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INFRINGEMENT AND PIRACY IN COPYRIGHT

AUTHORED BY - ANSHIKHA RAWAT

INTRODUCTION

In India, objective is toward a stronger economic future and sustainable economic growth and sustainable development coming decades. Draft policy of Intellectual Property Right states, creativity and innovation are the forces which drive the growth. Indian government focuses on the national IPR policy as a guiding principle for creative and innovative policy. Media and entertainment sector that registered a growth of 11.7% amounting to INR 1026 billion in 2014. In the year 2019 it is expected to grow approximately INR 1964 billion by 2019.

Piracy is a unauthorized duplication of the content and then sold at substantially lower price in open market. It has become one of the dominant threat to the entertainment industry. Ease of access to technology has become reason for rampant piracy. Today piracy has become a simple affair. CD writers are available off the self at a very low price. whenever question arises for punishment developed countries are very much serious for punishing piracy related issues whereas in Asian countries and specially in India government¹ has not given due attention due to more engaging issues in hand.

Propelled by the mobile first phenomenon of internet adoption and innovative business model with “mobile first” strategic. India became the second² largest country in terms of number of internet user. In India more than 213 million mobile internet user by Jan 2016. The emergence of 4G services and healthy growth in number of 3G subscriber and continued adoption of 2G by masses in the hinterland and concerted efforts by various digital ecosystem players under the Digital India Program have played a major role to make this possible. Availability of affordable Smartphone's and tablets has fuelled the screen phenomenon Smartphone penetration in India is around 10% .This is much lower than average global smartphone penetration by 25% allowing for considerable upside. India is expected to reach 640 million internet users by 2017. following are the outcome discussed in report.

12 Number of internet user are expected to grow much faster than tv viewers in the next 5 years. Due to rural electrification the internet penetration is growing at much faster rate.

¹ The Economic Times, “ How offline internet could make the web more accessible to India’s Telecom user base” page 5, 3rd Feb 2015

² FICCI- KPMG Report 2015.

II. Internet penetration in India is being driven by mobile internet user. As of December 2014 there were about 173 million mobile internet user in India. This figure has grown by 33% as compared to 2013. India had around 116 million internet enabled smartphone's and the number³ is expected to reach 435 million by the year 2019.

IV. 3G Services at greater uptake.

14 The eagerly 4G pan India role out- operator like reliance, Airtel, Aircel are planning to roll out their 4G services. India is basically late entrant in the 4G market, globally 4G reaches 26% of the population with 90% reaches in developed market and 15% in the developing country⁴.

VI. The great India urban-rural internet divides.

VII. Low internet speed is still plague in the country.

II. TYPES OF PIRACY

Internet piracy:

Internet piracy is the downloading and distribution of unauthorized copies of intellectual property such as movies, television, music, games, and software programme via the internet file sharing network, pirate server, websites and hacked computer. Hard good pirates also use the internet to sell illegally duplicated DVD through auction.

Peer-To-Peer Piracy:

The biggest threat is not through the illegal dvd factories but from peer to peer file sharing which is allowing copyright content to be distributed around the world instantaneously without any remuneration to the artist and producers of such content.

Theatrical camcorder piracy

Cam- cording or infringing copies of new release titles that originate from cinema hall⁵ appear online within few hours of film release . This affects distribution cycle, performance and jobs. Cam- coding takes place when someone⁶ enters the theatre with any type of recording device, camcorder, voice recorder etc.

Cinematographic Works

"Cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films'' In the case of CD, VCD and DVD there is visual recording and these are primarily considered as cinematographic work .

Cable piracy

³ *Economic Times* ,Sunday ,January 10,2016

⁴ KPCB Internet Trend Report,2014

⁵ Luigie Proserpio, Severino Salvemini and Valerio Ghirngelli, " Management Entertainment Pirates Determinants of Piracy in the software, music and movie Industries",p 34-36, 2015

⁶ FICCI –KPMG REPORT 2015

Cable piracy refers to unauthorized transmission of films through cable network. Very often, films, especially the new releases, are shown through cable without permission from the rights holder. Piracy is a rare phenomenon in satellite channels because these are organized and generally do not show films without buying proper rights.

Sound Recordings

“Section 2 (XX)¹²” 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. The advent of Compatible Discs (CDs), sound recording piracy has become even more common in the country.

Software Piracy

Software piracy consist of firstly illegal using, then copying⁷ and distributing it without owner’s permission. Software piracy is prevalent in the business environment both in the small scale and large scale companies.

Optical Disc Piracy

Optical disc piracy is the illegal manufacturing, sale, distribution or trading of copies of motion pictures in digital disc formats for illegal manufacture and distribution of motion pictures.

