Liability of Internet Service Providers for Third Party Online Copyright Infringement: A Study of the US and Indian Laws

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During the past decade or so there have been numerous efforts to bring in a suitable legal framework which deals with the protection of intellectual property on the Internet. There have been heated debates among many stakeholders such as owners of various intellectual properties, particularly, copyright and trademark right holders, consumers and intermediate service providers. Internet Service Providers (ISPs) were at the heart of this debate since there was a tendency to hold them responsible for the infringing actions of their customers and this would prove to be an adverse impact not only on the ISPs but also on the Internet per se. This paper examines liability of ISPs for copyright infringements by their subscribers.

A number of research questions like, what amounts to violation of copyright and rights available under copyright, have been addressed in this paper. The analysis of arguments for holding ISPs liable for copyright violation has also been done. The United States of America having most comprehensive law on the issue as of now, applying traditional intellectual property law to cases of copyright infringements on the Internet, is also examined. Later on USA drafted a new law, The Digital Millennium Copyright Act (DMCA), 1998, which deals with the Internet related crimes and provides detailed ‘safe harbours’ to limit liability of the ISPs in cases of copyright infringement by their subscribers. The paper further examines the case laws prior to DMCA and post DMCA to examine the manner in which court has looked at the ISPs liability for third party copyright infringement. The position in the Asia Pacific region is also examined with special reference to Singapore since it is believed to be a jurisdiction with a well developed system of law dealing with ISP liability. Since, India is developing rapidly and becoming more and more dependent on Internet, the Indian law and the Information Technology Act, 2000 with reference to ISPs has also been dealt with. The paper concludes with the suggestion on the improvement of the law relating to ISP liability in India.

Keywords: Internet Service Provider (ISP), Internet, subscriber, third party, copyright, infringement, Digital Millennium Copyright Act, safe harbour, Information Technology Act

The rapid growth of technology and the ever increasing access to the Internet has made it possible to access information from anywhere in the world at a mere click and at a minimal cost. Thus, it has revolutionized the manner in which information is disseminated and Internet users are able to access information as well as distribute their work, instantaneously. However, this easy access to information comes along with its drawbacks. In addition to various forms of violations of intellectual property in the real world, now the intellectual property owners risk their intellectual property rights (IPR) being violated in the virtual world as well. Despite existence of a gamut of legal regimes to protect IPR, more often than not these laws are either limited to territorial boundaries or biased towards protection of traditional intellectual property and do not cover intellectual property in the digital sense. Thus, these laws are inadequate to deal with the intellectual property infringements that take place on the Internet which knows no territorial boundaries.

Copyright

The Berne Convention for the Protection of Literary and Artistic Works establishes minimum rights that all countries agree to. Since 1996, the World Intellectual Property Organization (WIPO) and the signatories of the Berne Convention, including USA and India have been trying to develop a new international treaty, known as the Berne Protocol, to protect copyright holders in the digital context. However, this proposed Berne Protocol does not deal with ISP liability in great detail but has left it to the national legislatures.

According to the American Copyright Act, a copyright holder has exclusive rights over his intellectual property. The owner of a copyright has five specific rights: reproduce, prepare derivative works, distribute, perform, and display. Thus, violation of any of these rights is considered...
trespassing into the owners ‘exclusive domain.’ Copyright law aims to balance the competing interests of both, the artists and the general public by protecting artists’ works and encouraging their creativity on the one hand and on the other by allowing public access to information.

The US Copyright Act has adopted strict liability in cases of copyright infringement and therefore it does not expressly require any knowledge on the part of the infringer that he or she is infringing a copyright. The liability of a party in case of copyright infringement can arise in three different manners, viz., direct, vicarious, and contributory. Direct violation is when a person himself violates any exclusive right of the copyright owner. Vicarious liability for copyright infringement arises when a person fails to prevent violation of a copyright and thereby gaining a benefit. Since, direct and vicarious liability are based on strict liability, it is irrelevant whether there was any knowledge on the part of the copyright violator. Contributory liability arises in cases where a party actively participates in the act of direct infringement and has knowledge of the infringing act.

