OPEN ACCESS
Scholars International Journal of Law, Crime and Justice
Abbreviated Key Title: Sch Int J Law Crime Justice
ISSN 2616-7956 (Print) |ISSN 2617-3484 (Online)
Scholars Middle East Publishers, Dubai, United Arab Emirates
Journal homepage: https://saudijournals.com

Review Article

Right to Communication and Right to Reproduction in Digital Age in the Realm of Copyright Law: A Doctrinal Investigation

Abhishek Negi[1*], Utkarsh K. Mishra[2], Dr. Jalaj Goantiya[3]

[1]Assistant Professor (Law), Dharmashastra National Law University (DNLU), South Civil Lines, Pachpedi, Lekha Nagar, Jabalpur, Madhya Pradesh 482001, India
[2]Assistant Registrar (Research), Centre for Research and Planning, Supreme Court of India (On Deputation) & 2Assistant Professor of Law, Dharmashastra National Law University (DNLU), South Civil Lines, Pachpedi, Lekha Nagar, Jabalpur, Madhya Pradesh 482001, India
[3]Assistant Professor (Political Science), Dharmashastra National Law University (DNLU), South Civil Lines, Pachpedi, Lekha Nagar, Jabalpur, Madhya Pradesh 482001, India

DOI: 10.36348/sijlcj.2021.v04i12.005 | **Received:** 13.11.2021 | **Accepted:** 18.12.2021 | **Published:** 22.12.2021

***Corresponding author:** Abhishek Negi

Abstract

Rights of the Communication and Reproduction of the Copyright Owner have been deeply impacted due to advancements in technology and especially digitization. With the ever developing digital copyright law, the popular 'fair use doctrine' is also becoming slightly dysfunctional. In this context, there is a need to create a balance between the 'individual's right' in the developing digital Copyright law and 'social values' concerning the same. This paper is doctrinal investigation into the dynamics of the Rights of Communication and Reproduction in the context of the digital copyright law in India. The authors have also conducted a comparative study between the digital legal copyright ecosystem existing in the United States and India in order to understand the problem better.

Keywords: Right to Communication, Right to Reproduction, Copyright Law, India, United States.

I. BACKGROUND

The Right to Communication or the "making available right" is one of the very noteworthy achievements and inventions of the World Intellectual Property Organisation and the Right to reproduce is another supplement and associate of the right to communication [1]. The former allows the Copyright owner to disseminate information to the public in the way he wants and the latter grants him an exclusive right to reproduce the original work in any other 'form'. In the latter, the 'form' takes different meanings in different jurisdictions like India and United States etc [2].

'Fair Use' and 'Fair Dealing'

If above rights are exploited by some other person, it qualifies as infringement, with a very dynamic exception being that of the Doctrine of Fair use and Fair dealing. The Doctrines of fair dealing and fair use are an essential part of copyright law, be it in India, United States, United Kingdom etc. The Doctrines allow the use of the copyrighted work in a fashion or its reproduction, which, but for the exception carved out would have amounted to infringement of copyright [3]. Both the doctrines evolved out of equitable considerations in lieu of balancing the rights of copyright owner and the rights of common public, thus creating a social bargain in the sense of Hohfeldian philosophy [4]. Although both the

[1] See, Sandeep Kanak Rathod, *Comparing US and Indian Copyright Law*, JURIST - Dateline, May 28, 2012, available at http://jurist.org/dateline/2012/05/sandeep-kanak-rathod-copyright.php.

[2] See, Pamela Samuelson, "Copyright and Freedom of Expression in Historical Perspective" (2003) 10 *J. Intell. Prop. L.* 319 at 324.

[3] See, Ayush Sharma, "Indian Perspective of Fair dealing under Copyright Law: Lex Lata or Lex Ferenda?" Journal of Intellectual Property Rights, Vol 14, November 2009, pp 523-531.

