

**Course Name- B.A.LL.B 4<sup>th</sup> sem/ LL.B 2<sup>nd</sup> sem**  
**Subject- Cyber Law**  
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**Concept- Copyright in Internet**

## INTRODUCTION

Today we are in the 21st century and things are changing for India. With the rapid growth of trade and industry in the era of globalization, liberalization, increasing use of internet, e-commerce and convergence of technologies have opened new vistas of opportunities for the people of India. The information and communication revolution is taking place all over the world and it has left the common man bewildered to even comprehend what is happening. The social, economic, political, cultural and educational system is undergoing changes on an unprecedented scale. It is making the life of an ordinary man difficult as he is unable to keep pace with the changing time and especially with regard to matters pertaining to knowledge sector.

Today technology is evolving fast as result of which the computers have found place in every home, every office and in all important departments. With the touch of a finger the whole world of knowledge, information is available just like magical lamp of Allauddin where an individual would get any information which one desires. A person living in India can communicate with a person in U.S.A. or Australia thousands of miles away. This is done in Cyberspace.

The advancement of science and technology has made a tremendous impact and change almost in all walks of life. The paper highlights the impact of information technology on library science. The libraries are considered to be storehouse of knowledge and information which is acquired with the help of books. But now with the help of virtual world the scenario has changed. With the easy accessibility to information and knowledge the students of library science will have to equip themselves with information technology and they will be required to learn the cyber language. They will also have to be acquainted with the computer security system. As potential users of information technology it will be imperative for library science professional to prepare themselves to handle the new and exciting world of cyberspace.

Cyberspace is a world of virtual reality. It has netizens and not citizens. Cyber world is not like physical world. The laws of physical world are different and they cannot be applied to Cyberspace. Physical laws have limitations and are defined. But laws of Cyber space are dynamic, undefined and limitless and they have to keep pace with technological advancements.

Cyberspace is a space where entry is not bound by geographical boundaries. Today a person sitting in the Chennai can access the information through Internet anywhere in the world. In the light of this librarians and information scientist should know about:-

- 1) The right to information and right to freedom of speech and expression,
- 2) Crimes related to internet, and
- 3) Intellectual property rights.

The Indian people are governed by the Constitution of India which gives the fundamental rights to the people. The Constitution of India does not specifically guarantee the right to information, but since long it has been recognized by our Supreme Court as fundamental right necessary for democratic functioning of our country. Our Supreme Court has specifically recognized the right to information as an integral part of the right to freedom of speech and expression guaranteed under Article 19(1) (a) of constitution and it can also be read within the purview of Article 21. The right to information is not an absolute right some information can be held back where giving of the information would harm the interests which need to be protected.

**Article 19(1) (a)** gives the right of freedom of speech and expression including the freedom of press to the citizens of India and the same article 19 sub clause (2) gives the reasonable restrictions which can be imposed by the government on the grounds of sovereignty and integrity of India, security of state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. But today the information which is available on the internet, the access is unlimited and person is free to get the information which under the law is prohibited. To give an example the viewing of pornographic and obscene material or any matter which affect the unity and integrity of the nation can be accessed by the people easily. The question to be answered here is what happens to the reasonable restrictions given in article 19(2)? What control does the government have to restrict the right to information? These are questions which will have to be considered and determined by the government as well as the people of India while making laws for cyber space.

The advent of technology has brought with it unknown dangers and threats and in the hands of unscrupulous people it could mean a weapon mightier than any other weapon known to mankind so far. Internet crimes can be committed with considerable ease against anyone in the world from any part of the world and even from within the comfort of ones home. There is likelihood for more crimes to be committed in future in India.

Anonymity makes Internet a preferred weapon of choice for committing crimes. Technological perfection makes it very easy for these crimes to be committed. India has adopted a legislation to facilitate and safeguard electronic transactions and computer related crimes and it is the Information Technology Act 2000 which is applicable to the users of technology. This law is based on the Model Law on Electronic Commerce prepared by the United Nations Commission on International Trade Law (UNCITRAL) which was adopted by the UN General Assembly on 30th January 1997. The aims and objectives of the Act include enabling or facilitating the use of electronic commerce and providing equal treatments to users of paper-based documentation and to users of computer-based information. It is to promote efficient delivery of government services by means of reliable electronic records.

