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Copyright Law and the Digital Publishing Industry: Licensing and Privacy Issues

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Copyright Law and the Digital Publishing Industry: Licensing and Privacy Issues

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Abstract

The fast-changing publishing industry towards an electronic based and platform-oriented industry has posed an intricate legal and regulatory issues. The digital publishing platforms are growing upon the use of licensing access, content distribution based on algorithm, behavioural analytics and showing critical concerns at the border point of copyright laws and data protection. This paper will discuss the functioning of traditional copyright standards, such as reproduction, distribution, and the moral rights, within a digital context and evaluates the difficulties presented by Digital Rights Management technologies and intermediary liability and enforcing copyright across national borders. In parallel, it addresses the privacy issues caused by the gathering, managing, and the utilization of reader information, such as profiling, algorithm-driven recommendations, and customized content delivery in the context of the Digital Personal Data Protection Act, 2023 in India. That follows a doctrinal and comparative approach of the research that provides assessment of regulatory regimes in India, the European Union, the United States as well as Singapore that give insight into gaps, inconsistencies, and possibilities of reforms. The paper also suggests convergent solutions that balance the copyright management, license disclosures, and privacy measures as a way of compensating a fair, responsible, and sustainable digital publishing environment.

Keywords: *Digital Publishing, Copyright Law, Licensing, Data Privacy*

Introduction

This represents a massive transformation of the digital publishing sector that has occurred during the last twenty years as a result of the adoption of the internet, mobile technologies, and content distribution systems. The old print publishing system where the primary focus was laid on owning physical copies has been replaced by active, subscription-based and algorithm-based digital ecosystems. The content is being delivered on platforms using e-books, online libraries and mobile applications, which traditionally use a licensing-based access model, as opposed to ownership transfer. Such a transformation has radically changed how authors, publishers, intermediaries and readers relate to one another and it has brought forth new legal and regulatory issues that border on intellectual property protection and privacy. Digital material can be copied, sent and read all over the world in some seconds unlike physical copies of work of authorship, making it hard and cumbersome to enforce copyright rules and regulations¹. Meanwhile, the large amount of user data that can be used to personalise, analyse behaviour and deliver targeted content heightened the privacy concerns, which have led to the imperative to review copyright legislation and data security simultaneously.

The identified research problem of the given manuscript consists in the legal and regulatory gaps existing to regulate the challenges of copyright infringement and privacy controls that remain the consequences of the digital environment of publishing². Although the Copyright Act, 1957 (amended) in India offers a basis on which literary and creative assets can be safeguarded, it is very much oriented towards hardcopy, and is incapable of solving online distribution, algorithmic selection, and access through the approach of licensing. In the same manner, the Digital Personal Data Protection Act, 2023, in India sets out the principles in the collection, storage and processing of data, but its implementation in the publishing platform is complicated by the size, sensitivity and commercialisation of user information.

¹ Julie E. Cohen, “Examined Lives: Informational Privacy and the Subject as Object”, 52 *Stanford Law Review* 1373 (2000).

² Mark A. Lemley, “Rationalizing Internet Safe Harbors”, 6 *Journal of Telecommunications and High Technology Law* 101 (2007).

Copyright Law in the Digital Publishing Environment

The development of digital technologies has completely reformed the framework, distribution and consumption of literary and creative works. The conceptualisation of the traditional copyright law was used in a print culture where literature existed in material form and was distributed through recognisable intermediaries like publishers, booksellers and distributors. Control over a tangible copy was one of the foundations of delimiting the lines of access and the reproduction process was comparatively restricted and traceable³. The digital publishing area, by contrast, is executed inside devolved, immediate, and boundaryless networks, reproduction is effortless, dissemination is worldwide, and admittance is frequently through contractual concession as opposed to proprietorship.

