

DIGITAL PIRACY AND COPYRIGHT ENFORCEMENT: APPROACHES TO TACKLING ONLINE INFRINGEMENT

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Abstract

Digital Piracy means the unauthorized use or distribution of copyrighted content via digital means; the issue has emerged as a significant challenge in the age of the internet. With the bloom in expansion of digital platforms, the unauthorized dissemination of software, music, film and literary work has become extensive and increasingly sophisticated. Historically, the copyright laws were introduced to regulate tangible forms of reproduction; but the increase in digitalization has outpaced the capacity of traditional legal frameworks to new forms of infringement. Hence the law makers have introduced specific legislation at curbing online piracy. The United States enacted Digital Millennium Copyright Act (DMCA), 1998, whereas India amended the Copyright Act in 2012 primarily to strengthen protection in the digital environment and ensure fair use. At the international level, the TRIPS Agreement and WIPO Copyright Treaty (1996) states foundational regulation for harmonizing copyright enforcement on digital platforms. Despite these legislative frameworks complexities are faced due to jurisdictional challenges, global nature of the internet and anonymity of infringers. The article critically examines the evolving legal approaches to tackle digital piracy and copyright infringements along with a comparative analysis of legal enforcement mechanisms in the jurisdiction. An attempt shall be made to analyze several challenges that are associated with it and the contemporary dimensions of the copyright enforcement and author would further recommend some suggestions on the effective regulation of the original work in India.

Keywords: data piracy, copyright, legislative, infringements, jurisdiction.

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INTRODUCTION

Digital copyright infringement is a multifaceted and complex issue that has rapidly increased in recent years. The unauthorized use or reproduction of copyrighted digital content, such as music, film, software, and work without the permission of the copyright holder is called as digital copyright infringement.¹ The term refers to unauthorized reproduction, use, distribution, or display of copyright holder material in the digital environment that includes Internet and digital platform. The infringement occurs when someone uses protected work without the permission of the copyright holder or without legal justification. The rise of digital platform has made it easier for users to copy and share content such as movies, software, music, books, and images, which leads to widespread instances of infringement. The traditional copyright laws were introduced to protect physical copies of work where as digital copyright infringements constitute challenges. Digital piracy copyright infringement is a violation of both national and international copyright and the issue also undermines the interest of creators by depriving them of potential revenue from their creativity. In India, copyright provisions are governed under copyright at 1957, which has been amended in year 2012 to address the issues related to digital environment. The Information Technology Act, 2000 also place a complementary role in cybercrime, including digital copyright infringement. Though, the enforcement of these laws remains challenge due to jurisdictional complexes, anonymity of the Internet and dynamic nature of digital content sharing. The role of intermediaries such as Internet service provider, search engines, and social media platforms are key aspects of digital copyright infringement in facilitating or preventing spread of content.² In certain cases, the intermediaries are protected under section 79 of information technology act which provides ‘safe harbor’ provisions. Though the effectiveness of this provision is often debated as the copyright holders, face delays in getting infringing content removed. Therefore, digital piracy copyright represents a significant challenge in digital age.

¹ Nikhil Bharadwaj, Copyright Protection in the Digital Age: Challenges and Solutions, Legal Service India (2022) at <https://www.legalserviceindia.com/legal/article-10639-copyright-protection-in-the-digital-age-challenges-and-solutions.html>.

² Red Points, How to Send a Copyright Infringement Notice: Full Guide to Protect Your Brand, Red Points (n.d.) at <https://www.redpoints.com/blog/how-to-send-a-copyright-infringement-notice/>.

The existing laws and mechanisms need to be amended stating International Corporation, rights of creators and stating compensation.

Historical Background of Copyright Law- Printing press was invented in 15th century which made possible to reproduce literacy work. This led to the recognition of copyright which means right to reproduce or copy work. Under copyright exclusive rights were granted to the creator and author of an original work. These rights included the right to distribute, reproduce and adapt the creative work such as artistic, literacy, dramatic, musical, sound recordings and cinematographic.³ Hence it is the creator's ideal that does not permit anyone to duplicate his/ her original/ unique work. After period of time, the work became part of public domain and loses its copyright.⁴ The rise in internet in copyright led the creators growing interest in their work that includes communication, digital printing and entertainment. Copyright with the advancement in technology became global issue; to overcome with such issues numerous nations together established copyright protection conventions. The Widespread Copyright Shows and Berne Show were the primary step taken in protection of original work of the authors and creators.⁵ The conventions were recognized and regulated by majority of nations, including India. Public cooperation becomes crucial when dealing with the cases related to copyright infringement. Over last two decades in technological advancements the digital publishing and communication channels have made greatest leap. In worldwide, approximately 566 million users use internet, out of which 251 million live in rural India, as India emerged as the second largest market online in the world. 97% of Indians use mobile phones, who consume 9.8 GB of data monthly on an average.⁶ However with the rise in use of digital technology piracy has also increased simultaneously. Unauthorized torrent and websites offer “no-cost” alternative for popular movies, series, music, etc that are paid on OTT platforms like Amazon Prime, Netflix, Jio and others. Wide