Internet and Mobile Piracy

With growing technology, piracy is bound to increase especially when the enforcement mechanisms are so weak. India was the fastest growing market in the world for mobile phones. The piracy through the internet involves downloading unauthorized material from the websites, peer-to-peer file sharing. These files can be further compressed and copied to a mobile phone from a computer or directly from the internet.

Literary Works

Book piracy in India is dependent upon two factors. First, the popularity of the book in their particular area. Second, the price of the book which is of high cost.

Parallel Import

It refers to the importation of the goods authorized for manufacture or distribution in the exporting country but import has taken place without prior permission of copyright owner.

In the case of *State of Andhra Pradesh v. Nagoti Venkataramana*, it was broadly discussed that: Piracy has become a global problem due to the rapid advances in technology. It has assumed alarming proportions all over the world and all the countries are trying to meet the challenge by taking stringent legislative and enforcement measures. The problem of piracy and the necessity

⁷ The Copyright Act, 1957

for taking sufficient anti-piracy measures were also voiced by members of Parliament at the time of the consideration of the Bill to amend the Copyright Act, 1957, last year.

The emergence of new techniques of recordings, fixation and reproduction of audio programmes, combined with the advent of video technology have greatly helped the pirates. It is estimated that the losses to the film producers and other owners of copyright amount to several crores of rupees. The loss to Government in terms of tax evasion also amounts⁸ to crores of rupees. In addition, because of the recent video boom in the country, there are reports that uncertified video films are being exhibited on a large scale. A large number of video parlors have also sprung up all over the country and they exhibit such films recorded on video tapes by charging admission fees from their clients. In view of these circumstances, it is proposed to amend the Copyright Act, 1957, suitably to combat effectively the piracy that is prevalent in the country.

The Bill provides for the following amendments to the Act, namely:

(i). To increase the punishment provided for the infringement of the copyright, namely, imprisonment of three years, with a minimum punishment of imprisonment of six months, and a fine upto Rs. 2 lakhs, with a minimum of Rs. 50,000/-;

(ii). To provide for enhanced punishments in the case of second and subsequent convictions;

(iii). To provide for the declaration of the offence of infringement of copyright as an economic offence so that the period of limitation provided for in the Criminal Procedure Code, 1973, for offences will not be applicable to this offence; Section 3 of the Act defines publication as making a work available to the public by issue of copies or by communicating the work to the public.

Whereas section 4 of the Act envisages when work is not deemed to be published or performed in public.

Section 4 of the Act provides that except in relation to infringement of copyright, a work shall not be deemed to be published or performed in public without the license of the owner of the copyright. The permission of the owner is mandatory, if the owner has not taken permission of the owner then it has become appropriate case for the violation and infringer can be prosecuted in copyright violation. Registration of the copyright has become important tool to give statutory recognition to the copyright owner. Section 44 of the Act provides that there shall be copyright registrar office and the registration of the copyright work shall be deal by the registrar office.

III. Causes of Piracy

Price of some copyright material are huge and it cannot be afford by a common people .Due to this reason emergence of unscrupulous trader has taken place. These unscrupulous traders are

⁸ AIR 1998 SC 611

causing reverse marketing also. Apparently it is cause of piracy and this cause of piracy can take place only with the help of consumer. Therefore this cause of piracy can be tackled by creating awareness in masses. Following are the supportive reasons.

There is lack on the part of government authorities to communicate negative consequences from using unauthorized good.

Lack of deterrent punishment.

The development of digitization and the availability of used manufacturing equipment has facilitated the counterfeiting and piracy of a variety of products – from traditional industries like cigarettes and apparel to high-tech sectors like computer software and music CDs.

Lack of Employment

Although it is very difficult to establish a direct link between piracy and unemployment but we can affirmatively say that unemployment is economic and social evil⁹. Due to high volume of unemployment legitimate number can be involved only in labor intensive as a result unemployment person resort to all kinds of activities including the illegal production and selling of the goods .making quick money and to get high returns

Poor Enforcement Mechanism

Laxity on the part executive machinery is important cause of piracy. Anti-piracy enforcement machinery remained very ineffective. Slackness on the part of right holder on one hand and passive attitude on the part of police. Great involvement of the force in maintaining law and order, controlling murders, riots, and terrorist activities etc .The strength and number of the police force is also not adequate to tackle effectively the problem of India's size and complexity.

Inefficient Policing

Police officers are not so keen and vigilant in copyright cases, they are taking grievous offences cases like murder, robbery, rape, theft etc. on the priority basis. .In our governance system state is duty bound to protect law and order of the country. Our police system is putting their earnest endeavour effort on certain issues except copyright .In India in the case of life and liberty police take it on the priority whereas in the case of economic offences they are not taking it on the priority. Police should be encouraged to take the copyright violation cases on the priority basis.