[4] See, Newby, T.G., "What's Fair Here is Not Fair Everywhere: Does the American Fair Use Doctrine Violate International Copyright Law?" 51 Stan. L. Rev. 1633 (1999). See also: Sony Corporation v Universal Studios, 464 US 417, 479-480 (1984). There are jurists who have justified the fair use doctrine in a Lockean framework. See: Darmstadt, B.J., "Limiting Locke: A

doctrines are a part of exceptions to copyright infringement, they differ in terms of their nature and source of origin. Fair dealing originated in the copyright framework of the United Kingdom, which covers an exhaustive list of exceptions to infringement [5]. On the contrary, fair use is essentially a US doctrine and allows infringement for fair uses [6]. The former is quite qualified and rigid in nature, while the latter is liberal and bendable in its entirety as the latter defines fairness in very broad terms [7]. It will be seen in subsequent chapters that India is a country which has tried to imbibe in its copyright framework both the doctrines exceptionally well.

Technological developments

Apart from all above remarkable developments, there has been a parallel development of technology since the inception of the Law of intellectual property rights, and this technological development has been so dynamic that today the World has become really flat in the words of Thomas Friedman [8], and to be precise, it is the world of digitization and the copyright law has been responding to this technology in some way or the other. These technologies, personal computers are on one hand very promising in terms of efficiency but on another potentially harmful to the copyright owners [9]. Not only this, as a result this potential change, the Doctrines of Fair use and fair dealing have also been jeopardized by the very fact that on one hand, the fair users are finding it difficult to protect reasonable personal copying and on the other, it has become very difficult to track the infringers as it has become hard to prove that infringement has occurred [10]. This dilemma becomes more intense when it is seen in the context of country like United States where, "Copying" is the only criteria for the infringement [11]. The following chapters throw light on how digitization has completely changed the whole world and how countries like India and United States are trying to tackle the problems at hand.

II. Digitization of the World and the Potential Consequences for Intellectual Property

As the technology developed at fast pace, the world witnessed the coming up of new forms of communication through the instrument of digital technologies by which all the kinds of works can be converted into electronic medium, hence making its sharing very fast and at the same time. With the coming up of super computers, an information in binary form can be shared with lakhs and millions of users across the world and at the same time. Although the said achievement in technology has made convenient the communication between people at large, but at the same time it has posed terrific challenges to the rights of the copyright owners.

Easy infringement of Intellectual Property in the Internet age

With the growth of information technology, it has become very easy and simple to reproduce data in the binary/electronic form and to cite an example, piracy of music using CD Rom burning software has become a common phenomenon. In *CIT vs. Oracle Software India Limited* [12], the court held that duplicating a CD at home may amount to piracy and violation of the section 14 of the Copyright Act, 1957. Hence, the problem of duplicating has come to limelight [13]. New gadgets of technology including scanners, digital cameras, e-mail applications, recording softwares, ipads, iPods, mobile phones, smart phones, data mining and other hardware and software tools enable such kind of duplicating, easy reproduction and trouble-free circulation of infringing materials [14]. As a result, one of the objects of the

Natural Law Justification for the Fair Use Doctrine", 112 Yale L.J. 1179 (2003). Some authors also argue that fair use doctrine does not in any way protect freedom of speech, see: Lockridge, W., "The Myth of Copyright's Fair Use Doctrine As a Protector of Free Speech", 24 Santa Clara Computer & High Tech. L.J. 31 (2007).

[5] Griffiths, J., "Preserving Judicial Freedom of Movement–Interpreting Fair Dealing in Copyright Law", [2000] IPQ 164. See also: Copinger and Skone, J., Copyright, Volume I (Sweet & Maxwell, London: 15th edition, 2005) 481.

[6] *Supra*, note 4.

[7] Section 107 of the US Copyright Act, 1976 states that copies made "*for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research*" is fair uses. This list serves as a non-exhaustive guideline. The factors courts consider to determine whether a particular case is a fair use are: 1) the purpose and character of the use, including whether such use is of a commercial nature or is for non- profit educational purposes; 2) the nature of the copyrighted work; 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and 4) the effect of the use upon the potential market for or value of the copyrighted work.

[8] See, Thomas L. Friedman, "The World is Flat: A Brief History of 21st Century", Farrar, Straus and Giroux, 2005.

[9] See, A. Kerecer, *Reflections on the Future Development of Copyright*, (1983) Copyright 373 quoted at G. Davies, *op. cit*., at 293.

[10] See, Benkler, Y. (2006) The Wealth of Networks: How Social Production Transforms Markets and Freedom. New Haven, Connecticut, Yale University Press, p. 60.

[11] See, Ashley M. Pavel, "Reforming the reproduction right: the case for personal copies". Berkeley Technology Law Journal, Vol 24, 2010.

