

## Copyright Infringement By Internet Service Providers (ISPs)

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### ABSTRACT

The issue of copyright infringement among ISP's has been discussed extensively in the literature but little is known as far as this problem in Ghana is concern. This paper examines ISPs' liability for copyright infringement in Ghana. It was found that, little or no evidence supports the subject matter under study. It can be concluded that, ISPs' play a very instrumental role in the intellectual spheres of human life but copyright infringement is illegal though little evidence supports this claim. It was recommended that, individuals or third party is to encourage creativity and innovation whiles the government of Ghana through it ministries and agencies should bring to light some policies aim as awarding individuals or third parties who are creative and innovative as well as caution copyright infringers.

**Keywords:** Copyright Infringement, Isps, Liability, Evidence, Intellectual Property, Creativity, Innovation, Government Policies, Copyright Infringers,

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#### Proceedings Citation Format

Anumel, B. (2023): Copyright Infringement By Internet Service Providers (ISPs). Proceedings of the 36th iSTEAMS Accra Bespoke Multidisciplinary Innovations Conference. University of Ghana/Academic City University College, Accra, Ghana. 31<sup>st</sup> May – 2<sup>nd</sup> June, 2023. Pp 95-100 <https://www.isteam.net/ghanabespoke2023>.  
[dx.doi.org/10.22624/AIMS/ACCRABESPOKE2023P8](https://doi.org/10.22624/AIMS/ACCRABESPOKE2023P8)

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### 1. BACKGROUND TO THE STUDY

Discourse on copyright dates back to the 1709 when the Statute of Anne for the first time a codification of authors' rights in law in order to encourage learning (Sarpong introduced, 2013; Cohen, 2005). In 1998 the US became the first country to address the application of Copyright Law to the liability of Internet Service Providers (ISP) for online copyright infringement made by their subscribers. With the passing of the Digital Millennium Copyright Act (DMCA) the US not only regulated this issue as domestic law, but also created a model for the rest of the world. For instance, the EU Copyright Directive 2004 is similar in many ways to this norm.

The rapid increase in online activities in the digital world has posed complex legal issues, inter alia, in the areas of intellectual property law, defamation law and social media law. In the area of intellectual property law, online activities involve works protected by copyright law and among them, the liability of internet service providers (ISP) for copyright infringement that takes place on its networks is an emerging legal problem that challenges the traditional copyright law. Copyright infringement occurs anytime a party violates one or more of the copyright owner's exclusive rights granted by the copyright laws. The party whom themselves completes the infringing copying is directly liable under the statutory language of the 1976 Act.

The content that is distributed through the internet includes software, text, pictures, images, music, films that are part of the copyright law. The works protected by the copyright law are easily reproduced and distributed by unauthorised persons via the internet that may allow the users to access the material that is freely available on the web. This may affect the reproduction, distribution and communication rights of copyright owners since “the infringing act may occur when certain files containing copyright material such as text, pictures, or sounds are posted on the web from which they may be downloaded all over the world This paper aims to examine copyright infringement by ISPs in Ghana. In doing so, the paper starts with a brief background of this topic at the global level, the purpose of this paper, **ISPs’ liability for copyright infringement in Ghana.**

### **1.1 Conceptualizing ISPS’ and Its Roles**

The Electronic Commerce (EC Directive) Regulations 2002 in the UK, which gave effect to the European Electronic Commerce Directive, defines the “Service Provider” as “any person providing an information society service”. The “Information Society Service” referred to in this definition is given the same definition as that in Article 1 (2) of the European Directive No.98/34/EC of the European Parliament and of the Council (repealed) as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”.

In the Computer Crimes Act, No. 24 of 2007 of Sri Lanka, the term “Service Provider” is defined in section 38 as “(a) a public or private entity which provides the ability for its customers to communicate by means of a computer system; and (b) any other entity that processes or stores computer data or information on behalf of that entity or its customers”. Basically, ISP “provides internet access and other services to its subscribers: subscribers will connect to the ISP through various means, including dial-up connection across the public telecommunications network, and once connected will have access to such internet resources and facilities as the ISP provides”. ISPs are therefore actively involved in providing services that facilitate a transaction between the sender and the recipient. Without ISPs, no internet transaction can be affected in the digital world.

