
SAFEGUARDING CREATIVE EXPRESSION: LEGAL DIMENSIONS OF COPYRIGHT AND EMERGING CHALLENGES IN THE MEDIA AND ENTERTAINMENT INDUSTRY

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ABSTRACT

Aim: The purpose of the paper is to delve into the meaning of copyright in the media and entertainment industry and to address the challenges posed by it, coupled with suggestions to overcome the same.

The media and entertainment industry is intrinsically tied to intellectual property rights, particularly copyright, which serves as a vital tool for protecting creators and their works. While the Copyright Act, 1957 plays a crucial role in safeguarding artistic expressions, the rapid evolution of technology and digital platforms presents significant challenges. Issues such as confidentiality breaches, digital piracy, and the rise of streaming platforms have amplified the complexity of copyright enforcement in the entertainment sector. Moreover, the emerging use of Artificial Intelligence raises new legal questions about authorship and fair use of content.

A key concern is the overlap between copyright and confidentiality laws, wherein confidentiality breaches often occur without traditional copyright infringement. Additionally, the moral rights of actors remain underexplored, despite their significance in ensuring the integrity of performances. Copyright societies face challenges in royalty distribution, with the advent of digital media requiring updated frameworks to ensure fair compensation for creators.

The paper suggests several recommendations to address these challenges. Improving transparency and accessibility in the copyright registration process, amending international conventions like the Berne Convention to accommodate AI's implications on copyright, and enhancing Indian copyright law to incorporate actors' moral rights. These reforms would help foster a balanced ecosystem where creators, performers, and the public benefit equitably from the flourishing media and entertainment industry.

I. INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS

“Ideas shape the course of history, and intellectual property ensures those ideas have a chance to flourish.”

— John Maynard Keynes.

Plato believed that creativity originated from a divine source, where the creative individual would be sent to a temporary state of madness by the Muses. Creativity offers a vast canvas that provides space for human beings to draw out their imaginations in a splendid manner. Intellectual property rights are those intangible rights that secure this creativity by safeguarding them against piracy, unauthorised use and exploitation. The origin of Intellectual Property Rights can be linked to 500 B.C.E. where the chefs in Sybaris, a colony in ancient Greece, were granted annual monopoly in crafting certain recipes. The Statute of Monopolies (1624) and the Statute of Anne (1710) of England gave initial legal recognition to patent and copyright respectively. The ancient forms of trademarks in India can be traced back to the Harappan civilization, where special indications could be seen on their pottery works. France's Law on Marks of Manufacture and Trade, 1857, the United Kingdom's Merchandise Marks Act, 1862 and the United States' Lanham Act, 1946 are the initial legal frameworks on trademark.

The Paris Convention for the protection of Intellectual Property, 1883, of which India is a signatory as of December 7, 1998, established the principle of national treatment, right of priority and the principle of territoriality. India is also a member of the Berne Convention for the Protection of Literary and Artistic Works, 1886 which established the principle of automatic protection and the Madrid Agreement Concerning the International Registration of Marks, 1891. The Rome Convention of 1961 extends its protection to performers, producers and broadcasting organisations. These Conventions gave international recognition to intellectual property rights. Later, in 1967, the World Intellectual Property Organization was formed, which focuses on the international protection and promotion of intellectual property rights. India joined as a member in 1975 and has since then joined many of its treaties. The Trade-Related Aspects of Intellectual Property Rights Agreement, entered into in 1995 between the member nations of the World Trade Organisation, has set minimum standards for protecting international trade of intellectual property rights.

Intellectual Property Rights mainly consists of four categories, namely, Copyright, Trademark,

Patent and Design rights. It can also be extended to include Geographical Indications, plant variety rights and rights related to semiconductor integrated circuit layouts. The Copyright Act, 1957, The Trade Marks Act, 1999, The Patents Act, 1970, The Design Act, 2000, The Geographical Indications of Goods (Registration and Protection) Act, 1999, The Protection of Plant Varieties and Farmers Rights Act, 2001 and The Semiconductor Integrated Circuits Layout- Design Act, 2000 provides legal frameworks to safeguard the various intellectual property rights in India.

II. INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS IN MEDIA AND ENTERTAINMENT

Intellectual property rights are the bedrock upon which the media and entertainment industry is built. Being a broad canvas upon which artists give life to their creativity, it provides incentives for creators to develop novel ideas by safeguarding them against piracy, unauthorised use and exploitation. In the light of the media and entertainment industry being projected to grow by more than 100 billion dollars, by the year 2030¹, reaching INR 2.55 trillion by 2024², a well established promotion and protection system, regulating artistic rights and freedom is a desideratum. The Copyright Act, 1957 and the Trade Marks Act, 1999 are the key enactments involved in the regulation of these rights in the media and entertainment industry, in India.

The making of a cinematographic work often involves the commingling of a number of individuals, entrusted with the work of direction, production, music direction, acting, screenplay, etc., hence giving rise to a substantial set of rights and liabilities. The music industry, which contributes to around 6% of the total revenue generated from the media and entertainment industry, every year³, also involves creative labour from a number of individuals to create art. The film and music industry are two influential industries, whose growth is indispensable to the furtherance of the interests of the people of the country. The accordance of intellectual property rights to these industries is crucial for nurturing a robust media and

¹PRESS INFORMATION BUREAU, <https://pib.gov.in/indexd.aspx> (last visited Sept. 15, 2024).

² Javed Farooqui, Indian M&E sector expected to grow at 10% to Rs 2.5 trillion, (September 17, 7:00PM), https://m.economictimes.com/industry/media/entertainment/media/indian-me-sector-expected-to-grow-at-10-to-rs-2-5-trillion/amp_articleshow/108226718.cms.

³ Ashish Pherwani, The music economy creator- The rise of music publishing in India, https://www.ey.com/en_in/insights/media-entertainment/the-music-economy-creator-the-rise-of-music-publishing-in-india (last visited Dec. 5, 2023).

entertainment landscape.

III. COPYRIGHT: A VITAL SHIELD FOR THE MEDIA AND ENTERTAINMENT INDUSTRY

Copyright plays an important role in fostering innovation and encourages artists and creators to invest time, talent, and resources into creating works for others to enjoy. The Copyright Act, 1957 is a comprehensive legislation protecting and promoting original artistic works in India. It is a negative right⁴ which safeguards an individual's creative work from being appropriated. The Act promotes creative people to express themselves through their creations by ensuring them their right to original expression⁵. It also provides a framework to protect the moral rights of creators including their right to ownership and integrity of their creations.

Section 2(f) of the Act defines a "cinematograph film" to include a work of visual recording and a sound recording accompanying it. Section 13 of the Act addresses the types of works that are protected by copyright and includes artistic works, films, and audio recordings, but it excludes any cinematograph film or sound recording that contains significant infringements. The definition to copyright⁶ includes the exclusive right, subject to the provisions of the Act, to do or authorise the doing of a literary, dramatic or musical work and the making of any cinematograph film or sound recording. It also includes the exclusive right to make a copy, offer for sale or commercial rental, or sale or rental of any copy of the film and the communication of the film to the public⁷. The rights in respect of artistic work⁸ and sound recording⁹ are also provided under the Act. Section 17 which defines the "first owner of copyright" includes the author of a cinematograph film. The Act also provides for a "copyright society" for issuing of licences¹⁰ and a "register of copyrights" to be kept at the Copyright office¹¹. Section 52 of the Act paves way for creators to draw inspiration from and develop ideas on the basis of another original work, hence providing a space for artistic freedom.

The making of a cinematograph film begins with the producer finding an apt script. The

⁴ Time Warner Entertainment Company v. RPG Netcom, 672 (Del) (DB).

⁵ Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1.

⁶ The Copyright Act, 1957, S. 14, No.14, Acts of Parliament, 1957 (India).

⁷ The Copyright Act, 1957, S. 14(d), No.14, Acts of Parliament, 1957 (India).

