
ANALYSIS OF DIGITAL RIGHT MANAGEMENT PROVISIONS UNDER INDIAN LAWS

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ABSTRACT

This research paper provides a brief introduction to DRM and its relativity with copyright law. We shall focus on the main objective of the paper which is to know the pros and cons of DRM and then further draw the conclusion. But before starting on the main question or aspect of digital right management we will make their clarity over subject DRM and then move forward with its relation with copyright law which falls under the domain of intellectual property right and then knowing the necessity and hurdles of DRM.

I. Introduction

Copyright law protects the original form of expression of ideas and not ideas per se. It guarantees protection to copyright owners against unauthorized 'use' of their works—specifically in the form in which it was expressed by them. Hence, copyright owners are vested with 'exclusive rights' over use of their works, which include, copying or reproducing the work; distributing the work through sale, lease or lending; performing the work in public in the case of literary or dramatic works; translating the work to other languages; adapting the work or making products such as toys or clothes based on a copyright work); and making a sound recording or motion picture of a work and transmitting them over digital networks. Such rights are classified as economic rights of the copyright owner.

International copyright law also vests the author of a copyright work with moral rights. Moral rights include the right of the author to claim authorship of the work and the right to prevent any distortion, mutilation, modification, or other derogatory action with respect to the work, which would be prejudicial to the honour and reputation of the author. While economic rights of the author are capable of being transferred to another, the moral rights in a work will always remain with the author even after the transfer of economic rights in a work. For the purpose of our current study, we will only be focusing on the economic rights of the author/ copyright owner as it is the economic rights that are principally linked with the concept of access to educational materials in digital context.

II. What is copyright?

Copyright protects the rights that creator have over their literary and artistic works. Works protected under copyright include, literature, drama, art,

What is DRM?

Digital Right Management

A new term, a new name or a new phrase. Something which none of us have ever heard about or rarely heard about. But are surrounded by it completely and how. In this digital era where internet is an essential part of living, processing the life. And so, DRM is as much connected to it and so to the people's life.

Starting with what is DRM. It is Digital Right Management. Basically, a software which prevents the piracy and protects the copyrighted content on digital platform.

We can understand it by a simple example. We all have a door in our house and whenever we go out, we LOCK it and in order to come in we need to unlock it by its keys. Very similarly DRM is also like a lock which protects the copyright material in digital form and not in physical sense and it can be only unlocked by people who knows the key or who have the key to the lock .i.e., an encryption key, decryption key, passwords, subscription etc.

Components of DRM

DRM involves the employment of technological protection measure and right management information to protect copyright in digital content. DRM perform a variety of functions, including securing content, identification and authentication of user, identification and description of content that is secured, and identification of copyright violation. The types of DRM technologies, include, encryption, copy control, digital watermarking, fingerprinting, traitor tracing, authentication, integrity checking, access control, tamper resistant hard and software, key management and revocation as well as risk management architectures. DRM technologies facilitate a wide range of business models, including subscription, rental, purchase, gift, download or side load, playback restriction, and streaming of on- demand content on single or multiple platforms.

III. Relation between DRM laws and IPR.

India's Copyright act 1957 has been amended five times, in 1983, 1984, 1992, 1994 and 1999. The 1994 and 1999 amendments catered to the challenges posed by digitization in a limited manner and were principally aimed at compliance with obligations under TRIPS Agreement. The latest copyright act, 2012, among other provisions, has introduced DRM into India. The amendments make Indian copyright law compliant with the provisions under the WCT and WPPT, which are considered TRIPS plus legislations.¹ India introduced DRM laws regardless of the fact that India was a non- signatory to the internet treaties in 2012, entailing an apparent absence of corresponding obligation to enact provisions concerning DRM in India.² DRM laws

¹ Arul George Scaria, 'Does India Need Digital Rights Management Provisions or better Digital Business Management Strategies' (September 2012) 17 journal of intellectual property rights 463-77.

² India acceded to the Wct and WPPT on 25 September 2018 and they came into force in india on 25 Decemeber 2018. See contracting parties to WCT

have been introduced by way of sections 65A and 65B, dealing with TPM and RMI, respectively, which are principally employed by copyright holders to protect copyright over digital content. Section 65 A penalizes circumvention of TPM and also provides certain exceptions where circumvention is permissible. Section 2(xa) defines RMI and section 65B guarantees its protection.

