

An Empirical Study and Analysis on Criminal Right in Copyright

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Abstract: 'Copyright' is the term used to portray the zone of protected innovation law that directs the creation and utilise that is made of a scope of social products , for example, books, tunes, films, compositions, PC programs and so on. The question of copyright law is to secure the writer of the copyright work from an unlawful propagation or abuse of his works by others. Practice of encroachment of copyright isn't new yet existed in different shape in prior decades however today routine with regards to encroachment of copyright has expanded hugely in nearly in whole globe as well as spreading it at a disturbing rate in our nation as well. Presently the time has come to secure the privileges of the creator and to control the entryway from encroachment with legitimate method and enactment. This Article investigates those waiting questions by estimating the new laws against the principles that for the most part legitimise criminal law. Criminal hypothesis recommends it is fitting to rebuff lead that forces a network hurt or that ruptures an ethical standard. I reason that, rather than ruthless practices of contenders or to the self-improving assistance of duplicating by document sharing administrations, neither avocation completely underpins regarding encroachment for individual use as a wrongdoing. The ethical accord that would censure individual utilise is a long way from powerful and the mischief reason gives just a dubious premise to criminalisation. Besides, the consequences of criminalising individual utilisation of copyrighted material are conflicting with the fundamental approach of copyright law.

Keywords: Work, Crime, Intellectual property, copyrighted material, infringement, relinquishment

I. INTRODUCTION

Digitisation and broadband make music, films, and books progressively accessible to purchasers. They additionally make data items more defenceless against unapproved utilise, and hence present a powerful test to the revered space of copyright. The old request, set apart by a finely tuned and constantly tricky harmony between ensuring privileges of makers and keeping up free, is acclimating to these and other innovative changes that still can't seem to run their course. Their modifications fundamentally embroil the law, even the criminal law. Changing innovation incites copyright holders to look for more insurance from the law for their undeniably important items¹. With an end goal to hold authority over appropriation frameworks, ventures that distribute or convey copyrighted material participate in those endeavours. Customers, who need to practice their customary rights under copyright law and to use the new innovation, apply a contradicting weight on officials, as do the makers of gadgets that convey data and information. In spite of the fact that it is indistinct what shape another request will take, the powerful mix of innovative advancement and financial motivating forces is hard to stand up to. History shows that adjustment in the old request is a common sense certainty. As before, the law will assume a critical part in adjusting clashing interests and in choosing the parameters of the new order. At this point in the unfurling story, Congress seems to have grasped the old request. Since the mid 1980s, Congress has fortified existing rights in copyright and made a plenty of new rights. Two new laws grow criminal obligation for encroaching copyrights. The No Electronic Theft Act of 1997 (NET) achieves encroachment of

¹ (Savla 1997)



copyrighted material for individual and also business use. The Digital Millennium Copyright Act of 1998 (DMCA) takes a more proactive position by giving criminal punishments to acts that may prompt infringement. Treating deliberate encroachment of copyrighted material as a wrongdoing appears, at first evaluation, similar to a simple case. As individuals from Congress contemplated, a copyright is a kind of property, and intentionally taking or utilising property without authorisation is a wrongdoing. However a waiting uncertainty makes uneasiness when unapproved utilisation of learning, thoughts, and data is dealt with as normal robbery. The basic understandings that support robbery law don't exchange effortlessly to the domain of data, learning, and ideas. The results of scholarly exertion and the advancement of the whole network are connected in noteworthy ways, and information and thoughts, even those in mainstream music and business programming, have not been liable to the more total decides that represent physical property². This Article investigates those waiting questions by estimating the new laws against the regulations that for the most part legitimise criminal law. Criminal hypothesis proposes it is fitting to rebuff lead that forces a network hurt or that breaks an ethical standard. I infer that, as opposed to ruthless practices of contenders or to oneself enhancing help of replicating by record sharing administrations, neither avocation completely bolsters regarding encroachment for individual use as a wrongdoing³. The ethical accord that would denounce individual utilise is a long way from powerful and the damage method of reasoning gives just an obscure premise to criminalisation⁴. In addition, the aftereffects of criminalising individual utilisation of copyrighted material are conflicting with the basic arrangement of copyright law. Rather than quenching waiting questions, this examination affirms them. The aim is to study about the impact of copyright infringement⁵.

