

**“Digital Rights Management as a Legal Tool for Conscientious Business and Sustainable Progress”\*\***

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**Abstract:**

Telecommunication technology plays a major role in today’s digital era; technological advancements have made imperative for the lawmakers to take effective care of the interest of the Intellectual Property Right holders. Notwithstanding the prevailing legal regime, it is essential as well as inevitable for the business community to act responsibly towards the society and environment by maintaining sustainability, accentuating the sustainable development goals. The current need is to make use of the technology as an efficient measure to protect the digital content, its administration, allocation and endorsement on cyberspace. The United Nation(UN), World Trade Organization (WTO), World Intellectual Property Organization (WIPO) and Trade Related Intellectual Property Rights (TRIPs) have indeed played a magnificent role in safeguarding the interest of the intellectual property right holders and sustainability of business through various International Instruments. This paper aims to study the role of Digital rights management (DRM) and critical evaluation of the related laws, in securing the future of the intellectual property rights with special reference to original works in India, to meet the United Nation’s Sustainable Development Goals in the digital economy/environment.

**Keywords:** Digital Rights Management, Sustainable Developments, Intellectual Property Rights, Copyrights Treaty, ICT, e-waste.

**Introduction:**

Intellectual property is a broad unconditional explanation for the set of intangibles possessed and lawfully secured by the lawful owner from external use or implementation without permission for a specific period as per law.

Intellectual property [IP] is an outcome of creation of the mind; IP is divided into Industrial Property which includes patents, trademark, designs, Geographical Indication (GI) etc., and

Copyright which includes literary and artistic works and other works like performances, sound recording, broadcasting etc.

The main attributes of copyright law are to accentuate public welfare through the talent of authors and inventors in science and useful arts<sup>1</sup>, to protect the original expressions and to recognize fair use of the copyrighted works. The advent of digital era has given rise to widespread of piracy which allows doing anything to digital content<sup>2</sup> instantaneously with less or no cost, as the laws became ineffective to contain piracy. Hence the need of the hour was to have a technology as an effective measure to secure the digital content, its management, distribution and promotion on the cyberspace. Thus the same is termed as Digital Rights Management ('DRM')<sup>3</sup> and Technological Protection Measure ('TPM').<sup>4</sup>

DRM or TPM engrosses the description, layering, examining, appraising, trading & scrutinizing of the rights over an individual or organization's property; both in substantial and digital form. DRM basically allows only authorized recipient to do certain permitted act with the content<sup>5</sup>. DRM aims at making illegal copying harder and costly and intends the consumer to obtain the Digital Content legally. Due to the said acts of piracy, counterfeit and also IP infringements it has become inevitable to link IP and trade globally in order to avoid adverse effects on the business environment. In this regard one of the major international instruments is Trade Related Intellectual Property Rights [TRIPs] Agreement, which has emerged as a basic framework for ensuring minimum set of rules for global IPR protection under the system of world trade organization [WTO]. Other major treaties like WIPO Copyright Treaty [WCT], WIPO Performances and Phonograms Treaty (WPPT) not only recognizes international IP but also provided legal recognition of said DRM measures adopted by the copyright owners. Sustainability for future generations has been a paramount

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<sup>1</sup> Mazer vs. Stein, 347 US, 201, 219 (1954)

<sup>2</sup>This includes any text, graphics, images, audio, video, software, etc., necessarily in digital format.

<sup>3</sup>This means in include any technologies and tools that are specifically developed for managing digital rights or information.

<sup>4</sup>The term 'digital' can refer to various aspects: (1) automated management (by digital means) of (2) rights which are specified by digital means with regard to the use of (3) digitally stored content.

<sup>5</sup>Eg: Digital Versatile Disc limits the number of copies a user can make form that DVD.

concern of all constituencies of business and safeguarding the future interest of the Sustainable Goals can be achieved only through critical evaluation of the existing laws and effective implementation of the same in the said regard.

**Literature review: Dan L Bruk (2005)**<sup>6</sup> emphasizes on digital rights management system as an automated alternative to legal protections. He opined that DRM comprises the correspondence of legal rule for protection intellectual property. DRM shifts prudence away from the user, toward the creator, and DRM design therefore resembles legal rule making rather than legal standard setting. **R.Owens and R Akalu (2004)**<sup>7</sup> accentuated that the tendencies that influence the way global standards are urbanized are highlighted, spotlighting the work of organizations such as the World Intellectual Property Organization. The article concludes by providing impend on why the legislative process is an important contemplation in the development of DRM systems and future progress in this area. **Timothy k Armstrong (2006)**<sup>8</sup> studied the legal and technological protections for fair use of copyrighted works. The author enlightens that the DRM acts as a speed bump to slow down the mass infringement of intellectual property rights.

