

# **ONLINE PIRACY OF MOVIES IN INDIA: LEGAL CHALLENGES**

*A Thesis Submitted*

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## CANDIDATE'S DECLARATION

I hereby certify that the work which is being presented in the thesis, entitled “**Online Piracy of Movies in India: Legal Challenges**” in fulfilment of the requirements for the award of the degree of Doctor of Philosophy in Faculty and submitted in Galgotias University, Greater Noida is an authentic record of my own work carried out during a period from 2017-2022 under the supervision of Prof. (Dr.) Seema Yadav.

The matter embodied in this thesis has not been submitted by me for the award of any other degree of this or any other University/Institute.

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## ABSTRACT

As a tiny step in the direction of gaining a critical perspective on the problem of intellectual property theft, this research has been done by the researcher.

People's lives would not be complete without some form of entertainment. Over time, the monotony of the daily grind wears on people, reducing their energy and productivity. It's entertainment that gives us new life and vigour, allowing us to continue forward in our lives.

Since the dawn of human civilisation, entertainment has been a part of our daily lives. Various forms of entertainment have been widespread in different communities and time periods. Movies have become among the greatest dominant forms of entertainment for the past 100 years because they are easily accessible to people from all walks of life at a relatively low cost. For example, our lifestyles, fashion, and clothing habits were profoundly affected not just by movies but also by the growth of the entertainment business in general. Learned a great deal about how entertainment trends have influenced our way of life and values.

Every aspect of human life has been profoundly altered by the advent of the Information Age. In our minds, the entire globe has been reduced to a tiny town. Much has been changed in the film business as a result of the most recent technical advances, from the speed with which films in softcopy format are sent by satellite to the overall quality of the films being produced today. Since the beginning of movie production and distribution, technology has continued to have an impact on the film business. However, it has also emerged as a phantom threat in the shape of peer-to-peer online file sharing, which encourages movie piracy in both hard copy (DVD/CD) and soft copy formats.

Patents, designs, trademarks, and copyright are all examples of intellectual property. Copyright is critical to the expansion of creative content in nearly every sphere of human endeavour, as well as the expansion of industry, commerce, and trade. Despite the fact that there are just a few experts in this field. As a result of the fact that intellectual property is essential to a nation's economic and technical advancement, a wide range of benefits may be attained by all nations by using intellectual property.

Copyright infringement harms authors because it prevents them from making money from their creations. Most affected are the media and entertainment, including books, music, films, and other forms of audio-visual media. Petty theft is nothing more than a deliberate choice to disregard such rights.

It is widely accepted that copyright illegal downloading is a major offence that not only harms the creative possibilities of societal structure by trying to deny the inventors their legitimate dues, but it also provokes financial damage to all those who put their financial resources in attempting to bring out copyright material materials in numerous forms for use by end-users. As an increasing amount of copyrighted goods are exchanged on the worldwide market, globalisation has brought copyright challenges to the forefront. As a result, many nations' national agendas include copyright protection as a top goal, particularly in developing countries. Surely, it is also a major influence in international affairs.

A look at the wide range of copyright violations that have occurred in the film industry exposes the legal complexity involved. That there is a pressing need to deal with certain basic challenges in a quickly changing legal and technological world is evident. Here are some of the important challenges that need to be addressed.

The film industry's attempt to regulate internet file sharing by bringing legal action against certain infringers must be addressed. The film business has attempted to punish its own prospective consumers by bringing legal action against individuals who use file-sharing software under the names of John Doe lawsuits in American law and Ashok Kumar orders in India. Does such a policy benefit the music industry, or is it, as some experts claim, commercial death for the film industry? Cyberspace's copyright war has reached our personal lives for the first time. There will be no privacy left when copyright holders increasingly focus on the individual user. Piracy monitoring must take the privacy rights into consideration, which is a major concern. Does it violate a person's right to privacy if they are being monitored while handling copyright claims? Is there a legislative framework for the programming services supplied by mobiles as they expand from methods of communicating to entertainment hubs, or are Telecom Network Suppliers left unfettered to call the shots? This is an important question. The

efficiency and effectiveness of India's ISP liability framework is a key issue raised here. Illegal downloading is also a major issue that has far-reaching ramifications. The involvement of law enforcement authorities in combating piracy is another topic that should be examined.

There are many other important questions to solve, but one that stands out is the correct extent of copyright law today and do Copyright laws be revised and reconstructed in light of today's dynamic digital world.

Therefore, a growing concern in the digital world is the unauthorised downloading of copyrighted goods such as videos, music, and movies. This is one of the most pressing issues of our day, and it's a direct result of technology progress. The law is changing, the government is taking action, and copyright owners themselves are making attempts to counteract this threat. Film piracy research is an honest attempt to determine the elements that contribute and their influence on revenue creation at movies released as well as important legal problems on movie piracy. Piracy and counterfeiting were both affected by consumers perceptions. The reasons for piracy are as diverse as the people who engage in it, ranging from the desire to avoid the high costs of going to the movies to the belief that it is a morally wrong felony with no negative consequences. Government's attempts to safeguard inventors' intellectual property rights through legislation enacted and effectively implemented are insufficient until society as a whole is made aware of the dangers of piracy. An essential facet of virtual Copyright violations is contemplated and dwelled upon in this research, which culminates in some valuable proposals and ideas for controlling unfair usage and unlawful downloading of copyrighted information.

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## LIST OF ABBREVIATIONS

<i>Abbreviation</i>	<i>Full Form</i>
IPR	Intellectual Property Rights
WTO	World Trade Organization
TRIPS	Trade-Related Intellectual Property Rights
MPAA	Motion Pictures Association of America
DRM	Digital Rights Management
P2P	Peer-to-Peer
WCT	WIPO Copyright Treaty
WPPT	WIPO Performances and Phonograms Treaty
URL	Uniform Resource Locator
DoT	Department of Telecommunications
MeitY	Ministry of Electronics and Information Technology
CPC	Code of Civil Procedure
CDs	Compact Disk
DVDs	Digital Versatile Disk
PTC	Patent Trademark Copyright
Del.	Delhi
Anr.	Another
Ors.	Others
Ltd.	Limited
GATT	General Agreement on Tariffs & Trade
WCT	World Computer Congress
DMCA	Digital Millennium Copyright Act
TPM	Technological Protection Measures
ISP	Internet Service Providers
UNCITRAL	United Nations Commission on International Trade Law, the Information Technology Act
UNESCO	United Nations Educational, Scientific, and Cultural Organization
RC	Rome Convention
RMI	Rights Management Information
FMC	Film Makers Cooperative
IPRS	Indian Performers Rights Society
MIB	Ministry of Information and Broadcasting
CBFC	Central Board of Film Certification
FICCI	Federation of Indian Chambers of Commerce and Industry
PPL	Phonographic Performance Limited

MASCRADE	Movement Against Smuggling and Counterfeit Commerce
FIOLs	Flauntly Infringing Online Locations
CIPAM	The Cell for IPR Promotion and Management
MCDCU	Maharashtra Cyber Digital Crime Unit
SMEs	Small and Medium-sized Enterprises
IMI	International Music Industry
OCILLA	Online Copyright Infringement Liability Limitation Act
PIPCU	Police Intellectual Property Crime Unit
NCAC	National Copyright Administration of the People's Republic of China NCAC
RIAA	Recording Industry Association of America
IIPA	Intellectual Property Alliance
OPIA	Office of Policy and International Affairs

# CHAPTER 1

## INTRODUCTION

### 1.1. PRELUDE

Patents, literary and creative works, signs and pictures used in commerce are all examples of Intellectual Property Rights (IPR) that are protected by law.<sup>1</sup> “What is worthy imitating is prima facie worthy safeguarding,” stated Paterson J almost a century ago. Every intellectual property rights stem from this. Since its inception under British control, India’s copyright law has come a long way. The then-Governor General of India passed the first copyright legislation in 1847. Because India was a part of the British Raj when the Copyright Act of 1911 was passed in England, it immediately applied to India. It remained in effect in the nation until 1958, when new copyright law was enacted (the Act of 1957). The Act has since undergone several changes. US Copyright Act 1976 was 30 years old in 2006, the Australian Copyright Act 1968 was 40 years old in 2008, and the Statute of Anne was 30 years old in 2010. Modern copyright law has its symbolic origins in the Statute of Anne. It is undeniable that ideas about how to manage, regulate and exchange knowledge, culture and innovation existed in civilisations long before 1709. Copyright law must be reconsidered as we enter a new era of extraordinary information and intellectual culture and transmission, requiring us to rethink its basics.<sup>2</sup>

More and more attention are being paid to concerns of intellectual property rights protection since the Uruguay Round of the General Agreement on Tariffs and Trade was completed in 1995, resulting in the foundation of the World Trade Organization (WTO). An ongoing discussion is taking place in India about whether or not the Uruguay Round’s findings are good or bad for intellectual property rights (IPRs). As a result of these pedagogical conversations, there has been a shift in mindset toward making use of the new opportunities provided by the current international trade

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<sup>1</sup> Ayyappan Palanissamy, *The Future of Copyright in India – A Special reference to software piracy, its challenges and proposal for reform*, (Jan. 2, 2018, 09:15 PM), <https://pdfs.semanticscholar.org/eddf/d8a3e391f0e9f11ed711c4de1bdf53f1ef10.pdf>.

<sup>2</sup> *Ibid.*

environment. The idea of intellectual property rights includes copyright as an essential component. Copyright is not a new notion in the United States, but there is a pressing need to address issues around it. That might be due to the knowledge that copyright would likely be an economic consideration in the post-WTO environment in addition to its socio-cultural value.

As a result of its rich cultural legacy, India has long been a significant influence on copyright law. Copyright-related actions are widespread in the United States, and they are only going to get more popular. There are many publications in English in India, making it one of the top seven publication countries in the world. With an annual production of more than 600 films, it is the country's largest market for both audio cassettes and films. The software industry in India has enormous potential. Since the commencement of this decade, the software sector has grown at an incredible rate of more than 50% every year.

India's copyright rules are equivalent to those of most developed nations on the legislative front. Since its inception in 1958, India's copyright law has been updated several times, most recently in 1983, 1984, 1994, and 2012, in order to keep up with the latest technological breakthroughs. The penalties for violating copyright have become increasingly severe. The Uruguay Round Agreement on Trade-Related Intellectual Property Rights is nearly fully complied with by the current law (TRIPs). Despite this, there is a low level of knowledge about copyright in the country, leading some to conclude that piracy is widespread.

Copyright piracy is considered a severe crime around the world, as it not only undermines society's creative potential by depriving creators of their legal compensation but it also results in financial losses for those who have invested money into making copies of copyrighted materials available to end-users in a variety of formats. Because so many copyrighted goods are exchanged abroad, globalisation has brought copyright concerns to the fore. As a result, many nations' national agendas include copyright protection as a top goal, particularly in developing countries. It's safe to say that it's also become an essential role in international relations.



Countries with robust copyright-based economies, such as the United States, benefit significantly from the activities of companies like printing and publishing, audio cassettes/CDs, motion pictures and video, and computer software, among others. Past studies have shown that copyright-based companies contribute considerably to the GDP of certain of these countries (e.g., the United States, Germany, Sweden, Australia, and the United Kingdom). Although it is widely accepted that the copyright business plays a significant role in India's economy, no systematic effort has been made to determine the industry's contribution to GDP in the Indian context. Similarly, it is impossible to determine the actual cost of copyright infringement based on current figures. The assertions of various stakeholders in the copyright sector about the degree of piracy and the related damages are also revealed to be overly vague and, at times, inflated and inconsistent.<sup>3</sup>

Gutenberg's creation of the printing press in the 15th century was a significant factor in the development of copyright. Because of the printing press's ease of replication, the printing and distribution of texts increased dramatically, leading to the adoption of unscrupulous tactics such as competing printers' unlicensed printing.

India's overall enforcement of intellectual property rights, notwithstanding some improvements made online, is still abysmal. Last several years, India has been taking action against websites that provide pirated material. In spite of this, the police and justice system are ill-equipped to enforce intellectual property rights, there is no central IP enforcement body, and there is an inability to coordinate national and state-level efforts to combat piracy.

Piracy is defined as the "unauthorised task of generating duplications of an originating recording without the agreement of the rights owner." All sorts of types of illegal copying and sharing are used by bootleggers, but movie piracy takes on a specific flavour since it involves downloading and distributing films from unauthorised sites using a programme called Bit Torrent without authorisation from the sites' original

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<sup>3</sup> *Study On Copyright Piracy in India*, (Jan. 2, 2018, 09:35 PM), <http://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>.

creators. "File sharing" is a kind of online piracy that dates back decades, according to a report by the "Motion Pictures Association of America" that was released in 2013. (MPAA).

Modern technology and new methods for printing, recording, and fixing aired or recorded programmes have increased the scale of the pirate problem. The Act of piracy is a criminal offence in every country where it is practised, and those who engage in it face severe penalties.

It was not until 1710 that England's first modern copyright legislation was passed, despite the fact that piracy has been around since the conclusion of the fourteenth century. In accordance with the regulation known as 'Queen Anne's Statute,' authors might republish their works for a certain period of time. Specifically, the freedom to reprint was protected by the 1710 statute, which was solely applicable to writers of books. Creative works, such as paintings, sketches, and other forms of art, were not included in the scope of this study, which also included other characteristics of literature (e.g., translation, dramatisation etc.) In 1735, a new law, the Engravers Act, was passed to address this issue. The Copyright Act of 1911 was enacted after a few other enactments in the following eras.

The United States, Germany, and other advanced countries have all made advancements in this area. France passed a copyright decree in 1791 that approved the performance right, and the second decree in 1793 set up the exclusive reproduction rights of the author. A Saxon Order issued on February 27, 1686, recognised the rights of authors in Germany. The first federal copyright legislation in the United States, the Copyright Law of 1790, protected books, maps, and charts.<sup>4</sup>

**BOLLYWOOD...** The Indian film industry, which is akin to Hollywood in the United States, is the most prominent in India. It is widely regarded as one of the best and most impressive Hindi-language films ever made. Surprisingly, the Cinema is the only one

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<sup>4</sup> *Ibid.*

in the world to release the most movies in a calendar year. As a result, the movie business has the highest number of moviegoers in the world due to widespread public backing and a devoted fan base.<sup>5</sup>

For millions of Indians, movies are the only kind of entertainment that they can buy and that they can participate. The Indian cinema industry has traditionally had a significant impact on the development of copyright legislation in India because of the importance of cinemas in the contemporary culture of Indians. India's copyright legislation includes severe prison sentences and massive fines as consequences for copyright infringement. This is only one illustration of the film industry's influence in India. However, in the early 1980s, such remedies were put into place as a way to deal with developing technologies (VHS players and cassettes) that were threatening the film business at the time. Now, the film industry is trying to deal with Internet piracy. The Indian Parliament has revised copyright legislation to add explicit digital rights management (DRM) requirements after years of intensive campaigning. Many websites accused of hosting pirated movies have been blocked by the judiciary in recent years because of the development of the sector.<sup>6</sup>

### **1.1.1. PROLOGUE TO THE CONCEPT OF THE INTERNET**

If you think at it from a copyright viewpoint, the World Wide Web is basically a distribution method for works and information that are made available in the form of copies. These can be delivered in other ways, such as via direct transmission facilities that leave no documents, but they will do so considerably more slowly and inefficiently. However, the Internet is a copy-based company and hence has a pivotal role to play in the copyright and other rights regimes. The Internet's core is made up of digital copies of any kind of work that may be represented in digital form. Because of the Internet's structure and role as a comprehensive public platform for conversation, this dependence on many and repeated actions of copying in the dissemination of content is a design

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<sup>5</sup> Dutta Debshikha, *Silver Screen at the doorstep of Legal Box-Office*, (Jan. 2, 2018, 10:15 PM), [http://www.indialawjournal.org/archives/volume2/issue\\_3/article\\_by\\_debshikha.html](http://www.indialawjournal.org/archives/volume2/issue_3/article_by_debshikha.html).

<sup>6</sup> Arul George Scaria, *Online Piracy of Indian Movies: Is the Film Industry Firing at The Wrong Target?* (Jan. 2, 2018, 10:35 PM), <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1206&context=ilr>.

decision. Other design decisions made by the copier to promote the economy of scale, speed, and dependability are reflected in several other examples of Internet copying (especially ‘caching’).

These considerations are crucial while learning about internet piracy since so much of the Internet’s structure is portrayed in civil debate as unavoidable, pre-ordained, and fundamentally unalterable, whereas in reality, there is no required reason for this to be the case. Using government strategy, it is possible to regulate and control the Internet to protect authors and culture, just as the airspace is regulated, and to reconfigure and hold back among the worst characteristics of an Internet that has been permitted to create in a primarily unsupervised fashion, instead accepting the comfortability of software designers, telecommunications companies, and pirates.

### **1.1.2. ESSENCE OF INTERNET PIRACY**

Piracy has traditionally been defined by traditional definitions, such as those found in national criminal laws, as an act undertaken with the aim of gaining a commercial benefit of some type. Newer formulations, however, acknowledge that piracy’s fundamental sine qua non is harm to rights holders’ interests, which is why intellectual property regimes exist, and that this harm is increasingly perpetrated by action with little or no monetary purpose. Unauthorised Internet distribution of protected works, such as peer-to-peer file sharing on a large scale, has therefore become commonplace, even though a financial motivation for the breach of the rights may not be present. This is the correct course of action. Unauthorised copying, distribution, or performance in public are all examples of an infringement of intellectual property rights. In the context of damages, not culpability, considerations of purpose or commercial advantage are more common. The term “piracy” is acceptable when the objectives of rights holders are affected to the extent that illegal Internet copying has already damaged creative industries throughout the world.

Online piracy is rampant, and it will continue to rise as long as people have access to fast Internet and better compression technologies. For example, according to recent research, 58 per cent of South Korean internet users had illegally downloaded a

commercial film.<sup>7</sup> Copyrighted music has been piracy equal to 200 million pirated CDs or 85 million songs illegally downloaded every day throughout the world, according to estimates.<sup>8</sup> If this technological revolution is allowed to continue, it will enable even more cultural commodities to be illegally pirated.

### **1.1.3. THE ONLINE PIRACY: NATURE AND SCOPE**

Physical commodities pirates often produce, promote, and market their unlawful items on their own or with the help of a network of collaborators in the shadows. Only in the situation of money laundering do conventional pirates have to rely on the support of legal enterprises to carry out their crimes. But online piracy is a new kind. No internet pirate may violate the rights of rights holders simply through illegal operations. Online pirates cannot duplicate the transmission infrastructure needed to engage in criminal activity over the Internet because it's too complicated and expensive. There are genuine internet service suppliers and others who can produce and distribute the millions of illegal copies that pirates sell, and if online piracy is undertaken for profit, authorised payment cards and internet payment services may be utilised to accomplish these crimes. As a result, there are a plethora of places where respectable firms may work together to curb internet piracy.<sup>9</sup>

It's no surprise, then, that internet piracy is exploding at a rate significantly greater than that of physical piracy. Signal counterfeiting, for example, would spread like wildfire if pirates didn't have to build their own widespread distribution but could simply pay a tiny monthly subscription fee to legitimate business transmissions to undertake his/her

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<sup>7</sup> B. Fritz, "Pic Piracy Rampant in South Korea," Variety Technology, 8 July 2004.

<sup>8</sup> Brief filed by 40 US State Attorneys General in *Metro-Goldwyn-Mayer Studios Inc. vs. Grokser* (US Supreme Court), (Jan. 3, 2018, 09:25 PM), <http://www.copyright.gov/docs/mgm/StatesAG.pdf>.

<sup>9</sup> Internet service providers have consistently argued that the traditionally prevailing rules of liability for direct infringement of copyright should not apply to their acts of copying and distributing illicit material over electronic networks, and have sought legislative solutions to lessen their liability. Compromises embodying a general exemption from direct liability for ISPs coupled with new obligations for ISPs to cooperate in the control of online piracy have been enacted into law in both the US (Digital Millennium Copyright Act of 1998; Pub. L. No. 105-304, 112 Stat. 2860 (1998)) and the European Union (Directive on Electronic Commerce; Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market). Despite these solutions, rightsholders have still repeatedly been forced to pursue litigation over several years simply to get to the first step in any piracy investigation, disclosure of the identity of known pirates. See, e.g., *Recording Industry of America, Inc v. Verizon Internet Services, Inc.*, 351 F.3d 1229 (D.C. Cir. 2003).

illegally copied transmissions, secure in the expertise that now the advertising mediator of such an illegal downloading confronted neither responsibility because of its behaviour and would even take evidentiary action to stop the infringement.<sup>10</sup>

Using this example, it is clear that piracy is expanding its harmful consequences and illegally intruding on copyright holders' rights across the world, not only in India. As there is relatively little data on video piracy in India, it is impossible to offer an accurate number. However, piracy is rife in this country. In addition, video parlour piracy is common in rural areas and smaller cities. Online piracy, on the other hand, maybe more pervasive and destructive. In today's world, practically all new movies may be seen online at the same time as they are shown in theatres. Just after six weeks of theatrical distribution may, a picture be released on DVD, according to a decision reached by the Film-Makers Cooperative (FMC). Such films are shown on unlicensed websites long before their scheduled release dates, a clear illustration of cable piracy that is prevalent in the nation.

#### **1.1.4. CONCEPTUALISATION AND DEVELOPMENT OF ONLINE PIRACY**

In order to grasp the fundamentals of file sharing, one must first learn the notion of BitTorrent and also the associated liability for its providers. 'File sharing' refers to the Act of sending and receiving data between computers on a network.<sup>11</sup> All pcs in the network have agreed to share a few files so that users can discover & download content from those other pcs in the network when they need them. Individual nodes are referred to as "clients," "servers," and "peers" if they both request and provide information.<sup>12</sup> Today's scenario includes the P2P and the client-server models. There is no centralised server in the second P2P model, and instead, a person requests files from a more giant computer, which then sends them to the individual, the client. In a client-server model,

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<sup>10</sup> *Recording Industry of America, Inc vs. Verizon Intenet Services, Inc.*, 351 F.3d 1229 (D.C. Cir. 2003), (Jan. 3, 2018, 09:55 PM), [homepages.law.asu.edu/~dkarjala/cyberlaw/RIAAvsVerizon2003.htm](http://homepages.law.asu.edu/~dkarjala/cyberlaw/RIAAvsVerizon2003.htm).

<sup>11</sup> Felix Oberholzer-Gee & Koleman Strumpf, *File Sharing and Copyright*, 10 INNOV. POL'Y & THE ECON., 19, 24 (2010).

<sup>12</sup> *Ibid.*

each computer is connected to a single server, whereas in a peer-to-peer model, each computer is interconnected, making it nearly impossible to restrict the flow of information.<sup>13</sup> As a result of Napster's use of the P2P network for file sharing, "it rapidly amassed over eighty million enrolled consumers with just eighteen months of launch."<sup>14</sup> It was also shut down under numerous matters of copyright infringement like the previous client-server template, Napster. However, it was BitTorrent's incarnation that propelled file sharing to new heights by remaining free of legal encroachment.

### **1.1.5 BITTORRENT PROTOCOLS AS WELL AS THE SOFTWARE'S WAY OF WORKING**

When a user downloads a torrent file from a web server, he or she can open it in the BitTorrent source code and select the destination where he or she would like the torrent components to be saved. You can find out who your peers are by looking at your torrent file's "announced URL" in the file-sharing file, which connects you to the tracker and provides you with a list of peers. The software begins downloading the files as soon as it receives a list of nearby peers and seeds. BitTorrent users are divided into two groups: "seeds" and "leechers."<sup>15</sup> A "swarm" is a collective term for a gang of seeds and leechers. After the download is complete, the files can be viewed, stored, or deleted if desired. As a result, BitTorrent can refer to three different things: a business, a procedure, and a piece of software application.

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<sup>13</sup> Allen Mendelsohn, *A Torrent of Copyright Infringement? Liability for BitTorrent File-Sharers and File-Sharing Facilitators Under Current and Proposed Canadian Copyright Law*, Faculty of Law McGill Univ. Montreal, (Aug.15, 2010), (Jan. 3, 2018, 11:15 PM), <https://www.scribd.com/document/54602923/Allen-Mendelsohn-LLM-Thesis-A-Torrent-of-Copyright-Infringement-Liability-for-BitTorrent-File-Sharers-and-File-Sharing-Facilitators-Under-Current> [<https://perma.cc/25U5-NZN2>].

<sup>14</sup> Navalgund, *BitTorrent*, Nalsar University of Law, Internet Crimes - Law, Policy and Regulation, 6 (2014).

<sup>15</sup> Rebecca Giblin, *Physical World Assumptions and Software World Realities (And Why There Are More P2P Software Providers Than Ever Before)*, 35 COLUM. J.L. & ARTS 57, 105 (2011).

## 1.1.6 INHIBITING BITTORRENT'S EXPOSURE TO LIABILITY

Laws in the US, EU, and India fail to hold BitTorrent software providers secondarily responsible for any copyright infringement, which is the concept behind secondary liability.

### 1.1.6.1 STATUS IN THE UNITED STATES

Since digital technology has made it impossible for copyright laws to achieve their intended purpose, the copyright of composers is in danger because it is impossible to describe all potential actions of infringement.<sup>16</sup> In the United States, secondary liability is well established.<sup>17</sup> Anyone who violates a copyright owner's exclusive rights as stipulated in sections 106 and 121 is deemed a copyright infringer under American law.<sup>18</sup>

The concept of vicarious liability is entirely disregarded by BitTorrent. In tort law, the principle of respondent superior is similar to the standard rules doctrine of vicarious liability.<sup>19</sup> Copyright law's vicarious liability necessitates that an accused infringer has two things: (1) "an apparent & prompt monetary stake in the profiteering of copyrighted materials," and (2) "the right as well as ability to supervise," as decided by the Second Circuit in the specific instance of *Shapiro v. H. L. Green Co.*<sup>20</sup> Using the above two principles, it has been shown that BitTorrent application server is a simple device which enables the dispersion of archives and has no inbuilt search functionality, that also demonstrates that this has no power to regulate the preference of archive by the infringer.<sup>21</sup> To the knowledge of BitTorrent's developers, there is a direct financial incentive. No one at the tool's maker has any say in whether or not files shared via a

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<sup>16</sup> Raymond Shih Ray Ku, *The Creative Design of Copyright: Napster and The New Economics of Digital Technology*, 69 U. CHI. L. REV. 263, 300 (2002).

<sup>17</sup> See Robert A. Gilmore, *Peer-To-Peer: Copyright Jurisprudence in The New-File Sharing World, The Post Grokster Landscape of Indirect Copyright Infringement and The Digital Millennium Copyright Act*, 5 FLA. L. REV. 85, 88–90 (2004).

<sup>18</sup> 17 U.S.C §501(a) (2012).

<sup>19</sup> Bartholomew & Tehranian, *The Secret Life of Legal Doctrine: The Divergent Evolution of Secondary Liability in Trademark and Copyright Law*, 21 BERKELEY TECHNOLOGY LAW JOURNAL, at 48 (2006)

<sup>20</sup> 316 F.2d 304, 307 (2d Cir. 1963).

<sup>21</sup> *Supra* note 15.



P2P system are copied or transmitted at all. There are no intermediaries involved in this process.<sup>22</sup> This means that BitTorrent's developers have no vested financial interest in copyrighted content. In addition, BitTorrent's software providers have made it available for free, unlike its P2P predecessors. This means that BitTorrent's creators cannot be held responsible for the infringement of another party's copyright because both elements are missing.

Similar to the concept of vicarious liability, attempts by American legislators to hold BitTorrent service providers liable for contributing to infringement fell short. At its core is the idea that "one who has a direct impact on the infringement of another's intellectual property rights must be held accountable."<sup>23</sup>

As a platform for uploading and downloading files, BitTorrent Software does not know what is enclosed in the files. A distinction between the use of technology and the technology itself was upheld by the Supreme Court in *Sony Corp. of America v. Universal City Studios*<sup>24</sup> and *Metro-Goldwyn-Mayer Studios v. Grokster*.<sup>25</sup> Simply making something that could be utilised for copyright infringement does not make you liable. However, if you plan or encourage infringing uses, you may be held accountable.<sup>26</sup> After downloading BitTorrent, users have complete freedom to create as many peer networks as they want, all independent of the software's original provider.<sup>27</sup> When it comes to accessing and searching for content via BitTorrent, the company is no more similar to Grokster's defendants than it is to BitTorrent itself.<sup>28</sup> As a result, the BitTorrent application cannot be held liable for copyright infringement under the principle of contributory liability.

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<sup>22</sup> Fred von Lohmann, IAAL: What Peer-to-Peer Developers Need to Know about Copyright Law, 3, Electronic Frontier Foundation (2006), (Jan. 4, 2018, 12:15 AM), [https://www.eff.org/files/p2p\\_copyright\\_wp\\_v5\\_0.pdf](https://www.eff.org/files/p2p_copyright_wp_v5_0.pdf) [<https://perma.cc/E3NW-NDX3>].

<sup>23</sup> *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 264 (9th Cir. 1996).

<sup>24</sup> 464 U.S. 417 (1984).

<sup>25</sup> *MGM Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 941 (2005).

<sup>26</sup> See Center for Democracy & Technology, *Interpreting Grokster: Limits on the Scope of Secondary Liability for Copyright Infringement*, 2006 STAN. TECH. L. REV. 3, (2006).

<sup>27</sup> John Borland, *BitTorrent File-Swapping Networks Face Crisis*, ZDNET NEWS, Dec. 20, 2004, (Jan. 4, 2018, 02:45 AM), [www.zdnet.com/article/bittorrent-file-swapping-networks-face-crisis/](http://www.zdnet.com/article/bittorrent-file-swapping-networks-face-crisis/) [<https://perma.cc/HR86-FRV7>].

<sup>28</sup> *Supra* note 15

An inducement charge would be out of bounds in cases where vicarious or contributory obligation for BitTorrent has been challenging to establish in the law. “Inducement” is defined by Merriam-Webster as “a motivation or recognition that leads one into action, or to extra or more effective actions.”<sup>29</sup> Defendants in the MGM case must have taken “affirmative actions to nurture infringement by third parties” to be held responsible for inducing copyright infringement.<sup>30</sup> With this theory in mind, BitTorrent software allows consumers to install and transfer data via their software but does not give them control over the transmission process itself. As a result, BitTorrent is exempt from the obligation of enticement because it does not encourage its consumers to encroach on the copyrights of someone else.

As a result, despite the fact that the United States has enacted laws to deal with BitTorrent’s increasing copyright infringement issues, it does not explicitly hold BitTorrent responsible for the infringement.

