship. With the theory of indivisibility of copyrights gaining redundancy, coupled with the increase in electronic publishing, complex issues arise as regards authorship of a copyrightable work.

Laws virtually vest authorship to the creator of an original work. This simplicity in the basic understanding of copyright ownership, however, wanes fast in the context of works where there is a transfer in the medium of publication itself, like from the print to an electronic set up. There thus arise unresolved issues concerning the determination of the first author, and the balancing of distribution rights between the first and the second author of a creation. The legal dilemmas are all the more pronounced in cases where electronic publishing is not conceived as a possibility. Further, there remain fundamental questions concerning the territoriality of electronic publications, the problem of manipulations affecting the moral rights of the authors, and questions pertaining to the vesting of reproduction rights in electronic formats, i.e., whether reproduction rights vests with the original author of the employer/publisher concerned.

Within the Indian law, there exists little background material as regards authorship of a work converted from print to an electronic medium [13].

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## 6. Copyright Infringement

Copyright infringement occurs under different situations that are clearly mentioned in copyright law and is a legal offence. A copyright in work is considered to be infringed:

- When any person without a license granted by the owner of the copyright or the Registrar of Copyrights or in contravention of conditions of a license so granted, or of any conditions imposed by a competent authority under the copyright act, does anything, the exclusive right to which is conferred by the copyright act upon the owner of the copyright, or permits for property any place to be used for communication of work to the public where such communication constitutes an infringement of the copyright in the work.
- When any person makes for sale or hire, or sells or lets or hire, or by way of trade displays or offers for sale or hire, or distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or by way of trade exhibits in public, any infringing copies of the work.

The copyright infringer may be tried under both civil and criminal law. With amendments to Indian Copyright Act in 1994, criminal penalties (Section 63 B) stipulate a minimum jail term of seven days that can be extended up to three years and fines ranging from Indian Rupees 50,000 to 200,000, plus a jail term [14].

Copyright laws tend to protect the right of an incentive for the creator of a work. Copyright protection gives authors, artists, and composers an incentive to create original works by giving them exclusive control over the right to make copies. While this right overcomes the appropriability problem associated with intellectual property (owing to its public good nature), it also creates a distortion arising from the copyright holder's monopoly power. The limited duration of copyrights is one way that the law seeks to balance these offsetting effects. Another is by application of the fair use doctrine. Originally established by the Copyright Act, fair use allows unauthorized copying for limited purposes like criticism, scholarship, news reporting, and education based on the rationale that copyright holders would consent to such uses if bargaining were possible. In this sense, the allowed uses pass a "market test" for efficiency and should be permitted, subject to the constraint that they do not substantially impair the copyright holder's incentive to create the work in the first place. According to this argument, fair use is justified by the presence of transaction costs that prevent completion of otherwise beneficial bargains between the creator of copyrighted material and potential users.

Scholars nevertheless continue to disagree about the extent to which intellectual property should be granted any special legal protection. For example, those urging limited protection (i.e., a permissive fair use standard) argue that authors can appropriate the benefits from unauthorized copying indirectly, either by charging higher prices for those originals that are more likely to be copied (assuming they can price discriminate), or by charging an initial price for the original that captures the present value of all future benefits from copying it. Others caution, however, that these responses represent special cases and hence may not be the best guide for a general policy, especially in the face of ever-improving technologies for duplication [15].

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The copyright laws need to be rewritten to include digital documents. Copyright is not absolute. There are a number of limiting principles and exceptions to the rights. Those principles that are relevant for libraries in the digital age are listed below:

1. **Archiving and copying.** Libraries and archives are permitted to make up to three copies of unpublished copyrighted works for the purposes of preservation, security or for deposit for research use in another library or archive. Libraries can also make up to three copies of a published work to replace a work in their collection if it is damaged, deteriorated or lost, or the format of which has become obsolete.
2. **Fair use.** What constitutes “fair use” is debatable. However there are certain factors that govern fair use:
  - Purpose and character of use, i.e. is it for commercial use or for non-profit educational purposes?
  - Nature of the copyrighted work. The fair use principle is generally more lenient for fact-based works than it is for “fanciful” works, and also is broader for published works than it is for unpublished works.
  - Amount or proportion of the whole that is to be copied.
  - Effect that the use has on market potential or the value of the copyrighted work.
3. **First sale doctrine.** The matter of disposition of a particular copy of a copyright is limited by the first sale doctrine, according to which the owner of that particular copy of the work may sell or transfer that copy of the work. Libraries’ lending and marketing of used books are governed by the first sale doctrine.

