
NAVIGATING LIABILITY: COPYRIGHT INFRINGEMENT BY LINKING IN INDIA

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ABSTRACT

In the digital era, linking—whether it be deep linking, embedding, or the use of hypertext links—has become an integral part of how information is shared and accessed online. This paper aims to address the liability of copyright infringement by way of linking, if at all it amounts to copyright infringement. However, the ease and prevalence of linking raise significant legal questions, particularly in the context of copyright infringement. This paper explores the various forms of linking, the legal landscape surrounding this issue in India, comparative analysis of these legal frameworks with that of other countries.

The paper suggests potential improvements to better regulate and restrict copyright infringement via linking, aiming to strike a balance between protecting intellectual property rights and preserving the free flow of information online.

The aim of the study presented is to understand the legal implications of linking practices on the internet, particularly concerning copyright infringement in India. Aim is to understand the specific type of linking involved, the link provider's knowledge and intention, the presence or absence of consent from the copyright holder, and the relevant legal frameworks of different jurisdictions to determine liability. The as technology continues to evolve, legal frameworks surrounding linking practices will need to adapt to address the evolving digital landscape's challenges and opportunities.

Keywords: Linking, Copyright, Copyright Infringement, Communication to public, Moral Rights, Liability for linking.

1. Types of linking

Since linking is so essential to the Internet, many users believe that any legislative restrictions on their usage of links violate their freedom to move around and express themselves online.¹ For the purpose of this paper linking can be divided into three types; hypertext, deep link, and embedding.

Hypertext: A database structure known as hypertext allows users to obtain information about a display straight from the display itself.² Hyperlinking, the practice of connecting web pages through clickable links, is an intrinsic aspect of the internet and an essential tool for navigating online content.³ These links are typically text-based and can be highlighted or underlined to indicate they are clickable. The main goal is to create a network of interconnected documents or resources, allowing users to access related content by following links.

Deep linking: Deep linking is the practice of employing a coded word or image to connect to a page on an external website other than its main page. A deep link takes users straight to the source page instead of sending them to the homepage, where they can then browse to the relevant page.⁴ The aim is to take users directly to relevant content, improving navigation efficiency and user experience by not forcing them to navigate through intermediary pages.

Framing: “Framing” allows an original site to incorporate contents of other websites, in windows while still retaining its advertising and the like. Framing allows a user to view a specific part of a third-party website on another website, without copying or duplicating the content. Copyright and trademark concerns may arise as a result of framing. It is possible for the framing website to convey the idea that the framed site is associated with or supports the framing website.

Embedding: Further, there could be instances when the links and references to other websites are made through ‘inline linking’, in which images though belong to other websites, but would appear within the frame of the viewed web page as multiple, independently scrollable windows. In other words, you may basically import a graphic from another website and use it on your

¹ Richard Stim, *Linking, Framing, and Inlining*, NOLO, <https://www.nolo.com/legal-encyclopedia/linking-framing-inlining-30090.html>

² Merriam-Webster. (n.d.). Hypertext. In Merriam-Webster.com dictionary. Retrieved September 3, 2024, from <https://www.merriam-webster.com/dictionary/hypertext->

³ <https://bytescare.com/blog/is-hyperlinking-copyright-infringement>

⁴ https://www.termsfeed.com/blog/copyright-laws-linking-sources/#Deep_Linking

own by using inline linking. The inlined graphic will seem to the reader as a seamless component of the page he is seeing, and he will not be aware that it is from another website.⁵

2. Copyright infringement

Producers of cinematograph films and sound recordings, as well as authors of literary, dramatic, musical, and creative works, are granted the legal right to copyright. In actuality, it is a collection of rights, such as the ability to reproduce, communicate, adapt, and translate the work, among others.

Copyright is infringed if a person, without proper license, does any act that the copyright owner has exclusive rights to, or allows a place to be used for public communication of the work for profit, constituting infringement, unless unaware or having no reasonable grounds to believe so.⁶

3. Can copyright exists in link itself

Links are facts; therefore, they should not be copyrightable.⁷ A list of facts, however, may be protected by copyright. The US Supreme Court held in *Feist Publications Inc. v. Rural Telephone Service Co.*, a landmark case regarding fact compilations, that factual compilations must include some originality in the selection and arrangement of the data they include.

Applying the same analogy to links one can say that links are compilations of addresses i.e. URLs⁸. Consequently, if it contains unique descriptions of the links, those descriptions are protected by copyright. But the links themselves would not be covered by that protection.⁹

In *Ticketmaster v ticket.com*¹⁰, Tickets.com, a competitor online ticket seller, was sued by Ticketmaster for allegedly violating its rights by deep linking to copyrighted content from the Ticketmaster website. The claimant claimed, among other things, that copyright infringement

⁵ Sableman, M. (n.d.). Link law revisited: internet linking law at five years.