ISPs provide a wide range of services through different functional roles. In order to understand the liability, it is necessary to distinguish the different roles they play in the transmission of digital work from one point to another. This distinction is crucial, as the liability will depend in most instances on the different roles of ISPs. ISPs “in their various roles as hosts, access providers and as well as in their function as mere conduits play a key role as they provide the means to enable the individuals to store, access and transmit the data packages containing unauthorised music files

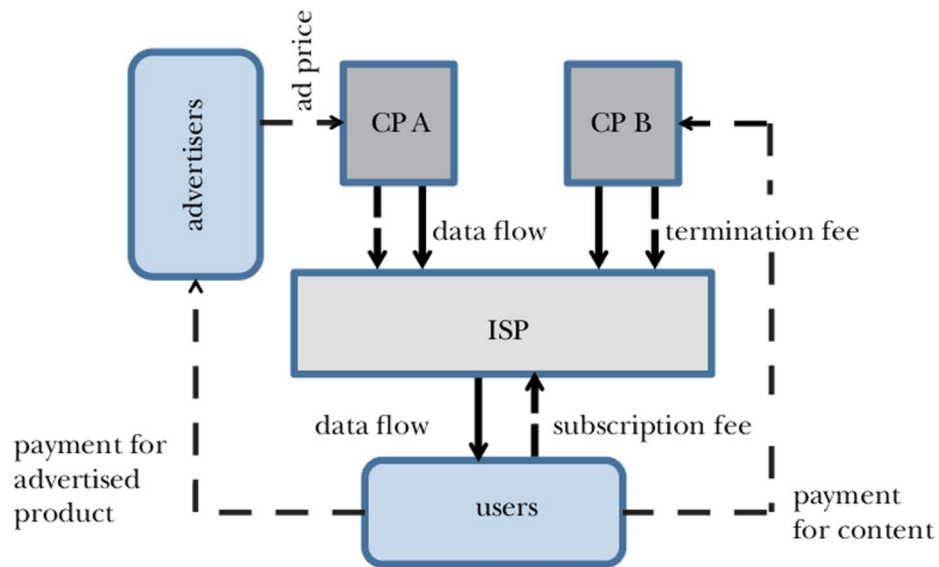


Fig 1: ISP Payments Framework  
(Source: Shane Greenstein, 2016)

## 2. REVIEW OF RELATED LITERATURE

The liability of communications facilitators regarding copyright infringements has evolved in the last 10 years at the international level. The starting point was article 11 of the Berne Convention, the main international provision likely to have an effect on their liability before 1996. ISPs are deemed to be more solvent than their users so that they would be able to pay a substantial liability judgment. However, this is a very arguable reason. It may apply to big ISPs like AOL and Yahoo!; yet not to the small ISPs that abound in the market all around the world. Anyways, these reasons justify the trend of Copyright owners suing ISPs rather than going directly after the infringers.

Cohen (2005) suggests that intellectual property rights are “all or nothing”, meaning that the use of one form of intellectual property right requires the use of another. He argues that a copyright prohibits people from using the labour expended in coming up with a literature or art, but does not include the use of an idea or fact. Cohen (2005) suggests that under natural law one enjoys the product of his own labour, and not the product of another person’s labour. The work of Gervais, D.J. (2005) on “The Purpose of Copyright Law in Canada. *University of Ottawa Law and Technology Journal*, 2(2), 315-356” explains the economic purpose of copyright law in Canada, which in my view applies to other democratic countries like Australia, UK and USA. The main argument of the author is that copyright law ensures that there is an orderly production and distribution of artistic and intellectual works. This article has used an approach of reviewing three court cases on copyright laws to articulate its main argument.

In **SOCAN V. CAIP**, the court ruled on the issue of liability of internet service providers in relation to their transmission of copyrighted work through the internet. The court of appeal ruled that Internet service providers are not liable because they do not control content. This article is a relevant text in this review, and relates well with other articles reviewed because it talks about the importance of copyright laws in enhancing exclusive right to ownership of artistic and intellectual property. Another pioneering article of “Ku, R.S., Sun, J. and Fan, Y. Does Copyright Law Promote Creativity? An Empirical Analysis of Copyright’s Bounty.

Vanderbilt Law Review, 62(6), 1669-1746” further uses a statistical approach to determine whether the changes in copyright law in have created an impact on the number of new works created by authors and artists. In terms of benefits of the copyright law, the article suggests that copyright law provides authors with exclusive rights with their work. This enables them to get a good financial reward for their works by marketing them. This article argues that greater protection of copyrights leads to greater rewards.