II. REVIEW OF LITERATURE

Eldar Haber, In this illuminating book, analyzes the circumstances, justifications, and ramifications of the criminalization process and tells the story of how a legal right in the private enforcement realm has become over-criminalized. **Stanley Rothenberg**, the right to secure copyright. Criminal provisions. Whereas the United State Copyright Act provides criminal measures only for willful infringements which are for profit," some of the criminal proceedings under the Act of 1911 apply irrespective of the profit element so long as the . **Christophe Geiger**, The first truly systematic analysis of the upsurge in criminal enforcement of intellectual property rights, this book offers a scholarly examination of the justifications for this approach, including claims regarding the involvement . **Rolando V. del Carmen**, Comprehensive and accurate without bogging readers down in unnecessary details, the text includes cutting-edge coverage of the law as it relates to arrests, searches and seizures, vehicle stops, use of force, interrogations, and line-ups. **John V. Martin**, Criminal Copyright Infringement: Proposal to Impose Criminal Liability on Nonprofit Infringers and Felony Liability for Transmissions Dorothy Schrader Criminal Copyright Infringement History Traditionally, the ... A public performance right for dramatic works has been granted more than 40 years earlier by the Act of August 18, 1856. **Neil Boister**, This has forced the US and other states with major IP interests to pursue the transnationalization of criminal copyright laws. ... Footnote 14 to Article 51 provides: (b) 'pirated copyright goods' shall mean any goods which are copies made without the consent of the right holder or person duly authorised by the right holder. **Larry K. Gaines**, Right to a lawyer in all criminal felony cases VI Gideon v. Wainwright, 372 U.S. ... Hogan, 378 U.S. 1 Right to have counsel when taken into police custody and subjected to questioning VI Escobedo v. Illinois, 378 U.S. 478 Right to confront and cross-examine witnesses VI Pointer v. Texas, 380 U.S. ... "Stand Your Ground" Laws Policy Matters Copyright 2019 Cengage Learning.

² [\(India, Constable, and Starling 1877\)](#)

³ [\(Das 2011\)](#)

⁴ [\(Cameron, Moore, and Gillam 2018\)](#)

⁵ [\(Hodel et al. 2018\)](#)



Objectives:

- To encourage the authors, music, composers, singer to create their original piece of works by granting them exclusive rights.
- To stop the misuse of copyrights.
- To protected copyrighted material.

Hypothesis:

NULL HYPOTHESIS: There is a significant relation between the age and awareness on the steps taken by the government against the infringement of copyright

ALTERNATIVE HYPOTHESIS: There is no significant relation between the age and awareness on the steps taken by the government against the infringement of copyright.

The Criminal Copyright Infringement

Two new criminal arrangements target copyright encroachment: the No Electronic Theft Act of 1997 (NET), which criminalises noncompetitive encroachment, and the Digital Millennium Copyright Act of 1998 (DMCA), which gives criminal punishments to, among other direct, going around encryption codes that are intended to ensure copyrighted material⁶. To completely get a handle on the import of their arrangements, it is valuable to survey criminal copyright encroachment as it existed under the watchful eye of the new laws were enacted. Preventing encroachment by contenders of the individuals who hold copyrights is a centre element of copyright law⁷; undoubtedly, encroachment by contenders for business purposes has been a wrongdoing since 1897⁸. This wrongdoing was ordered for eight decades as an offence, not a lawful offence. This reality alerts against understanding it as a long-standing congressional underwriting of a criminal answer for copyright infringement. Until section of the NET, the criminal offence connected just to the individuals who encroached "for benefit," and just monetary contenders were liable to criminal liability. Unlike the common provisions, the criminal statute was in this way kept to replicating and circulation for business purposes⁹. The necessity of monetary profit reflected congressional worry that copyright holders should themselves have the capacity to misuse their manifestations for benefit. In exempting individual clients from criminal obligation, the necessity likewise suited general society approach of keeping up community to copyrighted material¹⁰. The congressional hesitance to force criminal risk for copyright encroachment, noted by the Supreme Court as of late as 1988, immediately blurred despite innovative improvements¹¹. New enactment connected corrective approvals to secure a wide range of copyrighted material, expanded the seriousness of criminal penalties, and used criminal arrangements to ensure semi copyright material. Although these progressions altogether modified criminal copyright law, the statutes basically connected just to duplicating for monetary profit, leaving flawless the recorded division amongst focused and non competitive infringement¹². Then, in the mid 1990s, it ended up conceivable to post misused digitised programming programs on electronic notice loads up, making them accessible to people in general at no cost¹³.

