

Intellectual Property Rights – Issues in digital environment

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***Abstract** - Intellectual property laws confer a bundle of exclusive rights in relation to the particular form or manner in which ideas or information are expressed or manifested. The term "intellectual property" denotes the specific legal rights which authors, inventors and other IP holders may hold and exercise, and not the intellectual work itself. Copyright is a form of legal protection given to content creators through the assignment of specific rights to works that qualify for protection. Copyright infringement happens rampantly in almost all fields of digital media. Library professionals required basic understanding about copyright and related subject areas to showcase better professional capabilities.*

Keywords: Copyright, IPR, Intellectual Property Rights, Digital Library

Introduction

The word intellect originates from the root “intellectus” in Latin which means the power of knowing as distinguished from the power to feel. An intellectual makes his living by selling the product intellect, which is nothing but the brain child of his original idea, creative thought, which forms a special kind of property known as intellectual property. The intellectual property is ownership of something intangible. In India, IPR is a generic term which covers patents, registered design, trademark, copyright, layout of integrated circuits, trade secrets and geographical indications.

Intellectual property (IP) allows people to own their creativity and innovation in the same way that they can own physical property. The owner of IP can control and be rewarded for its use, and this encourages further innovation and creativity.

Intellectual Property Issues in Digital environment

ICT (Information and Communication Technology) has produced a new digital environment, which not only facilitates the making of copies, but also allows the immediate and global

reproduction of any type of intellectual property without the knowledge or consent of the owner. Digital information is easily transferable. Liability is one of its specialities. For an author or information provider concerned with the integrity of their documents, there are new problems in electronic forms that were not present in print.

Copyright and trademarks are the two most discussed issues in digital environment. A trademark is a distinctive sign which is used to distinguish the products or services of different businesses. Copyright is a property right which subsists in accordance with this part in the following descriptions of work –

- (a) Original literary, dramatic, musical or artistic works,
- (b) Sound recordings, films or broadcasts,
- (c) The typographical arrangement of published editions.

"Literary work" means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes

- (a) A table or compilation other than a database
- (b) A computer program
- (c) Preparatory design material for a computer program, and
- (d) A database

Copyright extends to a wide variety of subject matter found in or associated with hypermedia, including text, graphics, photographs, motion pictures, audio visuals, music compositions, sound recordings and a computer software. To qualify for copyright, the material must be an original works of authorship, fixed for more than transitory duration in a tangible medium of expression. These qualifications for copyright protection, which were developed in the world of print media, do not always map well onto the world of digital media, particularly in a networked environment.

Copyright and world wide web

The advent of electronic publishing and the widespread use of the Internet, and particularly the World Wide Web, dictates review of the concept of legal protection of the rights of authors in their works. The interaction of copyright and the internet has resulted in several legal quandaries concerning some of its technical characteristics. One of the most significant questions surrounding the emerging internet technologies is how copyright can be applied in light of the ease with which vast amounts of data can be stored, copies, manipulated and transmitted. The problems stemming from the interaction of the internet technologies and copyright law span several different categories. Among them technological characteristics are most importance.

Panda, K. C and others examined copyright law in the electronic age and noted proliferation of electronic information creating interest in the minds of authors, publishers, users and intermediates regarding the copyright law. Discussed the role of IFLA in the protection of copy right in the global scenario and concluded that there is an urgent need to reconsider the existing copyright law to make it suitable in electronic age.

Lakshmana Moorthy, A and Karisiddappa, C.R. while discussing copyright and electronic information, observed the main objectives of copyright law as promoting the access and the use for information and protecting the work from infringement and for encouraging the authors for pursuit of knowledge. They discussed the Indian Copyright law 1957 and its amendments; mentioned major worldwide projects to protect copy right of electronic information and concluded that the library professional should negotiate few electro copying privileges for legitimate non-commercial usage of electronic information similar to the kind of fair use as in the case of printed materials.

The other important issues are caching, linking and framing. 'Caching' is a generic term, which refers to the process of making an extra copy of a file or set of files for more convenient retrieval. On the internet, caching occurs both on the user's computer and at server level. The creation of transient copies on the RAM memory of a computer has been dealt with in the context of software copyright law as an infringement, but since this is the way that computers work, it can be covered quite easily by the concept of 'fair dealing' or 'fair use doctrine'. Digital transmission of copies over a network would presumably constitute a distribution of copies. This implies that the normal operation of computers and computer networks results in repeated and widespread copyright infringement.

The other most important internet tool is that 'linking'. The World Wide Web operates in a non-linear fashion, which is achieved by means of cross referenced links to associated items of information. A hypertext link is an address embedded into a web page or web site that allows users to navigate to an online document specified by the web designer. These are one of the web's most powerful tools because they offer users easy access to relevant information on time. Normally copyright owners grant implied licenses to other users to link to their work. Tim Berners Lee, the founder of World Wide Web points out that; there is no need to have permission to link to other documents. Not only has it comported well with common practice, but also with the rationale behind the creation of the World Wide Web as a repository of knowledge.

