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Online Copyright Protection in the Times of Hyperlinking

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The world of the internet serves many applications which also include hyperlinking a web page anyplace online and offline. The web page can be accessed at any time when the device is connected to the internet. The question of copyright infringement against the owner through the hyperlink of their work arises from time to time. When the attached links save time, however, many owners do not support the idea of their work being accessed anywhere anytime through another means. The argument considers interpreting the categorization of the use of hyperlinks so that it is easy to decide if it infringes the copyright of the owner or author of the work. Frequently, deciding on hyperlinks is a matter of discussion besides the article attempts to explain the matter with judicial decisions and a broad view of the sphere of links.

Keywords: *copyright, protection, hyperlink., infringement.*

INTRODUCTION

Copyright protects literary, artistic and cinematographic works created by different entities. It comes into existence immediately when the idea is expressed in some form. In the world of the internet, it becomes necessary to protect creations like websites or the transfer of links which make it easy for the users redirecting them to the piece of content they want to see. Sharing web pages is easier now than it was decades ago with the great network facilities in the realm

of coding. The exploitation of intellectual property often comes along with these web pages full of content leading to unlawful practices like infringing upon the work in unauthorized ways. A feature that follows through the World Wide Web is the extraction of links from any file on the web browser. The usage of links is the epitome of communication between various web pages online. Deep linking and surface linking are types of linking that allows access to files belonging to the same website or another with a click. In all instances, linking saves user's time through the functions it offers.

ROLE OF URL

URL stands for uniform resource locator which works by searching a link in the search bar of a web browser or by clicking on a hyperlinked text¹. Hyperlink helps the user navigate from one web page to another. Commonly known URL, Hypertext transfer protocol (HTTP) is a kind of Network management protocol that enables the user to access data on the web whereas HTTPS performs the same task and is comparatively considered secure. Documentation by Google has also suggested using HTTPS protocol for websites² and measures to switch from HTTP. Protocols enable the computer network dynamics to work efficiently by simplifying the language between various web servers and devices connected to the same network. For example, the troubleshooting protocol pops up when a computer device is not connected to the internet properly³.

ARE HYPERLINKS NECESSARY?

Hyperlinks make it easy for the internet user to reach a particular web page without searching for the same. Infringement through sharing a hyperlink arises when it leads to a commercial gain to the entity that hyperlinked it which the right holder is not aware of. The scope of a link

¹ Jessica Scarpati & John Burke, 'URL (Uniform Source Locator)' (*Tech Target*, September 2021) <<https://www.techtargget.com/searchnetworking/definition/URL>> accessed 22 March 2022

² 'Secure your site with HTTPS' (*Google Search Central*)

<<https://developers.google.com/search/docs/advanced/security/https#migrating>> accessed 22 March 2022

³ 'What Is a Network Protocol, and How Does It Work?' (*CompTIA*)

<<https://www.comptia.org/content/guides/what-is-a-network-protocol#:~:text=A%20network%20protocol%20is%20an,internal%20processes%2C%20structure%20or%20design>> accessed 22 March 2022

becomes broad with the roles of deep linking, surface linking, framing, and Inlining⁴. When linking on a website is such that it bypasses advertisements and other pages leaving the users confused if both websites relate to each other. This act is not considered a fair use of copyright and is referred to as deep linking.

DEEP LINKING

In the case of *Ticketmaster Corporation v Microsoft Corporation*⁵, the plaintiff operated an online website for selling tickets for events in the US. They did not embed the links to the tickets on their website but attached them to the home page of their website. Microsoft managed to embed the link deep for the tickets provided by the plaintiff in its website without any contractual obligation with the plaintiff.

The plaintiff had entered into contracts with other companies where they paid a sum to the plaintiff for making links available to ticket master. Using such link without any permission embedded deep attracted revenue from advertisements to 'sidewalk.com', a website of Microsoft. The plaintiff claimed it was not apparent for the users to figure out if it was fair use and also imbibed dilution of efforts and value ascertained by him. Microsoft on its side asserted that the plaintiff consented to the link by making it available on the first instance on the internet which can be accessed by anyone. The court claimed that there was no unfair act by the defendant but it was a matter of thought if the party was aware of any contracts and that no one can use the website for commercial use. The plaintiff contested that free linking on 'sidewalk.com' was an unlawful act to which the defendant removed the deep link and made direct access to the ticket master's web page. At last, the case was settled although the terms were kept confidential among both parties.