#### **1.1.6.2. THE EUROPEAN COURT OF JUSTICE**

Despite the EU’s reputation as one of the strictest copyright laws in the world, BitTorrent providers have not been held responsible for secondary infringement. Cached and hosted online service providers are held liable under Articles 13 and 14 of the E-Commerce Guideline if they have actual knowledge of unlawful information being transmitted over their networks and fail to remove or disable access to it promptly.<sup>31</sup> Momentary actions of procreation by a middleman whose sole purpose is to enable the bare transfer of copyrighted materials between third parties are also exempt from copyright liability under Article 5(1) of the Copyright Harmonisation Directive.<sup>32</sup> The European Directives, on the other hand, do not hold BitTorrent’s providers liable because the software merely facilitates the transmission of copyrighted material without their knowledge. There must be proof of direct liability before an

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<sup>29</sup> *Inducement*, Merriam-Webster.Com, (Jan. 4, 2018, 03:55 AM), <http://www.merriam-webster.com/dictionary/inducement> [<https://perma.cc/5DSV-NNU7>].

<sup>30</sup> 545 U.S. 913, 936–37(2005).

<sup>31</sup> Kolubahzizi T. Howard, Remedies of the e-Commerce Directive (Directive 2000/31/EC), 7 (2014), (Jan. 4, 2018, 05:05 AM), [http://www.academia.edu/7440378/Remedies\\_of\\_the\\_e-Commerce\\_Directive\\_Directive\\_2000\\_31\\_EC](http://www.academia.edu/7440378/Remedies_of_the_e-Commerce_Directive_Directive_2000_31_EC) [<https://perma.cc/XL2X-WE8L>].

<sup>32</sup> Council Directive 2001/29, 2001 O.J. (L 167) 1 (EC) [hereinafter Copyright Harmonisation Directive]; Council Directive 2000/31, 2000 O.J. (L 178) 1 [hereinafter E-Commerce Directive].

entity can be held responsible for any indirect crime. The specific responsibility of BitTorrent cannot be proven in EU law, so it is also exempt from the implicit obligation.

### 1.1.6.3. A DEFICIT OF LEGAL REGULATIONS IN INDIAN PRECEDENTS

Entities like BitTorrent software can easily avoid culpability under India's Copyright Act if it had more permissive copyright laws. Unlike in the US, middleman responsibility has not been established into a principle of contributory infringement in India, having left creators of BitTorrent apps in the very same bracket as other quest and network operators with much more than one billion web users.<sup>33</sup> The Indian Copyright Act, 1957<sup>34</sup> governs copyright infringement in the country. When a person violates a copyright holder's exclusivity rights, it is illegal under Section 51 of the Act to do so.<sup>35</sup> The section also states that copying work on any medium, communicating a work to the public, or disseminating copies of a work are all prohibited under Section 14.<sup>36</sup> This means that an Indian version of Napster would be in violation of the copyright holder's exclusivity rights. This means that anyone who has downloaded and shared work protected by the Copyright Act while doing so would be held liable under Indian law, which lags behind BitTorrent in terms of new tech and retains the resources to deal with third-generation networks like BitTorrent. When it comes to copyright issues, the latest World Intellectual Property Organization Copyright Treaty<sup>37</sup> was implemented in an effort to address some, but it failed to provide a specific international cause of action to BitTorrent clients and the sites hosting their torrent files.<sup>38</sup>

As a result, international law has not addressed the issue of secondary liability. A separate provision for BitTorrent providers' liability is proposed in part II of this

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<sup>33</sup> Navalgund, *BitTorrent*, Nalsar University of Law, Internet Crimes - Law, Policy and Regulation, 6 (2014), (Jan. 4, 2018, 09:05 AM), <http://thegiga.in/LinkClick.aspx?fileticket=sWu4-DXL-4E%3D&tabid> [<https://perma.cc/4JSY-PSUJ>].

<sup>34</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Supra* Note 34.

<sup>37</sup> *World Intellectual Property Organization Copyright Treaty*, (Dec. 20 1996), 36 I.L.M. 65, (1997) [hereinafter WIPO Copyright Treaty].

<sup>38</sup> Scott Burger, *Eradication of a Secondary Infringer's Safe Havens: The Need for a Multilateral Treaty Addressing Secondary Liability in Copyright Law*, 18 MICH. ST. J. INT'L L. 143, 147 (2009).

document to help deter the widespread copyright infringement that is currently taking place around the world.

## **1.2. IDENTIFICATION OF RESEARCH GAP AND NEED FOR THE STUDY**

Infringement of copyright is a non-violent misdemeanour with no victims. So, it seems, is the emerging feeling of those who illegally download copyright. Copyright violation is something with actual perpetrators, of which there are many. The entire motion pictorial sector is damaged by the unlicensed procreation and dispersion of feature films.

Because of the advancement in technology, movie piracy has become widespread throughout the world. Movie pirates all around the world now have easy access to unauthorised film prints because of modern technologies. Movies can be downloaded from illicit websites, or unlicensed compact discs (CDs) can be purchased. Camcording in cinema theatres during a movie's silver screen presentation has also been a recent innovation. Such a breach of the intellectual property rights of moviemakers and other authorised stakeholders in the film business was clear to anybody who looked at the situation.

Online movie piracy was found to solve a wide range of difficulties during the investigation. Movie piracy in India is influenced by issues such as illiteracy, high prices, unemployment, inadequate enforcement of the law, and a lack of infrastructure. Age, career, and sexual identity were also shown to play a role in determining a person's likelihood of being a victim of domestic violence.

Laws are currently in place in India to deal with internet piracy. In addition, the administration has adopted several other initiatives in various states to suppress the threat of internet piracy. It is essential that further work be executed at numerous points like the legislative and administrative gaps to mitigate the impact of Internet-based illegal downloading in the virtual environment because the concern is enormous. To investigate digital copyright infringement in India and to come up with possible

solutions, the researcher has examined the legal guidelines and circumstances in the country. To address this problem, the researcher has also looked for varied legitimate and ideal options.

### 1.3. LITERATURE REVIEW

Is the Indian film industry firing at the wrong target with *Arul Scaria's* online piracy of Indian movies?<sup>39</sup> in order to provide “sufficient” protection for intellectual works in the digital internet world, India has added particular digital rights management (DRM) requirements to its copyright legislation. The film industry, which has been one of India's most vocal proponents of the country's new digital rights management regulations, has worked hard to paint internet piracy as a serious problem. High courts in India frequently issue “John Doe” orders, which prohibit Internet access to websites accused of distributing pirated content, to the Indian film industry. The study argues that illegal downloading is at a significant level in India since it has been seen that copied Indian movie material is widespread on the Internet, which indicates a substantial demand for such content. The most likely buyers of pirated Bollywood films are the thousands of people who live outside of India, according to a thorough examination of the websites that carry them. DRM restrictions underneath Indian copyright legislation or broad John Doe rulings will never be a remedy to this piracy; it is also suggested. The inability of the Movie industry to discover new business opportunities to attain potential consumers abroad is mainly responsible for the illegal downloading of Indian movie subject matter abroad, and the Film industry can only accomplish viable alternatives for online piracy by making legitimate products available to those consumers.

*Kian Ganz*<sup>40</sup> in the It's a complicated fight to stop internet piracy, with problems such as the John Doe directions passed there in Great Grand Masti plus Dishoom instances

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<sup>39</sup> Arul Scaria, *Online Piracy of Indian Movies: Is the Film Industry Firing at the Wrong Target?* (Jan. 04, 2018, 10:35 PM), [https://www.researchgate.net/publication/254938401\\_Online\\_Piracy\\_of\\_Indian\\_Movies\\_Is\\_the\\_Film\\_Industry\\_Firing\\_at\\_the\\_Wrong\\_Target](https://www.researchgate.net/publication/254938401_Online_Piracy_of_Indian_Movies_Is_the_Film_Industry_Firing_at_the_Wrong_Target).

<sup>40</sup> Kian Ganz, *The messy battle against online piracy* (Jan. 04, 2018, 11:35 PM), [www.livemint.com/Consumer/YtbRN9fv6ZgZCZOexcswMI/The-messy-battle-against-online-piracy.html?utm\\_source=scroll&utm\\_medium=referral&utm\\_campaign=scroll](http://www.livemint.com/Consumer/YtbRN9fv6ZgZCZOexcswMI/The-messy-battle-against-online-piracy.html?utm_source=scroll&utm_medium=referral&utm_campaign=scroll).

and the potentially enormous number of websites that Ganz says have been stopped at the centre of the controversy. Citing Shamnad Basheer, he suggested reforming the system by removing some instances from the courts. An ombudsman could evaluate individual links and cope with sites such as Induna that have been blocked erroneously, according to “We should establish a neutral third-party authority.” As a result of this, Justice Patel expressed his frustration with the “constantly shape-shifting essence of the Internet as well as digital technology, the sheer speed of which is no contest for the diminishing rate of parliamentary and jurisprudential transformation; and perhaps, too,” perhaps from a genuine fear that the World wide web symbolises something similar to unknown and unknowable, he wrote in his opinion piece. There may come a day when new technology and new means of monetising it become the industry’s only weapon against piracy, and the law may run out of options.

*Lionel Bently, Jennifer Davis, Jane C. Ginsburg*<sup>41</sup> examines copyright from a multidisciplinary perspective. It looks the subject from both a legal and non-legal viewpoint. The evolving nature of copyright makes it impossible to analyse copyright infringement from a single group’s standpoint. Using an intersectional approach may be the best option in this situation. In this way, the book offered the researcher a variety of viewpoints on the subject of copyright violations. Researchers from the fields of economics, history, technological developments, sociology, cultural theorists, and criminology all contributed to this study, which helped broaden the researcher’s perspective on the issue of internet piracy.

In *P2P Networks: Online Piracy of Music, Films and Computer Software*<sup>42</sup> Copyright industry’s closest mate and worst enemy is technology, and P2P technology poses a more significant threat than the tape deck recording device since the effectiveness of recording technology on an MP3 player is nearly as substantial as that of the actual CD, and P2P innovation enables the massive distribution of copyrighted material. **Raman Mittal** specifically addressed this issue. When it comes to illegally distributing

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<sup>41</sup> Lionel Bently, Jennifer Davis, Jane C. Ginsburg, *Copyright and Piracy: An Interdisciplinary Critique*, (Cambridge University Press, 2013).

<sup>42</sup> Raman Mittal, *P2P Networks: Online Piracy of Music, Films and Computer Software* (Jan. 05, 2017, 8:05 PM), <http://nopr.niscair.res.in/bitstream/123456789/4884/1/JIPR%209%285%29%20440-461.pdf>.

copyrighted materials like music, films, or computer software, P2P technology makes it possible for the large and ever-growing internet population to do just that. Copyright-protected works are being distributed and traded at a size and scope that was previously unimaginable because of what is known as “internet piracy.” Copyright law is once again put to the test by the latest in a long line of technological advances, namely digital and communications technology when such piracy is perpetrated by regular people. Creative activity can no longer be supported without a legal framework that protects the rights of both manufacturers and consumers in an atmosphere where the link between the producer, intermediary, and the consumer has become increasingly brittle. Napster, Gnutella, and Kazaa are among the P2P networks examined by the author in an attempt to understand the social, economic, and legal ramifications of P2P sharing.

To that end, he noted that the issue is to ensure that copyright rules are updated in such a manner that they support and enhance creative endeavours rather than obstruct or overburden them. There is a cultural and economic dimension to copyright law that must be considered in addition to the property element. In other utterances: the entitlement of copyright holders to equitable recompense should constantly be harmonised with the objectives of the community at large. The key is to maintain a delicate symbiosis between the interests of the public and the advancements in technology.

*Steven Caldwell Brown, Thomas J. Holt*<sup>43</sup> As digital technology has advanced, the number of people who illegally download and share copyrighted material has increased at an unprecedented rate, frequently perpetrated by otherwise law-abiding individuals. From the viewpoints of criminal justice, psychology and business, this book takes a morally neutral approach to crime. Additionally, this book provides a comprehensive look at this expanding phenomenon. It brings together worldwide studies on a wide variety of themes, including copyright infringement and intellectual property. The rising body of knowledge on cybercriminals and digital security is given a fresh look in this book.

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<sup>43</sup> Steven Caldwell Brown, Thomas J. Holt, *Digital Piracy: A Global, Multidisciplinary Account*, (Routledge, 1.ed. April 2018).

Amongst many other things, *Andrew C. Mertha*<sup>44</sup> focuses on China's piracy problems. Everything from films and novels to apparel and consumer electronics to aeroplane parts is piratically produced in China in record numbers. In light of China's growing economic clout, the world's attention is turning more to the country's failure to execute intellectual property rights. As a side note, the author also discusses the external constraints on China's intellectual property enforcement. It is feasible to trace the impact of external pressure on intellectual property rights because of the composition of the government administration designed to defend intellectual property rights. Even though China's patent and copyright rules were created through state-to-state agreements, the author shows that enforcement of these laws has been hardly affected. However, when international trademark owners and private investigators in their employ put pressure on China's anti-counterfeiting organisations, they see a far higher rate of trademark enforcement.

*John Gantz and Jack B. Rochester*,<sup>45</sup> discuss how digital piracy affects us all, even if we have not downloaded an MP3 in our whole lives. When it comes to technology and content, this book is a must-read. Online piracy and its ramifications for the economy, law, ethics, and gamers alike are the topics of this book. The book explores the current upheaval in digital media's core foundations. It speaks of the global battle being waged against digital piracy and infringement of intellectual property rights. Each of the authors has weighed in on the matter from a variety of perspectives, including cultural, ethical, legal, and even geopolitical. The phrase "fair use" and its implications are discussed throughout the book, as is the ethicality of digital copying. It goes into further detail about the viability of digital media and whether or not enforcing copyright laws is beneficial to the development of new works. The book also discusses copyright law's expansion in the digital era and its ramifications.

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<sup>44</sup> Andrew C. Mertha, *The Politics of Piracy: Intellectual Property in Contemporary China* (Cornell University Press, 1<sup>st</sup>. ed. 2018).

<sup>45</sup> John Gantz & Jack B Rochester, *Pirates of The Digital Millennium: How The Intellectual Property Wars Damage Our Personal Freedoms, Our Jobs, And The World Economy* (2005).



Copyright law has eroded the line separating civil and penal encroachments since criminal copyright was introduced in the eighteenth century, according to *Eldar Habler*.<sup>46</sup> Copyright infringement is now punishable by penalties and even by jail in several places. Over-criminalising a legal right in private enforcement is the subject of this book, in which the author explains why it has been criminalised and the consequences of this overcriminalisation. He explores the beginnings of criminal copyright regulation and tracks the evolution of copyright criminality and enforcement on both a local and global level. Anyone worried about the sustainability of copyright and creative works in the internet age would benefit much from this book.

*Zakir Thomas*, in his Overview of Changes to the Indian Copyright Law,<sup>47</sup> focused on and said the Government of India had adopted the Copyright Amendment Act, 2012, which amends the Copyright Act, 1957. Indian copyright legislation now complies with the Internet Treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (WPPT). Despite the fact that the WCT and WPPT were signed in 1996, it took a long time for them to be incorporated into national law. In the year 2000, the Digital Millennium Copyright Act was passed in the United States, and the European Union Directive approved its provisions in Europe. When it came to digital protection, there were a lot of controversies. Careful implementation of these regulations was supported by many, including the author of this piece. Fair use rights have now been extended to the digital age in India, making it one of the very few countries to do so legally. There are a lot of positive changes brought about because of the Copyright (Amendment) Law of 2012, which will help the Copyright Act of 1957 maintain its status as one of the most significant copyright laws around. As a result of the modifications, performers' rights are protected while technical protection measures are introduced, and the legislation provides unique fair use requirements for the digital age. More author-friendly reforms to simplify business procedures, specific protections for the disabled, and other copyright-related changes have been made by the WCT and WPPT beyond their restricted mandate.

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<sup>46</sup> Eldar Haber, *Criminal Copyright* (1<sup>st</sup> ed. Cambridge University Press 2018).

<sup>47</sup> Zakir Thomas, *Overview of Changes to the Indian Copyright Law* (Jan. 14, 2018, 5:00 PM), <http://nopr.niscair.res.in/bitstream/123456789/14460/1/JIPR%2017%284%29%20324-334.pdf>.

The Copyright Amendment Act is examined in detail by the author. In summary, the modifications enhance the rights, expedite the process of assigning and granting licences, promote better access to works, and expand fair use laws specific to the Internet, in general, and expressly. The regulations of assignment and licencing, as well as the copyright societies, have undergone modifications in anticipation of streamlining business procedures, yet there remains a lingering worry about safeguarding the rights of writers. The management of copyright organisations and the Copyright Office has also undergone positive adjustments. Overall, the changes have the hallmarks of a reformer approach.

For example, the Copyright (Amendment) Act of 2012 includes fair use provisions that preclude intermediaries from liability in specific situations and give them the opportunity to remove illegal content when brought to their attention. According to Ananth Padmanabhan's *Give Me My Space and Take Down His*,<sup>48</sup> Legislators in India appear to have made a significant step toward protecting and nurturing the file-sharing economic model that has enormous potential even at this fledgling stage of development. Given recent decisions by the High Court of Delhi, as in *Myspace* and *RK Productions* cases, the judicial approach to Legislative intent is a topic of considerable concern to me. As a result of the Indian courts' *John Doe* rulings, the revisions need to be examined in the context of the possible risks to the expansion of file-sharing businesses and to free speech and information distribution.

A scholarly article by *Sean B Karunaratne*, *The Case Against Combatting BitTorrent Piracy through Mass John Doe Copyright Infringement Lawsuits*,<sup>49</sup> discusses massive bit torrent piracy and the evolution of internet piracy over time, as well as how bit torrent file-sharing occurs. That's not all, though; it also underscores the relevance of *John Doe*'s orders in copyright infringement cases, as well as the need for adherence to the basic standards for mass litigation.

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<sup>48</sup>Ananth Padmanabhan, *Give Me My Space and Take Down His* (Jan. 14, 2018, 9:35 PM), <http://docs.manupatra.in/newsline/articles/Upload/8DEBFB99-1CE4-462F-A261-0A47A8FA8384.pdf>.

<sup>49</sup> Sean B Karunaratne, *The Case Against Combatting Bittorrent Piracy through Mass John Doe Copyright Infringement Lawsuits*, Vol. 111, No. 2, *Michigan Law Review*, 283 (2012).

In Piracy in the Internet Age,<sup>50</sup> *Nikita Hemmige* is of the view that in addition to allowing for the development of a new means for exchanging and transferring information, the Internet has also aided in the expansion of e-commerce while also providing a worldwide marketplace for all countries and their residents. The rise of internet piracy is an important repercussion of this trend. Infringements on intellectual property (IP) are on the rise, thanks to illegal replication and unchecked downloads. Consider the measures that various nations have implemented and executed in an attempt to reduce or at least control internet piracy and associated activities. This information is essential. Even if the Copyright Act of 1957 and the Information Technology Act of 2000 in India attempt to combat piracy in some respects, these laws fall short of providing a comprehensive solution. As a result of technology improvements, India needs to create and implement laws that address the actual problem while also taking into account future challenges that may arise. In the foreseeable future, India will have an IP edge if such a rule is put in place. Aside from a few notable efforts and revisions to specific provisions of the Copyright Act, the narrow reach of Indian copyright legislation suggests that no decisive approach has been developed to reduce online content piracy. One of the most excellent methods to cope with the ongoing copyright dilemma is to rewrite legislation in accordance with today's technology and analyse its compliance with other countries. However, it is widely agreed that all these plans of action must be progressive and challenging in order to avoid stagnation in the legal process and growth in the number of infringements.

*Aadya Chawla*, in *John Doe Orders: Prevention of Copyright Infringement of Cinematograph Films*,<sup>51</sup> mentioned that Section 55 of the Copyright Act, 1957 grants copyright owners the ability to pursue civil action against anyone who infringes their rights. *John Doe/Ashok Kumar* rulings have been awarded by the Indian judiciary on a regular basis in the past few years or so to safeguard copyright owners against unidentified or potential future infringers. The author investigates the necessity and

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<sup>50</sup> Nikita Hemmige, *Piracy in the Internet Age* (Jan. 16, 2018, 8:35 PM), [http://nopr.niscair.res.in/bitstream/123456789/21538/1/JIPR%2018\(5\)%20457-464.pdf](http://nopr.niscair.res.in/bitstream/123456789/21538/1/JIPR%2018(5)%20457-464.pdf).

<sup>51</sup> Aadya Chawla, *John Doe Orders: Prevention of Copyright Infringement of Cinematograph Films* (Jan. 16, 2018, 9:00 PM), <http://ili.ac.in/pdf/adya.pdf>.

legal justification for such orders, as well as the philosophy that has grown surrounding them over the years, and analyses many judicially devised protections that restrict the broad scope of John Doe commands to avoid arbitrary banning of valid content.

**Dinesh Pednekar et al.** in their, *The Curious Case of John Doe*,<sup>52</sup> expressed that as soon as a Friday movie is out, people illegally share it on file-sharing sites, and cable providers around the country broadcast it without a licence for profit. A solitary unauthorised version of a DVD being sold by peddlers sets off a chain reaction of piracy that is impossible to regulate or scale. Piracy has the capacity to cause massive damage, to put it mildly. As a result, “John Doe” orders and other preventative measures have gained importance in the worldwide setting, especially for production companies concerned about intellectual property rights violations. The notion of John Doe is yet very much in infancy in India, but as more cases are presented before the Court, it will mature. Legal licence holders’ rights are unaffected by John Doe’s orders, which are always subject to the parties’ legal rights. Similar blanket rulings cannot be issued by the Bombay High Court unless a Plaintiff can establish actual occurrences of breach or conduct which are probable to occur in such a breach, as has been the case recently. In addition, Plaintiff faces difficulties in carrying out the directives that have been issued to it. It is critical that the judiciary specify the exact nature and scope of such orders in order to ensure their successful implementation and/or enforcement.

**Juhi Gupta** in *John Doe Copyright Injunctions in India*,<sup>53</sup> is it possible that John Doe directives are being churned out and enforced at an excessively disproportionate societal cost because of the sound considerations? According to an analysis of the author, it is firmly held that changing resources into blades to ludicrously deprive the people of their fundamental liberties without legislative or administrative authority is worthy of boundless criticism. It’s impossible to overstate how critical it is to follow ex-prate orders precisely because they are issued without any input from the opposing

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<sup>52</sup> Dinesh Pednekar et al., *The Curious Case of John Doe* (Jan. 16, 2018, 11:15 PM), <http://www.manupatrafast.in/NewsletterArchives/listing/Hariani/2015/Jan/THE%20CURIOUS%20CASE%20OF%20JOHN%20DOE>.pdf.

<sup>53</sup> Juhi Gupta in *John Doe Copyright Injunctions in India* (Jan. 16, 2018, 11:45 PM), [http://nopr.niscair.res.in/bitstream/123456789/20289/1/JIPR%2018\(4\)%20351-359.pdf](http://nopr.niscair.res.in/bitstream/123456789/20289/1/JIPR%2018(4)%20351-359.pdf).

party and without any consideration of the merits of the case at hand. There are more immense consequences for the future of the country's copyright protection framework, particularly in relation to the virtual world, when a worrying tendency is arbitrarily and illogically solidified. However, despite producers' prideful assertions of decreased rates of piracy, no evidence is accessible in the public realm at least to determine the true efficacy of the orders and their execution outside of the Internet, which is amusing.

*Payel Chatterjee* in her 'What's in a name'... John Doe arrives in India<sup>54</sup> researches the history and current status of the John Doe Order. They are headed in the right way and need to guarantee that these directives are not abused in order to avoid defeating their intended aim. It was held by the Delhi High Court in *Indian Performing Right v. Mr Badal Dhar Chowdhury* that vague injunction could not be issued and stated categorically that "vague injunction can be a misuse of court procedure, and of this kind vague and general injunctions can never be granted." This was done under the provisions in the CPC of India. To avoid any form of misuse, such commands need to be explicitly defined in terms of their scope and range. There is still a question as to how John Doe's orders will be administered and executed in the Indian context, which has provided knowledge and protection to IP rights holders.

The piracy issue is addressed in the report.<sup>55</sup> Aspects of music, movies, television shows, books, and video games purchased and consumed through the numerous legal and illicit channels that exist today are also addressed in a group of 13 nations from Europe (France and Germany), the Americas (Brazil and Canada), and Asia (Japan and China) (Hong Kong, Indonesia, Japan, Thailand). One goal of this research is to present facts about the current state of legal and illegal content consumption; (ii) to explore the fundamental motives and mechanisms, as well as the relationship between punitive measures and lawful replenishing (iii) to examine the impact of online piracy on legal supply.

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<sup>54</sup> Payel Chatterjee, 'What's in a name'... *John Doe arrives in India* (Jan. 17, 2018, 12:35 AM), [http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/-What-s\\_in\\_a\\_name\\_-\\_John\\_Doe\\_arrives\\_in\\_India.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/-What-s_in_a_name_-_John_Doe_arrives_in_India.pdf).

<sup>55</sup> Institute for Information Law, *Global Online Piracy Study*, University of Amsterdam, (2018).

*Carson S. Walker*, *A La Carte Television: A Solution to Online Piracy?*<sup>56</sup> this article discusses the present status of tv infringement and the possibility of a per plate tv service as a solution to fight the problem. Part 2 chronicles the emergence of televised pirates and discusses methods to stop it. It first examines the origin of television infringement and the numerous kinds of thievery experienced in the pre-Internet age. It then discusses the legislation created to counter counterfeiting and how these provisions are construed by the courts. Part 2 further investigates digital piracy by studying the rise of online piracy through file-sharing applications such as “Napster.” Additionally, Part 2 assesses the cable channels’ attempts to deter piracy by giving free internet material, as well as the criticism from customers that firms have received whenever these facilities are modified or postponed. Finally, Part 2 discusses the present enforcement activities and finishes with a study of the suggested “Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011” (“PROTECT IP Act”).

Part III explores how regulation itself is not the answer to the issue of digital piracy. Instead, a correct mix of the present regulation and enforcement measures should be complemented with a la carte programming options.

Accordingly, with all the reasons presented, the best method to battle television piracy is to provide on-demand entertainment in the form of moderately charged a la carte programming, continue to police current laws, and establish new legislation that fights piracy while encouraging innovation. Cybercrime and performance-enhancing drug regulation in sports have much in common, as users are virtually always one point ahead of the tests in both cases. Enforcers are always one step behind pirates whenever it comes to online piracy.

Using a la carte programming, clients would be able to get all of their content in one spot, as seen above. With so many choices, it’s difficult to know where to begin. In the

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<sup>56</sup> Carson S. Walker, *A La Carte Television: A Solution to Online Piracy?* 20 *Common Law Conspectus: Journals of Communications Law and Technology Policy* (2012), (Jan. 17, 2018, 12:55 AM), <https://scholarship.law.edu/commlaw/vol20/iss2/10/>.

present day and age, certain shows can only be viewed via a paid membership service like Netflix2.00, while others are only available via a network's website. It's possible that the same individual would like to view a live athletic event that's only available via a subscription on a different channel. A centralised a la carte solution might handle all of this, saving the subscriber time and money by eliminating the need for several processes.

Online anti-piracy is the focus of the article *The New Approaches to Digital Anti-Piracy In The Entertainment Industry* by **Igor Slabykh**.<sup>57</sup> The entertainment business has been fighting piracy over the Online platform for the past 40 years, and the outcomes have been mixed. This is followed by a look at why people engage in piracy in Part II of the report. While piracy may never be defeated, it may be significantly decreased, according to the author in Part III of the paper.

Piracy is not a problem that can be solved with a single action. It is only through engaging in a variety of activities that the issue may be reduced. This essay argues in favour of a multifaceted strategy for combating digital piracy. Furthermore, the anti-piracy community requires additional data to understand better how and why copyright infringement occurs. Piracy may be eradicated or at least decreased with the aid of data.

The entertainment sector cannot just sit back and wait for the outcomes of academic research on copyright infringement while the entertainment industry continues its anti-piracy efforts. Piracy is still a significant problem, and new dangers like stream-ripping, cloud piracy, and illegal material distribution via Telegram bots such as @brokinobot or @playplay are emerging every year.

The article *The Decline of Online Piracy: How Markets- Not Enforcement- Drive Down Copyright Infringement* by **Joao Pedro Quintais** and **Joost Poort**,<sup>58</sup> examines

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<sup>57</sup> Igor Slabykh, *The New Approaches to Digital Anti-Piracy in The Entertainment Industry*, (Jan. 17, 2018, 01:25 AM), <https://repository.law.uic.edu/cgi/viewcontent.cgi?article=1471&context=ripl>.

<sup>58</sup> Joao Pedro Quintais & Joost Poort, *The Decline of Online Piracy: How Markets - Not Enforcement - Drive down Copyright Infringement*, 34 Am. U. Int'l L. Rev. 807 (2018).

“the many legal and illicit channels that exist [now] is a collection of [thirteen] nations throughout the world for the procurement and enjoyment of audio, movies, episodes, literature, and videogames.” We want to provide readers with a general idea of how copyright infringement is handled in the nations we looked at; therefore, this post will do just that. The second objective is to give accurate information on the legal and illegal acquiring and consuming of various forms of material. Another goal is to examine the underlying processes and their connection to enforcement methods and legal supplies. The ultimate goal is to see how internet piracy affects the amount of legitimate consumption.

Copyright enforcement efforts, according to our findings, are of dubious effectiveness, raising the issue of whether they hold the key to reducing piracy. When enforcement efforts fail to generate more income or interfere with the fundamental rights of consumers and intermediaries, this is especially true. Piracy, it seems, is a problem that can't be solved by the law. Markets are the most probable place to find it.

Our findings show that internet piracy is on the decline. Rather than enforcement tactics, the primary cause of this reduction is the growing accessibility of inexpensive legal material. Consumer demand for legal material increases when it is accessible, convenient, and diversified. Customers are happy to spend for copyright-protected information and give up piracy in the proper circumstances. As a direct result of this finding, it is clear that policymakers must direct their efforts and resources to enhance these circumstances. In particular, policies and practices that promote authorised and reimbursed accessibility to copyright-protected content should take precedence over punitive methods of combating online infringement.

