
THE INTERSECTION OF ELECTRONIC LITERATURE AND COPYRIGHT LAW: CHALLENGES, PROTECTION, AND FUTURE PERSPECTIVES

Kriti Sinha, Presidency University, Bangalore, Karnataka, India

Siddhi Rashi IIT (ISM), Dhanbad

ABSTRACT

Electronic literature, commonly referred to as e-literature, is one of the major innovations that have occurred in the realm of literary creativity. As compared to conventional printed literature, e-literature involves interaction, media diversity, hypertext, and even participation of readers as an essential element of storytelling. Although these innovations provide greater scope for literary creativity, there are numerous issues that relate to e-literature from the perspective of law, including questions regarding authorship, ownership, copyright infringement, piracy, and preservation of digital literary works. This paper describes the evolution of e-literature, approaches to evaluation and interpretation of digital literary works, and copyright issues involved in their creation and publication.

Keywords: Electronic Literature; Copyright Infringement; Digital Copyright; Intellectual Property; Digital Preservation.

1. Introduction

Modern information technologies have changed all aspects of human communications, including literature. The phenomenon of electronic literature or e-literature challenges conventional views on authorship and reader's roles in literary works.¹ Unlike printed literature, which can be easily adapted for digital use, e-literature has been written with digital medium specifically in mind and includes such elements as hyperlinks and audiovisual content.²

As literature shifts into the digital domain, there is a need to consider legal issues related to copyright, ownership, reproduction, and distribution. Since digital literature can easily be replicated and circulated, it poses both benefits and challenges for creators and publishers. Thus, the study of e-literature should necessarily involve its legal aspect.

2. Development of E-Literature

2.1 Early Experiments (1950s – 1980s)

The evolution of e-literature has its roots in the emergence of computer-based writing experiments and the use of algorithms for generating poems³. In those years, writers and programmers started exploring what role computers played in literary works. Even though it was still impossible to create sophisticated e-literature due to technological limitations, the very idea had been formed.

2.2 Hypertext Fiction (1980s-1990s)

The development of personal computers led to the formation of another type of e-literature, namely hypertext fiction. It offered readers the opportunity to move around stories using hyperlinks and created numerous paths for interpretation.⁴ Readers became involved in the creative process and ceased being passive recipients of information.

2.3 Internet-Based Literature (1990s-2000s)

The emergence of the internet increased the potential for digital literature significantly. Writers

¹N. Katherine Hayles, *Electronic Literature: New Horizons for the Literary* (Univ. of Notre Dame Press 2008).

² George P. Landow, *Hypertext 3.0: Critical Theory and New Media in an Era of Globalization* (Johns Hopkins Univ. Press 2006).

³ Hayles, *supra* note 1.

⁴ Landow, *supra* note 2.

started to publish literary texts on the internet that included multimedia features, such as visuals, audio, animations, and videos⁵. Literature became increasingly interactive and available to people all over the world, while the online space provided opportunities for cooperation between authors and readers.

2.4 Modern Forms of E-Literature (2000s-Today)

In the modern times, e-literature has developed in different directions and takes various forms, including interactive stories, digital poetry, mobile stories, AI writing, and virtual reality storytelling.⁶ Platforms such as social media networks, blogs, and other forms of self-publishing have simplified the process of literary production and distribution. Along with continuous technological innovations, e-literature is still developing as an innovative genre of modern literary activity.

3. Specific Features of E-Literature

There are several specific features that make e-literature different from conventional print literature. These features not only change the process of storytelling but also raise issues concerning copyrights and authorship in this literary sphere.

3.1 Characteristics of E-Literature

- Interactivity:

This implies that readers engage in creating the storyline through decision-making and interactions.⁷ While such involvement increases engagement, it can also pose copyright issues where users' input is incorporated into the literary creation.

- Non-Linearity:

Many e-literatures offer more than one path for readers to explore as opposed to presenting a linear narrative.⁸ Even though this gives room for creativity, the protection provided by

⁵ Hayles, *supra* note 1.

⁶ Hayles, *supra* note 1.

⁷ Espen J. Aarseth, *Cybertext: Perspectives on Ergodic Literature* (Johns Hopkins Univ. Press 1997).

⁸ Landow, *supra* note 2.

copyright law includes the unique presentation of the material despite how it is accessed.

- Multimedia:

This implies that the text is complemented with images, sounds, animations, and even videos.⁹ Due to the fact that various individuals might have created the multimedia, it poses copyright challenges for authors.

- Hypertext:

It entails linking different sections or external information sources within a literary creation. This requires an author to be certain that copyright issues will not arise from linking to another source's materials.

- Dynamism:

Some examples of e-literature undergo changes over time or as a response to user actions. These evolving pieces raise legal issues in terms of authorship and copyright protection.