This revolution has far-reaching theologies. Though the copyright law is technically neutral in its application, all the applications to the digital space require a redefinition of underlying principles like reproduction, communication to public, distribution, authorship, and ownership. Digital publishing erases the difference between copy and access because the daily routine technological processes, which create temporary reproductions, include caching, buffering, and cloud storage. Online distribution, likewise, does not comply with the traditional distribution doctrines especially the exhaustion principle given that online works are usually distributed on a license-program basis, rather than being sold. Furthermore, the digital platforms of publishing bring into the picture new players to the system of copyright. Lots of online markets, subscriptions services, aggregators, and hosting of content are emerging as intermediaries between authors and audiences. The intermediaries are in charge of a large degree of visibility, pricing, algorithmic suggestion, and revenue distribution. As a result, the problem of copyright regulation on digital platforms cannot be limited to only relationships between the author and the users; it should also concern the regulatory status of platforms and the extent of intermediary liability.

The situation is even more difficult when it comes to authorship and ownership regulations. Publishing is often collaborative in nature, with commissioned work, user contributions, and extensive licensing of work platform-based publishing. Homogenised digital contracts tend to provide platforms with wide powers in reproduction and adaptation, which might change the historical power relations between authors and publishers.

³ A. Pihlajarinne, "Digital Publishing and Access Models" in T. Hoeren & S. J. Schaub (eds.), *Digital Publishing and Access Models* (Springer, Berlin, 2018) 112.

Bargaining power questions of fair pay, fair pay, and clarity therefore occur in the digital realm. The moral rights also achieve a new meaning in the case of digital dissemination. The fact that the right of attribution and integrity can be influenced in relation to the author in the case of the possibility to modify, remix, excise, or algorithmically curate works. The rights of economies control exploitation, whereas the rights of morality protect the personal and reputation relationship between the creator and work. These protections are particularly necessary in a place where digital works can be remixed or redistributed without direct authorial control.

Digital Right Management (DRM) has also been seen as a technological protection mechanism to control the access and to avert unlicensed copying. Though DRM increases the capacity to enforce, it also has normative issues in the area of user autonomy, fair dealing and inaccessibility of knowledge in the long term⁴. At the same time, intermediary liability frameworks seek to strike the balance between enacting enforcement and driving innovation by laying the functions of the platforms that host copyrighted materials. There are other challenges in enforcing in digital publishing. Online law breaking can be anonymous, technologically advanced and transnational. This has been countered by the courts with measures of dynamic injunction and blocking of websites but enforcement against cross-border is complicated. In India, Copyright Act, 1957(amended in 2012) offers statutory framework to regulate the digital works although the high technology is still challenging the sufficiency of the provisions.

The chapter thus embarks on a philosophical review of the effect of the conventional copyright concepts in digital publishing platforms⁵. It, through examination of reproduction and communication rights, authorship and moral rights, intermediary liability, and enforcement issues, and through interaction with case laws landmark decisions by courts to authenticate the changing approach to interpretation⁶. This will be not only descriptive but analytical: to determine whether current systems of law adequately respond to the realities of digital markets and where anational law or law change might be required.

⁴ Siva Vaidhyathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity* (New York University Press, New York, 2003) 45.

⁵ Jessica Litman, *Digital Copyright* (Prometheus Books, New York, 2001) 78.

⁶ Bhandari, *Indian Copyright Law and Digital Works* (Eastern Book Company, Lucknow, 2015) 132.

I. Digital Reproduction, Communication to the Public, and Distribution Rights

Copyright law makes use of the right of reproduction formed as the conceptual foundation. Since reproduction was historically understood as the physical act of copying a work, the creation of more copies of a book, of manuscripts, or even of reproductions of artistic works in a substantive form. But with the advent of digital publishing, the processes of reproduction have changed radically⁷. Reproduction in digital contexts not only happens through intentional duplication but happens automatically and as a technological necessity through an upload mechanism, download mechanism, caching mechanisms, cloud storage and even temporary buffering.

Section 14 on copyright Act, 1957, states that the copyright owner has the sole right to reproduce the work in material form including storage of the work in any form using electronic means. The direct reference of electronic storage shows that the parliament is appreciative of digital reproduction. The scope of this was further achieved by the Copyright (Amendment) Act, 2012 to make sure that digital copies are squarely under the umbrella of statutory protection.

