

## **Social Media Circulation of E-News: We Can or We Can't?**

- *Stuti Sinha*

Where we are guaranteed the Freedom of Circulation under the Indian Constitution<sup>1</sup>, it is to be noted that a lot of circulations made on the social media platforms may be hit by the provisions of Copyright Act. This article tries to explain how the Newspaper agencies abuse of the copyright laws claiming it to be an infringement of their Copyright to circulate the News Articles on social media in light of the directions recently given by Indian Newspaper Society to safeguard the copyright and commercial interests of the Newspaper Agencies.

Recently, Indian Newspaper Society (INS) declared that the download and circulation of pdf files of the e-papers on social media apps like Whatsapp, Telegram etc. would be rendered illegal and person responsible for the circulation would be penalized by the Newspapers for the same. The INS said that the Newspaper would use a technique to identify those who download the pdf files. In addition to that, it says that the circulation of news articles on the various social media groups will make the group admins responsible for the illegal act and he/she would be penalized for the same. However, there are a lot of ambiguities attached to this rule. Firstly, there is no explanation as to what exactly leads to an illegal act. There is a wide area left unanswered by the INS that could give a clear understanding to people about the illegality of their acts. It leaves us clueless about whether “illegal acts” is confined to circulating the newspaper article or even extends to downloading the material from the newspaper website/app? Secondly, there is a huge loophole in in such declaration as circulation is for a non-commercial private purpose and is merely for dissemination of information which qualifies as a fair use<sup>2</sup> and is not hit by the provisions of the Copyright Act<sup>3</sup>. Thirdly, making the group admins responsible for all the contents that are being shared on the group, no matter by who, is completely unfair as there is a technique available to identify the individual who downloads such material and making the group admins vicariously liable for the same is baseless. Let's look at these issues in detail.

INS has left the issue of demarcation of legal and illegal acts open ended which gives the Newspaper agencies an opportunity to exploit the Rule as per their whims and fancies. As per

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<sup>1</sup> As a part of Freedom of Speech and Expression guaranteed under Article 19 (1) (a) of the Indian Constitution.

<sup>2</sup> Section 52 (a) & (c) of the Copyright Act, 1957.

<sup>3</sup> Section 51 of the Copyright Act, 1957.

what the Rule says, it is illegal to download circulate the e-paper articles. It forms a clear understanding that there is an option of downloading the news item available on the website of that Newspaper. If so, how can the downloading such material be illegal if the website itself provides for the same? As per the general understanding of an “illegal act”, there must be an absence of permission for such download from the side of newspaper in order to make it an illegal conduct. However, the option of downloading the e-paper exhibits the implied consent for the same. Moreover, under Section 52 (c) of the Copyright Act, 1957, the transient storage of a work for a non-commercial purpose stands exempted from any liabilities under the Act, provided the person has reason to believe that such download is not an infringement. Therefore, a person of sound mind would believe that the download of such material would not land him into any trouble. But thanks to such poorly drafted Rule that takes no note of these provisions and give the authority to the newspapers to track down all the people who have downloaded the News item and book them for infringement of their copyright. Further, if we consider that the meaning of “illegal act” only encases the act of circulation of the information on social media and not its download, it brings us to the second issue, i.e., the “Fair Use Principle”.

Under Section 52 (a) of the Copyright Act, 1957 a person cannot be booked for infringement of copyright if he indulges in fair dealing with the work for purposes of private or personal use, criticism or review or the reporting of current events and current affairs. The circulation of a downloaded news item on social media platforms would confirm to all the above mentioned conditions. Also, such a circulation is non-commercial in nature which means that no illegal commercial advantages are being taken merely because of circulation of such news item. Therefore, there arises no question of infringement of copyright and the Newspapers claiming loss of revenue due to such circulation hold no solid grounds.

Next comes the issue of unfair rule of holding the group admins liable for such circulations. There are all the means and techniques available to track down the very individual who is involved in spreading news articles on social media. Holding the group admin responsible for the act of any specific group member is not a solution as it is not putting any reins on the act of the person actually responsible for the same. The principle of vicarious liability does not hold good here because of various reasons. Firstly, the Admin and the group members do not share a competent relation to apply this principle on. Secondly, the penalties being imposed on the group

admin would not work as an efficient deterrent to prevent such circulations. Group admins are responsible to create a group where people can come together to share their respective views. It is not at all warranted to expect the group admins to have knowledge of the authenticity of everything being shared on the group and hold him/her responsible for the illegal acts of the others unless he himself is a party to such an act.

Therefore, in my view, the directions given by INS to put a halt on the download and circulation of the e-paper materials is not an efficient tool to help these Newspaper Agencies recover from the revenue loss that they are facing today. However, if at all the download and circulation of the news items are the factors responsible for the loss, the News agencies should instead dissolve the option of downloading pdf files from the websites or apps so that people do not have the means to circulate it in public. It is not possible for a person to foresee the legal liabilities if the option of download is made so easily available for him on the authorized page or app and it would not be fair, either legally or morally, to charge a person for infringement of copyright when he is being misled by the nature of the Website or App. I would suggest that all the news agencies generate a column with clear information about the circulation of the e-papers through any means on any social media would lead to legal consequences as the download option of the pdf of e-papers is no longer available on any official website or App of these Newspaper Agencies. This will lead to more number of people paying to subscribe to these Newspapers and hence, would also help to balance the losses incurred so far.