CHAPTER – 6

CONCLUSION & SUGGESTIONS

In our approach to the issue under consideration we have dealt with the enunciation of the concept of Copyright, and we have also considered the socio-cultural, scientific & economic applications and implications of the right, more specifically, in the digital context.

As we all know change is intrinsic to 'society', which never remains static but is always evolving, and, from time to time, witnesses new developments in social, scientific and economic fields. Under the foregoing chapters of this work-up, we have discussed the development of digital technology and the Internet in 'scientific sphere', and how these scientific developments have created problems before the economics, the sociology and the jurisprudence of copyright.

We witnessed that the binary language of zeros and ones has produced, Plasticity, transmissibility and processibility, referred to as attributes of digital society and how they have made it possible for the copyrighted material to be created and stored in electronic form on computers and how the computers containing the copyrighted material when attached to the Internet, called, the network of networks make it
possible for people to exchange and use in any manner they like such information between the computers from different locations across the world.

The Cases like the Napster have shown that the copyrighted works, so available are greatly vulnerable in view of the easy access of the common people and the possibility of unauthorized interference with, and transference of such works, freely and easily available on the Internet.

The authorities are grappling with this challenge posed before the existing legal norms and debates have started taking place in order to find solutions to the new problems created by the digital technology before the law.

In context of the copyright law, such views may pose a conflicting situation as the philosophies behind the copyright and internet are apparently not in consonance with each other.

The philosophy behind the copyright law suggests that the works in any form, produced by an author is the results of his own labour, skills and efforts, and are so produced to accrue material gains to the author concerned and being a negative right, mostly potent with positive
results, the objective behind the copyright law is to prevent others from using the copyrighted work, unauthorized. On the contrary the philosophy behind the internet, as suggested earlier, is freedom of information, i.e., unrestricted flow of information on the internet.

When faced with such a situation the problem before the copyright law is how to balance the rights of the users of the copyrighted material who claim to use it as their right to information against the rights of the authors of such materials, posted by them on the Internet.

A solution to such a situation has been suggested by Prof. Ashwani Kr. Bansal, as he suggests that the users of the Internet are entitled to deal with the content on the Internet in the same way as the viewers of the broadcast are entitled to deal with the broadcast material, for it is understood that the providing of the content on the Internet is communication to the public and hence amounts to publication of the work within meaning of section 3 of the copyright Act 1957.

Prof. Bansal further observes that if a copyrighted material of a third party, is posted on the new without authorisation from the right holder, then the action must be taken against tile person so violating the copyright but there may not be the same protection granted to the owner
in case he himself chooses to post this copyrighted material to be freely viewed by the public on the Internet.

It is submitted that the observation of Prof. Bansal is in tune with the philosophy of Copyright law as even the courts have recognized such exceptions for certain purposes.

Further more, as far as having access to the copyrighted material on the Internet is concerned they can be so accessed subject to some payment stipulated by the persons concerned. Besides this the fair dealing provisions provided under the copyright law, can also be resorted to by people other than the copyright owners for making use of the copyrighted material, provided the use is fair depending upon the prevalent notions of fair dealing.

In the discussion under the foregoing chapters this comes to the fore that there exists a sufficient legal regime at the International level in the form of several treaties and conventions to take care of the infringement of copyrighted material in the tangible or intangible form on the physical medium and these legal instruments contain sufficient norms regarding the basic minimum protection to the owners of copyright.
But as far as the question of violation of copyright on the Internet is concerned though the WCT and WPPT lay down minimum norms of protection to the copyright in the digital environment, but even these 'Internet treaties', do not address the issue of liability for violations of copyright nor do they address the issue of enforcement of copyright and related rights on the Internet.

Besides this, the inclusion of stringent provisions of criminal liability for the infringement of copyright, if intentional, on the Internet under the proposed cyber crime treaty is not justified as this is difficult to establish as whether the copyright violation on the Internet by the users or access providers is intentional or not. It is submitted that such a provision must be dropped from the proposed cyber crime treaty and must be substituted by civil penalty which would be reasonable in view of the nature of Internet, which is to facilitate the free flow of information all over.

Though this is well known by now that the Internet has removed all the geographical boundaries separating the countries and this phenomenon has posed problem before the legal community in determining the jurisdiction in case of dispute on the net But still there is no provision in any of the existing International legal instruments addressing the issue of determining the jurisdiction in case of a dispute
on the Internet. Even the WCT and WPPT are not forthright as regards this issue, though these treaties are meant, specifically, to be applied to the Internet.