The philosophical dilemma is how to differentiate infringement reproduction and accidental copying as a result of technology. With digital publishing ecosystems, each time a customer reads an e-book of an online article, a transitory copy could be created within the memory of the device. The rigorous understanding of the right to reproduction might make normal browsing a type of infringement⁸. The problem of implied limitations of transient or incidental copies, has been appreciated in comparative jurisprudence. Even though Indian courts have not yet heard a lot concerning this particular issue of literary publishing, doctrinal argumentation proposes that the copies with technological ineludable nature created without any commercial will of its own ought not to be viewed as infringement activities.

The line of reasoning that the Supreme Court gave in *R.G. Anand v. Delux Films* (1978) is still a classic in interpreting reproduction in the Indian copyright legislation. The Court stated that the infringement exists in

⁷ Alexander Peukert, “Copyright in the Digital Age and the EU Digital Single Market Directive”, 37 *European Intellectual Property Review* 321 (2016).

⁸ Upendra Baxi, *Law, Technology, and Creative Rights in India* (Oxford University Press, New Delhi, 2019) 96.

circumstances when the copying of an expression of an idea is substantial rather than being the similarity of the theme⁹. Although the case was about dramatic works, its principle equally applies to the digital reproduction. When an online medium copies the vast manifestation of a literary work that has been copyrighted without permission, the infringement is proved regardless of the medium applied. The right of communication to the public is also increased by the digital publishing. The works in digital form are typically made accessible through streaming or access-based systems unlike in the traditional distribution where the physical versions are sold or circulated. Section 14 appreciates the exclusive right to communicate the work to the rest of the world with any possible method. This term making available is especially important in web-based situations, where they can be available on demand, and ownership is not transferred.

In *Super Cassettes Industries Ltd. v. MySpace Inc.* (2011), the Delhi High Court considered the issue of the hosting of copyrighted content on an online platform as something that amounts to communication to the public. The Court said that the mere fact that works were made available online, regardless of them being posted by users, could constitute communication provided there was an active role by the platform. The doctrinal argument has a direct effect even on digital publishing platforms hosting or streaming literary works although the case was about music¹⁰. Digital publishing distribution rights are even more troublesome. The conventional copyright doctrine acknowledges exhaustion principle- once the hard copy is sold, the copyright holder cannot determine what happens to the resale of a hardcopy. Nonetheless, online transactions are usually conducted based on licensing as opposed to selling. The rights to access by the users are limited by the contract, and the transfer of ownership in relation to a digital copy is hardly traditional. Such licensing structure is effective in avoiding the possibility of exhaustion in digital settings. What is technically different about a sale and a license in terms of law is the shift in collaboration between ownership and access. Digital publishing systems frequently build a business model in such a way as to maintain ongoing management of distribution and use¹¹.

⁹ Pamela Samuelson, “The Digital Millennium Copyright Act and Platform Liability”, 14 *Berkeley Technology Law Journal* 519 (2003).

¹⁰ Tan Cheng Han, “Singapore Copyright and Data Protection Frameworks”, 29 *Singapore Academy of Law Journal* 215 (2017).

¹¹ Josef Drexler, “Copyright, Licensing, and Privacy in EU Digital Markets”, 49 *Common Market Law Review* 967 (2018).

This has meant that consumers cannot discretely transfer, resell or lend digital books in the way that they can physical ones. It is the contractualisation of the process of exploiting copyright which indicates a structural change in the economics of publishing.

The problem is even more sophisticated when transnational digital distribution takes place. The availability of work online makes it accessible across borders making jurisdiction to be a problem. It has become evident to the Indian courts that an avenue of digital accessibility in India can be enough to create jurisdiction. Delhi High Court realized in the context of a piracy-related case like the case of *UTV Software Communication Ltd. v. 1337x.to* (2019) that online distribution is not limited by territorial boundaries and needs flexible judicial solutions. The other doctrine issue is fair dealing exceptions of the Copyright Act of Section 52. Digital reproduction with the purpose of the individual consumption, research, criticism, or review is still allowed within the statutory limits. The magnitude and the simplicity of online duplication however complicates the practical implementation of such exceptions. The courts need to strike a balance between protecting authors and authorized access of users in the educational and research fields.

