

A Study on the Liability of Internet Service Provider for Copyright Infringement

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Abstract: *The study discusses about the liability for violation and it rests on 3 theories- direct, vicarious and tributary infringement. Direct infringement happens once someone violates any right of the copyright owner. Vicarious liability arises once someone fails to stop infringement once he will and contains a right to try to to thus and is directly benefited by such infringement. These 2 theories area unit supported the strict liability principle and someone are going to be liable with none reference to his psychological state or intention. tributary liability arises once someone participates within the act of direct infringement and has information of the infringing activity. The question arises on that commonplace ought to be applied so as to repair the responsibility of service suppliers. will the service suppliers be control accountable for violations that come about within the web of that they'll or might not have information? area unit their activities like providing access by linking by deep linking, system caching, framing etc. violations of the rights of copy of the copyright holders? Explaining the role of web Service suppliers (ISPs) in creating copyright work accessible to end users over the world wide web, the paper describes the premise of liability. The objective of this research is to analyse about the liability of Internet service provider for copyright infringement and to study deeply about ISP regarding copyright infringement and also to determine the difference between direct and vicarious infringement . A total of 1504 random sample were collected. The collected data are known as primary data and secondary data were collected from books, journals, articles and ebooks. Both primary and secondary data were analyzed by SPSS - statistical package for social science.*

Keywords: Internet service providers, liability, infringement, copyright, vicarious liability, etc

I. INTRODUCTION

A party is guilty of violation if they violate one among the 5 exclusive rights given to copyright house owners underneath the Copyright Act (as is explained in additional detail within the BitLaw discussion on the scope of copyright protection). enclosed in those rights square measure the proper to stop others from reproducing (or copying) a piece, publicly displaying a piece, or distributing a piece.(United States. Congress. Senate. Committee on the Judiciary 1998) it's clear that on-line service suppliers are going to be chargeable for violation if they're directly concerned within the repeating of protected material(Fernandez-Diez, n.d.). let's say, if a service supplier were to put Associate in Nursing electronic copy of the most recent popular novel (or a pirated copy of Microsoft Word) on their bulletin board or computing device, they'd be guilty of violation.(Wegbrait, n.d.) In these circumstances, Associate in Nursing ISP is not any totally different than the other party.

However, web Service suppliers is found chargeable for violation even wherever they're indirectly engaged within the repeating of protected materials(Chen 2017). as an instance, ISPs square measure chargeable for instrumentality, resembling a laptop operational as a server, that's capable of creating copies with none direct involvement of anyone.(Yen, n.d.) Consequently, one relevant question is: "when is Associate in Nursing ISP liable underneath copyright law for the copies created by its equipment?" in concert example, the newsgroup servers controlled by ISPs build thousands of copies of newsgroup files everyday. (Synodinou 2018)though a number of these files doubtless



contain proprietary materials, no ISP has nevertheless to be found guilty of violation just for the unknown, autonomous action of their newsgroup servers.(Corato and Di Corato, n.d.)

Nevertheless, Associate in Nursing ISP should bear in mind of the theories underneath the Copyright Act by that a celebration is command chargeable for infringement though they are doing indirectly participate within the repeating or distribution of a piece.(O'Sullivan 2019) underneath the construct of "contributory infringement," a celebration could also be guilty of violation after they cause or contribute to the infringing conduct of another with data of the opposite party's infringing activities. (Cazacu, n.d.)additionally, underneath the construct of "vicariously liability," an individual could also be chargeable for the infringing actions of another if the person has the proper and skill to manage the infringer's acts and receives a right away money get pleasure from the infringement.T(Lindroos 2017) Vicarious liability is established while not the litigant having actual data of the infringer's activity. underneath these 2 theories, it's potential for Associate in Nursing ISP to be command chargeable for violation, though the ISP wasn't directly concerned in creating the infringing copy.(Lindroos 2018)

The liability of knowledge service suppliers, resembling web service suppliers (ISPs), may be a complicated issue that has got to usually be resolved underneath the law and jurisdiction of many countries.(Ryel, Kim, and Ryel 2007) it's so necessary to research public and personal law.

The issue of ISP liability is often placed completely within the context of the publication of obscene or racist content.(Carroll, n.d.) However, this slim vision of informative liability (which subsumes the liability of knowledge service providers) ought to be broadened. ("Contributory and Vicarious Liability for Copyright Infringement," n.d.)The **aim** of the research is to analyse the liability of internet service provider for copyright infringement.

