

Telegram directed to disclose information regarding copyright infringers on its platform, irrespective of its servers being located in Singapore

Introduction

In a recent copyright dispute of *Neetu Singh & Anr. v. Telegram FZ LLC & Ors.*¹, the Delhi High Court has directed the Defendant to disclose details such as devices, mobile numbers, IP addresses, email addresses, etc. of infringing channels using its platform. The order follows the recent approach² of the court against messaging platforms, including Telegram, which are being misused by infringers to violate protected works of others.

Background

The Plaintiff is an author and also runs coaching institutes for preparation of various competitive exams. It was the case of the Plaintiff that its copyrighted works, including course material, online lectures etc. are being disseminated unauthorizedly through the Telegram application, which is a messaging platform. The Plaintiff further claimed that videos of its lectures were being uploaded on a daily basis on Telegram's channels and being made accessible to students at discounted rates. Further, the Plaintiff also claimed that books of the Plaintiff are being circulated in PDF formats on Telegram channels. The Plaintiff had filed an application seeking disclosure of identity of channel creators, from Telegram.

It was submitted by the Plaintiff that as per the Privacy Policy of Telegram, if there is any violation of law, Telegram is liable to take down such channels and also disclose the information relating to the persons who are running the said channels.

On the other hand, the Defendant stated that the interim arrangement which is already in place directing Telegram to take down the impugned channels is sufficient to protect the interest of the Plaintiff. The Defendant further stated that as per the Privacy Policy of Telegram until and unless a person is expected to be a terror suspect, the disclosure of the subscriber information cannot be made. The Defendant argued that that so long as unless and until a law requires disclosure of such information, it is not permissible to direct disclosure

¹ CS (COMM) 282/2020

² DocTutorials Edutech Private Limited v. Telegram, 2022 SCC OnLine Del 2056, decided on 14-07-2022

of the same inasmuch as the privacy of the person operating the said channel would be protected by Article 21 of the Constitution of India.

The Defendant further argued that as an “intermediary” under Information Technology Intermediary Guidelines and Digital Media Ethics, 2021 (hereinafter “IT Guidelines”), it only has to remove the infringing content when notified and is not liable for any third-party information circulated on its platform. The Defendant also stated that unauthorised disclosure of subscriber information would be a breach of a contract, a criminal offence under Indian IT law. Further, it was argued that the data centers and servers of Telegram are located outside India and the direction for disclosure would violate the laws of the jurisdiction where the servers are located. Moreover, Telegram uses a distributed physical infrastructure and is bound by the provisions of the Personal Data Protection Act, 2012, of Singapore (hereinafter “PDPA”). Furthermore, it was also stated that Telegram itself is a Dubai-based company and is bound by the laws of Dubai.

Decision

The Court, with respect to the question of having jurisdiction in cases when Telegram’s servers are located outside India observed that Indian courts would be the natural forum of jurisdiction in this dispute due to the fact that the infringement is unabashedly continuing within India. In furtherance of the same, it was held that *“merely due to the fact that the persons disseminating the copyrighted works, are using the Telegram app and the said app retains its data outside India, on Telegram servers, the jurisdiction of this Court cannot be ousted”*.

Moreover, in response to Telegram’s contention regarding being an intermediary, the Court clarified that *“merely disabling or taking down channels upon information being given to Telegram is an insufficient remedy since the channels are clearly hydra-headed and are surfacing one after the other owing to the ease with which they can be created, with just another mobile number or email address.”*

With regards to Telegram’s reliance on Indian IT (Intermediary Guidelines and Digital Media Ethics), 2021 that it is only mandated to disclose originator information in case of specific

offences, the Court pointed out that these guidelines do not in any manner obviate the duty of Telegram as a platform to take all effective steps required to protect IP rights, including rights of copyright owners. The Court further clarified that such production of details of infringing devices or persons or other sources, is not a comment on Telegram's liability and does not derogate from safe harbour provisions. In fact, it is aligned with the view of Telegram's claimed role as an intermediary, which claims to act as a conduit of information.

The Court upheld that the Plaintiffs' works are protected under the Copyright Act. Further, the Plaintiffs' works circulated unauthorizedly on Telegram constitute electronic "infringing copies" under the Copyright Act. It was observed that "Plates" (which includes "any device used for reproducing copies of copyrighted work") used to produce such infringing copies can be seized or ordered for delivery up under Section 58 of the Copyright Act.

Therefore, keeping in view the facts of the case, the Court finally directed the Defendant to disclose the details of the channels/devices used in disseminating the infringing content. The data relating to the infringing channels and the details as to the devices/servers/networks on which they are created, their creators, operators including any phone numbers, IP addresses, email addresses, used for this purpose had to be disclosed by Telegram. The said information was to be filed in a sealed cover with the Court and upon perusing the said information, directions, if any, shall be passed by the Court, after hearing the parties.

Conclusion

To conclude, vide the said order, the Court has shed light on the pro-active measures being required to be taken by intermediaries before claiming the "Safe harbour" exception. The said order also touches upon other significant issues pertaining to the jurisdiction of Indian courts in cases when data servers of a party are located outside India. Orders of this nature play a vital role in developing the intermediary jurisdiction in India.

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