IV. DRM in USA

In U.S the domestic law for copyright act is named as “The digital Millennium Copyright Act 1998 (DMCA)”,

It is known to be the most controversial implementation of the internet treaties due to the introduction of anti-circumvention laws in USA. The DMCA provides anti- circumvention provisions under Title 7 Section 1201 it states

“No person shall circumvent a technological measure that effectively controls access to a work protected under this title.”³

DMCA prohibits ‘access’ to copyright work and doesn’t see whether such access infringes the copyright under the act or not. It just prohibits the access to a copyright work.

The DMCA act does not provide for a copy control mechanism. The copy control mechanism means that the user can circumvent copy control mechanism in order to copy and use the copyright work under the fair use exceptions. This protection which is given under the control mechanism under the act can prevent lawful copying of a work, as the work has to be lawfully accessed to be copied.⁴

Then further the DMCA act also mentions about anti device provisions. These provisions prohibit the products or a device or a service or else any technology which are so designed or marketed for circumventing access control measures. And the anti-device provisions relating to RMI are found in section 1202(b) of the DMCA.

https://www.wipo.int/treaties/en/showResults.jsp?lang=en&treaty_id+16 accessed 8 june 2022 and contracting parties to WPPT https://www.wipo.int/treaties/en/remarks.jsp?cnty_id+12517C accessed 8 june 2022.

³Digital Millennium Copyright Act 1998, Section 1201(a)(1)(A)

⁴JessicaD Litman, “Personal Lawful Use” 85 *Tex. L. Rev*7 (2007).

Starting with the section 1201 which is about circumventing a technological measure. The section specifically provides for the exception to anti- circumvention law. By the recommendation of register of copyrights the library of congress is authorized to produce specific exempted uses with relating to the anti-circumvention provisions under DMCA once in 3 years. Now what all can be the exemptions. It can be for

- A non-profit archival preservation and educational purposes
- Criticism, comment, news reporting teaching, scholarship, or research
- Such other factors considered appropriate by the librarian.⁵

These were the few exceptions mentioned under the section 1201 which the library of congress is authorized to make in relation to the anti- circumvention provisions.

Section 1201(a)(1)(c)⁶-

(a)Violations Regarding Circumvention of Technological Measures. —

(1)(C)During the 2-year period described in subparagraph (A), and during each succeeding 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make non-infringing uses under this title of a particular class of copyrighted works. In conducting such rulemaking, the Librarian shall examine—

(i) the availability for use of copyrighted works;

(ii) the availability for use of works for non-profit archival, preservation, and educational purposes;

⁵ Digital millennium copyright act 1988, Section 1201(a)(1)(C).

⁶ Ibid.

(iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

(v) such other factors as the Librarian considers appropriate.

DRM In India

The copyright amendment Act 2012 introduced DRM into India. The amendment makes Indian copyright law compliant with the provisions under the WCT and WPPT which are the TRIPS plus legislation.⁷ DRM laws are introduced under section 65A and 65B in India's copyright act. Section 65A deals with TPM which is technological protection measure and section 65 B deals with right information management. these two sections were introduced in order to protect copyright over digital content. Section 65 A penalizes circumvention of TPM and section 2(xa) defines RMI and section 65 B guarantees its protection.

Section 65A explicitly states, "any person who circumvents an effective technology measure applied for the purpose of protecting any of the rights conferred by this act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine".

And section 65B states, "Section 65B Any person, who knowingly Removes or alters any rights management information without authority, or Distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performances knowing that electronic rights management information has been removed or altered without authority, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine".

Analysis of DRM provision under Indian copyright act 1957.

⁷Arul George scaria, 'does India need digital rights management provisions or better digital business management strategies' (September 2012) 17 journal of intellectual property rights 463-77.

Anti-circumvention of TPM

The purpose of Section 65A is to protect a person's right to share or make available protected content. The law applies to any person who knowingly circumvents an effective technological measure, such as a digital rights management measure or access control measure that is applied for the purpose of protecting any of the rights conferred by the Act. The law is designed to prevent people from deliberately attempting to infringe copyright, without a legal excuse. The provision does not require the person to be aware of the specific act of infringement that was prevented.

