

In Quest of Resolving Online Copyright Infringements: Challenges and Way outs

Mohammad Ataul Karim *

Abstract

Remedying process of online copyright infringements suffers serious setbacks and unprecedented challenges due to the territorial nature of IPRs enforcement. Owing to the peculiar nature of internet, questions pertaining to choice of law, choice of jurisdiction, choice of forum and recognition & enforcement of foreign judgment are the complicated issues that arise in online copyright dispute. Encountering the exposed challenges successfully, three way outs are possible: firstly, universalism within the auspices of WIPO, where member States will be required to harmonize their laws up to a minimum threshold; secondly, regional arrangements like EU under umbrella of regionalism and finally, specific response on case to case basis by concerned Statehood under which a just and fair jurisprudence may be evolved through State practice and case laws. The paper explores the issues and concludes that the first option may take time and would be difficult one to put into practice because of the diversities of State laws. On the other hand, the last two way outs are more suitable and already in vogue because of their compatibility with nature of the challenges within present online environment.

Keywords : Online copyright, copyright infringement, resolving process, challenges, way outs.

Introduction

Internet as a modern technological medium has widened the scope for exploiting benefits from Intellectual Property Rights (IPRs) both commercially and non-commercially. It has also broadened the scope of violating IPRs along with opportunities of reaping out the benefits. Copyright infringements on internet have relatively raised in an apprehending magnitude in recent times. Addressing such violations through the appropriate laws and mechanisms is a matter of great

* Lecturer, Department of Law, East West University, E-mail: karimataul24@gmail.com

challenge for the reason of territorial approach to enforce IPRs amongst others.¹

Internet as a ubiquitous medium naturally has cross border implications. As a result, violation of copyright on internet has trans-national or extra-territorial issues such as choice of law, jurisdictional difficulty, recognition and enforcement of foreign judgments. Thus, the challenges are multiple in modern days. Despite those difficulties or challenges, one's legal rights should not be refused to be recognized and enforced. If not, it would tantamount to violation of fundamental principle of remedy.² In this backdrop, certain rules, regulations and mechanisms should be designed to resolve the problems which have cross border implications. This article, would attempt to identify the challenges in resolving copyright violation on internet. It also explores the possible way outs to overcome those challenges.

Methods and Materials

The article is exploratory as well as analytical in its nature. Both qualitative and quantitative methods are applied in this article, with special dominance of qualitative approach. Data and information are collected from both primary and secondary sources. Primary source includes International instruments, Statutes, State practice, Case laws etc. On the other hand, secondary source includes books, journals, research papers, etc. Since it is a legal research, thus, special emphasis has been given to contents analysis, documents analysis and finally, case laws of countries from different jurisdictions. In doing case analysis, it takes into consideration some famous cases, mainly, Lucas Film Case³ and Football Dataco Case⁴ along with others.

¹ Jurcys, Paulius, *The Role of the Territoriality Principle in Modern Intellectual Property Regimes: Institutional Lessons from Japan* (2010). Retrieved from <http://ssrn.com/abstract=1663219> or <http://dx.doi.org/10.2139/ssrn.1663219> last accessed on April 10, 2014.

² One of the general legal principles in this regard is *Ubi jus ibi remedium* which means where there is right, there is remedy. See, Tracy A. Thomas, *Ubi Jus, Ibi Remedium: The Fundamental Right to a Remedy*, San Diego Law Review, Vol. 41, p.163 (2004) Retrieved from http://works.bepress.com/tracy_thomas/12/ last accessed on April 21, 2014.

³ *Lucas Film Limited and others Vs. Andrew Ainsworth and another*, (2011) On appeal (2009) EWCA Civ 1328, and finally decided (2011) UKSC 39. Retrieved from www.supremecourt.uk/decided-cases/docs/FUKSC_2010_0015_Judgment.pdf last accessed on April 10, 2014.