⁸ The Copyright Act, 1957, S. 14(c), No.14, Acts of Parliament, 1957 (India).

⁹ The Copyright Act, 1957, S. 14(e), No.14, Acts of Parliament, 1957 (India).

¹⁰ The Copyright Act, 1957, S. 33, No.14, Acts of Parliament, 1957 (India).

¹¹ The Copyright Act, 1957, S. 44, No.14, Acts of Parliament, 1957 (India).

producer may employ a screenwriter to develop the script. The script, which may be rooted from an original idea or an adaptation, forms the original work. The producer will have to obtain an option agreement to move forward with a script based on a book or a play. The writer's contract is protected by copyright laws, which ensures their rights to the script. The other rights, including rights to televise the content or of making sequels is negotiated and an agreement is formed to this regard to prevent future legal issues.

The protection accorded to a cinematographic film is narrow compared to other artistic works. A film cannot be said to be a copy of another if it does not create a copy of the other film and a film resembling another cannot be said to have caused a copyright infringement. The Supreme Court has laid down some guidelines¹² for determining what constitutes a copy, emphasising the perspective of the viewer who views the two similar works. Later, the Supreme Court interpreted the Act in consonance with the Berne Convention and an advertisement was held not to be of infringement to another as it was not essentially or materially or substantially similar¹³. These precedents have set forth the line of distinction between drawing inspiration and copying a work in the entertainment industry.

Copyright and international relations intersect significantly. The loss caused to the American economy due to the intellectual property rights violations in China had caused a rift between the nations. This situation highlights the crucial role of copyright in maintaining international relations. The growth of international flow of content marks the importance of international treaties in regulating copyright on the international level.

Copyright in the field of music serves as a powerful tool that effectively regulates its unauthorised use by establishing necessary safeguards. Section 2(p) of the Copyright Act, 1957, defined "musical work" in a negative manner by stating that it is any work of music except words or actions accompanying music. The collaborative involvement of multiple authors for the creation of music is also recognised under the Act¹⁴. The Act also acknowledges two types of copyright, one pertaining to sound recordings and the other to music compositions.

Copyright helps establish one's ownership over his/her original artistic work in a legal purview. It deters any potential infringers from misuse of one's content and prevents an infringer from

¹² R.G. Anand v. M/S Delux Films and Ors., 1978 AIR 1613.

¹³ Mrf Limited. vs Metro Tyres Limited, (2019) 262 DLT 734.

¹⁴ The Copyright Act, 1957, S. 2(z), No.14, Acts of Parliament, 1957(India).

establishing wrongful control over another person's work. In an age of increasing piracy and growing black markets, the Act holds paramount importance. The Act also facilitates licensing, safeguards creators' rights globally and provides legal remedies for enforcement of their rights.

IV. COPYRIGHT CHALLENGES IN THE MEDIA AND ENTERTAINMENT INDUSTRY

Though copyright plays a dynamic role in protecting the rights of stakeholders of the dynamic media and entertainment industry, it is not without any challenges. An array of issues have arisen that pose significant challenges to copyright, especially in the advent of the digital age. Addressing these challenges is essential to ensure that the creators are effectively supported and empowered, thereby enabling the media and entertainment industry to flourish. Some of the challenges affecting copyright in the industry will be discussed below.

A. CONFIDENTIALITY AND COPYRIGHT INFRINGEMENT

Copyright protection is not extended to ideas, methods or concepts but to expressions¹⁵ solidifies the principle of idea-expression dichotomy upon which the idea of copyright is rooted. The principle of idea-expression dichotomy was laid down in the landmark judgement of *R.G Anand v. M/S. Delux Films & Ors.*¹⁶ in which it was held that there can be no copyright in an idea, subject matter, theme, plot or historical or legendary facts. Effectiveness of the test of similarity was widely invoked as well to determine the originality of a creation. Copyright protection extends to "original" literary, artistic, musical, dramatic, and literary works alongside sound recording and cinematographic films¹⁷. In the case of *Eastern Book Company v. D. B. Modak*¹⁸, the Supreme Court put forward the interpretation of "originality" as requiring a minimal creativity to claim copyright. No copyright can vest in an idea or model that has several methods of interpretation, but only in creative and unique expressions thereof. One of the drawbacks of idea-expression dichotomy is the innate inability to differentiate between the concept of an 'idea' and an 'expression' in certain cases. If they are closely merged and entangled with each other with no room for any separation, the doctrine of merger comes into