⁶ Section 51(a), The Copyright Act, 1957

⁷ See *R.G. Anand v. Deluxe Films*, AIR 1978 SC 1613 [LNIND 1978 SC 201]. Where the court held that actual events and facts are not copyrightable.

⁸ A URL (Uniform Resource Locator) is a web address that points to a unique resource on the internet. It's similar to a street address that helps people locate a building or house, and a URL helps people find a webpage.

⁹ Publication Information: (Chawla) Alka Chawla: Law of Copyright

¹⁰ Ticketmaster v Tickets.com 2003 U.S. Dist. LEXIS 6483

had occurred when the defendant's website reproduced the claimant's URL. Because a URL lacked enough uniqueness to qualify as a copyright work, the court rejected this claim:

“A URL is simply an address, open to the public, like the street address of a building, which, if known, can enable user to reach the building... there appear to be no cases holding the URLs to be subject to copyright. On principle, they should not be.”

4. Does linking amount to copyright infringement

To understand if linking amounts to copyright infringement it shall perform any function which is exclusive right of the copyright owner, hereinafter called as author. Linking may amount to copyright infringement if it infringes author's right of communication to the public or his right to reproduce.

A. Linking and communication to the public

Communication to the public gives author two rights: broadcasting rights¹¹ and making available right¹².

The phrase "making available" particularly refers to the freedom to make a work available to the general public in a way that allows anyone to access it at a time and location of their own choosing. This right is particularly relevant in the digital age, as it covers on-demand transmissions and other interactive forms of communication.

In EU copyright law, "communication to the public" is an exclusive right of copyright holders, allowing them to control how their work is made available to the public.¹³

In the digital context problem arises when these websites provide links to the material that is already available on another website, this situation poses a question; does this act of linking is mere functionality of the internet or will it amount to communication to the public.

¹¹ Section 37, The Copyright Act, 1957

¹² Article 3(1) of the Information Society Directive (2001/29/EC) grants authors the exclusive right to authorize or prohibit any communication to the public of their works. It reads as ““Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.”

¹³ Also see article 8, WCT

Moreover, to understand if link amount to any infringement it can be considered in two context: link to publicly available content and link to unauthorised content.

a. Publicly available content-

According to the European Court of Justice's analysis of cases in which content from one website is made available from another, infringement can be proven when there is an unauthorized act¹⁴ of communication directed at a "new public," or an audience that the right holders did not consider when they granted permission for the work's initial dissemination.

This concept of new public was first addressed by CJEU in case of *Rafael Hoteles*¹⁵, decided in 2006. This concerned TV sets in hotel bedrooms, to which the hotel proprietor sent a terrestrial TV signal by cable. The CJEU held that the hotel's transmission of broadcast works to guests in their rooms constituted a "communication to the public" under Article 3(1) of the Information Society Directive that required consent of the right holder. The court introduced the idea that a "new public" was being reached - The hotel owner stepped in to grant his patrons access to protected work. Without that involvement, its clients wouldn't be able to access it.

One of the arguments made by the defendants in the case was, it is only when a guest will switch on the television infringement of copyright will take place. Rejecting this contention court held communication is made "to a public in such a way that the persons forming that public may access it, irrespective of whether they avail themselves of that opportunity"

Thus, there is only one point of reference in relation to the act of "making available". Therefore, the act of granting access to the work in question completes the process of "making available," and further reference to the point of reception is completely unnecessary. Even if a hyperlink is not actively clicked, it may nevertheless be seen as "making available" a piece of work.

¹⁴ Due permission of the owner of target website is not taken.

¹⁵ *SGAE v Rafael Hoteles (C-306/05, 2006)*

In case of *Svensson*¹⁶, whether hyperlinks are considered a kind of public communication was the question. In the lawsuit, journalists claimed that Retriever Sverige had violated copyright law by inappropriately linking to news items they had written, making the articles publicly available without their consent.

The European Court of Justice ruled that links to legally permitted works that are publicly accessible online do not violate the exclusive right of communication to the public that is acknowledged by the EU. In the lawsuit, journalists claimed that Retriever Sverige had violated copyright law by inappropriately linking to news items they had written, making the articles publicly available without their consent.