One of the most important ways in which the Copyright Act has advanced the public domain is through the anti-circumvention provisions, which prohibit the circumvention of anti-piracy technologies such as digital watermarking and encryption. In order to circumvent an anti-piracy measure, one must have the intention to infringe on the copyright holder's rights. This has created a strong set of obligations for those who wish to unlock the public domain and has ensured that the rights of copyright holders are protected.

The anti-circumvention provision:

Section 65A- any person who circumvents an effective technology measure applied for the purpose of protecting any of the rights conferred by this act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

Intention

Under the US act which is DMCA there is no reference to "Intention" whereas The Indian provision mentions about "intent" which is an intention to infringe the copyright and so is an essential part in order to incur liability under the provision. Though many parties were against it as it placed the burden of proof to establish circumvention on the copyright owner.⁸ According to them a mere action of interfering with a TPM will be sufficient to make an act an

⁸ See parliamentary standing committee on human resources development ,277th report on the copyright amendment bill 2010 (23 november 2010)
<http://www.prrsindia.org/uploads/media/copyright%20Act/SRC%20Bill%202010.pdf> accessed 9 june 2022.

offence under the section. And many stakeholders were of the view that section 65 A lacked many essential things, like no provision for civil remedies or the access control provisions etc.

Punishment- Civil remedy or Criminal remedy?

There is one major drawback of the DRM provision under Indian copyright law which is no civil remedies. There is an only criminal remedy which is imprisonment for upto 2 years and fine.⁹ Whereas if we compare in context to US , it do have both the civil as well as criminal remedies. By having only criminal liability there is no such prevention of crime in such case as the offender under the act gets the bail as soon as s(he) is arrested and so therefore fails in serving the very purpose of punishment and brings us to the importance and requirement of having civil remedies(like injunction order or the statutory damages.) in order to prevent copyright infringement.

Provision related to Access Control

A copyright law in India, Section 65A, gives the right of first refusal to the author or any of his heirs for the right to publish the work. This provision can be very beneficial for the author, as he will not have to compete with other publishers for the right to publish the work. This is a welcome change as it enables users to access and use restricted content without being labelled as an unauthorised accessor and without being subjected to penalties. This, in turn, ensures that there is no impact on the legitimate interests of the copyright owners who have applied for the protection of their rights under the act. The new law also empowers the Central Government to issue further directions in this regard. Current text should be enough to understand the scope of section 65A. This is beneficial in that it does not impede the user from making backup of his/her data, which is a significant concern in the era of data breaches.

Provisions related to Anti Device

Under Indian law there no reference made to the acts like (business in trafficking circumventing technologies), to any such preparatory acts which are already found under DMCA act in US and even in the EU CD ACT in UK. In the context regard, professor Dan L Burk have advices that the application of digital rights management (DRM) on digital platforms may be expanded beyond anti-circumvention of copyright also advised against aggressively pursuing preparatory

⁹ Section 65A of Copyright Act 1957.

acts, which they felt are too broad, vague and open to interpretation. This could have implications for those who wish to follow the preparatory acts, and also those who wish to skirt the rules or to contest the rules of the law. Advised that anti-competitive laws serve to control prices, not reduce competition, and that therefore such laws in a free-market system can be a positive, rather than negative, influence on competition. Thus, the anti-device provisions of the Indian laws may not be in the overall interest of India or Indian consumers, and the absence of anti-device provisions in the Indian laws may result in higher product prices, reduced innovation and lower welfare. And also says that the Indian government needs to revise its IT laws and make it more specific and protective in order to provide a strong deterrence against the circumvention of anti-device provisions, principally through the use of digital protection systems. He advises caution about laws that use anti-access technology. The argument that these laws are necessary to protect national security is unfounded. The Anti-Counterfeit Trade Agreement has not been shown to have reduced the prevalence of counterfeiting or significantly raised the costs. In fact, counterfeiters seek to exploit new technology by creating products using it slightly off without being detected, resulting in significantly substandard products for consumers. One of the most exciting aspects of the right to privacy in the Digital Age is the protection of rights management information or RMI. The Copyright Act in India was last amended in 2012. Section 65B of the Act states that whoever knowingly removes any right management information without authority, Or distributes to the public copies of the work shall be punished with 2 years plus with fine¹⁰.