II. Authorship, Ownership, and Moral Rights in Platform-Based Publishing

The digital publishing ecosystem has essentially transformed the conventional concept of authorship and ownership concerning the copyright law. Within the classical doctrine of copyright, the original owner to copyright is the author of a literary or creative work, with statutory exceptions, e.g., any work created during employment, or in a contractual assignment. The digital publishing, however, is introducing layered contractual relationships, processes of production that are collaborative in nature, and a structure of dissemination that is platform based which makes it difficult to determine and practice the ownership right¹². Authors in platform-based contexts are often involved in a standardised digital deal, often by way of a click-wrap or a browse-wrap contract, in which the middleman gains a starts-wide licence to copy, distribute, modify or otherwise communicate works to the general audience. Such licensing models are drastically different as compared to the old school publishing

¹² WIPO Copyright Treaty, 1996.

contracts that are made between authors and publishers¹³. Digital platforms usually stipulate broad liberty to host, amass, advertise, algorithms select, and monetise material. Though this kind of set up facilitates the dissemination and visibility, it can erode the useful ability of the author to exercise control over the exploitation of the work.

The Indian law has always insisted on the fact that statutory rights are not divestable in the absence of express and specific contractual conditions. In hopeful cases such as, *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Association* (1977) the Supreme Court asserted that authors are only deprived of their rights by a written assignment. The Court dismissed presumptions that economic exploitation by manufacturers necessarily kills the statutory rights of authors. The principle is permanent as far as the digital publishing situation is concerned, as in these cases, platform providers can assert large-sized rights by using loosely phrased license terms. Courts can thus examine the terms of a contract so that the statutory protections do not get compromised to the detriment of statutory protections by unequal bargaining power.

In all collaborative and user-generated situations authorship itself commands to be complicated. Multi-author books, community edited books, multi-writer blogs and derivativism are also frequently found on digital publication platforms. Analysis When it comes to joint authorship, it must be demonstrated that there is an intent of collaboration and the contribution to the work cannot be separated. In internet settings, there is a likelihood of an evidential problem of determining who makes what and who is the one making it on a joint creation. The doctrinal requirement of originality that was accepted in *Eastern Book Company v. D.B. Modak* (2008) in which the Supreme Court upheld the requirement of originality on the basis of modicum of creativity standard is applicable in the digital world. It does not weaken the bar of originality in the digital form but extends the scope of the works under copyright.

Moral rights take new vigor in digital dissemination as per economic ownership. In section 57 the Copyright Act safeguards the right of the author to institute damage claims through such institute of authorship (right of paternity) and a right to restrain or institute damages caused by distortion, mutilation or modification that is prejudicial to honour or reputation (right

¹³ *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Association*, AIR 1977 SC 1443.

of integrity). Easy modification and redistribution as the hallmarks of the digital environment increases the possibility of misattribution or contextual distortion¹⁴.

The independent and enduring status of the moral rights was upheld in Delhi High Court where it was determined that they will endure even in case they were assigned economic rights. Even though the case was about a mural destruction, the reasoning used also applies to the digital works. In case of the alteration of a literary work, the excerptation and presentation in the distorted form of a literary work over the internet, the author can protect the moral rights invoking the right of protection¹⁵. The participatory culture of digital platforms such as user remixing, annotation, or adaptation of works, needs to be offset, against the interests of the author in integrity. With algorithmic curation the problem becomes more subtle. Wood can be presented on digital platforms in their short version, with a commercial, or organized into thematic sections. Although such practices do not necessarily amount to active distortion, they bring up the issue of reputational influence and contextual integrity. The direct application of algorithmic alteration in the literary publishing sector has not been discussed yet by the Indian courts, however there is a wide usage of the terminology of Section 57, which seems to be applicable where reputational damage has been proven.

Property litigations in online publishing can also be carried out in the job market, especially when journalists, generators of the contents or writers of an academic piece are commissioned to produce contents by digital media organisations. Under section 17(c), works made by an employee in case of employment under a contract of service become the property of the employer unless otherwise. Nonetheless, uncertainties can occur when the freelancer/ independent contractors provide content via online platforms. Whether the relationship between contracting parties is contractual or not is a matter which courts have to look at in order to ascertain ownership.

Finally, digital publishing needs to change how authorship and ownership are calculated by harmonizing statutory and emerging contractual facts. Although platforms enable a previously unheard-of spread, they also create the concentration of economic and technological power. Cases, like IPRS,

¹⁴ Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions that Shape Social Media* (Yale University Press, New Haven, 2018) 143.