- (1) The European Court of Justice (ECJ) ruled for the first time that links transmit works to the public; however, the court clarified that these links are not illegal and do not need additional authorization from the copyright holder unless they are sharing the work with a new audience. (par. 25-28).
- (2) The ECJ determined that there is no difference between a link leading user to a displayed work and one that embeds the work, giving the illusion of it being on the linking site. Only a link that introduces the work to a different audience infringes upon the copyright holders' exclusive rights. (Para 30), there is no legal solution for this conduct under copyright legislation. Nevertheless, the ECJ does not eliminate the possibility that courts could still approve this behaviour in certain cases as a form of unfair competition.

The "new public" concept has been interpreted by some as analogous to an implied license. By making content freely available online without restrictions, right holders are seen as implicitly granting permission for linking to that content. The "new public" emerges when someone circumvents technological restrictions or disseminates the content in a way that goes beyond this implied license.¹⁷

¹⁶ *Nils Svensson and Others v Retriever Sverige AB* (C-466/12),

¹⁷ Karapapa, S., (2017). The Requirement for a "New Public" in EU Copyright Law. *European Law Review*. 42 (1), 63-81

b. Link to infringing content-

Linking to infringing content can plausibly be characterised as culpable conduct at least in some situations- but whether person creating the link is in any position to know or find out who is the copyright owner and whether the owner has consented to the content being on the internet and the factors to be considered while determining any liability.

The CJEU has considered profit motive as a relevant factor in determining infringement, particularly in cases like *GS Media*,¹⁸ where knowledge of the illegal nature of the linked content, coupled with the pursuit of financial gain, led to a presumption of infringement.

B. Does linking reproduce the copy of the work

While the act of linking itself doesn't typically involve the creation of a permanent copy on the server of the linking website, there are multiple ways in which linking can still lead to copyright infringement.

Accessing linked content inevitably involves the creation of transient copies of the copyrighted material in the user's computer memory (RAM). whether these transient copies constitute a reproduction that violates the copyright holder's exclusive right, is debatable, as they are temporary and automatically created.

Some legal opinions, argue that the user's browser, not the linking website, is responsible for creating these copies, thus placing the burden of potential infringement on the user rather than the link provider.

In 2007, in *Perfect 10, Inc. v. Amazon.com, Inc.*,¹⁹ the Ninth Circuit ruled that embedding does not constitute a "display" under the Copyright Act. The court also addressed embedding by developing the heavily relied-upon "server test," which has

¹⁸ *GS Media BV v Sanoma Media Netherlands BV, Playboy Enterprises International Inc., Britt Geertruida Dekker* (C-160/15) EU:C:2016:644

¹⁹ 508 F.3d 1146, 1160–61 (9th Cir. 2007), *Perfect 10, Inc. (Plaintiff) sells copyrighted nude images through a subscription website and licenses reduced-size images for cell phones. Google, Inc. (Defendant) operates a search engine that indexes websites and provides search results, including small, low-resolution image thumbnails via its "Google Image Search." These thumbnails are stored on Google's servers, while full-sized images are hosted on third-party websites. Google's in-line linking process allows users to view thumbnails and full-sized images in the same window, but from different sources. Perfect 10 sued Google for copyright infringement, seeking to stop Google from displaying and linking to these images.*

effectively shaped the modern internet and requires that a work be stored on a website's servers—rather than simply hyperlinked—to constitute copyright infringement under US law. This rule, known as the server test, has been frequently used for years²⁰ it allowed websites to incorporate other people's content without having to pay for a license or risk being sued for direct infringement.

However, it is argued that the role of linking in facilitating access to the copyrighted material and inducing the creation of the transient copy, potentially opening the link provider to secondary liability claims

The right to reproduce is often tied to the copyright holder's ability to control access to their work. When linking makes the work accessible to a broader audience than the copyright holder intended, it can infringe their reproduction right by undermining their control over how their work is copied and disseminated.²¹

C. Attack on moral rights- author unknown, attack integrity of the work

Moral rights encompass the author's right to be acknowledged as the creator of a work. Framing and inline linking can obscure the origin of a work, potentially leading to a violation of this right. When a user encounters embedded content or a framed webpage, they might not be immediately aware of the actual source or author of the work. This lack of clear attribution can undermine the author's right to be properly credited for their creation.²²

Author's right to the integrity of their work protects the author from modifications or alterations that would prejudice their honour or reputation. By presenting a webpage within another website's frame, the context and presentation of the original work can be altered, potentially distorting the author's intended message or creating a misleading impression.²³

²⁰ In *Hunley v. Instagram, LLC*, No. 22-15293, on July 17, 2023, the Ninth Circuit reaffirmed the "server test," which protects websites from copyright liability for embedding images that are hosted on another website's server.