³ Shalu Gothi and Daisy Jain, An Overview of the Copyright Act, 1957, iPleaders (30 March 2020) at <https://blog.ipleaders.in/an-overview-of-the-copyright-act-1957/>.

⁴ Gayatri Singh, Historical Development of Copyright Law, WritingLaw (10 March 2024) at <https://www.writinglaw.com/copyright-law-history/>.

⁵ Uzma Nasim, Berne Convention and Position of India at a Glance, Legal Service India (2024) at <https://www.legalserviceindia.com/legal/article-13408-berne-convention-and-position-of-india-at-a-glance.html>.

⁶ Suvrashis Sarkar, History and Evolution of Copyright in India, Paripex – Indian Journal of Research, Vol. 5, Issue 11 (Nov. 2016) at https://www.worldwidejournals.com/paripex/recent_issues_pdf/2016/November/history-and-evolution-of-copyright-in-india_November_2016_8201054601_2910081.pdf.

ranges of audiences who are not even aware that such distribution of movies and music is illegal and unauthorized are accepting the free service.⁷ Hence also these lead to regulate copyright laws which were amended according to the technologies in year 2012.

Importance of Copyright Protection in Digital Era- Copyright protection in digital era is of prime importance due to transformative nature of creative works being distributed, created and consumed online. In this era, the Internet has become a global marketplace for creators ranging from films, software, music, books, and artwork that also includes research and educational materials, hence, the need to safeguard intellectual property of content holders has become important.⁸ The copyright protection benefits creators financially from their creations and prevent their work from unauthorized use, distribution and replication. Without copyright laws, the Internet could become a lawless space where the innovation and hard work of individuals are not valued that would also affect industries that rely on intellectual property to thrive. The key role of copyright protection in digital environment is to ensure creators with a legal mechanism to prevent their work from infringement. Furthermore copyright protection ensures sustainability of industries that rely on sale and production of creative works. In the absence of legislature the piracy could severely erode the profits industries, which could also lead to loss of job, reduce investments and decline overall quality of cultural and intellectual products. Copyright protection also supports economy by maintaining fair marketing of creative content. Moreover, it promotes innovation through balance between the rights of creators and public's access to information and knowledge.⁹ In digital environment, this balance is important as it allows for legal use of copyrighted material in research, education and transformative work such as review, commentaries and parodies.¹⁰ The platform such as YouTube, Spotify and Facebook that enable mass sharing of content have implement copyright, protection measures like takedown notices and content ID to ensure creators rights

⁷ IPTSE, Copyright Law: Historical Perspective & Its Significance for Academic Sector, IPTSE (n.d.) at <https://iptse.com/copyright-law-historical-perspective-its-significance-for-academic-sector/>.

⁸ IJIRD, The Importance of Copyright Protection in the Digital Age: Strategies for Researchers, International Journal of Innovative Research & Development (13 April 2024) at <https://ijird.com/the-importance-of-copyright-protection-in-the-digital-age-strategies-for-researchers/>.

⁹ Corpbiz, Copyright Infringement Notice in India: Complete Overview, Corpbiz (n.d.) at <https://corpbiz.io/learning/copyright-infringement-notice-in-india/>.

¹⁰ E-Consultancy India, The Role of Copyrights in Safeguarding Digital Content, E-Consultancy India (6 September 2024) at <https://econsultancyindia.com/blog/2024/09/06/the-role-of-copyrights-in-safeguarding-digital-content/>.

are not infringed. In summary, corporate protection in digital environment is cornerstone of a fair, sustainable and equitable digital content ecosystem.