¹⁵ Article 9(2) of the Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS)

¹⁶ *R.G Anand v. M/S. Delux Films & Ors.*, 1978 AIR 1613

¹⁷ The Copyright Act, 1957, S. 13(1), No.14, Acts of Parliament, 1957 (India).

¹⁸ *Eastern Book Company v. D. B. Modak*, AIR 2008 SC 809

picture¹⁹. In *Herbert Rosenthal Jewellery v. Kalpakian*²⁰, Court held that since the expression in question seems to be indistinguishable from the original idea, replicating the former may not be barred or else it might result in the monopolisation of the copyright holder over his idea. The Merger doctrine remains widely criticised for its inbuilt implication that works can only exist in a single form. The application of this doctrine is dependent on the discretion of courts with a sense of ambiguity since there are no strict guidelines.

Confidentiality on the other hand serves as a cornerstone of information security guaranteeing authorised access to sensitive information, which may be expressed, implied, or inferred through contracts and other forms of communication. The interplay between confidentiality breaches and copyright infringement becomes crucial when the confidential material also constitutes a creative work that could be copyrighted. While copyright protects the expression of an idea, confidentiality protects the idea itself. Although copyright cannot be established for an idea per se, confidentiality may be, depending on the circumstances of a case. In *Zee Telefilms Ltd v. Sundial Communications Pvt Ltd & Ors.*²¹, the Bombay High Court held that even in the absence of an agreement of confidentiality between the parties, the form in which a concept is expressed is crucial in determining whether there has been a copyright infringement or not. Therefore, Confidentiality law possesses a wider scope in hampering “copyright infringement”²². The Bombay High Court’s insistence on exactitude and precision in pleadings on the breach of confidentiality draws a line of intersection with the copyright infringement while expounding upon the settled expression-idea dichotomy under Indian copyright law in the case of *Tarun Wadhwa v. Saregama India Ltd. & Anr.*²³ as a mandate to prevent vague and baseless allegations against users.

While confidentiality and copyright law overlap in protecting creative works, their scopes differ significantly. Not all creative ideas are protected under copyright law, as copyright only applies to the expression of ideas, not the ideas themselves. This leaves creators vulnerable to misuse of their concepts before they are fixed in a tangible form, making confidentiality agreements a crucial protective measure. When these agreements are breached, creators may lose control over their intellectual property, even if no copyright infringement occurs at that

¹⁹ Pamela Samuelson, “Re-conceptualizing copyright’s merger doctrine” 63 *Journal of the Copyright Society of the U.S.A.* 417 (2016)

²⁰ 446 F. 2d 738 (9th Cir. 1977)

²¹ *Zee Telefilms Ltd v. Sundial Communications Pvt Ltd & Ors.*, 2003(5) BOM CR 404

²² The Copyright Act, 1957, S. 51, S. 52, No.14, Acts of Parliament, 1957 (India).

²³ *Tarun Wadhwa v. Saregama India Ltd. & Anr.*, MANU/MH/4460/2022

stage. Additionally, the global nature of content dissemination is an ever growing concern with the rising digital media. Even when the confidential agreements are intact, unauthorised leak and pirated content gets amplified with the speed of dissemination in this virtual era.