²¹ Schwemer, S. F. (2021). Linking: Essential functionality on the internet and never-ending story? *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3844548>

²² Schlach, e. (n.d.). The intellectual property renaissance in cyberspace: why copyright law could be unimportant on the internet.

²³ Atmaram Shelke et al. (2023). Critical study of deep-linking, framing and embedding vis-à-vis intellectual property infringement in India. *Russian law journal*, 11(2). <https://doi.org/10.52783/rlj.v11i2.519>

The act of embedding content can similarly lead to a perceived distortion of the work.²⁴ For example, if an image is embedded out of context or combined with other elements in a way that the author did not intend, it could be argued that the integrity of the original work has been compromised.

Thus, when the linking method obscures the true source and authorship of a work, or when the presentation or context of the work is altered in a way that could be perceived as distorting the author's intent or message, it could potentially amount to infringement of copyright.

D. Does reading, viewing, and listening to copyrighted content amount to copyright infringement

Copyright protection may contain a reproduction right, but it will almost certainly exclude a "reading" right. It may include a performance right but not a "listening" right; it may include a display right but no "viewing" right.

Reading, viewing, and listening do not violate copyright since any transient/temporary and incidental copying that is technically necessary for reading or listening to a work found on the Internet is expressly protected from copyright infringement.

In the US seventh Circuit Court of Appeals case of *Flava Works Inc v Gunther*²⁵ Posner CJ said:

“my Vidster displays names and addresses (that’s what thumbnails are, in effect) of videos hosted elsewhere on the internet that may or may not be copyrighted. Someone who uses one of those addresses to bypass Flava’s pay wall and watch a copyrighted video for free is no more a copyright infringer than if he had snuck into a movie theatre and watched a copyrighted movie without buying a ticket” and

“His bypassing Flava’s pay wall by viewing the uploaded copy is equivalent to stealing a copyrighted book from a bookstore and reading it. That is a bad thing to do (in either case) but it is not a copyright infringement”.

²⁴ *ibid*

²⁵ 689 F.3d 754; 103 U.S.P.Q.2d 1563

5. Liability for linking

While linking is fundamental to the internet's interconnected nature, certain linking practices can trigger legal issues, often based on theories of secondary liability. Contributory infringement and vicarious liability as the main types of indirect liability that can stem from linking.

Direct copyright infringement involves a direct violation of one of the copyright holder's exclusive rights, such as the right to reproduce, distribute, or publicly display the work. Ordinary linking (linking to the homepage of another website) generally does not constitute direct infringement, as it merely directs users to content without copying or distributing it.²⁶ However, deep linking (linking directly to a specific page within a website) and other linking practices like framing and inline linking can raise concerns about potential copyright infringement.

Secondary liability arises when a party contributes to or facilitates the infringement of another, even if they do not directly engage in the infringing act themselves.

Contributory infringement occurs when a party, with knowledge of the infringing activity, induces, causes, or materially contributes to the infringement of another. This doctrine is often applied in cases involving websites that host or link to infringing content.²⁷ But the knowledge requirement for contributory infringement can be challenging to establish, particularly in online environments where content is constantly being created and shared.²⁸

Courts often use a "red flag" test to determine whether a defendant should have been aware of infringing activity.²⁹ Circumstances that might raise red flags include repeated infringement notices, obvious piracy, or the presence of content that is widely known to be infringing. Courts might also find liability if a website operator deliberately ignores red flags or actively avoids acquiring knowledge of infringing activity.

²⁶ The act of linking is fundamental to the use of internet which facilitates free information from one web page to another.

²⁷ Lemley, M. (2016). Reducing Digital Copyright Infringement Without Restricting Innovation. SocArXiv. <https://doi.org/10.31235/osf.io/n4863>

²⁸ Mittal, r. (n.d.). Online copyright infringement liability of internet service providers.

²⁹ § 512(c)–(d), Digital Millennium Copyright Act (DMCA), 1998

Vicarious liability arises when a party has the right and ability to supervise the infringing activity and benefits financially from that activity. The basic rule is that "one may be vicariously liable if he has the right and ability to supervise the infringing activity and also has a direct financial interest in such activities."³⁰ This doctrine is commonly used against online platforms that profit from users sharing infringing content, even if the platform itself does not directly participate in the infringement.

Courts scrutinize whether the linking website derives a financial benefit from the infringing activity. A direct financial interest, such as earning advertising revenue from users who click on links to infringing content, can weigh heavily in favour of finding liability.³¹ However, courts have also extended liability based on indirect financial benefits, such as when a website attracts users with the promise of access to infringing material.