The liability of ISPs for illegal activities on the Internet has arisen since early 1990s and the issue has been receiving increasing interest due to various cases that have come up before the US courts in the recent past and also because of the spirited lobbying by ISPs to limit their liability while amending the copyright laws.

Infringement occurs when anyone violates any of these exclusive rights granted in the Copyright Act. The Courts in many countries including the United States and India have adopted a two-prong-test to determine copyright infringement. Firstly, whether a valid copyright exists and if this is answered in the affirmative, then it is further examined to see if there has been copying of the constituent elements of the original work. Though, it is very much in debate as to what is transitory and what is a copy, it can be broadly stated that a ‘copy’ means a permanent or stable reproduction, as opposed to a transitory communication. Therefore, temporary electronic copies are excluded from the definition of ‘copies’ as those temporary copies are transitory in nature and therefore cannot be regarded as ‘fixed.’ So in the digital context, transitory copies are not regarded as ‘copies’ in strict sense of the term and this brings us to the question of liability of ISPs. Since ISPs are not liable for millions of temporary copies that are made on their computers where does the question of ISP liability arise? For this purpose, it is necessary to examine the nature of work that ISPs are involved in.

Internet Service Providers and Their Liability
The DMCA defines ‘service provider’ in two ways, each applicable to different subsections. A ‘service provider’ as ‘an entity offering transmission, routing or providing of connections for digital online communications, between or among points specified by a user, of the material of user’s choice, without modification to the content of material as sent or received,’ the second part of the section states that a ‘service provider’ is broadly defined as ‘a provider of online services or network access, or the operator of facilities therefor.’ This broad definition is intentional on the part of the framers to include universities and other institutions which provide Internet access to their students and researchers, etc. Moreover, it is also broad to include the current ISPs, as well as providers of new services in the future.

The four main provisions of the DMCA address varying functions of an ISP. In Section 512(a) protection is given for the conduit function and it protects ISP for ‘transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider.’ Section 512(b) limits liability of an ISP for caching and Section 512(c) protects storage of material on the provider's system or network at the direction of the user and finally, ISPs who provide information location tools such as links or directories which are also protected, subject to certain circumstances.

Despite various laws protecting IPR, it is still an enormous task to keep a check on the copyright infringers on the Internet. Many lobbying groups and especially those who are in the music industry in USA were in favour of holding ISPs liable for copyright infringement by the subscribers. It is important to take note of the fact that there is a fundamental difference between online services involving transfer of content and the services themselves providing the contents. Though, it is fair enough to hold ISPs liable in the latter scenario, it is blatantly unfair to hold ISPs liable for the infringing actions of their subscribers. ISPs will be liable for copyright infringement if they are directly involved in the copying of protected material. For example, if an ISP makes available illegal copies of latest songs on its website it would be guilty of copyright infringement. But it is not fair to hold ISP liable for the actions of a subscriber who shares illegal copies of
songs over Internet without ISP having any knowledge of these infringing actions of the subscriber.

One of the main reasons behind involving ISPs in the process and making them liable is because usually under contracts that they enter into with their customers, ISPs are authorized to close down websites as well as e-mail addresses in case of infringement. In order to take necessary action they also have help lines for reporting abuse.\textsuperscript{16} In United Kingdom, under the Data Protection Act, the ISPs are prevented from disclosing the names of subscribers without their permission or an order from the court to a third party. Therefore, in case of a copyright infringement, a copyright owner cannot identify anything beyond IP address of the offender. In order to directly sue offender, the copyright owner has to force ISP to disclose the offender’s name.\textsuperscript{15} Some believe that turning to ISPs is an economic as well as a productive way to deal with copyright infringers or even other e-infringers in general, especially in locating the culprits.\textsuperscript{16} The Internet allows users to remain anonymous and consequently, it has become impossible to zero in on the perpetrators, thus many are in favour of holding ISPs liable for the copyright infringements by their subscribers. Moreover, the cost of litigation far outweighs what is recovered in the end and unlike holding an individual liable it is easier and economically viable to hold ISP liable. But it is absurd to hold ISP liable for the actions of its user merely because ISP has deeper pockets than the individual.