⁴ *Football Dataco Limited and others Vs. Sportradar GmbH (a company registered in Germany) and Sportradar AG (a company registered in Switzerland)*, (2012)

Research Objectives

The general objective of this article is to identify the challenges in remedying online copyright infringement, and thereby exploring the ways and means to overcome those challenges. In pursuance with the general objective, the article will tend to answer the following specific research questions:

1. How would the situations be handled, where one of the parties is from foreign jurisdiction? Or if none of them is a citizen of the country where act of infringement has taken place?
2. Which country should have jurisdiction? Which laws should be applied in disposing of the disputes with *foreign elements*?
3. How could the judgment of one country be recognized and enforced in other country? Laws of the different States are generally in different standards, but according to the *sovereignty doctrine* every State is of equal status. It is, therefore, a relevant question which law should be respected?

Copyright Protection in Digital Media

Copyright is a legal term which describes the rights that authors have over their original literary and artistic works. Works covered by scientific copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.⁵ Copyright confers bundle of exclusive rights to the author and at the same time it excludes the third party from 'free riding' on the copyrighted materials. Originality of the work is the key criteria for providing copyright. The concept of originality may vary from one jurisdiction to another. However, it is plausibly acceptable in copyright jurisprudence that there must be a minimum substantial difference in the literary or artistic works to justify such works as copyrightable. It is also important to note that novelty of any literary or artistic works must be in terms of expressions of the ideas not the ideas, procedures, mathematical concepts as such.⁶

EWHC 1185 (Ch). Retrieved from <http://www.bailii.org/ew/cases/EWHC/Ch/2012/1185.html> last accessed on March 29, 2014.

⁵ See, What is Copyright? Available at <http://www.wipo.int/copyright/en/> last visited on For more see, *Understanding Copyright and Related Right*, Retrieved from www.wipo.int/edocs/pubdocs/en/intproperty/909/wipo_pub_909.pdf last accessed on March 12, 2014. Copyrighted materials also connected to the internet and are protected by national and international instruments. See, *WIPO Internet Treaties, WCT, 1996 & WPPT, 1996* Retrieved from http://www.wipo.int/copyright/en/activities/internet_treaties.html last accessed on March 23, 2014

⁶ See, Article 9(2) of TRIPS Agreement, 1994

Copyright protection in digital media is a complicated issue because of the nature of protection in general and mass access by the internet users in particular. The WIPO Copyright Treaty, 1996 explains the copyright protection in relation to the digital media, basically the copyright protection for computer program and compilation of data.⁷ It accommodates copyright protection for digital media in the same way as it is applicable to literary and artistic works under the Bern Convention, 1886. The Treaty recognizes right of author to communicate or make available of his/her works in the digital media. Any of such communication without the prior consent of the author would tantamount to infringement of copyright in the digital media.⁸ Bangladesh Copyright Act, 2000 does not specifically provide any definition of copyright. It does not explicitly enjoin any provision for protection of copyright in the digital format either. However, the subject matters of copyright as enshrined in Bangladesh Copyright Act, 2000 entail the positive presumption on copyright protection in digital media.⁹

Challenges in Resolving Copyright Violation on Internet

Internet being a ubiquitous medium provides the access to copyrighted materials almost from anywhere of the world if there is internet connection. Such access carries the possibilities of infringement of copyright both within and beyond the national jurisdiction of a country where it is protected. Where the plaintiff and the defendant are within the national jurisdiction of a country, it is easier to try and give the remedy than the situations when such country lacks territorial jurisdiction to any or both of the parties.

For instance, in *Shetland Times Ltd vs. Wills*,¹⁰ the claimant owned a newspaper called *Shetland Times (the Times)* which also was available on the internet. The defendants developed news website where claimant's news paper's link was available without showing the front page. Claimant contended that it amounts to infringement of copyright since it was without authorization and acknowledgement of him. It resulted in commercial loss to the claimant as it did not show front page of the news paper. The UK court accepted the claim and granted an injunction not to carry on such act by the defendants. The court had little difficulty since

⁷ Article 4 and 5, The WIPO Copyright Treaty, (WCT) 1996.

⁸ Article 6, The WIPO Copyright Treaty, (WCT) 1996.

⁹ Section 14, The Bangladesh Copyright Act, 2000.

¹⁰ (1997)F.S.R. 604(OH), Retrieved http://www.internetlibrary.com/cases/lib_case194.cfm last accessed on May 15, 2014.

both the parties were within the domestic jurisdiction. However, the scenario would have been different and much more complicated if it was a cross border copyright dispute.

