

Issue / challenges in dealing with Criminal Cases under Copy right

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INTRODUCTION

Copyright is a legal right granted to the creators of original works of authorship, including literary, artistic, musical, and dramatic works, as well as software, photographs, and other forms of creative expression. Copyright law grants the copyright owner exclusive rights to control the reproduction, distribution, and public display of their work, as well as the right to create derivative works based on the original.

Section 2 (m) “infringing copy” means—

- (i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;**
- (ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;**
- (iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;**
- (iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer’s right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;**

CHAPTER 13

OFFENCES

Section 63. Offence of infringement of copyright or other rights conferred by this Act.

Not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Section 63A. Enhanced penalty on second and subsequent convictions

with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Section 63B. Knowing use of infringing copy of computer programme to be an offence.—

with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the Court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.

65A. Protection of technological measures.—

Any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

65B. Protection of Rights Management Information.—

Any person, who knowingly, —

- (i) removes or alters any rights management information without authority, or
- (ii) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine:

Provided that if the rights management information has been tampered with in any work, the owner of copyright in such work may also avail of civil remedies provided under Chapter XII against the persons indulging in such acts.

67. Penalty for making false entries in register, etc.,

with imprisonment which may extend to one year, or with fine, or with both.

68A. Penalty for contravention of section 52A.— Any person who publishes a sound recording or a video film in contravention of the provisions of section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.

69. Offences by companies.— Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly

70. Cognizance of offences.— No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

The Information Technology Act, 2000:

The IT Act is a comprehensive law that deals with a wide range of cyber-crimes, including copyright infringement. The act outlines penalties for various offenses related to digital content, such as hacking, piracy, and illegal file sharing.

The Digital Millennium Copyright Act (DMCA):

Although the DMCA is a US law, it has been adopted by several countries, including India. The DMCA provides legal protection for digital content, and outlines procedures for filing copyright infringement complaints with internet service providers.

The Indian Penal Code (IPC):

The Copyright Rules, 2013:

The Copyright Rules provide guidelines for the registration, licensing, and enforcement of copyright in India. The rules outline procedures for registering copyrighted materials, as well as procedures for filing complaints and conducting legal proceedings related to copyright infringement.

- These laws and regulations help to provide legal protection for copyright owners and deter piracy and copyright infringement in the digital era. However, enforcement of these laws can be a challenge, and there is a need for continued efforts to raise awareness about copyright laws and promote responsible use of digital content.

Issues/Challenges

1- Difficulty in Tracking:

In the digital age, it can be difficult to track the use of copyrighted materials. Once a digital copy is released online, it can be downloaded and shared countless times, making it almost impossible to know who is using the material and for what purpose.

2- Complex Ownership:

In the digital age, ownership of copyrighted materials can be difficult to establish. With the ease of reproduction and distribution, it can be hard to determine who the original owner of a particular work is, or who has the right to distribute it.

3- High Cost of Enforcement:

Enforcing copyright laws in the digital age can be a costly and time-consuming process. With so much content available online, it can be difficult to identify cases of copyright infringement and take legal action against those responsible

4- Emerging Technologies:

The digital age is constantly evolving, and new technologies such as artificial intelligence and blockchain are changing the way that content is created, distributed, and consumed. Keeping up with these emerging technologies and their potential impact on copyright protection can be a challenge.

5- Delay tactics by advocate-

In most of the cases there is gross abuse of the process of law by the Advocates to delay the matter by filing Exemption Applications at the initial stages before the proceedings or by resorting to the remedy of Section 482 by invoking the provisions of the inherent powers of the High Court to quash the criminal proceedings by alleging that the proceeding are illegal and fraudulent against the principles of natural justice or by challenging the jurisdiction of the Court or by asserting illegality in the proceedings.

6- Lack of expertise knowledge:

In remote areas the frequency of IPR cases coming before Courts is too low so most of the courts and the police officers are inexperienced or lacks expertise knowledge about the provisions of Act and latest developments having binding precedents of the Apex Court.

