



EFFECT OF TECHNOLOGICAL CONVERGENCE ON CYBER SPACE & ISSUES OF PRIVACY IN RELATION TO INTELLECTUAL PROPERTY RIGHTS MORE SPECIFICALLY WITH COPYRIGHT.

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Abstract

Technological convergence means amalgamation of various technologies in solitary device or in single machine, i.e. cable wire or fibre optic wire or without cable wire. The said machine would have numerous technologies built in including biotechnology, nanotechnology, **information technology** etc. prime focus of researcher in present papers shall be on technological convergence that takes place in **cyberspace** which hampers with the privacy in specific relation to intellectual property rights perspective. Further this paper tries to recast the exchange of **copyright** infringement regarding 'overseeing intertextuality'. Intertextuality alludes to how our contemporary social condition is set apart by duplication, interpenetration of writings and the dissemination and distribution of pictures, sounds and words in different structures and organizations. Intertextuality is omnipresent and unavoidable: the test is the manner by which to react to it. In perspective on the enormous chances and focal points of robotics and amazing development of web, portable advancements, computerized instrumentation, there have emerged genuine legal worries of techno-legitimate measurement all the more explicitly in meadow of **Intellectual Property** (IP) scheme. The internet, with speedy ramp of the 'internet' and 'World Wide Web', crowd be shaken by edgy content exchange convention and hyper content checking language, has turned into the most effective conveyance system; it is additionally the biggest gathering for talk on PC projects and programming and its biggest maker and market. In this way the key business of the web is PC programming. Simultaneously it stages host to the leading amount of theft websites wherein thief can download programming.

Key-Words: Technological Convergence, Information Technology, Cyberspace, Copyright, Intellectual Property Rights.

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Introduction

Technological convergence implies the extension in the wellspring of innovation wherein the innovation extends however the supporting machine gets tiny and precise, which turns out to be more advantageous and easy for anybody to utilize that innovation. Presently, this extension of the innovation can be in two fundamental ways either by wired innovation or by remote innovation. By amalgamation of innovation the gathering of various advances gets converged into one single machine. These days we routinely see the progressions in the innovation whether it is our cell phones, TVs, workstations, cameras, printers and so on in every single field innovation intermingling should be visible and with combination of advances there has been immense effect in the internet which has quickly opened doors for opportunity along with opening the doors for dangers in the internet. The digital regulations relating to the technological convergence are a lot of restricted in nature and purview as it can't forestall the encroachment and infringement in a large portion of the cases that happens in the internet. There are the two up-sides and negatives of the innovation combination in the internet.

IPR means “knowledge or information in any form which has a commercial value and Intellectual property rights can be defined as a mixture of ideas, inventions, innovations and creations i.e. Copyright, Patent, Trademark, Design are some of the types of Intellectual Properties.”¹ One of the largely affected field because of technological convergence in cyber space is intellectual property rights and to be more specific the area of copyright is the most exploited when we talk about privacy and “intertextuality” is copyrights. Copyright is a sector which is operated both in cyber space as well as in the real physical world, but its exploitation on cyber space is something which has now become harmful for the creator or author of the work. There are also other general cyber space merits and demerits which are frequently encountered by regular daily consumer in his/her life. So far as other intellectual properties are concerned the issue of cyber space exists but issue of privacy is less when compared to copyrights.

¹Mr. Atul Satwa Jaybhaye, ‘Cyber Law And IPR Issues: The Indian Perspective’, (Bharati Law Review, April – June, 2016), Pg-166.



Issues of Privacy in Cyber for Copyright

The speedy progress in development has made the web as fundamental media for information access and essentially every scrap of information can be found on web. Today, text can without a doubt be reordered from web. Thusly, it ends up being incredibly easy to use another maker's work from web without giving authentic reference.²The articulation "Fake" is portrayed as pantomime of the procedures or considerations of two or three another maker and tending to it as one's own remarkable work without reference. Forging has become one of the most mind-blowing informational hardships in light of the fact that most of the students or experts are misleading when they do the allotted tasks and adventures.³This is in light of the fact that a lot of resources can be found on the web. It is so normal to include them as one of the web crawlers to search for any point and to cheat from it without alluding to the owner/maker of the record. Therefore, it becomes vital to use abstract robbery revelation sensitive items to stop or to discard students cheating, recreating and changing chronicles when they understand that they will be found. A couple of sorts of duplicating acts can be recognized successfully by using a part of the new abstract burglary acknowledgment programming open accessible or over the internet.⁴