LEGISLATIVE FRAMEWORK

- India is a rapidly developing nation and has to with the challenges, constituted by digital piracy and need to ensure a protective legal framework to ensure electrical property rights. The regulations covering digital privacy copyright infringement in India is copyright act 1957, which was amended in the year 2012 to address the challenges by digital age. The amendment made in 2012 brought India's copyright laws in line with international complex, concerning digital content and online platforms. The legislative framework is supported by provisions in the Information Technology Act 2000, which plays a crucial role in regulating online behavior and the act also protects digital rights including those of copyright holders. The Copyright Act 1957, protect rights of composers, filmmakers, authors, and other creators over there, original works.¹¹ The rights also included control over distribution, reproduction, and communication of the work in public, including the digital formats. With the increase in Internet for consuming and distributing content, issues related to copyright infringement in the Internet have surged. To overcome these challenges, the act was amended in 2012, which introduced provisions, specifically targeting online infringement, unauthorized, digital reproduction, and distribution of the content, which includes films, music, software, and e-books; the offences are punishable under the act. Section 51 of copyright act states that copyright infringement occurs when a person unauthorized reproduces or communicates a work to the public. It includes unauthorized downloading, uploading or sharing of copyrighted material on peer to peer networks, websites or through any digital platform. Such activities are considered as violation of copyright and could lead to both civil and criminal penalties. Section

¹¹ Press Information Bureau, Copyright (Amendment) Rules, 2021 Notified; Amendments Will Bring the Existing Rules in Parity with Other Relevant Legislations; New Rules Will Encourage Accountability and Transparency, PIB (8 April 2021) at <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1710417>.

63 of copyright act; prescribe criminal liability, which includes imprisonment and fine, for those who are found guilty.

- The Information Technology Act 2000 compliments the copyright act by addressing legislative framework regarding cybercrime and regulating online platforms. Section 79 IT act 2000 states safe harbor provision for intermediaries such as ISPs (internet service providers), social media websites and hosting platforms.¹² The provision means that intermediaries are not liable for third-party content. Furthermore the intermediaries follow due diligence and remove the infringing content once acknowledged by the copyright holder. This aspect of legal framework imposes responsibility on intermediaries to assist in preventing an authorized or rated digital content. The Delhi High Court and other Indian courts have issued injunction against the sites that are involved in copyright infringement focusing on film and music piracy. The injunctions allow the Indian courts to direct ISPs to block the site that contained content.
- India is also sign to various international treaties, such as convention for the protection of literary and artistic works, trips agreement (trade related aspects of intellectual property rights) and WIPO copyright treaty. These international regulations ensure that India's copyright laws adhere to intercontinental standards. In summary, the legislative framework governing digital policy, corporate infringement in India is a comprehensive blend of Information Technology Act, 2000 and Copyright Act, 1957 (amended 2012) Supplemented by judicial presidents and international agreements.¹³ These regulations aim to ensure the rights of creators in digital environment while protecting and balancing the responsibilities of intermediaries and online platforms in assisting the prevention of proliferation of infringing content. The TRIPS Agreement and the WIPO Copyright Treaty (1996): form the regulatory framework for copyright enforcement in the digital environment. TRIPS is part of WTO regime, the body obligates signed countries to implement foundational standards of effective enforcement mechanism and copyright protection. The WIPO Copyright Treaty was

¹² ClearTax, IT Act 2000: Objectives, Features, Amendments, Sections, Offences, ClearTax (n.d.) at <https://cleartax.in/s/it-act-2000>.

¹³ Anubha Mathur, Law Notes: Indian Copyrights Act, 1957 with Case Laws, MyLawman (12 April 2021) at <https://www.mylawman.co.in/2021/04/law-notes-indian-copyrights-act-1957.html>.

adopted in year 1996 to address the challenges emerging in digital environment.¹⁴ The WCT specifically extends traditional copyright protection into digital platforms by mandating rights such as to protect work on online platform and “making available to public”.¹⁵ It also empowers legal protection for rights management information and technological protection measures, aiming to prevent illegal use and distribution online. The treaties aim to harmonize international copyright laws and balancing the rights of creators globally with accessible digital content.

- Digital Millennium Copyright Act (DMCA) - the act is a federal legislation in United States. It provides safe harbor protection to internet service providers that adhere to specific guidelines such as removing or deleting illegal content after being notified by copyright holder. DMCA also proved most important clause on “notice and takedown”, the mechanism enables copyright holder to alert internet service providers to infringement on their copyrighted work. The ISP after investigation on the matter compels to take down the illegal content for copyrighted infringements.