[12] See, CIT vs. Oracle Software India Limited 2010 (2) SCC 677.

[13] See, CIT vs. Mastek Limited, 2010 (13) SCC 58.

[14] See, Clarke, Roger, and Nees, Stephen, " Technological Protections for Digital Copyright Objects", available at www.rogerclarke.com/II/TPDCO.html

copyright law that the duty of the state is to protect and enforce the economic and moral interests of the copyright owner also seems to be defeated because of such a technological development.

The reason is simple that today, every kind of information can be transformed into binary language and is stored in bits and bytes. And now the digital representation of a work may itself lead to its reproduction. Apart from these direct infringements, hybrid infringements such as framing, deep linking and sale of pirated products pose altogether a new-fangled challenge to the law enforcement organisations [15].

The high-flying copyright issues in the digital era can be demarcated as follows [16]:

- Issues relating to an entire new set of work, that is to say computer programs, databases and multimedia works;
- Issues relating to reproduction, distribution and communication to the public of a work through digital media; and
- Issues relating to the digital rights management and administration of the same.

Apart from these issues in relation to balancing the rights of copyright owners and right of the public to up to date decision making, the governments have also faced certain challenges in relation to management and adjustment of IPR regimes with the advent of digital technology.

Fig 1: Major challenges posed to lawmakers with the advent of digital technology [17]

With the advent of digital technology, firstly, the law makers face a potential challenge of embracing the new forms of communication and expression within the ambit of their municipal laws. Such a challenge although is not very difficult to deal with as it needs only a new legislation, but then again it is not exhaustive in itself and has to conform with the newly coming technologies at a fast rate. The second challenge faced by the lawmakers is that of maintaining the framework of exclusive rights of the copyright owners such as right of reproduction, communication, distribution in the wake of digital environment where the presentation of information in digital form can itself qualify for the reproduction of the work. The third challenge faced by the lawmakers is to maintain the efficiency of markets because that is what gives best returns and economies of scale to the authors of copyright works and if market inefficiencies are not cured, it discourages the authors to work for better. The fourth challenge posed by the lawmakers is to determine the extent and span of resultant liability on the part of free riders i.e people using digital information in personal and then communicating it to public at large. The last and most important challenge is to reduce inefficiencies and problems for the honest users. Every honest user in this digital age would like to use some information available on a given topic for his purposes. Now the problem arises when he does not know who is the author of that work or is there any possibility of negotiating terms with the author in relation to use of his work. In such a scenario, the role of lawmakers comes into picture, where it is required that such mechanisms are created which reduce inefficiencies for honest users.

III. The International Digital Copyright Regime: An Analysis

The World Intellectual Property Organisation has been instrumental in bringing together copyright issues across many countries. The Copyright treaty, 1996 and the 'Performances and Phonograms Treaty', 1996 have been the two important treaties which have tried to address the above discussed issues in the digital environment. These treaties lay down guidelines for member countries to form laws to protect intellectual property in the offline world, yet much remains to be done in the online space [18].

WIPO Copyright Treaty, 1996 [19]

The WCT is a special agreement under the Berne Convention and it was entered into force on 6th

[15] See, Cameron J. Hutchison. 2010. "Interpretation and the Internet", Availableat: http://works.bepress.com/cameron_hutchison/1

[16] See, T.C. James, "Indian Copyright Law and digital technologies". Journal of Intellectual Property Rights, Vol 7, September 2002 pp 423-425.

[17] See, Marybeth Peters, "The challenge of Copyright in the digital age", 2008, available at http://iipdigital.usembassy.gov/st/english/publication/2008/04/20080429222342myleen7.736933e-02.html#axzz2tbQhC4Qy

[18] See, *Bara sits*, "Copyright in the Digital Age – Exceptions and Limitations to Copyright and Their Impact on Free Access to Information", 2005.