This process is very time consuming as the court¹⁰ can take several years to decide a case. As a

⁹ Rafael Rob and Joel Wald Fogel "Piracy on the High Music Downloading, Sales and Displacement and Social Welfare in a sample of college students". *The Journals of Law and Economics* 49th ed.

¹⁰ Priti H Dosh, "Copyright Problem in India Affecting Hollywood and Bollywood". 26 *SFKTLR* 295. Discussing the damage cause to the Indian film industry due to Piracy.p. 3-9, 2008.

result the witness is not available for such a long time and the case gets dismissed. According to Manas Saikia of the Cambridge University Press and Foundation Books, “It is extremely difficult to get the police to make raids and arrests and seizures in the case of actual pirates”.

Police officers from bottom to top should get training for investigating in such a manner that accused should not use it as an escape route.

In Canada there is Police Science Institute at Ontario.

In Kenya there is copyright board enforcement department which ensures for training of country wide police officers.

In US, FBI is putting their earnest Endeavour effort for providing training of copyright issues to their police officials.

Although in India there are police academies and they are still providing training but still they are not successful to create awareness for copyright issues to their officers.

Beyond Reasonable Doubt

Beyond reasonable doubt is the principle of on which our criminal justice system is based. Habitual offenders are getting benefits and it has become a kind of escape route

Naive Judicial System

Indian judicial system has to play a very important role for strengthening of our copyright enforcement, Judiciary has to take seriously all these copyright¹¹ issues cases .Large number of the cases are pending before the court of law and they are trying their best to get rid from pendency of the cases but judiciary has to play a pivotal role for protecting copyright cases .Government should provide training and should establish judicial academy in order to provide better capacity building. Copyright issues should be strength to improve our FDI and to encourage our economic condition. There should be special training program to judges on copyright issues only. Large number of cases are pending in court of law. Court takes long time to reach at the finality. Investors are not keen to invest in Indian economy due to less protection of copyright cases.

Due to weak enforcement machinery right holders are not keen to bring cases of copyright infringement. Government should provide machinery through which right holders should institute the cases without any hesitation and get expedite justice. Utmost duty of judiciary to interpret the law in such a manner that it can maintain the balance between private right as well as public right. Court while pronouncing must try to make the punishment deterrent .There are lack of deterrence approach while court is pronouncing the judgment.

¹¹ Joshnu Guha, “Times for India’s Intellectual property Regime to grow up”, page 13, March 2009

Inexperience Police System

In copyright Enforcement Advisory Council meeting government¹² has decided to take initiative of capacity building, sensitization of stakeholders etc. In order to achieve object of better enforcement machinery government has to overcome following issues and take strong initiative for strengthening police system. Section 64 of the Act provides that police officers not below the rank of sub inspector has power to take initiative. Followings are the suggestion: Appointment of adequate police officers Qualified appointment should take place Training should be specifically for copyright issuesm They should able to make distinction between genuine and fake copies Foreign training should be given Target should provide to them All India character

CONCLUSION

The present study reveals that infringement of copyright and piracy is a menace that denies the legitimate dues and rights of creative people and therefore the real challenge is how to enforce the law properly. As we know that the law is for the society and society must assume its responsibility along with government for its successful implementation.

The role of the Central Government is substantially advisory in nature. However, the role played by the police and other Central Government agencies is vastly instrumental in enforcement, bringing the infringing agents into picture but still Central Government has long way forward. Till now government has not given due stress and emphasis on sensitizing the common people and sharing of best practices on copyright issues. Infrastructure which also comprises of capacity building are inadequate and require immediate augmentation. With respect to capacity building measures, one needs to understand the dimensions of copyrights and their rapid evolution in the areas of infringement and violation. Thus, this has led to a situation where in an effective and efficient force catering to such violations must be created. The existing police personals are ill equipped both technologically and knowledge wise, which requires augmentation of their skill set in order to address this pressing issue. Moreover, such violations cannot be tackled through single agency, it requires coordination and convergence of both public and private agencies in order to address as well as reach to the root cause of the problem. Further, the seriousness of the issue calls for developing an effective forum on which all stakeholder can interact and decide for addressing the problem and also steps for strengthening the enforcement in entertainment industry. This forum shall not only be deliberative but also it shall lead to convergence of minds from hailing from various stakeholders.

¹² Any police officers not below the rank of a sub inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, whenever found, and all copies and plates so sized shall, as soon as practicable, be produced before a magistrate.



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