In the article by *Justice Prathiba M. Singh*, Evolution of Copyright Law- The Indian Journey, it has been highlighted that when it comes to distributing information, digitalisation has made it incredibly simple and, in most cases, impossible to trace. It used to be that when a picture was released, it had to be seized from infamous bazaars



in various towns by submitting civil or criminal complaints. In spite of the widespread availability of computer software, corporations used to execute periodic raids in identified markets where CDs carrying pirated software were sold. Meanwhile, the methods of infringement have evolved significantly in recent years. There is a lot of infringement going on in genuine marketplaces and businesses, but the most common kind of infringement is currently taking place on the web. There are several remedies for real-world violation, including injunctive relief, assignment of Local Commissioners, etc. Recently, in most cases of copyright infringement, injunctions have been imposed requiring cable companies and multi-system administrators not to distribute unauthorised content. Producers frequently request such injunctions and the designation of Local Commissioners from the trial at minimum one week before their picture is scheduled to be released. An injunction has also been filed requesting directives for officers to supervise and guarantee that unauthorised versions are not sold publicly, such as at traffic signals or other public places, in order to preserve literary work rights. Injunction orders were issued in civil cases, but the courts devised a hybrid enforcement system by authorising the regional SHO to execute them. For the police, it may not be a top concern, but this was a novel way to ensure that copyright violations are not left unchecked.

Internet use has forced courts to craft solutions for copyright violations in such a way that the infringer cannot get away with the infringement, which has been happening for around the last decade. In *Star India Pvt. Ltd. &Anr. vs Haneeth Ujwal &Ors.*,<sup>59</sup> 2014, Star India Pvt. Ltd. sought an order barring whole websites with infringing content from the Delhi High Court, which was one of the first instances to deal with this issue. Since then, the URL45, i.e., the exact web page holding the infringing content, has been blocked, rather not the entire website as previously. As a result, broadcasters wanted to restrict all of these websites because of the widespread scope of infringement on some of them. The term “rogue websites” was used to describe websites that were primarily devoted to illegal content. Ex parte ad interim order was issued based on several representations made between the litigants, including that “rogue websites”

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<sup>59</sup> CS(OS) No.2243.

shamelessly violate intellectual content and constitute a safety risk to naïve consumers. In the Department of Electronics & IT, even before the Division Bench, the issue of whether or not entire websites should be restricted came up. In the Delhi High Court, a government appeal to a banning order affecting all websites was adjudicated. According to the government, just the URLs should be restricted. The Division Bench, on the other hand, ruled that banning individual URLs is insufficient when dealing with rogue websites; instead, the entire website must be prohibited.

The article by *Mohit Kar*, in *Online Piracy in the Indian Film Industry: Effectiveness of the Indian Copyright Act*,<sup>60</sup> highlighted on the foundation of a country's Copyright laws is based on legislative restrictions and limiting the unauthorised copying of innovative work. Online Piracy is a new type of piracy born out of the digital age. In 2016, a survey indicated that 5.4 billion films and prime-time videos were downloaded illegally throughout the world. This has primarily affected India. Online piracy statistics place it 5th in the world. Whether or whether we are doing enough to reward everyone involved in creating and distributing a film or television show in order to reap the profits raises an important topic.

The Indian Copyright Act, 1957, is the primary piece of law in India addressing copyright issues. With an update to the Copyright Act of 2012, Digital Rights Management (DRM) was established in India. Bollywood successfully lobbied for this to become law. Digital Rights Management's first section protects against technical safeguards being circumvented. According to this section, any person who circumvents an effective technological measure employed to safeguard any right under the Copyright Act in order to infringe such rights may be penalised with imprisonment that may extend up to two years.

The battle between Bollywood and piracy has been going on for a long time. The hackers come to the rescue of moviegoers looking for a free or low-cost way to watch movies. Movies from a wide variety of genres can be found on a pirated site and

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<sup>60</sup> Mohit Kar, *Online Piracy in the Indian Film Industry: Effectiveness of the Indian Copyright Act*, 5 *JIPL* (2020) 103.

downloaded for free. However, it is past time for Indians to stop encouraging piracy and know that it is against the law. Actors, filmmakers, producers, editors, and managers all make their living in Bollywood, but if piracy continues to grow, they will be forced to go elsewhere for work. Copyright legislation in India has anti-piracy regulations, although these have not been effectively implemented. Even if the Cinematograph (Amendment) Bill passes, it is unclear how successful it would be. Piracy is actively combated by the Indian judiciary, which often issues John Doe rulings in favour of films. As a result, the John Doe directives are rendered ineffectual by pirates' inventive methods, such as replicating websites. More robust copyright measures allowing the entire halting of current pirate operations should be enacted by Indian legislators, following Australia's lead.

The article by *Jasper V. George*, in *Consumer Behaviour vis-à-vis Digital Piracy and Copyright Infringement*,<sup>61</sup> highlighted that traditionally, copyright industries focused on a small local market; for example, the Tamil Film Industry only produced content for a Tamil-speaking audience, while Bollywood produced copyright content for a Hindi-speaking audience. However, the advent of the Internet has transformed everything because it has opened up a seamless global market. Global marketplaces for digital copyrighted information have fundamentally altered the traditional interpretation of Copyright Law. It has also had an impact on the methods of piracy-illegal downloading is the result of this. Because of the significant financial harm, it is creating, the exponential rise in online piracy is a significant source of concern for governments throughout the world. Due to digital piracy's explosive expansion in the twenty-first century, it is critical to examine customer attitudes regarding piracy and how that influences their purchasing decisions. In the previous century, infringement of copyright on a broad scale for the purpose of duplicating and dissemination was extremely difficult and expensive because of the technological and economic costs associated with it. In addition, the Copyright Act of 1957 provided sufficient legal and financial safeguards for the owner of the copyright. Copyright infringement has become much easier and cheaper to commit as a result of recent technological advancements

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<sup>61</sup> Jasper V. George, *Consumer Behaviour vis-à-vis Digital Piracy and Copyright Infringement*, 5 *JiPL* (2020) 1.

brought on by the rapid increase of online technology over the last three decades. As a result, it is critical to understand the elements that drive consumers to engage in illegal downloading and copyright infringement in order to prevent the spread of this problem. First, the influence of the tech transformation on copyright content was examined, and then the second half of this study sought to identify consumer motivations for digital piracy in order to achieve this aim. In the third section, a consumer study is conducted to discover the current loopholes in the Copyright Act of 1957.

#### **1.4. OBJECTIVES OF THE STUDY**

1. To study the historical development of copyright laws in the realm of the evolution of the technological era.
2. To analyse the copyright laws in existence.
3. To develop a critical overview of how the violation of copyright law is adversely affecting the basic characteristics of entertainment industry in its creativity.
4. To critically evaluate whether or not the legal and administrative regulatory mechanism is adequate to meet the problems involved in maintaining certain standards for online piracy of movies.
5. To make comparative analysis of laws relating to piracy in India and USA, U.K & China.
6. To study the Indian outlook towards Indian Copyright Laws in the elimination of the menace of online piracy of movies.
7. To suggest, if weaknesses and inadequacies were discovered, how the existing regulatory measures could best be improved or the enforcement mechanism be made more efficacious to minimize the existing problems concerning online piracy of movies.

#### **1.5. RESEARCH QUESTIONS**

1. In terms of internet based illegal downloading, have the notable copyright reforms of 2012 been beneficial?

2. How far the existing laws are sufficiently deterrent to minimize the dangers inherent in the techniques of online piracy of movies and its impact on Indian Film Industry?
3. Whether the enforcement, monitoring and administrative mechanisms designed to set and maintain high standards of regulations efficient and effective to control this menace?
4. Whether in comparison to developed countries like USA, UK, China, India should adopt any of the measures which might be helpful in combating the problem of Copyright Piracy?
5. What is the attitude of the people towards online piracy and how their attitudes influence their piracy behaviour?

## **1.6. HYPOTHESES**

Taking into consideration the present status of online piracy of movies following hypotheses has been formulated:

1. There are existing IP laws to curb the menace of online piracy of movies in India.
2. Acquiring the legal rights and remedies by the copyright holders is a herculean task.
3. As far as movie piracy is concerned, there is little public consciousness in our nation.

## **1.7. RESEARCH METHODOLOGY**

The method applied to study and ascertain the matter is primarily based on doctrinal and with a limited application of empirical research methodology. The paper is conceptual in nature. This study is a combination of the following research methods:

### **(I) EVOLUTIVE/ HISTORICAL STUDY**

The evolutive method helped the researcher to understand the concept and causes of online piracy of movies in Indian society. The technique helped to find the whereabouts of this menace in India. Tracing the evolution of the various techniques of online piracy helped to understand the risks associated with it.

## **(II) DESCRIPTIVE AND EXPLORATORY STUDY**

The descriptive approach seeks to find out what happened. It involves the ascertainment of the state of affairs in respect of any problem, issue or question. The researcher has explained what kind of legal and administrative mechanism has been designed to ensure the protection of the right copyright holders, with the ultimate object of determining whether any inadequacies or gaps exist in the legal and administrative mechanism.

Also, the researcher has found it worthwhile to ascertain and describe the attitude of higher courts in the interpretation of the statutory provisions. Similarly, the thesis is descriptive in nature where the researcher has described the nature of jurisdiction, powers and mode of working of an administrative tribunal with the ultimate purpose of suggesting reforms.

In this thesis, the researcher has explained what kind of legal and administrative mechanism has been designed to ensure the protection of the right copyright holders, with the ultimate object of determining whether any inadequacies or gaps exist in the legal and administrative mechanism. Therefore, for the goal of discovering previously undiscovered or just partially understood truths, it is exploratory research since it outlines many legal issues that have been regarded potent over time.

## **(III) COMPARATIVE STUDY**

Another significant objective of this research which has been undertaken by the researcher was to conduct a comparative study of laws relating to digital piracy of copyrighted content in developed nations of the world. The researcher has made a comparative study of the legislative and judicial aspects dealing with online piracy of movies. With this view, the comparative analysis of the existing copyright laws is made in the common law countries, namely, the USA, UK and China, with an impetus of understanding the approaches and policies adopted by these countries for regulating online piracy.

## **1.8. TOOLS OF DATA COLLECTION**

Primary and Secondary references have been used to acquire information. In order to better comprehend how Indian law addresses the internet piracy problem, we will look at international treaties, the Copyright Act, and other relevant statutes. The shifting judicial tendencies and their application will be studied through a close examination of court judgments.

Authors who have written extensively on copyright law in India will be consulted for their viewpoint on the internet piracy of movies. There are no books on internet piracy of movies that the researcher has found. Researchers had to limit their study to a few cases or a few cases or a limited location in order to get their hands on the few texts they could find on the subject.

Additionally, materials from a wide range of national and international conferences, seminars, consultations, and workshops have been gathered together. Studying the relevance of the issue is done by gathering together the most recent and current developments from numerous web pages and print and electronic media.

The interests of copyright holders in preventing piracy are outlined in a number of international instruments that the researcher has reviewed. Piracy has yet to be defined; thus, researchers have attempted to do so using numerous tools and court rulings. As a result of this study, copyright owners in India will have a better understanding of how to protect their rights.

In empirical research, data has been collected with the help of the Close End Questionnaire. The selection of the sample was based on probability to ensure each person in that population has the same probability and chance of being selected. However, the total population comprised of 343 Respondents, which consisted of samples from different areas, and data has been analysed quantitatively.

## **1.9. SCOPE OF THE STUDY**

Privileged content that is illegally reproduced and sold on the “grey market” is known as piracy. Because of the ease with which technology is now available, there has been an increase in the prevalence of piracy. CD writers, for example, are readily accessible at inexpensive rates, enabling music piracy a cinch.

Numerous laws were enacted to protect private information. Developed countries across the world have strict and harsh rules in place to deal with acts of piracy. Due to more pressing national challenges, it receives less national attention in Asian countries, and this is especially true in India. In spite of the industry’s active involvement in halting the rot, the IT, music, and film industries have been adopting a proactive approach to the problem. There are other groups that identify pirate hotspots and then perform police-aided raids. However, convictions are infrequent, and fines are not severe enough to serve as deterrence in this case.<sup>62</sup>

Through this research, the researcher hopes to gain a better understanding of the issue by looking at all the associated factors that are impacted by movie piracy on the Internet. There is a strong desire to put to the test the legal protections provided by the Copyright Act. In general, there is a belief that the Copyright Act does not adequately protect the rights of copyright holders or that there are legal loopholes. An effort will be made to find out the truth. Indian courts and new legislative measures on internet piracy will be examined as a whole to see if they have any effect.

## **1.10. LIMITATION OF THE STUDY**

The aim of this research is to activate the machinery of the Indian judiciary in regard to Copyright Laws in India, with particular emphasis on cinematography. The researcher has discussed very elaborately the laws relating to copyright in connection to cinematography along with the laws of the US, UK & China. The method adopted has

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<sup>62</sup> Piracy Meaning? The Economic Times, (Jan. 4, 2018, 10:00 PM), <https://economictimes.indiatimes.com/definition/piracy>.



been to give an overview of the tasks performed by the court in the above-said area and then to trace the new innovative ideas further to combat this deficiency in society.

There are certain drawbacks to this study. The lack of any dependable database on the country's copyright industries is the first and most significant problem. With the exception of elements like software applications and sound recordings, the research started from a near-zero basis in this regard. It was unable to obtain relevant data for the study, even though it's both doctrinal and empirical, to determine the magnitude and scope of piracy. Furthermore, there was no documented information on the number of vendors and, more significantly, the internet streamer of pirated audio-visual items in this technologically advanced era.

### **1.11. UTILITY OF THE STUDY**

Copyright holders will benefit significantly from the research because it covers all aspects of their legal rights in depth. A better state of Legislation will not solely enrich the copyright owners and the Government, but it will also make it easier for them to enforce their rights against infringers. Following are some of the possible benefits of this research:

- (1) Copyright holders must be aware of the numerous rights accessible to them in order to take advantage of the protections provided by that the Copyright Act as well as other legal provisions. Besides examining the relevant statutes, the authors of this paper have rigorously examined nearly all of the most recent case law. Copyright owners will be given a detailed breakdown of their rights as a result of the study.
- (2) A little research has been done on this topic of internet piracy. The study, on the other hand, will aid policymakers, commissions, the legislature, and the judiciary in their efforts to examine how policies are being implemented and fill up any gaps.

- (3) The findings of the study will be used to spur a re-examination of a ruling that severely curtailed copyright holders' rights. As a result of several court rulings, the interests of copyright owners will be more clearly defined.
- (4) It will serve as a foundation for further studies and education.
- (5) It will be easier for the researcher to offer legal counsel to copyright holders if the study is successful.
- (6) Copyright holders will be better equipped to use their rights against infringers, thanks to the recommendations offered in this section.

The study's findings will shed light on the issue of internet piracy. It may be a small effort, but the potential for self-reflection and a more comprehensive perspective will be gained from it. Employing a variety of approaches, it is an effort to reconcile the gap between copyright holders and implementation. It's a genuine attempt at resolving a conflict. To help copyright holders better understand and apply their rights, researchers have drawn out a road map.

## **1.12. SCHEME OF THE STUDY**

The following sections are included in the research:

During the *first chapter*, "**Introduction**," you will learn about the study standards, which also will help you get a sense of the research's scope. There is a brief overview of the study in this section, as well as an explanation of the purpose, hypothesis, research questions, methods, and instruments.

Internet piracy is discussed in length in the *second chapter*, "**Historical Evolution and Development of Copyright Law**," which also covers the history of piracy as it has evolved through time in various forms such as peer-to-peer (P2P) and online piracy. After 1910, when the technique of piracy grew into the practice of duping or utilising positive prints in generating fresh negatives to make an endless number of duped prints,

the Quiet Era 1895-1929 will be addressed. By the 1960s, the new type of unauthorised film recording known as “cam rips” had been established. VHS cassettes were introduced to the public in 1979, ushering in a new era of home video recording. Next came the digital age, during which piracy moved online due to the fact that pirates could choose to obtain the content in physical (on DVDs, VCDs, etc.) or digital form.

Copyright law is discussed in detail in the *third chapter*, “**Application of Copyright Law in Indian Film Industry: Special Reference to Rights and Principles Provided to Filmmakers,**” which explains the fundamentals of copyright law, including what it is, how it has evolved in India, its most notable features, and its subject matter, including provisions pertaining to cinematograph films and piracy of movies online followed by the challenges faced by the Indian Film Industry.

*Chapter 4*, “**Online Piracy of Movies and its impact on the Indian Film Industry**”, focuses on the crucial aspects: the first part will give a glimpse of how piracy has evolved over time, its causes, factors which affect online piracy, the different tools used for infringement activity and its impact on the Indian film industry. Followed by this, the chapter will also focus on the various other recent developments as per the requirement of the study.

On the topic of movie streaming piracy in India, the *fifth chapter* focuses on the “**Role of Judiciary and Administrative functionaries in addressing online movie piracy in India**”. In the Indian film business, counterfeiting of films is still one of the most pressing intellectual property challenges. The Indian legal system has also taken a leading role in copyright protection in the fight against film piracy, as have production companies. The Indian film business is therefore pushing towards legal binding structures and procedures, supported by rigorous rules and robust enforcement of the law.

Indian copyright legislation offers administrative and penal remedies that are comparable to those found in most other countries, but various studies have shown problems in the enforcement system, particularly with regard to criminal prosecution.

In civil and criminal matters, copyright owners confront additional difficulties in the judicial system since Indian courts are overburdened and plagued by delays.

The *sixth chapter*, “**Global Protection against Online Piracy of Movies: Trends in USA, UK, China and India**”, provides and compares the concept of film piracy and its various aspects in the international arena. While the copyright laws in India have kept pace with the changes, implementation of the legislation has always been lax, as discussed in conjunction with the internet piracy acts in this chapter.

The *seventh chapter*, “**Piracy through Online Streaming: Indian Outlook**”, has been included to justify the Research Methodology. Empirical research data will be collected with the help of a close-ended questionnaire. The selection of the sample will be based on probability to ensure each person in that population has the same probability and chance of being selected. However, the total population would comprise (200 respondents) and data will be analysed quantitatively.

The *eighth and last chapter*, “**Conclusion, Suggestions, and Recommendations**” deals with the topic of cinema piracy in India and the best solutions to get rid of it, respectively. Here, the researcher will go through the breadth of a few proposed legal reforms as well as other potential approaches. Researchers concluded that India’s core anti-piracy legislation was essentially appropriate but that enforcement and compliance were lacking. The researcher thinks wiser business techniques, such as broader and more affordable access to content and more targeted consumer awareness campaigns, might be utilised to combat piracy successfully.

To combat the scourge of piracy, rights owners should connect more with young people and promote a desire to view films at the theatre and pay for content. While this notion is unfamiliar in India, it might include anything from working with cinemas to provide student discounts on tickets to fostering university film clubs and licencing films to these groups for a small or even non-existent charge.

## CHAPTER 2

# HISTORICAL EVOLUTION AND DEVELOPMENT OF COPYRIGHT LAW

### 2.1. INTRODUCTION

Creative property assets include inventions, literature, and artwork, as well as names, pictures, and designs utilised in business. Since the British colonised India, the country's copyright system has come a long way. In 1847, the Governor General of India established the first copyright legislation. Since India was a part of the British Raj, it immediately applied to India when the Copyright Act 1911 was passed in England. Before the country gained independence, this statute was in existence. The Copyright Act of 1957, however, came into force in 1958. After that, the Act has been modified a number of times. The US Copyright Act of 1976 will be 40 years old in 2008, the Australian Copyright Act of 1968 will be 45 years old in 2010, and the Statute of Anne will be three hundred years old in 2010. Modern copyright law's symbolic genesis is the Statute of Anne, which first brought the principles of managing, controlling, and sharing information, culture, and innovation to life over a century before 1709. We are now faced with the daunting task of re-evaluating copyright law in light of the explosion of new information and cultural creation and distribution that has been made possible in the 21st century.<sup>63</sup>

The formation of the World Trade Organization (WTO) in 1995, following the completion of the Uruguay Round of General Agreement on Tariffs & Trade (GATT), has caused the intellectual property rights (IPR) problem to become increasingly significant across the world. A real-time discussion on the benefits and drawbacks of the Uruguay Round results is taking place in India, especially as it relates to IPRs. But in the years after the implementation of the innovative international trade system, there has been a shift in attitudes regarding the use of the new avenues for the teaching of

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<sup>63</sup> Charu Dureja, *Historical Development of Copyright Law in India*, International Journal of Advanced Research in Management and Social Sciences, ISSN: 2278-6236, (Aug. 17, 2018, 12:55 AM), <https://garph.co.uk/IJARMSS/Jan2015/7.pdf>.

international commerce. While copyright is part of the larger intellectual property rights idea, it is nevertheless very significant. Although the country has had copyright for a long time, it is now time to resolve problems related to it. Because the WTO was about to end, there may have been a recognition that copyright law will play a role in future trade deals, not just in the cultural sector.

India has had a strong presence in the realm of copyright due to its vast cultural history. The copyright-related actions that are common in the country are on the rise. A substantial part of the country's publications is in English, which places India among the world's top seven publishing nations. About 60 percent of the films and audio cassettes made in the country are consumed within the country. The computer software industry is a great opportunity for India. Software has been booming, with growth of over 64% every year since the start of the decade.<sup>64</sup>

Copyright rules in India are equivalent to those in many developed nations on the legal front. To keep pace with the modern technology advancements, India's copyright statute has been altered many times since its creation in 1958, for example in 1983, 1984, 1994, and 2012. Previously, penalties for copyright breaches have been stiffened. The current legislation also generally matches the Uruguay Round Trade Agreement on Trade-Related Intellectual Property Rights (TRIPs). Despite the existence of all these issues, the level of understanding about copyright in the country is very low, and it is often assumed that piracy is prevalent.

## **2.2. ORIGIN AND DEVELOPMENT OF COPYRIGHT**

The development of printing, which allowed books to be replicated mechanically, introduced the notion of copyright protection. Beforehand, the only means of replication was copying hand-written documents. There was an understanding that once the Guttenberg printing press was invented in Germany in 1436, printers, publishers, and authors would require protection, and therefore certain special rights were awarded

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<sup>64</sup> Study On Copyright Piracy in India, Sponsored By Ministry Of Human Resource Development Government Of India, (Aug. 18, 2018, 10:05 PM), <https://Copyright.Gov.In/Documents/Study%20on%20copyright%20piracy%20in%20india.Pdf>.

to each group. European printing became popular rapidly. Soon after 1483, the English book trade, already dominant in Europe, became more prominent. The development of this technical advancement prompted the emergence of a new class of middlemen, including the printers, who had an initial interest in the book, i.e., as publishers and booksellers. The English dubbed them “stationers.”<sup>65</sup> Queen Mary I gave the Stationer’s Company of London the right to control the book trade in 1557.<sup>66</sup> A law was enacted in England in 1662 that forbade the copying of any book unless it had been licenced and recorded with the Stationers’ Company, which was a government-run organisation.<sup>67</sup> It was the first law of its kind that was designed to safeguard literary copyrights and curb piracy. The duration of the licence was rather brief. Only with the passage of the Queen Anne’s Statute of 1709, which defined the right of writers to their work, and public domain as a notion, did authors begin to be recognised legally.<sup>68</sup>

### 2.2.1. AN OVERVIEW OF THE PRE-GUTENBERG AGE

Long before the concept of copyright for the safeguarding of intellectual works was established, the owners of those works had little said in how their work was used. No money was made from the projects, and the creative products were free to use for study or leisure.

At that time, copying text by hand was the sole option for replicating it. Monks handled much of the translation work, but since the majority of the people could not read, they didn’t have much of an audience. When news was being spread away from the monasteries, it was done in a Chinese whisper, which went from ear to ear, making it more susceptible to errors in transmission. Their trustworthiness was seriously

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<sup>65</sup> Stephen M. Stewart, *International Copyright and Neighbouring Rights*, 1983, at 20.

<sup>66</sup> Jacqueline M.B. Seignette, *Challenges to the Creator Doctrine – Authorship, Copyright Ownership and the Exploitation of Creative Works in the Netherlands, Germany and the United States*, 1994, at 13.

<sup>67</sup> E.P. Skone James, et al, *Copinger and Skone James on Copyright*, 1991, para 1-24.

<sup>68</sup> L. Ray Patterson & Stanley W. Lindberg, *The Nature of Copyright : A Law of User’s Rights*, Athens University of Georgia Press (1991) ‘ the authors characterize the original Statute of Anne not as a major expansion in the protection of works, but as actually creating a public domain, by limiting the duration of protected works, by limiting the duration of protected works and by requiring formalities’ at Note 25, Edward Samuels, ‘The Public Domain in Copyright Law’, *41 Journal of the Copyright Society* 137 (1993), (Aug. 20, 2018, 11:35 PM), <http://www.edwardsamuels.com/copyright/beynd/articles/public.html#fn25>.

questioned. Copyright could not be implemented because the work was too difficult to copy and was too expensive to make.<sup>69</sup> To put it another way, past shows that information was almost “free” once upon a time. The idea of assigning monetary value to information was completely foreign to me.

Even in its original form, the copyright did nothing to encourage the development of new works of art or intellectual thought. As highlighted by Richard Stallman, an American software freedom activist, a comment by Richard Stallman is relevant here:<sup>70</sup>

“The idea of copyright did not exist in ancient times, when authors frequently copied other authors at length in works of non-fiction. This practice was useful, and is the only way many authors works have survived even in part.”

### **2.2.2. THE FIRST “COPYCAT” DISPUTE**

One of the first recorded copyright conflicts was adjudicated in Ireland in the fourth century, and it’s worth noting that it concerned the usage of reprographic tactics.<sup>71</sup> In the royal court of King Diarmed, a legal argument between St. Abbot Finnian and his old student St. Columba was settled by a coin toss.

St. Columba, in defiance of St. Finnian’s intellectual property rights, duplicated and distributed the works for free. As King Diarmed regarded it, Finnian’s property was the book itself, with ownership of which Finnian was entitled to its output, the copy. The monarch announced that both the genuine and the replica belonged to Finnian, according to him, “The original belongs to the cow and the copy to the calf, so that a book’s child is naturally a book’s copy”.<sup>72</sup> Columba was punished for the unauthorised

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<sup>69</sup> By ‘system’ the authors are referring not only to the laws pertaining to ensure copyright over the work but a wider connotation envisaging a host of institutions such as libraries, adjudicating body, copyright societies etc., and like arrangements.

<sup>70</sup> Deepak Nayyar, *Intellectual Property Right Beyond the Legal Perspective in Law of Copyright: From Gutenberg’s Invention to Internet*, viii, Prof. A.K. Koul, Dr. V.K. Ahuja eds., Faculty of Law, University of Delhi (2001).

<sup>71</sup> *So Sayeth Soup: The Death of Copyright*, (Aug. 21, 2018, 09:15 PM), [http://www.macedition.com/soup/soup\\_20000627a.shtml](http://www.macedition.com/soup/soup_20000627a.shtml).

<sup>72</sup> Philip Wittenberg, *The Protection of Literary Property*, 7, Rev, Edn., 1978.



reproduction of 40 cattle. The king's decree therefore indicated the route that copyright law would go in the future.

The monarch relied on the Brehon Laws to determine who owned animals discovered roaming, using the same principle that a calf belongs to the cow anywhere the cow was kept. Since the paper and printing were not developed, books were hand-copied on vellum, made from calf skin, or were destined in calfskin. St. Columba failed to follow the order.

However, unlike what some may believe, St. Finnian won't publish the psalter in issue. He just possessed it.<sup>73</sup> The matter debated by Diarmed concerned whether information should be shared equally, or if the rich and powerful should have the right to restrict the spread of information. Finnian did not write the book.

Count de Montalembert also states that Columbia's love of exceptional manuscripts was immense. He travelled from place to place in quest of books he might borrow or copy, frequently encountering refusals that he found deeply aggravating.<sup>74</sup>

As a result, the oldest record of a copyright dispute shows that the measures of justice were tipped in favour of the title owner and not the inventor or "author", who is the actual owner of copyright.

The ability to print was not known before Johannes Guttenberg, a German, invented the movable type printing machine in 1436. Printing became widespread throughout Europe immediately after. The printing press was both a boon and a curse. At one end of the spectrum, it was becoming easier to create print products, such photocopying and distribution, while the opposite end of the spectrum had all kinds of opportunities for misuse. Because of this, the author's protection vanished once the work went into print, making copyright necessary.

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<sup>73</sup> See Lucy Menzies, *Saint Columba of Iona: A Study of His Life, His Times, & His Influence* 22, fads. reprint 1992, (1920).

<sup>74</sup> The Count De Montalembert, *The Monks of the West: From St. Benedict to St. Bernard* 108 & n.1 (1867) at 117-118.

As a consequence of Gutenberg's commitment to the literary world, a wider consumer for printed books arose, and the creation of copyright is related to that phenomenon.

### **2.2.3. THE ENGLISH CROWN COPYRIGHT- A CHRONICLED DEVELOPMENT**

King Richard III, who was in power in 1483, allowed for the publishing of books in England by foreigners. As a result, the number of books available to foreigners increased due to their royalty's "royal permission". This rise in power led to England becoming as the primary publishing hub of Europe, spanning its width and breadth.

The King of England, Henry VIII, had a "system of privileges" for printing books created in 1529, resulting in the monopoly of the printing business falling to the Crown. In 1533, the king decreed that book may no longer be imported into England, though he offered no explanation for his ruling, claiming only that England's many publishers, printers, and bookbinders make imports unnecessary.

However, in France there was a Printers Guild Monopoly which created a government-enforced rule in exchange for unrestricted market accessibility. Parisian bookseller and publishers were ordered by the French government to establish a guild in order to obtain advantages in the printing press. It was not till the French Revolution around 1789 that press freedom was firmly established in the nation's constitution, thanks to popular backing.<sup>75</sup>

### **2.2.4. PETTY PIRATES ARE NOW PROTECTED BY THE LAW AS THE STATIONERS' COMPANY IS BORN**

A 97-member union of London publishers was created in 1556 under the reign king Henry VIII of England. Indeed, this firm provided a specific individual the right to reproduce compositions for eternity in the name of one of the members of the firm, who seem to have monopoly publishing rights for the rest of one's life. Book publishing was

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<sup>75</sup> Stephen M. Stewart, *International Copyright & Neighboring Rights*, 20, Butterworths, 1983.

essentially monopolised by these Shakespearian period characters, who were allowed to manufacture and sell books as their principal trade.

It was a permission, not a right. Publishing house membership included the publishers and their suppliers, but writers were excluded. Because they often sold books, printers in certain circumstances played the role of modern publishers.

The Stationer's Company of London, which was granted a book trade regulatory privilege by Queen Mary I in 1557, was eventually divided into the two distinct guilds of the Worshipful Company of Stationers and the Worshipful Company of Stationers. The stationers saw three advantages to the company's existence:

- To address their concerns about unprofessional activities and to stifle the competition, they first imposed safeguards to prevent bad workmanship.
- Second, they did so to decrease unprofessional behaviours. Finally, though they were reluctant to do so, they limited the scope of the market. The stationers also voiced their fear that non-company members would lack the necessary qualifications, training, and competency to do a decent job.
- Printing was also under the control of said Star Chamber, which made it possible to confiscate books considered of containing anti-government or anti-Catholic content. The Licensing Statute of 1662 made it possible to grab manuscripts perceived of carrying anti-government or anti-Catholic content.<sup>76</sup>

Materials of every kind that are intended to be published have to be registered in accordance with the regulations set forth in the Licensing Act of 1662.<sup>77</sup> People refer to the register's work as "copies." The publishers said they had the right to print copies of the books in perpetuity, and the privilege came to be known as copyright.

