

Need to curb Infringement of Copyright on OTT

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Abstract

There was a time when people used to watch movies at a theatre. There was a time when people used to watch their favourite TV shows on a specific time. If they missed the show on specified time, they never used to get the second chance of viewing it again. But, with the growth in the technology, this barrier was resolved. The Over TheTop platform which came into existence has made significant change in everything. Today, people can view their favourite TV shows at any time and at any place. People can watch movies at their home's instead of going to the theatre. All the required things people can get it through their mobile phones with the help of OTT. This is possible because the Author of work comes up with the new and original ideas on OTT which helps him to get a good revenue for his well being. However such idea gets drastically failed when the cheaters try to steal the original idea of a person and creates the pirated version. The most sad part is when the cheaters doesn't get caught due to no strict laws framed by legislature for OTT platform. Hence the researcher through this research paper will prove as to how there is infringement of copyright on OTT platform, and why there is a need to bring strict laws and make amendment to the copyright Act 1957 which will help to curb the problem of infringement of copyright and help the author to create new work with innovative ideas on OTT platform which will not only help the viewers but in turn will help for the growth of economy.

Keywords: Copyright, Infringement, Internet, Over the Top.

Introduction

A country's growth is mainly dependent on it's people. With more knowledge, more experience and more intellect the people of country try to always create something new. Such Innovative idea is actually needed which can help not only the individual who creates it. But also, to the large number of audience. Such Individual who creates the new ideas is given protection for his work in the form of copyright. copyright is the right which is given to an individual for the expression of his idea. Such expression is mainly in the form of literary, dramatic, musical, Artistic, Sound recording and cinematographic film. As the Pandemic situation which came in the year 2020, people of the country could not watch the films at theatres and were locked in their houses. To overcome this difficulty for people, the OTT i.e. over- The -Top platform become a very good source. The Over-The-Top (OTT) is a web based platform in which through apps such as Netflix, Amazon Prime, Voot, Sony Liv etc, it offers all the Entertainment services directly to the people on their smart mobile or smart TV through the Internet. It also consist of phone and Messaging Apps such as Whatsapp, Telegram, zoom, google meet etc. On one hand, The OTT platform has helped millions of people during pandemic and also helped the Author of work to bring new things and earn the revenue. But on the other hand, it has also created a negative impact for the author. It has made the author of the work to suffer due to the infringement of his copyright work. Through this research paper, The researcher will explain as to how there is infringement of copyright on OTT platform, and why there is need to curb such copyright infringement and also how the government is required to take initiative to curb the copyright infringement.

Legal Analysis

Legal Analysis will help the researcher to prove as to how there is Infringement of copyright on OTT platform and how such problem can be put to an end.

1-What is copyright? What is infringement of copyright?

2-Does OTT Platform violates copyright?

3-Is it difficult to find out the individual who has made the infringement of copyright on OTT platform?

4-What are the provisions made under Copyright Act 1957 for infringement of copyright ? Does it cover OTT platform?

5-Is there any requirement of any amendments which is to be made in copyright Act 1957 which can help to control the problem of Infringement of copyright over OTT platform?

1-What is copyright? What is infringement of copyright?

Copyright is a right which is given to the author of work who has created the work by using his artistic skills. Such work which is created by the author by using his skill is original.

The author of work gets the right to reproduce the work which is created by him and also to distribute the same. The protection to the author is given by the Copyright Act 1957. Hence, if any individual without the permission of the author uses his work then it will amount to infringement of copyright. Such infringement of copyright has been defined under section 2(m) of the copyright Act 1957.

2-Does OTT Platform violates copyright?

The growth in technology as well as growth in the internet has become very advantageous but at the same time disadvantageous if linked with copyright infringement. The OTT platform which came into force through which audio as well as video content can be streamed online on internet has led to the cases of copyright Infringement. The platforms on OTT asks the viewers to pay money for the viewing the content due to which there are lot of avenues which provides all the pirated contents to the customer on internet free of cost which results into copyright Infringement. There are softwares like telegram where the people share the pirated content i.e. movies or web series which are actually available on OTT platform such as Netflix, Amazon Prime Video, Hotstar etc. Hence, The person who provides content on OTT platform loses lot of revenue due to this illegal activity because of the people who is involved in the infringement of copyright.

3-Is it difficult to find out the individual who has made the infringement of copyright on OTT platform?

