The threat towards the Intellectual Property in Digital Environment

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Abstract:

Purpose – The protection of original work has been the real challenge to those who own it. In the advancement of the technology, protecting the original work is really a big challenge. The paper attempts to overview the faire use of intellectual property in the digital environment. Question on faire use of intellectual property we can analyze, to what extent IP laws allows a person to use the content online.

Design/methodology/approach – The research methodology intended for this study is case study and literature review method. The study method would enable a researcher to analyze and interpret the cases on the use of intellectual property and arrive at the decision.

Findings – The perplexity between the faire use and copyright infringement of content online has been analyzed and interpreted. The study highlighted the consequences and unfortunate situation for few originators who had to fight for the protection of their work in a digital environment.

Research limitations/implications – The accuracy of the case studies is limited to the accuracy of the events took place.

Practical implications – This paper helps to understand the ongoing conflict between the faire use and Copyright infringement in the digital environment.

Originality/value – The analysis of literature review has made the purpose and scope of this research very clear as to the research in this area. The case study and literature review method in this approach is first and unique.

Keywords
Intellectual Property, Digital Environment, Faire Use, Copyright Infringement, Case study

Paper type
Research Paper, Case study

INTRODUCTION

Intellectual property right is a legal right to any owner of the original work. He/she has the complete right and freedom on protecting their original work. But the question arise is, can they really protect their work in the Internet era. The word ‘digitization’ is a great threat to these works, which are protected under IP laws. The concern here is that, Does digitization means reproduction of original work using photocopying machines. This habit is often observed in institutions and colleges mostly used by the students. Since availability of notes and information available online, printing and distribution of the same is possible through photocopying techniques. The concept of Faire use of content is inviting lawsuits at a high level. The perplexity between the faire use and copyright infringement has taken many companies to court and pay monetary fine for their mistake.

There is decay in importance of Intellectual property right when it comes to virtual world. In the physical world copying somebody else’s work is not so easy compared to that of Digital environment. Accessibility and availability plays an important role in digital world where people can access and avail the copy righted content easily. Downloading songs, movies, art works, articles, photographs and so on, of the copy righted products become widely available online. Copying the link or copy-paste option lets the users literally steal the copyrighted content from digital environment. Copyright infringement and plagiarism has to be treated seriously in a technically growing society. To safeguard one’s own work has become a tough job even though Copyright Act of 1960 gives the complete protection to the original creator. Digital environment and technological advances has been the threat to the intellectual property right.
LITERATURE REVIEW

Filippi Primavera De, in his paper *Copyright in the digital environment from intellectual property to virtual property*, has pointed the shift of intellectual property to virtual property. The author has concentrated upon the safeguarding the original work in the digital era. The paper highlights and elaborates the objectives to copyright, self regulating tools of copy right law, private mechanisms of self help. Commenting on the copy right law author has brought forward the different layers involved in creation on intellectual work. According to Primavera, the copyright work is composed of different layers which include the work as an intellectual creation, the expression as a particular awareness of the work, the demonstration as the actual embodiment of the expression into a particular medium, and the item as a single paradigm of the expression. At any of these layers, each right holder has different rights depending on the work and type.

Mr. Primavera points out the new regime of property rights, according to him; the rights may be modified and manipulated according to the users and the owner of the original work. Since the digital era has given a wide range of exposure to any kinds of creativity, restricting on the use or faire use of content is depriving both the users as well as the owner of the original work. From the users point of view it could be the recreation of the work where the users can modify and improve the original work. From the owners work, his work gets recognized at the same time popularized. The citation or credits to the owner of the work is a must, in case of re-use and modification of the original work.

In conclusion author arises few very important points such that, By recognizing the distinction between the rights vesting in the expression of a work and the rights vesting in the digital manifestation of the work, the proposed reform may be capable of reintroducing the self-regulating features of the copyright regime, while simultaneously reducing the discrepancies that subsist between copyright law and property law in the digital environment.

implication. The paper sensitizes libraries, information professionals and users towards their obligation to conduct themselves according to licensing terms of digital media. It explores the effect that digital technology has had on copyright protection, the trend towards international harmonization of copyright laws based on international standards set down by the international conventions, agreements and treaties and the use of copyrights works by libraries. The paper presents status of copyright protection in select countries, including copyright law enactment, term, scope, sanctions, percentage of privacy and revenue loss in software piracy. Copyright issues for e-information along with forms of infringement and fair dealing are discussed. Digital copyright protection technologies such as watermarks, fingerprints, digital signatures etc. are described. The paper concludes by emphasizing about evolving general consensus on digital preservation along with protection of right holders with overall aim of protecting scholarship for posterity.