The two main issues have been around a practice called "deep linking" and around sites that provide links to materials that allegedly infringes on a complaining party's rights in some other way. Deep linking is the practice of providing links to interior pages within a webpage without directing people using the link through the host sites main page. Some site owners see deep linking as problematic because it takes control over the viewers experience away from them and may create confusion over whole site is whose. For web pages with commercial advertising, deep linking may mean users get to see the content of the site without having to pay for the information by first accessing advertisements placed on a welcome page. Any kind of linking may create problems when the linked site contains a material that is allegedly illegal. However some court decisions have been seen as very supportive of linking. According to them hypertext links do not constitute copyright infringement because no copy is actually created in the process of linking.

'Framing' is another common practice on the internet. It is a means of dividing a web site into separate windows, with option scroll bars and borders. Each window is displayed in a separate portion of the web browser screen and functions independently to display an individual web page. A user can choose any link within one of the individual framed pages within the site, which in turn opens a linked web page within one of the framed portions of the web site. Sometimes, activation of a hyperlink to an external site open the associated external page within one of the framed portions of the current sites homepage by leaving the log, commercial advertisements and URL of the web site on the screen surrounding the activated page. Despite the fact that, at first, the assumption of copyright infringement may seem justified, there are several issues that contest its accuracy. It is true that many users could be misled to believe that all material on screen originates from the same source, especially since the URL address displayed remains that of the framing site. Unfortunately, and despite numerous lawsuits involving frames, there are no fixed rules.

Fair use and implied license

Fair use encompasses a body of copyright law, which permits certain socially necessary uses of copyrighted works, which would otherwise infringe the exclusive rights of the owner. Implied licenses are contractual agreements that, although not written or formally negotiated, are inferred from the action of two parties. Drawing on a theory of implied license, we might infer that the generation of RAM copies in a computer network is permitted under the terms of an unwritten contract for use of materials on a public network or in the alternative; we might conclude that creation of such copies is a fair use of the work. The technology is such that one simply cannot avoid making such copies in the course of browsing online materials. Hence, we conclude that the generation of these copies must be permissible under the copyright law.

Copyright and Software

The computer software refers to a set of instructions that enable the computer to perform a task. There are four kinds of software, namely commercial, freeware, shareware and copylefting. While commercial software is on sale, the freeware is fully available on the internet free of cost. But user is not permitted to modify or alter. In shareware, the software is made available free for some time, and its permanent utility is charged, after the trial period. Copylefting is an alternative to the proprietary model software distribution. The user can use it freely as long as he likes and even allowed to make changes in it. Indian Copyright Act protects computer software as literary work. The possibilities of violating copyright of computer software are manifold. Whether it is created online or offline, when made available online or when it is used by the user, it can be easily copied.

Copyright and Public Domain

The term 'public domain' refers to creative materials that are not protected by intellectual property laws such as copyright, trademark or patent laws. The public owns these works, not an individual author or artist. Anyone can use a public domain work without obtaining permission,

but no one can even own it. Material found on the web may be copied freely only if the copyright has expired or the copyright has been abandoned by the holder. Therefore, “Internet” and “Public domain” are not synonymous. Any work published on the internet is not automatically placed in the public domain, unless the material in question complies with one or more the characteristics mentioned.

Research Methodology

As a part of the doctoral research work undertaken for copyright in corporate digital libraries in India, a sample survey has been conducted at national level. The survey was focused on library professionals and library in-charge of selected corporate libraries. The selected corporate libraries are further segregated based on the companies act registration. The collected data were analyzed. The questionnaire was distributed two or more times depend on the answer pattern of the previous questionnaire. The questionnaires are designed to focus on problems, opportunities, solutions and forecasts. All the responses were subjected for statistical analysis using chi square test and standard deviation.

Data Analysis and Discussion

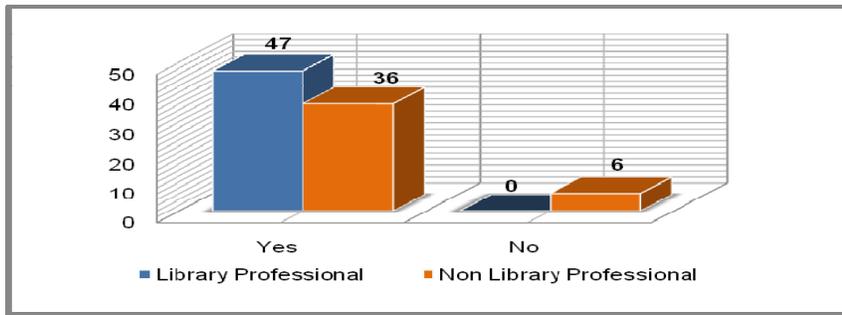
89 corporate library professionals, including library in-charge were participated in this survey across the country. The two main questions being asked and their responses are analysed below;

1. Familiarity with Copyright Act	Yes	No
2. Familiarity with library exception protocol in Copyright Act	Yes	No

Librarians and library professionals should have basic understanding about the Copyright Act. It is extremely necessary as they become the centre point of publishers, owners and users. Library users’ demands copyright exemptions due to urgent need and similarly copyright owners or licensed publishers demand copyright protection during procurement or subscription.