INLINE LINKING

⁴ 'Website Linking, Framing and Inlining' (*Find Law*, 20 June 2016)

<<https://www.findlaw.com/smallbusiness/business-operations/website-linking-framing-and-inlining.htm>> accessed 22 March 2022

⁵ Sidharth Behera, 'Ticketmaster Corporation vs Microsoft Corporation: A Case Comment' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-4395-ticketmaster-corporation-vs-microsoft-corporation-a-case-comment.html>> accessed 22 March 2022

It confuses the users to know the source and goes against the rights of an author by mutilating or modifying work. The moral rights of the author cannot be taken away by anyone irrespective of circumstances. In the case of *Leslie A. Kelly v Arriba Soft Corporation*⁶, the plaintiff was a professional photographer who found his work on a search engine by Arriba which is owned by the defendant. Having done it through inline linking, the defendant had pulled along the web pages in a way that their search engine reproduced thumbnails of the images from original websites. The thumbnail images would take the users to another window of the same website making the picture available in full size. The plaintiff claimed that the thumbnails of his pictures were also available on the defendant's website without his permission amounting to copyright infringement. The court refused because the defendants followed the fair use doctrine while creating thumbnails through Inline linking. The decision was reversed by the US Court of Appeals which stated that it was a copyright violation against the owner of those pictures. The court refused to accept that the defendants followed the fair use doctrine but diminished the rights of the plaintiff on those images.

FRAMING

It pulls other websites into one web page displaying the content from those websites in a frame of the webpage it does not belong to. Users can access the content of other websites by staying on it. These activities may amount to copyright infringement because the exercise diminishes the source for original websites as well as the revenue from the advertisement of those websites displayed in the frame of another site.⁷

IS THERE ANY INTERNATIONAL FRAMEWORK FOR PROTECTION?

Special agreement of Berne convention, WCT⁸ grants right of rental, distribution and communication to the public. These rights still stand relevant to the owners and authors of the work. The treaty extends its protection to computer databases and computer programs essential in creating intellectual work. To acknowledge it, it's established that data compilation

⁶ *Kelly v Arriba Soft Corp.*, [2002] 336 F.3d 811 [9th Cir.]

⁷ *Futuredantics, Inc. v Applied Anagramics, Inc., et al* [1998] Case No. CV 97-6991 ABC (Manx)

⁸ 'Summary of the WIPO Copyright Treaty (WCT) (1996)' (WIPO)

<https://www.wipo.int/treaties/en/ip/wct/summary_wct.html> accessed 22 March 2022

solely stands out of the scope of protection under the treaty unless it plays a crucial role in the creation of work. Due to the commercial aspect in distribution, licensing, and sale, it provides such authority to the owners subjected to the work. It applies to all the member states of WIPO and the European community. Recently amended Directive 2019/790⁹ of EU also provides a framework for the protection of copyright and related rights of creators. The focus is on the development at the community level so there is less disruption of loopholes at the national level.

CAN THERE BE A WAY TO DETERMINE COPYRIGHT INFRINGEMENT BY HYPERLINKS?

The person who owns the copyright will have the privilege to decide what can be reused of his Intellectual property and what cannot be. The law specifically requires that there should not be any use without prior authorization and compensation can be claimed against the same. The court also can decide if there's any infringement in the process of use or sale. If there has been no ground of threats to infringement against the defendant, the court has the power to grant relief by a declaration and can order an injunction or damages against the party that caused the threat.

