Chapter 5

Pirates of the Copyright and Cyberspace: Issues Involved

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ABSTRACT

The chapter discusses the issues involved in the protection of copyrights of intellectual creation over the Internet. The chapter focuses upon concept of liability and jurisdiction in cyberspace in context of the threat of violation of the rights of copyright holders. The chapter examines the role of technological advancement vis-à-vis the legal scenario make several observations and suggestions in regard.

INTRODUCTION

Not very long ago, fearsome pirates roamed the seas, looting and plundering the merchant ships and creating havoc, before they slowly vanished from the scene with the advancement of technology. Now, the world has seen the revival of pirates in a much more sophisticated, advanced and threatening form, owing to the same technological advancements. Yes, the reference being made here point towards the growing menace of intellectual property theft and piracy. In these early years of the 21st century, we continue to live in the Information Age -- an age when our economy’s greatest assets are not steel and coal, but ideas and their practical applications (Yang and Hoffstadt, 2006, 201). We have been able to exploit this intellectual capital more effectively in large part due to the widespread use of computers, which has enabled businesses to manipulate their intellectual property with greater ease and to buy and sell physical products with greater efficiency over the Internet. Just like various other fields this has also affected the realm of intellectual property rights. Due to technological advancements new avenues in respect of intellectual creation are emerging coupled with new issues

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relating to their protection. The consequences brought about in the content industry as a result of new technologies are already before our eyes (Lucchi, 2006, 11). The recent times, which have seen path-breaking scientific and technological advancement, has revolutionized the world in which we live. This Chapter focuses particularly on problem of copyright piracy in the digital age where it has assumed new dimensions due to its intermingling with the rapid growth of technology. It is quite evident a fact that the problem of piracy and theft of intellectual creations is not of recent origin and is probably as old as human creativity itself, but the point of discussion which will be presented and argued upon is based upon the multiplicity of issues involved which have arisen solely due to this interplay.

The basic working pattern of copyright is to reward the creative and innovative works and individuals to live by their creative efforts and skills. It covers the vivid areas of human creativity and extends to the protection of the contributors such as actors, dancers, singers, musicians and broadcasting organisations who adds value in the presentation of artistic and literary works to the public. The system of copyrights accomplish two goals: Firstly, protecting the creativity and consequently engendering the same by extending some special privileges to the producers of creative works (Ahuja, 2006, 429). The practice of pirating of copyrighted works eats away the very basis of this system. Copyright regimes throughout the world are facing a big challenge of budding technologies. Various digital and information technologies are emerging those have defined the new era of communication. This has led to a twofold effect, at one side they assist the copyright owners in better utilization of their intellectual capital and on the other darker prospect threatening them loss of control even over their own property. The impact of digital technology specially the Internet is such a massive one that, even the basic fundamentals of copyright law are under the threat of revisions and modifications (Edwards and Walde). Not only has this intensified the occurrence of copyright infringements but has led to such violations of the rights of the copyright holder which, due to their unprecedented nature, are protected poorly in IP regimes of various legal systems around the globe.

OVERVIEW OF THE ISSUES INVOLVED

The fact that computers have now being in existence for over half a century, protection of the intellectual property rights in computer programs has only really become an issue since the advent of microcomputers, a much more recent development (Rowland and Macdonald, 2005, 5). The extent to which the development of new situations and consequences resulting from the intermingling of intellectual property and internet is taking place today is wide and dynamic. This is precisely due to involvement of various factors like the worldwide reach of the Internet, the millions of websites on the World Wide Web, the easy access to and copying of others’ intellectual property and famed anonymity of this medium (Ryder, 2002, 1). Two prominent issues involved in the debate of copyright protection over the Internet are who is to be made liable for the violations and what should be the proper and effective forum to adjudicate such a liability. These are the two broad issues under which several complex issues relating to liability and jurisdiction can be assimilated. These concerns regarding finding liability and effective jurisdiction are also important from the point of view of the whole notion of protection of rights of the copyright holders as well as stemming the increasing occurrence of copyright violations.

Who is Liable: Copyright Infringements in the Cyberspace

Fixing of liability for copyright infringements in cyberspace is a very difficult issue. The dynamic
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