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NEW CHALLENGES OF THE OF THE COPY RIGHT IN DIGITAL ERA AND CYBER CRIMES

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Abstract

We live in a society dependent on technology. However far modern science and techniques have gone short of their inherent possibilities, they have taught mankind at least one lesson "Nothing is impossible".¹ Cyber space creates moral, civil and criminal wrongs. It has now given a new way to express criminal tendencies. In most of the cases law enforcement officers have lacked the tools to tackle this problem. It is often evident that old laws did not quite fit for the crimes being committed, new laws hadn't quite caught up to the reality of what was happening, and there were few court precedents to look upon for guidance. The advent of the internet age and electronics has brought about dramatic change in Intellectual Property law. There is in this short article, the researchers tried to trace out the problem, concentrating on the recent developments in copy rights in digital era and Cyber Law.

Introduction

The Copyright Act, 1957 protects the copyrights in respect of literary work, sound recording as well as computer programmes.² The question as to what amounts to an infringement is seen in the light of the definition of the term "infringing copy", which is defined under Section 2 (m) of the Act. It reads as follows:

"infringing copy" means:-

- (i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;
- (ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;
- (iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

For example, a book falls in category of literary work, therefore, Section 2 (m) (i) applies here. However, the term "reproduction" appearing in Section 2 (m) (i) is not defined under the Act. Further, to the best of the author's knowledge no judicial interpretation of the term is available. However, since the definition excludes reproduction by way of cinematographic film from the ambit of Section, it follows by way of implication that reproduction here refers to reproduction in any form (not necessarily in the form in which the original exists). Thus, in view of Section 2 (m) (i) making of a sound recording of the text embodied in book would amount to reproduction of the literary work. Consequently, an audio book if made by any person other than the holder of copyright would be an infringing copy.

As per section 51 (a) (ii) of the Copyright Act, 1956, Copyright in a work shall be deemed to be infringed, when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyright under this Act or in contravention of the conditions of a licence so granted or of any conditions imposed by a competent authority under this Act permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright.³ In *Gopal Dās V. Jagannath Prasad*,⁴ the court held that no one

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¹ LEWIS MUMFORD, *Technics and Civilization*, 1934. (Columbia)

² Copyright exists in a "work", which is defined under Section 2(y) of the Act as :

- (y) "work" means any of the following works, namely:-
- (i) a literary, dramatic, musical or artistic work;
- (ii) a cinematograph film;
- (iii) a sound recording.

Further, Section 2(o) provides that "literary work" includes computer programmes.

³ B.L. WADEHRA, *Law Relating to Intellectual Property* by, 6th Edition : 2015, Universal Law Pub. Co. Pvt. Ltd. -Delhi

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⁴ AIR 1938 All266