Another argument in favour of holding ISPs liable was due to the nature of electronic transmission of information; if a subscriber uploads infringing copyright material his ISP would have reproduced it on its computer servers and thereby be primarily liable for copyright infringement.\textsuperscript{16} However, this argument could not hold still for long, as discussed earlier in this paper, the courts decided that temporary electronic copies are excluded from the definition of ‘copies’.

ISPs are vehement in their refusal to take blame for infringing action by the subscribers. They point out that ISPs are mere conduits of information and are no different than a traditional post office which is not liable for a defamatory letter that is posted through it or a telephone company which is not responsible for any obscene call made by a user. Thus, liability of ISPs should also be limited. They also argue that imposing liability on ISPs would in turn mean barricading the potential growth of Internet.\textsuperscript{7}

ISP liability for the actions of the subscribers is based on their knowledge of the activities of subscribers. Where, the ISP is unaware of the subscriber’s activities, the courts are reluctant to hold ISP liable, but in cases where ISP is aware of the subscriber’s copyright infringement or where ISP should have known the activities of subscriber’s, it is highly possible that the courts would hold ISP liable for copyright infringement by the subscribers.\textsuperscript{17} At present, many national governments are of the view that ISPs should escape liability for infringements by the subscribers of which they are unaware of, but they have a duty to remove such content when such action is brought to their notice.\textsuperscript{16}

There are numerous reasons as to why it is not feasible in practice for ISPs to be responsible for cases of copyright infringement. Taking note of the immense number of transactions that take place through ISPs, it is not practical to expect ISPs to monitor the content that passes through their systems. It is impossible and expensive for ISPs to police the content of the websites used by millions. Moreover, the instant nature of the transactions also make it difficult to judge the content or even to edit it or merely monitor it. According to William Foster, ‘ISPs are similar to common carriers in that they have no control over which members of the public use their facilities, or the content, members of the public choose to transmit.’ Therefore, requiring ISPs to monitor transactions in order to trace copyright violations would violate the rights of the subscribers and it would also change ISP business model.\textsuperscript{2}

The latest argument is that ISPs should be liable for direct copyright infringement in cases where they interfere with the automatic data flow and conduct a human screening process of objects posted to the websites they host.\textsuperscript{9} But what has to be taken note of is that inspite of human screening, it is humanly impossible to be hundred per cent accurate as to there is no infringement of copyright at all. The very fact that ISP has involved a person to check for violations in addition to the terms and conditions is good enough proof that ISP is doing its best to prevent subscribers from copyright infringement. In such a case, it is unfair to hold, ISPs liable for the actions of the subscribers. But there are differing views on this point.\textsuperscript{10}

The US Position

Pre DMCA Scenario

Prior to the Digital Millennium Copyright Act (DMCA) when the liability of ISPs came up before
the courts, there was nothing but the copyright law to rely on. Thus, some courts relied on strict liability while others held ISPs to be not liable at all. However, in 1996, the Congress passed the Communications Decency Act providing immunity to ISPs.

**The Communications Decency Act, 1996**

In 1996, the Communications Decency Act was enacted in the United States and Section 230 of the Act states that ‘[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.’ Thus, it gives immunity to interactive service providers from liability under state intellectual property laws. As a result of this provision, holding ISPs liable for deciding to publish, withdraw or alter content is not possible. Similar to DMCA provisions which protect ISPs in case of third party copyright infringement, this provision was also brought in because holding ISPs liable for communications of others would adversely affect free speech and it would be unfair to hold ISPs liable for those actions. Moreover, as mentioned earlier in this paper, it is impossible to monitor the problematic content by ISPs. However, in *Chicago Lawyers’ Committee for Civil Rights under the Law Inc v Craigslist Inc*[^20], the Court held that the immunity provided to ISPs under Section 230(c)(1) of the Communications Decency Act, extends to claims, seeking to hold an ISP liable as a publisher for content authored by third parties, and not to all claims arising out of the ISP’s role in giving public access to such content. Thus, it can be seen that the immunity given to ISPs has limitations and ISPs can not escape from its liability in all circumstances.

