

IMPACT OF INTELLECTUAL PROPERTY RIGHTS ON THE MUSIC AND FILM PIRACY: A GENERAL STUDY

YOGESH BAJPAI

yogibajpai73@gmail.com

Lecturer, Department of Library and Information Science
College of Natural and Computational Science
Mekelle University,
Ethiopia (N.E. Africa)

PARUL BAJPAI

parulbajpai@ymail.com

Assistant Professor, Department of Law
D.A.V.P.G College,
Dehradun
Uttarakhand, India

ABSTRACT

Film makers, musicians, writers, cinematographers, singers, choreographer.....without copyrights, none of these occupations could claim remuneration. But because culture must be accessible to the greatest number, UNESCO, WTO, WIPO are engaged in seeking the right balance between the interests of the artist and those of the general public. The new techniques of pirating musical recording or DVD's however, are threatening this fragile equilibrium. This paper presents an overview of the current scenario of music and film piracy in different parts of the world. Intellectual property right is working as a global protector to protect rights of original creator, authors etc.

INTRODUCTION-

In Dubai, Pakistan and Middle East, it is easy to buy a Hindi film in DVD format or VCD (a format which can stock video or audio data and still photographs, although with poor resolution) before it opens in theaters. Pirated film and discs sell like hot cakes: at stoplight, at Old Delhi street corner, and even cinema entrances where a ticket can cost up to 50 Rupees or US\$ 1 the price of pirated CD. Street vendors of illegally copied music, films or electronic games can often be found in the vicinity of secondary schools, and sometimes set up shop a few meters from the court house or the customs office (Daporta, Natalia. 2006).

Every industry that depends on copyright protection, including the software industries, music and movies, is facing tremendous losses from optical disc piracy. Countries put their economic future in jeopardy when they fail to adequately protect these industries'

intellectual property rights (IPR) from both optical disc and traditional forms of piracy. Piracy hinders the development of these industries in many countries and thus discourages potential investors, innovators, and the creation of valuable new jobs.

Optical discs include formats such as digital versatile discs (DVD), DVD-Recordable (DVD-R), compact discs (CD), CD-ROM, compact discs with recording cores of dye instead of metal (CD-R), video compact discs (VCD), and laser discs (LD). Optical discs are inexpensive to manufacture and easy to distribute, two features that make them highly vulnerable to piracy (Lee, Laura and Richardson Bonnie J. K. 2006).

WHAT IS PIRACY?

Piracy is the name given to the illegal copying and selling of DVDs and CDs. Many people see it as a crime that doesn't really matter because no-one is getting hurt, but this is not the case. Money generated by piracy is used by gangs of criminals to fund the sale of drugs and guns.

If you do buy an illegal copy, the quality of the recording is usually really bad. If it's a DVD, the picture will be grainy or change to black and white at some points, while the sound quality will often be muffled and very quiet. You won't be given a receipt so if it doesn't work, you won't be able to get a refund or an exchange.

DVDs

You may come across illegal pirate copies of DVDs or CDs in markets, car boot sales or online auction sites. They will be cheaper than they are on the high street, but they'll probably have been recorded on a camcorder at the back of a cinema or downloaded illegally from the internet.

Sometimes they are easy to spot, as they're not sold in a plastic case. But other things you should look out for include:

- if the film has just been released at the cinema, any DVD of it will definitely be illegal
- if the DVD packaging has any foreign languages on it, or if the description or cast list doesn't match the film you're buying, it's probably been produced on someone's home computer
- if the cover of the DVD doesn't have a film certificate on it that you recognize, such as 'PG', '15' or '18', it's likely to be a pirate copy

Illegal music downloads

Downloading music directly to your computer or an MP3 player is now almost as popular as buying CDs over the counter. It's cheaper and you can choose to pay per download or a standard fee every month for a certain number of tracks.

There are now lots of different sites that allow you to buy music online or get some legal download for free, but there are users of other sites that are breaking the law by using file-sharing networks to share copyrighted music.

Although file sharing or peer to peer (P2P) networks can be used legally to share photos that you've taken, or music and video files that you've produced yourself, you should not use them to download songs by your favorite artists for free, as they'll be copyrighted.

If you're caught illegally downloading copyrighted music or video from the internet, you may be faced with a fine that costs you thousands of pounds.

Copying CDs

If you've bought a CD, you can lend it to your friends if they want to listen to it. However, it's illegal to make copies of CDs and give them to your friends or to sell pirate copies of CDs for a profit.

In 2003, the U.S. motion picture industry, working with law enforcement agencies around the world, seized more than 52 million pirated optical discs.

Worldwide Music and Film Industry affected by Piracy –

In Mexico, the pirate Market sells 76 million records a year in over 50,000 sales outlets, outweighing the legal market that can only sell 56 million. Same story in India, which boasts the world's most prolific film industry. With 1,100 films produced in 2003, it far outstrips Hollywood's output. According to data provided by the Confederation of Indian Industry (CII), India's film industry loses US\$ 70 million per year to pirating, mostly because of illegal sales abroad. It is estimated that four out of ten Bollywood produced CDs and DVDs sold in the United Kingdom are counterfeit copies. These figures are even higher in Middle east, Pakistan, Bangladesh, or Sri Lanka—not counting films broadcast on cable television networks that don't pay royalties. And as music is a major ingredient of any self-respecting Bollywood drama, the musical rights can represent up to 15% of profits—or losses – on certain films (Kuntz, Lucia I.). In Pakistan, film theaters have all but disappeared.