The problem of jurisdiction is one of the most gravest challenges thrown by the Internet and needs to be taken care of immediately.

Recently a Russian software developer was arrested on the charge of breaching encryption code of a software developed by a U.S. company 'Adobe'. Whether an act which is an offence U.S. and not an offence under the law of other countries (in this case Russia) can be left to the individual choice of U.S. or for that purpose to any other country. It is an issue which needs urgent attention of law makers.

The discussion under the foregoing chapters of this work shows that many efforts have been made to bring the Copyright Act 1957 in tune with the digital technology and the Internet by way of amending the Act at various occasions.

The challenges posed by the digital technology were taken care of, for the first time, in 1984 when the Act was amended to include 'computer programme' as one of the literary works. The Act also includes by way of amendments the definitions of computer, computer
programme and it specifically mentions computer databases as a literary work.

The inclusion of the above mentioned terms and definitions make the Copyright Act applicable to computer programme and databases considered intellectual creations and are crucial for the functioning of the Internet.

Under the 1994 amendment Act—the inclusion of, the words, "including the storing of it in any medium by electronic means", into the reproduction right of authors of literary, dramatic or musical works under the Act, as well as, the definitions of cinematograph film and sound recording which include, "the recording of it in any medium," has extended the right of reproduction to the digital environment.

And the only work in relation to which these amendments have not been made, is the 'artistic works', as the amendment gives only the authors of literary, dramatic and musical works, the right to reproduction 'in any form'. Now as a result of the amendment, the right of reproduction, applies to nearly all works including the cinematograph films, sound recording and computer program in the digital environment.
But one most publicized issue, not taken care of by the Amendment, is the question of temporary storage of the copyrighted material on the Internet, as the mere access to any material results in automatic copying of it into the RAM of the user's computer. We may accept it as limitation of law against technological advancement.

As witnessed under the foregoing discussion, there is a division in approaches on the question, whether such a temporary storage of the copyrighted materials should be deemed as constituting reproduction or not. Groups representing users and service providers want exemption from considering such storage to be reproduction whereas others i.e. the content providers want otherwise.

As regards the status of browsing on the net, it has been suggested that when documents have been posted for public viewing or access on the net, all technological processes till the time it is viewed on the computer screen, are to be considered to be consented to by the person posting the material on the website.

In a important judgment by a US court in Religious technology v Netcom it was held that the temporary copy made in the RAM of computer is not violation of copyright. In the light of the facts mentioned
above, it is submitted that as mere access to any material on the Internet results in automatic copying of it, this would certainly be justifiable not to consider such temporary reproduction as part of the right of reproduction, save of course the intentional storing or downloading of the material or where it can be so done only against a payment and without the copyright owner's permission, for a proposition contrary to it would frustrate the very purpose behind the Internet, that is to facilitate the free flow of information all over the world.

Therefore, there must be included some provision into our Act, specifically, exempting such a temporary reproduction under the fair dealing provisions mentioned under our Act, provided such reproduction is for fair use and can also be so reproduced where it can be so done subject to some payment.

In addition, in context of the communication right, the definition of communication to the public under the act has been amended in 1994 which now includes, making the work available for being seen or heard or otherwise enjoyed by public regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.”
The 1994 amendment also provides for a right of communication in respect of nearly every type of work which together with the new definition of the communication go long way in bringing the communication right, in tune with the new environment.

But even the amendment in relation to the communication right does not cover performers as die right of making available to the public of their fixed performances has not been recognised under section 38 of the Copyright Act and also the definition of communication to the public in section 2 (ff) does not include a performance. Moreover, the question whether the proxy caching amounts to an act of communication to the public which affects’ the moral rights of authors if done unauthorisedly, has been left open;

Though the Copyright Act 1957 covers the online dissemination of works, but still, it is not in tune with the provisions of the WCT, for the Act does not specifically mentions the words, "making available to the public of their works in such a way that member of the public may access these works from a place and at a time individually chosen by them" required by the WCT to be included into national legislations hence there is a need that these words be included into the Indian Copyright Act 1957 whenever the Act is next amended.
As regards the distribution of the works, the Internet has changed all the earlier notions regarding the distribution as disseminating a work on the Internet can be considered as amounting to distribution of copies for the purposes of Copyright law. And a person making a copyrighted work available on the Internet may be violating the copyright law.

The WIPO Treaties provide for a right of distribution applicable on the digital medium authorising the authors to make the copies of their work available to public. These treaties give freedom to member countries to introduce into their national legislation, the suitable principles in this respect.

