

Copyright and Electronic Information Resources: Issues and Challenges

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ABSTRACT

The worldwide accessibility of electronic information resources and the tendency of making duplicate copies from the original document brought new issues relating to intellectual property. Intellectual Property Rights (IPR) is a general term which covers copyright, patents, registered designs and trademarks. It also covers layout designs of integrated circuits geographical indicators and anti-competitive policies in contractual licenses. Based on the literature study this paper highlights issues and challenges faced by the librarians related to copyrights in the digital environment. While considering intellectual property issues in the print era, copyright laws traditionally amicable. Where as in the digital environment access to information resources and safeguard the right of authors by providing access with a fair use provision are the main issues and challenges for the information professionals.

KEYWORDS: IPR, Digital Environment, Information Resources, Libraries, and Copyrights.

1. INTRODUCTION

The enormous developments in various fields of arts, science, technology, industry, trade, and commerce during the last decade are mainly due to the research and development output resulting from the systematic, consistent and creative efforts of writers, artists, programmers, entertainers, scientists, and technologists all over the world. All these new creations of the human intellectual efforts are known as intellectual property. Intellectual property comprises all those things that come from the human intellect, whether they are ideas, inventions, words, music, theatre or art. This would include books, periodicals, pamphlets, archives, databases, internet resources, computer software, inventions etc. Broadcasting, cable casting, telecasting rights are some of the new branches of intellectual property.

The main objective of intellectual property is to encourage creativity, ideas and inventions for achieving, social, cultural, economic, scientific and technological development of the society. Intellectual property contributes significantly to the socio-economic, cultural, scientific and technological development of a society. Since technologies in all fields of human activities are developing exponentially, the field of intellectual property is also

expanding rapidly. It helps to protect, reward and enjoy the loyalty of the efforts. The owner or inventor of the intellectual property has certain rights, which prevent others from making use of that property has certain permission. These rights are called intellectual property rights. According to IPR, if anybody does make use of or copy that idea or invention without permission, it is an infringement of law and can be claimed for the damage caused.

2. DIGITAL LIBRARIES

The library exists for its users and everything that is done in the library is geared to the promotion of service to them. The advent of modern electronic technologies that ensure quick and effective networking of large number of computers geographically dispersed, brought in logical coherence of distributed database across the world. The assimilation of such distributed database and knowledge banks is generally termed as digital library. The key components of digital libraries are geographically distributed digital information collections, geographically distributed users, and seamless access provided through several mechanisms.

2.1 Features of Electronic Information Environment

Electronic information environment has the following features.

- Provide access to very large information collection
- Supporting multimedia content
- Network accessibility
- User friendly interface
- Unique referencing of digital objects
- Reference of various areas of the same time
- Current information service
- Advanced search and retrieval
- Supporting formal and informal learning
- Remote access

3. COPYRIGHT

Copyright is, as its name suggests, a right to prevent copying of an original work. It comes into being upon the creation of an original artistic, musical, literary or dramatic work. Since copyright is only a right to prevent the copying of the original work, there is no absolute legal monopoly and copyright cannot therefore be used to prevent the independent production of an identical or similar work, without reference to the original work. Copyright rises on a national basis in the country in which the original work is created but may be enforced internally by virtue of the Berne Convention (1885, Paris revised version 1979), and /or Universal Copyright Convention (1952, Paris revision, 1971). The convention is an attempt by the signatories to afford international protection for copyright works, which originate under the national law of a signatory state.

3.1 Classes of Copyright works

To keep pace with the dynamic environment, a number of changes have been made in the Copyright Act of 1957 by the Amendment Act of 1994, which came into force from May 1995, Copyright law provides protection for the following classes of works.

- a. **Literary work** refers to written or printed matter. The definition of literary work was amended to include computer programs, tables and compilations including computer databases.
- b. **Dramatic work** includes any piece of recitation, choreographic work or entertainment in dumb show, the scenic arrangements or acting form, which is fixed in writing or otherwise but does not include a cinematograph films.
- c. **Musical work** means a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph. Whether or not any such work possesses artistic craftsmanship.
- d. **Cinematograph film** means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording.
- e. **Sound recording** means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.