The contractual liability may arise from linking, if a website's terms of use or a licensing agreement prohibit certain types of linking, such as deep linking or framing, then linking in violation of those terms could result in a breach of contract claim.

Understanding the factors that determine the liability of linking requires a nuanced approach that considers the specific type of linking involved, the knowledge and intent of the website operator, the presence or absence of consent from the copyright holder, and the relevant legal frameworks in each jurisdiction. As technology continues to evolve and as the internet becomes an increasingly integral part of our lives, the legal landscape surrounding linking practices will need to adapt to address the challenges and opportunities of the digital age.

6. Provisions relating to linking liability; gap analysis of India and other countries

United States: In the U.S., the legal framework surrounding linking liability is predominantly shaped by case law, reflecting the dynamic nature of the internet and the challenges of codifying rules for an ever-evolving technology. The Copyright Act of 1976, while not specifically addressing linking, forms the foundation for understanding infringement. Courts have generally recognized the vital role of linking in the functionality of the internet and have been hesitant to impose liability for ordinary linking.³² Much of the copyright jurisprudence in

³⁰Gershwin Publ'g Corp. v. Columbia Artists Mgmt., Inc., 443 F.2d 1 159, 1 162 (2d Cir. 1971).

³¹ Robert M. Hirning, Contributory And Vicarious Copyright Infringement In Computer Software Harming One Form Of Intellectual Property By Protecting Another, 6 issue 10, Chi. -Kent J. Intell. Prop., (2006).

³² Kelly v. Arriba Soft Corp., 336 F.3d 811, 816 (9th Cir. 2002).

the U.S. has focused on embedding, although both deep and conventional links direct the user to the original website, indicating that the content is from a different site, embedding seamlessly integrates the information within the embedding website. Therefore, embedded information frequently seems the same as non-embedded information. Due to the inability to differentiate between linked and source website data, most US legal decisions are based on embedding.³³

Courts in the US scrutinize factors like knowledge of infringement, active participation in the infringement, and financial benefit derived from the infringing activity. The Digital Millennium Copyright Act (DMCA), 1998, introduced safe harbour provisions for Online Service Providers (OSPs), shielding them from certain types of liability for infringing content posted by users. Similar safe harbour protections apply to linking users to infringing content, provided the OSP meets the same conditions as for hosting.

European Union: The EU's approach to linking liability is characterized by a more proactive regulatory stance. The "new public" doctrine, a key concept in EU copyright law, holds that linking constitutes infringement if it communicates a work to a "new public" that was not contemplated by the copyright holder when the work was initially made available. This doctrine has generated considerable controversy, with critics arguing that it could stifle innovation and limit the free flow of information.³⁴

The EU's Directive on Copyright in the Digital Single Market has introduced provisions that could further restrict linking practices, particularly those related to embedding content from news websites.³⁵

United Kingdom: UK law generally follows the EU approach of providing safe harbours for OSPs hosting infringing content uploaded by users, provided they act expeditiously upon receiving notification. The courts might consider the context and purpose of linking when assessing liability, particularly if the linking facilitates access to unlicensed works for a new

³³ Rocha, M. (2020). The Brewing Battle: Copyright vs. Linking. *Berkeley Technology Law Journal*, 35(4), 1179–1212. <https://www.jstor.org/stable/27121774>

³⁴ ALAI, Opinion of 17 September 2014, 19 et seq.

³⁵ Directive (EU) 2019/790, also known as the Copyright in the Digital Single Market Directive, which was adopted by the European Parliament in April 2019. The directive aims to update copyright rules for the digital environment and address concerns about the so-called "value gap" between copyright holders and online platforms.

audience.³⁶ However, the principle of authorization, where someone who authorizes an infringing act can be held liable, could apply to linking in certain scenarios.³⁷

China: Hosting services are generally treated as ISPs, subject to liability for copyright infringement by users based on knowledge of the infringing act and their involvement in it. The Dissemination Regulations³⁸ offer protection to ISPs providing linking services, exempting them from joint liability if they promptly remove links to infringing content upon receiving notice from the copyright holder.

Legitimate linking services to a third-party website provided by an ISP are protected under Chinese law. However, to qualify as a legitimate linking³⁹ service, the source of the content must be clearly indicated. Deep linking to copyrighted works is generally considered infringing as it obscures the source's identity. Liability for linking to infringing works hinges on the knowledge of the linker. If the user or ISP knew or should have known about the infringing nature of the linked content, they could be liable.