Cross Border Issues: What to and What not to Respect?

In the aforesaid case, both the parties were under the territorial jurisdiction of concern State, thus, the court had little difficulty in disposing the matters. However, what if the parties are from different countries or if none of them is a citizen of the country where act of infringement has taken place? Which country should have jurisdiction? Which laws should be applied in disposing the dispute? How could the judgment of one country be recognized and enforced in other country? Laws of one State may not be of the same standards with those of another State. Furthermore, every sovereign State is of equal status in the eyes of law then, what to, and what not respect? These are the complicated issues that have to be settled for ensuring smooth remedying process of cross border dispute of copyright infringement.

In *Lucas Film Limited and others Vs. Andrew Ainsworth and another*,¹¹ the claimants were the companies from the U.S. and the defendants were from the U.K. The defendants were accused of soliciting activities over the internet to U.S. customers of such materials that were protected under U.S. copyrights law. So, the claimants sued the defendants in the U.S. court for infringement of copyright. Thereafter, the claimants got an uncontested (as the defendants did not appear before U.S. court) decree of \$20 million as compensation for the violation of copyright. Later on, the claimants filed a petition in U.K. court to recognize and enforce the decree that they got in U.S. court. Consequently, the difficulties on remedying of copyright violation over internet got a new avenue to be looked into.

Another recent case *Football Dataco Limited and others Vs. Sportradar GmbH (a company registered in Germany) and Sportradar AG (a company registered in Switzerland)*,¹² where the claimants who

¹¹ *Lucas Film Limited and others Vs. Andrew Ainsworth and another*, (2011) On appeal (2009) EWCA Civ 1328, and finally decided (2011) UKSC 39. Retrieved from [www.supremecourt.uk%2Fdecided-cases%2Fdocs%2FUKSC_2010_0015 Judgment.pdf](http://www.supremecourt.uk%2Fdecided-cases%2Fdocs%2FUKSC_2010_0015_Judgment.pdf) last accessed on May 10, 2014.

¹² *Football Dataco Limited and others Vs. Sportradar GmbH (a company registered in Germany) and Sportradar AG (a company registered in Switzerland)*, (2012) EWHC 1185 (Ch). Retrieved from <http://www.bailii.org/ew/cases/EWHC/Ch/2012/1185.html> last accessed on May 29, 2014.

were from the U.K., claimed that both the defendants infringed the *sui generis* protection and copyrights of the claimants as they ‘copied’ and ‘re-utilized’ the sport database that were available on the claimant’s website. These data were collected and compiled by the skilled ex-football players who were employed by the claimants. Questions of ‘jurisdiction’ over the defendants and soliciting on internet, whether at all infringement, were before the court to be settled to resolve the dispute.

Choice of Jurisdiction: Personal or Subject Matter?

In an online copyright infringement, the matter of jurisdiction over the defendant is very significant for giving the claimant proper remedy, the same is equally important in relation to the claimant. A State may have personal jurisdiction because one of the parties is resident or domicile of the State. However, it may lack of subject matter jurisdiction because the infringing act or acts committed beyond its territorial jurisdiction, or vice-versa.

In Locus Film Case U.K. court held that, as the defendants reside in its territory, it has ‘personal jurisdiction’. However, it refused to enforce the U.S. judgment on the plea that it lacks ‘subject matter jurisdiction’ since the alleged infringement occurred on the domain of the United States. Thereafter, in final judgment the Supreme Court of U.K. reversed the decision maintaining that “...We have come to the firm conclusion that... the claim is one over which the English Court has the jurisdiction.”¹³ In Football Dataco Case, the court of U.K. accepted the “subject matter jurisdiction’ (since infringement happened in the domain of the U.K.) despite it lacked the ‘personal jurisdiction’ over the defendants (as the defendants were from Germany and Switzerland).

In many cases, the courts of a particular country refused jurisdiction on the ground of State’s interests, i.e. plaintiff’s State is more willing to and defendant’s State is more reluctant to exercise jurisdiction on this aspect. In this regard, the former gets benefits and the latter suffers compensations if the case is proved. Thus, because of the unwillingness of defendant’s States to enforce foreign judgment, in most of the cases, the infringements of copyright on internet go unpunished.

