
ONLINE COPYRIGHT INFRINGEMENT IN THE ENTERTAINMENT INDUSTRY

M.G. Aarthi, PhD Scholar, The Tamil Nadu Dr Ambedkar Law University, Chennai

ABSTRACT

Concerning content creation, the Indian media and entertainment sector is booming. It has advanced even further after the invention of the Internet. When discussing the significance of content creation and delivery, it is critical to take into account the uniqueness of the content as well as the degree to which the rules and guidelines governing intellectual property rights were adhered to throughout its creation. Intellectual property laws ensure that original and authentic works are shared with the public and acknowledge the talents of creators.

In today's world, following a pandemic, people are increasingly resorting to OTT platforms rather than going to movie theatres, cricket stadiums, and concerts. They have become accustomed to watching TV and film content over the internet rather than through a cable connection. The General Public started using social media widely to express their creativity, while people in the entertainment industry utilised it to entertain their audiences. Though some ways of traditional entertainment activities are halted, the entertainment business made significant profits by using internet platforms to stream movies, web series, and other content. The Internet paved the way for the audience to have easy access to entertainment.

People in the entertainment industry employ fresh ideas, visuals, sounds, screenplays, and so on, all of which require diligent effort and a large expenditure. The stealing of such meticulous work has become more common as the entertainment business has grown on the internet. As a result, regulations governing copyright are made to help safeguard such works in the artists' best interests.

Copyright is one of the most crucial aspects of intellectual property rights. It grants the author or producer exclusive rights to their creations. When copyright-protected works are utilised without permission, it violates certain exclusive rights provided to the copyright holder and constitutes copyright infringement. Copyright holders typically use legal and technological methods to prevent copyright infringement. Piracy is the unauthorised use of the creator's original work, which is protected by copyright. Online piracy

violates copyright and threatens artistic creations and expressions. Despite being explicitly prohibited in many affluent nations, online piracy persists due to the ease with which it may be carried out and the frequently justified principles that underpin it.

According to a statement from Motion Pictures, India is the world's largest hub for video and audio piracy. It is also estimated that the worldwide entertainment business, which operates on online platforms, will lose around USD 51.6 billion due to copyright piracy and online piracy.

COPYRIGHTS LEGISLATIONS AND ITS RELEVANCE ON THE INTERNET

Meaning of copyright infringement

The term Copyright infringement is defined as the unauthorised use of someone's copyrighted work. It is the use of material that is normally protected by copyright without the permission of the copyright owner. In general, copyright infringement occurs when a copyright holder's right to exclusive use of a product or material is violated by someone without their consent. The entertainment business, which includes movies and music, suffers the most from copyright infringement. Violation of copyright happens if the item, or a substantial portion of it, is utilised without the authorisation of the actual owner. In general, it refers to the infringement or violation of someone's intellectual property (IP).

Copyright infringement is also defined as the unauthorised use of a producer's creative original work and the deprivation of benefits from such content. Section 51 of the Copyright Act explains what constitutes infringement of copyright. Copyright infringement is explained in Chapter XI of the Act of 2012. Often, Courts interpret it in the matters the context of copyright violations. As a result, everything that breaches the owner's rights protected by the Act becomes an act of infringement. It includes wilfully disseminating others' work to the public for profit, selling or giving for hire, distributing for trade purposes, and importing others' work into India for profit.

An opinion from American jurisprudence quoted by Justice M. Fazal Ali in the case of *R.G. Anand vs Deluxe Films*¹ is ideal to be referred here: "Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy of copyright, which is a synonymous

¹ 1978 AIR 1613, 1979 SCR (1) 218

term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by the statute on the owner of the copyright.

ROLE OF COPYRIGHT IN THE INTERNET

The Internet is often regarded as one of the most common platforms for copyright infringement. Piracy takes several forms, ranging from developers to end users, including intermediate service providers. Though the Copyright Act recognises computer programs and computer-mediated communication as protected copyright, cyberspace has been seen as a grey area of the law. The terms "Internet," "cyberspace," and "digital work" are not defined in the Copyright Act of 1957. Even the 2012 amendment remained quiet on the explicit inclusion of the Internet. The absence of a precise definition in the law, however, suggests that the "digital work" will be a collection of copyrights generated by the author with an identity in accordance with the Copyright Act, 1954. The types of works that are legally protected by copyright are outlined in Section 13 of the Indian Copyright Act, 1957. Section 13 of the Act subsists in a literary, dramatic, musical or artistic work, a cinematograph film, or a sound recording.

Literary works include computer programs, tables, and compilations, including computer databases. Dramatic work means any piece of recitation, choreographic work or entertainment in a show, or acting form of which is fixed in writing or otherwise, does not include a cinematograph film, as a cinematograph film is given as a separate head under the section.

