

IPR and the Digital World

Vivek Modi¹

I. ABSTRACT

The advent of technology today is surging through all spheres of life, and no doubt, it is revolutionizing every field it touches and it has been able to communicate with almost every field making our life easier. While some agree that technology in the field of Intellectual Property has successfully recognised the right of person to secure its innovation under the umbrella term of Intellectual Property Rights (IPR), others are of the view that it has caused problems for all as it has made reproduction (copying) and distribution quite easier and communicable almost to the extent that anyone can access anything from anywhere. This article will touch upon the interconnection of IPR and the Digital World while also giving insights on piracy related issues as well as the modes of protecting Intellectual Protection Rights in the view of special laws and amendment of existing laws so as to come down heavily on the people who infringes other's Intellectual Property Rights.

II. INTRODUCTION

Intellectual property Right is an umbrella term used for the protection of different kinds of intellectual creations and is broadly divided into two categories: Industrial property and copyright. Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications, and copyright protects rights related to creation of human mind in the fields of literature, music, art and audio-visual works.

With the rapid development of the Internet, copying a digital document is so easy and economically affordable that digital piracy is rampant in the world.² According to a report³ of the Business Software Alliance (BSA) and IDC in 2010, world software piracy resulted in lost revenue of nearly 30 billion dollars. The piracy rate is estimated to be as high as 92 percent in some countries.

As a result, IPR plays an important role in this digital age so much as so that it has recognised the protection of these rights against infringement which in turn leads to loss of revenue for the owner of that right and it can truly be said that IPR is an evolving field.

¹ Svk m's Pravin Gandhi College of Law, India

²37 B. LAMPSON, "COMPUTER SECURITY IN THE REAL WORLD", INTERNATIONAL CONFERENCE ON COMPUTER SECURITY 37-46 (2004).

³ BSA and IDC, "Bsa and IDC Global Software Piracy Study" (Nov. 22, 2004), <http://www.bsa.org/usa/research/>.

This is an age of internet where everyone can access anything from any part of the world and once the thing is out in the internet it can never be truly taken down as the technology has made copying and distribution so much easy.

Almost every organisation, including Banks and MNCs access data and personal information from their customers using a third party software and for that they enter into separate agreements with those service providers who gives platform to the Bank for use along with licences which protects the IPR rights of those service providers. In their arrangements, they might able to protect their IPR rights in a sense but there is always a risk of reproduction of the software or software piracy and distribution, privacy risk of users and that is why one needs to carefully and diligently evaluate the modes of protection of IPR and privacy rights of user in this digital age.

III. DIGITAL RIGHTS MANAGEMENT- A TOOL NECESSARY TO PROTECT IPR

Modes of protection of IPR are one of the most important things which need to be thoroughly and diligently evaluated in this digital era. IPR is that field where if due diligence is not conducted properly, could lead to a loss of insurmountable amount as has already happened during Volkswagen-Rolls Royce deal. Another example of why it is so important is that there are numerous cases of deep linking and surface linking where it is clear cut infringement of copyright but the courts and legislature are divided on the issue. On World Wide Web, it is pretty easy to copy the link and distribute it somewhere else without approval and most of the time the owner wouldn't even know that he has lost revenue because someone has already deep linked on their web site.

Digital Rights Management (DRM) technologies (also known as Electronic Rights Management Systems) ensure copyright through identifying and protecting the content, controlling access of the work, protecting the integrity of the work and ensuring payment for the access. DRM technologies prevent illegal users in accessing the content. Access is protected through user ID and password, licensing agreements. Another way to protect digital content is through Technical Protection Measures (TPM). These technologies allow publishing companies in securing and protecting content such as music, text and video from unauthorized use. If an author wishes to collect fee for use of his or her work, then DRM technology can be used. The TPM and DRM technologies are increasingly employed to sell and distribute content over the Internet.⁴ DRM is a general term used for a set of technologies, software, and hardware that seek to identify, protect, and manage digital content in terms of access, distribution,

⁴ PAUL, S. S., 'A BASIC UNDERSTANDING OF INTELLECTUAL PROPERTY' KOLKATA: DIAMOND (2003).

consumer usage, and payment.⁵

Copyright holders are allowed to use DRM to safeguard their work being duplicated or utilized by others. In terms of copyright law, the intellectual assets of the copyright holders are managed and controlled digitally by copyright holders through a technological mechanism. So DRM basically provides for an additional protection to a work, which is any way protected by the Copyright law. The various modes and types of DRM which protects IPR are as follows:

1. Cryptography
2. Digital Watermark Technology
3. Digital Signature Technology
4. Electronic Marking
5. Security Features of Operating System

The above methods play an important and key role in order to protect one's IPR by controlling the use of content and limiting piracy but at the same time have unwanted consequences on the user's privacy. Over the years, many have raised concern regarding digital signature technology as the privacy rights of users are getting compromised when they are asked for identity proof so that the product can be transferred only to that specific user who has officially purchased it. The Aadhaar (Targeted Delivery of Financial and other Subsidies, benefits and services) Act, 2016 (Act) and other such acts along with guidelines and circulars of UIDAI and NPCI with respect to Digital Signature Technology has been challenged in a case of 2017⁶ and the Supreme Court has upheld the privacy rights of an individual. In consequence, certain provisions of the Act were repealed and Digital Signature Technology was also suspended for so time with respect to private entities.

The copyright law of India by the amendment of 2012 incorporates the provision of Digital Rights Management in the legal regime of copyright protection.⁷ The following provisions are inserted by way of amendment to protect the copyright through DRM:

⁵ D.L. BURK, 'LEGAL AND TECHNICAL STANDARDS IN DIGITAL RIGHTS MANAGEMENT TECHNOLOGY' 17 (2005).

⁶ Justice K.S.Puttaswamy(Retd) vs Union Of India, (2017) 10 SCC 1

⁷The Copyright (Amendment) Act, 2012, No. 27, Acts of Parliament, 2012 (India).

1. Section 65A deals with penal provisions to those who circumvent the effective technological measure by way of infringement to use any right conferred by the copyright law by the owner.
2. Section 65B deals with penal provisions to those who knowingly remove or alters the rights management information from the digital content or sells and distributes the content knowing that the rights management information is tampered or removed.

The incorporation of the above provisions in the copyright act shows that India is finally ready to acknowledge, identify and resolve the issues faced in the field of IPR in this digital environment.

IV. CONCLUSION

From the above, we can conclude that India is finally aware of the challenges faced in the field of IPR in this digital environment and is trying to incorporate stricter penal provisions for the protection of the IPR. However, while countering the piracy and other infringements it must not forget the policy of Fair Use and also must keep in mind the impact of such technological measures does not breach the privacy of an individual as individual's privacy is the most important right guaranteed under Article 21 of the Constitution of India. It is a challenge for the legislature and judiciary to keep in mind all the above factors and maintain a balance which not only protects the IPR in this digital environment but also the technological measures must not in any way infringe an individual's privacy rights.