



Delhi High Court directs Telegram to disclose information of persons running channel/accounts in case of infringement of copyright

Recently, in a suit seeking relief against infringement of copyright, the High Court of Delhi (“**High Court**”) in the case of *Neetu Singh & Anr. v. Telegram FZ LLC & Ors*¹ directed the messaging application ‘Telegram’ to disclose the identities of administrators of channels/accounts on its application, hosting infringing content.

Issue

Whether an intermediary such as Telegram can be directed to disclose the identity of the creators of offending channels which are engaged in unauthorisedly disseminating the copyrighted works of another.

Brief Facts

The plaintiffs — one, an author of books for preparation for competitive exams, and the second, a company running coaching centres for competitive exams (“**Plaintiffs**”) had filed the suit seeking reliefs of permanent injunction, damages etc., against Telegram FZ LLC (“**Telegram**”) and unknown persons i.e. John Doe. The Plaintiffs alleged that their copyrighted works including course materials, online lectures, publications etc., were being disseminated unauthorisedly through several channels on Telegram.

When the Plaintiffs came to know of the illegal acts of the John Doe, they reported the illegal dissemination to Telegram in accordance with the latter’s Privacy Policy. Upon receipt of the notices, Telegram disabled and removed some of the channels. However, new channels were created by the John Doe almost immediately and the copyrighted works continue to be unauthorisedly disseminated.

The High Court had previously decided Plaintiffs’ application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (“**CPC**”) on the basis of Telegram’s statement that it would take down the offending channels within 36 (thirty six) hours of intimation by the Plaintiffs. Thereafter, the Plaintiffs filed an application under Order XI Rule 10 of the CPC, seeking discovery of the details of the persons operating the infringing channels from Telegram.

¹ Order dated August 30, 2022 in CS (Comm) No. 282 of 2020 .

Telegram's contentions

Telegram raised the following grounds for rejecting Plaintiffs' prayer for disclosure of information pertaining to the persons operating the infringing channels:

1. Upon receiving intimation of an offending channel/account by the Plaintiffs, Telegram has removed the channels and such interim arrangement is sufficient to protect the Plaintiffs' rights.
2. Disclosure of subscriber information cannot be made under Clause 8.3 of Telegram's Privacy Policy except in cases where a court order confirms that the subscriber is a terror suspect.
3. As per the Supreme Court's judgment in Justice K.S. Puttaswamy v. Union of India², any disclosure of information would not be permissible as the privacy of the user is protected under Article 21 of the Constitution of India.
4. The proviso to Rule 4(1) and (2) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**IT Rules**") provides for specific conditions which must be met before even a court can pass an order directing disclosure of the basic subscriber information.
5. As an intermediary, Telegram is only required to remove the infringing content upon being given notice and has no liability for third party information on its platform.
6. Telegram cannot share the data relating to the creators or users of the channels since the data is stored in its servers in Singapore and the laws of Singapore prohibits such disclosure.
7. Under the laws of Singapore³, Telegram may disclose certain information upon directions of a "Court". However, in this context "Court" would mean a court based in Singapore. Therefore, Indian courts are not empowered to direct Telegram to disclose information.
8. Under Section 72A of the Information Technology Act, 2000 ("**IT Act**") any disclosure of information in breach of a lawful contract (between Telegram and its user) is an offence.

Findings of the High Court

After considering the submissions of the parties and analyzing the position of law, the High Court held the following:

1. The Copyright Act, 1957 ("**Copyright Act**") permits the owner of a copyright to file a suit for infringement at the place where the owner resides or carries out business. Simply because the persons infringing the copyright are using the Telegram application which stores its data on servers outside India, the jurisdiction of Indian courts cannot be ousted.
2. The definitions of "infringing copy", "plates" and "duplicating equipment" under the Copyright Act are broad enough to cover the devices of channel operators which permit and enable dissemination and communication of infringing content, and electronic copies circulated on Telegram channels. Therefore, both civil and criminal Courts in India are vested with the jurisdiction to provide reliefs under the Copyright Act, irrespective of where the servers hosting the data are located.
3. Merely granting injunctive relief without commensurate damages for copyright infringement would be a hollow and ineffective. In the absence of disclosure of identities, orders granting injunctive relief do not hinder infringers from creating new infringing channels and profiting off their infringement. Instead, plaintiffs are compelled to repeatedly seek blocking orders against such new channels. If the identity of the users/administrators of channels and accounts are not disclosed, the remedy of damages under the Act would be a toothless remedy, thereby defeating the purpose and intent of the legislation.
4. Given that Telegram is one of the most popular messaging applications in India, simply by claiming that the servers hosting the data are located outside India, Telegram cannot evade orders passed by Indian courts.