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<sup>76</sup> A Transcript of the Registers of the Company of Stationers of London; 1554-1640 A.D. 60-63, Edward Arber (ed.), 1967.

<sup>77</sup> Nipps, Karen, "Cum Privilegio: Licensing of the Press Act of 1662." *The Library Quarterly: Information, Community, Policy* 84 (4) (October): 494-500. doi:10.1086/677787, (Aug. 22, 2018, 11:35 PM), <https://dash.harvard.edu/bitstream/handle/1/17219056/677787.pdf?sequence=1>

That said, the stationers' role was to publish materials and not to possess them. They did not have the right to make any changes to the work. In the present day, copyright is not only an economic transaction; it's a legal privilege in which the initial proprietor of copyright is the inventor, not the publisher.

Even while some authors may get rewarded for their work, they do not have the rights to collect royalty payments from their work or control how it is sold. One of these printing companies, which doubled as both publisher and vendor, took on the position of author in terms of rights, effectively becoming a three-in-one entity that focused on copyright's financial core while also including its crust.

The Licensing Act of 1662, which created a registry of licenced publications and required a copy of each book to be placed in the register, was passed. The Stationers' Company, which was granted the ability to seize books believed to contain anti-Church or anti-government content, handled the deposit. The company's chosen members were given the right to perform book searches and seizures and to submit the books to the Justice of the Peace. This organisation was permitted to jail anybody who defied the Church of England's doctrine or rules or who opposed the nation or government.

It is accepted claimed the Licensing Act of 1662 was the initial legislation in place to deal with copyright infringement. Nevertheless, people cannot help but be reminded that the writers were describing "pirates," a political pressure group that was permitted to print and disseminate books. When it came to the stationer's guild, the law supported pirates, and the legislative powers and responsibilities given to members rendered it possible.

The fundamental purpose of the state and the church was to maintain power, which it served by enabling a criminal conspiracy by means of laws that promoted stealing. It was clear that public interest as a common law basis with no statutory definition was not even on the table. One should also take into account the author's moral rights, such as the right to acknowledgment, even if other benefits are not forthcoming.

A select writers, such Sabellico, Petro Francesco da Ravenna of Venice and Palsgrave of England, were allowed to retain their monopolies.

The author needed to be prominent in order to ensure a yield on his investment. Wolfgang von Goethe, the German Shakespeare, might not have received the privileges demanded by his publisher if it were not for his prominence as an author and representative of said Weimar court and administration.<sup>78</sup>

To exert successful censure and prohibit seditious or heretical writings from entering into print, publishing was subject to the instructions of the Star Chamber. The goal was to regulate the press and never to help writers' rights.<sup>79</sup> It was a time of renaissance, with intellectual movements, nobles, and a religious environment that the church wanted to control, but it was largely via an edict about printing that they tried to build a monopoly to suppress the growth of Protestantism and keep the people in their thrall.

The Licensing Act served as a legal tool to disguise the intent of the nobles and the church to maintain power over the people by preventing works that would "cause" or tend to cause a damage of trust in the church's authority, which was already in decline due to political in-fighting and the spread of culture. Any writing that ran counter to the kingdom was seen as a threat to the tranquillity of these empires and as creating unrest among the people. In addition, the authorities of the day gave the Stationer's Company a right in perpetuity, and this meant that following a member's death, the successors and descendants inherited the right to publish. As for authors' rights, they were not taken into account when this "law of perpetuity" was put into place. The whole plan was intended to further the objectives of the authors and the government at the same time.

It was the Stationer's guild that was given the authority to exercise acts of piracy, and violators were subject to harsh penalties.

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<sup>78</sup> Cf. Stephen M. Stewart, *International Copyright & Neighboring Rights*, 17, Butterworths, 1983.

<sup>79</sup> William Z. Nasri, *Crisis in Copyright*, 1, Allen Kent ed., Marcel Dekker, Inc., 1976.

### **2.2.5. END OF THE LICENSING ERA**

The licencing acts expired, however, and eventually the Stationer's Company was weakened to the point where the prohibition on unlicensed printing was lifted, and independent printers began to appear and penetrate the Stationer's Company's "safe havens." The laws could not survive the passage of time as they were flawed and corrupted, and they offered property rights to those who copied works mechanically as opposed to those who did it via intellectual means.

The Stationer's Company had successfully secured a by-law that allowed them to continue controlling the printing trade by creating a system for the registration of books in 1681, seven years after the Licensing Act, 1662 was abolished.

In addition to the growing extent of the Stationer Empire's harmful effects, which included jacked-up prices for the writings of the gifted "pen wielders," increasing day by day, there was also the fact that men and women were being drafted to fight in the colonial wars that were at the time commonplace on the continent.

A firm reassurance of their dominance was something the Stationer's expected when the Licensing Act of 1662 was renewed in 1695, but the House of Commons instead ended their monopoly. In the dearth of copyright rules, piracy was rampant and the Scottish publishers, who were outside the Great Britain copyright authority, had intense competition.

Thus, because the Stationer's Guild no longer provided security and book commerce was uncontrolled, 'piracy' spread like a forest fire over Britain, and it burned for fifteen years it till finally being put out in 1710.

To protect their monopoly, the Booksellers pressured Parliament to pass a statute that would give them a monopoly over publishing. The Guild's claim to exclusive rights ad infinitum was motivated by the Lockean notion that everyone has an inherent right to

the products of their labour, with the purpose of prolonging their monopoly and obtaining legislative protection for it.<sup>80</sup>

The early seventeenth century English philosopher John Locke was also credited with the suggestion that the time a bookstore may keep a book after the author's death should be restricted.<sup>81</sup> They were also seeking to extend the Licensing Act in order to prevent their livelihood from being wrecked, since their property could not be supplied for if they did not have the act.

The House of Commons dismissed the request of booksellers, partly because booksellers were entitled to impede the printing of all of the books which are innocent and beneficial. In addition, they had the ability to enter a book title for themselves, and their friends. In addition to other concerns, the low quality and exorbitant pricing of the booksellers' editions also served as motives for rejection. In 1703 and 1706, the booksellers' attempts to garner greater legal protections failed.<sup>82</sup>

The Stationers, who had failed to get Parliament to grant them more authority, changed their legislative strategy, focusing on writers' interests rather than publishers'. After they focused their attention on getting new laws passed, the nation's first copyright law, known as the Statute of Anne, was created, which rewarded authors and purchasers of books with copyrights.<sup>83</sup>

Named in honour of the ruling English queen, Anne, the Statute of Anne was in place. Authors' contributions to their country's literary heritage were recognised by their country's Parliament by awarding them exclusive rights to reproduce their works for a limited period of time. Copyright protection for printed works was granted for a period of 14 years first from enactment of the legislation.

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<sup>80</sup> English equivalent of the Latin maxim 'forever'.

<sup>81</sup> Rosemary J. Coombe, *Challenging Paternity: Histories of Copyright*, 6Yale J L & Human 397 (402).

<sup>82</sup> L. Patterson, *Copyright in Historical Perspective* 27 (1968) at 141-42; 14 HC JOUR 306.

<sup>83</sup> Paul Goldstein, *International Copyright Principles, Law and Practice*, p.5, section 1.1, Oxford University Press, 2001.

This was created when the Stationer's Guild failed to restore their deal with the government, and sanity triumphed in the government, which had refused to move from its position. Rather of renewing licences, the book trade switched to insisting on legislation to safeguard what they referred to as "literary property" against both English and international pirates.<sup>84</sup>

Copyright law, thus, was based on the economic analysis of publication instead of authorship, and it is clear that the idea of a copyright law originating prior to the Statute of Anne existed not to encourage learning, but to suppress the dissemination of learning that was contrary to the church or government by controlling the print and enforcing censorship rules.

An important turning milestone in the evolution of copyright protection took place when the Stationers' Guild oversaw a paradigm change in granting long-overdue rights to writers of scholarly papers. To paraphrase, it was only Anne's statute by which the changes were made. They also delivered the promise of legislative security while serving a larger goal of humanity and appreciating the creator under the framework of legal framework.

It was only while the English Parliament passed the Queen Anne's Statute in 1709, in response to the first known copyright infringement case, that the concept of the "public domain" was first formally codified.

In addition, the Stationers were granted this unique privilege of works from the years before 1710, of which many had previously been managed to sell to them. It has been said that the Stationers pushed the draught to assume legal enforceability for the saying "a bird in hand is better than two in the bush" which allows them to control works that they sold prior to the Act's enactment for twenty years after which they gain common perpetual rights to works published after the Act.

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<sup>84</sup> See John Feather, *Authors, Publishers and Politicians: The History of Copyright and the Book Trade EIPR 1988*, 10 (12) 377 (378).



An author could keep their copyrights for unreleased creations indefinitely until the Statute of Anne was passed. Despite the fact that copyright legislation was originally intended to compensate authors for a limited amount of time before allowing their works to become publicly owned, as soon as copyright legislation was implemented as a legal title, this right lapsed with publication.

While attempting to discover the answer to this question of the statute, which had its origins in the rule of perpetuity, it is found that this query was not answered in the statute itself and while trying to trace the history of this legislated copyright, which followed this grant, the Common law system had a difficult time dealing with this issue, and it was finally resolved by a judicial decision in *Donaldson vs. Beckettin* in 1774.<sup>85</sup>

#### **2.2.6. CONSTITUTION OF ANNE: A BREAKTHROUGH OCCURRED**

Anne's statute, which went into effect on April 10, 1710, is often regarded as the first codified law. For the first time in history, the concept of copyright was formally defined. An author was granted their first formal right to profit from their creative creations under Queen Anne's Statute, which guaranteed authors exclusive printing rights to their works for a limited time of twenty-one years beginning on April 10, 1710.

The books produced after the Anne Act received a fourteen-year copyright. Under the common law of England, the author of a manuscript had a permanent right of property in his "copy" before the Statute of Anne.

By abolishing bookshop exclusivity, the Law of Anne intended to ensure that the interests of authors and readers were balanced by making it impossible for bookshops to return. It was assumed that printouts and publications would continue indefinitely under common law before the passage of the statute.

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<sup>85</sup> 2 Brown's Parl Cases 129: 1 Eng Rep 837: 4 Burr 2408: 98 Eng Rep 257 (1774): 17 Cobbett's Parl Hist 953 (1813).

The Statute of Anne, a limited code consisting of only two sections, remained in force for over one hundred years. To foster learning and to prohibit others from printing or reprinting the book for 21 years.

The Act gave writers a temporary break in order to improve their situation by ensuring that they were paid what they were owed. The Book was subject to strict registration, which was overseen by the Stationer's register, and nine copies were to be placed in archives of the specified universities, with an express provision that those institutions would not be allowed to print such books. In addition to giving citizens a way to resolve disputes, the law was good for business, since it benefited the bookseller and printer by encouraging citizens to submit complaints if they believed the prices were unfair. In order to ensure such a complaint could be dealt with and redressed, certain members of the nobles, this authority and power was given to clergy, Vice-Chancellors of Higher education institution, and Judicial system so that they may supervise or govern the cost of all printed books within their jurisdiction. In addition, such a defaulting party was required to advertise the agreed-upon price in the Gazette, and the specified punishment for repeating the offence once the price was resolved was more severe. This Act did not provide the writers monopoly status, but merely ensured they received their rightful compensation. But the expansion of the author's copyright term was still necessary, and it was therefore extended after that. Previously, copyright protection was only fourteen years long, but the Copyright Acts of 1814 and 1842 extended it to twenty-eight and forty-two years, respectively. Because of this, there was the conflict in the laws of common copyright and statutory copyright, and it all began to come to a head in the second half of the 1700s. The booksellers made their best effort to claim their copyright in the pre-1710 works following the end of a 21-year term. For almost half a century, the lower courts supported them in this position, which came to be known as the "Battle of the Booksellers," by issuing injunctions after the statutory period had ended.<sup>86</sup> Locke's idea that 'everyone has an inherent right to property in the results of their

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<sup>86</sup> William F. Patry, *Copyright Law and Practice*, (Aug. 25, 2018, 10:55 PM), <http://digital-lawonline.info/patry/patry2.html>. A similar situation was faced by France when it came to the renewal of a privilege of a Parisian publisher at the beginning of the eighteenth century. For more see Stephen M. Stewart, *International Copyright & Neighboring Rights*, 1983, at 13.

labour' is the basis of,<sup>87</sup> even though the Stationers claimed they had the right to print and sell whatever copies they obtained, they could only do so if the author had given up their permanent rights to sell their works.<sup>88</sup>

This victory in the *Millar vs. Taylor* case was the Stationer's everlasting defence of common rights. This ruling, however, proved not to be timeless and was overturned five years later by the House of Lords. This idea that the author or publisher holds exclusive rights to the work emerged with the ruling of the House of Lords in the *Donaldson vs. Beckett* case.<sup>89</sup> Queen Anne's Statute was the earliest law of copyright, which prioritised the rights of writers over the commercial interests of publishers. The law in question was a significant milestone in the evolution of copyright legislation.<sup>90</sup>

### **2.3. HISTORICAL EVOLUTION OF COPYRIGHT LAW IN INDIA**

Indian copyright law was inspired by English copyright law; the first Indian Copyright Act, which was passed in 1847, was simply a reinterpretation of the English Copyright Act of 1842. Queen Anne's Act was established in the UK in 1709.<sup>91</sup> This was the initial copyright legislation to establish guidelines. The English common law that was established under this legislation created the Indian Copyright Act of 1847. The Indian government's first copyright law was passed under the British East India Company's reign. The Indian Copyright Act 1847 was initiated between 1847 and 1911. The UK Copyright Act of 1911 was approved and was subsequently extended throughout the various British colonies, going into effect on October 31, 1912. Under the UK Copyright Act, Indian Copyright Act 1914 was implemented until 1957.

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<sup>87</sup> Locke, *Second Treatise*, Chapter V, section 27.

<sup>88</sup> Jacqueline M.B. Seibnette, *Challenges to the Creator Doctrine – Authorship, Copyright Ownership and the Exploitation of Creative Works in the Netherlands, Germany and the United States*, at 15, 1994.

<sup>89</sup> 4 Burr (4th edn.) 2303, 98 Eng Rep 201 (KB 1769).

<sup>90</sup> Akhil Prasad and Aditi Aggarwala, *Copyright Law Desk Book*, 2009 at 132-133.

<sup>91</sup> Although the clear enactment of a statute cannot be controlled by the preamble, the preamble can be usefully referred to for the purposes of ascertaining the class of works it was intended to protect. See *Hollinrake v. Truswell* (1894) 3 CHD 420 (DAVEY, LJ) referring to the UK 1842 Act where the preamble referred to "affording encouragement to the production of literary works of lasting benefits to the world."

### **2.3.1. THE GOALS AND MOTIVATIONS BEHIND THE 1957 COPYRIGHT ACT**

The following was announced in Parliament on the passage of the Copyright Act of 1957:

“A separate copyright law should be written to help align UK laws with the recent changes in India’s constitution, as well as to ensure the needs of the public and authors are met, in light of the 50 years of experience the current copyright law has already had. The use of newer and more complex forms of communication like radio, lithography, etc., necessitates changes to the present legal framework. India also has to make sure that it can meet international copyright responsibilities, which may include signing on to certain treaties. It looks like a full rewrite of the Law of Copyright is inevitable.

The legislative goal in passing the copyright law was to control the commercial and competitive interests of the individual involved. Regardless, our autonomous Copyright Statute is based on the ideas of the UK’s 1956 Copyright Act. Justice Deshmukh, of the Bombay High Court, expressed the following opinion, “We also respectfully defer to the opinions of British legal scholars, like Ian Duncan, who assert that an appropriate interpretation of Indian copyright law should be based on Indian law and should be used to guide English statutes, with the caveat that the Indian judiciary must always make a point of citing relevant English cases when adjudicating copyright cases.”<sup>92</sup>

When drafting the Indian Constitution, both the legislature and the judiciary drew largely on international treaties and other countries’ constitutions for guidance. It might be a good idea to quote Ambedkar, who was the chair of the Constituent Assembly and called the Draft Constitution “lacking in originality” as well as a copy of said Government of India Law 1935 and analogous Constitutions. He defended the Draft Constitution by saying, “I make no apologies for including a substantial section of the Government of India Act, 1935.” Borrowing is not anything to feel embarrassed about. This process is 100% plagiarism-free. Fundamental concepts in a constitution do not belong to anybody.”<sup>93</sup>

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<sup>92</sup> J.N. Bagga vs. All India Reporter Limited, AIR Born. 302(308).

<sup>93</sup> CAD Volume IV, (Aug. 28, 2018, 90:45 PM), [www.parliamentofindia.nic.in/ls/debates](http://www.parliamentofindia.nic.in/ls/debates).

And in the absence of any international precedent, it was deemed sensible to defer to the opinion of a foreign country's court. This was a copyright issue involving case law reporting that concerned whether case law was covered by copyright law as a whole or if only parts of it, such as headnotes and marginal notes, were under copyright protection.<sup>94</sup> Due to the fact that court decisions are available to the public,<sup>95</sup> in accordance with Sections 17 and 52 of the Indian Copyright Act, 1957. *Sweet vs. Benning*, an English case, had been cited by the Court<sup>96</sup> the identical facts and circumstances were determined by the same court on the same English land, and the dicta of that judgement was read in this issue before it. In addition, a number of additional clauses have been incorporated into the 1957 Act.

The Copyright Act of 1957, in the true meaning of the term, was India's first "independent" statute. It was this act that marked the beginning of modern copyright law in India, which was in accordance with the Berne and the Universal Copyright Conventions. The Act is both substantive and procedural in character, and it provides for legal solutions to be used to enforce the rights granted under it. As a result, it may be concluded that any country seeking to excite or motivate its own authors, composers, or artists, and therefore contribute to the enrichment of its cultural legacy, must ensure that their work is adequately protected.<sup>97</sup>

To begin, it provides definitions of terms that should be recognized in copyright jargon, such as 'author', which does not refer to a person who is just the creator of a literary work for copyright reasons, but rather to a person who is the originator of the work as defined in copyright jargon. A clear meaning and scope have been established for terms such as 'reproduction', "artistic work," "work," and 'reprography', amongst others, which must be understood within the boundaries of copyright coinage. This also

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<sup>94</sup> N.T. Raghunathan vs All India Reported Limited, AIR 1971, Born. 48(51).

<sup>95</sup> *Eastern Book Company Navin J. Desai*, AIR 2001 DEL 185; Anu Tiwary & Shruti S. Rajan, Proprietary Rights or Common Property? - The Dilemmas of Copyright Protection if Case Law Reporters, Vol. II, JIPR 33 (39) January, 2006.

<sup>96</sup> (1855) 139 ALLER 838.

<sup>97</sup> S. Ali khan, *The Role of the Berne Convention in the Promotion of Cultural Creativity and Development: Recent Copyright Legislation in Developing Countries*, Journal of the Indian Law Institute, Vol. 28, 1986, p.423(429-430).

clarifies the different types of copyrighted materials<sup>98</sup> and it specifies the exclusive rights that define copyright in the various kinds of copyrighted works, as well as the limitations on those rights,<sup>99</sup> includes the phrase ‘copyright’ which can refer to literary, theatrical, artistic, and sound recording works, among other things.

### **2.3.2. THE COPYRIGHT ACT, 1914**

The Copyright Act of 1914, which contains 15 parts, was established. Only original work created by its author was protected under copyright law. As the work was made, the author right came into being. A creator work registration was not needed. The law protects the expression, not the ideas. After the author’s death, the copyright lasts only for a quarter-century. Owners of copyrights can use criminal penalties to delete infringing copies, although copyright infringement is not a criminal offence.<sup>100</sup>

### **2.3.3. THE OBJECTS AND REASONS FOR THE NEW ACT WERE STATED IN PARLIAMENT AS FOLLOWS:**

Copyright law, as it relates to the United Kingdom, is based on the Copyright Act of 1911, with the Copyright Act of 1914 acting as an amendment. It is crucial to draught a brand-new legislation that is independent of and self-contained with regard to copyright notwithstanding the truth that the United Kingdom Act does not match with the recently changed constitutional position of India. The introduction of new and sophisticated forms of communication like radio and lithography necessitates some changes to the current legislation. India also has to meet international copyright responsibilities, and adequate provisions must be established for fulfilling such commitments. So, a total rewrite of copyright law is inevitable.

The necessity for a new Indian statute came about because of the spread of technology and innovation after India gained independence in 1947. The legislation came into being in 1957. The view of the Indian Performing Rights Society Limited was

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<sup>98</sup> Section 2 of Indian Copyright Act, 1957.

<sup>99</sup> Section 14 of Indian Copyright Act, 1957.

<sup>100</sup> P. Narayanan, *The law of copyright and Designs*, 3rd edition 2002 pg.14.

represented by J. Krishan Iyer, who held that in *Indian Performing Rights Society Limited vs. East Indian Motion Picture Associations*:<sup>101</sup>

Because of the inequitable nature of the economy, many artists who are valued are forced to labour for pitiful sums, and their work is exploited by the economy. International legislation, which was created to safeguard art and artistic creation, was strongly supported by the whole community in defence of human rights. To address this global issue, India passed the Copyright Act of 1957.

#### **2.3.4. THE COPYRIGHT ACT, 1957**

To further equip the copyright enforcement apparatus, our legislation has established a copyright office within the Registrar of Copyrights. Its goal was to catalogue books of art and other items. This legislation will allow the creation of a copyright board. As per the notice from the copyright board's registrar, the copyright board's decision can be appealed.

There are several important aspects of the Act of 1957 that should be noted:

- i. As a result of addressing specific copyright conflicts that arise under Copyright Act laws, Congress established copyright offices and copyright boards as statutory entities. Licensing requirements are also required.
- ii. Various types of copyrighted works have distinct copyright terms.
- iii. The breadth of rights available depends on the copyright and the scope of definitions used to different kinds of works where copyright is valid. Some measures for establishing first copyright ownership in various types of works.
- iv. Laws regarding copyright licencing and copyright ownership transfer.
- v. The broadcasting rights section is provided.
- vi. Statutory definitions cover copyright infringement.
- vii. You will discover how to recognise whether an exclusive right and its exception are not infringing.
- viii. The writers have been granted special permissions.

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<sup>101</sup> AIR 1977 SC 1433.

- ix. Criminal and civil punishments to fight infringement have both been introduced.
- x. Provisions for restitution in the event of a judicial case being threatened.

Many of the terms employed in the Copyright Act have been given a meaning that differs from that which would be given to them by the majority of people. For example, words such as “reproduction”, “adaptation”, “artistic work”, “literary work”, “publication”, and “adaptation” have been given meanings that are not entirely consistent with the meanings given to them by the majority of people. As a result, it is necessary to determine the interpretation of these words in the framework of Copyright Law. In the case of a term that is susceptible of having various meanings or nuances of meaning, it has been noticed that it is seldom beneficial to examine the meaning that has been assigned to it in a separate chapter of the law.”<sup>102</sup>

### **2.3.5. THE COPYRIGHT AMENDMENTS ACT, 1983**

India’s legislature amended the Copyright Act of 1957 to reflect the country’s accession to the Berne Agreement as well as the Universal Copyright Convention. Moreover, both of these Conventions were updated in Paris in 1971 and, as a result, modified in 1983, and both contained enabling clauses.

The Copyright Act has been amended, and the issuance of forced licences is now permitted under Section 32A<sup>103</sup> of the Act. The translation and reproduction of overseas creations is required for study, teaching, and research, as well as for systematic educational activities.

There was a new section 31A introduced, which stated that provisions are set up for the publication of an unpublished work in circumstances where the author is probably died or unidentified, or in cases where the genuine proprietor of the work can be determined. The Copyright Board can provide permission to anyone who wants to release material or a transcription of that content and determine a suitable royalty fee for doing so. For

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<sup>102</sup> Lord Reid in *Race Relation Board v. Charter* (1975) RPC 626.

<sup>103</sup> Copyright Act 1957, section 32A. The period prescribed are a) 7 years for works relating to poetry, fiction, drama, music or art. b) 3 years for works relating to natural science, physical science, mathematics or technology. C) 5 years for any other works. The authority for granting the license is the copyright board.



the benefit of the copyright holder, his heirs, executors, or legal representatives, the royalties might be placed in a public account for a specific period of time.<sup>104</sup>

### 2.3.6. THE AMENDMENTS OF 1984

Certain significant amendments have been made to this legislation in order to combat rampant piracy and intellectual property infringement. The foregoing are the major provisions of the legislation.

(i) Infringement of intellectual property rights has been elevated to the level of a criminal offence.

(ii) The punishment for owning or fabricating an equipment for the intention of infringing on a copyright is increased as per Section 65<sup>105</sup> of this Act, among other things.

(iii) According to Section 64<sup>106</sup> of the Act, police officers have the authority to confiscate without a warrant copy of a work as well as tools used for the intention of creating infringing versions of the work if they are discovered.

(iv) According to Section 63 of the Act, imprisonment for 3 years and a penalty of fifty thousand rupees to two lakh rupees have been increased (from fifty thousand to two lakh rupees). Those who commit crimes on a regular basis are susceptible to punishment for each subsequent offence.<sup>107</sup>

(v) Among the things covered by this statute were definitions for the following:

1. According to Section 2(f),<sup>108</sup> video films are defined as works created via a method comparable to cinematography.

2. The concept of replicating equipment in Section 2 (hh) was first introduced.<sup>109</sup>

3. Section 2(o) defines a computer programme as a literary work that can be treated as such.<sup>110</sup>

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<sup>104</sup> The Copyright Act, 1957.

<sup>105</sup> The Copyright Act, 1957.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Mannubhandari v. Kalavikas Pictures*, AIR 1987 Del 13 at p.16.

<sup>108</sup> The Copyright Act, 1957.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Garapati Prasad Rao v. Parmati Saroja*, AIR 1992 AP 230 at p.233.

4. Section 2(t) duplicating equipment is deemed to be included in the word plate under this section.<sup>111</sup>

**2.3.7. THE COPYRIGHT CESS BILL 1992**, which was not enacted by the parliament and so expired, allowed for the imposition and collection of a cess on copying equipment, but was never implemented.

**The Copyright (Amendment) Act 1992** amended the Copyright (Amendment) Act 1992 to prolong the duration of the copyright by an additional ten years.

### **2.3.8. THE AMENDMENTS OF 1994**

The following are the modifications to the statute:

- I. Incorporation and authority of the Copyright Board.
- II. The proprietor of the copyright was granted privileges under the amendment.
- III. The copyright societies are governed by a constitution.
- IV. The concept of performers' rights was introduced.
- V. Acts that did not fit within the definition of infringement were given.
- VI. Special permissions were granted to the authors.
- VII. The federal government has the authority to make laws.

### **2.3.9. THE AMENDMENTS OF 1999**

- I. This modification raised the protection of the performer's interest from 25 to 50 years in order to better safeguard the performer's interest and to be in compliance with the TRIPs agreement.
- II. The idea of rental rights was developed in line with the World Computer Congress (WCT) in 1996 in order to enhance the interests of reproduction of the creator of a computer programme.
- III. The central government is given authority to deal with the rights of broadcasting organisations under Chapter VI.<sup>112</sup>

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<sup>111</sup> *Supra* note 108.

<sup>112</sup> The Copyright Act, 1957.

IV. Under Article 42A of the Indian Constitution, the central government is empowered to impose restrictions on the activities of foreign broadcasting organisations and artists on Indian soil.

### **2.3.10. THE AMENDMENTS OF 2012**

Among other things, the Copyright (Amendment) Act 2012, which went into effect on 21.6.2012, brought about modifications to the following areas of law:<sup>113</sup>

#### **2.3.10.1. AMENDMENTS PERTAINING TO ENTERTAINMENT INDUSTRY: POST DEVELOPMENTAL EFFECT AFTER THE COPYRIGHT (AMENDMENT) ACT, 2012.**

However, the primary point of the 2012 revisions to the legislation was to remove uneven treatment in Indian movies related to copyright protections due to unfair contracts. One-time lump-sum payments were historically given to film producers in exchange for ownership of all rights to songs and music used in films. Musicians and lyricists were left with no future royalties if their work was used in media other than movie theatres. The copyright belongs to the producer, according to the Supreme Court, as outlined in *Indian Performing Rights Society vs. Eastern India Motion Picture Association*.<sup>114</sup> The group's decision in 1977 is a significant issue in the business that is commonly used to fight against composers and lyricists, and it keeps their income from commercialising their works from rising because of new technology. As a result of signing contracts that gave producers complete interests in the creations, notably commercialization privileges, musicians and composers had no share in the huge earnings created by the original efforts.

Section 17 of the Act was amended to make it clear that subsections (b) and (c) of that section would have had no impact on the writer's right to the cinematograph film, thus overriding a prior Supreme Court decision and resolving this obvious inconsistency. According to the Amendment Act, there is a clear distinction amongst the application

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<sup>113</sup> Copyright Amendment Bill 2012 receives Indian Parliament's assent, The Genie's Lamp or the Pandora's Box The debate has just begun!, (Aug. 28, 2018, 10:45 PM), [https://www.nishithdesai.com/fileadmin/user\\_upload/Html/IP/Copyright%20Amendment%20Bill%2012.pdf](https://www.nishithdesai.com/fileadmin/user_upload/Html/IP/Copyright%20Amendment%20Bill%2012.pdf)

<sup>114</sup> (AIR1977 SC 1443).

of poetic or musical work in films and other independent applications of these kind of work in other media or genres. They also demanded that the writer's entitlement to earn revenues for the usage of his or her creative or instrumental work in the film be annulled unless the writer's legitimate successors or the copyright organisation for compilation and disbursement of royalties were named in the assignment contracts. Copyright assignments in compositions do not apply to future media or exploitation methods that do not appear at the moment of the assignment, for this reason as well. The Amendment Act stipulated that all licencing and permissions be handled by a registered copyright institution underneath the Copyright Act in order to ensure proper implementation of these restrictions. Copyright assignments in compositions do not apply to future media or exploitation methods that do not arise at the moment of the assignment, for this reason as well. The Amendment Act stipulated that all licencing and permissions be handled by a recognized copyright entity under the Copyright Act in order to ensure proper implementation of these restrictions.<sup>115</sup>

### **2.3.10.2. CINEMATOGRAPH FILMS**

The cinematographic film has been simplified, and a new concept of visual has been established in relation to it.<sup>116</sup> Visual recording refers to the act of recording something on any material using any manner, as well as the act of storing it using any technological means. Specifically, the term "hire" has been substituted by the term "commercial rental," and some activities, such as the rental, leasing, or lending of a legally obtained copy of a motion picture not deemed infringement if used by a non-profit organisation or educational institution for non-profit purposes.<sup>117</sup>

It was decided to expand the producer's rights by granting them the right to retain the film on any medium, whether electronic or otherwise. Previously, this privilege belonged solely to the person who owned the copyright.