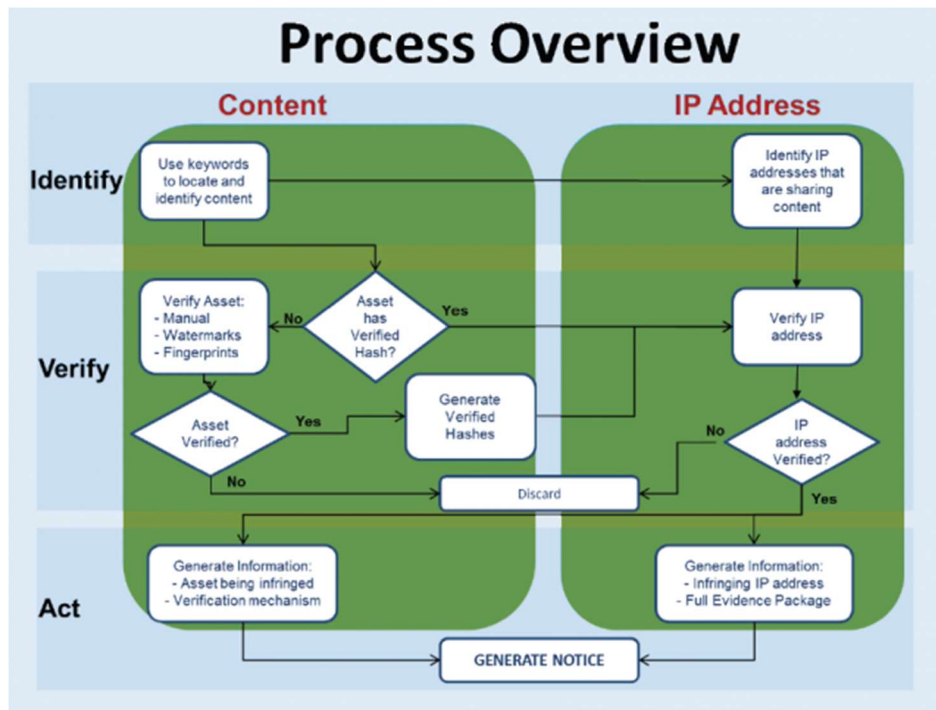


Fig 2: Process Overview

Source: <https://arstechnica.com/tech-policy/2014/05/isps-sent-1-3m-copyright-infringement-notice-to-us-customers-last-year/>

According to Wang, Z. (2009) paper on the “Current Status of Copyright Awareness of China’s Publishing Corporations. *Publishing Research Quarterly*, 25(4), 208-218”. The author describes the general idea of copyright as understood in China’s publishing corporations. Awareness of copyrights by China’s publishing corporations has been explained through the description of the current status of copyright management departments in Chinese Publishing Corporations. The article has also examined the current status of websites and copyright-related information and anti-privacy programs among various publishing corporations in china. The article also uses a strong analysis and conclusion to come up with the current status of copyright awareness of China’s publishing corporations.

Also, Lichtman, D. and Landes, W. (2003) studied on the “Indirect Liability for Copyright Infringement: An Economic Perspective. *Harvard Journal of Law and Technology*, 16(2), 395-410”. This article talks about indirect liability that may arise from the infringement of copyrights. The article quotes the Copyright Act 1976 to explain the indirect liability that may arise from copyright infringement. Various sources of information are cited and included in footnotes to back up the arguments of the author. The article suggests that indirect liability arises when courts hold third parties responsible for the infringement of copyrights. In this case, copyright infringement by third parties includes contributory infringement and vicarious liability. This article links to other articles reviewed because it connects the aspects of third party infringement with their legal consequences.

### **3. FINDINGS**

In Ghana, there is no or little evidence on the issue of ISPS' liability for copyright infringement. However, the empirical evidence supporting the subject matter under consideration focuses basically on developing copyrights in Ghana via the court system. This is clearly seen in works of McDave K. and Hackman-Aidoo A. (2019). It can be found that, ISPs' liability for copyright infringement in Ghana is ideally seen as criminal but no or little academic literature supports this assertion.

### **4. CONCLUSION**

This paper deals with the background to copyrights infringement as one of the intellectual property rights. It further explains how various agencies and authorities have conceptualized the meaning of ISP's and the basic roles or importance of ISP's. This paper reviewed related literature about the subject matter under consideration and it was found that, ISPs' liability for copyright infringement in Ghana is ideally seen as criminal but no or little academic literature supports this assertion. However, it can be concluded that, ISPs' play a very instrumental role in the intellectual spheres of human life as the use of copyrights enhances economic benefits, allows for easy creation and distribution of artistic and literary works but copyright infringement is illegal though little evidence supports this claim.

### **5. RECOMMENDATION**

Based on the above problem under study, it has been recommended that, individuals or third party are to be prevented from interfering with the commercial exploitation of intellectual property. Also, individuals or third party is to encourage creativity and innovation. Furthermore, the government of Ghana through its ministries and agencies should bring to light some policies aimed at awarding individuals or third parties who are creative and innovative as well as cautioning copyright infringers.

### **6. FUTURE WORKS**

More studies should be conducted on the same field by individuals or agencies to help the general public know the criminality as far as copyright infringement is concerned.

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