

Protection of Copyright Owners & Authors Rights in the Internet: A Comparative Analysis of IP Law in Sri Lanka and European Directives

Isuru Sri Bandara Nishshanka
Faculty of Computing
NSBM Green University Town
Homagama, Sri Lanka
ibandara4@gmail.com

Aparrajitha Ariyadasa
ATD Legal Associates
42 Galpotta Rd
Sri Jayawardenepura Kotte, Sri Lanka
aparrajitha@gmail.com

Abstract— Protection of copyright of original intellectual Creations has become an uphill task under the prevailing highly connected and complicated global environment with the digitalization and the internet. This paper scrutinizes the effectiveness of the copyright protection of the current legal regime in Sri Lanka in a comparative analysis with the European Union Directives in order to seek the answer for the research gap to conclude whether the Sri Lankan Intellectual Property (IP) regime is sufficient to safeguard the rights of the copyright owners and authors with the rapid involvement of the internet. This study is expedient due to lack of investigation in the Sri Lankan academia. The exploration rested on secondary sources and data was analyzed by a qualitative approach. Materials included national and international legislation, academic and media data. The study stood on the comparative legal analysis, integrated legal interpretation and modeling. In addition to that, key informants in the field were interviewed as a supplementary primary source of information. The research findings suggest the free riders are exploiting the existing loopholes of the legal systems and law enforcement areas. Therefore, a special emphasis should be paid to the protection of intellectual property rights on the internet. The article identifies major approaches in legislation and practice on EU regulations and explores a number of current options: IP enforcement as a harmonized and regulated or not regulated by separate rules of law, Digital Single Market etc. The research findings laid grounds for preliminary recommendations on legal drafting with regard to IP status as that of harmonized and autonomous legal personality. It could be concluded that the Sri Lankan IP Legislation consist of many lope holes to safe guard their copyright of the Owners and Authors due to

the territorial nature of enforcement, lack of harmonization and lack of proper regulations and awareness. In order to prevent those problems, it is suggested various options such as development and amendments of the national legislation, introduce IT-IP regulations, introduction of the data privacy Act etc. further research could be recommended to discover the challenges for IP law in artificial Intelligence.

Keywords— IP, Internet, Economic Rights, Moral Rights, EU Directives, Digital Single Market

I. INTRODUCTION

Copyright law is seeking to strike a balance between the rights of the creator and the copyright owner to manage and protect their businesses and work. Currently, copyright has become increasingly important, particularly in terms of accurately ensuring the source of information. The Internet has allowed the consumers across the globe to access information easily and with few boundaries. Yet this tool has also allowed the consumers to access and reproduce works without adhering to copyright requirements. How has the copyright law dealt with this problem and how can it seek to alleviate the boundaries set by internationality? And how is the Sri Lankan law support for the copyrighting laws locally and internationally. It is sad to mention that, the violation of the legitimate rights of the copyright owners has been gradually increased. Overall looking at EU laws, Laws of the EU are updated with the technological development and digitalization which was finally enacted with Intellectual Property Act No. 36 of 2003. The misappropriation of property rights

would challenge the interests of the owners who devoted their skills, interests and labor to create that work with a financial motive. The primary objective of this research is to identify, explore and analyze the changing nature of the challenges on copyrights and related rights in an era of digitalization. Currently, Intellectual Property plays a main role as a valuable intangible asset in digitalizing and developing world. It is mostly focused on the originality of ones work under digitalizing and developing technology (Inventions, computer applications, art, scientific inventions, etc.). Almost all the developing and developed countries are trying their best to protect the original work within their countries and outside due to the importance of their work. In order to overcome these problems, legal academia have been strengthened accordingly addressing the originality of the work. This article scrutinizes copyright laws in Sri Lanka to explore whether the Law is effectively responding challenges that are posed by the internet and digitalization, comparative to EU copyright law. Therefore, copyright and related rights can be considered as a one of the most important intellectual property rights which should be achieved. In order to reach the answers to the research problem, it is hereby questioned the Laws of Sri Lanka to protect copyright owners and authors, EU directives and the Comparative analysis to make recommendations and suggestions. Aims and objectives of this article is to understand whether the Sri Lankan Legal regime is sufficient to address online piracy of copyright. In order to reach the said aims and objectives, primary sources such as statutes and EU directives as well as secondary sources are used as methodology in this article. This research is limited to compare the Directive (EU) 2019/790 of The European Parliament and of The Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC with the Intellectual Property Act No.36 of 2003.