Choice of Law: Defendant’s or Plaintiff’s State?

In a copyright violation on internet, under which law the issue should be disposed of is a very relevant and pertinent question. Plaintiff may claim

¹³ Ibid, Para-105, (2011) UKSC 39

the law is favorable to him and so is the defendant. “The Plaintiff State has no interest in protecting the defendant who comes from another State and the defendant’s State has no reason to give plaintiff more compensations than he would get under the law of his own State.”¹⁴ Laws of one State may not and practically do not have the same standards with those of another State. Furthermore, every sovereign State is of equal status in the eyes of law, then, what to and what not to respect? For example, The Copyright Act 1976 of the U.S.A has the provisions of contributory infringement and fair use defence. The Copyright, Design and Patent Act 1988 (CDPA) of the U.K., has the rules regarding secondary infringement with lower level of involvement of the infringers as internet service providers. The internet service providers are held responsible when they have ‘reason to believe’ to possess and distribute the infringing acts. Moreover, it has the provision of ‘fair dealing’ as defence which is less wide than ‘fair use’ of the U.S.A. Besides these, Germany and France also have such provisions. Thus, if there is a copyright violation on internet in Germany which has copyright protection under U.K. law and is violated by the France nationals, then which law should be applied? Laws of both countries have different standards and distinct degree of defences.

Choice of Forum: Forum Conveniens or Non-Conveniens?

The premise of forum non conveniens means that the court though has the ‘subject matter jurisdiction’ should not exercise it because there is a more convenient forum for this litigation.¹⁵ In cross border dispute there is possibilities to confront with this issue.

In the case of *Owusu v Jackson and Others*,¹⁶ the claimant was domiciled in the U.K. suffered an accident in Jamaica whilst staying in holiday villa rented to him by Jacson, who was also domiciled in the U.K. The claimant sued the Jacson and other Jamaican companies in the court of U.K. However, the defendants contended that court should not

¹⁴ It is overwhelmingly common phenomena and prevalent tendency of the states to protect their own interests. See, Weintraub, *Law and Contemporary problems* (1977) p.146

¹⁵ *Private international law and Intellectual property rights :a common law overview*, WIPO forum on private international law and intellectual property, Retrieved from www.wipo.int/edocs/mdocs/mdocs/en/wipo_pil.../wipo_pil_01_5.doc last accessed on June 10, 2014

¹⁶ *Owusu vs. Jackson and others*(2005)2 WLR 942, Retrieved from <http://www.bailii.org/eu/cases/EUECJ/2005/C28102.html> last accessed on June 15, 2014

exercise the jurisdiction because Jamaica is more appropriate forum. The European Court of Justice (ECJ) had to deal with this issue by examining relation to Brussels Convention. The implication of this case can be linked with internet infringement as well. Such cases bear the possibilities of involving transnational citizens and jurisdictions, eventually, with potentiality of claiming forum conveniens or non-conveniens by any of the parties.¹⁷

Recognition and Enforcement of Foreign Judgment: Reflection of Respect to Sovereignty

Plaintiff may win a decree (most of the cases uncontested) on his own State's court and may request the court of defendant's State to recognize and enforce it. However, what if the latter court refuses to recognize and enforce the said judgment.

In Lucas Film Case, U.K. court declined to recognize and enforce the decree of U.S. court and as to the justiciability by U.K. court. It left the local matter to be adjudicated by the local judges on the ground *inter-alia* that non-EU judgment is not recognizable and enforceable in EU countries. Furthermore, it was contended that enforcement of U.S. copyright law in U.K. would constitute a 'Long Arm' of U.S. in U.K. Thus, it should not be done because enforcement of IPRs is overwhelmingly territorial. The recognition and enforcement was also denied on the ground of 'act of State doctrine'. However, in the final judgment by the UK Supreme Court, it allowed the appeal on the question of justiciability.