Infringement Under the New Electronic Theft Act

The essential criminal copyright encroachment offence, which forbids wilfully encroaching a copyright for motivations behind business preferred standpoint or private monetary profit, keeps on requiring a money related motive. The NET

⁶ [\(Ramsay 2012\)](#)

⁷ [\(Haddaway and Westgate 2018\)](#)

⁸ [\(Scrivens and Perry 2017\)](#)

⁹ [\(Binder 2016\)](#)

¹⁰ [\(Florentino et al. 2018\)](#)

¹¹ [\(Singha 2000\)](#)

¹² [\(Gil-Miravet et al. 2018\)](#)

¹³ [\(Scaria 2014\)](#)



just included an arrangement that criminalises encroachments that are not embraced for a budgetary purpose¹⁴. This arrangement applies to replicating and conveying copyrighted material, and incorporates the utilisation of computers¹⁵. It is presently a wrongdoing to duplicate or circulate copyrighted work, inside a 180-day time span, whose aggregate esteem is more than \$1000. Congress' motivation was to achieve noncompetitive encroachments by people, for example, programmers and disappointed representatives, who don't have a budgetary intention in replicating. Accordingly the limit retail estimation of \$1000 is best comprehended as exempting de limit encroachments, instead of as a pointer of budgetary motivation¹⁶. The NET likewise changed the meaning of "money related gain," to envelop "anything of significant worth, including the receipt of other copyrighted works¹⁷." As utilised in other government criminal arrangements, the expression "anything of significant worth" is for the most part deciphered extensively to incorporate any advantage gotten by a defendant. By this backhanded means, the customary "revenue driven" arrangement presently incorporates encroachments that had, before, activated just thoughtful liability. Two parts of criminal encroachment were not changed. The administration should at present set up that the respondent acted unyieldingly, and this component recognises criminal from common infringement. The offence likewise necessitates that encroaching behaviour be "unlawful," which implies that except if direct meets the prerequisites for common encroachment, it's anything but a crime. Accordingly, barriers to common encroachment, for example, reasonable utilise and the privilege of first deal, apply additionally to criminal allegations under the NET.

The "Pre-Infringement" Offence of the DMCA

The Digital Millennium Copyright Act (DMCA) of 1998 does not address encroachment per se; rather, it gives criminal approvals to direct that may prompt encroaching uses. Among a large group of common arrangements, the DMCA precludes going around of, or managing in an innovation that handicaps electronic insurance frameworks that are concocted to anticipate duplicating and appropriating digitised material¹⁸. Although unmistakable arrangements apply to getting to ensure work and to utilising copyrighted material, the two measures deny the utilisation of circumvention gadgets and trafficking in and promoting them¹⁹. This movement is a wrongdoing when it is performed tenaciously for monetary benefit. Hence it is a wrongdoing to showcase circumvention gadgets, however shoppers who evade an entrance code on material they possess don't confer a offence. The primary DMCA prosecutions, of a Russian PC programming architect and his employer, inspired extensive open comment²⁰. Although the product creator collaborated in the preliminary of the business, Elcom a jury found the firm not guilty²¹. The Elcom case is likewise noteworthy on the grounds that the preliminary court rejected pre-preliminary movements to expel that depended on protected challenges²².

III. METHODOLOGY

The present paper was analysed through the non-doctrinal research methodology and empirical and descriptive method of research was used. The present analysis was made through random sampling method where the survey was taken from common public, professionals, etc. The sample size in the present analysis is 1307 samples, the independent variable is in the analysis is gender and the dependent variables is reliable on the statement that whether the magistrate can personally enquire the cause of death and can the magistrate arrest the accused. The research tools used in the

¹⁴ [\(Seville, n.d.\)](#)

¹⁵ [\(Anand 2018\)](#)

¹⁶ [\(Prabha Unnithan 2013\)](#)

¹⁷ [\(Biral 2014\)](#)

¹⁸ [\(Prabha Unnithan 2013; Halder and Jaishankar 2016\)](#)

¹⁹ [\(South Asia Human Rights Documentation Centre 2014\)](#)

²⁰ [\(Uma Devi 2012\)](#)

²¹ [\(Bava 2000\)](#)

²² [\(India, Constable, and Starling 1877\)](#)



present paper such as cross tabulation, chi-square and case summary and graphical representation was also used to analyse the study.

IV. ANALYSES AND DISCUSSION

Are you aware of obtaining criminal right in copyright?