4. COPYRIGHT IN THE DIGITAL ENVIRONMENT

Copyright is one of the most important types of intellectual property. Copyright in digital setting has raised numerous legal issues and practical problems that concern to library professionals, information scientists, archivists, authors, publishers, and information users the importance of copyright has grown enormously in recent times due to rapid revolutionary development in the field of computer, communication, networking, publishing, and entertainment technology. Today protection of copyright has become much more complex and serious in digital environment as the digital works can be copied, reproduced, and distributed/communicated easily, quickly, and inexpensively with modern technological devices like photocopies, scanners, tapes, cassettes. Video records, CD/DVD writers etc.

Copyright means the exclusive right to do or authorized others to do certain acts in respect of the work. It is the right to copy or reproduce the work in which copyright subsists. It protects the results of an author, artist, and other creator's intellectual skills, judgement and labour or capital expended in the creation of original piece of work. It prevents others from copying, hiring out, performing and broadcasting, amending or deforming the work.

Copyright in a work is automatic and subsists as soon as the work comes into existence provided it is original. No formalities like registration and required to acquire copyright. The term of the copyright is the life of the author of the work plus 60 years with certain exceptions. In 1988, the US made changes in the copyright law known as Sonny Bone Copyright Terms Extension Act. According to this Act, exclusive right to the work of authors and inventors is available for 70 years after their death.

Copyright has been emerged as an increasingly important instrument in a regulating international flow of information ideas and knowledge products. It attempts to satisfy both the wish of information to have simple and easy access to scholarly information and the wish of creators/owners to protect their commercial or other interests.

4.1 Copyright Clearance Centre and Library Licensing

It is very challenging for an individual writer, composer or musician or other person to sell his original work in the country or abroad without any risk of shutting out the potential licensees or buyers or misuse by such persons and getting the appropriate commercial benefit. It is also not a practice for an individual to sell his work and fixing the royalty and collecting of the fees and to keep track of the copies of frequency of display not a technical and a commercial person to evaluate the potential of the work. Copyright Act dictates that purchasing a copy of a work, such as a book, magazine, scientific journal, or a newspaper does not give the buyer the right to make any copyright sensitive use of that work. That means the purchased copy may be read, enjoyed, resold, given away or destroyed. The work embodied in the copy may not be reproduced, publicly performed or else used within the scope of the Copyright Act.

In the case where a copyright sensitive use needs to be made, permission can usually be obtained either directly from the rights holder or from a third party organization that has been authorized by the rights holder to grant the permission on his or her behalf. In some countries, through payment the permission is granted by law. In many countries, Copyright Collective Management Organizations (CMOs) license large-scale use of works on behalf of large numbers of rights holders, collect royalties for those uses and distribute these royalties back to the rights holders. For example, Copyright Clearance Centre (CCC) in the United States and Copyright Licensing Agency (CLA) in United Kingdom help in collective management of reprography/photocopy and also digital use on basis of voluntary licenses. India has established similar societies, which are:

- Society for Copyright Regulation of Indian Producers of Film and Television (SCRIPT) for cinematograph and television films.
- The Indian Performing Right Society Limited (IPRS) for musical works.
- Phonographic Performance Limited (PPL) for sound recordings.
- Indian Reprographic Rights Organization (IRRO) for books, literature, artistic photocopy rights.

4.2 Fair Use in the Digital Environment

The copyright act provides exceptions to certain users, which shall not constitute an infringement of copyright. The copyright work can be used for certain specified purpose without copyright infringement. The objective these exceptions is to enable the reproduction of the work for certain public purposes such as private study and research, criticism, comments, reviewing, news reporting etc., which is not an infringement of copyright. These are the defenses against infringement action as the use of the copyright work for such purposes does not damage the legitimate interests of the copyright owner.

In determining whether the use made of work in any particular case is a fair use, the factors to be considered shall include:

- a. Strict observance of the rights of copyright holders
- b. Making individual users aware of copyright and its implications
- c. Licensing agreements wherein payments are made to avoid liability for copying.