- Collaboration:

In many cases, creation of electronic literature includes participation from different individuals: writers, programmers, graphic designers, users etc. In case of collaborative works, determining authorship and ownership of copyright is rather problematic.¹⁰

3.2 Types of E-Literature

- Hypertext fiction – Stories written in hypertext form (hyperlinks).
- Interactive fiction – Fiction in which user actions affect outcome.
- Digital poetry – Poetry with multimedia and interactive components.
- Generative literature – Literary pieces created through algorithms and computer

⁹ Hayles, supra note 1.

¹⁰ Paul Goldstein & P. Bernt Hugenholtz, *International Copyright: Principles, Law and Practice* (4th ed. Oxford Univ. Press 2019).

programming

- Multimedia stories – Texts combined with audiovisual components.
- Literature with use of AI technologies – Literature with the help of artificial intelligence; an issue concerning authorship and copyright ownership.

4. Analysis, Evaluation, and Protection of E-Literature

Evaluation of e-literature requires special approach that takes into account not only literary aspects but also those legal concerns. Given that digital literary products can be easily reproduced and distributed, the copyright is vital here.

4.1 Rethinking Literature

Literature in the age of e-literature ceases to be a fixed text and becomes a dynamic digital medium of literary communication. The meanings arise out of the interplay between text, sound, visuals, code, and the reader's engagement with the text. In its turn, the copyright needs to account for the complexity of these layered works containing several objects under the copyright at the same time.

4.2 Evaluation Criteria

- Interactivity and Reader's Involvement

Reader's involvement should have a valuable effect on the literary process. However, too much reader engagement may bring complications for determining the authorship and ownership issues.

- Multimedia Elements

Using images, sounds, and videos creatively will make the narrative more engaging. Moreover, where external materials are used in the narrative, copyright must be respected.

- Structure of the Narrative

A non-linear narrative must be coherent, artistic, and, what is more important, copyright-

protected.

- The Interface

The interface, being part of literary communication, can become a subject of copyright as well.

Technological Solutions

AI and VR technologies can be used productively enhancing creative writing, but copyright and ownership rights are equally important.

4.3 The Reader as a Co-Creator

In contrast to conventional literature, e-literature allows for reader input regarding the development of the narrative. Although such an approach enhances reader engagement, it makes it difficult to separate the roles of authors from those of their readers in that case, leading to problems concerning ownership and copyright on the content.¹¹

4.4 Approaches from Literature, Digital Studies, and Copyright

- Reader-Response Theory:

Focuses on the role of the reader in interpreting the text and thus applicable to interactive literature.

- Postmodernism:

Offers explanations for the fragmentary and non-linear nature of e-literature, allowing for more than one interpretation at once.

- Digital Humanities:

Combines aspects of literary theory and technology and can provide significant insights into the digital literary world.

¹¹ Aarseth, supra note 7.

- Copyright:

In terms of copyright law, e-literature is a literary work and, therefore, eligible for copyright protection. Authors have certain rights to reproduction, communication to the public, adaptation, and distribution.¹² At the same time, digital technologies make plagiarism and copyright violation possible and, hence, necessary.

5. Copyrights Protection in E-Literature

As a result of digitization in publishing and online literature platforms, copyright protection has become an essential aspect for protecting e-literature. Since literary works in the digital form can be easily duplicated and shared, copyright becomes very instrumental in safeguarding creators' rights and promoting innovations and creativity.

5.1 Recognition under Law

E-literature is protected by law as a literary work under the Copyright Act, 1957.¹³ The legislation does not differentiate between the printed and the digital format. In other words, original literary works are granted copyright irrespective of how they are presented. Examples of literary works that can be protected by copyrights are e-books, blogs, online journals, digital poetry, hypertext fictions, and other types of literary works available online.¹⁴

5.2 Copyright Rights

Authors are granted several exclusive rights over their literary works through copyrights, including:

- The Right of Reproduction – the right of reproduction involves making copies of the work, either in digital or other forms.
- The Right of Distribution – the right of distribution involves making copies of the work accessible to the public.
- The Right of Communication to the Public – this involves placing the work on the internet

¹² Copyright Act, 1957, No. 14 of 1957, § 14(a) (India).

¹³ Copyright Act, 1957, No. 14 of 1957, § 2(o) (India).

¹⁴ Copyright Act, 1957, No. 14 of 1957, § 13(1)(a) (India).

via website, digital platforms, etc.

- The Right of Adaptation – the right of adaptation involves changing the form of the work or transforming it.
- The Right of Translation – the right of translation involves translating the work to other languages.¹⁵

With these rights, the author can manage the commercial exploitation of his/her work and also protect the work from being used without authorization.