The liability of attached links if they infringe on the copyright of another is well interpreted in the judgment of *Nils Svensson and others v Retriever Sverige AB*.¹⁰ The applicants were a group of journalists that claimed compensation against a website by Retriever Sverige before Stockholm district court for the use of a hyperlink that redirects viewers to their press articles. The hyperlinks were published on the website without any prior permission from the authors. The case involved interpretation of article 3 of the directive 2001/29/EC¹¹ which lays down the authority of communication to the public to the authors of member states. The communication

⁹ 'DIRECTIVE (EU) 2019/790 on copyright and related rights in the Digital Single Market, (*Official Journal of the European Union*, 17 May 2019) < <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN#d1e1075-92-1> >accessed 22 March 2022

¹⁰ *Nils Svensson, Sten Sjögren, Madelaine Sahlman, Pia Gadd v Retriever Sverige AB* [2014] Case No. 466/12

¹¹ 'DIRECTIVE 2001/29/EC on copyright and related rights in the Digital Single Market, (*EUR-Lex*, 22 June 2001) < <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0029> >accessed 22 March 2022

of work can be done either through wired or wireless means. Article 8¹² grants the author exclusive rights against making work available to the public at large in a way that any person can access it from any place at any time. The articles by the applicants were initially published and freely accessible on the website of Göteborgs-Posten. The website operated by Retriever Sverige provided clickable links to their clients which redirect them to another website of their subject interest. The applicants pointed out that it's unclear to the clients that the links available take them to another website to access the articles. The application was rejected by the Stockholm District Court and was brought before the Svea Court of Appeal. The applicants contested that Retriever Sverige failed to adhere to the exclusive rights of authors to communicate the work to the public by making the clickable links available on their website.

QUESTIONS BEFORE THE COURT

The court had to decide whether clickable links provided by a website on the internet infringe upon the copyright of work and pertains to the communication of that work to the public. Secondly, if the content of the attached link is unrestricted a user may be free of objections to article 3(1) of directive 2001/29 EC. Thirdly, if there must be a distinction between the links redirecting to another website giving the impression that it belongs to the same website, it's linked on. Fourthly, to analyse if there's a wider scope to article 3(1) of the directive that refers to communication to the public.

SIGNIFICANCE OF COMMUNICATION TO PUBLIC

The court construed concerning article 3(1) that the communication of work to the public is decided on the criteria based on an act of communication and that act of communication is done to the public by the copyright holder. It must be done in a way that the attached link on the first site redirects the user to another site where it's first made available on the internet without any restriction to access. The public here means a broad set of audience on the internet, which could access the work freely on the website before it's aware of the links on another. Here, the links attached did not redirect the protected work to a new audience that

¹² WIPO Copyright Treaty (WCT) (1996) (n 8)

could not access it at the place where it's published. So, permission from the copyright holder is not necessary for other websites to attach links making them accessible to a wider audience. Fourthly, it is agreed that there is a wider range to the communication of the public than article 3(2) of the directive has provided. As Berne convention allows member states to promote agreements effective in providing more rights in the development of intellectual property protection.

WHAT AMOUNTS TO INFRINGEMENT OF WORK THROUGH A HYPERLINK?

The websites that attach links that take the audience to the protected work when there's restricted access on the website for its particular audience amounts to a new public and actions can be taken against such. Hyperlinks act as a source to narrow down multiple web pages to reach the specific page directly with a click. As discussed in the Svensson case, hyperlinks were used as a means to refer to other websites where content based on users' interests was available through them.

Many times, the owner attaches links to its webpage so more viewers view it, which in turn, increases the target benefit for the webpage. To its contrast, many web pages hyperlink other websites that redirect the viewers to those websites owned by different people. Advertising is also a part that brings more revenue to the website owners but deep links go against the norms of navigation lowering the revenue from advertisements for the original website. It is crucial to decide if hyperlinks of the content available lawfully really amount to any copyright violation. It is streamlined in many judicial interpretations that identify unlawful acts by figuring out if the hyperlinked webpage has restricted access to its public.

CONCLUSION

The owners can be liable for copyright infringement when they use web links of other websites depending on the facts of the case, but it generates a good influx of users to the original website. Hyperlink works to redirect the user to another web page that makes a route for the original webpage in the end. The user can either open the webpage by searching through various web pages or by clicking on these hyperlinks to save time. Hyperlinks do not generate

any liability to the owner of another website if it's done fairly. Anyone can view the websites with open access on the internet. The web pages that hyperlink other websites certainly help the users to know about their presence. Think about a person unaware of the website that teaches how the solar system works. That person finds out about such a website while going through another webpage. The problem arises when another webpage makes it a norm to deep-link, inlink or frame practising commercial gain to the revenue that the main website could generate. It disrupts the business for the one that manages a particular amount of subscriptions. Making the content available for free on websites demean the commercial value created by the original website.