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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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DIGITAL COPYRIGHT WARS: PROTECTING KNOWLEDGE IN THE AGE OF INFRINGEMENT

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Abstract:

The digital era has ushered in a new frontier for copyright protection, where online infringers wield anonymity as a powerful weapon. This article presents an in-depth analysis of recent legal cases and their profound impact on safeguarding intellectual property. Dive into the intricate legal battles that define copyright enforcement in the digital age, and explore the battle against infringing educational materials. Learn how the courts, digital platforms, and copyright owners join forces to protect knowledge and creativity. Discover how the law is adapting to face the challenges of encrypted platforms and anonymous infringers, and why legislative amendments may be the key to a secure digital future.

Introduction:

The advent of the internet has ushered in a new era of challenges in protecting copyright and intellectual property. Online copyright infringement has emerged as a significant concern, affecting artists and content creators and raising questions about access to knowledge. This article delves into the challenges posed by copyright infringement in the digital age and explores the legal solutions aimed at addressing these issues.

In recent years, cybersecurity has emerged as a pressing concern due to vulnerabilities on the internet, leading to the rise of cyber threats such as online copyright infringement. This type of criminal activity has been on the rise, and it appears that there is no effective solution to curb it, as it is becoming increasingly accepted as a norm. Online copyright infringement violates the ethical standards of behaviour on the internet, with artists and other intellectual property owners suffering the most from this problem. Without proper control and prevention measures, artists may find themselves unable to earn a fair income from their creative works.

A copyright serves as a form of protection that signifies ownership of intellectual property and its content. Copyright infringement occurs when an individual, without the legal authorization of the original owner, decides to utilize protected works covered by the copyright. Copyright infringement is a cybercrime that has persisted for an extended period, particularly due to the changing ways of sharing content, allowing people to exploit established and protected works for their personal gain.

Many people believed that the issue would cease once internet platforms were introduced, but much to their astonishment, this crime escalated to even more challenging and severe levels. Individuals devised methods for unlawfully obtaining intellectual property, making it accessible offline, and subsequently uploading the same content illegally to their platforms for their own gain.¹ Due to the growing population of internet users accessing online content in today's world, it has become challenging to control this wrongdoing, as tracking it has become increasingly difficult. Another complicating factor in preventing copyright infringement is its diverse manifestations, which vary depending on the type of intellectual property involved.

Growth of online copyright infringement:

Authors marketed their articles to magazines, and a few also offered their work to newspaper companies for integration into their publications.² Initially, the intellectual property and content experienced strong sales for the first few weeks, but then the sales declined. An inquiry into the situation uncovered that the initial high sales were due to the presence of only original copyrighted tapes in the market. However, as time passed, the sales dwindled because an increasing number of copied tapes were circulating, often at a lower price. This copyright infringement problem grew to a point where artists implored buyers to refrain from purchasing pirated items.³ Despite these efforts, the problem persisted. Subsequently, the internet presented a new opportunity for selling content online. Artists embraced this online approach, and it proved effective until individuals devised alternative methods for online content piracy.

¹ Ahmad, T., & Ghosh, I. (2011). Plagiarism and Copyright Infringement. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.1839353>

² Astrachan, J. (2008). De Minimus Copyright Infringement. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.1625037>

³ *Id*

In the era predating the internet, literature was manually transcribed into books and magazines, which were sold through offline means. This made it relatively straightforward for individuals to pilfer pre-written articles.⁴ Stealing articles and incorporating them into one's own books or articles and subsequently selling them in distant parts of the world was a significant setback for writers. This practice often led to authors receiving diminished returns for their literary works, as those who engaged in literary theft sold the material at considerably lower prices. Then, the internet emerged, enabling the uploading of articles and books online, simplifying access to these materials.⁵ In their view, the battle against this form of theft prompted writers to turn to online platforms for a safer approach. Nevertheless, the act of stealing articles, commonly referred to as plagiarism, persisted. Individuals would appropriate online articles, transfer them to printed books, and then sell these physical copies. This made content theft a straightforward endeavour.

To combat this problem, an anti-plagiarism initiative was introduced. Numerous online sites and platforms, such as Grammarly, facilitated the identification of original versus copied articles. Thanks to the anti-plagiarism legislation, individuals can properly attribute articles when using them for research purposes. This law also extends to offline publications, making it unlawful to exploit a plagiarized article for personal gain or without the author's permission.