B. MORALITY RIGHTS OF ACTORS

The Copyright Act, 1911, was the first legislation to give statutory recognition of copyright in cinematograph films. Influenced by the Berne Convention of 1908, which is in turn inspired from the French Copyright law, “droit d’auteur”, which recognised cinematograph films as an art form, the Act was laid down to incorporate these rights. The Convention grants authors protection of their works in the countries of their origin and in foreign countries²⁴. The Convention however vests discretionary power with the countries of the Union²⁵ to determine the extent of protection conferred under their respective Acts. The Convention also provides recognition to the moral rights of authors by incorporating Article 6, which states that, an author shall have the right to object to any changes in his work, which may affect him negatively, including distortions or alterations of the work. Section 57 of the Copyright Act provides special rights to authors, which exist independently of their copyright and remain even after the copyright is fully or partially assigned. The Copyright (Amendment) Act of 1994 and the Copyright (Amendment) Act of 2012 have had significant roles in reinforcing authors’ morality rights.

In the case of *Fortune Films v. Dev Anand*²⁶, the Bombay High Court stated that the matter as to a cine artist’s right to copyright in his performance was *res integra*. It was held that the performance of an actor does not come under the definition of “work” and denied the actor’s right to control the use of his performance in a film. However, after the Copyright (Amendment) Act of 1994, this position has evolved. In *Neha Bhasin vs Anand Raj Anand and Anr.*²⁷, the performer’s right to control the use of her live performance was upheld.

Though the Copyright Act includes an actor under the definition of a performer²⁸, as per the 2012 Amendment, the Act focuses on the producer’s rights and neglects the actor’s perspective. Section 57 has not been explored to protect the morality rights of actors as well. The case of

²⁴ BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS, 1908, Article 5.

²⁵ BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS, 1908, ARTICLE 1.

²⁶ *Fortune Films v. Dev Anand*, AIR 1979 Bom 17.

²⁷ *Neha Bhasin vs Anand Raj Anand And Anr.*, 132(2006)DLT196.

²⁸ Section 2(qq), The Copyright Act, 1957.

*Manisha Koirala v. Shashilal Nair*²⁹, in which the actress sought an injunction to prevent the release of a film featuring revealing scenes performed by a body double, highlights the need for the inclusion of morality rights in the Act, as no protection could be extended to her under her moral rights at that time. The position with respect to morality rights of actors, after the 2012 Amendment, is different and the case would have been decided differently, if the plaintiff were to argue that there was a violation of her morality rights under Section 38B. However, the actors' right to morality has not been explored in the Indian legal landscape, yet. An amendment in copyright laws across the world, where morality rights of actors would be incorporated has been called for, worldwide³⁰.

C. COPYRIGHT SOCIETIES AND ROYALTY DISTRIBUTION

Copyright societies³¹ serve as middlemen in managing the rights and revenues of copyright holders. Section 33(3) of the Act³² states that societies functioning in the capacity of copyright societies should be legally registered for their validity, with a minimum of seven members as a mandatory requisite. They are authorised by the Act to grant licences, gather royalties and distribute them to copyright holders. Even though the term "royalty" has no statutory definition, it can be deemed a consideration to be paid to the copyright holder for an authorised usage and access to his creation. Right to receive royalty cannot be waived, assigned or licensed except to legal heirs or copyright societies as such³³. The Amendment³⁴ has substantially altered the face of copyright societies by promoting equity and transparency in royalty distribution. Though the inclusion of "actors" in the broad category of performers alongside eliminating the unequal pay meted out to lyricists and composers of copyrighted works owing to the contractual practice in cinematographic films has revamped the Indian film industry, certain provisions require efficient enforcement. Authors of literary and musical works are entitled to claim royalties mandatorily as recently held in *Vodafone v. Saregama*³⁵, marking the end of unsympathetic treatment and ignorance of their copyrighted works, despite their rights

²⁹ *Manisha Koirala v. Shashilal Nair*, 2003(2) BOM CR 136.

³⁰ Adler Bernard, "The Proposed New WIPO Treaty for Increased Protection for Audiovisual Performers: Its Provisions and Its Domestic and International Implications", 12 *Fordham Intellectual Property Media and Entertainment Law Journal*, 1089 (2002).

³¹ The Copyright Act, 1957, S. 2(ffd), No.14, Acts of Parliament, 1957 (India).

³² The Copyright Act, 1957.