The Indian Copyright Act specifically recognises the right to issue copies of literary, dramatic, musical, artistic works and computer programmes. However this right does not extend to the authors, performers and phonogram producers, nor does it specifically refer that it be made applicable to the Internet.

As witnessed, the Moral Rights can also have copyright implications in the digital environment. This has been seen that the content on the Internet can easily be distorted, mutilated, modified and a false authorship to them can also be claimed. This poses a problem
before the owners of moral rights as the traditional norms governing moral rights are inadequate to address this problem.

Though Berne convention and WPPT provide for moral rights but the WCT not provide for author's moral rights and it is only Berne which can be referred in this regard. However Indian copyright act provides for a moral right for authors but even it does not provide for a specific provision which could afford protection the works on the Internet.

Regarding the Neighboring Rights, the technological developments like the Internet pose a problem before them also. All the international legal instruments including the Rome convention, Phonograms convention and the TRIPs agreement recognise neighboring rights. But the development of Internet has changed all the earlier notions of creation and transmission of the works.

And, in view of, this changed scenario the existing international norms were found inadequate to address the issues posed by the new technology. But recently enacted WIPO performances and Phonograms Treaty 1996 seems to address some of such issues in context of the digital environment.
Though our Copyright Act complies with the TRIPs, but there is no provision in it to make it WPPT compliant. The prospective convergence of technology may affect the neighboring rights, and their owners may need to negotiate and assign the entire rights excluding moral rights to one party to exploit the work in one media.

There is a need to address this issue in respect of our law, though the govt. has enacted a Convergence Bill 2000-2001 which has yet to become an Act. But this still is not sure that whether issues of related rights will feature in this Act or not.

There is no provision in Indian law as regards the circumvention of technological measures and the rights management information adopted to protect copyright on the Internet, as provided under the WCT and WPPT, required to be included into the national legislations of various member countries.

The US Digital Millenium Copyright Act 1998 (DMCA) of USA has provided for provisions which seek to prevent the circumvention of technological measures of protection, controlling access to a protected work, and thus allows the invention of technological tools to prevent the violation of copyright on the Internet. Besides this the DMCA also
incorporates provisions providing for the copyright management integrity on the Internet, and thus it complies with the mandate of WCT and WPPT.

It is submitted that as to accede to WCT and WPPT requires the inclusion of above mentioned provisions into the national legislations, it would be pertinent that India should make suitable amendments in the Copyright Act by including some provisions similar to the one provided under the WCT and WPPT in order not only to fulfill the gap in our law in this respect but also to make our law advanced and forward looking like the DMCA of America in order to meet the challenges posed by the digital technology, internationally.

As regards the liability of service providers there is no provision in the copyright act which could be interpreted to address the issue of liability of the service providers in cases of infringement of copyright arising out of their activities on the Internet.

However, the Indian Information Technology act 2000, provides for a provision exempting a service provider from any liability for the infringement of copyright through any activity of Ike provider on the Internet, in case he is able to fulfill the requisite conditions provided
therein i.e. "that the contravention was committed without his knowledge or that he exercised all due diligence prevent the commission of such offence or contravention."

But even the IT Act does not spell out clearly the liability of service providers and its only provision provided in the respect absolves the service providers of any liability if he proves his innocence.

It is submitted that the provision under section 79 IT Act, 2000 is insufficient to protect the interests of the Copyright holders, for the Act does not protect the interests of right holders, whereas it provides a blanket cover to the service providers and thus leaves gap between the interests of various parties that too, without any rational or justification.

On the other hand, as witnessed under the foregoing chapters, the law on this subject in America provides an opportunity to the right holders to make representation to the service providers against the presence of the infringing material on their networks. Though service providers have been given general exemption under the American Act, but they are still obliged to act promptly on receipt of such representation and remove or prevent access to, the infringing material and thus get absolved of any liability.
It is submitted that such a provision, is lacking in our law which may balance the interests of service providers and the right holders and also that the provisions fixing the liability should be enacted carefully balancing each party's interests so that various parties involved in making the Internet a functional medium are encouraged rather than discouraged in taking up the net, as their most coveted avocation.

Creativity and innovation and not merely originality should be the criteria of protection. As laid down by the courts in USA in *Fiest Publication case* that some modicum of creativity should be there before the protection could be granted. The same has been reiterated by the Indian supreme court also in *Eastern Book Company v. D.B. Modak* wherein the court has laid down that the original or innovative thoughts are necessary to establish copyright in author’s work and not the labour and capital but the labour, capital and judgement should be the criteria of copyright protection. That is why it is suggested that a relevant provision in this regard should be incorporated in the copyright act.