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<sup>115</sup> Abhai Pandey, *Inside Views: The Indian Copyright (Amendment) Act, 2012 And It's Functioning So Far*, (Sept. 08, 2018, 08:25 PM), <https://www.ip-watch.org/2014/10/23/the-indian-copyright-amendment-act-2012-and-its-functioning-so-far/>.

<sup>116</sup> Australian Performing Right Association v. Telstro Corporation Ltd. [1994] RPC 299.

<sup>117</sup> *Supra* note 108.

### **2.3.10.3. DIGITAL ADVANCEMENTS HAVE NECESSITATED CHANGES TO THE COPYRIGHT ACT**

A major goal of the Amendment Act was to bring the Indian Copyright regime in line with the latest technological improvements and international trends. As a result, the scope of the reproducing right has been expanded to encompass the archiving of the work on any medium, including electronic media. Sections 65A and 65B have been included in order to encourage the use of digital rights management. There have been worries that these clauses may impede on the fair use rights of copyright users in the digital domain, as demonstrated by the United States Digital Millennium Copyright Act, which protects the rights of copyright owners and copyright users in the digital domain (DMCA). According to the Amendment Act, the objective of bypassing is specifically defined as “a purpose not expressly forbidden by this Act” will be permitted under certain conditions. Despite this, there are significant uncertainties in the language of this clause. For example, while the clause forbids circumvention of an efficient TPM, it does not specify what comprises an effective TPM in this context. While effective TPM in the United States refers to a TPM that is effective in controlling access to copyrighted digital content, the meaning of the term in the Indian context is not apparent at this time.

Section 52(b) and 52(c) of the Amendment Act contain safe harbour provisions designed specifically for internet service providers (ISPs) in order to guarantee that digital advancements are beneficial to consumers as well as not unnecessarily restrict their access to information and services. Both of these provisions shield Internet service providers (ISPs) from liability for copyright infringement in the case of transitory or incidental storage of a work for the reason of providing access, provided that such entrance is not explicitly outlawed by the copyright owner and there is no sensible basis to believe that the work in question is an infringing copy of the work. ISPs are only obligated to remove content or limit access in the event of a formal written complaint from a copyright owner against the content. Both of these rules do not appear to impose any affirmative responsibility on ISPs to prevent infringement, and they are only required to take action if they are made aware of a complaint of infringement. However,

in a recent decision in *Star India Pvt. Ltd vs. Haneeth Ujwal*,<sup>118</sup> the Delhi High Court found that Internet service providers (ISPs) have a responsibility to guarantee that no infringement of third-party intellectual property rights occurs over their networks. The ISPs are also required to guarantee that content that violates intellectual property rights is not transmitted across their networks by virtue of the responsibilities that have been imposed on them under their licensing arrangement with the Department of Telecommunications. With this ruling, the ISPs have been ordered to regulate the content that they give access to, and they have also been deemed liable for curtailing infringement, limiting the extent of the safe harbour clause included in the Amendment Act.<sup>119</sup>

#### **2.3.10.4. COMPULSORY AND STATUTORY LICENSES**

Complimentary licencing (CL) has undergone several revisions, and significant provisions have been introduced to the statute that governs statutory licencing, all of which are detailed here.

Section 31B has been amended to include a new provision that allows for a mandatory licence in the interest of people with disabilities. Any individual or organisation who works for the welfare and interest of people with disabilities may submit an application to the copyright board for a mandatory licence to disseminate any composition in which copyright exists for the advantage of such individuals.

#### **A. CL TO APPLY TO FOREIGN WORKS AS WELL**

The CL provisions of Sections 31 (with respect to publicized work) and 31A (in regard to unreleased or anonymous work) of the Act were formerly confined to Indian works only. The Amendment attempts to do away with this restriction. The requirements are now applicable to any and all construction projects. However, it is not apparent if the purpose is to extend the CL restrictions to any “foreign work” or to confine them to works that have been published in India under the terms of the CL.<sup>120</sup>

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<sup>118</sup> CS(OS) No.2243 of 2014

<sup>119</sup> *Ibid.*

<sup>120</sup> A compulsory license is a license issued for a copyrighted piece of work that the copyright owner has to grant for the use of their rights in the work against payment as established under law.

## **B. CL FOR BENEFIT OF DISABLED**

This CL service will help those with impairments by making the employment available to them. Organizations that are eligible may apply to the Copyright Board to assist the disabled. This kind of application must be discarded immediately, and you should make every effort to do it within two months. If the Copyright Board is convinced that a CL has to be given to make the work accessible to the individuals suffering from impairments, it may pass an order granting a CL. When the CL is issued, it should include information on the publication, how long it may be used, and the quantity of versions that may be obtained. The Copyright Board may limit the number of free copies allowed and set the royalty rate for additional copies. Additional orders may be issued to prolong the term of the CL and issue additional copies.

## **C. STATUTORY LICENSE FOR COVER VERSIONS**

- A specific exemption was written into the Act to provide for the possibility of cover versions when Section 52 (1) (j) was created. The Amendment strikes Section 31 and adds a new Section 31C, which would effectively allow cover songs to be made. The following is a summary of the relevant provisions of Section 31C:
- You can make a cover version of just those literary, theatrical, or musical works whose sound recordings were already created with permission or licence of the proper owner.
- If the original was recorded in a media that is not in current commercial usage, a cover version can be created in the same medium.
- After the five-year countdown from the date in which the original song was released, a cover version is permitted. Two years after the last year in which the initial records of the work were produced, cover versions may be created under the old Section.
- You must not change the literary, theatrical, or musical work in any way without the owner's permission, and doing so is unnecessary for the objective of creating sound recordings;

- Anyone who sells or distributes a cover version is not allowed to package it in any way that would confuse the public about the source of the cover version, nor may they include the original sound recording's performer's names or images on their packaging;
- A Section 31C cover version should clearly declare that it is a wrap version on the cover;
- Every person who intends to produce a cover recording is expected to provide the owner of the copyright in the audio recordings in advance notice of their intention and to provide a pre-payment of royalties to the owner in relation of all versions to be produced by them;
- For each annual year in which duplicates of it are created, a least of fifty thousand copies, a royalty of one-tenth of a cent per copy will be paid. The Copyright Board may, however, by general order, decrease the minimum rate in cases where it is considered applicable to works in a specific language or dialect, depending on their probable distribution;
- Recording owners must be given complete access to any books and information on the number of copies sold, costs, and other important details;
- Owners of copyrights who have not been compensated in full for cover versions created in compliance with this provision may submit a complaint with the Copyright Board. If the Copyright Board finds that the complaint is credible, it may immediately issue an ex parte order for the individual creating the cover version to stop copying the song and make any subsequent orders, including one to pay royalties, after conducting an inquiry.<sup>121</sup>

#### **D. STATUTORY LICENSE FOR BROADCASTING**

Statutory permission came into play because of the Amendment, which involves published works. Any broadcaster that intends to broadcast an existing work (radio, TV, or theatre) or perform any published musical/lyrical work and audio recording must notify the rights holders before doing so. A previous notification must include the

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<sup>121</sup> Ankit Relan, *Mashups, Cover Versions and all that Jazz under the Indian Copyright Law*, (Sept. 12, 2018, 05:35 PM), <https://iprmentlaw.com/2018/04/14/guest-post-ankit-relan-mashups-cover-versions-and-all-that-jazz-under-the-indian-copyright-law/>.



duration and the broadcast territory, as well as specify the fee for each piece of work as established by the Copyright Board. In order to establish a distinction between the rates charged for radio and television transmission, the former must be established at a different level than the latter. The Copyright Board may force a broadcasting organisation to pay advance payments to the owners of rights in order to correct the method and the rate of royalties. The only permissible changes to any written or musical work, other than shortening it for the sake of broadcasting, are those that are absolutely essential for the transmission of the work. To announce the identities of the author and lead actor, the broadcast will have to take place (unless communicated by way of the performance itself). Because the authors of the rights have a right to a record of all transactions and books of accounts, reports will have to be supplied to them by the broadcasting entities. The owners also get to audit the broadcasters.<sup>122</sup>

#### **2.3.10.5. COMPLIANCE WITH WCT AND WPPT**

A new term for “right management information” is included, and a new clause for “commercial rental” is established. WPPT compliance introduces new exclusive rights for performers.<sup>123</sup>

#### **2.3.10.6. MORAL RIGHT OF AUTHORS AND PERFORMERS**

Even after the period of copyright has passed, rights to paternity and to integrity have been given. Moral rights of performers were formally recognised under Section 38B.<sup>124</sup>

#### **2.3.10.7. CHANGES IN ADMINISTRATIVE MACHINERY**

##### ***Copyright Societies & Constitution of Societies***

The Copyright Act calls for the formation of a ‘work’s owner’s’ copyright society. The bill also allows for authors to join the copyright societies.

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<sup>122</sup> Pratistha Sinha, *All About Section 31 D of Copyright Act, 1957*, (Sept. 12, 2018, 07:35 PM), <https://www.khuranaandkhurana.com/2018/10/09/all-about-section-31-d-of-copyright-act-1957/>.

<sup>123</sup> Hiral Chheda, *India Accedes to the WIPO Copyright Treaty and WIPO Performers and Phonograms Treaty*, (Sept. 12, 2018, 08:35 PM), <https://iprmentlaw.com/update/india-accedes-to-the-wipo-copyright-treaty-and-wipo-performers-and-phonograms-treaty/>.

<sup>124</sup> Sana Singh, *Moral Rights under Copyright Law*, (Sept. 12, 2018, 11:05 PM), <https://singhania.in/blog/moral-rights-under-copyright-law>.

- A Copyright Society registration will be awarded for a five-year period, which will be updated every five years.
- One year after the Copyright (Amendment) Act 2012 went into effect, the Copyright Societies would need to re-register.
- To manage the societies, the number of writers and holders of work must be equal in the governing bodies. Everyone in the Copyright Society will have equal membership privileges, and writers and owners will be treated equally in terms of remuneration.<sup>125</sup>

#### ***Societies of performers and broadcasters***

Additionally, the Amendment gives the performing artists and broadcasters their own group to handle their rights. The tariffs and regulations mentioned below apply to authors' associations.

#### **2.3.10.8. TERM OF COPYRIGHT FOR PHOTOGRAPHS**

The duration of the term is defined as starting sixty years after the author's death, rather than from the day of publication.

#### **2.3.10.9. TARIFF SCHEME BY COPYRIGHT SOCIETIES**

Section 33A, as proposed by the Amendment, contains the following:<sup>126</sup>

- Each copyright society is obligated to make its Tariff Scheme publicly available in a stipulated way.
- People who believe that the tariff system is unfair may apply to the Copyright Board, and the Board may, if they find an irrational element, anomaly, or inconsistency in the tariff scheme, issue any orders that may be required to eliminate it.
- However, the party that feels wronged must pay any charge that is due to the copyright society before appealing to the Copyright Board, and they must continue to pay that cost until the appeal is resolved. The Board has no power to impose a temporary injunction, which would halt the collection of the charge, until the appeal is resolved;
- After the parties have given their arguments, the Copyright Board may put an interim tariff in place and require the parties to pay up while the appeals process takes place.

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<sup>125</sup> *Copyright Societies*, (Sept. 12, 2018, 11:55 PM), <https://copyright.gov.in/documents/copyright%20societies.pdf>.

<sup>126</sup> The Copyright Act 1957.

#### **2.3.10.10. DISPUTES WITH RESPECT TO ASSIGNMENT OF COPYRIGHT**

Section 19A of the Copyright Act is changed by the Copyright Amendment Act 2012, and the amendment has a new proviso for disputes. The proviso states that Copyright Board complaints will be resolved within six months of receipt. The Board may provide temporary instructions about the assignment's terms and circumstances, including compensation for using the rights.<sup>127</sup>

#### **2.3.10.11. RELINQUISHMENT OF COPYRIGHT**

In 2012, Section 21 of the Copyright Act was changed, and it is now possible to renounce copyright by publishing a public notice rather than by just notifying the Registrar of Copyright.

#### **2.3.10.12. EXTENSION OF FAIR DEALING TO ALL WORKS**

The provisions of section 52 (1) (a) of the Copyright Act 1957 are modified and the boundaries of fair use are expanded. The previous legislation covered “literary, dramatic, musical, or artistic works” with respect to their rights to get fair trade in the decaling industry. Audio record and cinematographs films are included, and also includes all other tasks (excluding computer programmers). People will be able to create copies of their favourite music and movies for their own use, as well as use film snippets in the classroom.<sup>128</sup>

### **2.5. INTERNATIONAL PERSPECTIVE OF COPYRIGHT DEVELOPMENT**

The most significant basis of international law is international treaties. Because nations have discovered in this source a purposeful way to construct binding international law,

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<sup>127</sup> The CCH Canadian Ltd. v. The Law Society of Upper Canada [2000] AIPC 152 (Canadian case).

<sup>128</sup> Dr. Prashant Kumar, *Understanding Copyright and the Principle of Fair Use*, (Sept. 13, 2018, 01:25 AM), [https://www.iostjournals.org/iosr-jhss/papers/Vol.%2022%20Issue6/Version-6/N220606104106.pdf](https://www.iostjournals.org/iosr-jhss/papers/Vol.%202022%20Issue6/Version-6/N220606104106.pdf).

the latter rationale.<sup>129</sup> Statute Article 38<sup>130</sup> states signatory to the treaty agree to enforce the norms explicitly laid out by the convention as the fundamental authority on international law. Either the number of parties involved in a convention is restricted because of the narrow scope of its subject matter, or it's not since it's meant to be comprehensive. It is worth noting that the Vienna Convention on the Law of Treaties was signed on March 21, 1986.

Article 1 of this Convention stipulates that this Convention shall apply to the principles following:

- Treaties among one or more nations and one or even more international bodies
- Treaties between various international bodies.

The *Pacta Sunt Servanda* concept is reiterated in Article 26 of the Vienna Convention of 1969. It states that each treaty in effect is binding and must be carried out in good faith by the parties to it.

Internationally, there has been a constant increase in the development of international standard regulations to protect the rights of intellectual property owners, particularly copyright. In the constant pursuit of improved methods for the use of copyrighted material and the growth of cultural contacts between nations it was important not only nationwide but also globally to preserve copyright. The very first multinational International Convention for the Preservation of Industrial Property was therefore enacted in 1883, usually referred to as the “Paris Convention.” However, the Convention was not copyright-related.

### **2.5.1. BERNE CONVENTION**

The first International Convention on the Protection of Literary and Artistic Works was the Bern Convention. The objective of this Convention is to safeguard the rights of copyright owners in an effective and standard way. For example, in Berlin in 1908, in Rome in 1928, then in Brussels in 1948, then in Stockholm in 1967 and finally in Paris

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<sup>129</sup> IFPI (International Federation of the Phonographic industry) The Recording Industry Commercial Piracy Report 2013 London; p 4-7, 2013.

<sup>130</sup> International Court of Justice, Statue is annexed to the charter of the United Nations of which it forms an integral part.

in 1975 to address the difficulties following technological advancement. The Director General of the World Intellectual Property Organization will be shown the instruments of ratification and accession after revisions have been made.<sup>131</sup> The Convention is founded on three fundamental principles:

- (a) Independence of protection
- (b) Automatic protective measures
- (c) National therapy

### ***Independence of Protection***

A country itself is sovereign. This protection reflects this concept, and the exercise of rights and pleasure in accordance with this principle is independent of protections in the nation in which the work has been produced. This Convention has also established a minimal standard of protection for each Member State. These basic protection requirements should be established by national law. There is some relaxation for poor nations which may, under some conditions, differ from this basic degree of protection in relation to translation rights and reproduction rights for particular work.<sup>132</sup>

### ***Automatic protective measures***

Under the national treatment concept, there are no such formalities in the exercise of rights and enjoyment of benefits, and as a result, member states are automatically protected.<sup>133</sup>

### ***National therapy***

The Bern Convention stipulates that work emanating in one state party of the Bern union shall offer the same level of protection to work originating in another member country as the latter provides to the work of its native citizens under the same conditions.<sup>134</sup>

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<sup>131</sup> Aguststine Birelle, *Seven Essays on the law and history of copyright books*, Cassel and Co., p.10,1989.

<sup>132</sup> Berne Convention for the Protection of Literary and Artistic Works, (Sept. 25, 2018, 09:25 PM), <https://www.wipo.int/treaties/en/ip/berne/>.

<sup>133</sup> *Ibid.*

<sup>134</sup> Article 11 of the Convention provides that Author shall enjoy the exclusive rights of authorizing to broadcast their work or the communication thereof to the public by any other means of wireless diffusion or signs sounds or images. Authors of literary and artistic works shall enjoy the exclusive right of authorizing.

### **2.5.2. UNIVERSAL COPYRIGHT CONVENTION**

The Universal Copyright Convention was created in 1952 with the goal of protecting literary, scientific, and artistic works, including musical, theatrical, and cinematographic works, writing, engraving, painting, and sculpting, against infringement by third parties. This Convention was the result of a stalemate between the world's two most powerful countries, the United Nations and the Soviet Union, as well as with the other member nations of the Berne Convention. At the time, the United States and the Soviet Union were not members of the Bern Convention, and the reason for this was because the degree of security provided by the Bern Convention was quite high. Finally, the Universal Copyright Convention was accepted by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) after numerous obstacles were removed from its way. The Universal Copyright Convention rendered it obligatory for the contracting state to give effective and appropriate protection to the copyright holder and the author's rights, and it was ratified in 1982.<sup>135</sup>

### **2.5.3. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO), 1967**

Although the Stockholm Convention was adopted in 1967 and entered into force in 1970, the World Intellectual Property Organization (WIPO) was designated as a specialised agency of the United Nations in 1974.<sup>136</sup>

#### ***Objective of WIPO***

The World Intellectual Property Organization (WIPO) has three particular objectives:

- For the purpose of ensuring administrative collaboration amongst the intellectual property unionists established by the Treaties that WIPO administrations administer (e.g., the Paris Union, The Berne Union, etc.),
- To increase and preserve respect for intellectual property all around the world by educating people about it.

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<sup>135</sup> UNESCO means united nation educational scientific and cultural organization encourages international peace and universal respect for human rights by promoting collaboration among nations.

<sup>136</sup> WIPO Intellectual Property Handbook, (Oct. 10, 2018, 11:45 PM), [https://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo\\_pub\\_489.pdf](https://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf).

- Boost the number of creative activities and make it easier for technology to be transferred and literature and artistic work to be distributed.

### ***Function of WIPO***

- Activity in the certification of international patent applications for inventions, as well as the confirmation of international trademarks and industrial designs, are carried out.
- Coordinating efforts across industrial property offices in the areas of patents, trademarks, and documentation of industrial design documentation.
- Classification and standardisation operations on an international scale.
- Program activities include providing legal and technical support to the state in the area of intellectual property rights protection.
- It is possible to establish norms and standards for the preservation and implementation of intellectual property rights through the signing of international treaties.<sup>137</sup>

### **2.5.4. ROME CONVENTION, 1961**

This Convention copes with neighbouring rights, which are also referred to as related rights. It makes it mandatory for member countries to protect performer rights, broadcasting rights, producer of phonograms, and other related rights. It is also based on the principle of national treatment, which is a legal concept. When it comes to specific reservations, any contracting state can make them at any moment, and the concept of reciprocity is included into the agreement.<sup>138</sup>

### **2.5.5. GENEVA CONVENTIONS, 1971**

This Geneva Convention, also known as the phonogram Convention, was enacted in the year 1971 to protect individuals against illegal reproduction of their phonogram. It differs from the Bern Convention, the Rome Convention, and the United Nations Convention on the Rights of the Child. A national treaty concept is not the foundation

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<sup>137</sup> *Supra* note 136.

<sup>138</sup> V.K Ahuja, *Law of Copyright and Neighbouring Rights, National and International Perspective*, Lexis Nexis, second edition, 2015.

of this agreement. The acknowledgment of reciprocal duties between member nations is the foundation of this Convention, which does not guarantee a minimum degree of protection for individuals. In comparison to the Rome Convention, this Convention is more expansive in that it addresses not only the production of phonograms, but also the acquisition and dissemination of such recordings. Member states are allowed to protect phonogram producers either via the award of copyright or through the grant of particular rights. India is a signatory to the Phonogram Convention of 1971.<sup>139</sup>

#### **2.5.6. BRUSSELS CONVENTION, 1974**

Specifically, this Convention makes it mandatory for each contracting party to prevent the unlawful and unauthorised dissemination on or from the landmass of any programme transporting signal by any supplier for whom the signal radiated to or passing via orbit is not intended. However, this Convention is only applicable to contracting states; it is not appropriate to initiate where the dispersion of signal does not take place.<sup>140</sup>

#### **2.5.7. FILM REGISTERED TREATY, 1989**

According to the treaty's objectives, it should be possible to strengthen the legal support in transactions involving audio-visual works while also encouraging the development and production of audio-visual works and combating piracy of audio-visual works. To facilitate the registration of statements relating to audio-visual works, it was established that a contracting state has the right to submit an application for the certification of a statement relating to its audio-visual works.<sup>141</sup>

#### **2.5.8. TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHT, 1994**

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<sup>139</sup> *Summary of the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (1971)*, (Oct. 18, 2018, 08:25 PM), [https://www.wipo.int/treaties/en/ip/phonograms/summary\\_phonograms.html](https://www.wipo.int/treaties/en/ip/phonograms/summary_phonograms.html).

<sup>140</sup> *Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite*, (Oct. 20, 2018, 10:25 PM), <https://www.wipo.int/treaties/en/ip/brussels/>.

<sup>141</sup> Alka Chawala, *Law of Comparative Perspective*, Lexis Nexis, 2013.



Known as the TRIPS Agreement, this agreement was established as a part of the final act marking the conclusion of the Uruguay Round of international trade negotiations. The objectives of TRIPs Agreement are as follows:

- In order to ensure that intellectual property rights are effectively and adequately protected,
- To guarantee that appropriate mechanisms and procedures are in place to safeguard intellectual property rights.
- To lower the impediments to lawful trade whenever possible.
- To lessen the distortion and barrier to international commerce that now exists.<sup>142</sup>

### **2.5.9. THE WIPO TREATIES**

The World Intellectual Property Organization's Treaties comprise the WCT<sup>143</sup> and the WPPT.<sup>144</sup> Each of these accords has as its goal the adaptation of copyright and associated rights to the virtual environment. A unique agreement under the sense of Article 20 of BC is what the World Trade Organization (WTO) is. The TRIPS Agreement, like the Berne Convention, integrates by relevance the substantive regulations of the latest edition of the Berne Convention and introduces to the Berne Convention two new categories of shielded works: computer programmes and databases. The Berne Convention already includes two categories of safeguarded works: computer programmes and databases.<sup>145</sup> However, the WCT extends rights accorded to Berne to online usage as well as distribution and rental rights, as well as a broad right of communication with the general public, to the WCT.<sup>146</sup> The freedom to reproduce and communicate, as well as the right to make material available to the public, is particularly essential in the internet world.

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<sup>142</sup> *Overview: the TRIPS Agreement*, (Oct. 25, 2018, 09:45 PM), [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm).

<sup>143</sup> WIPO Copyright Treaty, 1996, (Oct. 25, 2018, 10:55 PM), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_226.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_226.pdf).

<sup>144</sup> WIPO Performances and Phonograms Treaty, 1996, (Oct. 26, 2018, 12:35 AM), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_227.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_227.pdf).

<sup>145</sup> Arts 1, 4 and 5 WCT, (Oct. 26, 2018, 02:15 AM), <https://wipolex.wipo.int/en/text/295166>.

<sup>146</sup> Arts 6 to 8 WCT, (Oct. 30, 2018, 12:35 PM), <https://wipolex.wipo.int/en/text/295166>.

The WCT grants the holder a unique reproduction right that has a wide range of applications in the digital realm. It might be argued that the legislation encompasses all types of accidental, transitory, and technological copies, among other things.<sup>147</sup> In accordance with Article 9 (1) of the Berne Convention, writers have the sole right to provide permission for the reproduction of their works “in whatever form.”<sup>148</sup> As stated in Article 1(4) of the WCT, “the Signatory Countries shall conform with Sections 1 to 21 and the Annexure to the Berne Convention” and that the correlating agreed statement qualifies “the storage of a copyrighted material in digital form on a digitised medium” as a propagation within the interpretation of Article 9 of the BC, the WCT is a “worldwide treaty” that was signed in Berne in 1815.<sup>149</sup>

In terms of communication to the general public, the receiving country has already separated this idea into particular rights of execution, transmission, and recital, as previously stated.<sup>150</sup> Article 8 of the WCT broadens the scope of Berne’s right to make works of art open to the public by include the ability to make works accessible to the public. “The public may view these pieces from a location and at a time that has been designated by the artist.” The applicability of copyright is therefore broadened to include dynamic and on acts of communication, as well as traditional written and spoken communication.<sup>151</sup>

The World Intellectual Property Organization (WIPO) expands on the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (Rome Convention) in the realm of related rights (RC or Rome). The World Phonogram Protection Treaty (WPPT) acknowledges basic levels of protection for phonogram artists and producers. For unfixed (live) performances, the

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<sup>147</sup> Silke von Lewinski, ‘*Certain Legal Problems Related to the Making Available of Literary and Artistic Works and Other Protected Subject Matter Through Digital Networks*’ UNESCO E-Copyright Bulletin 1, 5-6 (January 2000).

<sup>148</sup> Arts 7, 10 and 13 RC, (Oct. 30, 2018, 02:30 PM),

[https://www.wipo.int/treaties/en/ip/rome/summary\\_rome.html](https://www.wipo.int/treaties/en/ip/rome/summary_rome.html).

<sup>149</sup> The Agreed Statements to Arts 7 and 11 WPPT contain similar provisions for performances and phonograms.

<sup>150</sup> Paul Goldstein And P Bernt Hugenholtz, *International Copyright Principles, Law, And Practice* 317-318. (3<sup>rd</sup> ed. Oxford University Press 2013).

<sup>151</sup> *Supra* note 150.

performers are allowed first transmission rights as well as communication to the general public and fixing of their performances. Second, with respect to their recorded fixed appearances in phonograms, performers are allowed the rights of reproducing, distribution, renting, and making available of their recordings.<sup>152</sup> Producers of phonograms have the right to reproduce, distribute, rent, and make their phonograms available to the public.<sup>153</sup> Under some conditions, performer and creators are also entitled to payment for the distribution and transmission to the public of phonograms that are published for commercial purposes, subject to certain limitations.<sup>154</sup>

TPMs (Technological Protection Measures) and Rights Management Information are included in the two WIPO treaties in a manner that is comparable to each other (RMI). The so-called “three step” test, as allowed for in Article 9(2) of the Berne Convention, is incorporated into Article 10 of the WCT to establish restrictions and exceptions, and its application is extended to all rights under this provision. According to the agreed-upon Statement accompanying the WCT, such limits and exemptions, as established in national legislation in accordance with the Berne Convention, may be expanded to the online realm in accordance with the Berne Convention. It is possible for contracting states to create additional exceptions and limits that are more suited for the digital world. If the criteria of the “three-step” test are fulfilled, the expansion of existing restrictions and exceptions, as well as the establishment of new restrictions and exceptions, are permitted.<sup>155</sup>

Both Treaties impose obligations for ensuring appropriate legal protection and effective remediation against: (1) by-lawing the effective TPMs used in linkage with the exercise of their rights by authors, performers or phonogram creators and restricting acts not

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<sup>152</sup> Arts 6 to 10 WPPT, Performers are also granted moral rights pursuant to Art. 5 WPPT, (Nov. 28, 2018, 12:35 AM), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_227.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_227.pdf).

<sup>153</sup> Arts 11 to 14, WPPT, (Nov. 29, 2018, 11:35 PM), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_227.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_227.pdf).

<sup>154</sup> Article 16, WPPT, (Nov. 30, 2018, 12:35 AM), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_227.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_227.pdf)

<sup>155</sup> Summary of WIPO Copyright Treaty, WIPO, (Nov. 30, 2018, 01:45 AM), [https://www.wipo.int/treaties/en/ip/wct/summary\\_wct.html](https://www.wipo.int/treaties/en/ip/wct/summary_wct.html).

authorised by or permitting right holders; and (2) removal or modification of the RMI and a number of unauthorised acts.<sup>156</sup>

Lastly, the Treaty on the Enforcement of Rights of Contracting Parties contains ‘minor’ provisions on adopting steps to secure the execution of the treaties. Specifically, they must guarantee that their legislation provides for enforcement mechanisms in order to allow effective action against all acts of infringement of the rights protected by the Treaties, ‘including speedy remedies to avoid infringing and remedies to prevent subsequent violations’.<sup>157</sup>

#### **2.5.10. BEIJING TREATY ON AUDIO-VISUAL PERFORMANCES, 2012**

This Treaty seeks to promote and preserve as effectively and consistently as possible the safeguarding of the interests of entertainers in their audio-visual performances. This Treaty was necessary since WPPT does not provide performers with protection in regard to their performance in audio-visual fixations. The Treaty provides performers rights to exploit their performances offline as well as online (e.g., dissemination or rental of their services - for example, in DVDS - by making them accessible, etc.). These privileges would allow entertainers to be appropriately paid for their performance. It also recognises the moral rights of performers i.e., the right to be identified, the right to object to distortions of the performance. Actors of countries that ratify or accede to the Treaty must have the minimum degree of protection provided by the Treaty plus national treatments (i.e., their performances will also be protected when exploited by other contracting parties).<sup>158</sup>

## **CONCLUSION**

Thoughts are protected by Copyright law, not their manifestations. Section 13 of the Copyright Act of 1957 grants copyright protection to literary, dramatic, musical, and aesthetic works, as well as films shot on film and recordings made on sound tape.

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<sup>156</sup> Arts 11-12 WCT and 18-19 WPPT, (Nov. 30, 2018, 02:30 AM), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_227.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_227.pdf).

<sup>157</sup> Arts 14 WCT and 23 WPPT, (Nov. 30, 2018, 03:35 AM), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_227.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_227.pdf).

