Dynamic Injunctions

Confronting Copyright Infringement with Evolving Legal Fortresses

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Introduction

In the realm of legal battles against copyright infringement, the concept of "whack-a-mole" emerges from the depths of arcade nostalgia, where players wield a mallet to thwart toy moles that capriciously emerge from various holes. Metaphorically, it symbolizes the ceaseless and wearisome struggle against a persistent problem that resurfaces with shapeshifting resilience. This becomes especially pertinent when injunction orders are issued, attempting to quell the infringement. Yet, like elusive phantoms, targeted websites evade the court's grasp by employing cunning strategies—redirecting, exploiting mirror sites, or adopting enigmatic alphanumeric URLs. Frustratingly, the initial injunction order applies solely to the original site, leaving the mirror reflections and transformed digital paths untouched. This creates an exasperating cycle of copyright infringement suit, wasting valuable resources.

To confront this maddening conundrum, the Indian judiciary has pioneered a groundbreaking solution: dynamic injunctions. Empowering rights-holders, dynamic injunctions enable them to seek swift judicial intervention, expanding the scope of the primary injunction to encompass all mirror websites facilitating access to the same infringing online domains. This measure ensures that when the initial website resurfaces promptly after being subjected to an injunction, it confronts an extended fortress of legal shield. Henceforth, the author endeavours to expound upon the evolutionary trajectory of dynamic injunctions, shedding light on their inherent limitations, while simultaneously charting a course towards progress and innovation. Finally, the narrative will converge towards a compelling denouement, crafting a conclusion that encapsulates the core essence of the subject matter at hand.

Trajectory of dynamic injunctions

In the annals of legal jurisprudence, the concept of dynamic injunctions found its genesis in the seminal pronouncement of the esteemed Court of Justice for the European Union (CJEU) in the consequential case of L 'Ordal v. eBay. With resolute determination, the CJEU elucidated the hallowed authority of Member State courts, mandating them not only to curb ongoing infringements but also to vigilantly forestall future transgressions within the realm of online marketplaces. This resounding judicial decree resonated with the venerable Delhi High Court, which, in its pursuit of justice and the safeguarding of innocent victims, took inspiration from the illustrious decision rendered by the esteemed Singapore Court in Disney Enterprise v. M1 Ltd. Building upon this strong judicial foundation, the Delhi High Court unveiled a transformative remedy: the dynamic injunction.

Under the mantle of this revolutionary legal recourse, the aggrieved plaintiffs were accorded an extra-ordinary prerogative—a direct approach to the Joint Registrar to extend an extant injunction against the websites. This unique provision assumed utmost significance when perpetrators, resorting to artifice and subterfuge, erected mirror, alphanumeric, or redirect websites in a brazen attempt to elude the grip of justice. Importantly, the High Court explicitly delineated the purview of dynamic injunctions,

restricting their application solely to the sinister breed of "hydra-headed" or "rogue" websites that materialized with the sole purpose of circumventing legal restraints. To fortify the process (under Order 1 Rule 10 of the Code of Civil Procedure, 1908) the Court mandated the submission of a compelling affidavit, replete with substantive evidentiary proof, convincingly establishing the impleaded website's nature as a mirror, redirect, or alphanumeric entity. Once satisfied with the veracity of the evidence, the registrar swiftly issued directions to Internet Service Providers (ISPs), commanding the expeditious removal of access to such nefarious domains.

The statutory authority empowering the courts to dispense dynamic injunctions emanates from the hallowed precincts of Section 151 of the Code of Civil Procedure, 1908, which confers upon them the plenary power to issue necessary orders for the just administration of justice and the prevention of the abuse of court processes. Nevertheless, it is incumbent upon the discerning legal fraternity to acknowledge the lacuna in specific legislative provisions regulating the terrain of dynamic injunctions. As the age-old adage cautions, "Every coin has two sides," and the advent of dynamic injunctions brings forth a confluence of opportunities and challenges, necessitating profound ruminations and meticulous deliberations within the labyrinthine corridors of the legal domain.

Challenges of Dynamic Injunctions

In the UTV Software case, defendant websites were branded "rogue" for omitting authentic contact details, impeding their legal recognition. Yet, this judgment rested solely on the copyright owner's claim, lacking fair verification. These circumstances stir apprehension of bias against website operators and the erosion of principles of justice. Relying solely on the copyright owner's claim can cripple a law-abiding website, even with new domains. The Joint Registrar's authority to disable access creates this quandary. Website operators are left with no option but arduous court appeals, burdened by the high costs of legal representation.