¹⁵ Paul Ohm, "Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization", *57 UCLA Law Review* 1701 (2010).

EBC v. Modak, and Amarnath Sehgal meet the doctrinal anchors where the safeguard of authorship, originality, and moral rights unquestioningly safe in spite of structural changes within the models of publishing, remain intact.

III. Digital Rights Management and Intermediary Liability

The high pace of digital publishing has forced it to construct the processes that can safeguard the copyrighted materials in the contexts where the copying and distribution of the same occur in real-time and with insignificant cost. Intermediary liability frameworks and the Digital Rights Management (DRM) technologies have taken the centre stage in terms of tackling this issue¹⁶. Whereas DRM aims to block unauthorised usage and utilisation of digital content via technological methods of control, intermediary liability statutes establish the lawfulness of those platforms that host, disseminate, or promote entry to digital-based publications. All these mechanisms make the copyright enforcement system in the digital ecosystem so strong.

A. Electronic Rights Management and Protection against technology.

Digital Rights Management is defined as the technologies that limit the possibilities to reproduce digital works, manage access to them and trace the way they are used. Such measures can consist of encryption, password security, access control, watermarking and use tracking. On the subscription-based publishing platforms, DRM will make sure that users will not be able to download, re-distribute, as well as manipulate the e-books further than the restrictions contained in the licensing agreements.

In the light of increased significance of technological protection, the Copyright (Amendment) Act, 2012 added Sections 65A and 65B against the Copyright Act, 1957. Section 65A criminalises the bypass of efficient technological protection systems employed on copyrighted material. The section 65B secures the rights management information, including computer-generated metadata, that refers to the author or the copyright owner. Such amendments bring the Indian law into line with the international commitments in the WIPO Copyright Treaty and are an indication that the legislature aims to enhance the enforcement capabilities in the digital realm.

¹⁶ The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services, 2016 SCC OnLine Del 5521.

Nevertheless, the idea of dependence on DRM is concerned with normativity and doctrines. Although technological protection methods can discourage unauthorised duplicating, they cannot substitute them with the law¹⁷. DRMs frequently inhibit not just infringing applications but also lawful applications that are included in statutory exclusions, including fair dealing under Section 52. E.g., the users can be technically denied the possibility of extracting short passages to conduct research or review even in cases in which such was legally allowed. This puts this at cross with technological enforcement and statutory user rights.

The Indian courts also have not given thorough interpretations about Sections 65A and 65B in the context of literary publishing¹⁸. However, the statutory model shows that circumvention is only punishable in case of doing it with intent to violate copyright. This intent requirement will prevent criminalization of legal technological use. Enforcement and the right to access of digital technology is a thin line balance, especially in learning and research areas where access to digital information is a fact of life.

Besides, DRM is not able to solve systemic problems like offshore piracy sites, file sharing networks with anonymous buyers and dissemination across national boundaries. In most cases, technological controls are bypassed via proxy servers or modified programs. Therefore, the mediation of intermediaries is also of equal importance to legal regulation.

B. Intermediary Liability and Platform Responsibilities

Digital publishing ecosystems rely on intermediaries, online marketplaces, content-hosting platforms, the use of search engines, and social media networks, which help us to spread literary works. What these intermediaries may not do is create content, however they actively host, index, promote and monetize. One of the key areas of concern in the management of digital copyright is the issue of their liability in regard to infringement of material. The liability under intermediation in India is regulated mainly in the acts of the Information technology 2000 in section 79 where safe harbour, should it be applicable, is granted under certain conditions. The third parties that provide the content do not make intermediaries liable provided they exercise due diligence, and actually, they do not have knowledge of any illegal action. When they are notified, usually by a court order or

¹⁷ Pamela Samuelson, "Privacy as Intellectual Freedom", 52 *Stanford Law Review* 1125 (2000).

¹⁸ William Fisher, *Promises to Keep: Technology, Law, and the Future of Entertainment* (Stanford University Press, Stanford, 2004) 88.

government notification, of knowledge of infringing material, they should promptly take steps to prohibit or shut access to the material.