[19] See, WIPO free publications: http://www.wipo.int/freepublications/en/intproperty/909/wipo_pub_909.html

March, 2002. Some of the salient features of the treaty are enumerated as under-

- Article 4 of the treaty protects the computer programs as literary works.
- Article 5 of the treaty protects compilations of data or databases as a copyrighted intellectual property.
- It calls for a pressing need to draft new legislations for protection of copyrighted materials in digital atmosphere.
- It provides that the right of reproduction available to an author also applies to digital works or the electronic records and its exceptions as described in the Berne Convention also apply to the online world [20].
- In relation to rental rights, the treaty provides that the authors have an exclusive right to sanction commercial renting of their work for computer programs. Where the computer programs are not the foremost object of renting, this right is expelled [21].
- The treaty makes the mention that with respect to the right of communication, the authors hold the exclusive rights to communicate to the public their copyrighted works subject to the provisions of the Berne Convention including by wire or wireless means [22]. Such a stipulation gives vent to the 'on-demand' programs and interactive communication using internet.
- The WCT specifically provides for member countries to enact exceptions within the confines of the three-step test [23].
- Additionally, the Agreed Statement to Article 10 clarifies this and allows scope for signatory nations to extend exceptions in the digital environment [24].

WIPO Performances and Phonograms Treaty, 1996 [25]

- The WPPT was entered into strength on 20 May, 2002 and aims to protect intellectual property rights of performers including actors, singers, musicians and producers of phonograms i.e sound recordings.
- The treaty focuses on the moral and economic rights of the performers including rights reproduction, distribution and commercial rental rights and rights of communication to public in relation to live performances.
- The treaty very clearly lays down that the rights and exceptions described in the treaty will apply equally to the digital world and storing any performance or phonogram in electronic format will amount to reproduction of the protected work.

WTO and the TRIPS

- The WTO comes into the picture through the TRIPS agreement which also contributes to the protection of intellectual property rights in digital environment in some way or the other.
- The chief objective of the treaty is to disembark at a homogeneous set of legislations that egg on the protection of the different kinds of intellectual properties.
- Its core objective is to benefit the copyrights owners morally and economically and encourage innovation.
- The TRIPS agreement also imbibes certain provisions governing digital copyrights.[26]
- All in all, the agreement tries to imbibe in itself the basic principles of both the Paris convention and the Berne convention in order to create a suitable intellectual property framework.

ANALYSIS

- We have seen in above international regulations that there is no problem as far as acknowledgment of the right of reproduction in the digital environment is concerned. The problem is comes to the forefront when the issue of incidental reproduction that takes place in the communication through internet is observed. When a soon-to-be buyer goes to a bookstore, he has the option of browsing through it

[20] See, http://www.wipo.int/treaties/en/text.jsp?file_id=295166

[21] See, Article 7, WCT, 1996.

[22] See ,Article 8, WCT, 1996.

[23] See, WCT, 1996: *Article 10: Limitations and Exceptions*

(1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. (2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author."

[24] See, WCT, 1996,*"Concerning Article 10-It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws, which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment. It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention."*

[25] See, WIPO free publications: http://www.wipo.int/freepublications/en/intproperty/909/wipo_pub_909.html

[26] For example, Article 10 of the agreement says that the computer programs qualify for protection as literary works as per Berne convention and even databases are copyright protected.

as to whether to splash out on a book or not. Now, in the case of internet, this option is available only after the digital replication of the book in the RAM of the buyer's computer. The WCT does not cover such an issue of reproduction as to whether such a digital reproduction should be covered under the scope of the right of reproduction [27].

- The WPPT lacks clarity in terms of the rights of communication and broadcasting in the digital medium.
- Both the treaties-WCT and WPPT although have tried to tackle the problems posed to the traditional intellectual property framework by including some techno-legal measures to protect IPR in the online space, but both of these lack in dealing with detailed regulations as to the extent and scope of online copyright protection and issues relating to enforcement agency.
- The most important contribution of the "internet treaties" is that both the treaties have very clearly laid down and clarified on aspects of Digital rights management, Fair use definition and acceptability of reverse engineering in order to bring homogeneity in laws of the member states.
- Even the TRIPS agreement has tried to be in consonance with the two Berne convention and Paris convention, but at the same time it also does not throw much focus on the above-mentioned grey areas.

IV. Digital Copyright Ecosystem in India and the United States: A Bird's eye view

I. POSITION IN UNITED STATES

In the United States, as premature as in 1994, the Information Infrastructure Task Force and a Working Group on Intellectual Property Rights were formed to submit a report on intellectual property protection in USA. The report was a landmark recommendation to the US government to amend the laws in accordance with the requirements of the cyber space. The recommended two very important recommendations:

- The circumvention of any copyright protection technology would be a criminal act.
- The Requirement of 'monetary gain/financial gain' should be omitted from the requirements to determine a copyright infringement.
- The importance and acceptability of the report is reflected in the following legislations and other aspects discussed as under.