In *Shri Vardhman Rice and General Mills v. Amar Singh Chawalwala* the honourable Supreme Court has held that the matters relating to trademarks, copyrights and patent should be finally decided

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very expeditiously by the trial court instead of merely granting or refusing to grant injunction. Experience shows that in the matters of trade marks, copyrights and patents, litigation is mainly fought between the parties about the temporary injunction and that goes on for years and years and the result is that the suit is hardly decided finally.

The same has also been stated by the supreme court in other case decided by it namely, Bajaj Auto Ltd. v. TVS Motor Ltd.424

Although proviso (a) to Order 17 Rule 1(2) CPC Already provides for provisions to the effect however it is suggested that the ruling by the honourable Court should be taken in to account by all the authorities in India.

In order that the respect towards copyright could be enhanced it is necessary that its registration be made compulsory as it will also preclude the possibility of false claims that is why it is suggested that provision for compulsory registration should be incorporated in the Act.

Unlike the UK Act the word copy has not been defined under the Indian Act. Although the definition of infringing copy has been given under the Act, however the specific definition of as to what actually

424 (2009) 9 SCC 797
causes copying has not been provided for. It is suggested that the profession of copying must be defined properly in the Act.

India has not yet acceded to WCT and WPPT, however the incorporation of specific provisions in the Copyright Amendment Bill 2012 makes the Indian law compliant with the treaties to a great extent. Notwithstanding, India must accede and ratify both these treaties in order to comply with its obligation to abide by the international law generally.

A major issue of mass copying by the photo state machines in the University libraries and elsewhere is not taken care of even by the Copyright Amendment Bill 2012. Whereas specific provisions for imposing levies on sales of copying machines are incorporated under the UK act. Similar provisions can be introduced in the law in India also for saving the authors from the menace of mass violations of their rights.

A major issue of home recording of films, television programmers and music has not been taken care of by the copyright amendment act 2012 and in this way a serious issue has been ignored by the authorities in this respect. It is suggested that some kind of levy should also be imposed upon the sale of recording instruments and CD burring
software's, so that the unauthorized Home recording, causing immense loss to the TV and media industry, could be stopped.

A very important issue of determining the liability of the internet service providers for the violation of copyright by their activities on the internet site remains unaddressed as even under the Copyright Amendment Bill 2012 does not address this issue adequately, although it speaks about. Unlike USA which has made specific and special provisions in this regard there is only some provisions in this regard under the Indian Information Technology act 2000, which too is not sufficient to address the issue properly. Therefore, this is suggested that some specific measures addressing this issue elaborately should be incorporated in the Copyright Act.

As witnessed the foregoing chapter of this thesis, the Copyright Acts of UK and USA contain very exhaustive and comprehensive provisions concerning the law of copyright the long experience of these countries in tackling the issues relating to copyright is evidently richer than India and that is why their laws as seen, address and concern various areas not hitherto touched by the copyright lain in India. USA has even taken an unprecedented lead in this arena as it has enacted some of the most modern pieces of legislations such as the Digital
Millennium Copyright Act (DMCA), No Electronic Theft Act (NETA) and the computer Software Protection Act 1880 (CSPA), in order to specifically cater to the needs and requirements of the digital environment. Such steps have put these countries in the league of those nations which can claim as having the most modern law of copyright on the earth.

India is a signatory to the Berne, Rome and Universal Copyright Conventions etc. and also a member of WTO-TRIPs Agreement and shall soon have to sign WCT and WPPT also that is why it is incumbent upon it to take some guidance from laws in UK and USA and enact certain laws which could not only comply with these treaties and instruments but also to bring our laws in tune with the latest in the world.

Suggestions:

In the light of the foregoing discussion, the following legislative and administrative suggestions have been made:

(1) The Copyright Act should provide for photocopying in general terms subject to limitations and conditions to be prescribed by administrative regulations. Administrative regulation is preferred
to legislative amendments as the former can keep pace with the technological developments in a better and faster way rather than the latter. Moreover, Administrative authorities can easily come in direct contact with manufactures of photocopy machine, operators, users and can continuously monitor the advantages and disadvantages of photocopying.

(2) The government of India must encourage the libraries, publishers and other groups concerned to develop a working arrangement to maintain an equitable balance between authors and users of information. The Library Association should get together and work on drafting a ‘Reproduction of Material Code’ which should specify the policy for determining as to whether any act of copying is ‘Fair Dealing’ in consultation with authors and users i.e., research organizations, educational and professional institutions. The assistance can also be sought from non-government organizations (NGOs) who are actively involved in developmental programmes such as: education, research, scientific and development etc. For this purpose, This code should act as a guideline for authors and users of information.
(3) A new provision should be enacted for imposing equipment levy on photostat machines, sound and film recording equipment whereby manufacturers and importers pay a levy on blank audio/video recording media and photostat machine. The money collected should go to two different funds: one for composers and producers of music and films and second for authors and publishers.