Resolving Online Copyright Violation: Possible Way Outs

Copyrights system like other IPRs is founded on the 'Principle of territoriality'.¹⁸ Thus, international protection is less active and more

¹⁷ Jurcys, Paulius, *International Jurisdiction in Intellectual Property Disputes: CLIP, ALI Principles and other Legislative Proposals in a Comparative Perspective* (2012). JIPITEC, Vol. 3, No. 3 (2012), pp. 174-226. Retrieved from : <http://ssrn.com/abstract=2160076> last accessed on June 20, 2014

¹⁸ According to the principle of territoriality, the scope of protection of an IP right is limited to the territory of the State where the right is granted. Thus different, and from each other independent, national and regional protection rights which are subject to different legal regimes may exist alongside each other on the same immaterial good. The principle of territoriality forms the basis for both national and regional IP laws as well as multilateral conventions on intellectual property protection and can therefore be considered an internationally recognized principle structuring the protection of IP rights. See, *Principle of Territoriality*, Max Planck Institute for Innovation and Competition, Retrieved from <http://www.ip.mpg>.

clashes occurred because of the diverse laws of different States. Consequently, some challenges arise as have been identified hereinbefore. To counter those challenges which rule or law should be applied? Is it *Lex fori* or *lex loci delicti* or *lex protectionis*? *lex fori* (law of the forum) postulates application of law of the country where the court is adjudicating, thus, said rule gives the scope for applying the law of land. However, in cross border dispute, the standards of laws differ and parties may be discriminated by application of *lex fori*. The *lex protectionis* rule implies application of law of the country for which protection is sought. Primarily, this rule infers the application of 'territoriality principle' but contrary to *lex fori* it may require the application of foreign law. On the other hand, *lex loci delicti* rule expresses the application of law of place where infringement is taken place. Putting it in simple way, where there are no steadfast rules to apply aforesaid principles any one of these principles may be applied. However, application of these principles may lead to the complexities and controversies.

In this backdrop, what mechanism should exactly be adopted to counter the challenges in this globalised world? Should it be universal system of laws by way of harmonization or should it be regional arrangements¹⁹ or country specific legislation only? Universalism by way of convention or treaty would be a difficult task for the reasons *inter alia* divergence of State laws i.e. protection of copyrights varies from one country to another country. Despite the regional or transnational arrangement (like Brussels Convention in EU) a large number of copyright infringements on internet may go unredressed because that occurred beyond the jurisdiction of such mechanism. Even there may be conflicting situations in different regional arrangements.

There are some potential way outs to combat the challenges in resolving online copyright infringements. a) Following the principles and rules under different international instruments²⁰ ratified by the member States. b) Harmonizing the State laws under auspices of Model Law²¹

de/en/pub/research_teaching/ip/main_areas/concept_of_territoriality.cfm last accessed on May 18, 2014.

¹⁹ Zirnsteinor, Elizabeta, *Harmonization and Unification of Intellectual Property in EU*, (2014), p.293. Retrieved from www.fmkp.si/zalozba/ISBN/961-6486-71-3/293-306.pdf last accessed on June 25, 2014.

²⁰ The Paris Convention, 1883, The Bern Convention, 1886, The TRIPS Agreement, 1995, WCT, 1996, WPPT1996, etc.

²¹ UNCITRAL Model Law for International Trade, 1985, many states enacted their national laws by following the minimum standard as set out in this model law. In this process the harmonization of laws of different states are taken into operation.

(like UNCITRAL, 1985). c) Applying the principles of ‘Private International Law’²² by the States. The first way out is in practice from long time. For example, ‘Principle of national treatment’²³ is one by which a minimum threshold can be established. However, still there are complexities in remedying process of online infringement of copyrights. The second way of solution is probably more difficult and may take time. Standard setting by model law and replicating such law by every member States will require much time and pursuit of the member States. On the other hand, implication of third way out may be good option. It may produce better results because of the nature and suitability with internet related intellectual property cases.²⁴

Harmonized and Regional Approach

The empirical instances, in support of the third way out, could be found worldwide in general and European Union in particular. European Union adopted measures to tackle cross-border disputes. The Rome II Regulation²⁵ creates a harmonized set of rules within the European Union to govern choice of law in civil and commercial matters (subject to certain exclusions) concerning non-contractual obligations. This Regulation, unlike the Rome I Regulation, provides a specific rule on infringement of intellectual property rights. It stipulates that the law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed. This principle may practically resolve the problem with the choice of law, and it is one of the principles of private international law.