LEGAL ISSUES AND CHALLENGES IN IMPLEMENTATION OF COPYRIGHT LAWS ON THE INTERNET

The Issue of Jurisdiction

Determining jurisdiction can be challenging because the internet is an intangible realm. Different nations or areas may be involved in an online copyright infringement case. Then, the issue of which jurisdiction applies comes up. Depending on where the issue started, a decision could be made. The location of storage, or even the location where the content is ultimately used or shown, could also be taken into consideration. What is considered unlawful copyright infringement in one nation may not necessarily translate to illegal copyright infringement in another. Conflicting laws can occasionally even exist between nations. This makes punishing

a specific person challenging.

After establishing an infringement case, determining which jurisdiction to apply becomes a complicated matter. The problem gets even more difficult to solve when there are competing regulations in different countries on the subject. Finally, the lack of feasibility, along with higher court expenses, makes it difficult to penalise someone. As a result, it is critical to have clear guidelines for determining jurisdiction in cases involving online copyright infringement. It is also impossible to pinpoint the work's location of origin.

The Issue of Public Vs Private Use

Traditional copyright regulations, particularly the Act of 1957, make a distinction between the reproduction of specific content in public and private domains. This distinction enables a person to reproduce copies of copyrighted content in the public domain with prior authorisation from the author or original creator. However, cyberspace makes such distinctions challenging. Because one person can send work to multiple others via the internet, copyright regulations governing public and private venues have become complex.

The Issue of rights of reproduction

The right to reproduce is one of the major problems on the Internet. To distribute content online, it must be reproduced. Data is transferred over the internet using a technology that fragments the complete information into little packets. These little packets are subsequently combined to produce the complete substance. This approach is known as "packet switching". Packet switching implies that there is replication at every stage of data transfer through a computer. This makes it difficult to determine the exact rights of reproduction and can be abused in cases of breach.

The Issue of Enforcing Liability

The main concern with online copyright infringement is liability. To impose any type of penalty on an offender, it is necessary to define where exactly the liability resides. However, in one case involving online copyright infringement, multiple people may be engaged. Before reaching the public domain, information may pass through multiple levels and computers. Such infringements could involve multiple people.

Quite often, these persons are based in completely separate locations. For example, in a piracy case, the question is whether the obligation lies with the party receiving the information, the party transmitting such information, or the act that was involved in the process. Under Section 79 of the IT Act 2000, intermediaries are not accountable for any third-party information. However, it is difficult to identify whether the intermediary is at fault. The clause, which is intended to safeguard innocent mediators, is frequently abused by criminals for their own benefit.

Implementing harmonious State IPR Laws in India

There is a lack of consistency among state IPR laws regarding online copyright infringement on the internet. The various domestic regulations governing digital piracy and copyright infringement in different states make effective implementation a challenge. Because online copyright infringement often involves several parties and may involve offenders from multiple states, it is vital to establish state regulations that are consistent. Some states, for example, have the authority to require ISPs to analyse the material. Several other states don't have that power. This generally leads to disharmony and delays.

COPYRIGHT INFRINGEMENT AND THE INDIAN ENTERTAINMENT INDUSTRY

IPR plays a significant role in the expansion of the media and entertainment industries. Media is a sector of creativity that entertains, informs, and educates millions of people across the world. Various media channels, such as TV, radio, cinema, print media, music, software industries, online and digital platforms, are enriched with a wealth of original ideas, creative works, and formats. The Indian Media and Entertainment Industry has emerged as one of the progressive industries in our country, as its contribution to GDP is felt, its role in cultural exchange is understood, and its labour, suffering, and investment in the development of content are recognised.

In the era of digital media, the market for all media sources is growing daily due to rising economic advancement and literacy rates. Copying and reproducing other people's work in any format is now easy because of technology. In addition to discouraging the original authors or contributors from creating more imaginative works, acts of infringement hurt their financial prospects simply because someone else is stealing their work. Copyright infringement occurs in many media in multiple ways.

DOCTRINE OF FAIR DEALING

A legal exception known as the Doctrine of Fair Dealing would typically shield any content deemed copyrighted under the Indian Copyright Act, 1957 (henceforth referred to as the "Act"). It is a legal theory that allows someone to utilise any work that the Act protects, but only in certain ways, in order to preserve the work's uniqueness and purity, as well as the registered owner. The definition of "fair dealing" varies depending on the situation.

Depending on the specifics of each case, the Indian Court applies common sense when determining what constitutes fair dealing. Fair dealing is a significant limitation on the exclusive right of the copyright owner. The financial impact it has on the copyright holder has been used by the courts to interpret it on multiple occasions. If the use has little effect on the economy, it may be considered fair dealing. Fair dealing depends on multiple factors such as the purpose of use, the nature of the work, the amount of the work used, and the effect of the use of the work on the original.

Over the years, India has embraced the idea of fair dealing in accordance with UK copyright rules. In contrast, under U.S. copyright regulations, the same idea is referred to as "Fair Use." The notion of "fair abridgement" was created by instances like **Gyles v. Wilcox**² and **Folsom v. Marsh**³, which also defined the definition of fair dealing and served as precedents for the Indian trials. Fair use and fair dealing can be used as a defence for the authorised use of copyrighted works in India under Section 52(1) of the Copyright Act 1957, arguing that such usage does not constitute infringement.