The historic ruling of *Shreya Singhal v. Supreme Court*. The scope of intermediary liability in Section 79 was explained by Union of India (2015). The Court ruled that it takes actual knowledge to unleash a court order or official notice to obligate the removal of content upon the intermediaries, thus barring arbitrary censorship on a personal basis¹⁹. Even though the case involved the free speech, its reasoning has substantial impacts on the copyright enforcement in setting the boundary on intermediary responsibility.

In *Super Cassettes Industries Ltd. v. MySpace Inc.* (2011) the Delhi High Court had earlier considered the issue of copyright infringement on a digital medium onto which users were uploading data. The Court believed that an intermediary may be deprived of such protection as safe harbour in cases when it becomes an active participant of the process of advertising or cataloguing the infringing materials. The case placed emphasis on passive versus active participation. This difference is especially pertinent to digital-publishing platforms that suggest, classify, or commercialise literary works. It is important to balance between enforcement and innovation. Observation of over-higher standards of liability can lead to discouragement of platforms development and inhibition of creativity in the user. On the other hand, overimmunity can facilitate the large scale infringement and contravene author rights. Indian jurisprudence, therefore, aims at finding a middle ground and extracts a safe harbour protection along with a due diligence and immediate removal when notified. And another dimension deals with algorithmic curation. Modern publishing platforms are based upon recommendation algorithms that decide on the visibility and monetisation. When algorithms are run automatically to encourage infringement content or otherwise cannot react to the presence of established violations, it becomes a matter of constructive knowledge and active engagement²⁰. Although Indian courts have not discussed the issue of algorithmic liability in a publishing setting in the broadest sense, the developing trend in world jurisprudence might see the courts review the extent of platform control and monetary gain based on the violation of the content.

¹⁹ Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture* (Penguin Press, New York, 2004) 52.

²⁰ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.

Intermediary regulation is further complicated by the idea of cross-border enforcement. There are numerous piracy websites that are beyond the Indian jurisdiction and they are not easily prosecuted. Courts in India have reacted by giving dynamic injunction and blocking the websites. Delhi High court accepted the phenomenon of rogue websites in *UTV Software Communication Ltd. v. 1337x. to (2019)* and issued dynamic injunctions to allow plaintiffs to block mirror and redirect websites without the need to bring new suits. Even though the principal is mainly focused on cinematographic productions, the principle can also be applied in digital publishing in which there is case of systematic online infringement.

C. Balancing Technological Enforcement and Legal Accountability

The relationship between DRM and intermediary liability is that this architecture of digital copyright enforcement is undergoing transformation. DRM offers *ex ante* technological regulation whereby intermediary regulation provides *ex post* legal solutions. None of the mechanisms is sufficient. Proper regulation necessitates agreements of legal protection, case law, and technology regulation.

Indian law shows an effort of reconciling the international commitments with the national constitutional principles. The safe harbour regime of the IT Act exists with enhanced anti-circumventions of the Copyright Act. The cases of *Shreya Singhal*, *MySpace*, *UTV Software* indicate that judiciary has adopted the adaptable stance that facilitates the protection of authors, responsibility of the platform, and freedom of speech. Finally, the main elements of controlling digital publishing are the DRM technologies and the systems of intermediary liability. Their functioning should however be calculated and in line with statutory exceptions and constitutional guidelines. The future consideration of Indian copyright legislation in the digital frameworks will be based on the sustenance of this balance with the consideration of arising challenges of the algorithmic regulation and the international distribution.

IV. Indian Digital Marketplace and Enforcement Challenges.

Regulation of copyright within digital publishing space has proven to be an even more complicated problem than issues that would be faced when using print-based publishing. Digital infringement is in most cases anonymous, instantaneous and transnational, as compared to physical infringement, which usually has identifiable players and distribution routes. It is made possible by the decentralised nature of the internet where infringing content can be posted, copied and replicated across several jurisdictions in a few

seconds. This has led to the ineffectiveness of conventional enforcement, e.g., physically taking away physical copies or trying local distributors, in dealing with digital infringements. Jurisdiction is one of the main challenges of digital enforcement. Through Internet publishing libraries and piracy sites can be located outside India and be available to the Indian audiences. Thus, the issue of territorial jurisdiction takes the center stage. Indian courts have slowly realised that, the availability of infringing content in India can be enough to create jurisdiction, especially in situations where infringement of the copyright holders happens within their borders²¹. This strategy is a response to the old jurisdictional norms embracing borderless cyberspace.