N. M. Malwad and M. Anjanappa, in their paper, IPR in digital environment: issues of concern to library community, points out the key terminologies related to the IPR and library community. A brief review of the recent Indian Publications on IPR in digital environment has been discussed and highlighted in this paper. The basic concepts explained in the literature are enumerated and explained as to simplify the title and the objective of the study. The paper also indentifies the Internet resources on the topic and explained. Several issues of concern to library community have been raised and discussed.

Charlesworth Andrew, (2012), in the report, Intellectual Property Rights for Digital Preservation, reports the preservation intellectual property rights for the digital environment. This report is also aimed primarily at depositors, archivists and researchers/re-users of digital works, but will provide a concise introduction to the subject matter for policymakers and the general public. The report concentrates on the different copyrights such as, crown copyright, public records, parliamentary copyright and legal fundamentals.

Jones S.A Cherie, in his paper, The intellectual property debate in the digital environment: Challenges and opportunities for the information sector, has highlighted the rights, responsibilities and liabilities of the information provider along with the development guidelines. The paper also elaborately explains the responsibilities and freedom of the
information providers by explaining each of them separately. The paper concludes by pointing out the role of information providers. As the Caribbean seeks to improve its social development initiatives, the role of the information provider in the new digitized information era as gate-keeper, as defender, as proponent cannot be over stressed.

Pahamin A Dato, (200) in his paper, the protection and management of Intellectual Property in a Digital Environment, points out the threat towards management of contents or information in the digital environment. By taking Malaysia as a study area, the research paper points out the need of digital environment in Malaysia, since the digital environment is crucial in the nation’s advancement. The paper concentrates on the opportunities from the digital environment as well as addressing the intellectual property issues.

METHODOLOGY

The purpose of this study is to find out the threat towards the intellectual property in the digital environment. The confusion and liberty of faire use of information online has over ruling the intellectual property right given to the owner of the original work. It is important to highlight copyright infringement in the name of faire use of content online. The case studies and literature review helps to draw a horizontal line between the concept of copyright infringement as well as the faire use.

Objectives:
The objectives of this paper are as follows:

- To find out the threat towards intellectual property in the digital environment.
- To analyze and to interpret the cases studies and literature review.
- To draw clear understanding of copyright infringement and faire use of content online.

Operational Methodology

The research methodology proposed for this study is qualitative research.

“Qualitative research is the systematic study of individuals, groups, phenomena and so on, in
an attempt to determine the nature of that which is being studied. Often used to develop insights and develop hypothesis, also called subjective research”. (Jensen, 2005)

“Qualitative Research is the means by which human symbolic actions are studied through various contexts in its performance”. (Lindlof & Taylor, 2011)

The research study constitutes a Case Study and literature review. the study incorporate the case study which will help to draw clear understanding of copyright infringement and faire use of content online. The case study and literature review has been selected keeping in mind the objectives of the study. The study includes 5 case studies as follows:

1. Art Rogers and Jeff Koons
2. The Associated Press and Shephard Fairey
3. Patrick Cariou and Richard Prince
4. Vanilla Ice vs. David Bowie/Freddie Mercury
5. Meltwater News and Associated Press
ANALYSIS AND INTERPRETATION

1. Art Rogers and Jeff Koons

Famous Photographer Art Rogers took a photograph of a man and woman holding a line of 8 puppies in a row. Art Rogers used this photograph as an image to use it in greeting cards and other similar products for generic merchandise. Internationally, prominent artist Jeff Koons was in the process of making an exhibit on the predictability of everyday items, came across Rodgers’ photograph of a couple holding 8 puppies and used it to craft a set of statues based on the image. The statues were a big hit and it attracted many audiences. Koons also sold several of these structures, and made a significant profit. Rodgers when he learned the development of his photograph as a statue sued Koons for copyright. Koons was clueless of the copyright infringement and responded by claiming fair use by parody.