II. LITERATURE SURVEY

If economic losses are an indication of a crime's seriousness, and if current estimates are to be believed, then film piracy constitute a crime wave nearing epidemic proportions [1]. Apart from that, Danahar B., Smith M.D, Telang R. in 2019 discuss whether file sharing displaces sales

of media goods and then discuss whether such displacement will lead to reduced incentives to produce new creative works. They continue by summarizing recent findings on what businesses can do to compete with piracy and the effectiveness of antipiracy interventions on encouraging consumers to migrate from illegal to legal consumption channels. It was concluded by demonstrating that without additional empirical evidence, it will be difficult to determine the socially optimal set of strategies and government copyright policies in the digital era [2]. Choy D.Y Perez A, 2007 describes that online piracy has shown to be an important source of technological and strategic innovation to both industry incumbents and newcomers. They describe the evolution of pirate technologies and the associated online communities. Then, it examines the processes by which pirate technologies and communities have stimulated innovation and the creation of pirate as well as legitimate business models and conclude with some suggestions by which incumbents and entrepreneurs may deal with and take advantage of piracy. Online piracy has had and is likely to continue to have a large impact on the fast-changing media and software industries. Given the irrepressible growth of piracy communities, legal battles, while necessary, may be limited in their effectiveness. An alternative for both incumbents and entrepreneurs may be to view online piracy as a source of innovation that has been lacking in the traditional media sector. [3] Chaudry. P et al., 2011 addresses the increased willingness of younger generation towards pirate goods in the internet has led the academics to suggest new antipiracy technologies. [4] Batch. D, 2004 in his article concludes that more work on the intricate interplay of technology, business strategy, and public policy in necessary, particularly in the highly dynamic field of digital media could be suggested in order to reduce online piracy [5]. Jayawardena D.S.R. & Chandrathilake M.A.N. 2010, Investigated on the Sri Lankan Legal Regime and concludes that Ignorance and mis-understanding about the copyright Law, encouragement of infringement in Internet platforms and the existing "Doctrinal" approach to derivative work create overlap in the "idea/ Expression" dichotomy and require new approach to deal with digital environmental conditions. Law fails to provide justification for

the additional protection provided to the computer programs in comparison to other creative work. [6]

With the development of internet and the technology copyright laws are extend to the IT field as well. Discussing about Copyright law related to IT one of the most effective internationally recognized Copyright law is Europe union law. "Coherence has become particularly crucial in the EU's cyber security policy because, for a long time, its governance was highly scattered, with relevant actors working independently from each other in areas as distinct as law enforcement, critical information infrastructure protection, and defense. The continued pursuit of policy coherence, coupled with the sustained increase in attacks on critical information infrastructures and on personal and commercial data, led the EU to further reinforce its new role by publishing its first cyber security strategy in 2013 (European Commission and HREU, 2013)." According to Helena Carrapico & Andre Barrinha (2018) Europe Union Cyber Security law is more practical implementation to the law enforcement. According to Dr. Kanchana kariyawasam, Dr Chamila Thalagala and Dr. Althaf Marsoof() reasearch article "As identified by many research studies,1 "the present copyright law in Sri Lanka is an impediment to public access to knowledge, which is a prerequisite for a knowledge-based economy.

The stringent and unbalanced manner in which copyright owners rights are protected under Sri Lankan copyright law makes it highly doubtful whether the law caters to the current needs and interests of Sri Lanka and whether it supports the Government's aspirations of moving towards a knowledge based economy. "So there is a doubt whether this IP law can protect the copyright owner's right in knowledge-based economy. For this situation already Europe union have introduced many directives to IT field because knowledge-based economy rest upon top of the IT field because all the knowledge is share via internet or as computer programs.

III. COMPARATIVE ANALYSIS OF IP LAW IN SRI LANKA AND EU COPYRIGHT DIRECTIVES

The main objective of the Directive (EU) 2019/790 Of The European Parliament and of the Council of 17 April 2019 is that to make a harmonized legal framework which contributes to the proper functioning of the internal market, and

stimulates innovation, creativity, investment and production of new content, also in the digital environment, in order to avoid the fragmentation of the internal market. It further discusses about cross border use of the Copyrightable work. In particular, but not only, as regards the dissemination of out-of-commerce works and other subject matter and the online availability of audiovisual works on video-on-demand platforms, with a view to ensuring wider access to content. It also contains rules to facilitate the use of content in the public domain. In order to achieve a well-functioning and fair marketplace for copyright, there should also be rules on rights in publications, on the use of works which totally contrasts with the Sri Lankan IP Act and the objectives of the said Act has no clue with the inventions of the internet (Article 1-5).