India: While the IT Act 2000 initially offered safe harbour protections⁴⁰ for internet intermediaries, including hosting and cloud computing providers, for user-uploaded infringing content, subsequent court interpretations, notably in the *Super Cassettes v Myspace case*,⁴¹ have significantly narrowed these protections, particularly in copyright infringement cases.

Indian copyright law doesn't explicitly address hyperlink liability. However, if the linked content forms part of an artistic or visual work, it may be subject to copyright protection. Courts have demonstrated a tendency to prohibit deep linking, as seen in the *Info Edge v Bixee case*,

³⁶ Paramount Home Entertainment International Limited v BSKyB (2013] EWHC 3479(Ch).

³⁷ ABKCO Music v Music Collection International Ltd (1995] RPC 657. (infringement by authorisation can occur even if the act of authorisation takes place in another jurisdiction.)

³⁸ Under Article 23 of the Dissemination Regulations, (Regulation on Protection of the Right to Network Dissemination of Information, 2006, was amended in 2013)when an ISP providing a searching or linking service to its clients cuts off the link to "any infringing works, performance, or audio-visual recording after receiving the rights owner's written notice", it is not jointly liable for infringement unless the provider knew or should have known that any of the works it linked to were infringing.

³⁹ In deciding the test for the requirements of a legitimate linking service, the court in Ciwen y Hainan Co, ruled that if an ISP asserts that it provides content on linked web pages or websites to the public through linking services and if the contents displayed on a web page or website provided by the ISP do not indicate that the linked content was Owned by a third party, then the ISP's linking service is not legitimate and the ISP is directly liable for infringement of the linked web pages or websites.

⁴⁰ Section 79 of the Information Technology Act (IT Act) of 2000

⁴¹ Super Cassettes Industries Ltd v Mysore Inc, IA No 15781/2008 and IA No 3085/2009 in CS (OS) NO 2682/2008 (as per the Delhi High Court's interpretation of the proviso to Section 81 in the IT Act, this safe harbour does not extend to cases of copyright infringement.)

⁴² where an injunction was issued to prevent the defendant from deep linking to job listings on the plaintiff's website.

While not explicitly prohibited, linking to infringing works can lead to legal consequences. A notable example is the arrest of a website CEO for providing links to unauthorized copies of Bollywood songs.⁴³

7. Suggestions

Obtain Prior Permission or License: Seeking explicit permission from the copyright holder before deep linking or embedding their content is a prudent approach to avoid infringement claims. An express licensing system would allow copyright holders to choose the level of sharing they are happy with for their property.

An inferred license to embed items, while unique to each site responsible for content creation, could be used by the defendant in copyright infringement if a copyright license could "be implied from conduct." There are two types of behaviour that could suggest permission on the internet: (1) sharing content online, and (2) not choosing to utilize existing technology to limit linking. Securing a license that clearly outlines the permitted uses of the copyrighted material can provide legal certainty. An implied permission is essentially an estoppel theory that arises because the infringing party relied negatively and reasonably on the intellectual property owner's activities.

Linking Agreements: Establishing clear linking agreements between websites can help clarify the terms and conditions of linking practices. These agreements can address issues like the scope of permissible linking, attribution requirements, and the use of copyrighted material. However, some criticize this approach, arguing that it hinders the free flow of information on the internet.

⁴² Info Edge v Bixee, Suit No 1633/2005 (In Info Edge v Bixee, the plaintiff claimed that the defendant was taking job listings from its database and displaying them as classified advertisements on its website with a hyperlink to the plaintiff's page. The Delhi High Court issued an interim injunction restraining Bixee.com from deep-linking to Naukri. com. By means of this interim order, the Delhi High Court extended protection to the website of Naukri.com and Bixee.com was restrained from copying, downloading and reproducing the content of Naukri.com.)

⁴³ Anita Iyer, Gurujicom CEO arrested for music piracy, April 30 2010, available at: www.radioandmusic.com/content/editorial/news/gurujicom-ceo-arrested-musicpiracy

Take Down Links Upon Notice: Promptly removing or disabling links upon receiving knowledge or notice of potential copyright infringement is crucial to mitigate liability. For an instance, Article 14 of the E-commerce Directive provides a safe harbour for ISPs where information is hosted at the request of a recipient of the service. The ISP must not have actual or constructive knowledge of this illegal activity. The ISP, on obtaining any such knowledge, must act expeditiously to remove the information. In other words, the ISP must operate a notice and takedown procedure. This proactive approach demonstrates a good-faith effort to respect copyright and avoid contributing to infringement.

Web Protection Tools and Technological Measures: Copyright holders can employ technological measures to control access to and use of their content. These measures include:

Access Codes: Requiring access codes to unlock protected content can help control usage and ensure payment for copyrighted material.