To put a control on the infringement of copyright on OTT is not easy because the person who is involved in infringement cannot be found out. Also, it is not easy to find out and put a control on the various number of people who are having the access towards the infringing content. With the help of Virtual Private Networks, it increases the problem of finding out the person who is involved in infringement of copyright as the network easily allows the person an opportunity to view the required content easily, because the person's internet activity is not traced back to his IP address. If a person who has made infringement of copyright of OTT content is found out, the adjudication of his case can become a difficult task as there are various countries who are involved and finding out the jurisdiction can become very difficult. Also, the most important problem to find out the person who is involved in infringement of copyright is that there are number of people who are involved in copying of the content from various OTT platform and then reproducing it in a pirated version and then making the pirated copy available to public. Thus, it becomes difficult to identify the wrongdoer and assign liability for such activity.

4-What are the provisions made under Copyright Act 1957 for infringement of copyright ? Does it cover OTT platform?

The copyright Act 1957 has laid down certain provisions to tackle the infringement of copyright. Section 14 of copyright Act 1957 gives the power to the author of copyright to reproduce his work, issue copies of work, communicate the work to public and storing of the work. Further, Section 51 of Copyright act 1957 states that any person who issues copies or reproduces the work, or communicates work to public without the permission of the original author then such Act will amount to Infringement of copyright and the person will be liable for civil as well as criminal liability.

John Doe Order.

It is not easy to find out person who is involved in the infringement of copyright online, Hence to hold such person liable for infringement of copyright the Indian Judiciary mainly takes into account the John Doe order which is also known as the Ashok Kumar order. This order was first introduced in case of

Taj Television & Anrv. Rajan Mandal & odrs.

A John doe order gives a right to a person who is holding intellectual property right for his work. It helps him to give notice and take action against a person who is infringing his copyright and identity of such person is not known to him. The orders are passed under Order 38 Rule 1 and 2 of the civil procedure code 1908 which is read with Section 151 of the civil procedure Code and also the part III of the Specific relief Act, 1963 which deals with power of the court for granting a temporary injunction which prevails as a permanent injunction. In order to get a john Doe order the person has to fulfill certain criteria

1-The person who want the order from court has to prove to the court about the infringement of his copyright by some person.

2-The person has to prove that there is existence of prima facie case of infringement

3-The person has to prove to court that if the john doe order is not given then he can face financial damages.

Once the court agrees that plaintiff has fulfilled all the criteria for john doe order then it will pass the john doe order. The court can pass the order which will help the plaintiff to get the relief for blocking the access to the content for a particular period of time. The provision of john Doe orders is very helpful in case online infringement of work. Section 31 D of copyright Act 1957 gives protection to only those broadcasting organization which offers services or communicates the work to the public by way of broadcast or by way of performance of literary, musical, sound recording which has been published. Thus, the statutory recognition is not given to the OTT platform that is the internet broadcasting.

5-Is there any requirement of any amendments which is to be made in copyright Act 1957 which can help to control the problem of Infringement of copyright over OTT platform?

The people who are involved in development of software applications has to be aware and take appropriate measures as to how their products can be used for distribution of pirated content. Legislature is required to frame appropriate laws which can help to curb the problem of copyright infringement. In case of UTV software communication Ltd V.1337X to and Ors it was discussed that whenever a individual is trying to view the infringing content then a warning should be given to such individual from viewing or downloading such infringing material and still if he downloads then a fine should be levied on him.

There is requirement of laws which shall be in uniformity with the international treaties so that the problem of infringement of copyright over internet can be easily eradicated. It will also help to deal with the problem of jurisdiction in case of copyright infringement over internet. There is a need for an amendment under section 31D of copyright Act 1957 to replace the word radio broadcast and television broadcast for each time it is used with each mode of broadcast. Hence with this amendment,

it will cover all modes of broadcast under ambit of statutory licenses i.e. the OTT as well. In short, if tomorrow there is an infringement of copyright on OTT platform, then person can take the advantage of section 31 D stating that the term broadcast doesn't include OTT hence the pirated version which he has created do not fall under infringement of copyright. Hence, to avoid such problem there is a great need to bring changes in section 31 D and include OTT under the term broadcast.

Suggestions & Conclusions

From the above legal analysis concluding that with the growing need of technology there are new creations of people which can help for the development and growth of country. OTT is the platform which is mainly helping such talent to bring in new ideas. Hence to protect such new ideas there is a great need that the legislature is required to bring new laws which can be in uniform with international law. It will help to resolve the matter of jurisdiction which is mainly faced in infringement of copyright over Internet. Also when a person is trying to download any material, he is to be given warning for infringement of copyright and still if he downloads the content, a fine is required to be levied on him. The legislature also is required to bring an amendment to section 31 D of copyright Act 1957 and include the word OTT thus which can never create a question if in case there is infringement of copyright on OTT.

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