The Digital Millennium Copyright Act (DMCA), 1998

- This act made the producing and distribution of the technology that provides a means to circumvent copyright protection mechanisms as unlawful. And this is so if the focal intention at the back of the use of such technology is aimed at prejudicing the rights of the copyright holders.
- This act curbs the development of those softwares which are used to infringe the copyright of the shareholders.
- It, in very uncommon circumstances provides for the cracking of the copyright protection devices counting for research in encryption technologies, assisting interoperability issues and for enhancing computer security.
- The service providers are liable to do away with any infringing materials from the user's websites which may be infringing.

The No Electronic Theft Act, 1997

The NET act prescribes punishment for copyright infringements even where no commercial or financial gain is involved. It simply says that lack of knowledge of law is not an excuse [28]. Before the coming of this act, the position in US was that if copyright infringement was made for no profit, then it was not treated as a criminal offence.

US Courts on P2P File Sharing, Napster, Grokster and KaZaA

P2P or Peer-to-Peer sharing as a part of MP3 revolution is defined as the two or more computers linked by software which enables the connected computers to transport files or data to other connected computers. In topical usage, P2P has approached to describe applications in which users can use the internet to switch over files with each other unswervingly or through a mediating server.

- In the Napster Case, the Napster introduced software that enabled P2P file sharing of mp3 music files which were stored on hard disk of the computers of the RIAA members. The sharing was potential when the members were online and requested exact music files. Napster faced legal action for copyright infringement in cyber space. The argument on behalf of Napster was that it was only an intermediary and offered necessary retort whenever a complaint was received and hence its acts were in consonance with the DMCA, 1998. The court held that Napster is liable because the services that it offered were different from that of the Internet service provider, as Napster through its services makes the provision for a dais where different users could trade the copyrighted CD tracks based on the P2P sharing.
- In the Grokster case, Grokster had obtained the license for fast track technology from the Dutch Company called KaZaA. Another P2P file sharing software is the Smart Cast which uses 'Morpheus technology'. They faced a stroke for vicarious liability for

[27] See, Hargreaves, Digital Opportunity: A Review of Intellectual Property and Growth, May 2011, at 20, available at: http://www.ipo.gov.uk/ipreview-finalreport.pdf

[28] See Karnika Seth, "Computers Internet and new technology laws", LexisNexis, 2013.

copyright infringement. The court observed that the Grokster did not use a central server and the software could be used for commercial non-infringing use and the distributors of Grokster cannot be imputed constructive knowledge of the infringement. The court added by saying that Napster had a control over its users and had the capacity to prevent its users from infringing by downloading the copyrighted material. But in the case of Grokster and Smart cast, even if they de-activated their computer systems, it would not be able to prevent the users from using the software. The Grokster ruling was challenged in appeal, where again it was dismissed.

- In the KaZaA case, a super node system was adopted where few computers played the role of indexing servers. Grokster had financed its technology from KaZaA and the US Courts held that Grokster is not able to close the indexing servers without the assistance of KaZaA. A suit was initiated by Buma against KaZaA seeking a ban on the operations of KaZaA. The Dutch Supreme Court held that KaZaA is not liable for infringement of exchange of music by users using its free software.
- The US copyright office has drafted a bill for the purpose of bringing a new provision in force that concerns with the making of the inducing of copyright infringement a punishable offence. The bill is still pending [29].
- In cases like Sony Corporation of America vs. Universal City Studios [30] and Perfect 10 vs. Visa International [31], US courts have held that for the attribution of liability of intermediaries, its knowledge and intention plays a vital role to decide their culpability in the copyright infringement [32].

Reverse Engineering in the United States

The question that whether the US Copyright Act permits the non-copyright holders to reverse engineer a computer programs to analyse the unprotected functional elements of the program, came up in the landmark decision of Sega Enterprises Limited vs. Accolade Inc [33], where the court said that if a disassembly is made by a person for a valid and justified reason and where there are no measures to access the 'unprotected elements', then disassembly will amount to a fair use of the copyrighted work [34].