Moreover, other subject matter by online service providers storing and giving access to user uploaded content, on the transparency of authors' and performers' contracts, on authors' and performers' remuneration, as well as a mechanism for the revocation of rights that authors and performers have transferred on an exclusive basis. Apart from that the Directive promotes academic research through internet while securing rights of the authors while safeguarding the cross-border involvements. It seeks a fair balance between the authors and other right holders while Sri Lankan Authors rights are limited to black letters which were drafted in the 2003 giving a territorial nature to the enforcement (Article 8).

However, in the Union, confronts text and data mining companies in order to protect data and insist them to obtain the authorization of the Authors and the Authors are highly safeguarded from text and data mining of content. In certain instances, text and data mining can involve acts protected by copyright, by the sui generis database right or by both, in particular, the reproduction of works or other subject matter, the extraction of contents from a database or both which occur for example when the data are normalized in the process of text and data mining. Where no exception or limitation applies, an authorization to undertake such acts is required from right holders (Article 9).

EU Directives specifically elaborates the fair use of copyrightable work by giving the loop hole to data mining companies while Sri Lankan Law doesn't utter a word about digitization and data

mining. Even though the fair use exception is elaborated in the IP Act, it doesn't specify the digital data and Work.

License of material to harmonize the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities, the arrangements for implementation can vary from one Member State to another, to the extent that they do not hamper the effective application of the exception or limitation or cross-border uses of the content. Sri Lankan Law being a territorial Law, is therefore been unable to address Cross border Piracy of Digital Work.

EU Directives forces the Member States to provide for an exception to permit cultural heritage institutions to reproduce works and other subject matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports or to insure such works and other subject matter. Even though Sri Lankan IP Act protects Folklore by its section 6, there have not been mechanisms suggested to protect rights and licensing mechanisms to secure them. The provisions on collective licensing of out-of-commerce works or other subject matter introduced by this Directive might not provide a solution for all cases in which cultural heritage institutions encounter difficulties in obtaining all the necessary authorizations from right holders for the use of such out-of-commerce works or other subject matter.

EU Directives strongly suggest Member States should ensure that appropriate safeguards are in place to protect the legitimate interests of right holders that have not mandated the organization offering the license and that those safeguards apply in a non-discriminatory manner. Even though IP Act safeguards owner and authors by way of the Section 9 and 10, there is no proper mechanism stipulated in the Act.

Video-on-demand services have the potential to play a decisive role in the dissemination of audiovisual works across the EU. However, the availability of such works, in particular European works, on video-on-demand services remains limited. Agreements on the online exploitation of such works can be difficult to conclude due to issues related to the licensing of rights. Such issues could, for instance, arise when the holder of the rights for a given territory has a low economic incentive to exploit a work online and

does not license or holds back the online rights, which can lead to audiovisual works being unavailable on video-on-demand services. Other issues could relate to windows of exploitation (Article 51).

It is addressed that online content-sharing service providers perform an act of communication to the public or of making available to the public when they give the public access to copyright protected works or other protected subject matter uploaded by their users. (Article 64). It is appropriate to provide for a specific liability mechanism for the purposes of this Directive for cases in which no authorization has been granted (Article 66). Apart from that, Enforcement mechanism of the National laws should be in compliance with the EU Law. In contrast, the IP Act is silent on the online content sharing even though it protects literary work by way of Section 06 of the IP Act and also the territorial nature of the enforcement of copyright law (Section 120) has become a barrier in taking actions against infringement of online content. EU Suggests strong assessment criteria for the owners of copyright online content-sharing service provider has made its best efforts in accordance with the high industry standards of professional diligence, account should be taken of whether the service provider has taken all the steps that would be taken by a diligent operator to achieve the result of preventing the availability of unauthorized works or other subject matter on its website, taking into account best industry practices and the effectiveness of the steps taken in light of all relevant factors and developments, as well as the principle of proportionality. (Article 66). Sri Lankan Law is totally silent about the content providers and it doesn't speak about the intermediary liability.