The Copyright Act was amended last in 2012 and the amendment came into effect from 21st June, 2012. Section 65B of the Copyright Act now provides statutory recognition for electronic records. RMI is the digital equivalent of the physical rights inscribed on paper documents such as books, music, movies, software etc. It is the information on who owns what rights to a particular work or performance, so that the public can determine whether to view, listen to, or purchase the work or performance. It includes the name of the author or performer, the name and address of the owner of rights, terms and conditions regarding the use of the rights, and any number or code that represents the information referred to in all the instances mentioned above. The purpose of the title or other information that identifies the work or performance; the name of the author or performer; the name and address of the owner of rights; terms and conditions regarding the use of the rights; and any number or code that represents the

¹⁰ Indian copyright act 1957, section 65B

information referred to in all the instances mentioned above is to identify the owner of the copyright so that other people cannot steal the copyrighted work without the owner's permission. The protection under the act is therefore intended to prevent other people from stealing the copyrighted work without the owner's permission. The act therefore protects the owner of the copyright from being stolen by other people.

Stringent law

If we compare the DRM provisions from US copyright law, we can see it is much less stringent than the US law as our act do not have the access control measure and anti device provisions which prohibits acts of circumvention irrespective of such act being legal or not. In India, the only significant provision that is akin to the fair use exception is Section 52E of the Copyright Act, which enables a person to use a copy of a work for private and domestic purposes. The impact of DRM laws in restricting the fair use exception is compounded by the lack of prior analysis of the impact of DRM laws in restricting fair use. The impact of the current Indian laws on the fair use exception is unclear.

This, in turn, may impede access to knowledge and education for the society at large.

Such a scenario, where the cost of obtaining a digital copy is prohibitively high, may result in digital copyright works being inaccessible to the public at large. In addition, the DRM provisions in India may also have the potential to hinder the diffusion of information among consumers, through inhibiting access to works, hindering lending of works and forbidding resale and other forms of alienation- such as the transfer of a work to a library or school as a donation. In particular, DRM can hinder usage of the doctrine of fair use for educational purpose and digital exhaustion. For instance, a lecturer, who is lawfully entitled to access and use a digital copyright work, under the fair use exception for teaching purposes, may be unable to make use of the exception.

Even if the student is able to gift her digital copy without incurring any transaction cost, the law may prevent the student from doing so due to the DRM technology on the digital work. This is because the DRM technology prohibits the recipient from making use of the digital work for any purpose other than viewing it in the digital form. This can also happen with lending of digital works, where a library or school may not be able to lend a digital copy of a work to a student for her to study for a few days or weeks, due to the high regulatory costs

involved in issuing a license for the transfer. These were the few analyses of DRM provisions in Indian laws.

V. Conclusion

The widespread adoption of DRM has had numerous negative consequences on the free flow of information, the ability of consumers to access content, and the ability of content creators to generate income. Digital Right Management is a system for copyright holders to grant users access to digital goods that have been restricted by DRM.

The advent of digital technology has fundamentally changed the way we interact with the world, from banking to social media. But the advent of digital technology also brought with it a host of security issues and privacy concerns. One of the most pressing issues facing digital users is the management of their digital rights, specifically when their digital content has been illegally obtained or misused. The industry has responded with Digital Right Management (DRM) techniques, which are designed to limit the use of digital content and provide additional restrictions to those who have legally acquired digital content.

Digital rights management, or DRM, is a technology that is used to restrict the use of digital content so that it can be used only on a particular device or platform. Today, most entertainment and software is distributed digitally, which has led to a host of new digital entertainment and software experiences. However, digital rights management technologies limit consumers' access to these digital experiences. This has raised concerns about the ability of consumers to access digital content and has reinforced the need for improved digital rights management.

Digital rights management (DRM) is a set of technologies used to restrict access to digital content (such as music, ebooks, games, movies, and software). It is used to control access to content so that only authorized users can access it. An example of DRM is the content ID system used by Blockbuster to prevent people from copying DVDs. The content ID system uses a barcode and a digital signature to identify a specific DVD.