Problems with the US Copyright Act, 1976

The new realities of the digital age have rendered the 1976 Copyright Act inadequate for protecting reasonable personal copying and have created incentives for copyright holders to implement objectionable strategies to protect their rights [35]. The Copyright Act also fails to protect copyright holders due to its focus on "copying" as the proxy for infringement [36]. This is ineffective to prevent file-sharing as it is hard to prove that "copying" has occurred, and it forces the holder to invade consumers' privacy by using programs that track their activities [37]. This also incentivizes holders to litigate out of existence developing technologies that aid consumers in making personal copies in direct contravention of the constitutional purpose of copyright [38]. The 1976 Act fails consumers because a fair use defence is an almost pathetic shield against even unjustified copyright infringement claims [39]. The 1976 Act fails copyright producers because, where personal use copies are involved, the Act's focus on copying as the proxy for injury leads to ineffective and expensive litigation strategies [40].

II. POSITION IN INDIA

Although India is not a signatory member of both the internet treaties, WCT and WPPT, but the Indian courts and legislature have tried to make bring Indian law in consonance with the objects and instruments laid down in the treaty. The position in India in relation to digital copyright infringement has been discussed under the following heads.

India's stance on P2P sharing technology related infringement issues

- In India, if softwares like Napster run in order to facilitate the users to share files by P2P sharing facility, such company will be straightaway liable under Section 51 of the Copyright act, 1957 [41].

[29] See, Karnika Seth, "Computers Internet and new technology laws", LexisNexis, 2013.
[30] See, Sony Corporation of America vs. Universal City Studios 464 US 417 (1984).
[31] See, Perfect 10 vs. Visa International 2007 DJ DAR 10586 (9th Circuit, 3rd July, 2007).
[32] *Id*.
[33] See, Sega Enterprises Limited vs. Accolade Inc 977 F 2d 15, 93 Daily Journal DAR 304.
[34] *Id*.
[35] See, Ashley M. Pavel, "Reforming the reproduction right: the case for personal copies". Berkeley Technology Law Journal, Vol 24, 2010.
[36] *Id*.
[37] Supra note 23.
[38] Maureen Ryan, *Fair Use and Academic Expression: Rhetoric, Reality, and Restriction on Academic Freedom*, 8 CORNELL J. L. & PUB. POL'Y 541, 566-67 (1999).
[39] See, Ashley M. Pavel, "Reforming the reproduction right: the case for personal copies". Berkeley Technology Law Journal, Vol 24, 2010.
[40] See, the COMMITTEE ON INTELLECTUAL PROPERTY RIGHTS IN THE EMERGING INFORMATION INFRASTRUCTURE, NATIONAL RESEARCH COUNCIL: THE DIGITAL DILEMMA: INTELLECTUAL PROPERTY IN THE INFORMATION AGE 129, 134 (2000).
[41] Section 51 of the said act provides that if a person does anything which violates the exclusive right of the copyright holder or of the author of a work, it shall

- Under section 14, making the copies of any breed of work through any medium and communicating it to public is an exclusive right of the copyright owner. Hence for softwares like Napster function in India, it would be liable for copyright infringement. There is no doubt in relation to such P2P sharing infringement framework in India.
- Even if it is argued that a software like Napster is providing only for an indexing or listing service and not for transferring any files, section 63 of the Copyright act, 1957 will come into picture which states that any person who knowingly infringes or abets the infringement of copyright in a work or other rights conferred under the act excluding right under section 53 A shall be punishable [42].
- In case, the softwares like KaZaA which is based on a decentralized file sharing system function in India, it will be easier said than done for the Indian courts to decide as to the ban of such operations if an action is brought in such nature [43]. It is simply because such a networking system can be used even for a non-infringing commercial use. But Indian position is very clear on the point that if by using such softwares, downloading or distribution of copyrighted material is done, it will be copyright infringement.
- In relation to the liability of intermediaries and whether inducement by intermediary will result in copyright infringement, India's stance is very clear as opposed to that of the United States. As per the amended IT act of 2000, section 79 (3) clearly states that exclusions to liability available to intermediaries are not available to them in case when an intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act. Hence, if such networks abet, induce or conspire infringement, they will be liable for punishment [44].

Indian position on Reverse Engineering

Indian position on reverse engineering is crystal clear. It can be found in Section 52 of the Copyright Act, 1957. Section 52 (1) (aa) of the copyright act specifies that making copies or adaptation of a computer program by lawful processor of a copy of such program from such copy is not qualified as infringement when it is done to utilize the computer program for the purposes of which it was supplied or to make backup copies [45].

amount to infringement of copyright; See Section 51, Copyright Act, 1957.