**Playboy Enterprises Inc v Frena**[^21]

This was one of the first cases where liability of ISPs for the copyright infringement of subscribers was examined. The defendant, George Frena, operated a Bulletin Board Service (BBS) for those who purchased certain products from the defendant and anyone who paid a fee could log on and browse through different BBS directories to look at the pictures and they could also download copies of the photographs. Among many photographs that the defendant made available to his customers, one hundred and seventy were unauthorized copyrighted photographs which belonged to the plaintiff. The Court noted that the intent of the BBS operator was irrelevant and applied strict liability principle of the Copyright Act. The BBS operator was held liable for direct infringement because the defendant’s system itself supplied unauthorized copies of copyrighted work and made them available to the public. It was irrelevant that the defendant did not make infringing copies itself. However, later on the Court’s ruling was widely debated and discredited.

**Religious Technology Center v Netcom**[^22]

Few years later, came the Netcom case. The plaintiffs, Religious Technology Center (RTC) held copyrights in the unpublished and published works of L Ron Hubbard, the founder of the Church of Scientology. The defendant, Erlich was a former minister of Scientology who had later on become a vocal critic of the Church. On an on-line forum for discussion and criticism of Scientology, Erlich posted portions of the works of L Ron Hubbard. Erlich gained his access to the Internet through BBS which was not directly linked to Internet, but was connected through Netcom On-Line Communications Inc. After failing to convince Erlich to stop his postings, RTC contacted BBS and Netcom. The owner of BBS demanded the plaintiff to prove that they owned the copyrights of the works posted by Erlich so that he would be kept off the BBS. The plaintiffs refused BBS owner’s request as unreasonable. Netcom similarly refused plaintiffs’ request that Erlich not be allowed to gain access to Internet through its system. Netcom contended that it would be impossible to prescreen Erlich’s postings and that to prevent Erlich from using the Internet meant doing the same to hundreds of users of BBS. Consequently, plaintiffs sued BBS and Netcom in their suit against Erlich for copyright infringement on the Internet.

The Court reasoned that eventhough ‘copyright is a strict liability statute, there should be some element of volition or causation which is lacking where a defendant’s system is merely used to create a copy by third party.’ The Court further noted that, when the subscriber is directly liable it is senseless to hold other parties (whose involvement is merely providing Internet facilities) liable for actions of the subscriber.

The Court also noted that the notice of infringing activity of service provider will implicate him for contributory negligence as failure to prevent an infringing copy from being distributed would constitute substantial participation. Substantial participation is where the defendant has knowledge of primary infringer’s infringing activities and induces, causes or materially contributes to the infringing conduct of primary infringer. The Court rejected the
argument of the defendant that an ISP is similar to a common carrier and therefore entitled to exemption from strict liability codified in Section III of the Copyright Act and stated that carriers are not bound to carry all the traffic that passes through them. Nevertheless, the Court did not impose direct infringement liability on ISP as that would result in liability for every single server transmitting information to every other computer. Nevertheless, the Court did not impose direct infringement liability on ISP as that would result in liability for every single server transmitting information to every other computer. Nevertheless, the Court did not impose direct infringement liability on ISP as that would result in liability for every single server transmitting information to every other computer.