**Heller, Gregory (2007)**<sup>9</sup> studied the effect of DRM technologies on the environment, the author opines that users rights will be trammeled and they will be forced to abandon the hardware in order to meet software updates which results into e-waste causing damage to environment. **James Evans Turner (2012)** narrates how the gaming console becomes useless due to hardware failure and further its disposal creates world wide e-waste problem. Points out how users rights can be protected without causing adverse effect on the environment.

### **Statement of Problem:**

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<sup>6</sup> Dan L Bruk, 2005, Minnesota Legal Studies Research, Paper No 05-16, Legal And Technical Standards In Digital Rights Management Technology.

<sup>7</sup>R.OwensAnd R Akalu, 2004, Proceedings Of The IEEE , Volume: 92, Issue: 6, June.

<sup>8</sup>Timothy K Armstrong, 2006, Harvard Journal Of Law And Technology, Volume 20 Issue 1, Digital Rights Management And Process Of Fair Use.

<sup>9</sup>Heller, Gregory (26 January 2007). "'Wow starts now'? Software Freedom Activists Stand Up To VISTA Launch". *Defective By Design.org*. Free Software Foundation, Inc. visited 22 November 2017.

Existing technique of organizing, dealing and protecting such intellectual property are ineffectual in coping the sustainable development goals. Therefore there is a need to integrate the intellectual property with the legal provisions so as to meet the United Nation's Sustainable Development Goals in the digital economy/environment.

**Objectives of the study:**

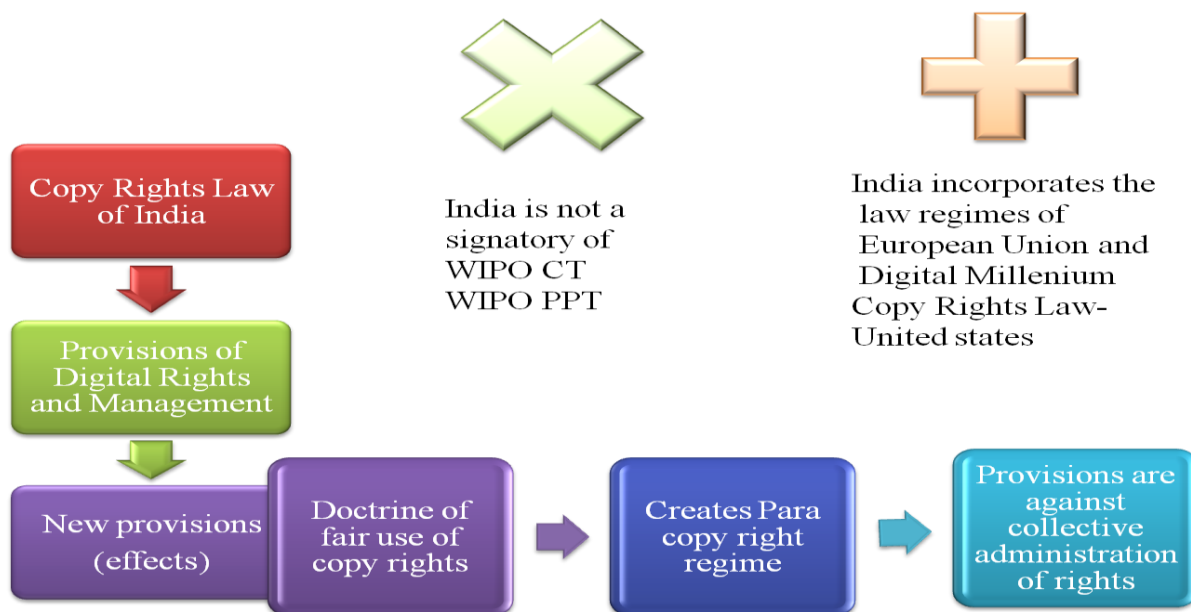
- To understand the role of the legal provisions of DRM under IP law in India
- To suggest ways to improve the current IP legal regime in India to enhance sustainability.