Familiarity with Copyright Act (Professionals-wise)

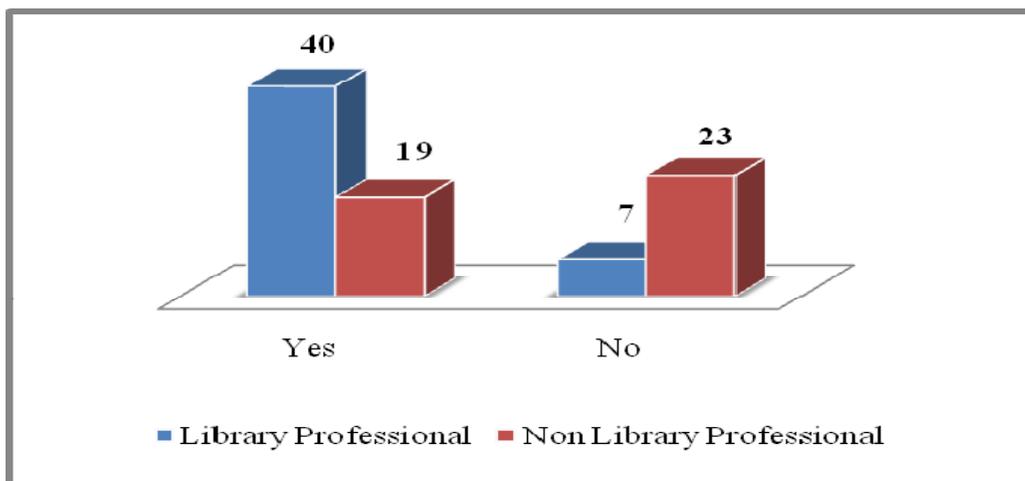
Position	Yes	No	Total	Chi Square	Sig.
Library Professionals	47 (100.00%)	0 (0.00%)	47	7.200	0.007
Non-Library Professionals	36 (85.70%)	6 (14.30%)	42		
Total	83 (93.30%)	6 (6.70%)	89		
Chi Square	66.618				
Sig.	0.000				



Results indicates that there is a statistically significant difference between personnel ($\chi^2=7.200$; Sig. 0.007) and their opinion on familiarity with Copyright Act ($\chi^2=66.618$; Sig. 0.000). Overall a large number of professionals i.e. 93.30 percent were familiar with Copyright Act and only 6.70 percent were not familiar with Copyright Act. It is interesting to note that all library professionals were familiar with Copyright Act. Among non-library professionals, 85.70 percent only familiar with Copyright Act and 14.3 percent were not familiar.

Familiarity with library exception protocol in Copyright Act (Professional-wise)

Position	Familiar	Not familiar	Total	Chi Square	Sig.
Library Professionals	40 (85.10%)	7 (14.90%)	47	15.777	0.000
Non-Library Professionals	19 (45.20%)	23 (54.80%)	42		
Total	59 (66.30%)	30 (33.70%)	89		
Chi Square	9.449				
Sig.	0.002				



Significantly large numbers of library professionals (85.10%) were familiar with library exception, i.e. “fair use” or “fair doctrine” protocol in copyright compared to non-library professionals (45.20%). Results were statistically significant ($\chi^2=15.777$; Sig. 0.000). Only 14.90 percent library professionals and 54.80 percent non-library professionals were not familiar with library exception protocol in copyright. Statistically and significantly ($\chi^2=9.449$; Sig. 0.002) highest i.e. 66.30 percent professionals were familiar with library exception protocol in copyright compared to 33.70 percent professionals who were not familiar.

Conclusion

The advent of digital technology has greatly accelerated the dissemination and distribution of information with great speed and accuracy never seen before. It is much easier to disseminate literary, artistic and scientific work to a very large community of Internet users and users of electronic media. At the same time poses some problems and issues for consideration. Intellectual Property Rights (IPR) in an era of information and communication technology is certainly a matter of concern. The astonishing ease of reproducing digitized materials, and the ease of forwarding such materials over computer networks, may be pushing the notion of authorial control to its limits. With the web providing a new medium in the search for information it has also opened a closet filled with new questions relating to traditional areas and intellectual property. As technology has advanced new products have been made possible and also new methods of supply. Copyright infringement happens rampantly in almost all fields of digital media. Library professionals required basic understanding about copyright and related subject areas to showcase better professional capabilities. The Librarians should continue to work as catalyst for the free flow of information between the owners of copyright and the users of the information.

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