_Sega Enterprises Ltd v Mapihia_23

In this particular case, the BBS Operator knowingly created his BBS to allow users to upload the plaintiff’s copyrighted video game software so that users could download and use the software uploaded by other users for free. The Court noted that merely because the defendant is not liable for direct infringement, however, does not mean that he is free from liability. Although, the Copyright Act does not expressly impose liability on anyone other than direct infringers, courts have long recognized that in certain circumstances, liability for contributory infringement will be imposed. The Court observed that contributory copyright infringement stems from the notion that one who directly contributes to another’s infringement should be held liable. Such liability is established where the defendant, with the knowledge of infringing activity, induces, causes or materially contributes to the infringing conduct of another. Thus, the Court took note of the knowledge of BBS operator and his material contribution in the copyright infringement by subscribers and held BBS operator contributorily liable.

**Digital Millennium Copyright Act, 1998 (DMCA)**

Three years after the Netcom case,25, the DMCA was brought in. The Online Copyright Infringement Liability Limitation Act11 was also enacted as part of the Digital Millennium Copyright Act of 1998.6 However, the DMCA was an update of the general law governing copyright, viz, the Copyright Act, 1976, which limited the potential liability of ISPs regarding certain activities, and subject to their complying with certain conditions but did not exempt ISPs from liability.24 In addition to limiting the liability of ISPs in certain instances, the DMCA also lays down where ISPs can be held liable for infringement of copyright by their subscribers.

The DMCA allows ISPs to avoid both copyright liability and liability to subscribers by adhering to certain guidelines set out therein which are known as ‘safe harbours’. Through these safe harbour provisions, DMCA limits ISP liability to four categories, viz., firstly, transitory digital network communications, secondly, system caching, thirdly, information residing on systems at the direction of subscribers; and fourthly, information location tools. The DMCA accepts the ruling of the Netcom case22 and gives express protection to ISPs, hence, as long as the data is automatically transmitted through the server and the ISP is not involved in altering the content, the ISP will not be liable for mere transmission of infringing data through its server.

The DMCA also exempts ISPs from direct liability for reception or temporary storage of material in their networks if certain measures are taken by ISPs. The DMCA in Section 512(i)(1) states that the limitation of liability of the ISP under this Section is provided only if ISP

(A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and

(B) accommodates and does not interfere with standard technical measures.

Thus, firstly, ISPs have to follow a policy where it terminates access to subscribers who are repeat offenders25; secondly, they have to put in place technical measures to prevent infringements. There are additional requirements in the individual sections of the activities protected.3 The DMCA has a system of ‘notice and take down’ under which when an ISP receives a notification from a right-holder informing it that a breach of copyright had been committed through its system, the ISP is obliged to take account of that information and to act to restrict all access to the offending information through its system. The ISP is put under pressure of either restricting access to user at the risk of being sued for breach of contract in case of false notification or for being sued by the alleged copyright owner for not taking action when informed of a copyright violation by the user of ISP. But if ISP follows the statutory procedure in such a situation, he is protected by the law. So in such a situation, the ISP can repost the material taken down if the user files a counter notice stating that his posting of material does not
infringe anyone’s copyright. But this can be done only if the copyright owner has not filed an infringement action seeking a retraining order against the user.27

Analysis of DMCA

Initially, USA was to adopt a procedure where ISPs were to be liable for the content that was transmitted and as transmission was regarded to be equivalent to reproduction. But later on in 1996 they adopted a policy which provided that ISPs are not liable for content that they unknowingly transmit. However, ISPs would be held responsible for taking down content that copyright holders can show to violate their copyright rights. This puts the burden of monitoring the content on the owners of intellectual property and not on the ISPs. It is an interesting solution that can be adopted by national governments in dealing with copyright infringement issues on the Internet.

What has to be noted is that US Congress has not granted general immunity to the ISPs through DMCA, but it has limited the liability of the ISPs based on their knowledge and involvement of the infringing activity.9 The ISPs are willing to adhere to DMCA provisions, and seek refuge in the safe harbours so that they are guaranteed of non-liability.4 This system of limiting the responsibility of ISPs has enabled USA to create an equitable balance among the interests of all parties concerned.25 Thus, ISPs do not escape liability at all costs and copyright holders also cannot harass ISPs where the sole responsibility for infringing action is on a subscriber.