<sup>158</sup> *Beijing Treaty on Audiovisual Performances*, (Dec. 10, 2018, 01:25 AM), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_227.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_227.pdf) [https://www.wipo.int/beijing\\_treaty/en/](https://www.wipo.int/beijing_treaty/en/).

Piracy is wreaking havoc on the Indian media and film industry, which has been plagued by blatant copyright infringement. This has a knock-on effect on the sector, reducing profitability and, as a result, reducing investment, output, and employment opportunities. Also, within hours of a film's release, pirated versions of the film surface online and have an impact on the film's box office results.

The present chapter deals with the historical evolution and development of the Copyright Law both at the national and international level. In this chapter the researcher has specifically highlighted the related provisions of copyright law in consonance with the cinematography. The chapter has also emphasized the various International Treaties and Conventions and Agreements which focusses on the intellectual protection of the various contents in the process of film making.

The chapter also have had a detailed discussion on the Internet Treaties, i.e., WPT & WPPT those prime objectives were to see whether authors are granted exclusive rights to distribute and rent their works, as well as a greater right to communicate their works to the public in the digital environment, under this treaty. A database's structure and content, as well as the data it contains, are both safeguarded as literary works under the law. Technology safeguards and digital rights management information, which are employed to detect & administer works, are likewise protected. And also, whether related rights are addressed in this treaty, which enhances the security of artists/performers and record producers, notably in the internet age, from infringement. Their works and sound recording can only be reproduced, distributed, rented, and made accessible to the audience under the terms of their exclusive rights. Their phonograms generated for economic purpose are likewise entitled to fair compensation when broadcast or communicated to the public.

The chapter has also analysed the important aspects of the Copyright Amendment Act of 2012, where important and feasible amendments and changes were being introduced in various rights such as artistic works, cinematograph films and sound recordings.

Also, various other important issues which addressed the difficulties and lags that are often faced in the digital era and which are passively mandated by the WPT & WPPT.

## **CHAPTER 3**

### **IMPLEMENTATION OF COPYRIGHT LAW IN INDIAN FILM INDUSTRY: CONCEPTS AND PROVISIONS**

#### **3.1. IMPLEMENTATION OF COPYRIGHT LAW IN INDIAN FILM INDUSTRY**

##### **3.1.1. INTRODUCTION**

Throughout India, the preservation and implementation of intellectual property rights have long been a source of considerable concern. The average people are completely unaware of what creative property is or even what it is not. And the relatively few laypeople who have heard of it are unable to distinguish between a trademark, a copyright, and a patent, to say nothing of the differences between them. Because the enforcement procedures are inefficient and ineffectual, the remaining individuals who are aware of this do not hesitate to infringe on the rights of others.

Just like owners of physical property, such as vehicles, structures and retail outlets can restrict the illegal usage or sale of the creations, so can intellectually or artistically skilled persons. In contrast to those who create physical things such as chairs, freezers, and other household items, those whose labour is basically intangible suffer more challenges in earning a livelihood if the intellectual property rights to their works are not recognised and protected. In the absence of physical safeguards like locks and fences, creative types like authors, artists, and innovators cling to the concept of “Intellectual Property Rights” to protect their creations.

Apart from ensuring that innovators and artists are properly rewarded and that nations are able to draw foreign investment and technologies, intellectual property regulation is essential for the protection of consumer’s rights. Most advancements in

transportation, telecommunications, agribusiness, and medical care would not have been possible without robust intellectual property protections.<sup>159</sup>

### 3.1.2. INTRODUCTION OF ENTERTAINMENT INDUSTRY

An action might be considered amusing by one, not the other. The notion of amusement may vary even for one individual over a length of time. But, in order to study entertainment, we need to identify specific sources of entertainment, such as films, television and music, for the general population.

Although the entertainment business includes several components, the current research will focus on cinema and musical industry in India in particular. The piracy issue is the major topic of this investigation. Piracy is the most widespread in films and music in India compared to other entertainment media. It is wrong to suggest that there is reduced piracy on TV. However, I think the damage inflicted to TV might be smaller due to the very structure of the revenue generator in the TV segment. The major source of income is publicity, not the selling of CDs or albums. This might alter in the near future if other sources of income are drawn or if new tactics, such as pay per view, are implemented, but today publicity is the principal source of TV in India.

Second, chosen fields in the entertainment business should be concentrated on in-depth study. This method is intense in character and will aim to get into the subject's depths rather than have a bird's eye perspective of the phenomena.

Finally, India is the subject of investigation since India ranks among the biggest internet piracy rates in the world.<sup>160</sup> The presence of a cinema business which has the component of music constantly ingrained within it makes the research all the more fascinating. It is extremely terrible that internet piracy is such a scourge in India but unfortunately this issue has not been handled in a thorough approach which would have allowed us to

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<sup>159</sup> Yogesh Bajpai, *Impact of Intellectual Property Rights On The Music And Film Piracy: A General Study*, (Jan.09, 2019, 01:05 PM), <http://www.ijodls.in/uploads/3/6/0/3/3603729/ijodls07111.pdf>.

<sup>160</sup> The Future Now streaming FICCI - KPMG Report 2016, (Dec. 10, 2018, 03:25 AM), <https://assets.kpmg/content/dam/kpmg/in/pdf/2016/12/The-Future-now-streaming.pdf>.



realise the seriousness of the crisis in India and give remedies for the same. India being a growing nation, the understanding of cyber piracy and its effects is limited.<sup>161</sup> In addition, the implementation of the rules that limit piracy online is really not up to the task. Although this may not render India an anomaly among emerging countries, administrative institutions too need to revise their operations with changing times.

### **3.1.3. RECASTING OF COPYRIGHT LAW IN THE REALM OF TECHNOLOGICAL ADVANCEMENTS**

Despite the fact that copyright was first adopted in India during the British colonial period, the country has come a long way. Copyright legislation was originally enacted in India in 1847 by the Head of state of India, who had been the country's first president at the time. Because India was an important component of the British Raj at the time the Copyright Act 1911 was passed in England, it came immediately applicable to India when the Act was passed. This legislation remained in force in the country until sometime after freedom, when a new copyright act the Copyright Act of 1957 was passed and brought into operation in 1958, effectively superseding the old statute.<sup>162</sup>

The 2012 revisions bring Indian Copyright Law into compliance with the Internet Treaties, namely the World Intellectual Property Organization's Copyright Treaty and the World Intellectual Property Organization's Performances and Phonograms Treaty.

Revised legislation ensures that reasonable utilization is protected in the internet age by establishing explicit decent usage standards in the amended statute, while incorporating technological protective mechanisms. Author-friendly modifications, specific provisions for handicapped individuals, amendments allowing access to works, and other changes to improve copyright administration have all been implemented as a result of the adjustments.

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<sup>161</sup> Baru, Sanjaya, "A WTO ruling opening up china to Hollywood should help Bollywood too," Business standard, March 15,2012.

<sup>162</sup> *Study On Copyright Piracy in India Sponsored By Ministry of Human Resource Development Government of India*, (Jan.11, 2019, 02:35 PM), <http://copyright.gov.in/Documents/STUDY%20ON%20COPYRIGHT%20PIRACY%20IN%20INDIA.pdf>.

The modifications made by the Copyright (Amendment) Act 2012 can be divided into the following categories:

- Right amendments in the context of creative creations, cinematograph films, and sound recordings.
- Rights have been amended in connection with the WCT and WPPT.
- Amendments that are author-friendly in terms of assignment and licence terms.
- Amendments that make it easier to gain access to works.
- Increasing the effectiveness of law enforcement and defending against Internet piracy
- The Copyright Board will be reformed, as will other minor modifications.<sup>163</sup>

India's Copyright Act protects the rights of authors and publishers in the creation and distribution of creation of cinematic films and also the creation and dissemination of audio recordings based on unique literature, dramatic, symphonic and artistic works. The term "original" refers to the fact that it should not be taken from other works, or, conversely, that it should be the result of unique research and development. The Act grants the right to perform or authorise the doing of a variety of actions to the owner(s) of a copyright.

Some of the more significant of these are as follows:

- a. to make a physical copy of the content;
- b. to make the information public;
- c. performing the artwork in front of a public or making it publicly;
- d. any paraphrase or reproduction of the content;
- e. produces any documentary or video recording of the project;
- f. to alter the content in any way; and
- g. to make any changes to the original material in the context of a transcription.<sup>164</sup>

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<sup>163</sup> *Inside Views: Development in Indian IP Law: The Copyright (Amendment) Act 2012*, (Jan.11, 2019, 03:05 PM), <https://www.ip-watch.org/2013/01/22/development-in-indian-ip-law-the-copyright-amendment-act-2012/>

<sup>164</sup> Copyright Act, 1957, (Jan.14, 2019, 11:35 PM), <https://copyright.gov.in/documents/copyrightrules1957.pdf>

All of the rights listed above are referred to as “exclusive” in the idea that they are only available to the author (or right holder) and are not available to anyone else. Due to the fact that he created the work, as a result of completing the assignment, the author gains ownership of the project’s copyright. This rule does not apply, however, in the below two instances:

- i. Even if an author is hired by somebody else to create a piece of work, ownership of that work remains with the owner, nor the author(s);
- ii. Copyright might be transferred by the original inventor to another person through the execution of a written document transferring ownership. Assignment is the term used to describe this.

The copyright business, in general, and the film industry, in particular, serves not merely to the creation of money for its rightful owners, but also to the protection of the labour employed in the industry. In addition to this, the government’s coffers are replenished by the imposition of an entertainment tax. India is dedicated to one of the world’s major film industries, with over a thousand films being produced on a yearly average.

Due to the numerous various sorts of copyrights within a particular production, copyright in cinematographic film is more complex than other types. ‘Right for the stage’ refers to the right to show a film in a theatre, which is the first right granted to a filmmaker in a film. The producer is the owner of the copyright. Distribution companies acquire theatrical rights from filmmakers and then establish deals with theatre owners to display their films in front of the general public on a regular basis. The theatre rights are restricted in terms of region and duration. Video cassettes are also available for purchase for some films. In fact, watching films at leisure has become more fashionable in recent years than going to see the same films in theatres. The video rights are sold by the producers to a third party, who then creates film tapes for distribution in the economy. Because these tapes are designated just for “leisure watching,” you can buy a duplicate to watch with your loved ones at home once you buy it. Consequently, such tapes cannot be utilised for the distribution of films via cable or satellite channels. In

order to broadcast films on cable or satellite channels, the filmmaker must first acquire two sets of rights: ‘cable rights’ and ‘satellite rights.’<sup>165</sup>

Copyright law normally protects two sorts of privileges: commercial privileges and moral rights.<sup>166</sup> Easy to exploit rights (sometimes referred to as “economic rights”) are those that allow the holder of the copyright to economically exploit the work in question. Those who hold copyrighted content have the sole right to produce copies of it, as well as adaptations or photos of it, and they also have the option of licencing similar privileges to certain other individuals.<sup>167</sup> Aesthetic privileges are those that a work’s author will forever possess in his or her ownership as long as the work exists. A work’s moral obligations encompass the right to decide whether or not it should be released, the ability to claim ownership, as well as the freedom to ban certain changes that might damage a writer’s good name or renown. Numerous court decisions for example, in India as well as United Kingdom have upheld the to make duplicate creations is the sovereign right of the creator. A collection of ideas, theories, and events are not protected by intellectual property rights.<sup>168</sup> Only the “form, method, and organisation, as well as the presentation of the notion” are protected by intellectual property rights.<sup>169</sup> As a result, various writers are not precluded from autonomously elaborating the identical idea, although if their outputs have some characteristics. During the landmark decision of *R.G. Anand v. Delux Films*,<sup>170</sup> the Indian Supreme Court recognized this idea and declared it to be constitutionally valid.<sup>171</sup> This is the case

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<sup>165</sup> *Study On Copyright Piracy in India Sponsored by Ministry of Human Resource Development Government of India*, (Jan.15, 2019, 07:35 PM),

<http://copyright.gov.in/Documents/STUDY%20ON%20COPYRIGHT%20PIRACY%20IN%20INDIA.pdf>.

<sup>166</sup> Mohit Kapoor & Ajay Shaw, *India: To Kill a Copy Cat*, DSK LEGAL, India, (Jan.16, 2019, 09:40 PM), <http://www.mondaq.com/article.asp?articleid=22595>.

<sup>167</sup> Copyright Act of 1957, (Jan.18, 2019, 07:35 PM), <https://copyright.gov.in/documents/copyrightrules1957.pdf>.

<sup>168</sup> Ranjan Narula, *Battles in Bollywood: The Fine Line Between Idea and Expression in India*, Rouse & Co. International, (Jan.18, 2019, 09:05 PM), <http://www.iprights.com/publications/articles/article135.asp?articleID=208>.

<sup>169</sup> Justice P.S. Narayana, *Intellectual Property Law in the New Technological Age*, (2002) PLWeb Jour 6, (Jan.20, 2019, 08:05 PM), [http://www.ebcindia.com/lawyer/articles/607\\_1.htm](http://www.ebcindia.com/lawyer/articles/607_1.htm).

<sup>170</sup> 1978 AIR 1613, 1979 SCR (1) 218 (India).

<sup>171</sup> Atrayee Mazumdar, Mayur Suresh & Lawrence Liang, *FAQs about Copyright*, (Jan.21, 2019, 11:15 PM), [http://www.infochangeindia.org/IPR\\_article6.jsp](http://www.infochangeindia.org/IPR_article6.jsp) (citing *R.G. Anand v. Delux Films*, A.I.R 1978 SC 1613).

here instance, the composer and in the play “*Hum Hindusthani*” a producing company was sued for allegedly creating a film that was a “identical duplicate” of his original play. Even though there were some parallels between the movies and the play, the Supreme Court determined that the film did not infringe on the copyright of the play since there were significant differences between the two.

In the early 1990s, when digital display Internet connection remained still in its infancy and only a few people had access to the internet, there were legal concerns about digital copyright violation. During the first Clinton administration, the Information Infrastructure Task Force (IITF) was established at the request of Vice President Al Gore in order to explain the United States Government’s strategy for the so-called National Information Infrastructure. To support this effort, a working group issued a study in 1995, which examined how the Internet (at the time, just getting started) will affect copyright law in the future, as well as other issues. The study made the following prophetic observation: “The National Institute of Health has great capacity to improve and enrich our lives.” Accessibility to a greater volume and diversity of informational and amusement resource base that can be supplied rapidly and inexpensively from and to almost anywhere in the globe in the twinkle of an eye can be increased as a result of this technology. Consider the possibilities: “tens of networks of television programmes, countless albums and maybe thousands of “magazines” and “books” might be made accessible to families and companies all over the world.”

The researcher conceded that the rapid growth of the Online platform “upset the equilibrium” among copyright holders and those who make usage of, although, as a result, by which the problem could well be resolved “little more than slight clarification and restricted adjustment” in accordance with existing copyright regulations, rather than by “sweeping changes”. According to the report’s principal recommendations, traditional rights of distribution and performances should indeed be extended to digital

distribution of content.<sup>172</sup> A similar point of view was expressed the following year by Jane Ginsberg in arguably of the early law review papers on the issue.<sup>173</sup>

Regarding the first issue, a government investigation conducted in the late 1990s, when Broadband presence in India was relatively restricted, highlighted movie theatres and the principal means through which unlicensed films are distributed is through broadband companies. According to the findings of the research, “all parties engaged in the lawful trade of films-from the creators to the theatre owners”-have suffered “heavily as a result of pervasive video or cable piracy,” and the government has lost out on possible tax income as a result of the piracy.<sup>174</sup> For this reason, the authorities formed a new working group to investigate piracy in greater depth. In contrast to the previous research, the Committee highlighted that Internet penetration was increasing in India and projected that piracy was “designed to explode” as a result of the expansion of broadband Internet access in the country.<sup>175</sup> However, while the amount of Internet subscribers in India has undoubtedly increased tremendously during the 1990s, when represented as a proportion of the population, it still represents just 30 percent of the country’s total population. In addition, connection connections in India are frequently sluggish. Indeed, according to one research, download speeds on India’s 4G networks are arguably the worst in the whole globe., making it one of the least developed countries.<sup>176</sup> As a result, in contrast to industrialised nations, physical piracy, as seen by the selling of pirated DVDs by street sellers, continues to be a popular method of consuming pirated films in India, thereby undermining the objective of online policing.<sup>177</sup>

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<sup>172</sup> *Supra* note 164.

<sup>173</sup> Ginsburg, J. 1995, *Putting Cars on the “Information Superhighway”*: Authors, Exploiters, and Copyright in Cyberspace, Columbia Law Review 95: 1466, 1482.

<sup>174</sup> National Productivity Council (1999), *Study on Copyright Piracy in India*, p. 14, (Jan.23, 2019, 10:15 PM),

<http://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>.

<sup>175</sup> Ministry of Information & Broadcasting. (2009). *Report of the Committee on Piracy*, pp. 45–6.

<sup>176</sup> Dovall, P. 2018. 4G speed in India slowest in world. Times of India, (Jan.23, 2019, 11:15 PM), <https://timesofindia.indiatimes.com/business/india-business/4g-speed-in-india-slowest-in-world/articleshow/63021612.cms>.

<sup>177</sup> US Trade Representative. (2014). *Out-of-Cycle Review of Notorious Markets*, p.16 (listing bazaars in India where pirated DVDs are sold); Liang, L. & Sundaram, R., (2011). India. In Karganis, J. (Ed.), *Media Piracy in Emerging Economies* (pp. 339–398, 348–50). New York: Social Science Research Council.

Regarding the second aspect, the Indian cinema business derives a significant portion of its earnings from the Indian expatriate, which is concentrated mostly in industrialized countries. Many of India's most popular films are screened in cinemas in these nations. Because of the higher ticket costs in the United States compared to India, several producers consider these audiences to be their primary target demographic.<sup>178</sup> The consumption of pirated films, on the other hand, is quite high within this group of people.<sup>179</sup> The Indian film sector does not have the financial means to effectively protect its copyright rights throughout the world. Despite the fact that the Government of India has engaged foreign governments on behalf of the movie industry, little appears to have happened as a result of these efforts.<sup>180</sup>

Regarding the third aspect, as Marc Galanter has remarked, Indian laws are “notoriously incongruent” with “attitudes and concerns” held by the people of the country<sup>181</sup> and that “delays of Bleak House proportions are routine in many sorts of litigation”.<sup>182</sup> There are several million cases waiting before Indian courts, according to official statistics, and there is a serious lack of judges, according to the government's own data.<sup>183</sup> The problem is a concern for state governments rather than national governments in the scope of criminal copyright enforcement. Due to dishonesty and incompetence, the implementation of copyrights in least developed countries becomes

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<sup>178</sup> Banerjee, A. 2011. A Case for Economic Incentives to Promote “Parallel” Cinema in India. *Media & Arts Law Review* 16: 21, 23–6, (Jan.24, 2019, 12:55 AM), [https://link.springer.com/chapter/10.1007/978-981-13-8102-7\\_8](https://link.springer.com/chapter/10.1007/978-981-13-8102-7_8).

<sup>179</sup> For example, according to one report, the hit Bollywood film *Kaminey* was downloaded illegally 350,000 times within a week of its release, with a third of the downloads originating from outside India. Frater, P. 2009. *Online Piracy in India a Global Problem*, *Hollywood Reporter*, (Jan.24, 2019, 02:15 AM), <http://www.hollywoodreporter.com/news/online-piracy-india-global-problem-92365>.

<sup>180</sup> Banerjee, A. 2016. Copyright Piracy and the Indian Film Industry: A “Realist” Assessment. *Cardozo Arts & Entertainment Law Journal* 34: 609, 639–40, (Jan.24, 2019, 04:25 AM), <http://www.cardozoelj.com/wp-content/uploads/2016/08/BANERJEE-ARTICLE.pdf>.

<sup>181</sup> Galanter, M., *The Uses of Law in Indian Studies*. In *Language and Areas: Studies Presented to George V. Bobrinsky* (pp. 37–44, 38), (Jan.25, 2019, 03:45 AM), <https://core.ac.uk/download/pdf/62553288.pdf>.

<sup>182</sup> Galanter, M., *World of Our Cousins*, *Drexel Law Review* 2: 365, 368, (Jan.25, 2019, 04:45 AM), [https://uwlaw-omeka.s3.us-east-](https://uwlaw-omeka.s3.us-east-2.amazonaws.com/original/56b1ac9e7d618f45b0384ccae9709ed50f4d7cac.pdf)

[2.amazonaws.com/original/56b1ac9e7d618f45b0384ccae9709ed50f4d7cac.pdf](https://uwlaw-omeka.s3.us-east-2.amazonaws.com/original/56b1ac9e7d618f45b0384ccae9709ed50f4d7cac.pdf)

<sup>183</sup> Government of India (2012). *National Court Management Systems, Policy and Action Plan*, (Jan.25, 2019, 02:15 AM), <http://164.100.24.220/loksabhaquestions/annex/172/AU3884.pdf>

inadequate.<sup>184</sup> In criminal proceedings, the plaintiffs confront extra obstacles. One investigation has found that criminal prosecutions of copyright “most times did not provide efficient and dissuasive outcomes,” with difficulties such as accused bail, long lags, loss of data, low rates of conviction and minimal penalties for sentencing.<sup>185</sup> Cases tend to progress slowly in the interim phase in civil litigation. “In trademark, copyright and patent issues, the dispute over interim injunction is largely waged between the parties and continues for years and the outcome is that the lawsuit has been seldom concluded” the Supreme Court of India remarked.

### **3.2. CINEMATOGRAPH FILM AND COPYRIGHT LAW**

When discussing film copyright, there are four distinct areas to consider. Original film producers, the exclusive owners of a picture, are allowed to offer movie licenses, broadcast entitlements, satellite privileges, commercial privileges, and even space entitlements. A film’s copyright comprises of five parts, each of which is broken down over 3 different parts by the law. The following are:

#### **1. Rights to the Movies**

- Cinematic
- Non- Cinematic
- Shared Videos

#### **2. Additional Privileges**

- Aviation
- Export
- Holiday inn

#### **3. Rights to the video**

- Hiring at house
- Home see through
- Merchandising

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<sup>184</sup> Prof. Dr. Marco Gercke, Understanding cybercrime: Phenomena, challenges and legal response, (Jan.27, 2019, 02:15 AM), <https://www.itu.int/ITU-D/cyb/cybersecurity/docs/Cybercrime%20legislation%20EV6.pdf>

<sup>185</sup> International Intellectual Property Alliance (2014), *Special 301 Report on Copyright Protection and Enforcement*, p. 43, (Jan.27, 2019, 04:05 AM), <http://www.iipa.com/rbc/2014/2014SPEC301INDIA.PDF>.



#### 4. Pay TV Rights

- Terrestrial
- Cable
- Satellite

#### 5. Free TV Rights

- Terrestrial
- Cable
- Satellite

Most agreements say that all of the aforementioned rights have been transferred to the buyer. Deals involving the sale of movie rights would specify whether the rights were purchased for screenings in theatres, elsewhere, or for distribution to the general public through video. In addition, the contract would specify the duration and area to which you had access. Films that have been purchased with a theatre-exclusive licence can't be shown on video or many other medium if they have been purchased with that same theatre-exclusive licence. That would be blatantly infringing on someone else's copyright. It's the same with pay vs. no-pay TV. Television companies can run both for-profit and non-profit channels for the general public. A movie's broadcast rights might be purchased by a pay-TV provider. However, if this film is broadcast without permission, it would violate copyright law. Some satellite stations have violated copyright in the past. However, the number of cases like this is a tiny percentage of the total number of films, including cable and home video, that have been infringed upon.

Various investigations by film manufacturers and distributors, media and broadband copyright owners, and television stations have revealed that digital rights violations of films occur primarily in the areas of television, internet service, and monetary rights, i.e., films across multimedia rooms (which are becoming increasingly popular in rural India), and to a lesser extent in hotels. It was not obvious whether commercial rights of films were indeed sold, while engaging with some film producers. The majority of hotels have their own dish antenna while some (mostly in the categories of 5 stars and 4 stars) broadcast movies via their VCRs. Most hotels are connected via cable operators.

Our talks on the number and form of copyright infringements are largely linked to video rights, cable rights and trade rights exclusively.

### 3.2.1. SUBJECT MATTER OF COPYRIGHT PROTECTIONS

Creative, literary, and scientific works are all subject to copyright protection, regardless of how they are expressed. Even while federal regulation determines the exact scope of copyright protections, most countries' statute covers the following types of creative work as a general rule:<sup>186</sup>

- **ORIGINAL LITERARY WORK:** Novels and short storey collections, poetry and theatrical performances as well as any other manuscripts, regardless of their subject matter (fiction or quasi), length (fiction or quasi), intent (entertainment or education), relevant data or advertisements, or propaganda; whether released or unreleased; in often these nations “verbal works,” which is capable of functioning not pared down to written form, also are protected by the copyright protection; instructional manuals, software programs, chord progressions for songs, blog postings in news sites, certain sorts of data sets, and unique scripts, which contain pieces of dance or mime.
- **COMPOSER’S EXCLUSIVE CREATIONS:** Songs and choruses, operas, musicals, and operettas, no matter how severe or light-hearted the subject matter, whether you are a soloist, a small ensemble, or a large orchestra, you have come to the perfect spot if you are seeking for lessons on how to play an instrument.
- **ARTISTIC WORKS:** Art can be double-dimensional (drawings, canvases, engravings, etc.) or tri-dimensional (sculptures, architectural details), and it can be any medium (representational or abstract), and it can have every location that may be a goal.
- Diagrams and plans of a technological nature;
- **OPTICAL ARTIFACTS:** Irrespective of something like the subject matter (such as portraiture, landscapes, recent events, etc.) or the motivation;

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<sup>186</sup> Fundamentals of Copyright Protection, (Feb.07, 2019, 02:15 PM), <http://gil.com.sg/education/general/copyright-fundamentals.html>.

- **PICTURES IN MOTION (“CINEMATOGRAPHIC WORKS”)**: Silent or sound tracked, irrespective of its intent (theatrical, television or other), format (movie plays, documentaries, newsreels), duration, manner (live film, cartooning, etc.) utilised or technological process (transparent film images, videocasts, DVDs etc.), it is all the same in terms of its ability to communicate.
- Computing programmes (whether as part of a literary piece or as a standalone project);
- **RELATED RIGHTS**: The right to ‘neighbouring’ or ‘related’ copyright, which is commonly dubbed ‘related rights’, is another key aspect of the protection of artistic works. It is commonly known that three types of entitlements that are associated exist: interests of performers, rights of phonogram makers in their sound recordings, and obligations of broadcasting and television organisations. Those that help intellectual creators to express their message and spread their work to the general public are protected by associated rights. Sound recordings that may be recorded of any media such as tape or compact disc and recordings of other works of copyright such as music or literature; movies, including videos; and cable and broadcasting.

The fundamental premise and notion of this chapter, however, is copyright in cinematic works.

1. To study film concepts and definitions under the 1957 copyright legislation.
2. Analyse legal ideas and precedents pertaining to the issue of film-specific proprietary rights.
3. Film production examples will be used to investigate the ownership rights, transfer, & licencing.
4. Indian courts’ interpretation of cinematic works in terms of their territorial competency.

### **3.2.2. COPYRIGHTS IN CINEMATOGRAPH FILM WORKS: DEFINITION OF CINEMATOGRAPH FILM**

Theoretically, this is because “Concise Oxford Dictionary”, a movie is a work of art that generates the appearance of movement on a screen using several photos shot

sequentially on a lengthy film by quick projection through a device called a cinematographer.

**3.2.3. MEANING OF CINEMATOGRAPH FILM SEC 2 (F)-** For purposes of this definition, a “movie film” is any visual work on a type of media generated using the methodology through which a moving picture can be built through any technique and accompanied by an audio recording that features such video recordings.<sup>187</sup>

Just the movie and the accompanying soundscape are included in the definition. Sections of the movie may very well be covered by the overall copyright, giving the film’s copyright holder a stake in those sections; but this notion or idea cannot be lengthened to include a notion that there would be yet another holder of the film and distinct owners of parts, in the sense of entertainer who has played collectively.<sup>188</sup>

Cinematographic film is referred to in section 21 of the analysis by Krishna Iyer as follows:

The term “Cinematograph” refers to a serendipitous combination, a glorious completeness, a constellation of lights, though the researcher would use these wonderful illustrations to hammer down mine point, whispering so the over norm barring the use of combined metaphors in order to make my point crystal plain. Long stretches of celluloid, miraculous photographic captures of moments in time, music, dancing, and dialogue are all part of what makes cinema so compelling. It is also about more than a dramatic tale, an intriguing storyline, captivating circumstances, and outstanding performances. However, it is the ensemble as a whole that is the final product of organised execution by each of the numerous members, despite the fact that the components may, on their own, be beautiful creatures. Copyright in a movie film is recognised by law, however Section 13 (4) of the Act ensures that a copyright possessed by any ‘work’ continues to exist in its uniqueness, despite the fact that it is incorporated into the film as part of the film. Despite the permanence of the artistic “personality” of

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<sup>187</sup> The Copyright Act, 1957, (Feb.08, 2019, 03:30 PM), <https://copyright.gov.in/documents/copyrightrules1957.pdf>.

<sup>188</sup> Indian Performing Right Society Ltd. v. Eastern India Motion Picture Association., A.I.R. 1977 SC 1443.

the intellectual property, the copyright of the film as a whole cannot be taken away from it.

According to Article 2(1) of the Berne Convention, which stipulates that “works represented by a method comparable to cinematography” fall under the category of “cinematic works”, Whatever the technological technique used, it comprises films or recorded fixes of classic dramatic works such as play adaptations or comedy sketches as well as documentaries, animated shorts, and cartoons, among others.<sup>189</sup> In accordance with Section 101 of the United States Copyright Act of 1976, a motion picture is defined as “an audio-visual work consisting of a sequence of linked pictures that, when presented in succession, convey the sense of motion, combined with corresponding sounds, if any.” According to Section 5B of the United Kingdom’s Copyright, Designs, and Patent Act 1988, a “film” is defined A moving image capturing on whatever medium through which a motion picture might very well be recreated through whatsoever manner is characterised as a motion picture recording. (1) The soundtracks that is used to accompany a film is considered to be a component of the film. Where sub-sec (2) applies, references to displaying a film involve playing the film audio track as an accompaniment to the film. Presenting any movie’s musical score as an accompaniment to a phonetic recording is referred to in this section when phonetic recordings are mentioned but the movie’s soundtrack is not. An issue is not created by the absence of copyright inside a movie which is, or even to the extent that this is, a duplicate of another movie previously released on the market. Nothing in this provision has any effect on any copyright that may be present in a movie or sound track that is being used as a sound recording.