The film industry in the United States loses 4 billion dollars a year because of pirating. In 2004, 34% of computer software was pirated, one per cent less than in 2003. Financial loss, however, increased at the same time from 29 to 33 billion dollars. A 10% reduction in software pirating would allow the creation of 1.5 million jobs and generate globally 64 billion dollars in taxes. In Columbia, authorities confiscated 37,000 pirated books in 1998 and 180,000 in 2003.

Intellectual Property Right as a Protector of Original creators

Intellectual or artistically gifted people have the right to prevent the unauthorized use or sale of their creations, just the same as owners of physical property, such as cars, buildings, and stores. Yet, compared to makers of chairs, refrigerators, and other tangible goods, people whose work is essentially intangible face more difficulties in earning a living if their claim to their creations is not respected. Artists, authors, inventors, and others unable to rely on locks and fences to protect their work turn to Intellectual Property rights to keep others from harvesting the fruits of their labour.

Beyond making it possible for innovators and artists to be compensated fairly and for countries to attract foreign investment and technology, intellectual property protection is critical to consumers. Most advances in transportation, communication, agriculture, and health care would not exist without strong IP support.

Increased recognitions and support of intellectual property also has much to do with the rapidly rising standards of living in countries like china and India. Just a few years ago, India was losing the battle to retain the best and the brightest of its engineers and computer scientists. The lack of protection for their intellectual property was forcing those scientist and technicians to immigrate to countries where their hard work could be protected and kept safe from unfair exploitation by competitors seeking easy advantages.

TYPES OF INTELLECTUAL PROPERTY RIGHT

- **Copy right** –copy right is a legal term describing the economic rights given to creators of literary and artistic works, including the right to reproduce the work, to make copies, and to perform or display the work publicly. Copy right offer essentially the only protection for music, films, novels, poems, architecture, and other work of cultural value. Copyrights also endure much longer than some other forms of Intellectual Property. The Berne Convention, the 1886 international agreement under which signatory states recognize each other's copyrighted works,

mandates that the period of copyright protection cover the life of the author plus 50 years. Under the Berne convention, literary, artistic, and other qualifying worker are protected by copyright as soon as they exist. No formal registration is needed to protect them in the countries party to that convention.

We can credit 17th century England with the concept of a “copy right”, a law that protects the creative products of authors, artists, singers, and, to reflect developments since the 1600s, filmmakers and software developers. This concept even has been enshrined in U.S. constitution, where Article I, Section 8, Clause 8 reads, “the Congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writing and discoveries (Wayne, Anthony E. 2006).

- **Tread Secret-** Business information that is the subject of reasonable efforts to preserve confidentiality and has value because it is not generally known in the trade. Such confidential information will be protected against those who obtain access through improper methods or by a breach of confidence. Infringement of a trade secret is a type of unfair competition.
- **Trade Marks-**A word, slogan, design, picture, or any other symbol used to identify and distinguish goods or any identifying symbol, including a word, design, or shape of a product or container, that qualifies for legal status as a trademark, service mark, collective mark, certification mark, trade name, or trade dress. Trademarks identify one seller’s goods and distinguish them from goods sold by others. They signify that all goods bearing the mark come from or are controlled by a single sources and care of an equal level of quality. A trademark is infringed by another if the second use causes confusion of source, affiliation, connection, or sponsorship.
- **Patents-** patents is a contract between society as a whole and an individual inventor. Under the terms of this social contract, the inventor is given the exclusive right to prevent others from making, using, and selling a patented invention for a fixed period of time- in most countries, for up to 20 years—in return for the inventor.

COUNTRIES ARE AWARE TO PROTECT CULTURAL HERITAGE-

India-The Indian Parliament has passed a law in 1999 to protect the intellectual Property right.

Estonia- Estonia's police Board and its Customs and Tax Board signed a cooperative agreement on December 27, 2004, that allows them to improve Estonia's IPR regime through the exchange of information on operations, investigations, and procedures. Both boards also are working more closely with the country'

Indonesia- Former Indonesian President Megawati Sokarnoputri signed Indonesia's first-ever optical disc regulations on October 5, 2004. The long-awaited regulations require producers to register their production facilities, maintain and report production records, and open their factories to unannounced police and/ or civil service investigators, among other measures.

South Korea- In January 2005 the South Korean Government's new actions to protect sound recording grabbed the attention of the Korean public. A drastic slide in revenues over the last three years for the music industry in South Korea, including both domestic and foreign rights holders, prompted the government to push through amendments to the country's Copyright Act that require prior permission from rights holders before anyone can download music from the Internet. In an effort to protect the "cultural future" of Korea—especially the "Korea Wave" of popular music, TV dramas, and films that permeates Asia—the government has been very aggressively raising public consciousness about the new rules.