Post DMCA

Costar v Loopnet10

Costar, a copyright owner of numerous photographs of commercial real estate brought a suit of copyright infringement against Loopnet Inc, an ISP, for direct infringement because Costar’s copyrighted photographs were posted by Loopnet’s subscribers on Loopnet’s website. If a subscriber includes a photograph for a real estate listing, he must fill out a form and agree to the ‘terms and conditions’, along with an additional express warranty that the subscriber has ‘all necessary rights and authorizations’ from the copyright owner of the photographs. The subscriber then uploads the photographs into a folder in Loopnet’s system, and the photograph is transferred to RAM of one of the Loopnet’s computers for review. Then a Loopnet employee cursorily reviews the photograph firstly to determine whether the photograph in fact depicts commercial real estate, and secondly to identify any obvious evidence, such as, a text message or copyright notice, that the photograph may have been copyrighted by another. If the photograph fails either one of these criteria, the employee deletes the photograph and notifies the subscriber. Otherwise, the employee clicks an ‘accept’ button that prompts Loopnet’s system to associate the photograph with the web page for the property listing, making the photograph available for viewing.

The Court held that direct liability attaches only when there is some conduct that causes the infringement. The Court took note of the fact that the infringing activity is initiated by the subscriber and therefore he is the direct infringer. The majority held that an ISP should not be liable as a direct infringer when its facility is used to infringe a copyright but when it engaged in no intervening conduct.5 With regard to Loopnet’s gate keeping practice, the Court observed that ‘the employee’s look is so cursory as to be insignificant’. The Costar decision also made it clear that DMCA does not limit ISPs to the safe harbour provisions codified in the statute. Rather, ISPs may rely on either DMCA safe harbour provisions, common-law defences or both.5

The Indian Position

India is rapidly developing its information technology market and the number of Internet subscribers is increasing everyday. Along with this development, there is need to have better and more comprehensive laws to tackle the issues that may arise in near future. The Copyright Act, 1957 does not deal with the liability of the ISPs at all. However, the liability of ISPs finds mention in Section 79 of the Information Technology Act, 2000 (IT Act) as follows:

‘Network service providers not to be liable in certain cases-

For the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under this Act, rules or regulations made thereunder for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.
Explanation. -For the purposes of this Section, -(a) ‘network service provider’ means an intermediary;
(b) ‘third party information’ means any information dealt with by a network service provider in his capacity as an intermediary’

Section 79 of the IT Act exempts ISPs from liability for third party information or data made available by him if the ISP had no knowledge of the offence committed or if the ISP had exercised ‘all due diligence’ to prevent any infringement. This in turn means that unless the case in hand falls under these two exemptions ISPs are liable for copyright infringements as well as any other violations that take place in their websites, even if the act is done by the subscribers. Section 79 is extremely loosely worded and there is a possibility that these exceptions mentioned in the IT Act can be used more as a tool of harassment of companies by the authorities. The Section exempts ISPs from liability if the ISP has exercised ‘all due diligence’. What is all due diligence? It should have been worded clearer since the manner in different ISPs understand ‘all due diligence’ will be different and one can always say that irrespective of the measures taken by ISPs that it is not ‘all due diligence’. The explanation to Section 79 also has the possibility to be broadly interpreted and thereby making almost any intermediary a ‘network service provider’. A better definition should have been given to the term ‘network service provider’. One can possibly argue that this broad definition allows many different types of service providers to be included, but at the same time there is also the possibility of it being interpreted in a manner broader than what was contemplated by the framers.