### **3.2.4. RIGHTS PACKAGE FOR MOTION PICTURE FILMS**

Clauses f, m, and y of Sections 2(1)(b) and 14(1)(d) of the Act would become entirely meaningless if changed in any way. Legislative bodies are already burdened with costly and time-consuming technological and scientific endeavours, as well as capital

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<sup>189</sup> WIPO, *Guide to the Berne Convention for Literary and Artistic works*, (Feb.09, 2019, 02:45 PM), [https://www.wipo.int/treaties/en/ip/berne/summary\\_berne.html](https://www.wipo.int/treaties/en/ip/berne/summary_berne.html).

expenditures, due to the rise in popularity of cinema as a strong form of artistic expression.

It is apparent, then, that a protected copyright is enshrined in the cinematographic film as a result of the sequential of the Act scheme, as revealed in particular paragraphs (d), (v), (m), (V), and (y) Section.2, Section.13(1), and 14(1)(d), Section.17, and Section.26 of the Act.

*If 'A' directed a cinema, 'B' wrote the script, 'C' wrote the dialogues, 'D' wrote the tale, 'E' created the ambient soundscapes track, 'F' wrote the lyric, 'G' acted, and 'H' sang the melodies.*

The above picture safeguards every potential author of several copyrighted material by providing each with their very respective independent intellectual protection. To name only a few: An agreement between "A" and "B" transfers ownership of the film to the producer, who retains copyright in the directorial and screenwriting as stipulated in the Indian commercial treaties. 'C', 'D' and 'F' shall be protected under the copyright of the literary provisions of Article 14(a) of such Code. Musical copyright protected 'E' under Section 14.

The performer's rights of "G" and "H" are protected by the Act's Article 38.

As the film's 'creator', the film producer is accountable for the syncing of all interests in the illustration, which includes everything from "A" to "G" in the illustration's whole. In addition, he is the exclusive owner of the 'moral rights' granted to the director under Section 57 of the Act under Section 14 (d) (i) (ii) and (iii) of the Cinematograph Creations Act. According to the whole copyright legislation, the rights given by section 57, alone, are not transferable by any means of conveyance, including agreement, contract, and assignment, as well as by way of a licence.

To add to that, a film is a culmination of the endeavours of a slew of people who contribute to its creation. These individuals include the filmmaker of photography, the artistic director, stuntmen, the dancer, spot boys and make-up artists, among others. The vessel's chief is the filmmaker, and the crew are the artists.

The Internet, YouTube, Torrent sites, and other comparable portals have given today's modern viewers unparalleled access to cutting-edge technology and filmmaking techniques from around the world. As a result, today's producers are being compelled to invest vast sums of funds in order to create a film that satisfies the high criteria set by the international community. Marketing expenditures have grown rapidly as a result of the rising number of films made each year, and films are now promoted over a wide range of channels. Large corporate entities such as Reliance Industries, UTV Corporation, Sun Television Networks, and Fox Networks have been involved in the Indian film business, causing the budgets of Indian films to skyrocket and the films to gain a far broader audience in international markets. Even regional films are now being produced with budgets that exceed Rs 100 crores, which is a record.

Even with large expenditures and the participation of corporations, the film industry's techniques of doing business and the legal issues associated with them are considerably distinct from those of various sectors. The film business continues to rely heavily on word of mouth and internal collaboration among the many labour unions that exist within the industry today, and this is true even today. And all of this is taking place with little or no involvement from legitimate judicial systems. Therefore, the rules governing motion pictures are still in their early stages and need to be improved.

A key component of a film's success is the ability of its creators or producers to protect their work against piracy, even as they accept that the screenplays and plots, they create are intangible. When it comes to today's culture, the person who makes a film is now considered to be its legal owner because of their involvement in its creation. In this instance, the producer or the corporation that created the picture has the bulk of the responsibility for preserving the film.

The Indian Copyright Act is the most significant piece of legislation in the world today when it comes to film protection (1957). When making a film, copyright will remain with its author or producer for sixty years. A cinematographer's ownership of a picture

gives him exclusive control over its commercialization for a period of Sixty years, as well as security from third-party exploitation.

The security of a movie nowadays may often separate in two distinct sections, pre-production protection and post-production protection. Pre-production includes preparing for the production of films, including screenwriting, screen playing, recruiting cast and crew, the shooting schedule, hunting sites, rehearsals and so on, where stringent legislation in addition to statutory defences. The movie's foundation is considered to be it's before the phase. Film preservation becomes considerably simpler if these are in place.

### **3.3.PRE AND POST PRODUCTION RIGHTS OF A FILM-MAKER UNDER THE INDIAN COPYRIGHT LAW**

During the pre-production phase, first and foremost would be to conclude solid agreements between filmmakers and the different parties engaged in film creation, laying out the rights and obligations of each party. Some of the most crucial agreements to be implemented are the actors, promotion and distribution agreements, music composers' agreements, products merchandising agreements, founder negotiations, theatrics and other forms of entertainment dissemination pacts for the exchange of interests, alliances concerning international distribution and broadcasting, telecommunications and other dissemination rights agreements. These agreements will allow different parties to understand their roles, duties, rights and restrictions. This will assist to avoid future conflicts and misunderstandings and the film filming may be started after these agreements.

It is claimed that there are several components of a picture that need to be safeguarded even throughout the production. Under the Copyright Act, the following components of a movie can be protected.



**3.3.1. LITERARY WORK:** The Act declares that creative literary works include copyright,<sup>190</sup> and the Act stipulates within this heading 2(o) “literary work” contains computerized databases, graphs, and other assemblages are all types of software.

Regardless of the content, style or literary worth of the work, if it is written, printed, or in any kind of notation or sign it can be called literary. A literature work is designed for knowledge or instruction in the manner of narrative pleasure.<sup>191</sup> In copyright legislation the term ‘literary’ in a similar way to the use of literature in legislative as well as electoral materials, and refers to textual or printable content.<sup>192</sup>

In relation to a film, the plot, script, dialogue, lyrics, computer animation, animations etc. are included.

**3.3.2. CREATIVE WORK:** Artwork, sculpting, or even a sketching are all examples of creative work (with the use of a blueprint, mapping, or plan) a graving, alternatively, photography, what works and what doesn’t of this type has an artistic quality; architecture; and any other craft work.<sup>193</sup> This in a film translates into a backdrop set, suits, structures constructed for producing the film, etc. Legal protection can be granted for such costumes and backdrops if they might be presented in the form of a written work or an artist’s impression.

**3.3.3. PIECE OF ART:** Copyright subsists in and adapts the original theatrical work. Section 2(h) specifies that “drama work” includes any piece of recitation or choreography in stupid exhibition or performance that is written or otherwise fixed, but does not comprise a film from a feature film.<sup>194</sup> These include reciting or choreography. This alludes to any dancing, stunts, etc. in relation to a film. Again, they can be protected by the Act when written on a document.

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<sup>190</sup> Section 13(1)(a), Copyright Act, 1957.

<sup>191</sup> Exxon Corp v. Exxon Insurance Consultants International Ltd (1982 RPC 69) (U.K.).

<sup>192</sup> University of London Press Ltd. v. University Tutorials Press Ltd., (1916) 2 Ch. 601 (U.K.).

<sup>193</sup> Copyright Act 1957.

<sup>194</sup> *Ibid*

**3.3.4. MUSICAL WORK:** Based on what is stated in Section 2, (p) There are no words or movements that are designed to accompany the music in the term “musical art,” which encompasses any graphic display of such work. This relates to music including the visual notation of such compositions. This means songs, backdrop scores, recorded music, theme music, etc. In relation to a film.

According to section 2(d)(ii), the author is “composer” with regard to the musical work. In Section 2 (ffa), “composer” refers to the person making the music in connection to the musical composition, irrespective of whether it is recorded in any type of visual notation. Joint authors/composers may also submit a request for musical work. 2(z) denotes “work of joint authorship” so as creation created via two or more such as its among the authors whose works have been collected by one author contributions do not differentiate from those of its authors.

**3.3.5. SOUND RECORDING:** “Sound recording” is described in Section 2(xx) as recording sounds that can be produced from, irrespective of the medium used for the recording or the way the sound is created.<sup>195</sup>

A copyright in sound recording may be claimed in a sound collection incorporated in any material in which sound is fixed, including phonograph disk drives, open-reel tapes, cartridges, tape, player piano rolls and other materials of the sound, which may be transmitted, either directly or by the machine or device. If a graphical representation of a musical piece is recorded on any sound media, it is sound recording. The author of a music recording work is the producers of the recorded sound and the author of the musical piece is the composer.

‘Producer’ is defined in section 2(uu) as a person taking the initiative and the responsibility for creating a movie or sound recording.<sup>196</sup>

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<sup>195</sup> Copyright Act 1957.

<sup>196</sup> Copyright Act 1957.

For instance, when a tune that is presented as musical notation (which may comprise Western, Swaras or any type of pictorial notation) is developed by a composer, it is recorded under category Music. When nevertheless the same tune is recorded in CDs, usb drives or any alternative recording media in which the sound is fixed and communicable either straightforwardly or with the help of the machine or equipment, the recording is recorded in the sound category.<sup>197</sup>

Each of the following characteristics may be protected individually by the Copyright Statute. The problem arises when they combine into a movie, its creator, or its studio becomes proprietor of Cinematograph picture and the film's copyright. In this scenario, then, the production firm or the creator need not safeguard every aspect. All of the film's components are safeguarded because the film itself is secured.

To put it another way, the composer supervisor or the songwriter could be unable to make their participation until they have an accord in place prior to production. The Act, on the other hand, does not safeguard the labour of actors and actresses in a cinematography.

Once the film has been made, its post - output security comes into play. The film's preservation is of the utmost importance now. Prior to going on to securing protection, it is necessary to examine a few other facets about which our legislative framework offers the cinema industry.

### **3.4 THE PROPRIETOR OF A COPYRIGHT FOR A FILM ENJOYS VARIOUS LEGAL PRIVILEGES AS A FILMMAKER**

#### **3.4.1. LIBERTY OF BROADCASTING:**

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<sup>197</sup> Musical Work, (Feb.11, 2019, 03:45 PM), [http://copyright.gov.in/Documents/Public\\_Notice\\_inviting\\_reviews\\_and\\_comments\\_of\\_stakeholders\\_on\\_draft\\_guidelines/Musical\\_Work.pdf](http://copyright.gov.in/Documents/Public_Notice_inviting_reviews_and_comments_of_stakeholders_on_draft_guidelines/Musical_Work.pdf).

- (1) For the broadcasts that they make available to the public, that each transmitting entity must be given a specific privilege known as a “broadcast reproduction right.”
- (2) Except in cases of termination, the transmission replication privilege is effective for 25 years from the date of its creation, unless it is sooner terminated.
- (3) When a broadcast reproduction right for that broadcast is in effect, anyone who violates this section or any significant portion of it by engaging in either of the following behaviors in correlation with the broadcast or any significant portion of it is in violation of this section or any significant portion thereof., -
  - (a) reproduce what was aired; alternatively,
  - (b) enables any transmission to be made available for the general public for the cost of any applicable fees; or
  - (c) capturing the programme on audio or video is highly recommended; or
  - (d) reproducing a sound or visual record lacking a licence or using a licence for purposes other than those specified in the recording’s original licence; or
  - (e) reconstructions of these kind of audio or visual recordings where the primary recordings were made.<sup>198</sup>

Affirmative Action and the Right to Reproduce The author retains the sole right to reproduce his or her work in any medium, including textual, theatrical, musical, artistic, cinematograph film, and sound recording.<sup>199</sup>

Right of owner of the copyright to prevent others from copying and reproducing is perhaps the utmost vital and typically the earliest.<sup>200</sup> Despite the fact that the Copyright Act recognises this right in all forms of work, the nomenclature employed and the scope of the right vary from one category of work to the next. “Reproduction,” “copying,” and the difference between the two are not defined under this legislation.

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<sup>198</sup> Section 37 The Copyright Act, 1957.

<sup>199</sup> Article 9, 14 and 14bis of the TRIPS also recognize these rights, (Feb.12, 2019, 04:05 PM), [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm).

<sup>200</sup> Kevin Garnett, Jonathan Rayner James & Gillian Davies, Copinger and Skone James on Copyright, 14th edn, (Sweet & Maxwell, 100 Avenue Road, London NW3 3PF), 1999, p.392.

Since reproduction involves a larger variety of actions than copying, the two expressions have been used interchangeably. Replicate is to copy, according to the House of Lords' ruling in *Ladbroke Ltd v. William Hill Ltd*,<sup>201</sup> and does not encompass circumstances when a writer or compiler obtains a substantially identical result by independent labour without copying. Although copying does not always have to be in toto, any considerable reproduction constitutes a form of reproduction. Developing a replica in a distinct manner is also included in the definition of reproduction, even if the copy is not readily apparent.

Literary works can be reproduced and stored in any form, including electronic, under the legislation. Put another way, placing something on a computer or compact disc will be regarded a type of replication, even though the replica is now in a different format from the original file. To be clear, the legislation is ambiguous as to what type of storage will be regarded to be reproduction under the conditions and for how long such storage will be considered to be reproduction. In *MAI Systems Corp v. Peak Computers Inc.*,<sup>202</sup> Copyrighted electronic programme placed on a computer's persistent store, according to the Ninth Circuit, was considered a "copy" for purposes of the United States Copyright Statute. A copy of copyrighted computer software is created when it is loaded into the central processor unit's memory directly from a piece of storage equipment (hard disc, floppy disc, or read-only memory), it has been determined. Cloning into RAM also proved to be durable and reliable enough to allow viewing, duplication, or transmission for such an amount of time longer than the copying operation's duration in RAM. Even making a momentary replica will be a violation of the copyright holder's rights under US law in light of this judgement.

Writers of cinematograph films are also granted rights that are similar to those granted to authors of books. According to Section 14(d) I of the Copyright Act, 1957, they have the sole right to create a copy of the film. In the occurrence of *Star India Private Limited v. Leo Burnett (India) Private Limited*,<sup>203</sup> the Bombay High Court addressed the

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<sup>201</sup> [1964] 1 All ER 465, 469.

<sup>202</sup> 991 F.2d 511, 26 USPQ2d 1458 (US Court of Appeal, Ninth Circuit, 1993).

<sup>203</sup> *Star India Private Limited v. Leo Burnett (India) Private Limited.*, 2003 (2) BomCR 655, 2003 (27) PTC 81 Bom. (India)

question of what acts constitute the act of producing a copy of a cinematograph film and what does not. A cinematograph film named “*Kyun Ki Saas Bhi Kabhi Bahu Thi*” was the subject of this lawsuit, and the plaintiff was the proprietor of the film. Defendants produced a commercial film under the title “*Kyun Ki Bahu Bhi Kabhi Saas Banegi*” in which the same actors played characters that were identical to those in the lawsuit. The issue in the court here is whether or not advertising film created by that of the respondents constituted simply duplication of something like the plaintiff’s production and, as a result, should be excluded from the proceedings. The Court in this case noted that the rights provided under Section 14 (a), (b), and (c), as well as those granted under Section 14 (d) and (e), are of varying degrees of protection. The former is awarded the sole right to procreate any artwork in whatsoever physical matter, while the latter is granted the exclusive right to ‘make a copy’ of the subject matter. It is this disparity in the language of the provisions that has resulted in the law being interpreted differently on different occasions. As a result, even the production of the identical cinematograph film by a third party will not represent an infringement of the copyright of the original film. When someone says they are making a duplicate of a film, they are referring to a tangible copy of the film itself, not another film that is just similar to the original. However, even though the second picture was shot separately from the first, and even though it seems to be a copy of the very first movie, it is not a copy and does not infringe. According to the Trial, it consulted the following sources in *Norowzian v. Arks Limited and ors.*<sup>204</sup> when this being established that only a subsequent movie must constitute almost exact reproduction of a preceding picture in order potentially breach upon that authorship of the first. Additionally, trust was placed on *CBS Australian Limited and others v. Telemak Teleproducts (Aust.) Pvt Ltd.*,<sup>205</sup> in which it has been decided all reshoots of original picture could not effectively deemed duplicates of the film for the purposes determining infringement.

According to the information presented above, the right to reproduce appears to be one of the most basic rights that a copyright holder can exercise. To reproduce is to make a copy or a replica of anything. As the name suggests, it’s the act or process of

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<sup>204</sup> 1996 FSR 394.

<sup>205</sup> 1987 (9) IPR 440.

reinvigorating a previously forgotten thought or memory. According to this definition, any electronic material, such as floppy discs, CD-ROMS or computers used to store an original work constitutes a copy. Specifically, provision was added to safeguard the rights of digital content producers and users alike. Cinematographic images and sound recordings are included in the scope of the right to reproduce because of the defining clause. In contrast, there is no official definition of the term “storage.” Additional rights, such as the right to reproduce, might also be included in the right. As a result, Internet users and service providers may encounter challenges, and the traditional equilibrium of copyright law may be pushed off course.

A work or an item with related rights must be stored on a computer or other digital device in order for it to be sent over the Internet, and here is where reproduction rights come into play again. Because of this, several copies of each piece of work can be found in the storage of computers linked to a network at various points along the network. Digital copies have a different significance in the digital world than they do in the printed one. In other cases, a cluster computer may only get a small portion of the data, while the rest is sent to a different node computer and stored in its RAM. It’s not clear to me if these shards of art may be legally classified as a “original” or “copy.” A “copy” of the work cannot be considered an intermediate snapshot of data stored in RAM because there is no point in time at which the entire work is accessible. Because of this, it is crucial to look at the ways in which the reproduction rights of authors are violated when copies of works are made on many computers linked to a network or by individuals who have access to such works.

This case pits a well-known Indian sports broadcaster against Roy MA,<sup>206</sup> the only media rights licensee for a wide range of sporting events and intellectual property portfolios. Additionally, they operate a sports television channel network that was granted to them by the Ministry of Information and Broadcasting after they secured the necessary downlink rights from the government. It was alleged that the defendants’ websites included infringing material by the complainants in their complaint. It is also

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<sup>206</sup> Star India Pvt. Ltd. v. Roy MA 2014 Law Suit (Del) 4442 (India).

asserted that a Uniform Resource Locator (URL) on the plaintiffs' website allows viewers to watch cricket matches. According to the plaintiffs' claims, this URL is <http://starsports.com/cricket/index>. In order to protect and defend their exclusive rights, the plaintiffs hired a third-party firm to monitor websites and gather evidence of infringement. A list of 150 (one hundred fifty) "Rogue Websites" equipped with a primary business model that appears to be providing illegal content for viewing and downloading over the course of three (three) recent events for which the plaintiffs had exclusive rights has been considered, and that the evidence gathered against such websites has been considered. Ex parte injunctions were granted if the court found that the plaintiffs had shown a strong prima facie cause for such an order. The plaintiffs are also in their favour, while the defendants are at a disadvantage because of the balance of convenience. The plaintiffs would suffer irreparable injury if the interim orders were not granted. As of this writing, ad interim orders have been granted barring the defendant from providing direct exposure to and/or communication with the general public (including its subscribers and users) over the internet in any form whatsoever, in any medium.

According to Section 37 of the Copyright Act, every broadcasting institution is entitled to transmit reproduction rights in relation of the broadcasts that it makes available. According to the plaintiffs in *Star India Pvt. Ltd. v. Haneeth Ujwal*,<sup>207</sup> the defendants are India's largest sports broadcaster and the only distributor of broadcasting rights to a wide range of sporting events and properties. and properties. The Delhi High Court ruled that any web host, streaming, making available for viewing, and/or communication to the public of the "2014 India-England Series Matches," as broadcast on the plaintiffs' Channels by any means on any platform, including the internet and smartphone, by any of the titled or unnamed defendant webpages would be illegal and would amount to a violation of the broadcast reproduction rights of telecommunications company tel. As a result, practically all digital works are now protected by both reproduction and transmission to the public rights, which are now applicable to virtually all works. However, storage has not been declared by the Act, and it will be a question

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<sup>207</sup> 2014 Law Suit (Del) 2711 (India)



of interpretation to decide whether interim and permanent reproduction would be included in this right under the Act. If transitory reproduction is incorporated as part of the reproduction right, it will have a negative impact on the interests of consumers of digital resources and service providers that offer these items. The Section 52 of the Act dealing with the permissible use of works lacking the consent of their owner does not include any adjustments to address this issue as a result. When you browse through digital resources for study or personal use, you may be considered to be reproducing them. The present fair dealing protections in Section 52 are insufficient to protect you from this, especially when the contents are in multimedia format. Section 52(1) (a) applies solely to works of fiction or theatre as well as music or visual arts. Cinematograph film and sound recordings are not permitted to be sold or used for personal purposes under any circumstances.

#### **3.4.2. RIGHT TO DISTRIBUTE COPIES OF WORK AND COMMERCIAL RENTAL:**

The entitlement to distribution includes the sale, leasing, renting, loan, and other forms of lending of the job to the general public. Or, to put it another way, having versions of the work in your hands through any of the means of distribution constitutes “distribution.” The initial owner of the work retains the exclusive right to distribute copies of the work to other individuals or entities. The Berne Convention on Literary and Artistic Works, which was signed in 1886, does not specifically include the right to distribute copies of a cinematographic work in its whole. A separate type of distribution right is granted to the creator of the work within the Copyright Act 1957, which grants him the right to sell or to rent out the work for a fee to others for a period of time. If you are in compliance with Section 14(d)(ii), the Copyright (Amendment) Act of 2012, which was repealed in 2013, you have the right to sell, supply on corporate rent, offering to sell, or rent whatever version of the film. It is also true that, like with cinematograph films, the right to make and distribute copies of sound recordings is protected under Section 14(e)(ii) of the Copyright (Amendment) Act, 2012. For works of art, such as those in the performing arts and the humanities, the freedom to make new copies that differ from the ones currently in circulation exists (Section 14 (a) (ii)

and (c) (iii) of the Copyright Act of 1957, respectively). For a computer programme, the distribution right can be inferred from If a copyright holder has the right to sell or rent any version of the computer programme, as revised by the Copyright (Amendment) Act, 1999, they can also sell or rent a copy.

Yet, if the computer programme itself is not the primary goal of rental, the notion of commercial renting does not apply in such situation. The question that has to be resolved at this point is whether the right to disseminate in respect to a copy is exhausted after the first sale of the copy in question. There is a reference to the doctrine of exhaustion in Article 6 of the TRIPS Agreement, whereby the exhaustion of a transmission right has been confined to the regulations of Articles 3 and 4 of the TRIPS Agreement, which allude to the fundamentals of National Treatment (NT clause) and Most Favoured Nation Treatment (MFNT clause), respectively (MFN clause). The so-called “first sale doctrine” or the “doctrine of exhaustion” is officially acknowledged by the United States government (17 U.S.C. S.109) and other countries (a). According to the Doctrine, if someone purchases a genuine copy of a work, they are free to do anything they want with it, which include selling it to others, lending it out, or whatever else they desire. They merely are not able to create any more copies of it. In a fairly well-known example of *Bobbs Merrill Co. v. Straus*,<sup>208</sup> the Supreme Court of the United Nations held that it was determined that once the holder of the copyrighted work, Bobbs-Merril, has sold his book called “The Castaway” without any restriction on the sale of that article by the buyer of that article, he has relinquished all rights to control the sale of that article. This was the ruling by the Supreme Court of United Nations. By having sold his copies at retail, the owner consumes his right to vend and is unable to prevent the merchant, Straus, from retailing the copies at a second-hand price, which is less than the price stated on each copy, later on through the filing of an infringement complaint against him. The court determined that the copyright law, in its most basic form, granted the right to the owner of the work to prevent others from creating their own versions of the work. Unfortunately, it did not provide them the authority to regulate what happened to the books once they were sold.

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<sup>208</sup> 210 U.S. 339 (1908) (USA)

However, in India, the owners of computer software, which are the subjects of copyright, as well as the owners of sound recordings, have been granted economic leasehold rights, which do not fall under the purview of the first sale concept and so constitute obvious anomalies to this rule. While this may be true in the case of computer programmes and other technologically advanced works, the phrase “not being copies currently in circulation” suggests that the author’s right to distribute copies of his work stretches solely to the number of fresh copies that must be sold for the first time. Thus, the ideology of exhaustion is relevant in respect of certain works that are not the subject of infomercial rental; however, such works are subject to other provisions, such as Section 53A of the Copyright (Amendment) Act, 1994, which allows a share in the resale of the work if the value of the re - sale is rupees ten thousand or more, despite the fact that this is not explicitly stated in Indian copyright law. Some nations, in contrast to the United States’ first-sale doctrine, offer artists or their heirs the right to pursue (*droit de suite*, a French principle), which implies that they are entitled to a royalty on reselling of their works of art, rather than the first-sale theory of the United States. Resale share to the author, if the author is the first holder of the protections under Section 17, or to his legitimate heirs, in an original copy of an artwork, sculpture, drawing, or authentic monograph when the cost of a piece of literature, theatre, or music exceeds 10,000 rupees, is allowed in India. While he no longer has a legal claim to the original copy or manuscript, he does have an ownership interest in it, which he may exercise in line with the rules of Section 53A. Although it will continue until the end of the copyright’s term, the resale sharing right will be terminated at that point.

**3.4.3. RIGHTS TO SYNCHRONIZING:** Audio and visual images may be synchronised in accordance with this legal right. The use of music and audio recordings in television shows, movies, and other kinds of motion image and media entertainment must take into account factors like synchronisation rights.

**3.4.4. RIGHTS TO ADAPTED WORKS:** The right to make changes to an original work of art is known as the “derivative works” right. Like the right to write fresh lyrics or blend in extra instruments, or include a song into a musical medley.

**3.4.5. THE FREEDOM TO ADAPT AND TRANSLATE:** If the film is remade or translated into another language, the rights to re-release it are reserved.

**3.4.6. EXHIBITOR'S RIGHTS:** The right to publicly show a music is referred to as this right. It's a less common right, although it may arise if someone wanted to present a song at a fashion show, for example (e.g., put the lyrics for a song in their store window). Efforts by the government have been ongoing in recent years to bring the film industry's legal structure into line. The Ministry of Information and Broadcasting (MIB) is the Indian government agency that sets the laws and regulations for the production and distribution of films. The Central Board of Film Certification (CBFC) is the most significant branch of the film business, and it is governed by the Cinematograph Act of 1952. The CBFC must certify any finished film before it can be shown publicly.

So far, the topic of producer rights has been broached.

In addition to the production, the Act offers protection to the film's artists in the post-production stage. For example, the "Performer's Right" conferred to the film's music composers and vocalists is referred to as such. It is the composer's right to perform in public, and the film's producer has no right to oppose to that right.

Actors, singers, dancers, acrobats, conjurors, snake charmers, lecturers, and anybody else who performs are included in the definition of "performer" in Section 2 (qq), which was added to the Act in 1994. Section 2 (q) defines "performance" as "any visual or auditory presentation delivered live through one or more performers" in regard to the performer's right.<sup>209</sup>

The definition of "performer" was amended in 2012 with a proviso stating, "Except for the purposes of clause (b) of section 38B, no person shall be treated as a performer in a cinematograph film whose performance is incidental or instrumental in nature and who

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<sup>209</sup> The Copyright Act 1957.

in the normal course of practise of the industry is not acknowledged anywhere, even in the credits of the film.” These performers are commonly called as “extras” in the film.<sup>210</sup>

To ensure the safety of individuals who work on a film, there are several organisations that have been formed. An example of a group that protects the rights of Indian composers and music publishers who have their compositions played publicly is the Indian Performers Rights Society (IPRS).

“The Phonographic Performance Ltd. (‘PPL’)” is another organisation. The PPL, which oversees the telecasting and transmission of sound recordings, is where music labels register themselves. In addition, the Film Writers Association is a national and state-level labour union that works to safeguard the rights of those who create screenplays for motion pictures.

### **3.5. MORAL RIGHTS OF THE PERFORMER**

The WPPT, 1996, was amended in 2012 to provide moral rights for performers who do not adhere to the WPPT. The amendment specifies that the presenter of a performance, even if he or she has assigned all or part of his or her rights, has the right to retain ownership of the performance, -

- Claim to be recognised as that of the performer of a performance, unless the usage of the performance necessitates deletion of the claim; and
- In order to protect his reputation, he has the right to demand damages for any distortion, mutilation, or other change of his performance.

Two moral rights of the performers are similar to the right of authorship and right of integrity of the copyright owners.

In light of the newly appended clause (b) to section 38B, the courts have yet to rule on whether or not parody and imitation done by artists after 2012 would be considered legal.

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<sup>210</sup> *Ibid.*

If a performance is edited, or the recording is compressed, or any other alteration is needed for technical reasons, it will not be considered to harm the reputation of the artist. This is according to the law. In order to strike a proportion amongst the interests of the show's creators and its performers, this explanation has been included.

Unlike the legal agents of copyright owners, the representatives of performers are unable to enforce their moral rights. Why the legislature passed a law that is so discriminatory is unclear.<sup>211</sup>

### 3.6 COPYRIGHT MATERIAL CONTENT LICENSING

Any existing work may be licenced by the copyright holder. One can issue a licence to his or her works even though they do not hold the copyrights to them yet, provided that the licence only applies when the work in question comes into being. Also, the Indian Copyright Act enables the use of compulsory licencing in works that are not available to the general public. According to Section 31 of the Indian Copyright Act, if a complaint is filed to the Copyright Board at any time throughout the term of copyrights in any Indian work that has been published or performed publicly.<sup>212</sup>

(a) has forbade the work to be redistributed or reprinted, either has denied to enable it to be performed publicly, and the work has been kept from the public as a result of this refusal, or

(b) such work or the work captured in the sound recording has not been made available to the public through broadcast or on acceptable conditions, as determined by the complaint;

If the Copyright Board determines that the grounds for the rejection are not reasonable, and after providing the copyright holder in the work with a reasonable opportunity to be heard and conducting such an inquiry as it may deems appropriate, it may instruct the Official of Copyrights to confer the alleged victim a licence to publicise the task, undertake the work in public, or convey the work to the general populace by broadcast, as appropriate, pertain to payment to the copyright owner in the work, as appropriate.

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<sup>211</sup> Alka Chwala, *Law of Copyright*, 1st edn., Lexis Nexis 2013.

<sup>212</sup> Ramanathaaiyar, *Lal's Commentary on Copyright Act of 1957 with Copyright Rules and Neighboring Rights*, 4th edn., Delhi Law House 2013, p.298.

It is mandatory for unpublished works in India to be licenced under Section 31-A of the Copyright Act of India This section authorises the licence to replicate and disseminate works for a defined purpose, whereas Section 32-B outlines the circumstances under which the licence might be terminated.