Taiwan- a new law passed by Taiwan's Legislative Yuan on August 24, 2004, closes loopholes in the version they passed in 2003. the new bill makes any technology or information used for circumventing "anti piracy measures" a crime punishable by up to one year in prison and or a fine of up to approximately US\$8,000. It also allow to Taiwan Customs to impound goods, pending determination of their authenticity.

Paraguay- Paraguay moved forcefully in 2004 with legislation and enforcement actions that strengthen IPR protection For instance, the government worked with the private sector and supported the introduction of two draft laws that increase penalties in criminal cases of IPR violations, one law for copyright piracy and the other for counterfeiting. The draft laws increase penalties to five years or more, avoiding provisions for crimes with lower penalties that provide the option of paying a fine in lieu of jail time.

Burkina Faso- the director general of the government's office for the Rights of Authors, in turn, outlined Burkina Faso's anti-piracy strategy. The strategy will include setting up an independent anti-piracy organization; issuing a common policy with the neighboring countries to secure the borders against pirated goods; setting up a sub regional court in

charge of copyrights; providing intellectual property rights (IPR) training to judges, and gendarmes, police, and custom agents; and pressing criminal charges against pirates and sellers of pirated goods, of which there are an estimated 100,000 in Burkina Faso. The Majority of these sellers are street hawkers (Bureau of International Programs.2006)

INTERNATIONAL ORGANIZATIONS FOR INTELLECTUAL PROPERTY RIGHT-

Many international institutions, such as the World Bank, the World Intellectual Property Organization (WIPO), and even the United Nations Educational, Scientific, and Cultural Organization (UNESCO), recognize this link. In fact, if you visit UNESCO's web site (<http://www.unesco.org>), you will find an entire section devoted to the issue and a list of programs and publications that explain the benefits of copyright to educational, scientific and cultural policies and provide help in finding ways to fight piracy. Every April 23, on the anniversary of the deaths of both Miguel de Cervantes and William Shakespeare, a global tribute is paid to books and copyrights. In 1995, the UNESCO General Conference Proclaimed April 23 as World Book and Copyright Day, a day to promote reading and the protection of intellectual property. In addition, besides promoting legislation supporting copyright, the organization publishes the online copyright Bulletin and participates in campaigns to raise public awareness of the importance of copyrights. And to fight pirating, UNESCO has since 2004 organized training workshop involving police, customs and judicial authorities, notably in southern Europe and sub-Saharan Africa. UNESCO is also considering the creation of an observatory to follow pirating issues and serve as an electronic information centre.

INTERNATIONAL IPR TREATIES-

The international community, however, did not have single sources for intellectual property obligations and norms until the 1994 Uruguay Round of the General Agreement on Tariffs and Trades created the world Tread Organization (WTO) and included the Agreement on Trade-Related Aspect of Intellectual Property Rights (TRIPS).

The significance of the TRIPS Agreement is three-fold:

- It is the first single, truly international agreement that establishes minimum standards of protection for several forms of intellectual property.
- It is the first international intellectual property agreement that mandates details civil, criminal, and border enforcement provision; and

- It is the first international intellectual property agreement that is subject to binding, enforceable dispute settlement. TRIPS, in effect, lay the groundwork for a strong and modern IPR infrastructure for the world community (Salmon, Paul E. 2006).

The TRPIS Agreement came into force in 1995, as part of the Agreement Establishing the World Trade Organization. According to TRIPS, developed countries were to have implemented the agreement fully by January 1, 1996. Developing- country members and members in transition to a market economy were entitled to delay full implementation of TRIPS obligations until January 1, 2000. Least- developed members were given until January 1, 2006, to implement their obligations with the possibility of further transition upon request.

CONCLUSION

The whole world affected by different types of piracy. Not only original creators are losing their rights also governments are losing revenue due to different types of piracy. Somehow, we will have to stop all types of piracy including music and film. There are different types of organizations are working in the way but this is our moral and social duty to protect intellectual property. We have to boycott all type of pirated film and CD's, DVD's, and if any one involve in piracy we must inform to police, after that only we can save government revenue and rights of original creators.

REFERENCE

- Bureau of International Information programs. 2006. *Taking action: How countries are fighting IPR crime*. Focus on Intellectual Property Rights. Manila: U.S. Department of State.
- Daporta, Natalia. 2005. *Paraguay and the pirate's song*. Paris: The New Courier, UNESCO.
- Kuntz, Lucia I. 2005. *Seeking the right balance*. Paris: The New Courier, UNESCO.
- Lee, Laura and Richardson Bonnie J. K. 2006. *New Tools for fighting optical discs piracy*. Focus on Intellectual Property Rights. Manila: U.S. Department of State.
- Salmon, Paul E. 2006. *A short guide to Intellectual IPR treaties*. Focus on Intellectual Property Rights. Manila: U.S. Department of State.
- Wayne, Anthony E, 2006. *Why protecting intellectual property rights matters*. Focus on Intellectual Property Rights. Manila: U.S. Department of State.