When the case went on trial the concept of copyright infringement and faire sue was discussed intensively. The court found the resemblance in the image by Art Roger and the statue by Jeff Koons and claimed that any person would be able to recognize the similarities. Koon’s did defense for himself but same was rejected by the court with the statement under the argument that, Koons could have given the credit to the owner of the original work i.e. Art Rogers instead of copying his work and without giving any credit. Thus Koons was found guilty and
was forced to pay a monetary settlement to Rodgers. Along with the fine, Koons was supposed to ship the remaining statues in his collection.

**Interpretation**

The case was very much prominent because it covered a major issue in the art world. The issue was of appropriation of art work, original work by the owner. Building the work based on other’s original work was subject to copyright infringement. It was never being claimed as a faire use of content online. Here the important subject is the work by Art Rogers was the image, a photographic work. The product of photography is not a random image; it is someone’s original work. Even though this case did not touch upon these points but it became the reference used in many cases thereafter.
2. The Associated Press and Shephard Fairey

The poster of Barak Obama was created by the famous street artist Shephard Fairey called the, ‘Hope poster’ during first run for presidential election in 2008. The design was liked and rapidly became a symbol for Obama’s campaign, basically with the approval. In January 2009, the same photograph which was used by Fairey for the poster design was revealed by the Associated Press as the photograph was clicked by one of AP freelancers Mannie Garcia. With this the AP demanded compensation for the use of same photograph in Fairey’s work to create a Hope poster design. Fairey was clueless and responded with the defense of fair use. Fairy also claimed that his work did not harm or reduce the value of the original photograph rather increased the beauty. But his argument was not considered since nor credit neither monetary value was not shared between the two parties. The artist and the AP press came to a secretive resolution in January 2011. According to the settlement Artist had to split and share the profits
for the work since both parties important for the ‘Hope Poster’ of Barak Obama’s presidential election campaign.

**Interpretation**

This case was different and unique since the poster based on the photograph was not the original work of the artist who created the ‘hope poster’. However there wasn’t a court case and court was not involved in this case and an actual verdict was absent, this case twisted a lot of discourse around the value of work in these copyright battles. It is true that Garcia’s work would not have popularized so much as to be used in the election campaign. But at the same time it is important for us to understand that only with that image Faiey could make such a meaningful poster. Both the photographer as well as the artist is equally responsible for the success of the poster. Because the photograph was so nice that he could make such an adorable poster. When we look at it the other way around, because the poster has been made such lovely, the photograph looks stunning. In fact Garcia the artist himself affirmed that he was “so proud of the photograph and that Fairey did what he did artistically with it and the effect it has had”. The situation could be anything; the problem arises with the fact that Fairey took the image without permission and without credit for its originator.
3. Patrick Cariou and Richard Prince

Photograph: Patrick Cariou – 2000; Adaptation: Richard Prince – 2008 (both via artnet)

The case of Richard Prince is more relevant when discussing the copyright infringement. Famously known as appropriation artist, Richard Prince is one who renovates the original work of others to create new meaning in his own work. In the Gagosian Gallery on occasion of an exhibition Prince appropriated 41 images from a photography book by Patrick Cariou, French photographer. Prince claimed the faire use of content and used the photographs and created new meaning out of the photographs. The meaning given to the photographs were based on the Prince perspective and his angle. Cariou did not agree with the statement of faire use but he complained of stealing or misusing his original works. He argued that it was purely the act of copyright infringement. The case was in favor of Cariou in 2011 and the base on which Cariou won the case was that, The changes made by Prince were not significant enough to generate new meaning or change the meaning. The changes were not so significant to claim the faire use of content by Prince.
The case took a different turn in 2013, and it was in favor of Prince. The argument against both the images was observed and it was claimed that the appropriation of the work by Prince was in the way that it changed the aesthetic meaning of the image. The transformation of the work to change the aesthetic meaning of the original work is acceptable under the dispute of faire use.