The ruling of the Delhi High Court, *UTV Software Communication Ltd. v. 1337x.to* (2019) is one of the moves in this respect. The Court admitted that rogue sites which actively indulge in systematic theft need active solution. It gave dynamic injunctions which allowed the plaintiffs to seek an injunction to block the mirror or redirect websites without initiating new proceedings against the site with each re-emergence of the infringing site under a different domain name. The case involved cinematographic works but the rationale can be applied to the digital literary publishing where pirated e-books and internet repositories often go across fields. The ruling shows the judicial awareness that a static injunction does not work against a technologically-flexible infringer. There is also another privacy issue posed by anonymity and encryption. Those people who are shipping the infringement copies online can hide their identity by the use of a pseudonymous account, an encrypted network, or even a virtual private network. Finding those who violate copyright can also involve collaboration with the intermediary, which can also cast more doubts on privacy and due process. Although there are mechanisms of notice-and-takedown in the various doctrines of intermediary liability, these mechanisms are reactive and not proactive.

The problem is increased by technological circumvention. In the case of digital rights management systems in place, users are able to overcome protection systems due to the sophistication of the user. The copyright act section 65A and section 65B criminalize the act of overwhelming technological protective measures and infringement of rights management information. Nevertheless, to respond to such actions, it is necessary to

²¹ Neil Richards, *Intellectual Privacy: Rethinking Civil Liberties in the Digital Age* (Oxford University Press, Oxford, 2015) 72.

prove the intention and establish who committed such an action, which might be hard in the field. Further, the use of criminal penalties which are deemed to be excessive might not always produce equivalent outcomes particularly where the resources used in enforcing the punishments are minimal. Website-blocking orders have also been embraced by the Indian courts as a means of enforcement²². Blocking orders instruct the internet service providers to block out violating websites. Though successful in limiting access to certain areas, the actions could end up influencing the good material or lead to the transfer of copyable content to another site. This conflict between strong enforcement and freedom of expression comes into personal focus especially in matters of extensive blocking orders.

Section 52 also makes the analysis of fair dealing exceptions as another thorn in the side. Reproduction at a personal level, to repose or to conduct a study, review or critique of work is still considered legal provided the statutory limits are not transcended. Making the difference between authorized sharing of educational content and engaging in mass illegal distribution of the same is difficult however in the realms of the Internet. The Chancellor, Masters and Scholars of the University of Oxford v. The Chancellor The reasoning of the Delhi High Court in the present case. Even though it focuses on photocopying course packs, Rameshwari Photocopy Services (2016) emphasizes the judicial restraint in balancing copyright protection and its effects on education. The principles stipulated in that case can guide online enforcement controversies over the academic materials published online. When it comes to economic feasibility, another dimension is involved. Initiation of enforcement litigation is both expensive and time-consuming especially when the infringing entities are situated in a different foreign country. Small authors and independent publishers have no resources to follow cross-border remedies. Accordingly, the large publishing houses have an opportunity to be in better positions to obtain an injunction, and as a result, they may possess unequal enforcement ability in the field.

²² Julie E. Cohen, "Examined Lives: Informational Privacy and the Subject as Object", 52 *Stanford Law Review* 1373 (2000).

Through the e-commerce and online subscription services in the Indian digital market place, there has been high proliferation in legitimate access to the works of literature. Meanwhile, there is simultaneous parallel expansion of piracy networks that continue to destroy revenue streams. The issue of policymakers and courts is to develop solutions that will curb the widespread violation without imposing unnecessary burdens on innovation or access. Finally, legal adaptation, technological innovation and international cooperation are used interchangeably in enforcing digital publishing. Judicial resourcefulness such as the use of dynamic injunctions and emergent intermediate norms has been significant towards dealing with matters that emerge. Nevertheless, there is a need to maintain the consistency of the doctrine and to coordinate the policy change so that the protection of copyright in India can keep in step with the realities of the global digital distribution.

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