Like in other cases WIPO can establish Model Law on Cross-Border dispute related to copyrights. The member States may be required to update and enact their own national laws by following minimum standards as set out in Model Law.

²² The term “private international law” is used in most civil law countries while the term “the conflict of laws” is generally used in the United States (US). See, Cheshire, North & Fawcett, *Private International Law*, 14th ed, (2008), Oxford University Press,

²³ This principle means no state is allowed to give less standard of protection to foreign IPRs holder than that of its citizens. The foreign IPRs holders enjoy at least level protection that is granted to a citizen of a country. This principle is articulated under various multilateral conventions. See, Article-5, The Bern Convention, 1886 & Article-3, The TRIPS Agreement, 1995

²⁴ J.Fawcett, James & Torremans, Paul, *Intellectual Property and Private International Law*, Oxford University Press, (2011), Chapter-10.

²⁵ Article-8, The Rome II Regulation, 2007. The regulation (ec) no 864/2007 of the European Parliament and of the Council

Challenges and Way outs

E.U. incorporated some rules of private international law to settle its cross border issues. Brussels I Regulation²⁶ of European Union is significant one in this regard. It eased the jurisdictional difficulties by postulating that persons domiciled in a Member State shall, irrespective of their nationality, be sued in the courts of that Member State. It further provides that persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State. Incorporation of those rules reflects the principles of private international law. Those principles may practically solve the problems with jurisdiction and place of suing on one hand, and recognition, enforcement of foreign judgments on the other. The provisions of Brussels I regulation is obligatory upon the members of the European Union and it has successfully resolved to some extent the questions of IPRs enforcement and protection beyond national border of this region.²⁷

Issues relating to remedy of online copyright violation have been taken significantly beyond E.U. as well by implications of rules of private international law. The American Law Institute has drafted its ‘Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes’ (ALI Principles).²⁸ It is a comprehensive regulation of conflict-of-laws issues specifically focused on intellectual property rights. The ALI Principles categorically include provisions relating to internet copyright infringement. The European counterpart, Max Planck Group for Conflicts of Laws and Intellectual Property (CLIP Proposal) also replicated principles of Private International Law.²⁹ The gist of ALI and CLIP Groups is firstly, to enable the application of a single law (universality approach) to the entire online infringement and acquire worldwide remedies. Secondly, they intended to avoid the situation where the user moves to the country with the least protection, which would lead to the overall decrease of copyright protection.

²⁶ Article-2, The Brussels I Regulation, 2001

²⁷ Torremans, *Exclusive Jurisdiction and Cross-Border IP (Patent) Infringement: Suggestions for Amendment of the Brussels I Regulation*, E.I.P.R. 29(5), (2007), p. 195.

²⁸ American law Institute [ALI], *Intellectual property: principles governing jurisdiction, choice of law, and judgments in transnational disputes: proposed final draft*, (2007). Retrieved from http://www.ali.org/index.cfm?fuseaction=publications.ppage&node_id=79 last accessed on July 03, 2014.

²⁹ Group on Conflicts of Laws in Intellectual Property (CLIP), *Principles for Conflicts of Laws in Intellectual Property, Final Draft*, (2011), Retrieved from www.cl-ip.eu last accessed on July 05, 2014.

Country Specific Response

The country specific responses to tackle the challenges exposed in cross-border copyright dispute have already been in practice and shifting rapidly towards the implementation of principles of Private International Law. For example, United States of American's jurisprudence was long dominated by the strict territorial application of IPRs. Thus, foreign copyrights infringement had no remedy before U.S. court. However, U.S. Supreme Court later on reviewed the approach in the case of *Subafilms, Ltd. v. MGM-Pathé Communication Co.*³⁰ The Courts of Ninth and Second Circuits have taken conflicting approaches to solve cross border disputes of IPRs. The Ninth Circuit viewed *lex fori* approach on one hand, and the Second Circuit ultimately reviewed that by using a broader interests approach to choose the appropriate law on a case-by-case basis by application of Private International Law principles on the other. In the U.K., case laws that regulate copyright violation are almost similar to those of the United States. From a choice of law perspective, one can find out two distinct periods of thought, prior to and after Private International Law Act, 1995.³¹ The first period involved a narrow application of foreign law, while the second period may provide for a broader application of foreign law.