**Interpretation**

The preliminary ruling in this case in favor of Cariou had created huge divisions in the artistic world. The artistic intent and the subjectivity of art have been questioned at a greater level in the first judgment. The ruling initially questions the authority to judge or determine the faire use of content. How do people decide if they can use the content and claim as a faire use? Art is open for the discussion and interpretation but when the restriction in the name of copyright infringement is applied how we use it and appropriation of art and modification is difficult.

When the second judgment was out, it was favoring Prince. The argument against both the images was observed and it was claimed that the appropriation of the work by Prince was in the way that it changed the aesthetic meaning of the image. The transformation of the work to change the aesthetic meaning of the original work is acceptable under the dispute of faire use.

**4. Vanilla Ice vs. David Bowie/Freddie Mercury**

The company Vanilla Ice was the successful company in 1991. The Vanilla Ice with the song *Ice Ice Baby* song was quite famous and popular. Vanilla Ice sampled the song but did not credit it, *Under Pressure* by David Bowie and Queen. Vanilla Ice denied the complaint and was not ready to accept the mistake. After the discussion and debate the Vanilla Ice agreed. The case was not taken to court but was settled privately out of court. The Ice had to pay the monetary fine along with the crediting Bowie/Queen on the tract.

**Interpretation**

This case is quite unique yet impractical. Any company cannot use or sample any songs in their product or advertisements just because they have it. Crediting the source is very important and
professional. The Vanilla Ice case was the simplest case which was cleared outside the court. Even though it was ridiculous thought to take random song and sample it without crediting the source. Once Ice realized the fact they had to compensate to David/Bowie.

5. Meltwater News and Associated Press

Meltwater news is a San Francisco-based news website. Meltwater News is a self described commercial media monitoring service. In Meltwater News website content published and freely available on the Internet can be scraped, compiled and commercially resold under fair use laws. Davis Wright Tremaine who represented Associate Press is in an opinion that because of these websites the concept of information available online are free and they can be easily taken and commercially sold has spread. In February 2012 the Associate Press filed case against Meltwater News for copyright infringement, but Meltwater retained that it operated as an Internet search engine and the usage of content from Associate Press was protected by fair use law. Court gives a statement that Meltwater News cannot have a free business model on the costly newsgathering.

Interpretation

This case is completely different and answers most of our question in the faire use of the content online. The balance between the value of equitable rights and the value of search engines has to be maintained. It is the common notion that anything available online is of free of cost. It is free to consume as well as reuse. This case ascertains that is not the case, that there are boundaries, and that Meltwater clearly crossed the line.

The consumption of content/information online will not cause such a big problem compared to the reuse of the same. The case may vary depending on the consequences. But the question is the pattern of reuse. The motive behind reclaim of the content from online has to be monitored, if it’s for a commercial purpose or private purpose like creating original work without crediting or is it for the appropriation of original work with same/unique aesthetic meaning.
CONCLUSION

Thinking among people that content available online are for free and free to use has affected the intellectual property right of the owner of the original work. The concept of plagiarism and reuse of content have been common problems which are complicating the fair use concept online. The digital environment being the forum to share and express one’s own work has become the threat too.

Even though many techniques have been developed to guard the original work like digital watermarking, access and copy and paste etc. despite the fact that these techniques have been included in the legislations, policy and protection of original works in the digital environment remains a goal that is yet to be achieved. It is very significant that ideas should be made available to the general public so that the stream of inspiration must not be infertile. However creators and authors must always be incentivized for their efforts. Hence the interest of both must be kept in mind while endorsing and implementing techniques and legal actions.

REFERENCES

Journals


• Filippi Primavera De, “Copyright in the digital environment from intellectual property to virtual property”. European University Institute, Florence, Italy

• Jones S.A Cherie, “The intellectual property debate in the digital environment: Challenges and opportunities for the information sector”.

• N. M. Malwad and M. Anjanappa, “IPR in digital environment: issues of concern to library community”. Bangalore Univesity Library, Bangalore.

• “Online copyright infringement: recent cases worldwide and legislative responses”, (2010). Davied Collison cave.


Online/ Websites

• https://cpyrightvisualarts.wordpress.com/2011/12/20/art-rogers-vs-jeff-koons/