OBJECTIVES:

- To analyse about the liability of Internet service provider for copyright infringement
- To study deeply about ISP regarding to copyright infringement
- To determine the difference between direct and vicarious infringement

II. MATERIALS AND METHOD

This is a non- doctrinal study. This paper depends on both primary and secondary data. The primary data for the present study is collected using sampling technique. Random sampling is used to collect the primary information from the respondents. A random of 1504 samples selected from the study area to analyse the liability on the Internet service provider for copyright infringement. The primary data which has been analysed using Frequencies, Chi-Square test and Crosstab method. The secondary data is collected from books, journals, articles and e-sources. The researcher has also utilized commentaries, books, treatises, articles, notes, comments and other writings to incorporate the various views of the multitude of jurists, with the intention of presenting a holistic view. And current paper uses SPSS analysis SPSS is short for statistical package for the social sciences, and its used by various kinds of research for complex statistical data analysis of social science data and this research uses such kinds of analysis for a paper and appropriate.

HYPOTHESIS:

Ho: There is no statutory legislation when it comes to copyright infringement

Ha: There is statutory legislation when it comes to copyright infringement

III. REVIEW OF LITERATURE

V.K. Unni, Internet Service Provider's Liability for Copyright Infringement. Only a fool would question the role and relevance of Internet Service Providers in promoting the Internet. But, unfortunately, Internet Service Providers ("ISPs") are at the receiving end of many disputes involving Intellectual Property violations. The difficulty in pinpointing the real culprit has resulted in a piquant situation where the Internet Service Provider is often taken to court. United States' courts and courts of other advanced countries have confronted this issue since 1993 and have finally enacted specific legislation to solve this mind-boggling issue. ("Contributory and Vicarious Liability for Copyright



Infringement," n.d.)The Indian Information Technology Act 2000 ("The Act"), enacted with much hype, is almost silent on this issue. Although it includes a sentence or two about ISP liability, the picture on this issue is a vague one.

Gupta, The Scope of Online Service Providers' Liability for Copyright Infringing Third Party Content under the Indian Laws – The Road Ahead. This paper attempts to evaluate the ISP picture in the U.S. before the Digital Millennium Copyright Act and passage of The Act. The position in Australia, including the most recent Act is also examined. The situation in Canada, (yet to enact a specific act), and that in Singapore, (the first country in Asia to enact such a law), are briefly mentioned. Finally, latent defects in the latest Indian Law are analyzed, and some suggestions are made.(Bainbridge 1998)

Kahandawaarachchi, Thilini, Liability of Internet Service Providers for Third Party Online Copyright Infringement: A Study of the US and Indian Laws. The issue of liability of online service providers (OSPs) for third party content is one of the most contentious issues in the realm of cyber law. Different jurisdictions around the world have dealt with the issue either through legislative provisions or judicial pronouncements. Until recently, the legal position in India was nebulous and vague especially with respect to liability for copyright infringing third party content.(Giovannella 2017) The Information Technology(Amendment) Act, 2008 has significantly clarified the scope of immunities available to intermediaries. Unlike the immunities under the old IT Act, these immunities are not only available with respect to offences under the IT Act, 2000 but even for the liabilities arising under any law. The object of this paper is to extensively examine applicability and scope of such immunities, by comparatively analysing them with similar provisions in the United States and the European Union. (Dinwoodie 2017)

Just, M, 'Internet File-Sharing and the Liability of Intermediaries for Copyright Infringement: A Need for International Consensus'. This paper further examines the scope of OSPs liability under the Copyright Act, 1957 under three heads viz. direct liability, secondary liability and criminal liability. The potency of the argument that OSP authorize infringement has been examined by the courts in the UK, Canada and Australia. (Wang 2018)This paper examines the accuracy of the argument and its applicability in the Indian context. The paper concludes with an overview of the position likely to emerge under the Indian law(Strowel and Hanley, n.d.)

W. Handong, Tort Liability for Indirect Infringement of Copyright on the Internet according to Article 36 of the Tort Law PRC. Net service provider is a neutral third party in net information exchange.If net user uses net service to infringe another's copyright,net service provider assumes indirect liability as helper of common violation.This is a fault liability,that is,if net service provider "know" or "should know" the infringement,he should assume tort liability;At the same time,it's an unreal Joint and several liability,in fact,net service provider should assume final obligation(Sinclair 1970)

IV. ANALYSIS

Are you aware of the term 'Infringement'

Crosstab				
Count				
		5.Are you aware of the term 'Infringement'		Total
		yes	no	
Gender	male	679	571	1250
	female	46	208	254
Total		725	779	1504



Chi-Square Tests					
	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	110.858 ^a	1	.000		
Continuity Correction ^b	109.413	1	.000		
Likelihood Ratio	119.207	1	.000		
Fisher's Exact Test				.000	.000
Linear-by-Linear Association	110.784	1	.000		
N of Valid Cases	1504				

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 122.44.

b. Computed only for a 2x2 table

Symmetric Measures					
		Value	Asymptotic Standard Error ^a	Approximate T ^b	Approximate Significance
Interval by Interval	Pearson's R	.271	.022	10.933	.000 ^c
Ordinal by Ordinal	Spearman Correlation	.271	.022	10.933	.000 ^c
N of Valid Cases		1504			

a. Not assuming the null hypothesis.

b. Using the asymptotic standard error assuming the null hypothesis.

c. Based on normal approximation.