Possible Avenues under Bangladeshi Laws

Bangladesh, on its country specific response, should take wise and appropriate steps within its domestic legal framework. As per Bangladesh Copyright Act, 2000, certain activities are prohibited and restricted terming those as the infringements of copyright if done without prior consent of author.³² However, there is no express provision that covers the copyright violation on internet. In the said Act, no explicit provision is incorporated either to address the cross-border issues related to copyright dispute. In spite of non specification of interest issues in Bangladesh Copyright Law an affirmative inference could be drawn in favour of such issue. Section 14 of the Bangladesh Copyright Act, 2000 accords the author's right to make available the works to the public. Section 71 postulates the infringement of copyright amongst other by communicating or making available to public without prior consent of the

³⁰ *Subafilms, Ltd. v. MGM-Pathé Communication Co.*(1994), 24 F.3d 1088, 1095 (9th Cir).

³¹ The Private International Law (Miscellaneous Provisions) Act of 1995 (PIL)

³² Section-71 of The Bangladesh Copyright Act, 2000, deals with infringement of copyright. Under the said Act, there are civil, criminal and administrative remedies available for infringement of copyrighted materials.

author. However, an amendment could be made to the Bangladesh Copyright Act, 2000 in order to explicitly cover internet issues of copyright.

Furthermore, Bangladesh is constitutionally obliged to respect the principles of international law.³³ Thus, Bangladesh may also resolve the online copyright challenges by applying principles of private international law. The challenges and difficulties exposed by online infringement of copyrights may efficiently be remedied by the application of private international law. Thus, the challenges with the choice of law, choice of jurisdiction, choice of forum, recognition and enforcement of foreign judgments, if applicable, could be encountered, lessened and resolved by application of principles of private international law.

Conclusion

Every infringement of copyrights over internet, if goes unredressed, may pose multiple threats not only to the concerned parties but also to others who may be affected today or tomorrow. In case of copyright violation on internet challenges with the choice of law, choice of jurisdiction, choice of forum, recognition and enforcement of foreign judgments, if applicable, could be encountered, lessened and resolved by application of principles of Private International Law. The principles of Private International Law could be applied by way of incorporating them into international instruments, country specific legislations, regional arrangements, and State practice. Refusal of cross border enforcement of copyrights like other IPRs on ground of ‘Territoriality’ or ‘Act of State Doctrine’ is no longer should be justified. In remedying online copyright infringements, the scope of applying Private International Law is increasing day by day due to its suitability with the peculiar nature of internet disputes.

³³ Article-25 of The Constitution of People’s Republic of Bangladesh

References

Books

- Azam, Mohammad Monirul, *Intellectual Property WTO and Bangladesh*, 2nd ed, (2012), New Warsi Book Corporation, Bangladesh.
- Dr. Wadehra, B.L, *Law Relating to Intellectual Property*, 5th ed, (2011), Universal Law Publishing, Delhi, India.
- Das, C.K, *Intellectual Property Rights*, 1st ed, (2008) Kamal Law House, Kolkata, India.
- Cheshire, North & Fawcett, *Private International Law*, 14th ed, (2008) Oxford University Press.
- Zirnsteinor, Elizabeta, *Harmonization and Unification of Intellectual Property in EU*, (2014).
- J.Fawcett, James & Torremans, Paul, *Intellectual Property and Private International Law*, (2011), Chapter-10, Oxford University Press.
- Weintraub, *Law and Contemporary problems* (1977).