Challenges:

The digital age has seen an alarming surge in online copyright infringement. Despite the introduction of internet platforms, the problem has evolved into more complex and challenging forms. One of the significant challenges is the ease with which individuals can unlawfully obtain and distribute intellectual property, making it increasingly difficult to control and track such activities. Furthermore, copyright infringement takes on diverse manifestations, varying depending on the type of intellectual property involved, thereby presenting a multifaceted problem.

Content creators and authors, who once marketed their work through magazines and newspapers, have experienced dwindling sales due to the widespread availability of copied content at lower prices.

⁴ Carpenter, C. (2012). Copyright Infringement and the Second Generation of Social Media Websites: Why Pinterest Users Should Be Protected from Copyright Infringement by the Fair Use Defense. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2131483>

⁵ *Id*

While the internet initially appeared to offer a solution, it paved the way for new methods of online content piracy. Plagiarism, wherein individuals appropriate online content, transfer it to printed books, and sell physical copies, has persisted as a challenge.

The Positive Side:

Ease of Access: Online copyright infringement provides easy access to a wide range of content, making it more accessible to users.

Cost Savings: Users can often access copyrighted materials for free or at a lower cost, which can be advantageous for individuals seeking educational resources or entertainment.

Disadvantages of Online Copyright Infringement:

Loss of Income: Content creators and artists suffer from reduced income as their work is often accessed without proper compensation.

Erosion of Intellectual Property Rights: Online copyright infringement undermines the rights of intellectual property owners, potentially discouraging future creativity and innovation.

Solutions:

To combat copyright infringement, an anti-plagiarism initiative was introduced, with support from online platforms like Grammarly. This initiative aids in distinguishing original content from copied material, ensuring proper attribution when using articles for research purposes. The anti-plagiarism legislation extends to offline publications, making it illegal to exploit plagiarized articles for personal gain or without the author's permission.

Case analysis:

In the recent case in India *Jainemo Pvt. Ltd. v. Rahul Shah and ors.*⁶, the Delhi High Court made a pivotal decision regarding the classification of 'course material' and 'course videos.' The court determined that these materials are encompassed within 'literary work' under Section 2(o) and 'cinematographic films' under Section 2(f) of the Copyright Act, respectively.⁷ The defendants in this

⁶ Jainemo (P) Ltd. v. Rahul Shah, 2023 SCC OnLine Del 6136

⁷ The Copyright Act, 1957. Act No. 14 of 1957, Section 2(o), 2(f)

case employed various digital platforms to distribute the plaintiff's copyrighted educational materials and charged fees for access.

The plaintiff, Jainemo Private Limited, specializes in creating and selling educational materials and vocational courses, covering subjects such as coding, computer programming, and website development. These courses comprise recorded videos, live sessions, assignment questions, reading materials, and question banks, among other resources. The case underscored the necessity for stronger copyright protection in the digital age. In this case, the court recognized 'course material' and 'course videos' as forms of 'literary work' and 'cinematographic films,' respectively, under the Copyright Act. The accused individuals were using digital platforms to distribute the plaintiff's educational materials for profit. The court's order restrained defendants from downloading, uploading, storing, sharing, transmitting, selling, or utilizing any of the plaintiff's courses on electronic platforms.

Challenges and Legal Response:

In early September 2023, the plaintiff discovered that numerous individuals and entities were illicitly sharing their courses on platforms like WhatsApp, Telegram, and YouTube, while charging fees ranging from Rs. 500 to Rs. 1000. In response, the plaintiff sought legal remedies by filing an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (CPC) to restrain the defendants from sharing copyrighted materials.

This legal action raises vital questions about the balance between copyright protection and access to knowledge. It also prompts a re-examination of the legal principles established in previous cases, such as the well-known *The Chancellor, Masters & Scholars of the University of Oxford & Ors v. Rameshwari Photocopy Services & Anr*⁸, often referred to as the **DU Photocopy case**.