5.3 Authorship and Copyright Ownership

In general, the creator of an e-literary work is considered as the author as well as the copyright owner of the work.¹⁶ Nevertheless, there are cases where copyright ownership differs. This means that for literary works made during employment, the employer may become the first owner of the copyright, unless something else is agreed to. Another case of copyright ownership involves assignment and licensing of the copyright.¹⁷

5.4 Moral Rights

In addition to the economic rights, the authors have their moral rights in relation to their literary works. They include:

- The Right of Attribution (Paternity) – right of the author to be identified as such.
- The Right of Integrity – right to protect his/her literary work from distortions or modifications detrimental to the author's dignity.

The above-mentioned rights secure the bond between the author and the work regardless of the assignment of copyright to another person¹⁸.

¹⁵ Copyright Act, 1957, No. 14 of 1957, § 14(a) (India).

¹⁶ Copyright Act, 1957, No. 14 of 1957, § 17 (India).

¹⁷ Copyright Act, 1957, No. 14 of 1957, §§ 18–19, 30 (India).

¹⁸ Copyright Act, 1957, No. 14 of 1957, § 57 (India).

6. Copyright Issues in E-Literature

Even though e-literature is protected by copyright laws, there are some peculiarities that make enforcement much harder than in the case of printed material.

6.1 Ease of Copying and Distributing E-Literature

The first issue relating to e-literature concerns the ease of reproduction and distribution of digital copies. A single file can be reproduced as many times as one wishes with no decrease in quality and sent anywhere in the world within a few seconds.

6.2 Complicated Authorship

Numerous e-literatures require more than one person, whether it is an author, programmer, graphic designer, or a reader, to take part in its creation. The involvement of interactive and artificial intelligence-based elements makes things even more complicated and complicates the conventional notions of authorship. Therefore, determining the legal author or copyright owner becomes rather problematic.

6.3 Digital Piracy

Digital piracy poses serious threats to e-literature.¹⁹ It encompasses unauthorized actions of uploading, downloading, distribution, and redistribution of digital books and literary materials. Such activity leads to considerable financial losses on behalf of both authors and publishing houses. The global aspect of the Internet usually makes it complicated to enforce the copyright rights across the globe.

6.4 Technological Protection Measures

In order to prevent illegal activity, publishers apply numerous DRM technologies and other methods to protect their intellectual property.²⁰ They limit the possibility of copying, printing, and distributing any digital work. Nevertheless, such technological protection might affect legitimate use of digital literature for educational or other purposes.

¹⁹ Copyright Act, 1957, No. 14 of 1957, § 51 (India).

²⁰ Copyright Act, 1957, No. 14 of 1957, § 65A (India).

6.5 Preserving E-Literature Against Technological Obsolescence

Unlike print books, which have the ability to last for centuries, most e-literature is based on certain software, hardware, or file formats. Technological progress may make such formats obsolete and some e-literature unreadable. It follows that preserving digital literature poses certain challenges for libraries and archives.

6.6 The Problem of Access and the Digital Divide

The problem of access to e-literature stems from its dependence on technology. There are many people who lack technological means to access digital literature. The problem is thus connected with the existence of a digital divide – an uneven access to information in different segments of society.

6.7 Copyright Law, Protection, and Access

Modern copyright law faces the challenge of balancing copyright protection and access to cultural heritage and knowledge.²¹ If there are too many restrictions on copyrighted content, education and creativity will be hindered. If there are too few restrictions on copyright, authors will have little incentive to produce their content.

7. Advantages and Drawbacks of E-Literature

The introduction of e-literature has revolutionized the process of literature creation, publication, and consumption. Although there are many benefits associated with this format, there are also some issues that must be addressed.

7.1 Advantages of E-Literature

- Creative Freedom:

E-literature allows for creative experimentation with literary genres. With the help of multimedia, hypermedia, animation, and interactivity, writers have an opportunity to create literary works using new methods that were inaccessible before the advent of the digital age.²²

²¹ Copyright Act, 1957, No. 14 of 1957, § 52 (India).

²² Hayles, *supra* note 1.

- Engagement of Readers:

In contrast to traditional literature, e-literature is interactive and therefore promotes active engagement of readers during the process of story creation.²³

- Instant Availability and Global Accessibility:

Using Internet technology, literary works are available to a global audience. Authors no longer need to go through publishers when distributing their work; instead, they can distribute their writing via the Internet.

- Collaboration between Writers and Programmers:

Innovative literary works can emerge due to the collaboration of writers and other people engaged in programming, design, and reading activities.

- Reflection of Contemporary Culture:

E-literature is reflective of the digital age. The use of technology and means of communication that have gained importance in contemporary times makes this form of literature extremely relevant for today's generation.

7.2 Limitations of E-Literature

- Technological Dependence:

The use of technology is integral to accessing e-literature. Issues pertaining to technology such as technical glitches or changes in technology may pose a problem while accessing digital literary works.