Articles

- Jurcys, Paulius, *The Role of the Territoriality Principle in Modern Intellectual Property Regimes: Institutional Lessons from Japan* (February 22, 2010). Retrieved from <http://ssrn.com/abstract=1663219> or <http://dx.doi.org/10.2139/ssrn.1663219> last accessed on March 10, 2014.
- Tracy A. Thomas, *Ubi Jus, Ibi Remedium: The Fundamental Right to a Remedy*, 41 San Diego Law Review 1633 (2004) Retrieved from http://works.bepress.com/tracy_thomas/12/ last accessed on March 21, 2014.
- Private international law and Intellectual property rights :a common law overview*, WIPO forum on private international law and intellectual property, Retrieved from www.wipo.int/edocs/mdocs/mdocs/en/wipo_pil.../wipo_pil_01_5.doc last accessed on April 10, 2014.
- Jurcys, Paulius, *International Jurisdiction in Intellectual Property Disputes: CLIP, ALI Principles and other Legislative Proposals in a Comparative Perspective* (2012). JIPITEC, Vol. 3, No. 3 (2012), pp. 174-226. Retrieved from : <http://ssrn.com/abstract=2160076> last accessed on May 10, 2014.
- Torremans, *Exclusive Jurisdiction and Cross-Border IP (Patent) Infringement: Suggestions for Amendment of the Brussels I Regulation*, E.I.P.R. 29(5) (2007), p. 195.

Cases

- Football Dataco Limited and others Vs. Sportradar GmbH (a company registered in Germany) and Sportradar AG (a company registered in Switzerland)*, (2012) EWHC 1185 (Ch). Retrieved from <http://www.bailii.org/ew/cases/EWHC/Ch/2012/1185.html> last accessed on May 29, 2014.
- Lucas Film Limited and others Vs. Andrew Ainsworth and another*, (2011) On appeal (2009) EWCA Civ 1328, and finally decided (2011) UKSC 39. Retrieved from www.supremecourt.uk%2Fdecided-cases%2Fdocs%2FUKSC_2010_0015_Judgment.pdf last accessed on May 20, 2014.

Challenges and Way outs

Owusu vs. Jackson and others (2005) 2 WLR 942, Retrieved from <http://www.bailii.org/eu/cases/EUECJ/2005/C28102.html> last accessed on June 15, 2014.

Shetland Times Ltd vs. Wills (1997) F.S.R. 604(OH), Retrieved http://www.internetlibrary.com/cases/lib_case194.cfm last accessed on June 15, 2014

Subafilms, Ltd. v. MGM-Pathé Communication Co. (1994), 24 F.3d 1088, 1095 (9th Cir. 1994)

International Instruments

WIPO Copyright Treaty, 1996

WIPO Performances and Phonograms Treaty, 1996

The Paris Convention for Protection of Industrial Property, 1883

The Bern Convention for Protection of Literary and Artistic Works, 1886

The Agreement on Trade Related Aspects of Intellectual Property, 1995

The Rome II Regulation, 2007, The regulation (ec) no 864/2007 of the European Parliament and of the Council

The Brussels I Regulation, 2001

UNCITRAL Model Law for International Trade, 1985

Reports and Presentations

Understanding Copyright and Related Right, Retrieved from www.wipo.int/edocs/pubdocs/en/intproperty/909/wipo_pub_909.pdf last accessed on June 12, 2014.

Principle of Territoriality, Max Planck Institute for Innovation and Competition, Retrieved from http://www.ip.mpg.de/en/pub/research_teaching/ip/main_areas/concept_of_territoriality.cfm last accessed on June 18, 2014.

American law Institute [ALI], *Intellectual property: principles governing jurisdiction, choice of law, and judgments in transnational disputes: proposed final draft.* (2007). http://www.ali.org/index.cfm?fuseaction=publications.ppage&node_id=79 last accessed on June 03, 2014.

Group on Conflicts of Laws in Intellectual Property (CLIP) *Principles for Conflicts of Laws in Intellectual Property, Final Draft*, (2011), Retrieved from www.cl-ip.eu last accessed on June 05, 2014.

Statutes

The Bangladesh Copyright Act, 2000

U.S. Copyright Law, 17. U.S.C. §§ 101 et seq. (Consolidated Copyright Laws as of December 2011)

The Digital Millennium Copyright Act, 1996

The Copyright, Designs and Patents Act 1988

The Private International Law (Miscellaneous Provisions) Act of 1995 (PIL) of UK.