(4) Home recording or recording for ‘private use’ should be inserted specially as an exception of fair dealing under section 52 of the Copyright Act 1957. India is a poor country where the source of entertainment in millions of houses, in rural as well as urban households, is listening to radio and taping songs and programmes from the radio and prerecorded cassettes of friends and relatives. Such a source of entertainment should be freely available to the people without any financial burden.

(5) Sec.52 should spell out some factors necessary for determining when ‘reproduction of a work without authorization’ results in ‘fair dealing’ of the work, as is done in some countries like United States of America and Singapore.
(6) Sec. 2 should be amended to include the definitions of “reproduction’, ‘fair dealing’ and ‘copying’ so that interpretation of sec.52 dealing with acts notamounting to infringement can be based on those definitions bringing more certainty and clarity in the law.

(7) For protection of producers of sound recordings and films the emphasis should be made on technological measures to prevent copying like SCMS etc.

(8) Digital browsing, for personal use including research, educational and teaching purposes should be treated as similar to browsing a book, i.e., not within the scope of right of reproduction of authors. A specific provision may be inserted in sec. 52 treating browsing under ‘fair dealing’ clause.

(9) Catching activity, for personal use including research, educational and teaching purposes should also be specifically included in ‘fair dealing like the activity of browsing.

(10) Links should be treated as “compilations” of addresses i.e., URLs and therefore, should be treated as subject matter of copyright like the “directory of addresses” but the protection should not be extended to the links themselves. The definition of literary work
including ‘compilation’ may have an explanation whereby it may be explained that links are compilation of addresses.

(11) Efforts to fight piracy and infringement of copyright should be harmonized and government should take the lead, like it is doing with the fight against counterfeit products.

(12) The police force and other law enforcement agencies should be trained to handle this crime. As such almost everybody believes that it is not a crime to steal one’s intellectual property.

(13) Effective protection of copyright enhances creativity and indeed the music and films industries in India have high potential of competing favorably in the world market, thereby earning India foreign exchange, just like the MERCOSUR and the European experiences.

(14) The Information Technology Act, 2000 briefly touches upon liability of Internet Service Providers. It deals only with computer crimes and not with the Intellectual Property Rights. For the purposes of liability of Internet Service Providers with respect to copyright of the authors the Copyright Act, 1957 should be amended on lines of DMCA, 1998 which contains elaborate provisions on safe harbors for ISPs and, therefore provides an equitable balance of interest between ISPs and copyright holders.
(15) The countries must work together for a uniform convention on jurisdictional issues in Internet in order to arrive at harmonious settlement of disputes in a certain and predictable manner. The need is to have uniform dispute resolution methods that are capable of cost effectively handling significant caseloads and delivering decisions that are enforceable internationally. As an established method of private dispute resolution, arbitration and comparable administrative procedures are well placed to meet these goals. The European Parliament has also indicated that online Alternative Dispute Resolution should be a priority.

(16) For implementation and enforcement of legal provision i.e., making legal tools a reality a few administrative measures should also be taken. For ex., an office should be set up at the centre to work as a coordinating agency between the special cells for copyright enforcement, established in various states of India to look after cases of copyright offences.

(17) Frequent online training programmes by the Government, seminars and interactive workshops with facility of videoconference and public outreach programmes should be held quite often where different sectors like chambers of commerce,
industry, business houses, universities, research institutes, scientists, performers, broadcasting organizations, police personal etc. should be connected together to prevent views on various aspects of intellectual property. These programmes and seminars should ensure that a link is created between theory and practice.

(18) Intellectual property guides in a simple language shall be distributed free of cost in areas where copying is rampant, for ex. Amongst teachers, students and researchers cyber cafes, xerox operators etc. The cable operators who are in direct touch with ‘home copiers‘ can be provided with such a guide for the purposes of distribution amongst viewers, i.e., the general public. CD ROMs based on actual and fictitious copyright cases can be prepared by some research organizations and be provided to small scale and big industries at a low cost, to equip them with provisions on intellectual property.

A well developed copyright regime with strong protection for rights of creators equitably balanced with the right to information of public provides a matrix for the growth of original and innovative work which, in turn leads to the growth and development of the society.