- Technology-Based Preservation Issues:

Digital literary works, unlike printed books, can become obsolete because of changes in technological trends. This becomes a problem for preserving these forms of literature.

²³ Aarseth, *supra* note 7.

- Lack of Accessibility:

Not all people are equally equipped with the necessary tools required to access digital literary works. Such people will not be able to access these works.

- Overemphasis on Technology:

At times, the emphasis on the use of technology may distract from the literary aspect of the work. A piece of work may lose its literary value because of its emphasis on technological advancement.

- Narrative Confusion:

Non-linear narratives may confuse readers who are more used to linear structures.

8. Major Copyright Cases Involving Digital & Literary Works

Court decisions have been influential in determining copyright norms, which apply to e-literature and digital innovation. Such decisions assist in the determination of how copyright is defined, how authors are determined, what constitutes originality and use of literary works.

8.1. Nichols v. Universal Pictures Corp. (1930)

This major court decision helped establish that copyright does not protect an idea but rather protects the expression of an idea. Anne Nichols sued Universal Pictures claiming that its film violated her copyright insofar as it was based on the same idea as her play. The decision was that the law did not provide any protection for general idea, concept and theme, which are considered unprotected by copyright, only the expression of them can be copyrightable.²⁴

The case continues to be relevant to e-literature, where many authors borrow general ideas in creating new digital literary pieces.

8.2 Suntrust Bank v. Houghton Mifflin Co.

The case dealt with *The Wind Done Gone*, which parody of a very popular literary work called

²⁴ *Nichols v. Universal Pictures Corp.*, 45 F.2d 119 (2d Cir. 1930).

Gone With the Wind. It has been determined as a case of fair use.

The case presents the delicate nature of copyright law and freedom of creation, especially for e-literature producers who often borrow themes from earlier texts. In this context, the ruling shows how copyright law can support creativity while ensuring the protection of the rights of the original author.²⁵

8.3 *Apple Inc. vs. Microsoft Corporation*

This lawsuit was filed by Apple against Microsoft due to its claim that some aspects of its graphical user interface were illegally borrowed by the Windows operating system created by Microsoft. This case reveals the difficulties in providing intellectual property protection in cyberspace in terms of determining what is protected expression and what is not.²⁶

Although mostly concerning software, the case will always remain relevant to e-literatures' producers due to the legal complexities that emerge.

9. Future Developments and Recommendations

With the development of e-literature in tandem with technological advances like virtual reality, digital publishing, etc., copyright law should adapt.

- Improvement of Measures for Ensuring Digital Copyright Protection

There is a need for developing more advanced measures for tackling cyber-piracy and unauthorized dissemination of digital literary materials. Proper protection of authors' interests will promote literary creativity.²⁷

- Development of More Advanced Preservation Approaches

Digital libraries and other relevant organizations should employ more advanced approaches to digital literary preservation in order to avoid digital decay.

²⁵ *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257 (11th Cir. 2001).

²⁶ *Apple Computer, Inc. v. Microsoft Corp.*, 35 F.3d 1435 (9th Cir. 1994).

²⁷ Goldstein & Hugenholtz, *supra* note 10.

- Regulation of Issues of Authorship and Ownership

With respect to new forms of literary production, which involve collective efforts or the involvement of AI technologies, there should be clear legislation concerning ownership rights, authorship issues, and potential liabilities related to copyright infringement.²⁸

- Improving the Problem of Accessibility

It is important to bridge the technological gap by providing better access to digital literature and technological education.

Conclusion

Undoubtedly, e-literature signifies a major shift in terms of production, dissemination, and consumption of literature. This form of digital literary content offers endless opportunities to innovate through the interaction, media convergence, and involvement of readers in the process of reading and writing. Still, at the same time, it poses new challenges with respect to conventional notions of authorship, copyright, and literary engagement.

Copyright protection becomes vital in this case because it helps ensure that the rights of authors are protected²⁹, and their creative works receive legal recognition and monetary compensation. However, the specificities of e-literature itself, such as ease of duplication, collaboration between different authors from various countries, global availability of literary texts, and their reliance on technologies, pose challenges to current legislation.

Thus, the relationship between e-literature and copyright proves to be dynamic and mutually dependent. While copyright laws can protect the interests of authors and promote innovation and literary creativity, they need to evolve further to adjust to this changing context and new challenges. In order to ensure the sustainability of e-literature, copyright protection is important.

²⁸ Lionel Bently, Brad Sherman, Dev Gangjee & Phillip Johnson, *Intellectual Property Law* (6th ed. Oxford Univ. Press 2022).

²⁹ Copyright Act, 1957, No. 14 of 1957, §§ 14, 57 (India).