

Time to tackle piracy through dispute resolution

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Copyright owners face an array of challenges in protecting and enforcing their rights online, including on social media, and it's time for a new dispute-resolution policy that is administered internationally, says Jaya Mandelia of Singh & Singh.

The significant, albeit negative, impact of unauthorised sharing of copyright-protected content online has been felt since as far back as the advent of the internet itself. For instance, music sales in the US reportedly dropped by 47% after the emergence of Napster, a peer-to-peer (P2P) music-sharing platform, in 1999.

Piracy before the release of a film can lead to losses in the projected sales revenue and may consequently have severe ramifications such as loss of interest from film investors. It also leads to economic loss for the state due to loss of employment and sales tax revenue.

Before the advent of social media/networking platforms, the majority of internet piracy was attributed to P2P file-sharing platforms such as Napster, Pirate Bay and BitTorrent. However, sharing of infringing or pirated content on social media platforms such as Facebook, Twitter and YouTube poses a novel set of problems. Unlike P2P file-sharing platforms, which are popularly considered to be vehicles of infringement, the primary function of social media platforms is social networking and communication; piracy/infringement here is only incidental.

The primary problem posed by P2P sharing of infringing/pirated content, especially on social media, is rapid sharing and re-posting across various platforms which makes it virtually impossible for an aggrieved party to identify and trace each infringing copy of the work. Since the internet is not limited by any territorial boundaries, the same content is being rapidly shared and viewed in different countries.

However, court orders are typically restricted to the territorial boundaries over which the court exercises jurisdiction. As a result, even if the content owner approaches a court for relief, and the content/posts are found to be infringing, effective relief is very difficult to obtain. Particularly when content goes viral on social media, it garners millions of views within a matter of minutes. Even if the infringing instances are confined to one territory at first, by the time a content owner approaches the appropriate forum and obtains relief, the content is likely to have already been shared outside the territory.

No global remedy

Copyright is often called a global right, but it is without a global remedy at present. The only recourse available to a content owner is to approach courts separately in all jurisdictions, which is not only cost and time-intensive but often logistically impossible.

The issue of copyright liability on social media networks arises at two levels: that of the user and that of the social media platforms or the intermediary. Whereas copyright liability of the user is always a primary liability, that of the intermediary is secondary *vis-à-vis* the content posted by its users. Further,

secondary liability contemplates actual knowledge of infringement on the part of the intermediary as opposed to general awareness.

Most social media networks employ terms and conditions that prohibit their users from posting third-party copyrighted works without authorisation of the copyright owner. As such, relief can be obtained only against the user, as the only party vested with primary liability. However, individually tracing every infringing copy of the work may be practically impossible for copyright owners.

With the proliferation of social media networks, the viral transmission of copyrighted content on these platforms can have an alarming and diminishing effect on the copyright of authors/content owners. The lack of effective remedy has led to content owners going after file-sharing platforms since they are viewed as facilitating piracy, an approach that is widely considered to be detrimental to innovation.

"Copyright owners will be left without any recourse but to continue fighting against file-sharing platforms or, alternatively, devalue their intellectual property."

However, if no resolution is found to the existing situation, copyright owners will be left without any recourse but to continue fighting against file-sharing platforms or, alternatively, devalue their intellectual property.

Many organisations such as music labels have already succumbed to these pressures and made their copyrighted content available on platforms such as YouTube in exchange for advertising revenue, at no cost to the user. Even though some jurisdictions have attempted to develop internal mechanisms to tackle the problem, there remains a void of any international body/system to address the issue.

Content owners are often left without effective immediate relief except the possibility of obtaining a meagre sum as damages. Since search engines such as Google have already found means to block access to some content such as that containing child pornography or acts of terrorism, a potential solution is for search engines to develop technology to block infringing/pirated content. However, given that most platforms are reluctant to carry out take-down/blocking measures in the absence of a court order, jurisdictional limitations of courts and varying domestic laws may still pose serious problems for content owners to get effective relief.

Need for an international forum

To mitigate these problems and offer effective remedy to content owners, it may now be time for the formation of an international centralised dispute resolution forum for copyright infringement/piracy on the internet, similar to the World Intellectual Property Organization's Uniform Domain-Name Dispute-Resolution Policy (UDRP). The UDRP mechanism is designed to curb bad-faith cybersquatting by facilitating the filing of a trademark complaint against an unauthorised registered domain name.

An international copyright dispute resolution forum may be particularly beneficial for straightforward claims of online piracy and claims involving high-volume uploads of infringing content. It would also offer the uploading entity an opportunity to respond to the claim and raise all its defences, including fair use.

Such a forum would not only offer a time and cost-efficient remedy to copyright owners for curbing piracy and infringement over the internet, but also relief which would not be shackled with territorial or jurisdictional constraints.

With future developments in technology and the possible development of blocking/identifying mechanisms for infringing copies of copyrighted content, the relief such a forum can offer would only increase, along with the chances of copyright owners finally receiving fair and prompt relief against piracy/infringement over the internet.

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