**Data collection techniques:**

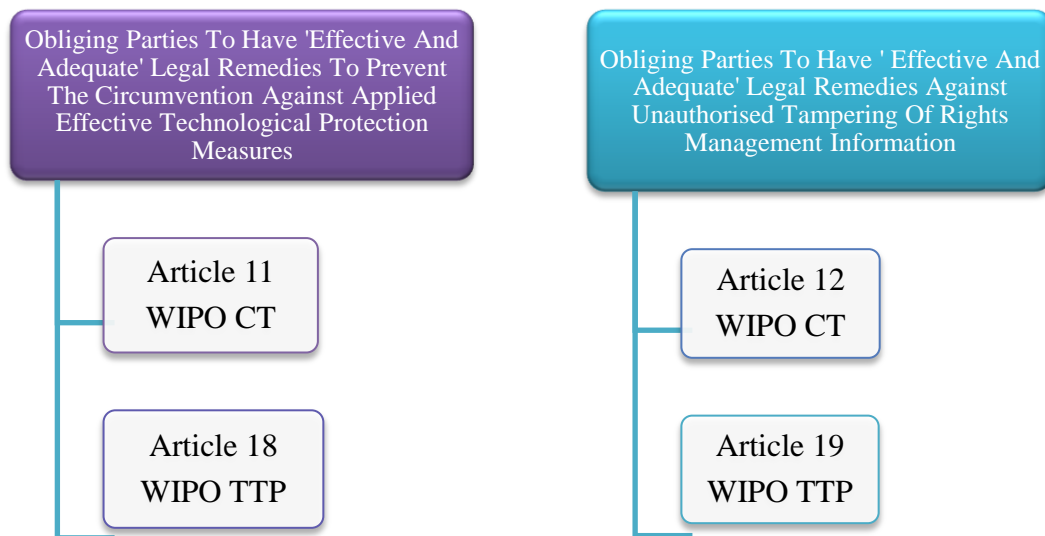
Secondary data was collected from various articles and websites. The provisions were also referred from WCT and WPPT and Indian Copyright (Amendments) Act 2012. Sustainable goals are extracted from 2030 sustainable goals summit.

**Discussions and observations:**

**International Legal provisions related to Digital Rights Management**

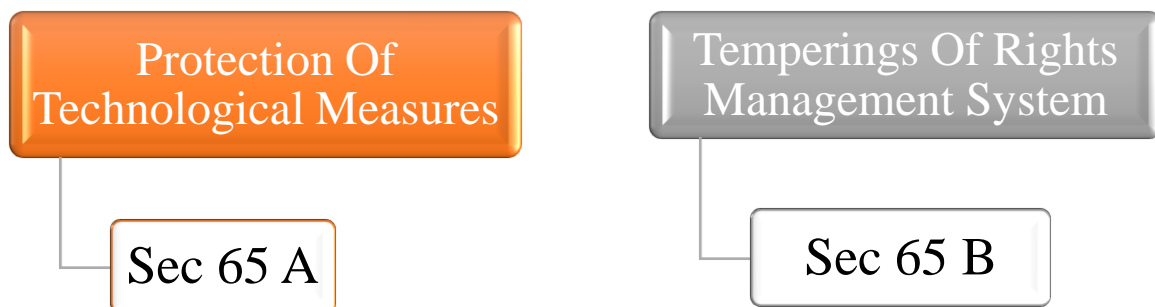


Picture 1 : Indian Copy Rights Amendment Act 2012, concepts and facts



Picture 2: International provisions on TPM and RMI explained

Indian Copyrights Act 1957



Picture 3: Provisions under the Indian Copy Rights (Amendment ) Act 2012

Excluding certain exceptions Sec 65 A punishes with imprisonment of all the intentional acts to circumvent the works of the copyright towner which are protected by the Actand Sec 65 B protects Rights Management Information (RMI) and punishes anyone who unauthorizedly removes or alters the RMI and distributes works of the copyright owner.

**Sustainable Development Goals 2030**

United Nations Headquarters in New York from 25-27 September 2015 as the Organization decided new global Sustainable Development Goals.