According to some legal experts on Indian law, caching amounts to reproduction and such unauthorized reproduction would be tantamount to infringement. Since caching is done by ISPs themselves, ISPs may find it difficult to plead ignorance. ISPs would surely be liable if the owner of the copyright informs ISP about such infringement and no action is taken by the ISP. As in any other jurisdiction the veracity of the copyright owner’s claim is an issue in India as well. While Section 79 of the IT Act, 2000 absolves ISPs of its liability if it can prove its ignorance and due diligence, it does not specify who would be held liable for such contravention in such an event. Therefore, this provision will cause problems when an offence regarding third party information or provision of data is committed. Thus it can be observed that the existing legal provisions do not clearly prescribe the extent of the ISP’s liability in cases of copyright infringement by the subscribers.

Need for better legislation on ISP liability

India has a long way to go in bringing a comprehensive legislation on the liability of ISPs in cases of copyright infringement in digital context. It is of utmost importance for a country such as India with an increasing number of Internet users and thereby increasing the threat to infringing the rights of copyright holders. At the same time, India is rapidly becoming digitalized and if new laws are not brought in to protect ISPs from copyright infringement by subscribers and the related aspects, it would adversely affect the ISP industry as a whole though cases regarding the same are yet to come before any court of law in India. Moreover, it is also important for India to update their laws regarding this aspect to remain in competition with other Asian countries such as Singapore which have come up with comprehensive laws limiting the liability of ISPs.

Some argue that taking note of the borderless nature of the Internet, all nations should develop a set of rules for ISPs which are universally applicable. Given the differences in the systems, different countries will come up with different approaches regarding the liability of ISPs and consequently ISPs operating in multiple countries will face different liabilities in different countries. Another aspect is that there will be clash of various domestic laws on ISPs where an ISP is operating a web hosting site in one country and where it has allegedly committed copyright violations in another country where the site has been accessed. Thus, a universal set of rules to be made applicable in the context of the Internet is being suggested.

Conclusion

The rapid growth of the Internet has not only brought about easy access to information, but has also led to various problems and made the existing laws on protection of rights largely inadequate to deal with the issues that arise in virtual world.

There’s no debate that the owners of intellectual property should receive royalty for the reproduction or commercial use of their work and there are ways and means through which this can be ensured. But
what should not be done is holding the ISPs responsible for the actions of their subscribers. It is impossible for them to keep track of the activities of the subscribers and there has to be an effective balance of the rights and responsibilities of ISPs regarding issues of copyright on the Internet.

USA being rights based society; it is more often than not the first to come up with laws protecting those rights. Considering that the DMCA being one of the earliest legislations which deal with ISP liability, it is comparatively comprehensive set of rules that govern the liability of the ISPs. The DMCA starts with the presumption that provided the ISPs have adhered to the conditions laid down in the Act, they are guaranteed immunity from being liable for copyright infringement by their subscribers. Some of the areas where the DMCA can improve on are that it can make provisions to minimise unnecessary litigation which will affect the reputation, productivity as well the resources of the ISPs. In addition to the attorneys’ fees and damages provided in Section 512(f) those who bring false copyright claims and force the ISPs to remove certain information from the sites should be firmly dealt with.

Another problem with DMCA is the manner in which it makes provisions for removing material which claim to be in violation of rights of copyright holders. As mentioned earlier, on one hand there can be false claims from competitors of the copyright holders and on the other hand there can also be issues relating to freedom of expression as well as breach of contract on the part of the subscribers of the ISPs. However, the provisions mentioned in DMCA should be applied with caution so that the interest of both, ISPs as well as the copyright holders is protected.

Regarding the position in India, it is laudable that India has made an effort to deal with limiting the liability of ISPs in its IT Act, 2000. However, it has to be made comprehensive in order to ensure that there is a fair balance between IPR holders and ISPs and others involved in technology in a rapidly developing country such as India.

Taking note of the fact that the Internet goes beyond territorial borders, some believe that it is better to have a universally accepted set of rules regarding the liability of the ISPs and if such a measure is adopted by the international community that would be a better way of ensuring the rights of intellectual property rights holders as well as the ISPs and other concerned parties and it would definitely be a boost for the international economy as a whole.

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