Another challenge stems from the absence of an effective mechanism to communicate blocking orders to affected parties. In the absence of proper channels for dissemination, affected parties may remain unaware of the blocking order within a reasonable timeframe, potentially compromising their rights. This concern is further amplified by the limited 15-day period allocated for appeals against such orders.

Furthermore, in the recent Applause Entertainment Pvt. Ltd. v. Meta Platforms Inc. case, heard by the Bombay High Court, a dynamic injunction order was issued against a social media handle. However, the Delhi High Court's concept of a "rogue website" and its corresponding indicators, as delineated in the UTV v. 1337x. to case, did not explicitly address their applicability to social media handles. Similarly, the Bombay High Court's concerns regarding the emergence of other "rogue handles" raise significant questions about the consistent and equitable application of indicators pertaining to rogue websites to social media platforms.

Way forward

In response to the intrinsic imbalances that pervade website blocking injunctions, a compelling solution emerges: the establishment of a neutral verification agency and ombudsman (NVAO) or Check and Verification Method (CVM), enjoying esteemed backing from influential voices such as Prof. Shamnad Basheer and Kian Ganz. Operating as an impartial third-party entity, the NVAO would consist of a diverse assembly of stakeholders, wholeheartedly dedicated to assisting courts in the resolution of disputes involving copyright owners, online intermediaries, and website operators.

At the heart of the NVAO's mandate lies the validation of copyright ownership and the scrupulous scrutiny of alleged instances of copyright infringement. Furthermore, the NVAO assumes a pivotal role in verifying the plaintiff's assertions pertaining to the identity of website operators, thus ensuring that

website blocking injunctions exclusively target the rogue websites. In order to engender transparency across the entire process, the NVAO could actively disclose an all-inclusive roster of blocked websites in public forums.

Notably, the universal implementation of the Bombay High Court's ruling in Eros International holds great promise. This ruling mandates Internet Service Providers (ISPs) to present "special default error pages" incorporating pivotal provisions of the Copyright Act, comprehensive details of the lawsuit and blocking order, and elucidative information pertaining to avenues of recourse against the blocking order. By effectively addressing the challenges associated with disseminating precise particulars of website blocking orders to the public, this measure serves as a significant stride forward.

Conclusion

In the enthralling saga of combating copyright infringement, the emergence of dynamic injunctions has injected a potent force. Yet, challenges loom, demanding ingenious solutions. Enter the captivating prospect of a neutral verification agency, an impartial arbiter wielding the sword of transparency. Coupled with the transformative power of the Eros International ruling, this harmonious symphony of fairness and efficiency orchestrates a harmonious resolution. With the scales finely balanced between the rights of creators and the operators of digital domains, this captivating narrative unveils a captivating chapter of innovation and progress. Together, we unlock the doors to a future where resurfacing infringement meets its match.

David Lindsay, Website Blocking Injunctions to Prevent Copyright Infringement: Proportionality and Effectiveness, 40 U.N.S.W. L.J. 1507 (2017).

Pratik P. Dixit, Dynamic Injunctions against Internet Intermediaries: An Overview of Emerging Trends in India and Singapore, 23 J. WORLD INTELL. PROP. 65 (2020).

L'Oreal SA Ltd. v. eBay International AG, Case C-324/09, EU:C:2011:474.

Disney Enters. v. M1 Ltd., [2018] SGHC 206.

David Tan & Susanna Hs Leong, Intellectual Property Law, in 19 SAL Ann. Rev. 586 (2018).

Ibid.

Supra 2.

Code of Civil Procedure, § 151 (1908).

Pranay Bali & Nayantara Malhotra, To Block or Not to Block? Analysing the Efficacy of Website Blocking Orders and Dynamic Injunctions in Combating Digital Piracy, 11 INDIAN J. INTELL. PROP. L. 179 (2020).

UTV Software Commc'ns Ltd. v. 1337x.to, 2019 SCC OnLine Del 8002.

Ibid.

Supra 1.

Applause Entm't Pvt. Ltd. v. Meta Platforms Inc., 2023 SCC OnLine Bom 1034.

Kaleda, S. L. The Role of the Principle of Effective Judicial Protection in Relation to Website Blocking Injunctions, 8 J. Intell. Prop., Info. Tech. & E-Comm. L. (JIPITEC) 216 (2017).

Lokesh Vyas & Anuj Bajaj, John Doe Order: A Cogent Jurisprudential Account of Judicial Endeavours, 3.1 J. Indian L. Stud. 29 (2020).v

Izyumenko, E. The Freedom of Expression Contours of Copyright in the Digital Era: A European Perspective, 19 J. World Intell. Prop. 115 (2016).

Ibid.

Eros Int'l Media Ltd. v. Bharat Sanchar Nigam Ltd., 2016 SCC OnLine Bom 8199.

Supra 14.

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