Issues and concerns are complicated by the difficulty of defining what constitutes a “copy” in the digital age. The first copy may be the only copy for which the copyright receives an economic return. The paranoia of the holders of copyright stems from this fear of losing the market and the right to distribute. There are understandable concerns of users, including those of libraries, regarding loss of their rights as provided for in the above “exceptions” [16].

Both authors and publishers are the ones who are at great loss due to copyright infringement. The primary advocates of a strong and far-reaching copyright have predominantly been publishers and authors.

In the context of modern society, information is an increasingly important resource. There is recognition that information is now a hugely tradable commodity and new markets for information are opening up. Information, if managed correctly, could be used to stimulate innovation, raise levels of productivity, boost the level of competitiveness and ultimately promote the overall success of an economy. It thus appears that information is growing in value and economic importance.

It was also assumed in most discussions pertaining to copyright protection that fair dealing leads to an absolute loss of potential income to authors. This might not hold true in all instances. For example, academic authors may be indirectly compensated

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by promotion to a higher paid job, as academic promotions typically depend upon publication records and frequency of citation, i.e., on objective bibliometric measures of “success”. Moreover, copyright owners have other means of gaining economic benefit for copying, even with fair dealing, which allow them to recuperate between hardback copies- mostly purchased by libraries- and paperbacks. Additionally, scientific journals have a two-tier pricing system for institutional and individual subscriptions [17].

In India, Copyright Act was enacted in 1957, still copyright infringement is not treated as a serious offence. Copyright policy is not always treated as a serious crime, even though it has far reaching consequences both social and economic [18].

There are different socio-economic factors behind copyright infringement, namely, illiteracy, poverty, high price, unemployment, poor enforcement of copyright laws and lack of infrastructure.

Copyright has become a hot topic and a vexing issue for all those who have a stake in scholarship and scholarly communication. In the digital world, the very premises and philosophy of copyright are being questioned and voices are being heard reviewing its tenets [19].

In Indian context, copyright infringement is seen mainly due to two reasons. Book piracy in India, primarily depends on two factors, namely, the price of the book and its popularity. These two factors positively contribute to piracy. Piracy is generally confined to foreign and good indigenous books. Because these books are demanded in large quantities and are also priced high. The types of books pirated mostly are medical, engineering and other professional books, encyclopaedia and popular fictions. The piracy is also widespread with respect to books published by National Council of Educational Research & Training (NCERT), National Open School and Board(s) of Secondary Education. These books even if priced low are having large demand.

Piracy of literary works leads to loss of revenue to publishers (in terms of less sales), authors (non-payment of royalty) and the national exchequer (non-payment of income tax and other levies payable by publishers/authors). While it is believed that book piracy is high in India, it is very difficult to arrive at an estimate [20].

While publishing industry is quite old in India, the statistics on publishing are very poor in the country. Even data on number of publishers and number of titles produced are either non-existent or outdated. This is because no systematic research has been carried out in the country on publishing industry except the one undertaken by the National Council of Applied Economic Research (NCAER) during 1976. The NCAER undertook another study on the problems of small publishers in 1985. But both these studies are quite old and thus have lost their significance today, especially to fulfill the informational requirements [21].

Copyright infringement could be checked at many levels. The police personnel in general also agreed that they tackled the orientation towards copyright laws, such as

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knowledge of distinguishing infringed copies (duplicate copies) from the originals, machines used for making duplicate copies etc. and more particularly penalties for violations etc.

Not only the end users, the right holders and the dealers/distributors are also to be educated on the Indian copyright laws. Many right holders, though were aware of copyright, are not fully acquainted with the various provisions of the Indian Copyright Act. The right holders in many cases are reluctant to do any thing even if they come to know about the violation of their works. This is more so in the case of cinematographic works, and music and to some extent book publishing [22].

Copyright continues to be a battleground between copyright owners and users. Developments in technology, and the emergence of an Internet culture that is frequently and openly antagonistic to the very notion of copyright, mean that problems associated with copyright on the Internet are likely to increase rather than decrease in the future. Information professionals find themselves in an awkward no-man's-land between the competing factions. There can be little doubt that this area of information law will become more problematic [23].

## 7. Conclusion

Copyright has been a debatable topic for the authors, publishers and the end users since the days of print documents. This debate has continued in the digital era also. India needs to develop a concrete legal policy to protect digital information from being unfairly copied.

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