**It also covers some computer related crimes and contravention which are as follows:**

- ✓ tempering with computer source documents (section 65 which provides for punishment with imprisonment upto 3 years and fine extend upto 2 lakh)
- ✓ Hacking with computer system (section 66 under which punishment is imprisonment upto 3 years, fine which extend upto Rs. 2 lakh)
- ✓ Publishing of information which is obscene in electronic form (section 67 which provides for punishment of imprisonment {first conviction- which extend upto five years, fine extend upto Rs. 1 lakh}, {imprisonment second or subsequent conviction extend upto 10 years, fine extend upto Rs 2 lakh}.
- ✓ Securing access to protected system notified by the government (section 70 punishment of imprisonment extend upto 10 years, and fine but it is silent about the fine which is to be imposed.
- ✓ Breach of confidentiality and privacy by disclosing any electronic information to any other person without consent of the concerned person (section 72 which provides punishment of imprisonment upto 2 years, fine upto 1 lakh.)

In addition to the crimes given above there are few more crimes which are given below:-

- # (1) Unauthorized reproduction
- # (2) Software piracy
- # (3) Miscellaneous computer crimes
- # (4) Theft of data and information

## **UNDERSTANDING INTELLECTUAL PROPERTY ( COPYRIGHT)**

The next important aspect to be considered here is the issue of intellectual property rights. An intellectual property right is a general term which covers copyright, patents, registered designs. The intellectual property rights provide an incentive for the creation of an investment of a new work (literary work, music, film, print media, software performances etc.) and their exploitation. Copyright protects original work of authorship that is in tangible (definite) form of expression.

The work coming under the purview of copyright includes the following categories:

- (1). Literary works.
- (2). Musical works.
- (3). Dramatic works
- (4). Choreographic works
- (5). Pictorial, graphic, sculptural works
- (6). Motion picture and other audiovisual works
- (7). Sound recording and architectural works

### **a. In the case of a literary, dramatic or musical work not being a computer programme,-**

- to reproduce the work in any material form including the storing of it in any medium by electronic means;
- to issue copies of the work to the public not being copies already in circulation;
- to perform the work in public, or communicate it to the public;
- to make any cinematograph film, or sound recording in respect of the work;
- to make any translation of the work;
- to make any adaptation of the work;
- to do in relation to a translation or adaptation of work, any of the acts specified in relation to the work in sub-clause (i) to (iv).

### **b. In the case of a computer programme**

- to do any of the acts specified in clause (a);
- to sell or give on hire, or offer for sale or hire any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions;

### **c. in the case of an artistic work,-**

- to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- to communicate the work to the public;
- to issue copies of the work to the public not being copies already in circulation;
- to include the work in any cinematograph film;

- to make any adaptation of the work;
- to do in relation to any adaptation of the work any of the acts specified in relation to the work in sub-clause (i) to (iii).

**d. in the case of a cinematograph film,-**

- to make a copy of the film including a photograph of any image forming a part thereof;
- to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

**e. in the case of a sound recording,-**

- to make any other sound recording embodying in it;
- to sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;
- to communicate the sound recording to the public

To give an example computer programmes and most compilation may be registered as literary works. Maps and architectural plans may be registered as pictorial graphics and sculptural works.

The main objective of the copyright law is to promote the access and the use of information and for protecting the works from the infringement and for encouraging the author in pursuit of knowledge. The technological developments, the increasing number of electronic publication and digital libraries pose challenge to the right holder as well as law enforcing agencies.