DU Photocopy Case and Its Relevance:

In the DU Photocopy case, the petitioners sought a permanent injunction against Rameshwari Photocopy Services and Delhi University (DU) for infringing their copyright by reproducing and distributing various publications as course packs to students. The defendants argued that their actions

⁸ Chancellor v. Rameshwari Photocopy Services, 2016 SCC OnLine Del 6713

fell under the exception to copyright provided in Section 52(1)(i) of the Copyright Act.⁹ This section permits the reproduction of works by teachers or pupils in the course of instruction.

The primary issue before the division bench in the DU Photocopy case was whether the right of reproduction of any work in the course of instruction was absolute and not subject to the condition of 'fair use.' Sub-issues revolved around the scope of the phrase 'course of instruction' and the interpretation of 'reproduction' versus 'publication.'

Legal Findings and Implications:

The court in the DU Photocopy case made noteworthy findings. Firstly, it clarified that Section 52(1)(i) is not subject to the traditional four-factor fair use test but is guided by a general principle of fair use, with the 'purpose test.' The use would be considered fair as long as it is necessary to help learners understand the material, representing a broader and more flexible approach.

Secondly, the court differentiated between 'publication,' which involves profit motives, and 'reproduction,' which entails 'copying' for limited use, such as for individuals or a class of students being taught together. This distinction implies that a commercial motive categorizes the activity as 'publication,' placing it outside the educational exception under Section 52(1)(i).

Implications in the Jainemo Case:

The Jainemo case builds upon the DU Photocopy case's legal foundations but introduces unique challenges. The defendants in the Jainemo case, private individuals and entities, were uploading complete copyrighted course materials and videos owned by the plaintiff on various digital platforms. They did not qualify as 'teachers or pupils' under Section 52(1)(i), rendering the 'course of instruction' aspect irrelevant.

Furthermore, the commercial element in the defendants' activities pointed to 'publication' rather than mere 'reproduction,' removing them from the educational exception's protection.

⁹ The Copyright Act, 1957. Act No. 14 of 1957, Section 52(1)

Challenges of the Digital Age:

The Jainemo order demonstrates that the interpretation of the court in the DU Photocopy case establishes safeguards to ensure that genuine usage of educational material is protected under Section 52(1)(i). It broadens the protection against the usage of copyrighted educational material by including 'educational videos' prepared by the copyright owner.

Importantly, the order recognizes the challenges posed by digital platforms where copying and reproduction of course material are made easy and anonymous. Infringers create alternative and duplicate channels to distribute copyrighted material even after the original channel is taken down. In another case involving the online portal Apna College, the Delhi High Court ordered WhatsApp to deactivate the phone numbers of users sharing infringing material. The court emphasized that failing to block the dissemination of copyrighted material would result in significant monetary loss, loss of subscribers, and loss of goodwill for the plaintiff.

Embracing Technology: Lessons from *Neetu Singh v. Telegram*:

To address these challenges, the court in the Jainemo case relied on the precedents set by *Neetu Singh v. Telegram*¹⁰, where the unauthorized use and sharing of video lectures, books, and other educational materials on the Telegram platform were addressed. In the Jainemo case, the defendants employed various techniques to communicate and distribute the plaintiff's courses, videos, and course materials.

The court noted that the proliferation of digital platforms makes copying and reproduction of educational materials significantly easier, posing unique challenges. As a response, the court directed platforms like Telegram, YouTube, and GoDaddy to disclose the details of individuals sharing infringing materials.

Conclusion and Legislative Amendments:

In conclusion, these legal cases emphasize the evolving dynamics of copyright protection and access to knowledge in the digital age. While copyright protection is essential to incentivize creativity and innovation, it must be balanced with facilitating knowledge dissemination. A harmonious balance

¹⁰ *Neetu Singh v. Telegram FZ LLC*, 2022 SCC OnLine Del 2637

between copyright protection and knowledge accessibility is crucial for nurturing a thriving educational ecosystem and encouraging the creation of quality educational materials. Legal responses will need to adapt and innovate to address the ongoing challenges posed by the digital landscape.

As education technology companies and encrypted digital platforms continue to evolve, the court faces the challenge of locating additional safeguards within the Copyright Act to protect copyrighted materials from anonymized infringers. Legislative amendments may be necessary to address these challenges effectively, ensuring that copyrighted educational content remains accessible and secure in the digital era.