7- forensic laboratory report

Sometimes forensic laboratory report is missing, hugely delayed or vague. Improper police charge sheet and inadequate filling of appropriate documents by police too adds to the woes of the remedy seeker. To top it all witnesses are either missing or they turn hostile as the cases drag on for up to 10 yrs. The Opinions are ambiguous and confusing –Opinions are not suggestive to take direct actions against the fraud. Opinions are not direct they are diplomatically given to avoid further trouble of attending the Courts by the designated officers. Sometimes to shift the burden of the legal action on the Police Officers for their timely acts.

8-No Deterrence Punishment:

Though the Offences under the provisions of the Trademarks Act and Copyright Act 1957 are Cognizable, Warrant cases, triable, Non-Bailable and Non-Compoundable. The penal provisions of the Act are not deterrent as it should have been considering the mentality of the criminals.

9-No Judicial Intervention: The Offences Copyrights Act 1957 are cognizable still the Courts are reluctant to entertain the Private Complaint and direct the Complainant to the Police Authorities for registration of FIR and further investigation.

M/S Knit Pro International vs The State Of Nct Of Delhi on 20 May, 2022 {DB}

In this case Hon'ble Supreme Court held that offence under Section 63 of the Copyright Act is a cognizable and nonbailable offence.

10. Simultaneous raids are refused: If the one of the premises to be raided is outside the jurisdictional limit, Raid (search and seizure) is simply refused and the Complainant is asked to file fresh Complaint with the jurisdictional Police Authority for the same cause of Action with repetition of the same procedure.

11.Lack of Awareness of Rights amongst the Business Community:

No effort is done by the business community to protect their rights by proper registrations as per the statutory provisions. There is lack of awareness of the existence of the law in remote villages where the business is conducted in traditional way. There no statutory protection sought to protect the rights so there exist no the question of enforcing the rights. The rights are not sought and not enforced.

Solutions:

1- Watermarking:

Watermarking is a process of embedding a unique identifier into digital content, such as images or videos. It can be used to track and identify the source of content and to deter unauthorized use.

2-Copyright Education:

Educating users about copyright laws and the consequences of copyright infringement can help to reduce the incidence of piracy and encourage responsible use of copyrighted materials.

3- International Collaboration:

Collaboration between governments, industry, and international organizations can help to develop and enforce consistent copyright laws across different countries and legal systems.

4- Creative Commons Licensing:

Creative Commons is a non-profit organization that provides a range of free, standardized licenses that creators can use to grant permission for others to use their copyrighted materials. These licenses allow creators to retain ownership of their content while enabling others to use it in a variety of ways, depending on the terms of the license.

5- Collaborative Content Protection:

Collaborative content protection involves bringing together a range of stakeholders, including content creators, publishers, technology providers, and legal experts, to develop and implement effective copyright protection strategies. By working together, these stakeholders can develop more comprehensive and effective solutions that address the challenges of copyright protection in the digital era.

6. Fair Use Guidelines:

Fair use is a legal concept that allows for the limited use of copyrighted materials without permission from the copyright owner. However, the scope of fair use can be unclear and subjective, and it can vary depending on the jurisdiction and context. Developing clear and comprehensive fair use guidelines can help to promote responsible use of copyrighted materials while respecting the rights of copyright owners.

7- Blockchain Technology:

Blockchain is a decentralized digital ledger that can be used to track ownership and usage of digital content. By using blockchain technology, copyright owners can create an immutable record of their ownership and control the distribution and usage of their content more effectively.

CONCLUSION

In conclusion, There is a rampant increase in piracy related offences in India so much so that it is a parallel economy now. that the proper enforcement of IPR laws, constitution will make the ends of the justice meet in a more meaningful manner in line with the legislative intent at the time of framing and approving and enacting them. the digital era has brought many challenges to copyright protection. However, it has also provided new tools and technologies to help content creators and publishers protect their rights. By implementing measures such as digital rights management, watermarking, and educating users on copyright laws, it is possible to address the challenges presented by the digital eralt is important to continue to monitor emerging technologies and their impact on copyright protection, and to find a balance between access and protection. With the right measures in place, we can continue to promote creativity, innovation, and responsible use of copyrighted materials in the digital age.