**Section 14 of the Indian Copyright Act, 1957** enumerates certain activities which are exclusive rights for the author of the work who can do or authorize someone to do all or a part of those activities. These, when done by unauthorized person or without the explicit permission of the copyright holders, amounts to a breach or infringement of copyright. These include:-

- 1) To reproduce the work in any material form including the storing of it in any medium by electronic means
- 2) To perform the work in or communicate to public
- 3) To issue the copies of (publish) the work to public not being in circulation.
- 4) To produce and publish any translation of the work
- 5) To make any translation or adaptation of the work.
- 6) To make any cinematography film, or a sound recording and
- 7) To do in relation to a translation or adaptation of the work any of the above specified acts.

8) To sell or give on hire or offer for sale or hire any copy of the computer program regardless of whether such copy has been sold or given on hire on earlier occasions.

In the case of computer programmes in addition to what is given above the Act also mean to do or authorize:-

### **There are certain exceptions to copyright infringement**

In section 52 of the Indian Copyright Act enumerate 5 categories of acts which when performed do not fall under the infringement of the copyright, they are:

- Reproduction in the course of fair dealing that is, for private use, research, criticism, review, reporting, broadcast, etc.
- Reproduction for educational purposes
- Reproduction for official purposes that is for judicial, legislative, etc.
- Reproduction where there is remote relation to the original which does not cause and loss to the copyright holder.
- Reproduction for private entertainment

There is no such thing as an international copyright that will automatically protect an author's writings throughout the entire world. Protection against unauthorized use in a particular country depends, basically, on the national laws of that country. However, most countries do offer protection to foreign works under certain conditions and these conditions have been greatly simplified by International Copyright Treaties and Conventions.

Copyright infringement is the courtesy of technology. According to him: Technology support Copycat- you brows, you select and you copy. Copying has become a dynamic 24/7 activity. The law has to differentiate between memory and copying. Computers have been programmed in such way that they save data automatically, whereas copying is a command, which is deliberate and intentional and may infringe a copyright law.

There is word of caution for the young users of information technology. Do not adopt the method of cut, copy and paste.

Technology is boon for mankind and new developments are taking place everyday. Computer is at the core of information technology activities. These activities are no doubt is regulated by law but the prevailing laws are not sufficient to control the unscrupulous activities. If this technology is used for negative things in life it can prove to be disastrous and if it is used for enriching ones personality, for getting information and for gaining knowledge it will benefit the humanity.

## **COPYRIGHT IN INTERNET**

### **Liability of Internet Service Providers**

Internet Service Providers ("ISPs") can act as hosts storing information posted by a subscriber. Many Home Pages on the World Wide Web are hosted by ISPs; CompuServe and America Online host discussion groups on which users can post messages and material. To avoid transmission delays, the most popular sites are often mirrored (copied and stored locally) by ISPs. ISPs also act as a conduit for messages between users, the transmission of which necessarily involves the copying of the message along the way and at the destination's electronic mailbox. Although in some cases they do not create the content, they have ultimate control over what goes onto and through the Internet.

In India, the law applicable to the infringer depends upon which part of law deals with that particular infringement. Therefore, due to the absence of such law, the Copyright Act and the Information Technology Act includes the liability of ISP's:

### **Copyright act 1957**

#### **As per Section 51(a)(ii) of the Copyright Act;**

“the Indian Copyright Act, the act of infringement is when, a person without any licence by the registrar or the owner of the particular copyright, does an act that is in the contravention of the conditions of a that licence or condition imposed by a competent authority under this Act permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he is unaware as and had no reason to believe that the particular communication to the general public would result in copyright infringement.”

Nowadays the Internet service providers, instruct their servers transmit and store their users data across the network. This act of ISP's helps them to hold any third party liable in case of any infringement. In order to be liable for the infringement, it is very necessary that the ISP should benefit financially from it. The ISP's earn even if they offer some copyrighted illegal material because of the advertisements that come along with it. Therefore, an ISP can be held liable not only when they transmit such infringed material but they are liable even if they store it.

### **Criminal Liability**

An ISP can be held criminally liable when, he does an act of infringement or abets infringement of:

- (a) the copyright in a work, or
- (b) any other right conferred by this Act,

If a person does such an act than the Copyrights Act provides for the punishment to be given to him, i.e of imprisonment which may extend to one year, or with fine, or with both.