² Justice K.S. Puttaswamy v. Union of India & Ors., (2017) 10 SCC 1.

³ Section 17 and 29 of the Personal Data Protection Act, 2012 – Singapore

5. Indian courts would have jurisdiction since: (i) the infringement is happening in India; (ii) the accounts uploading infringing content are likely created in India; (iii) the data of such accounts is likely to have been uploaded from India; and (iv) the devices circulating works relating to competitive examinations and the persons running the infringing channels / content are likely located in India. It is also relevant to note that Telegram is actively making its services available in India, and even earning revenue from India.
6. Since the data is being stored using cloud computing, while the servers may be located outside India, the data would be accessible across jurisdictions, including India. Territoriality in the conventional sense does not exist so as to divest the courts in India of their powers.
7. The laws of Singapore recognize violations of laws as an exception to privacy. Infringement of copyright being one such violation, any disclosure in such proceedings would be recognized as an exception to privacy under the applicable law of Singapore.
8. Singapore is a signatory to the Berne Convention for Protection of Literary and Artistic Works, 1886 read with the Agreement on Trade-Related Aspects of Intellectual Property Rights. Therefore, Plaintiff's works would enjoy protection under the laws of Singapore as well, despite the privacy obligations.
9. Merely disabling or taking down channels upon Telegram being notified of infringing content is insufficient.
10. The IT Rules and the safe harbour provisions of the IT Act do not preclude Telegram's duty as a platform to take all effective steps to protect intellectual property rights. Production of details of infringing devices or the persons would not derogate from the safe harbor provisions or put any liability on Telegram for such infringing acts of others.
11. Telegram cannot escape disclosing the information pertaining to infringers on the ground of violation of fundamental right to privacy – this right cannot be used as a shield by any person to protect itself against illegal actions.
12. The non-obstante clause in the IT Act contains a proviso stating that the provisions of the IT Act do not restrain a person from exercising his rights under the Copyright Act. This means that the provisions of both legislations are supplemental.

JSA Comment

The overarching theme of the judgment is the need to ensure the effectiveness of intellectual property protection against infringement by persons using the anonymity offered by the cyberspace. At the same time, the judgement of the High Court may have an impact on the working of intermediaries under the IT Act, especially since the net of jurisdiction of Indian laws has been widened.

Intermediaries cannot escape the jurisdiction of Indian courts by being incorporated outside India and locating data or servers outside India, when they actively make their services available in India. This is a nod to the jurisprudence that the High Court had developed on purposeful availment as a test to determine jurisdiction in internet-related disputes.⁴ Intermediaries may now be directed to disclose information relating to the users of their platforms in certain cases where there is prima facie violation of a law by such users.

The judgment also clarifies the interaction between the IT Act and the Copyright Act – effectively, the IT Act does not override the Copyright Act, and can be harmoniously read with it.

On the other hand, while intermediaries can be asked to disclose user details, the judgement may strengthen the jurisprudence that liability for third party actions cannot be put on intermediaries, which are merely conduits for information. It remains to be seen where the protection accorded to intermediaries would be diluted as a result of the judgement.

⁴ Banyan Tree Holdings Limited v. M. Murali Krishna Reddy & Anr., 2008 SCC OnLine Del 1740

It is likely that the present order will be challenged soon considering the impact it will have on the position of intermediaries under the law, which they have been vigorously defending. It will be interesting to see if and how appellate courts, including the Supreme Court of India, balance the rights protected under the IT Act vis-à-vis the right to privacy claimed under Article 21 of the Constitution of India.

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