The 9th goal: “Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation”

“9.5 Enhance scientific research, upgrade the technological capabilities of industrial sectors in all countries, in particular developing countries, including, by 2030, encouraging innovation and substantially increasing the number of research and development workers per 1 million people and public and private research and development SPENDING

9.a Facilitate sustainable and resilient infrastructure development in developing countries through enhanced financial, technological and technical support to African countries, least developed countries, landlocked developing countries and small island developing States

9.b Support domestic technology development, research and innovation in developing countries, including by ensuring a conducive policy environment for, inter alia, industrial diversification and value addition to commodities

9.c Significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020”

The goals of sustainability have also laid emphasis on the technological developments and sustainability therefore the Indian Copyrights Act has to harmonize with the said treaties of WCT and WPPT.

The reforms made to Indian copyright law which is more than 60 years old, is to keep pace with the time in India and world specially to harmonize with WCT and WPPT to protect the right holders in cyberspace and raising piracy in India<sup>10</sup>. Access to these treaties adopting the provisions therein, despite India not being a party to it, will not only protect Indian National Interest but also enables Indians to earn royalties worldwide for their creativity.

### **DRM & E-waste versus Sustainable development goals:**

The DRM restrictions on the electronic goods like discs, DVD players and drives, gaming consoles etc and its serious environmental impact needs to be understood and acted upon to contain the same effectively for the purpose of achieving Sustainable Goals. Electronic waste

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<sup>10</sup>DipinnVerma, Anti-circumvention Law of Copyright in India, International Journal Of Intellectual Property Rights (IJIPR), Volume 6, Issue 1, January - June (2015), pp. 22-31

has its reference in Goal 12 of SDG i.e., to substantially reduce waste generation through prevention, reduction, recycling and reuse. To achieve said Goal 12 there required a strong national framework for sustainable consumption and production that is integrated into national and sectoral plans, sustainable business practices and consumer behavior, together with adherence to international norms on the management of hazardous chemicals and wastes<sup>11</sup>.

In India E-waste is covered in Schedule 3 of “The Hazardous Wastes (Management and Handling) Rules, 2003<sup>12</sup>” and further under the E-waste Management Rules, 2016<sup>13</sup>. Supreme courts<sup>14</sup> has issued directions to frame hazardous waste laws and also building number of hazardous waste disposal facilities and laws are also notified in the last ten years but as per CAG report over 75 per cent of state bodies have failed to implement these laws. India being signatory to Agenda 21 of world commission on Sustainable Development of UN conference on Environment and Development, waste management efforts in India were not directed by clear policy<sup>15</sup>. CAG opined that no effective strategies have been introduced to implement 3 R’s (Reduce, Reuse and Recycle).

#### **Concluding Remarks :**

Legal Reform is an effective process that accentuates the process of keeping pace of law with the changing needs, and technologies and/or updating or removing defects or simplifying the existing laws and to make law and legal system fair and just. The Electronic Frontier Foundation in USA criticized Digital Millennium Copyright Act (DMCA) anti-circumvention

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<sup>11</sup>Progress towards the Sustainable Development Goals, Report of the Secretary-General, 28 July 2016, [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2017/66&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=E/2017/66&Lang=E)

<sup>12</sup> Under Schedule 3, E-waste is defined as “Waste Electrical and Electronic Equipment including all components, sub-assemblies and their fractions except batteries falling under these rules.”

<sup>13</sup> In this respect Central Pollution Control Board has issued Implementation Guidelines. For example Canada has the Hazardous Substances and Waste Dangerous Goods Regulations.

<sup>14</sup> Research Foundation for Science, Technology and Natural Resource Policy Vs Union of India and Others, (2005) 13 SCC 186.

<sup>15</sup> CAG Environment Reports on Waste Management, Chapter 5, “All India Audit Report on ‘Management of Waste in India’ [http://www.cag.gov.in/sites/default/files/publication\\_files/Chapter\\_5.pdf](http://www.cag.gov.in/sites/default/files/publication_files/Chapter_5.pdf), accessed on 22.11.2017

clauses, saying it ‘chills’ free expression and scientific research’, jeopardizes fair use<sup>16</sup>, impedes competition and innovation and interferes with computer intrusion laws.<sup>17</sup>

The infringement of copyright requires involvement of a violation of copyright *per se* but circumvention law under S.65A of Copyright (Amendment) Act, 2012 may punish for mere breach of the digital or technological measures *or* Mere circumventing the access control, without infracting copyright work, which goes to the root of the law and makes the legal reforms illogical.