However, the Copyright Act clearly states that the ISP can be held liable only in the case he was unaware infringing material stored or being transmitted through their servers. This provides an exception to the liability.

### **Information Technology Act, 2000**

S. 79 of the Information Technology Act states the ISP( a Network service provider in the case of this act) as an “Intermediary”, which is defined as “ any person who on behalf of any other person receives, transmits or stores any message or provides any service with respect to any message.” This section also provides that, no ISP can be held liable if he proves that he was unaware of the infringement that was caused by the third party that he had exercised all due diligence to prevent the commission of such offence.

Therefore, the ISP can get away from being liable for the copyright infringement if it is proved under this section

- (a) That the ISP was unaware of the infringement,
- (b) That he took all the due diligence to prevent such infringement.

However, data has passed through an ISP’s servers or stored in them, that is likely to infringe the copyright of another, it is considered that such ISP had to have ‘knowledge’ of such data and he has the duty to take appropriate measures to prevent such infringement. In such a case, the ISP cannot take a defense that he was unaware of such infringement.

A person is said to have done an act with due diligence when in the layman’s terms he had done that act or prevented an act by reasonable standards expected out of a prudent person who is said to have the knowledge about such illegal activity.

### **Drawbacks of Copyright Act**

- (a) The IT Act provides a wider scope to the authorities to harass ISPs in matters where their liability is the question.
- (b) Which actions can be termed as done with ‘due diligence’ is not defined anywhere in the act.
- (c) Who is an ISP? The answer to this question is not given under the IT Act. Also, the IT Act does not provide for the liability of ISP. The liability of ISP is as same as for anyone who is simply a communication carrier.

### **Liability in the countries like USA and Europe**

The arguments/defense that are taken by the ISP’s in these countries are that:

- (a) That, ISPs are mere “passive carriers” and that they are nothing but a mere messenger. The court in the case of Sony v Universal Studios, was of the opinion that,

“If one provides means to accomplish an act of infringement is not sufficient to hold the person liable in the absence of any constructive knowledge of such infringement”.

- (b) Every day plenty data flows in through the servers; therefore, it is impossible to check that all the data that flows through it is not an infringement. Moreover, it is impossible to achieve 100% accuracy even post-screening.



It was held by the courts in the case of Religious Technology Service Centre v Netcom, that the ISP's are unable to exercise any influence on the data. Their duty is to offer an opportunity to publish what people say on the internet.

In the United States the law regarding online copyright infringement is dealt with in the Digital Millennium Copyright Act (DCMA) that provides the limitations the a person's liabilities for online infringement. The act protects the ISP's from any liability in the case, he, on the receipt of an instruction from the copyright owner, had blocked the alleged infringing.

If a person or a publisher wants to limit the use of his material after the sale, he can do so with the help of Digital Rights Management (DRM). DRM along with the other technologies restrict the user interactions with the online content and help in reducing the risk of infringement.

In the European Union, Directive on e-Commerce of 2000 provides for the liability for ISP's. This act provides rules regarding online information requirements and transparency, commercial communications.

Both the laws of the United States and the European Union provides for the protection of both internet service providers as well as content providers. Both of these countries do not hold the ISP liable unless they are expressly notified of the alleged infringement.

## **Conclusion**

There is an urgent need to incorporate certain laws or bring amendments in the acts because the absence of specific laws regarding the liability of the ISP in the Indian Law results in the ISP's escaping the liability in case of infringement. In order to pave way for sound legislation with regard to ISP liability in India, it is essential to address some of the key issues mentioned hereunder;

- a) There is an urgent need to provide a definition of Internet Service Provider. Unless it is done, it would always create confusion as to who can be put under the liability. It is also important to define "due diligence"
- b) effective tools like DCMA can be used. Various effective measures should be adopted so that the liabilities of ISP's are clearly identified.
- c) It should be made sure that, the Information Technology Act makes it obligatory for ISPs to terminate services of subscribers who frequently violate.