

ANALYSIS OF IP ISSUES IN CYBERSPACE: A CASE STUDY OF HYPER LINKING

- Archie Anant*

Introduction:

The concept of Internet technology combined with cyberspace is a sword with double edge. It has its own advantages, like enabling people to organize, recreate or take inspiration from copyrighted material, and disadvantages like various legal intricacies attached with the same. There can be various instances of copyrights infringement in cyberspaces and related issues. And the most potent example of copyright infringement is related to Hyper-Linking and Framing in cyberspace.

The Concept of Hyperlinking:

Hyper-linking helps in providing the reader with an organized and structured information and copyrighted material. It helps in the efficient working of the internet and it can be done in various ways. A hyperlink helps in directing web browsers to any other page or document linked to it, which the user wants to access. The link provides path to the data available on the same or any other website. It is more like a storage unit of various data available. The following words of American Bar Association explain the functioning of the same:

“As computer programming goes, adding a web link on a home page is relatively simple and requires only knowing the address of the linked page. The WWW technology ... based on a simple programming language called HTML (Hyper Text Mark-up Language) ... does not require coordination from both ends of a link to establish one. ... The simplest link acts merely as an automated directory -- when the hypertext link is clicked with the mouse, the connection to the page with the link is dropped and the user's computer then connects with the linked site, without further connection with the original page. ... The simplicity of making web links and the lack of any centralized control are largely to credit for the enormous (and somewhat anarchic) growth of the Web”.¹

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¹ Mark Sableman, Law: The Emerging Law of Internet Hyperlinks, https://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?start=11&sort=RELEVANCE&format=GNBFI&risb=21_T6145648511.

Legal Angle:

As of late, both connecting and encircling have gone under exceptional legitimate examination, as the law around these battles to stay up with the quickly advancing innovation and practices of the internet. Linking to a site's landing page seldom starts questions or presents lawful issues. Connections to home pages have been broadly acknowledged as characteristic outcomes and an integral part of the web since the time its commencement.²

In *Shetland Times, Ltd. v. Dr. Jonathan Wills and Another*³, the respondent was the proprietor and administrator of a site of a comparative sort. The respondent purportedly imitated features of Shetland Times and they were hyperlinked to the inside pages of the offended party's site. The litigant had circumvented the first page (landing page) of the Shetland Times, which conveys paid ads. In this manner, it had reduced the estimation of the site for expected publicists. The fundamental issue in Shetland Times case was in the case of "deeplinking" to inside or installed pages using the offended party site's news features was a demonstration of copyright encroachment under the United Kingdom's Copyright Designs and Patents Act of 1988. The court concurred that the offended party introduced by all appearances case and gave a break prohibiting banishing the respondent from engaging in the previously mentioned exercises. The case was privately addressed any outstanding issues by the gatherings. The respondent consented not to deeplink with the offended party's site.

In *Verlagsgruppe Holtzbrinck v. Paperboy*⁴, the German Federal Court of Justice, while focusing on the significance of the profound connections held that the respondent, an online internet searcher didn't damage either Copyright or Competition Law by giving profound connections. The court additionally held that the offended party can forestall profound connections with the assistance of specialized measures.

There is no express arrangement for contributory encroachment under copyright laws in India. Nonetheless, Section 51(a) (ii) of the Indian Copyright Act, 1957 can be alluded to decipher the

² Nicos L. Tsilas, Minimizing Potential Liability Associated With Linking and Framing on the World Wide Web, (March, 2009), https://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?docLinkInd=true&risb=21_T6145648511&format=GNBFI&sort=RELEVANCE&startDocNo=1&resultsUrlKey=29_T6145648514&cisb=22_T6145648513&treeMax=true&treeWidth=0&csi=144192&docNo=1.

³ *Shetland Times, Ltd. v. Dr. Jonathan Wills and Another* [1997] FSR 604.

⁴ *Verlagsgruppe Holtzbrinck v. Paperboy* dated July 18, 2003.

presence of contributory encroachment under the Indian Copyright Act, 1951. As indicated by Section 51 (an) (ii), copyright in a work considered to be encroached, when any individual without permit, or in repudiation of the states of permit licenses for benefit wherever to be utilized for the correspondence of the work to the open where such correspondence comprises an encroachment of the copyright in the work, except if he didn't know and had no sensible ground for accepting that such correspondence to general society would be an encroachment of copyright. As per Section 51 (an) (ii), the individual allowing a spot to be utilized by third individual for correspondence of the work to people in general is mindful. The demonstration of real encroachment by correspondence of the work to people in general is directed by third individual. The individual is answerable for the demonstration of an outsider under Section 51 when: a) permission is given to utilize the spot for correspondence of the work to people in general, which comprises an encroachment of copyright in work b) authorization is given revenue driven c) the individual allowing a spot to be utilized knows or has sensible justification for accepting that such correspondence to the general population would be an encroachment of copyright. Be that as it may, the utilization of the contributory risk or obligation for the demonstration of outsider under section 51 (an) (ii) of the Copyright Act, 1957 is restricted to authorization to utilize a spot for correspondence of the work to the public. The investigation on utilization of contributory encroachment and vicarious obligation to connecting has been given after investigation of the idea of vicarious obligation.

Conclusion:

The above investigation shows that there can be an obligation for direct encroachment of copyright on connecting parties in the examples of confining and inline connecting under US and Indian laws. Be that as it may, the connecting parties can't be considered answerable for direct encroachment in situation of profound connecting (aside from encircling and inline connecting). The connecting gatherings can be considered liable for contributory encroachment in cases of giving asset itself is a copyright encroachment. They (connecting parties) can't be considered liable for contributory obligation when the copyrighted asset is either given by the creator or is given the authorization of the creator. At present, in profound connecting, there is an unjust misfortune to the creator yet there are no lawful cures accessible under Indian and US copyright laws. Besides, the legal executive has a chance to proclaim encircling and inline connecting as encroachment of the copyright. The surrounding, online connecting and deeplinking ought to be proclaimed as

selective privileges of the creator of the work under the US and Indian Copyright Laws. The connecting by a web index will not be made an offense so as to adjust the interests of society and enthusiasm of the creator. The web can't work successfully at least without the connecting via internet searcher. Along these lines, denying connecting via search motor would hamper the development of web and the interests of society. It will likewise have unfavorable ramifications on the key opportunity and essential human rights for example right of articulation including option to get data.