Copyright encroachment can occur in many constructions, for instance, reusing the considerations of others without suitably referring to, translated artistic burglary in which the main substance is deciphered, duplicating is the source code where whole or a piece of the code made by someone else is imitated and various others.⁵Scholarly burglaries of digital device software are exceptionally ordinary among the students where they will frequently copy the source software and change them with little changes in the appearance. In both the text based report copyright encroachment and source code falsifying, acknowledgment can be by a similar token: Manual revelation or modified area.⁶

The issue of PC theft and violation and infringement of copyright are now known for a while. Nonetheless, the beginning of the computerized climate is frequently named as death bow for IP regulations, as the jurisprudential establishments and philosophical securing of the copyright, data

²Asim M., Hussan M., Vaclav S., "Overview and comparison of Plagiarism detection tools," *Dateso*, pp. 161-172, 2011.

³*Ibid*

⁴*Ibid*

⁵ *Ibid*

⁶*Ibid*



innovation and digital regulations are compared to one another in many regards. The old style IP regulation teaches embodies the precepts of property regulation, business regulation, scholarly regulation or more every one of the ethical regulations.⁷ The procedural and institutional component prefaced on these grounds as regular chorally makes the literary theft, robbery and deceptive scholarly prospecting an untouchable. Then again data innovation and digital regulations are fundamentally a worth free statute and adroitly proclaims general dispersal and liberal spread of information by rising above geological, administrative and administrative deterrents. Disavowing the monopolistic portrayal of information under the IP regulation the propounded of digital commotion keeps up with that data and information is definitely not a theoretical structure as perceived by individuals however is an economy itself to be measured and compared into money related terms.⁸

Infringement of Copyright

Copyright gets infringed, when any person, uses the copyright wherein he/she fails in obtaining the license from the owner or registrar of that copyright under the copyright Act or if the use is not in accordance of the terms & conditions of a license so granted or of any terms & conditions imposed by a competent authority under this Act. The following aspects will also be termed as infringement of the copyright if the user:

- (a) Tries to exploit “*exclusive right*” which is conferred to the owner of copyright by The Copyrights Act;
- (b) Grants the permission that ought not have been granted such as selling, making, hiring, exhibiting, distributing etc. in public domain or imports within the territory on India;

Above are two conditions which are expected to be considered as encroachment of copyright. The product copyright proprietor should demonstrate the misleading comparability, at first sight case and hopeless misfortune to guarantee the harms from infringer.⁹

⁷Faizan Mustafa, “Copyright Law: A Comparative Study” 6 (1998)

⁸Md. Salman Waris “*Copyrights And Legal Protection Of Software*”, Paper presented at the WORLD CONGRESS FOR INFORMATICS AND LAW II Madrid - Spain - 2002, Cradle of a Global World Venue Law School, Complutense University of Madrid 23 - 27 September 2002.

⁹Section 51 of the Copyright Act, 1957



The purpose of copyright is to empower creators, authors, chiefs to make unique works via giving them the selective right to imitate and distribute the works to assist individuals. At the point when the restricted right for example term of copyright moves past, the work's have a place with the public area and anybody might replicate them without authorization. The copyright remains alive in unique abstract, sensational, melodic, imaginative, cinematographic film, sound recording and PC program too.¹⁰At the moment, copyright serves a variety of undertakings including creation and transport of books, magazines and paper, media of feeling that is enthusiastic and melodic works for presentations, creation of melodic works and film, broadcasting, etc, etc. copyrights being Intellectual Property branch out from one country to another more actually and quickly than various kinds of property. Mechanical progression has made reproducing of copyright material basic and essential. Along these lines, the control of copyright infringement has irksome and regularly unbelievable. Books, recorded tapes or video tapes of motion pictures or PC ventures can be taken beginning with one country then onto the following with no difficulty and a large number copies can created utilizing it and spread. Unapproved home taping of radio and TV programs has become wild everywhere.¹¹

Captivating substance from one internet site and adjusting it or simply imitating something very similar on another internet site has become conceivable by headway of advanced innovation and this has presented new difficulties and troubles for the customary understanding of individual freedoms and insurance. Any individual with a PC (Personal Computers), PC, advanced cell and a functioning web modem can turn into a distributor of content. Downloading, transferring, saving, changing or making a subsidiary work is only a tick away from an individual's range. A site page isn't immeasurably not quite the same as a book or a magazine or a sight and sound discs and will be equipped for copyright security, as it contains content plans and, surprisingly, sound and accounts. Intellectual property regulation awards the proprietor or maker of the work a restrictive right to approve the proliferation or utilization of duplicate corrected works, arrangement of subordinate works, conveyance of works and so on.¹²

Digital Convergence and Intertextuality in Plagiarism

¹⁰Available at www.wipo.int , visited on 15/02/2016.