The rules provided for in EU Directive are intended to take into account the specific case of start-up companies working with user uploads to develop new business models (Article 67) and online content providers should be transparent with right holders. (Article 68) apart from that, EU has been elaborated the fair use exemption on the contents of on-line service providers. (Article 69, 70). Remuneration of authors and performers should be appropriate and proportionate to the actual or potential economic value of the licensed or transferred rights, taking into account the author's or performer's contribution to the overall work or other subject matter and all other circumstances of the case, such as market

practices or the actual exploitation of the work. A lump sum payment can also constitute proportionate remuneration, but it should not be the rule. Member States should have the freedom to define specific cases for the application of lump sums, taking into account the specificities of each sector. Member States should be free to implement the principle of appropriate and proportionate remuneration through different existing or newly introduced mechanisms, which could include collective bargaining and other mechanisms, provided that such mechanisms are in conformity with applicable Union law (Article 73). Similarly, in IP Act Moral rights recognizes the remuneration of the Authors.

III. CONCLUSION

In conclusion, Law of the EU is properly updated in accordance with the technological development and digitalization. In contrast to the IP Law of Sri Lanka, EU Directives lays down aiming to harmonize the law applicable to copyright in the framework of the internal market, taking into account, in particular, digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations to copyright and related rights, on the facilitation of licenses, as well as rules which aim to ensure a well-functioning marketplace for the exploitation of works and other subject matter. Moreover, EU Directives introduce Digital Single Market Strategy to secure the online content. Apart from that it emphasizes the exemptions for Text and data mining for the purposes of scientific research, cross boarder teaching and cross border cultural heritage. It takes measures to improve licensing and collective licensing practices and ensure wider access to content while giving a recognition and remuneration to the Authors of the content. Apart from that, Access to and availability of audiovisual works on video-on-demand platforms and the intermediary liability of the on-line platforms are properly addressed in EU Directives. Apart from that, Works of visual art in the public domain, work of online press publications, use of protected content by online content-sharing service providers and Fair remuneration in exploitation contracts of authors are elaborated and liabilities are specified in its articles.

Transparency obligation of the Member states to ensure that authors receive a remuneration on a

regular basis will not deprive the authors by content piracy. Alternate dispute resolution procedure will lower the number of court cases of IP related nature. Apart from that protection of personnel data will ensure the data privacy of the authors. Apart from the above gaps, Sri Lankan Law have already been analyzed as a territorial law in the enforcement and lack of harmonization of the IP Law have made barriers to preserve the content in the internet.

Therefore, it is suggested to amend the IP Act accordingly and also make rules and regulations to regulate the internet making intermediaries liable for copyright infringement.

Literature is suggested to research mechanisms and regulations to harmonize IP the laws in Sri Lanka with other nations and also further research could be recommended to discover the challenges for IP law in artificial Intelligence.

REFERENCES

- [1] M. Yar, "The Global 'Epidemic' of Movie 'Piracy'; Crime Wave or Social Construction?," *Media Culture and Society*, vol. 677, no. 27, p. 21, 2005.
- [2] Brett Danaher, "Piracy and Copyright Enforcement Mechanisms," *Economic Research*, vol. 2, no. 5, p. 37, 2019.
- [3] D. Y. Choi, "Online Pirecy, Inovation and Legitimate Business Models," *Technovation*, vol. 27, no. 3, pp. 167-178, 2006.
- [4] Peggy E. Chaudry, "Piracy in Cyber Space: Consumer Complicity, Pirates and Enterprice Enforcement," *Enterprice Information Systems*, vol. 01, no. 01, pp. 1-18, 2011.
- [5] D. Batch, "The Double Punch of Law and Technology: Fighting Music Piracy or Remrking Copyright Law in the Difital Age.," *Business and Politics*, vol. 6, no. 2, p. 35, 2004.
- [6] D.S.R.Jayawardena, "Evolution of the Digital Copyright Industry: Are We Ready to Face," *K.D.U.Law Journal*, vol. 4, no. 3, p. 6, 2010.
- [7] David Choy, "Online Pirecy, Innovation and Legitimate Business Models," *Technovation*, vol. 27, no. 3, pp. 167-178, 2007.
- [8] Directive (EU) 2019/790 of The European Parliament and of The Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC 9 and 2001/29/EC
- [9] Intellectual Property Act No.36 of 2003 in the Democratic Socialist RepublicMcKinsey (2015), 2015. Unlocking the potential of the Internet of Things