The questioner was done based upon the gender, majority was the question were given by male while comparing to female. The question is Are you aware of the term 'Infringement'.

The majority answer given by them is disagree by the male and female majority answer neutral . The chi square value is 0.000 which is less than 0.5 hence it is alternative hypotheses.

Internet service providers and data that are given are liable to the rule of authenticity

Crosstab						
Count						
		6. Internet service providers and data that are given are liable to the rule of authenticity				
		strongly agree	agree	neutral	disagree	strongly disagree
Gender	male	24	364	442	340	80
	female	2	65	56	76	55
Total		26	429	498	416	135



Crosstab		
Count		
		Total
Gender	male	1250
	female	254
Total		1504

Chi-Square Tests			
	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	69.074 ^a	4	.000
Likelihood Ratio	58.662	4	.000
Linear-by-Linear Association	33.070	1	.000
N of Valid Cases	1504		

a. 1 cells (10.0%) have expected count less than 5. The minimum expected count is 4.39.

Symmetric Measures					
		Value	Asymptotic Standard Error ^a	Approximate T ^b	Approximate Significance
Interval by Interval	Pearson's R	.148	.028	5.813	.000 ^c
Ordinal by Ordinal	Spearman Correlation	.134	.028	5.223	.000 ^c
N of Valid Cases		1504			

a. Not assuming the null hypothesis.

b. Using the asymptotic standard error assuming the null hypothesis.

c. Based on normal approximation.

The questioner was done based upon the gender, majority was the question were given by male while comparing to female. The question is Internet service providers and data that are given are liable to the rule of authenticity. The majority answer given by them is disagree by the male and female majority answer neutral. The chi square value is 0.000 which is less than 0.5 hence it is alternative hypotheses.

V. RESULTS

The above questions which is compared to the liability on the Internet service provider between various genders and in the above case the total value is 1504 and the majority answer was no and it comes from the gender male. according to chi square value is 0.000 and it is less than 0.05 ,hence it comes under the alternative hypothesis.

VI. DISCUSSIONS

In the above values and research it is clearly observed that some sector of people are not aware of this Internet service provider because the rate of usage is less. And the chi square reveals that it comes under alternative hypothesis. The above questions which is compared to the liability on the Internet service provider between various genders and in the above case the total value is 1504 and the majority answer was no and it comes from the male gender. according to chi square value is 0.000 and it is less than 0.05 ,hence it comes under alternative hypothesis. And the younger generations well aware of hacking , malware etc., but where as the older generations are not aware. There are certain Internet



service providers and data that are given are liable to the rule of authenticity. And also provision for the infringement of Internet service provider. Encroachment happens when a man takes part in the unapproved utilization of material that has been ensured under encroachment laws. These sorts of infringement by and large include material that has been ensured under trademark, patent, or copyright securities. For example, if a man utilizes a logo that has been trademarked without the proprietor's authorization, they may be liable to a trademark encroachment infringement. Contributory encroachment laws force obligation on somebody who has not effectively taken part in encroaching exercises, but rather has by and by added to the encroachment infringement. To be held subject for contributory encroachment, the gatherings need to realize that they are participating in encroachment of secured content. Additionally, the litigant needs to influence material commitments or must have empowered the encroachment. Contributory encroachment is some of the time known as auxiliary risk or contributory obligation.

VII. CONCLUSION

There is statutory provision for copyright infringement. Network access Provider is essential body to the procedure of Internet Service of this electronic age. ISP is taking adequate contemplations for giving its administrations yet in India, still, the risk of specialist co-op isn't explicitly secured under present Copyright Act, 1957. The Information Technology Act, 2000 exempts ISPs from obligation on the off chance that they can demonstrate that they had no learning of the event of the charged demonstration, and that they had found a way to keep an encroachment. Keeping in mind the end goal to be excluded from risk, the Indian Act requires the specialist organization to practice due perseverance to keep the commission of copyright encroachment though, the Act does not give the significance of the term due constancy. There is a requirement for an accord on the importance of the term due steadiness in light of the fact that the essential capacity of ISPs is to construct and give the Internet benefit.

VIII. SUGGESTIONS

The most ideal approach to abstain from damaging a copyright is just to get the creator's consent before utilizing that statement of thoughts or certainties. In the event that you can't get the creator's consent, rehash the thoughts in your own words. Abstain from utilizing extensive portions of another person's demeanor verbatim — this could be an unmitigated copyright encroachment. The radio news host who communicates stories from the nearby daily paper word for word is requesting to be sued. Only one out of every odd unapproved utilization of a copyrighted work is a copyright encroachment. The statute views some restricted uses as "reasonable utilizations, for example, news revealing, editorial, feedback, research, instructing and grant.