Metering Technologies: Implementing metering systems to track and control access to copyrighted works can enable copyright holders to enforce their rights and prevent unauthorized use.

Dynamic Pages and Changing URLs: Creating dynamic web pages or periodically changing URLs can make it more difficult for others to link directly to specific content.⁴⁴ This can help prevent unauthorized deep linking and framing.

Password Protection: Restricting access to certain content through passwords can limit unauthorized use and distribution.

Instructions for Robots and Spiders: Including specific instructions in the header of web pages can inform search engine bots not to index certain content, preventing it from appearing in search results.

Blocking Techniques: Implementing techniques to block or prevent unauthorized linking or framing from specific websites can help control how content is used and displayed

⁴⁴ Kristi Coale, Intellect Smartens Up to Banner Bypass, Wired News (Mar. 28, 1997) <<http://www.wired.com/news/technology/story/2844.html>> (describing how Intellect, a weather site, prevented links to its weather maps which bypassed the associated banner advertisements).

8. Conclusion:

This research has explored the complex interplay between copyright law and linking practices on the internet. As technology evolves and online platforms become increasingly interconnected, the legal landscape surrounding linking continues to shift, requiring careful consideration and proactive measures to mitigate copyright infringement risks.

A fundamental challenge lies in reconciling the goals of copyright law, which incentivizes creation by granting exclusive rights to copyright holders, and the open and accessible nature of the internet. Striking a balance between these competing interests is crucial for fostering innovation while ensuring the free flow of information online.

Traditional copyright principles face significant challenges in the digital realm. The ease of copying and distributing digital content, coupled with the borderless nature of the internet, makes enforcing copyright online a complex task. The lack of clear legal precedents and the rapid pace of technological change further contribute to the uncertainty surrounding linking liability.

Obtaining prior permission or licenses from copyright holders provides legal certainty and minimizes the likelihood of disputes. Establishing clear linking agreements between websites can help clarify the terms and conditions of linking practices. Promptly taking down links upon receiving knowledge or notice of potential infringement demonstrates a good-faith effort to respect copyright. Copyright holders can employ various technological measures, such as access codes, metering technologies, and dynamic pages, to control access to and use of their content.

The legal and ethical implications of linking practices on the internet require ongoing dialogue and collaboration among stakeholders, including copyright holders, internet users, policymakers, and legal professionals. Fostering a deeper understanding of the evolving legal landscape, promoting responsible linking practices, and exploring innovative licensing models can help navigate the complexities of copyright in the digital age, ensuring a balanced and thriving online ecosystem.

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6. Section 51(a), The Copyright Act, 1957
7. See *R.G. Anand v. Deluxe Films*, AIR 1978 SC 1613 [LNIND 1978 SC 201]. Where the court held that actual events and facts are not copyrightable.
8. A URL (Uniform Resource Locator) is a web address that points to a unique resource on the internet. It's similar to a street address that helps people locate a building or house, and a URL helps people find a webpage.
9. Publication Information: (Chawla) Alka Chawla: Law of Copyright
10. *Ticketmaster v Tickets.com* 2003 U.S. Dist. LEXIS 6483
11. Section 37, The Copyright Act, 1957
12. Article 3(1) of the Information Society Directive (2001/29/EC) grants authors the exclusive right to authorize or prohibit any communication to the public of their works. It reads as ““Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.”
13. Also see article 8, WCT

14. Due permission of the owner of target website is not taken.

15. *SGAE v Rafael Hoteles (C-306/05, 2006)*

16. *Nils Svensson and Others v Retriever Sverige AB (C-466/12)*,

17. Karapapa, S., (2017). The Requirement for a "New Public" in EU Copyright Law. *European Law Review*. 42 (1), 63-81

18. *GS Media BV v Sanoma Media Netherlands BV, Playboy Enterprises International Inc., Britt Geertruida Dekker (C-160/15) EU:C:2016:644*

19. 508 F.3d 1146, 1160–61 (9th Cir. 2007), *Perfect 10, Inc. (Plaintiff) sells copyrighted nude images through a subscription website and licenses reduced-size images for cell phones. Google, Inc. (Defendant) operates a search engine that indexes websites and provides search results, including small, low-resolution image thumbnails via its "Google Image Search."* These thumbnails are stored on Google's servers, while full-sized images are hosted on third-party websites. Google's in-line linking process allows users to view thumbnails and full-sized images in the same window, but from different sources. Perfect 10 sued Google for copyright infringement, seeking to stop Google from displaying and linking to these images.