¹¹ Dr. Gupta & Agarwal, *Cyber Laws* (Premier Publishing Company, Allahabad, 2010) 148.

¹²Tabrez Ahmad, *Cyber Law and E-Commerce*, APH Publishing Corp., New Delhi, 2003, at Page no.25



Initiation has been reliably shaped and formed by the physical-world around it. Generally speaking, intellectual property regulation in each respectful guideline and incessant guideline global areas recognizes a work's creator and its novel owner as the flesh, home grown man or lady who considered and executed the work. At worldwide level, Article 15(1) of the Berne Convention¹³, the main worldwide copyright instrument in light of the nineteenth century standards, lays out a widespread assumption of origin, and thusly beginning possession, for reasons for criminal behaviour.¹⁴

Obviously initiation is progressively embracing creativity. The previously mentioned Berne Convention depicts protectable "abstract and imaginative works" in the most including terms as "each creation in the scholarly, logical and imaginative space, anything that might be the mode or structure its demeanor. Albeit the Convention no place characterizes "creator" or "work", the ordinary norm for insurance of scholarly and imaginative works, applied across both precedent-based regulation and common regulation frameworks, is that the work unmistakably be the result of its creator's endeavors and not duplicated from another work or works.¹⁵

Obviously authorship is progressively embracing creativity. The previously mentioned Berne Convention depicts protectable "literary and artistic works" in the most incorporating terms as "each creation in the scholarly, logical and imaginative space, anything that might be the mode or structure its demeanour. Albeit the Convention no place characterizes "author" or "work", the ordinary norm for assurance of abstract and creative works, applied across both precedent-based regulation and common regulation frameworks, is that the work unmistakably be the result of its creator's endeavours and not replicated from some other work or works.¹⁶

Softwares Detecting Intertextuality

In present world of internet on one hand copying and indulging in the act of piracy has grown rapidly but along with that there are also software which can detect the piracy or copy in the text as well as in the pictures or figures. Therefore, technology has grown in both ways and it is upon the user that in which manner the user wants to utilize it. There is enormous software for detecting the plagiarism. These software works on two counts i.e. (i) Online and (ii) Offline.

¹³ Berne Convention, 1886 Article 15(1)

¹⁴ Hegemann, Helene and Péter Esterházy. "Plagiarism, Intertextuality and Copyright on Literary Works." (2010).

¹⁵ Paul Goldstein, *International copyright: principles, law and practice*, Oxford University Press, 2001, §5.1.1.1.A

¹⁶ See *Supra Note 14*



Creating web frameworks for counterfeiting recognition conquers machine ability issues, work with the accessibility of the framework to numerous clients and broaden the inquiry of appropriated assets to the World Wide Web without any problem. There are software such as “Urkund” and “Turnitin” which are most notable business copyright infringement discovery framework to which numerous colleges around the world buy in¹⁷. The automated detection software such as “Urkund” or “Turnitin” uses a vast database from the cyber space along with the previous works of student which is already saved in the software and accordingly the same is required to be compared with the query document.¹⁸

As far as legislation of Copyright law is concerned the concept of computer software is elaborated and it also speaks that whether same can be granted protection or not. The specific legislation is U/S 2(o) of The Copyrights Act 1957 which permits identification of computer programmes. Further, the work generated by computer data is also entitled for protection under the Copyright Act, 1957. Moreover, The Copyrights Act, 1957 also conceptualize the term “*computer programme*” under section 2(ffc) as below:

*“Set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular results”.*¹⁹

Computer programme are one of the most progressive technological development and are most capable of breaching one’s privacy. At the same time it is also capable of protecting the privacy of user. Hence the same is required to be used with utmost care.