[42] See, Section 63, Copyright Act, 1957.

[43] See, Karnika Seth, "Computers Internet and new technology laws", LexisNexis, 2013, pp 244-245.

[44] See, Section 79 (3) of the Information technology Act, 2000.

[45] See, Section 52 (1) (aa) of the Copyright Act, 1957.

Copyright (Amendment) Act, 2013

The Indian lawmakers through this amendment have tried their level best to bring the Indian copyright law in consonance with the International digital copyright regime as discussed in earlier chapters. Some of the important amendments can be mentioned and are as follows-

- Section 52 (1)(i)(a)-Storing of any work in electronic medium for private or personal use including research, criticism, or review of work or reporting events etc., is not a copyright infringement.
- Section 52 (1) (b)-Incidental storage of work or performance purely in technical process of electronic transmission of communication to public is not a copyright infringement.
- Section 52 (1) (c)- It provides for the transient or incidental storage of work or performance for purpose of providing electronic link, access or integration where it has not been expressly prohibited by the right holder, unless the person responsible grounds for believing that such storage is of an infringing copy.
- Section 65A-Punishment for circumvention of any technological measure applied for the purpose of protecting any right conferred by the act.
- Section 65 (2) (b) - Doing anything necessary to conduct encryption research using lawfully encrypted copy is permitted as exception.
- Section 65B- It makes available the provision for the protection of rights management information.

III. ANALYSIS OF THE COPYRIGHT FRAMEWORK IN INDIA AND THE UNITED STATES

Firstly, it is evident from the comparison made above that India's position on the digital copyright management is much clearer than that in the United States, despite the fact that India is not a party to the two treaties-WCT and WPPT. In India, the lawmakers have themselves taken up this challenge to amend existing laws and bring them in conformity with the international framework. Hence the Indian Copyright act as it stands today itself deals with most of the possible nuances which were dealt with by the internet treaties. While in the United States, although there are certain new statutes in place, but still, the courts there are more active and brought forth most of the principles of the law of the land. Secondly, as far as the liability of intermediaries in copyright infringement is concerned, the position seems to be crystal clear in India than in the United States. A relevant example in this line would be the question as to whether the inducement of copyright infringement makes the intermediaries liable or not has been settled in India and is pending in United States. This has been despite the fact that the movement for bringing a new digital copyright law framework had started in US even before it started in India. Thirdly, under the US copyright law regime, the basic flaw of considering only "copying" as a proxy for infringement has become detrimental for it. As

a result, the management of digital rights has become problematic there. As opposed to this, Indian Copyright law considers both copying (physical copying) and Communication by any means as a proxy for copyright infringement, which is in accordance with the present requirements.

V. Looking forward: Digital Rights Management and Balancing the Rights

Be it in India or in the United States, the balance between the rights of the copyright holders to have protection over their work and the rights of the users to be informed can be maintained by the governments by resorting to implement the anti-circumvention law and the digital rights management as discussed in previous chapters. Both of these aspects have been very clearly enshrined in the Articles 11 and 12 of WCT and Articles 18 and 19 of the WPPT. Circumvention of technical measures is an act of offence and similarly if someone attempts to change or destroy any kind of electronic rights management information in an unauthorized manner or if that person distributes or communicates the work of that author in an unauthorized manner with the full knowledge that change has been without an authority, then in that case, legal remedies can be claimed against that person. The basic idea behind the copyright law itself is to regulate the use of content and to balance the rights of creators and the general public. The copyright owners also need to look for the potential for the application of technological solutions that discourage an unauthorized use. The most important challenge that the lawmakers will continue to face is the ongoing development in technology. As Charles Clark has put it, "*The answer to a machine is a machine*!" [46]. In simple words, if the usage of some websites is blocked by a university, then students do come up with proxy websites to bypass the blockade. Hence, lawmakers will have to be vigilant in that sense. In any circumstance, a strong legislative action, supported by judicial activism is desired.

[46] See, Clark, Charles, The Publisher in the digital world, WIPO Document No. WIPO/CR/Del/96/5, New Delhi, 1996, also avaialble at http://copyright-debate.co.uk/?p=641