³³ The Copyright Act, 1957, S. 18(1), No.14, Acts of Parliament, 1957 (India).

³⁴ The Copyright (Amendment) Act, 2012.

³⁵ *Vodafone v. Saregama*, IA NO: GA/1/2018

being enshrined under the Amendment Act.

With the advent of digitalisation, the steady uprise in streaming devices has inevitably cornered the delicate art of balancing creator rights and innovative content delivery by raising new challenges in fairly compensating copyright holders. The landmark judgement in *Tips Industries Ltd. v. Wynk Music Ltd.*³⁶ by the Bombay High Court marked a turning point in demarcating the obligations of streaming platforms by ruling out that statutory licensing³⁷ as an exception to copyright does not apply to internet broadcasters.

Registered copyright societies like Indian Performing Rights Society (IPRS) and Indian Reprographic Rights Organisation (IRRO) are traditionally focused on regulating copyright of literary and auditory works. Although a performer is entitled to royalties for performing commercially³⁸, reluctance to form actor specific copyright societies for enforcing the same is a cause for concern. Incorporation of royalty payments within the gamut of assignment of the copyrighted work leave certain practical issues unresolved. Along with predetermination of rate of royalty³⁹, parameters incorporating fixed analytical methods for its assessment and calculation needs to be employed.

The media and entertainment industry faces evolving challenges in copyright law, exacerbated by digital technology, globalisation, and new content creation tools like AI. While legal frameworks exist to protect creators and their works, ongoing developments in technology, distribution models, and user-generated content continue to test the limits of copyright protection. Effective solutions will likely require a combination of legal reform, better enforcement mechanisms, and industry cooperation to balance the interests of creators, consumers, and distributors.

D. DIGITAL PIRACY AND COPYRIGHT INFRINGEMENT

With over 820 Million active internet users⁴⁰, India has evolved to become a nation with a notable digital literacy. Content streaming sites like Netflix and Eros now have gained

³⁶ *Tips Industries Ltd. v. Wynk Music Ltd.*, 2019 SCC Online Bom 13087

³⁷ The Copyright (Amendment) Act, 2012, S. 31D, No.14, Acts of Parliament, 1957 (India).

³⁸ The Copyright Act, 1957, S. 38A (2), No.14, Acts of Parliament, 1957 (India).

³⁹ The Copyright Act, 1957, S. 19(3), No.14, Acts of Parliament, 1957 (India).

⁴⁰ Annapurna Roy, How India is using the internet, (September 23, 7:30 PM), <https://economictimes.indiatimes.com/tech/technology/how-india-is-using-the-internet/articleshow/108354854.cms?from=mdr>.

considerable popularity in India, in recent times and the streaming landscape in India has reached a height of 547 Million users⁴¹. However, the rise in popularity of unauthorised streaming sites which illegally stream movies, series and documentaries poses significant challenges to copyright. India is one of the top 10 countries in digital piracy with the number of visits to unauthorised and unauthenticated websites at 5.6 Billion⁴². Cyber-lockers, Peer-to-Peer networks and torrent sites are also critical to this aspect.

Section 65A of the Copyright Act and the Information Technology Act, 2000 regulates digital piracy. Section 65A has been inserted through the Copyright (Amendment) Act, 2012 states that any individual who bypasses the technological measures protecting any of the rights conferred under the Act shall be punishable. When the easy availability of pirated content undermines the rights and financial incentives of rights holders, discouraging them from investing in new projects. This challenge deprives the producers of their production costs and may cause a ripple effect in the industry.

As the digital domain continues to grow, the methods of pirating content are evolving, often outpacing the existing legal frameworks. The anonymous nature of the internet coupled with the global reach of content makes the enforcement of copyright law difficult. Copyright infringements often involve multiple countries, hence requiring international cooperation for regulating and enforcing the same.