REFERENCES

- [1]. Bainbridge, David. 1998. "Internet Service Providers, Web Site Operators and Copyright Infringement." *Computer Law & Security Review*. [https://doi.org/10.1016/s0267-3649\(97\)82134-6](https://doi.org/10.1016/s0267-3649(97)82134-6).
- [2]. Carroll, Michael W. n.d. "Why Protecting Internet Service Providers from Liability for Users' Copyright Infringement Has Been a Policy Success." *Innovation, Competition and Collaboration*. <https://doi.org/10.4337/9781784715779.00018>.
- [3]. Cazacu, Anca. n.d. "Is This the End of Free Streaming? The Role of Internet Service Providers in Copyright Infringement." *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3271091>.
- [4]. Chen, Lung-Sheng. 2017. "Internet Service Provider Copyright Infringement in Taiwan." *Secondary Liability of Internet Service Providers*. https://doi.org/10.1007/978-3-319-55030-5_14.
- [5]. "Contributory and Vicarious Liability for Copyright Infringement." n.d. *Copyright Law and the Information Society in Asia*. <https://doi.org/10.5040/9781472563835.ch-006>.
- [6]. Corato, Giorgia Di, and Giorgia Di Corato. n.d. "The Internet Service Provider Liability in Online Trademarks Infringement." *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2692287>.
- [7]. Dinwoodie, Graeme B. 2017. *Secondary Liability of Internet Service Providers*. Springer.
- [8]. Fernandez-Diez, Ignacio Garrote. n.d. "Internet Service Provider Liability for Copyright Infringement on the Internet." *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2331303>.



- [9]. Giovanella, Federica. 2017. "Online Service Providers' Liability, Copyright Infringement, and Freedom of Expression: Could Europe Learn from Canada?" *Law, Governance and Technology Series*. https://doi.org/10.1007/978-3-319-47852-4_12.
- [10]. Lindroos, Katja. 2017. "Intermediary Liability for IP Infringement in Finland: CopyRight vs. CopyLeft—A Series of Legislative Proposals and Decade of Debates." *Secondary Liability of Internet Service Providers*. https://doi.org/10.1007/978-3-319-55030-5_8.
- [11]. ———. 2018. "Erratum to: Intermediary Liability for IP Infringement in Finland: CopyRight vs. CopyLeft—A Series of Legislative Proposals and Decade of Debates." *Secondary Liability of Internet Service Providers*. https://doi.org/10.1007/978-3-319-55030-5_16.
- [12]. O'Sullivan, Kevin T. 2019. "Copyright and Internet Service Provider 'Liability': The Emerging Realpolitik of Intermediary Obligations." *IIC - International Review of Intellectual Property and Competition Law*. <https://doi.org/10.1007/s40319-019-00816-x>.
- [13]. Ryel, Kim Hyoung, Kim, and Hyoung Ryel. 2007. "Defamation on the Internet and the Liability of the Online Service Provider." *과학기술법연구*. <https://doi.org/10.32430/ilst.2007.13.1.163>.
- [14]. Sinclair, Kent. 1970. "Liability for Copyright Infringement. Handling Innocence in a Strict-Liability Context." *California Law Review*. <https://doi.org/10.2307/3479524>.
- [15]. Strowel, Alain, and Vicky Hanley. n.d. "Secondary Liability for Copyright Infringement with Regard to Hyperlinks." *Peer-to-Peer File Sharing and Secondary Liability in Copyright Law*. <https://doi.org/10.4337/9781848449442.00008>.
- [16]. Synodinou, Tatiana-Eleni. 2018. "Internet Intermediaries' Liability for Online Copyright Infringement: European Copyright Law Acquis and Perspectives." *Intellectual Property Perspectives on the Regulation of New Technologies*. <https://doi.org/10.4337/9781786436382.00015>.
- [17]. United States. Congress. Senate. Committee on the Judiciary. 1998. *The Copyright Infringement Liability of Online and Internet Service Providers: Hearing before the Committee on the Judiciary, One Hundred Fifth Congress, First Session, on S. 1146 ... September 4, 1997*. Government Printing Office.
- [18]. Wang, Jie. 2018. *Regulating Hosting ISPs' Responsibilities for Copyright Infringement: The Freedom to Operate in the US, EU and China*. Springer.
- [19]. Wegbrait, Pablo. n.d. "Internet Service Provider Liability for Copyright Infringement in Latin America." *The Evolution and Equilibrium of Copyright in the Digital Age*. <https://doi.org/10.1017/cbo9781107477179.013>.
- [20]. Yen, Alfred C. n.d. "Internet Service Provider Liability for Subscriber Copyright Infringement, Enterprise Liability and the First Amendment." *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.236478>.