Other Field of Copyright Facing Issue of Piracy on Digital Platform

The digital piracy is something for which practically there appears to be no regulation as digital piracy is clear outcome of technological convergence. Therefore, regulating the digital piracy is one of the most hardest thing that world at large is facing. The digital piracy is some or the other way infringing the privacy of the author or creator of the work, as without knowledge of the author or creator the pirated versions of software and applications are getting circulated, which is direct attack on the privacy of the

¹⁷ Tuli, Ruchi. (2016). RuchiTuli, “Plagiarism: A Threat to Intellectual Property Rights” International Journal of Recent Research Aspects ISSN: 2349-7688, Vol. 3, Issue 1, March 2016, pp. 27-32. International Journal of Recent Research Aspects. 3. 27-32.

¹⁸ *Ibid*

¹⁹ Section 2(ffc) of The Copyrights Act, 1957



owner of the product. There are also certain notable instances wherein such digital piracy was caught one of such instances is as below:

- (i) There are many famous litigations around the world when we talk about infringement or violation of copyrights, but in the said category most talked about litigation is *A&M Records; Inc. v. Napster; Inc*²⁰, the facts of the litigation are that plaintiff herein was prosecuted by defendant herein, for the purpose of sharing 'P2P' files. The defendant herein was delivered the software, using which one can share multimedia files such as MP3 which is saved within his/her device with another person using the defendant's software. Said P2P sharing had created the copyright issues as a person not having purchased the copyright music was able to download such music without spending anything on it. Therefore, many companies after prosecution of the defendant herein started to make claim for infringement and violation of copyright because of P2P sharing. At the end there was an amicable arrangement between plaintiff and defendant on several conditions.

In light of the meaning of the dangers to the distributing business presented by computerized innovation, and the way that advanced theft is probably going to altogether affect the improvement of the business due to absence of substitute income streams, it is convenient to assess both the copyright difficulties confronting the cutting edge distributing industry and the expected answers for those issues. In this manner, it is helpful to consider examples where the business has been ineffective in really attesting command over important substance. Late case regulation like *United States v. Apple*²¹, *Authors Guild, Inc. v. Google*²², *Authors Guild, Inc. v. Hathitrust*²³, and are real situations wherein law of courts have been to an immense level of being unsympathetic to the distributing business' endeavours to defend its essence.

Conclusion

The copyright law is almost the same around the globe there are minimalistic changes in the said law. Therefore, the issues such as, literary theft or "intertextuality" or privacy is a matter of concern for the world at large. In present time the issues of privacy, literary theft and "intertextuality" is growing rapidly since in earlier time it was only human efforts with possible

²⁰ Cited as (2000 WL 573136, I (N.D. Cal. 2000))

²¹ *United States v. Apple, Inc.*, 952 F. Supp. 2d 638, 702 (S.D.N.Y. 2013)

²² *Authors Guild, Inc.*, 2013 WL 603193.

²³ *Authors Guild, Inc. v. Hathitrust*, 902 F. Supp. 2d 445, 464 (S.D.N.Y. 2012).



errors which was required to be dealt with but now the efforts put in are of artificial intelligence wherein there are almost no chances of any error. Therefore, finding out the originality of the work is very much difficult. On the other hand the original owner or creator of the work would also not be aware of his/her privacy being breached by artificial intelligence and without even getting caught the original work can be duplicated by use of different software. Hence, by the day's end, the distinctions among literary theft or “intertextuality” and intellectual property regulation’s legal enforceability might be debatable on the off chance that accepted practices, market influences, and grassroots activity can cure the issues of untrustworthy acquiring. Counterfeiting and copyright encroachment are regularly confounded by and by. While literary theft or “intertextuality” includes getting the work copied without attribution-and not really acquiring exacting text-copyright encroachment for the most part includes strict replicating (in spite of the fact that summarizing will at times add up to encroachment contingent upon the degree of reflection). Attribution is immaterial to copyright encroachment. So far as the software are concerned there are both types of software available one to hide the duplicity and another to find out the duplicity, both are performing their work but duplicity would get attracted wherein there would exact similar sort of work, which is not the case thereof.

It is possible that the new age of authors considers literary theft and “intertextuality” to include exacting replicating as a result of the commonness of copyright infringement discovery programming that searches for strict correspondence between an understudy's tasks and previous works. The expanded dependence by schools and universities on this product and the expanded attention to this product by understudies and graduates might make the feeling that counterfeiting, by definition, includes strict duplicating, rather than basically taking one more thoughts without legitimate attribution. Hence the issue of privacy and “intertextuality” is something which is growing day by day and there will have to be a legislation for curbing such misuses.