The WIPO's treaties became inadequate to meet the growing needs of copyright with the rise in technological innovations. The WIPO Copyright Treaty (WCT) and the WIPO Phonogram and Performance Treaty (WPPT), termed as internet treaties⁴³ were introduced to address this issue. The WCT aims to protect the creative works of authors and the WPPT aims to protect the rights of performers of artistic works. The treaties also deal with the rights of creators to make their work available online and has measures to prevent unauthorised use of content. A balance is also maintained between the rights of creators and the interests of the public at large. The Copyright (Amendment) Act, 2012, addressed some of the digital challenges through

⁴¹ Naman Ramachandran, India's Streaming Universe Grows to 547 Million Users as Paid Subscriptions Stagnate, Says Report, (September 24, 9:30 PM), <https://variety.com/>.

⁴² GO Globe, Online Piracy in Numbers - Facts and Statistics, (September 24, 10:00 PM), <https://www.go-globe.com/>.

⁴³ Report by World Intellectual Property Organisation, Geneva, 3rd Session, The Digital Agenda :The Implementation of the WPC and WPPT, (September 22, 6:40 AM), <http://www.wipo.int/>.

amendments made in line with the WCT and WPPT. Though India was not initially a signatory to these treaties of the WIPO, it acceded to it in 2018.

The Copyright (Amendment) Act, 2012 has failed to address the issue of bringing in a compliance between the broadcasters and venues in paying royalties and the licence fees. The short video platforms which use unauthorised content without any legal implications have to be brought under the purview of piracy as well. The impact of Artificial Intelligence on society calls for a regulation to that regard as the inability to file a case against AI poses a notable threat to enforceability of copyright mechanisms. The time period of an original work, that is 60 years from the death of the owner of the work, cannot be accorded to AI as it never dies. A multifaceted approach is to be taken to address these issues and navigate the challenges.

V. RECOMMENDATIONS

The rapidly evolving media landscape necessitates copyright law to be adaptable and responsive to the emerging challenges it poses. In light of the challenges to copyright in India, the following recommendations are proposed, aligning with the object of the legislation. These recommendations may be implemented to better safeguard copyright while nurturing a media ecosystem that proves to be beneficial to its stakeholders.

1. The Controller General of Patents, Designs and Trade Marks' Annual Report of 2023, showcases a rise of 61.46% in the number of copyright applications filed from 2018-19 to 2022-23. The rising number of copyright applications, calls for the need to improve the safeguards and make the system more transparent and flexible to the public. The steps taken to digitise and strengthen the Copyright office, the opening of a window encompassing the status of copyright applications filed and the effort to improve accessibility to the public by trying to incorporate virtual hearing in copyright matters are welcomed as it improves The Merger doctrine remains widely criticised for emanating that works can possibly exist in a single form transparency and will prove to be beneficial to both the stakeholders and the public.

2. The Berne Convention has formed the basis of copyright laws in India and in the countries of the world. The current Artificial Intelligence boom and its implications on copyright and trademark calls for an amendment in the Convention, incorporating a uniform mechanism, which could potentially be adopted internationally. AI utilises data from numerous resources to generate its content and the unfolding of the legal landscape in this area could mould the

heavily-funded and emerging AI industry⁴⁴. Recently, the New York Times filed a case against OpenAI's use of the newspaper's content to generate similar content on demand⁴⁵. The question as to whether this use of data by AI comes under the definition of "fair use" or causes a copyright infringement pertains. The question also as to whether AI qualifies as an author is a critical question that needs to be analysed and addressed.

3. In the light of the global movement advocating for the inclusion of the morality rights of actors in copyright law, it is imperative for legislators in India to take steps to enhance the Copyright Act of 1957 by incorporating these rights. The actors' moral rights, including the right of integrity and the right to be acknowledged as a creator, that is, the right to attribution are crucial for protecting the actors' interests and recognising their creative contributions. These rights ensure that the integrity of an artist is protected from distortions that could harm their reputation and also ensures that they get their due credit for the work done. By recognising these rights and incorporating the same, India can better support its artists and promote a more equitable environment in the industry, while reflecting global standards in their legislation.

4. The Deloitte Report⁴⁶ indicates that 60% of delays in royalty payments stem from outdated tracking mechanisms which can be resolved by incorporating automated smart contracts.

