Neighboring Rights Law – WIPO

Part of: GS-II- International organisation-IPR (PT-MAINS-PERSONALITY TEST)

The French competition regulator has asked Google to negotiate with publishers and news agencies the remuneration due to them under the law relating to neighboring rights.

- The French regulator has announced that Google must start paying media for sharing their content, as its practices had caused serious harm to the press sector.
- The order is an interim decision. Though the order is only for the French press, it has global ramifications for Google and the press, as it can set a legal precedent and shape the discourse around the economics of news on the net.
- The neighboring rights law that came into force on 24th July, 2019 in France aims to set the conditions for a balanced negotiation between publishers, news agencies and digital platforms, in order to redefine, in favour of press publishers and news agencies, the sharing of the value between these actors.

Neighboring Rights

- According to the World Intellectual Property Organization (WIPO), related rights, also referred to as neighboring rights, protect the legal interests of certain persons and legal entities that contribute to making works available to the public or that produce subject matter which, while not qualifying as works under the copyright systems of all countries, contains sufficient creativity or technical and organizational skill to justify recognition of a copyright-like property right.
- Traditionally, related rights have been granted to three categories of beneficiaries:
  - Performers (actors/musicians);
  - Producers of sound recordings (also referred to as phonograms); and
  - Broadcasting organizations.

Protection in India

- The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright in an idea.
  - Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work.
  - Copyright is an Intellectual Property Right (IPR).
    - Intellectual Property Rights (IPR) are the rights given to persons over the creations of their minds: inventions, literary and artistic works, and symbols, names and images used in commerce.
    - Other IPRs include trademarks, geographical indications, industrial designs, patents, etc.
- Copyright as provided by the Indian Copyright Act is valid only within the borders of the country. To secure protection to Indian works in foreign countries, India has become a member of the following international conventions on copyright and neighbouring (related) rights:
Earlier news: Copyright Case verdict

In The Chancellor Masters and Scholars of the University of Oxford vs Rameshwari Photocopy Services case, the Delhi HC gave the verdict that photocopying portions of academic publications to make course packs for students does not amount to copyright infringement. Along with the verdict in Novartis case, this marks an important point in the evolution of IPR laws in the country.

Copyright is a legal right created by the law of a country that grants the creator of an original work exclusive rights for its use and distribution. This is usually only for a limited time. The exclusive rights are not absolute but limited by limitations and exceptions to copyright law, including fair use. A major limitation on copyright is that copyright protects only the original expression of ideas, and not the underlying ideas themselves. Copyright is a form of IPR that is recognized under the 1995 TRIPS Agreement.

Judgement by Delhi HC:

The Delhi HC in its verdict mentioned that copyright is a statutory right and not a natural right. Hence, any right that is granted to the owner is also limited by exceptions carved out by law. Section 52(1)(i) of Copyright Act of India provides that exception. It allows for reproduction of work in the following cases:

1. By a teacher or pupil in the course of instruction
2. As part of question to be answered in the course of the exam
3. As part of the answer given in the course of exam

The crux of the dispute was whether course packs fall within this exception. The petitioners tried to provide a narrow reading of the section, claiming that at best what the section allows for is the provision of materials in the course of a lecture and spatially restricted to a classroom. The court, while rejecting this claim, argues that “instruction” cannot be narrowly understood. It held that “when an action if onerously done is not an offence, it will not become an offence when owing to advancement in technology, doing thereof is simplified”. Photocopiers have made the task simpler and faster, but if the act of copying for a particular purpose is itself not illegal, and “the effect of the action is the same, the difference in the mode of action cannot make a difference so as to make one an offence”.

The court also questioned the unidimensional suggestion that the purpose of copyright is protection of the property rights of owners. It is designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public. Copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative
activity of authors and inventors in order to benefit the public.

**Impact of the judgement**

1. The judgment has immense consequences beyond India and is a bold articulation of the principles of equitable access to knowledge — and one that deserves to be emulated globally. For a while now, the globalisation of copyright norms through international law (Berne Convention, TRIPS Agreement) has been accompanied by the globalisation of copyright standards that have primarily emerged from the global north. Aggressively pushed by the copyright lobby, such as Hollywood, the music industry and the publishing cartels, copyright law had effectively been hijacked by narrow commercial interests (albeit always speaking in the name of authors and creators). Thus even when it came to discussing fair use and exceptions and limitations, countries have found themselves constrained by judicial precedents from the U.S. and elsewhere that have defined quantitative restrictions on photocopying.

2. The Delhi High Court has held that the exception in the copyright law provided for the reproduction of copyrighted work in the course of instruction for the purpose of teaching with the conviction that it does prejudice the legitimate interest of the authors. This is also in tune with the international obligation under TRIPS, which provides for reasonable exception by providing the flexibility for reproduction in certain cases. Access to education is an important consideration for a developing country like India where libraries and universities have to cope with the needs of thousands of students simultaneously, and it would be naïve to expect every student to buy copies of every book.

3. The judgment along with the judgement in the case of generic medicine (Novartis case) sets a precedent for developing countries around the world to follow. Sec 3(d) verdict has now been incorporated in the IPR laws of many developing countries such as South Africa and Phillipines.

4. It is important to note that in March 2013, over 300 academics — many of whose works were on reading lists in Delhi University syllabi — wrote to the publishers asking them to withdraw the case and expressed solidarity with the students.

5. The verdict may justly raise the concern whether conferring unrestricted reprographic rights on academic institutions will drive reputed publishers out of the field of education. It is true that academic publications, especially international ones, are expensive, putting them beyond the reach of many students. But the question is whether the balance between the competing interests has been fully preserved in the law. If reputed publishers feel that there is insufficient copyright protection and back out of educational publishing in the country, it will be equally injurious to the public interest.

**Conclusion:**

In light of the argument given by the court with regard to access to education the judgement is needed for a country like India where the demand for books is high and university and public libraries are short in supply, crowded and noisy. The Indian Copyright law and the exception provided under it (Section 52(1)(i) is fully compliant with international obligations under TRIPS and Berne Convention. Many of the published works are prohibitively expensive putting them beyond the reach of many students and the onus falls on these publishers to come up with innovative business models so that the cost impact on students can be reduced. In an era of rapidly evolving technology such as ebooks etc, coming up with cost effective solutions which
can enhance the reach of knowledge is the need of the hour.