Further the new amendment does not consider the human right aspects and cultural life of those persons who are technologically illiterate; in a country like India such consideration is very important. The reformation ought to have considered the individual’s right to share, right to enjoy digital contents, law do not distinguish intentional and unintentional breach of TPM.

It is predicted that by 2030 people won't refer to Internet, technology will be known through connected devices that work behind the scenes to make their lives easier. Their laptop, phone, glasses, homes, cars, they'll all be connected in ways that simply integrate with their lives. Every person on the planet will have access, and it will be nearly impossible to opt out in 2030<sup>18</sup>. No doubt Information Communication Technology (ICT) offer great opportunities for the effective sustainable development. E-waste is an outcome of more people using ICT and not recycled. DRM technology replaces existing assets like books and more and more devices make it difficult in sharing files etc and results into circumvention.

To circumvent DRM system there exists abundant free software on the Internet. Unlike US Digital Millennium Copyright Act, Indian Copyright does not prohibit trafficking in circumventing tools, which is indeed an essential element. In order to avoid e-waste of CDs or

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<sup>16</sup>In *Universal City Studios v Reimerdes* (S.D.N.Y.2000), Court held there is no fair use defence in circumvention cases “[i]f Congress had meant the fair use defence to apply to such actions, it would have said so”.

<sup>17</sup><http://www.eff.org/issues/dmca>

<sup>18</sup>“12 Entrepreneurs Predict: What Will the Internet Look Like in 2030?” Inderpal Singh, *Northshore Partners*, <https://www.inc.com/ilya-pozin/12-entrepreneurs-predict-what-will-the-internet-look-like-in-2030.html> accessed on 22.11.2017.



DVDs, the other forms of protection, like fingerprinting can be employed, by making small changes to the code or design of each copy in order to track piracy.

As for as access control and information management which may affect privacy of the user and also lead to virus infection of computer systems, it was declared by Hon'ble Supreme court in a landmark case that Privacy is a Fundamental Right, held that Privacy enables individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity<sup>19</sup>. Therefore, it would be interesting to observe how the legal framework for informational privacy linked with devices in the coming years will evolve in India.

If the purpose of privacy is to preserve democracy, then data protection laws must reflect this purpose. The Supreme Court has done well to lay down the groundwork, stating that privacy must “enable individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity.” Considering the pervasive influence of technology and the adverse implications for democracy, it is clear that the principles of consent, notice and purpose limitation need to be reframed in order to take into account and limit the ability of companies and government to influence our norms, preferences, behavior and choice<sup>20</sup>.

It's not just a matter of convenience or accessibility. It's a matter of safety and security. There is a need to protect a user's right to legally modify software and hardware on mobile computing devices, even if it voids the manufacturer's warranty.

In a landmark move the US Copyright office has legalized jail breaking<sup>21</sup> by including it as an exception. Reforms if not supported by proper policy approach more specifically not considering historical significance, political background and not following comparative approach of different legal jurisdiction across the globe, and best practice model, may affect

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<sup>19</sup>Justice K S Puttaswamy (Retd) v Union of India, (2017) SCC OnLine SC, p 996.

<sup>20</sup>How the Right to Privacy Judgement Will and Won't Impact India's Data Protection Regime, AKHIL DEO, <https://thewire.in/170689/right-to-privacy-data-protection>. Accessed on 23.11.2017.

<sup>21</sup> <http://www.ipwatchdog.com/2015/11/09/copyright-office-dmca-exemptions-for-automotive-software-jailbreaking-smart-tvs/id=62834/> Accessed on 23.11.2017.

the very purpose of legal reformation posing new legal and constitutional challenges. An effective legal reformation to reiterate depends on various key factors like policy, research, etc., in order to bring perfect legal regime in the area of anti-circumvention law to suit the changing pace of society and technology. In this respect, there is lot of scope for study and look the best standards and protocols available in the society.

**References:**

Foged, T., ‘US v EU anti circumvention legislation: preserving the public’s privileges in the digital age?’ , (2002) EIPR 24(11) 525-542, p527

JE Cohen, ‘WIPO Copyright Treaty Implementation in the United States: Will Fair Use Survive’ [1999] EIPR 21, 236–247.

WW Fisher and W McGreveren, The Digital Learning Challenge: Obstacles to Educational Uses of Copyrighted Material in the Digital Age, a Foundational White Paper, p. 70: <http://cyber.law.harvard.edu/media/files/copyrightandeducation.html>. Accessed on 23.11.2017.