Though the relevance of blockchain technology with automated contracts has an alarming impact in royalty distribution so far, the current blockchain model poses significant drawbacks which makes the validation of online transactions very slow and tedious. It can be restructured by category-wise employment of energy specific blocks to boost the efficiency thereby enhancing scalability. Adapting legal frameworks to regulate the blockchain and smart contracts would prevent the backlog of royalty transactions.

5. With the advancement in technology and widespread awareness about the importance of copyright, creators tend to protect their original work in all aspects, i.e economical and moral rights. Gaining inspiration from a copyrighted content regardless of the form of copyrighted content for a novel creation is an arguable avenue in the face of emerging challenges in

⁴⁴ J. Edward Moreno, Boom in A.I. Prompts a Test of Copyright Law (Sept 18, 2024, 9:00PM), <https://www.nytimes.com/>.

⁴⁵ Audrey Pope, "NYT v. OpenAI: The Times's About-Face", HARVARD LAW JOURNAL (Sept. 18, 2024, 9:29 PM), <http://harvardlawreview.org>.

⁴⁶ Deloitte Centre for Integrated Research, "Deloitte's 2021 Global Blockchain survey: a new age of digital assets" (March-April, 2021), <https://www2.deloitte.com/>

copyright infringement. Leniency for inspiration in art is essential but rigidity comes into play when it violates the rights of the owner by evading his creative space. Fostering creativity without any copyright infringement is the standard to be achieved by incorporating definite demarcations in this grey area of study.

6. With the rise of the digital age, piracy has surged as unauthorised sites containing illegal copies of movies proliferate the internet. The ease of accessibility and the zero-cost state of these sites attract the users to watch pirated content online without realising the potential consequences of their action. The users are unaware that even a single unauthorised watch could have significant repercussions. It is essential to educate individuals of the evil associated with these sites. The original creators of content are discredited and are deprived of their profits. Though the Copyright Act contains provisions to regulate pirating, the enforceability of the same has not been as par and is lacking. To adequately address and balance the growing needs of artists and the society, the Act needs to be strengthened to balance the growing needs of the artists with the interests of the society.

7. Robust enforcement mechanisms need to be established to guarantee adherence to the regulations laid down in the Act and hence ensure effective implementation of the Act. There should be a focus on strengthening the legal frameworks, providing improved resources to the enforcement agencies and utilisation of technology for monitoring. ADR mechanisms should also be advocated for cost-effective and time-efficient settlement of disputes.

8. It is crucial to define "fair use" taking into account the technological advancements and the increasing prevalence of AI. The evolution in the ways in which content is created, consumed and shared urges the inclusion of a definition balancing the interests of its stakeholders.

9. Public awareness campaigns aimed at sensitising and educating the public of the consequences of copyright infringement are crucial to convey the importance of intellectual property rights to the public. The use of Digital Rights Management (DRM) Blockchain technology should be promoted to protect creator's works from unauthorised alterations or enhancements and to ensure fair compensation.

10. The digital landscape necessitates a regular review mechanism that updates copyright laws ensuring that the law remains relevant and addresses the evolving challenges of the digital age. Periodic reviews conducted every year could potentially accelerate the capability to adapt to

AI, Blockchain technology and virtual reality. More legislative initiatives like metaverse must be adopted to set up think tanks employed with monitoring the latest trends in digital media so as to stay one step ahead of the emerging challenges.

In conclusion, navigating copyright challenges in the media and entertainment industry requires a multifaceted approach that blends legislative updates, technological advancements, and judicial interpretation. As digital platforms evolve and new technologies emerge, existing copyright frameworks must be regularly reviewed and adapted to remain relevant. By fostering dynamic licensing models, revising fair use doctrines, and enhancing cross-border enforcement, the industry can protect intellectual property while encouraging innovation. Ultimately, a balanced approach that safeguards creators' rights while fostering creativity and accessibility will ensure a more sustainable future for the media and entertainment ecosystem.