20. In *Hunley v. Instagram, LLC*, No. 22-15293, on July 17, 2023, the Ninth Circuit reaffirmed the "server test," which protects websites from copyright liability for embedding images that are hosted on another website's server.

21. Schwemer, S. F. (2021). Linking: Essential functionality on the internet and never-ending story? *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3844548>

22. Schlach, e. (n.d.). The intellectual property renaissance in cyberspace: why copyright law could be unimportant on the internet.

23. Atmaram Shelke et al. (2023). Critical study of deep-linking, framing and embedding vis-à-vis intellectual property infringement in India. *Russian law journal*, 11(2). <https://doi.org/10.52783/rlj.v11i2.519>

24. *ibid*

25. 689 F.3d 754; 103 U.S.P.Q.2d 1563
26. The act of linking is fundamental to the use of internet which facilitates free information from one web page to another.
27. Lemley, M. (2016). Reducing Digital Copyright Infringement Without Restricting Innovation. SocArXiv. <https://doi.org/10.31235/osf.io/n4863>
28. Mittal, r. (n.d.). Online copyright infringement liability of internet service providers.
29. § 512(c)–(d), Digital Millennium Copyright Act (DMCA), 1998
30. Gershwin Publ'g Corp. v. Columbia Artists Mgmt., Inc., 443 F.2d 1 159, 1 162 (2d Cir. 1971).
31. Robert M. Hirning, Contributory And Vicarious Copyright Infringement In Computer Software Harming One Form Of Intellectual Property By Protecting Another, 6 issue 10, Chi.-Kent J. Intell. Prop., (2006).
32. Kelly v. Arriba Soft Corp., 336 F.3d 811, 816 (9th Cir. 2002).
33. Rocha, M. (2020). The Brewing Battle: Copyright vs. Linking. *Berkeley Technology Law Journal*, 35(4), 1179–1212. <https://www.jstor.org/stable/27121774>
34. ALAI, Opinion of 17 September 2014, 19 et seq.
35. Directive (EU) 2019/790, also known as the Copyright in the Digital Single Market Directive, which was adopted by the European Parliament in April 2019. The directive aims to update copyright rules for the digital environment and address concerns about the so-called “value gap” between copyright holders and online platforms.
36. Paramount Home Entertainment International Limited v BSkyB (2013] EWHC 3479(Ch).
37. ABKCO Music v Music Collection International Ltd (1995] RPC 657. (infringement by authorisation can occur even if the act of authorisation takes place in another jurisdiction.)
38. Under Article 23 of the Dissemination Regulations, (Regulation on Protection of the Right

to Network Dissemination of Information, 2006, was amended in 2013)when an ISP providing a searching or linking service to its clients cuts off the link to "any infringing works, performance, or audio-visual recording after receiving the rights owner's written notice", it is not jointly liable for infringement unless the provider knew or should have known that any of the works it linked to were infringing.

39. In deciding the test for the requirements of a legitimate linking service, the court in Ciweny Hainan Co, ruled that if an ISP asserts that it provides content on linked web pages or

websites to the public through linking services and if the contents displayed on a web page or website provided by the ISP do not indicate that the linked content was Owned by a third party, then the ISP's linking service is not legitimate and the ISP is directly liable for infringement of the linked web pages or websites.

40. Section 79 of the Information Technology Act (IT Act) of 2000

41. Super Cassettes Industries Ltd v Mysore Inc, IA No 15781/2008 and IA No 3085/2009 in CS (OS) N0 2682/2008 (as per the Delhi High Court's interpretation of the proviso to Section 81 in the IT Act, this safe harbour does not extend to cases of copyright infringement.)

42. Info Edge v Bixee, Suit No 1633/2005 (In Info Edge v Bixee, the plaintiff claimed that the defendant was taking job listings from its database and displaying them as classified advertisements on its website with a hyperlink to the plaintiff's page. The Delhi High Court issued an interim injunction restraining Bixee.com from deep-linking to Naukri. com. By means of this interim order, the Delhi High Court extended protection to the website of Naukri.com and Bixee.com was restrained from copying, downloading and reproducing the content of Nukari.com.)

43. Anita Iyer, Guruji.com CEO arrested for music piracy, April 30 2010, available at www.radioandmusic.com/content/editorial/news/gurujicom-ceo-arrested-musicpiracy

44. Kristi Coale, Intellicast Smartens Up to Banner Bypass, Wired News (Mar. 28, 1997) <<http://www.wired.com/news/technology/story/2844.html>> (describing how Intellicast, a weather site, prevented links to its weather maps which bypassed the associated banner advertisements).