Cross broader nature of digital content- It presents significant challenges in enforcing and regulating law in the digital era. The Internet is a global network that allows free flow of content across geographical boundaries, making jurisdiction a issue which creates complexity of Countries like India have laws to protect intellectual property rights and these laws applies within countries jurisdiction.¹⁶ However, the violation often involves platforms or websites hosted in foreign countries, hence making it difficult to hold violators accountable. For example, a website hosting music or movie operated outside country with lax copyright laws, or whether regulations are weak or do not exist. This cat and mouse game makes global change in copyright laws for digital age. Further different countries have different legal standards and approaches to regulate content. What may be considered acceptable or protected less than one country may be deemed illegal or offensive in another. For instance, the content that contains hate speech or violet free speech in one country maybe allowed in another, it

¹⁴World Intellectual Property Organization (WIPO), WIPO-Administered Treaties, WIPO (n.d.) at <https://www.wipo.int/treaties/en/>.

¹⁵ World Trade Organization (WTO), The WTO Agreements: A Summary of the Final Act of the Uruguay Round, WTO (n.d.) at https://www.wto.org/english/docs_e/legal_e/ursum_e.htm#nAgreement.

¹⁶ Shreeti Dhanuka, Cross-Border Copyright Infringement in Cyberspace, International Journal of Creative Research Thoughts (IJCRT), Vol. 12, Issue 2 (Feb. 2024).

could be lenient. Further, the problem also arises when it comes to jurisdiction where the content violates local laws and the matter becomes debatable. The cross powder flow of data also raises concerns about data, privacy and protection. For example, personal data of user is being collected and stored in one country making it difficult to ensure the compliance with the local laws of another. Here the data includes sensitive information, such as healthcare or financial information. India has introduced stringent laws governing cross border, data flows and data localization to protect citizen's personal data, but it becomes challenging when data resides outside borders.¹⁷ The lack of international consensus on handling cross border cybercrime with corporation between regulations in different jurisdictions, complicate the prosecution and investigation of such offences. In response to these challenges, a step forward has been taken to address the cross border, nature of digital content, initiative, such as extradition, agreements, mutual legal treaties, and international treaties aim to cooperate between the countries on issues related to digital content, including data, privacy, cyber-crimes and copyright enforcement.¹⁸ These initiatives are often affected by different legal system, national interest and technological development. Therefore, the crossword and nature of digital era introduces a range of regulatory challenges. While these challenges enable Internet to free flow of information.

CONCLUSION AND SUGGESTIONS

In conclusion, piracy of digital copyright, infringement possesses significant challenges under provisions of Copyright Act, 1957 and Information Technology Act 2000. These acts being comprehensive still fall short in addressing the complexities of digital intellectual property violations. The rapid evolution of technology makes it tough to regulate copyright protection, particularly when it comes to jurisdiction infringement.

Below are some key recommendations and suggestions for strengthening the provisions to ensure intellectual property:

¹⁷ B. Pooja, Social Media and Copyright Law: Navigating AI, Fair Use, and Digital Rights, LegalOnus (18 April 2025) at <https://legalonus.com/social-media-and-copyright-law-navigating-ai-fair-use-and-digital-rights/>.

¹⁸ Lawctopus, Copyright Issues in the Digital Era: Challenges and Solutions, Lawctopus (n.d.) at <https://lawctopus.com/clatalogue/clat-pg/copyright-issues-in-digital-era/>.

1. Updating definitions and expanding scope: the Information Technology Act and copyright act should be amended to include definitions and provisions for emerging crimes. Digital threats, such as cyber bowling, defect, read somewhere, cyber stalking, identity, theft, and crypto currency fraud should be addressed. New technology, such as blockchain and artificial intelligence must be included within the provisions of the act to ensure, regulation over crimes, which are associated with these technologies.
2. Strengthening intermediary liability: the provision of Information Technology Act provides intermediaries like Internet, service providers and social media platforms to assist digital copyright infringement. The intermediaries should be strengthened to take proactive measures to regulate harmful content, including hate speech, miss information, terrorist, content, and child exploitation.
3. Enhancing data protection and privacy: the data need to be strengthened significantly. General Data Protection Regulation (GDPR) provides standard provisions which can help with better protection of sensitive and personal data. Sticker penalties should be introduced for non-compliance with data protection, norms, and data breach. Introduce laws on data localization to ensure sensitive data to stay within Indian border.
4. Addressing cross border, data flow and cyber crimes: it is one of the major issue to overcome. Hence here the application of machine learning and artificial intelligence may help in detecting the infringer and creation of more effecting working.
5. Increase infringement penalty: Indian government should think about increasing the amount of penalty for copyright violation. The government should also provide resources and training to the judicial to make it easier to amend and make new copyright laws.