In spite of the above, compliance is considered a “Grey area” as it is difficult to establish status of fair dealing and how licensing agreements affect the liability of individuals. Further, in instances of violation of copyright law, most of them have been settled out of court though significant costs were involved to the academic institutions concerned.

In this context, it is worthwhile mentioning that academics regard copyright as a constraint on their duty to disseminate knowledge as it runs counter to a core value of the profession. Another complaint has been that observance of copyright law is different in different countries and that there was an element of unfairness here. In addition, the whole process was inefficient and expensive resulting in few requests for copying.

7. COPYRIGHT LAW IN INDIA

Indian copyright law is at parity with the international standards as contained in TRIPS. The (Indian) Copyright Act, 1957, pursuant to the amendments in 1999, 2002 and 2012, fully reflects the Berne Convention for Protection of Literary and Artistic Works, 1886 and the Universal Copyrights Convention, to which India is a party. India is also a party to the Geneva Convention for the Protection of Rights of Producers of Phonograms and is an active member of the World Intellectual Property Organization (WIPO) and United Nations Educational, Scientific and Cultural Organization (UNESCO).

In order to keep pace with the global requirement of harmonization, the Copyright Act, 1957 has brought the copyright law in India in line with the developments in the information technology industry, whether it is in the field of satellite broadcasting or computer software or digital technology. The amended law has also made provisions to protect performer's rights as envisaged in the Rome Convention.

7.1 Registration of Copyright

In India, the registration of copyright is not mandatory as the registration is treated as mere recordable of a fact. The registration does not create or confer any new right and is not a prerequisite for initiating action against infringement. The view has been upheld by the Indian courts in a catena of judgments.

7.2 Need for Registration of Copyright

The awareness of Intellectual Property (IP) Laws is considerably low among the enforcement authorities in India, and most of the IP litigation is confined to metropolitan cities. Despite the fact that the registration of copyright is not mandatory in India and is protectable through the International Copyright Order, 1999, it is advisable to register the copyright as the copyright registration certificate is accepted as a "proof of ownership" in courts and by police authorities, and acted upon smoothly by them.

7.3 Enforcement of Copyright in India

The law of copyright in India not only provides for civil remedies in the form of permanent injunction, damages or accounts of profits, delivery of the infringing material for destruction and cost of the legal proceedings. etc. but also makes instances of infringement of copyright, a cognizable offence punishable with imprisonment for a term which shall not be less than six months but which may extend to three years with a fine which shall not be less than Rs 50,000 (approx. US\$ 800) but may extend to Rs. 2,00,000 (approx. US\$ 3,000). For the second and subsequent offences, there are provisions for enhanced fine and punishment under the Copyright Act. The (Indian) Copyright Act, 1957 gives power to the police authorities to register the Complaint (First Information Report, i.e., FIR) and act on its own to arrest the accused, search the premises of the accused and seize the infringing material without any intervention of the court.

7.4 Duration/Term of Copyright

In the case of original literary, dramatic, musical and artistic works, the duration of copyright is the lifetime of the author or artist, and 60 years counted from the year following the death of the author. In the case of cinematograph films, sound recordings, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organizations are protected for a period of 60 years which is counted from the year following the date of publication.

CONCLUSION

It is very clear from the study that the library and Information Science professionals have always provided value added services, facilities and products in the information and communication technology enabled digital era. The intellectual property rights, especially copyright challenges confronting libraries today raise a number of fundamental questions. The main question being asked is that, what is the role of the Copyright Act in fostering innovation and creativity. Libraries across the world want to foster literacy and learning. At the same time needs to safeguard the culture and scientific heritage and ensure comprehensive digital preservation irrespective of library model, whether it is academic or public or private sector or commercial library. Digitization of resources seeks to convert the existing library resources into an electronic representation of the information contained on the library resource; copyright laws on the other hand seeks to prevent the duplication, reproduction and transformation of a copyrighted material without a documented consent of the copyright owner(s). It is well intentioned to note that the extent of challenges posed by copyright to the digitization of library is highly determined by the copyright laws of the geographical location in which the library is located.

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