The idea of fair dealing has been expanded to cover works that are musical or cinematic in character in the latest amendment to the Act, which is known as the Copyright (Amendment) Act, 2012. This is because the new Act has expanded the definition of what constitutes fair dealing under the Indian Regime to include both private and personal works, except work done in the field of computer programming. Fair Dealing has also been thought to help disabled people, who can now access works, including sharing them with other disabled people for research, private or personal use, or other educational objectives.

² 1740) 26 ER 489

³ Marsh - 9 F. Cas. 342, 1841 U.S.

OFFENCES AND PENALTIES

The infringement of copyright cases is punishable under the Indian Copyright Act, 1957. The provisions enshrined under the act impose heavy penalties and fines on infringement of copyright. Section 63 of the Copyright Act, 1957 provides punishment for an infringement of copyright. The burden of proof always lies on the prosecution to prove guilt. The Copyright (Amendment) Act, 1996, enhanced the punishment for copyright infringement and prescribes imprisonment to the offender, which may be extended for a minimum period of 6 months to a maximum of 3 years, and a penalty in terms of fine should not be less than Rs . 50,000 to Rs. 2 lakhs.

Increasing the use of unscrupulous activities in IPR leads to strict penalties against such activities in India. Copyright infringement generally gives criminal as well as civil remedies to the owner. If copyright is infringed, the owner has the exclusive right to bring an action against the person who infringes the work and recover damages or an account of profits. The infringer must pay the damages to the owner for money lost or spent due to the copyright infringement.

In special circumstances, copyright infringement can also come under the purview of criminal law and be taken as a criminal offence. Fines and imprisonment are possible penalties for the criminal offence of copyright infringement. However, in the case of *Cheran P. Joseph v. K. Prabhakaran Nair* ⁴(1967), the Karnataka High Court held that “a criminal court may not give a finding on the question of infringement if the suit is pending before the civil court.

REMEDIES FOR COPYRIGHT INFRINGEMENT

The remedies available for a copyright owner in case of infringement can be classified into civil and criminal remedies

Section 55 of the Copyright Act (1957) defines civil remedies for copyright infringement. The owner can pursue an array of civil remedies, which are explained below;

Anton Pillar Orders

It involves particular procedures, which are as follows: First, a preliminary injunction on the

⁴ 1967 CriLJ 1517 (1957)

distribution of work prohibiting the infringement or destruction of it. Second, the plaintiff's lawyer was given an order to search the defendant's premises and seize the property. Third, an order requiring the defendant to reveal the names of distributors and consumers.⁵

Interlocutory injunctions

An interlocutory injunction is the most substantial remedy accessible to the owner in the event of copyright infringement on his original work. In most situations, an interlocutory injunction is issued against the infringer, and the case seldom progresses beyond that. To benefit from the interlocutory injunction, various requirements must be met, the first of which is that the case be *prima facie*. Second, a balance of convenience should be present. Finally, the owner must have suffered irreparable injury.

Norwich Pharmacal Order

This type of order is passed against the defendant when there is a requirement of information from a third party.

Mareva Injunction

This injunction is used against the defendant when the court of law determines that he is attempting to postpone the proceedings and hinder the execution of the order issued against him. The court of law has the authority to order the defendant to turn over the property to the court, either partially or wholly, in order to satisfy the court's ruling.⁶

Remedies that are pecuniary

The owner of the original work may opt for three remedies under Section 58 of the Copyright Act of 1957. Firstly, if the person profited from their illegal activity. Secondly, if the owner was given compensatory damages for losses incurred as a result of the infringement. Third, if conversion damages are determined using the value of the product or work.

⁵ Internet Intermediaries And Contributory Copyright Infringement , <https://www.mondaq.com/nigeria/copyright/1441546/remedies-for-copyright-infringement> accessed on 21.1.2025

⁶ Shashwat Kaushik, Copyright infringement in the digital age, <https://blog.ipleaders.in/copyright-infringement-in-the-digital-age/>, accessed on 4.5.2025

Criminal Remedies for Copyright Infringement

Section 63 of the Copyright Act of 1957 explains the offences of infringement of copyright and other rights conferred by this Act. If found guilty of copyright infringement, the punishment is imprisonment for at least six months and up to three years, as well as a fine ranging from 50,000 rupees to two lakh rupees. Further, the Copyright Act of 1957 under Section 63A deals with the increase in both the term and the fine.

CONCLUSION

As copyright laws covering copyright infringements happening online are dealt with under the generic class of copyright infringements, the need for special explanation on online copyright infringements is much needed. Because the nature of online copyright infringements is different from the traditional ones, a specific section for online infringement of copyright should be made. This will pave the way for tracking down online copyright infringements in a better way. Extending the scope of online copyright infringement will benefit creators in securing their work without piracy.