Crosstab				
Count				
		43. Are you aware of obtaining criminal right in copyright		Total
		strongly disagree	disagree	
2. Age	15 - 30	173	247	420
	31 - 45	218	245	463
	46 - 60	135	224	359
	Above 60	45	82	127
Total		571	798	1369

Under this analysis the age was taken as the independent variable In such analysis on basis of the age, there are 571 respondents were strongly disagree about the statement. Similarly there are 798 respondents were disagree about the statement.

Chi-Square Tests			
	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	10.094 ^a	3	.018
Likelihood Ratio	10.101	3	.018
Linear-by-Linear Association	2.650	1	.104
N of Valid Cases	1369		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 52.97.

H₀: There is a significant relation between the age and awareness on the steps taken by the government against the infringement of copyright

H_a: There is no significant relation between the age and awareness on the steps taken by the government against the infringement of copyright.

From this analysis , the hypothesis can be accepted or not accepted. The above values such as the person value implies the value of 10.101 where the significant value is 0.018 which is lower than 0.05 which proves that the above hypothesis is accepted in this analysis. Hence the alternative hypothesis in the present analysis is accepted.



Are you aware of the compensation provided for copyright infringement?

Crosstab				
Count				
		44. Are you aware of the compensation provided for copyright infringement		Total
		no	yes	
2. Age	15 - 30	185	235	420
	31 - 45	175	288	463
	46 - 60	149	210	359
	Above 60	50	77	127
Total		559	810	1369

Under this analysis the age was taken as the independent variable In such analysis on basis of the age, there are 559 respondents were no about the statement. Similarly there are 798 respondents were yes about the statement.

Chi-Square Tests			
	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	3.742 ^a	3	.291
Likelihood Ratio	3.744	3	.290
Linear-by-Linear Association	.720	1	.396
N of Valid Cases	1369		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 51.86.

H₀: There is a significant relation between the age and awareness on the steps taken by the government against the infringement of copyright

H_a: There is no significant relation between the age and awareness on the steps taken by the government against the infringement of copyright.

From this analysis , the hypothesis can be accepted or not accepted. The above values such as the person value implies the value of 3.744 where the significant value is 0.290 which is greater than 0.05 which proves that the above hypothesis is not accepted in this analysis. Hence the null hypothesis in the present analysis is accepted.

Recommendations:

The Recommendation urges Council of Europe part states to endorse the WIPO arrangements at the earliest opportunity, remembering that powerful insurance of rights holders is progressively subject to the harmonization of such assurance at the universal level. Since these bargains just secured certain classes of rights-holders, the Recommendation gives that different classifications of rights-holders, i.e. telecasters, makers of databases and varying media entertainers as respects their settled exhibitions, ought to likewise be agreed assurance adjusted to the advanced



reality. A few distinctive methods for handling robbery are suggested. Most importantly robbery ought to be a criminal offense under national law. Far beyond activity in light of dissensions by the casualties, part States ought to accommodate the likelihood of ex officio activity by open specialists. As respects common law, the courts ought to have the likelihood of requesting temporary estimates required to keep an encroachment or to safeguard important proof. Where vital, these measures could be taken without hearing the influenced party. At last, the Recommendation offers a conceivable cure with respect to the unlawful creation of optical circles (CD's, DVD's and so on.). It is suggested that part states should examine the likelihood of acquainting a legitimate commitment with utilize a novel distinguishing proof code when creating such circles. This would help deciding the cause of a speculate item.

V. CONCLUSION

In inspecting the move from common risk to criminal assets for individual utilise encroachment, this examination brought up an essential issue: What direct ought to be criminal in any case? Working from the hypothesis that we criminalise direct that is unsafe or unethical, the responses to the request are alarming. The ethical accord that would denounce such utilise is a long way from hearty and the damage method of reasoning gives just a dubious premise to criminalisation. Given current network sees, regarding individual utilise encroachment as a criminal demonstration may not be a successful method to ensure the interests of copyright holders and to accomplish the objectives of copyright policy. If the new criminal laws are compelling in forestalling individual utilise encroachment, we are looked with an alternate issue. A viable criminal law may undermine the explanations behind sanctioning the law in any case to actualise the national arrangement of empowering innovative articulation. Criminal laws that regard encroachment as robbery pass on the message that data or learning may not be utilised without authorisation. This oppressive exercise may not be one that we need to bestow. In the long haul, imaginative people who disguise this instructing may compel their ability and subdue their craving to make new thoughts and items, subsequently constraining future advancement. In a last incongruity, criminalising copyright encroachment may deliver the inverse of its expected objective to support imaginative exertion.

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