### **3.6.1. PROVISION OF A MANDATORY LICENSING**

Cinemaster is being sued by the Pure Video Theatres Association (PVTA).<sup>213</sup> According to the Maharashtra Cinema Regulation Act, the petitioner is a Pune-based organisation of video parlours. The members of this organisation are in the profession of displaying to the public, for a fee, motion pictures shot on videotape. They had permission from the copyright owners to show the films, and until the copyright owners granted permission, the members were not authorised to show the films. Displaying on TV and other mediums will need a yearly licencing charge of between Rs.20,000 and Rs.30,000,000. Additionally, the Court noted that 75 percent of the video parlours functioning in the region of Maharashtra were allowed to keep the rights to more than 1,200 films. Because of the prohibitive licencing cost, plaintiffs said that they couldn't show digital versions of the movie since users couldn't afford to do so.

S.31 of the Act requires proof in order to claim any rights;

- (i) It is possible because the proprietor expressly stopped allowing the work to be performed in public, and as a result, the job is unavailable to the general public;
- (ii) If the reasons for such a rejection aren't reasonable, the Board must determine this;
- (iii) After an investigation, the Board may give a forced licence to the complaint if it finds that the complainant's conditions warrant a licence on receipt of such remuneration as the Board considers appropriate.

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<sup>213</sup> Pure Video Theatres Association v. Cinemaster, 2001 (24) PTC 242 (CB) (Delhi) (India).

Compulsory licences to disseminate the work are the goal of this section. To put it another way, the licence grants the right to distribute and perform in public any work that would otherwise be unavailable to the general public. The Court found that the complaint was not filed to offer a service to the public but to prevent the owner from making more money, based on an evaluation of the evidence. As a result of this decision, the owner of the copyrighted works has been allowed to benefit from them in a legal manner. This clause is applied if the accused sets aside the films and does never allow them to display them. The complaint might ask the Board for help in using its authority to set a fair licencing cost for them to be granted a licence. As a result, the petitioners in this case were already licenced to show all of the films. Section 31 of the Act does not apply since the movies were not withheld from the public, and consequently the plaintiffs cannot seek a remedy under this section.

### **3.6.2. ASSIGNMENT OF FILM COPYRIGHT**

Copyright for the musical composition included in a film's soundtrack that belongs to the film's lyricist and composer for the first time, a writer of lyric or music for a cinematograph film for valued consideration becomes the first owner of a copyright in the composition when it is produced for the film's use. Neither the picture nor its soundtrack can be assigned any copyright to the composer, hence he is not entitled to any. In certain cases, the assignment of any future copyrights is of no consequence. Only if the composer and the owner of the cinematographic film expressly agree to a copyright agreement may the composer claim a copyright. A sound track is considered to be part of a cinematographic film. 'Sound', on the other hand, refers to everything that can be heard by the ear. As a result, the music on the soundtrack is an integral aspect of the film's cinematography. Only when a composer can demonstrate that he already has or will acquire a future right may he assign his copyright. Without an agreement to the contrary, he has no existing or subsequent rights in relation to a cinematograph film he composes for the first time for valued consideration [Section 2(f)]. Additionally, a film's "sound track" refers to the portion of a movie that contains the sound recording. As a result, unless he enters into an agreement to the contrary, the



composer of music for valued remuneration as stated above cannot have any present or future rights that he may assign or is capable of assigning. Neither the assignor nor the creator of music has a higher claim to valued consideration than an assignee. The first owner of the copyright in music for a cinematograph film is the person whose initiative it was to produce the picture, therefore whomever writes the music for a film for the first time does not obtain any copyright in the music unless a contract provision talks about the first owner of the copyright. It is possible to enter into an assignment contract under Section 18 of the Act, but only if there is an existing or prospective right that may be assigned.

Piracy and plagiarism are two of the major challenges facing the film business today, even with strict contracts, relevant laws, and many organisations to safeguard producers and artists. This is a global problem, not simply a problem in India. For example, it's fairly uncommon to steal a script and make "essential" alterations to avoid giving credit to the original author; another example is when a foreign film's plot is plagiarised and repackaged as an original Indian production. Another major challenge in the film industry nowadays is piracy. Under the Copyright Act, any type of piracy or plagiarism of a cinematographic film is deemed an infringement. Piracy can be prosecuted in civil court or by a Judicial Magistrate of First Class in India, where a civil action or other civil process can be filed. Both are competent to rule on the criminal charge of piracy. Piracy is now punishable by harsher penalties and punishments.

Movie-makers' rights holders have also used a variety of strategies in order to safeguard their work. Rather of publishing in one nation and selling the DVD licenses to other countries, producers are now aiming for a worldwide distribution. There is a notice on the original DVD about the dangers of piracy. They ask that people not support piracy, as well as the DVDs are being built such that they can be duplicated and redistributed in public. In addition, movie theatres play their part by prohibiting the use of high-resolution cameras and video recorders within the theatres. Despite our best efforts, however, piracy and plagiarism continue to plague our nation.

Copyleft is an intriguing new notion in the fight against piracy. Because of the provisions of copyright law, the creator of a piece of work has the right to prevent others from using, altering, or distributing it. Copyleft, on the other hand, gives up part, but not all, of the owner's rights under Copyright legislation. It's therefore possible for a copyleft recipient to use the work of the copyright holder in any way he or she chooses, provided that it is properly attributed and that the Copyleft holder does not engage in any other behaviours that are prohibited by the Copyleft system.

### **3.7. CHALLENGES FACED BY INDIAN FILM INDUSTRIES**

There are a number of difficulties that the Movie industry must overcome. The following is a list of some of the most pressing issues it confronts:

**3.7.1. MINIMAL INTEGRATION OF REQUIRED STRUCTURE:** In contrast to the oversaturated Major cities and metros, the Grade 2 and Grade 3 locations lack the necessary structure, such as shopping centres and reduced energy sources. There are significant obstacles towards this industry's expansion because of a dearth of display architecture. Roughly 150-200 additional monitors are added each year, which is not enough to keep up with the growing. Moreover, with only 6 screens per million people, India lags far behind China and the United States in terms of screen penetration. Since single-screen cinemas have traditionally had poor attendance and minimal ticket sales, they have been unprofitable. The number of solitary theaters has plummeted from 10,000 in 2009 below 6,000 as a result, particularly in remote and outlying communities. Single-screen movie houses continue to be phased out at a slower rate in Grade 2 and Grade 3 cities, where multiplexes are springing up. The expansion of the movie industry will indeed be stifled if more screens are not added to smaller cities and townships more quickly. To properly realise the possibilities of Bollywood movies, the country requires approximately 20,000 panels.<sup>214</sup>

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<sup>214</sup> Sudipto Roy, *Growth of the Indian film industry slowing down FICCI report elucidates the challenges and prospects*, Media India Group, (Mar.19, 2019, 01:05 AM), <https://mediaindia.eu/cinema/growth-of-the-indian-film-industry-slowing-down/>.

It's been a rough year for the Indian film business, even though in 2020 movie theater halls were closed for roughly 8 months as Covid-19 diagnoses swelled across the country. Video streaming services emerged as a "saviour" for films last year as theatres closed, according to filmmakers, industry experts and trade analysts. Directly on streaming sites in 2020, and over 50 films were released, resulting in a decrease in theatre earnings. Digital and streaming platforms' rights sales accounted for 49% of the overall revenues earned by filmed entertainment in 2020, according to the current Ficci-EY entertainment media study. Many Streaming services started to pay huge money to the movie makers last year in order to have their films straight on their online platforms in attempt to enhance subscription income. An ex-executive of an OTT service remarked that the success of the films didn't matter to them because they were just a customer retention tool for the platforms. Unfortunately, many of the films that streaming services have purchased have failed to attract new viewers. Big-budget movies like "Sadak 2," "Coolie No. 1," "Laxmii," and others with a star-studded cast got terrible reviews. As a result, industry experts believe streaming companies have become more cautious about acquiring new films. State and local governments have also imposed limitations and shut downs on the firm, which has caused additional problems for production schedules. "You will once again see enormous damage to the cinema sector," trade expert and independent movie distributor Shaaminder Malik predicted when Maharashtra shut down cinema halls, saying that no Hindi films would be released. As a result of this and the fact that OTTs are only interested in buying large pictures, the film business is facing a double whammy this time around, he continued. "Theatrical revenues for the film business are expected to plummet more in any circumstance," he warned. One producer, whose film had been finished for over a year, stated this. When things were going well last year, the sector remained hopeful...." But we were confident that audiences would return in full force once the situation had stabilised. With the present spike in cases, the outlook is not favourable. The state of affairs is dire. Almost half of my film's budget has been spent on money thus far. Otherwise, I'll have to lose money on my movie if this situation persists. As a result of this, experts believe that online streaming services will be willing to go to great lengths to get their hands on upcoming movies only after they have been released in theatres,

unless there are a handful of significant pictures that have not been sold to OTT platforms. Approximately Rs 40 crore and Rs 80 crore were paid by streaming companies directly for the release of mid and large-budget films.” After four weeks, this cost drops to about Rs 20-25 crore whenever a movie is released on streaming sites. Streaming services are likely to purchase new films after theatrical release because of the poor performance of films with bankable stars. According to a senior producer, this is a less hazardous proposition for streaming companies. Picture critics also claim that streaming companies are protected from just about any unexpected complications that may arise from obtaining a film after its theatrical premiere because the Censor Board has already approved it. Another development that could have an even greater impact on box office earnings is the contracting of the Coronavirus by top stars and the ensuing chaos in filming schedules. The Coronavirus has infected a number of Bollywood celebs recently, including Ranbir Kapoor, Alia Bhatt, Vicky Kaushal, and Aamir Khan. Industry insiders predict that this could cause significant delays in both ongoing and new projects, substantially reducing income. According to an anonymous industry insider, “the sector is in a weird scenario where things are influenced not only from the producing front but also from the distribution level.” There is a good chance that in 2021, the industry’s losses will exceed those of 2020.” According to the Ficci-EY research, revenues from cinema entertainment will be 62% lower in 2020 than in 2019, amounting to Rs 7,220 crore. In 2021, industry observers believe that this decline would worsen by 10-20 percent.<sup>215</sup>

### **3.7.2. THERE HAS BEEN A GRADUAL INCREASE IN ENTRANCE PRICES:**

It is estimated that the cost of a single movie entry in India has increased by 4% during 2011 (from INR 150–160 to INR 175–200). Movie theater displays, typically are valued with over 100 % guaranteed higher than solo displays, and the expanding quantity of 3-dimensional films have fueled such development, that again is expected to persist for the foreseeable future. As instance, Tier 1 towns have an average ticket price of about

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<sup>215</sup> Rajesh Naidu &Gaurav Laghete, *Indian film industry staring at bigger loss in 2021*, *The Economic Times* (E-Paper), 13 January,2022, (Mar.19, 2021, 01:05 AM), <https://economictimes.indiatimes.com/industry/media/entertainment/media/indian-film-industry-staring-at-bigger-loss-in-2021/articleshow/82154876.cms>.

INR 200, whereas Tier 2 as well as Tier 3 towns have an average ticket price of about INR 160 & 100, respectively. There are \$8.4 (about INR 570) and \$5.5 (roughly INR 385) in average ticket prices in the United States and China, respectively. With an estimated attendance percentage of 35%, the usual entry value will now require to rise approaching worldwide prices in attempt to enhance the effectiveness of Indian films.<sup>216</sup>

**3.7.3 UNWIELDY REVENUE CODE:** The multimedia business is subject to a number of taxes, both federal and national. Regulators were indeed progressively contesting such levies. Owing because the convergence of many secondary duties including sweeping alterations in income tax legislation & legal judgements, taxing with in cinematic universe has become increasingly complicated. Furthermore addition, the duty on amusement differs from jurisdiction to jurisdiction. Through an effort to boost the local box office, a number of governments have lately exempted local movies against paying amusement taxes.

**3.7.4. INCREASED EXPENSE WITH LIMITED FINANCING OPTIONS:** Owing to excessive taxation charges & complicated levies, India's movie industry has difficulty accessing funds throughout all points along its supply channel. Most movies being funded solely by production companies, a situation that has led to a chronic lack of funds towards filmmaking. The largest expense inflationary reason is indeed the hiring of expertise, who may demand up to 40% of a movie's expenditure, the biggest in the nation, where even the value of skill usually never surpass 15-20% of the expenditure for a movie. In order to keep expenses down, it is necessary to hire new talent and provide a percentage of revenues instead of an advance price on their services (move towards social and digital platforms of marketing). Films have received financial help from banks since 2000, but strict lending standards have made it difficult for them to raise funds. Those who lack access to bank financing, such as smaller studios and independent filmmakers, are disproportionately harmed. A number of film funds have been established, but their success has been patchy. Examples include Third Eye,

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<sup>216</sup> *Supra* Note 215.

Cinema Capital Venture Fund, Vistaar Religare Film Fund, and Dar Capital. Investments are being invested in modest production, which have a higher risk of failure, because of this. Film funds that invest in Indian material may become more prominent in the future as the industry continues to focus on content, scalability, and corporatization. There are a number of singular displays in India that are in need of repair. Renovations are not viable, however, because of the low revenues and occupancy. As a result, several theatres in the Bengali cinema industry have been shut down because of a lack of viable and sustainable exhibition infrastructure. Single-screen theatres need to be converted to multiplexes in order to expand India's film industry and improve its profitability. The single-screen operator's lack of cash flow and availability to finances has slowed this process of conversion.<sup>217</sup>

**3.7.5 PIRACY:** Since the invention of home media, piracy has taken a toll on profits. Instead of bootleg VHS cassettes with fuzzy images and static-filled sound, we now have instant access to high-definition digital prints of newly released movies within two days of their initial release date, if not even sooner. However, even if several independent filmmakers have disproved this claim, it is still an issue against which all of the film industry come together to unite. Piracy is still a major problem in the film business, costing the industry an estimated INR 190 billion a year. The piracy of Indian films is thriving on more than 150 sites, where rapid copies are manufactured and distributed all over the world. Eleven Canadians, nine Panamanians, and six Pakistanis make up the other half of the 150 participants. In terms of revenue, the top 100 websites generate INR 35 billion (\$510 million). Regional films worsen the situation. Films like Baahubali, with one of the greatest production values in Hollywood, were immediately pirated upon their initial release. The movie was illegally downloaded by 1.6 million people and streamed illegally by 1 million people across 1,500 links. Online piracy cost the Telugu cinema business INR 3.6 billion in 2015, with 18 million downloads or web streaming being the primary cause.<sup>218</sup>

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<sup>217</sup> *Supra* Note 215.

<sup>218</sup> Swapnil Narender, 8 *Problems of Indian Cinema*, Filmmakers Fan, February 16, 2016, (Mar.25, 2019, 03:05 AM), <http://filmmakersfans.com/challenges-and-problems-indian-cinema/>.

**3.7.6. TIGHT RULES OF CENSORING:** Films must be censored by the Central Board of Film Certification (CBFC) before they may be shown to the public in India, as mandated by the Cinematograph Act, 1952. As part of the CBFC's review procedure, films are reviewed before they are shown to the general public. The CBFC then decides whether or not the film should be shown to the public in its current form. As a result, the Indian film industry has been hindered by the lengthy monetization process, as well as the potential of a decrease in quality content. Moviegoers' willingness to watch movies about important topics has led filmmakers to try new approaches in order to create more thought-provoking and forward-looking works of art. The industry is hampered, however, by the ongoing struggle with CBFC to obtain certification without changes. According to the CBFC, 89 modifications had to be made to a film about the growing problem of drug abuse in Punjab, such as the film *Udta Punjab*. In addition, many Hollywood films that are released in India are edited before they are shown to the public. This causes public screenings to be delayed, and discourages moviegoers from going to the theatre, making it more difficult for Hollywood to release films in India. Hollywood films should be subject to minimal censorship and delays as a significant growth category in the Indian cinema market, in order to harness the expanding audience and potential of this segment.<sup>219</sup>

**3.7.7. RELEASE OF FILMS BY A COMPETITOR MEDIA COMPANY:** One publication in India contains quotes from people in the film industry saying that competing publishing houses are enabling much of the piracy in question, despite the government recently increasing the criminal penalties for capturing or distributing films and audio. Piracy is mainly an inside job, as per a Tamil cinema DVD trader who volunteered upon the terms of anonymity. In a competitive effort, movie firms are leaking each other's films, according to a source. Movies are secretly released online or circulated as DVDs by people from competing production firms or individuals in the creative department in order to make a splash at the box office.

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<sup>219</sup> Manojit Saha, '*Indian film industry faces growth hurdles*', *The Hindu*, October 07, 2017, (Mar.29, 2019, 03:25 AM), <https://www.thehindu.com/business/indian-film-industry-faces-growth-hurdles/article19820369.ece>.

**3.7.8. LOCAL CENSOR BOARD AND DISTRIBUTION HOUSES ARE PIRACY BANDWAGONS:** Insiders at the censorship board and distribution businesses are selling the copies for as much as 5 lakhs, according to the Times of India. Eventually, these copies are posted to private portals that require unique passcodes to access. Of course, none of this justifies illegally downloading a movie. However, the industry's allegations that piracy harms the larger film business are thrown into question by this study. When industry insiders are posting videos of recently released movies, they are self-inflicting their own wounds. If the industry's greater assertions are correct, it really would make very little sense to do so. Amazingly, this is said to extend much deeper down the food chain. Theatre owners hire these insiders to obtain the recordings, not moviegoers. Movie theatres are said to have a problem when it comes to capturing video and audio.

**3.7.9. CRYPTOCURRENCY SURGE WITH DARKNET EVOLUTION:** Increasingly crime syndicates are turning to the "darknet," an area of the Internet which is not accessible to the general public. On such a marketplace, nefarious data can be sold, such as that of the unlawful programming being used hack broadcasting gadgets or the consumer information obtained via viruses. Crime networks are progressively incorporating bitcoin to guarantee that whatever money they receive, such as via subscribers to virtual lockers that are undetectable, will arrive on time.

**3.7.10. ONLINE PIRACY IS INDEED A NEWER FELONY:** Since hardware and software have become more advanced, and fresh technologies have become more affordable, breakthroughs in technology have been made possible. A few years ago, CDs and cassettes were the primary means of distributing creative works, but the expense of creating copies was too expensive. Duplicating innovation like instance CD duplicators and CD ripper software helped speed up the process, making it more effective. These cases can take many years to explore and bring to court because the technology has advanced so much in only the past 3-4 years. That means that online piracy is just the top of the iceberg.



**3.7.11. BOOST IN SOCIAL MEDIA COMMERCE:** The illegal streaming device trade is migrating to the internet, thanks to the efforts of organised crime. Traditional settings like pubs, markets, and car boot sales are becoming less and less popular places to sell these things. Instead, they're using e-commerce and social media to promote their products. As a result, they are able to draw in a far larger audience while attempting to maintain their anonymity and evade capture.<sup>220</sup>

**3.7.12. STREAM RIPPING OF MOVIES:** Piracy is a huge concern for the Indian film industry, and it is vital that actions are taken to reduce this loss of revenue. India's music customers may be willing to spend for material if they have been properly rewarded, but more must be done to make this happen. Digital piracy poses a serious danger to the success of the music industry. Effective anti-piracy rules and tactics are urgently required, with an emphasis towards turning pirated consumers to lawful media buyers. It is more common for Indians to download movies via piracy than any other country, according to the report. The most common method of internet piracy in the United States is stream-ripping. There is a great potential for India's music industry to become one of the world's largest music markets. However, stream ripping, among the most frequent ways of music piracy in India, is a major problem. According to the results of the survey, 72% of participants employ stream ripping to get free movie downloads. Stream ripping is most commonly done using anonymous websites from YouTube.<sup>221</sup>

**3.7.13. UNWILLINGNESS TO PAY FOR GENUINE MUSIC:** Consumers' evident reluctance to spend for media is the most pressing issue. India-based streaming services have attracted more than 100 million users, yet only 1% are paying customers. The younger generation, accustomed to free music, is the source of the problem. A huge market exists for pirated MP3s sold on Usb drives that can be sideloaded onto mobile

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<sup>220</sup> Paul Brindley, India: The sleeping giant of digital music is ready to wake up, Musically, December 22, 2017, (Apr.09, 2019, 01:15 AM), <https://musically.com/2017/12/22/india-sleeping-giant-digital-music/>.

<sup>221</sup> Shweta Nair, *Piracy & value gap- key challenges faced by the Indian music industry*, Music Plus, (Apr.09, 2019, 03:25 AM), <https://www.musicplus.in/piracy-challenges-faced-indian-music-industry/>.

devices. An estimated \$1billion is spent each year on the sale of unlicensed music to end-users.<sup>222</sup>

**3.7.14. P2P (PEER-TO-PEER) DATA TRANSMISSION:** Allowing digital media content to be exchanged over the internet, P2P systems have become popular with music pirates due to the ease with which digital content may be shared. It's difficult to curtail online music piracy since a new service pops up as soon as the old one is taken down. Using the internet, customers are able to share music at a low cost, resulting in the worldwide distribution of millions of illicit copies of music. It is also very simple to acquire access to these networks. All that is required is the free or low-cost installation of a file-sharing programme on a computer. Any MP3 file stored on another user's computer can be accessed remotely using peer-to-peer networks after the software has been installed. All other network users have access to the data on their machine.

### **3.8. PROVISIONS RELATING TO PIRACY UNDER THE CURRENT COPYRIGHT REGIME**

Watermarks printed with technology allow manufacturers to monitor and restrict where and how each print is used. Even still, the issue of internet piracy in India has yet to be resolved. Online piracy has grown exponentially as the costs of translating perceptions to digital copies have decreased thanks to technological advancements.

India's Copyright Act 1957 safeguards all kinds of creative works, including film and television producers and directors' work. To safeguard filmmakers and distributors from internet piracy, India's government has enacted stringent regulations. One of the measures governments have taken to tackle the rising menace of internet piracy in India is the revision to the copyright legislation.<sup>223</sup>

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<sup>222</sup> *Ibid.*

<sup>223</sup> R. Dhiraj, *The Law of Copyright in India*, (Feb.17, 2019, 01:25 PM), [http://www.saprlaw.com/copyright\\_final.pdf](http://www.saprlaw.com/copyright_final.pdf).

In 2012, the Copyright Act of 1957 underwent a considerable overhaul. As a result of the modifications, which fundamentally harmonised copyright legislation with the “Internet Treaties,” the WCT and WPPT, the Copyright law is now capable of coping with the problems brought by digital technologies, as well,

To prevent technical measures from being evaded and to secure rights management information, the Copyright Amendment Act, 2012 introduced Sections 65A and 65B.

Persons who intentionally violate either of those of the rights granted by the Act by evading a technical measure intended to protect such rights, as stipulated in Section 65A, face imprisonment up to two years as well as a fine.<sup>224</sup>

There are, however, several exceptions to this rule that enable third parties to assist in circumvention, provided that they keep a thorough record of who they helped and why. In order to reduce the high rate of illegal access and copying of intellectual items and technological infringement of Copyright, this measure was enacted.<sup>225</sup>

Rights management information, like the identity of the performers, copyright information, or an ISBN number that is used for authentication, was also protected by this amendment. One can be fined and imprisoned for up to two years if they knowingly remove and alter any rights management information from any work or performance that they know has been altered without authority, as well as if they distribute copies of those works and performances in the knowledge that they have been removed or altered.<sup>226</sup>

Cinema, its tools and technology, and even its audience, have seen a dramatic shift in the past several decades. Television channels and cable networks have proliferated across the nation; new digital technology has been introduced; piracy has been a concern, notably the publication of pirated versions of films on the internet, which has

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<sup>224</sup> Section 65A of the Indian Copyright Amendment Act, 2012, (Feb.17, 2019, 02:45 PM), <http://nopr.niscair.res.in/handle/123456789/33584>.

<sup>225</sup> Bhuvana S. Babu, *Technological Protection Measures*, (Feb.17, 2019, 03:35 PM), <https://www.bananaip.com/ip-news-center/technological-protection-measures-under-the-copyright-amendment-act-2012/>.

<sup>226</sup> Section 65 B of the Indian Copyright Amendment Act, 2012, (Feb.17, 2019, 04:55 PM), <http://nopr.niscair.res.in/handle/123456789/33584>.

resulted in massive losses to both the cinema industry and government coffers. For a long period of time, the film industry has urged the government to consider amending the statute prohibiting the recording and distribution of videotapes. The Cinematograph Amendment Bill, 2019, a bill to modify the Cinematograph Act, 1952, has been approved by the Union Cabinet for introduction. As part of the revised Act, the penalties for illegally recording and duplicating films have been added.<sup>227</sup>

The amendments stipulate for the following in order to combat the problem of film piracy: A new Section 6AA has been added to restrict the recording of unlawful material. Provision 6A of the 1952 Cinematograph Act shall be amended to include the following section.

6AA: *“Notwithstanding any law for the time being in force, no person shall without the written authorization of the author be permitted to use any audio-visual recording device to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof.”*

Section 7 was amended to include Penal Provisions for Violation of Section 6AA Provisions. The accompanying subparagraph (1A) shall be added to Section 7 of the primary act: *“If any person contravenes the provisions of section 6AA, he shall be punishable with an imprisonment for a term which may extend to 3 years or with fine which may extend to 10 lakh rupees or with both.”*<sup>228</sup>

Indian courts have implemented a new order known as the “John Doe Order” in an effort to combat internet piracy. Because the accused in a move by John Doe is still unidentified at the moment of filing, just a brief overview is offered to help the court locate the person. Filmmakers in India employ John Doe’s instructions to combat illegal downloading of new movies before they are distributed on hundreds of pirate websites.

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<sup>227</sup> Lata Jha, *Union Cabinet approves amendment to Cinematograph Act*, (Feb.23, 2019, 04:55 PM), <https://www.livemint.com/industry/media/union-cabinet-approves-amendment-to-cinematograph-act-to-tackle-film-piracy-1549518226819.html>.

<sup>228</sup> Ministry of Information and Broadcasting, *The Cinematograph (Amendment) Act, 2019* (Feb.23, 2019, 04:55 PM), <https://www.prsindia.org/billtrack/cinematograph-amendment-bill-2019>.

Websites that are suspected of illegally distributing unreleased films are restricted before they can be accessed via free movie downloads or torrents.

The entertainment business has a serious problem with online piracy. Online piracy is a major issue in India, as evidenced by recent studies and increased industry surveillance. Copyright owners' rights must be safeguarded by more government actions and the criminalization of individuals who engage in cyber piracy.

### **3.9. THE INFORMATION TECHNOLOGY ACT, 2000**

In the last ten years, India's Internet usage has skyrocketed.<sup>229</sup> Since many global technology companies, India has become one of the greatest marketplaces for users.<sup>230</sup> Even as internet use has grown and democratised knowledge, it has also created difficult regulatory issues related to how to deal with detrimental internet content and behaviour, which have impacted the digital economy. 'Intermediary liability' is at the heart of this problem. Should organisations that transmit, convey, distribute, or otherwise make available third-party (user) material and facilitate internet engagement be held liable for any harm that may be caused by the use of or reliance on those services? The issue is one of balancing the rights of Internet users, intermediaries, and the digital ecosystem, while also ensuring that destructive behaviours are penalised and that the digital environment is secure for everyone.

The Information Technology Act, 2002 is based on United Nation Commission on International Trade Law, 1996 (UNCITRAL). The general assembly of United Nation has recommended that all states should provide positive and effective consideration to the said model.<sup>231</sup> Object behind model law is to provide equal legal treatment of users and paper-based communication.<sup>232</sup>

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<sup>229</sup> Internet users in India to reach 627 million in 2019: Report, (Feb.24, 2019, 01:05 AM), <https://economictimes.indiatimes.com/tech/internet/internet-users-in-india-to-reach-627-million-in-2019-report/articleshow/68288868.cms?from=mdr>.

<sup>230</sup> Manish Singh, Whatsapp reaches 400 million users in India, its biggest market, (Feb.24, 2019, 02:15 AM), <https://techcrunch.com/2019/07/26/whatsapp-india-users-400-million/>

<sup>231</sup> Resolution No. 51/162, dated 30<sup>th</sup> January, 1962.

<sup>232</sup> See, statement of objects and reasons to the Information Technology Act, 2000.

Through this Act digital signature<sup>233</sup> and electronic records<sup>234</sup> has got legal recognition. It empowers people to enter into contractual obligation through electronic medium. Digital signature certificates issued by certifying authority can be monitored by the regulatory framework under this provision. The act is facilitating electronic governance. Whenever contravention of the act has taken place both civil and criminal liability can be imputed on the accused.<sup>235</sup> This Act has provided reasonable protection to the service providers.<sup>236</sup>

Section 79 of the Information Technology Act, 2000 (IT Act) provides “intermediaries” with protection from prosecution for transporting or sending user-generated information, provided that specified requirements are fulfilled. As a condition of this immunity, intermediaries must not have been involved in the conduct of the violation and must take corrective measures upon “real knowledge” of the offense’s commission.

This “*safe harbour*” for intermediaries has been the subject of increased public controversy in recent years, not least because of the notion that global technology platforms are reluctant to respond to consumer safety concerns, specifically in the impoverished nations.

An issue is around the changing nature and economic methods of Internet intermediaries. Many intermediates don’t operate in a fully impartial or “passive” fashion. There are concerns that intermediaries may help or worsen the scope and effect of harmful internet activity, whether intentionally or not. Are certain intermediates misusing safe harbour to escape their users’ obligations for the hazards that they face? This raises issues about whether granting safe harbour to some intermediaries is still necessary. Is it reasonable to expect them to “do more”?

It is imperative that the motion picture industry not only implement new legislation and frameworks aimed at strengthening the copyright protection of cinematographic films

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<sup>233</sup> Information Technology Act, 2000.

<sup>234</sup> *Ibid.*

<sup>235</sup> *Ibid.*

<sup>236</sup> *Ibid.*

and music, but that industry should also enact its own set of union rules and regulations to ensure that the works of others are not plagiarised. Cinematograph regulations can protect the rights of owners, but preventing copying by industry workers requires robust processes to be in place throughout before and after production work as well. In the meanwhile, the film business needs to educate the people about the dangers of piracy, as well. As a society, we need to be educated about the reality that piracy is not just about the loss of property, it's also about the fact that it contributes significantly to the expansion of the black economy.

### **3.9.1. INTERNET INTERMEDIARIES IN INDIA**

In the context of online piracy, it is important to understand the role played by Internet Intermediaries and their liability. On the Internet, intermediaries are largely accepted as necessary to the fulfilment of the rights of free speech. The vast majority of the world's jurisdictions have passed laws restricting the liability of intermediaries to ensure that the wheel keeps running.<sup>237</sup>

Online material is delivered to end users through intermediaries, or third-party service providers. The word “intermediates” is used in the Information Technology Law to define Internet intermediaries, and it denotes,

*“In the case of a particular electronic record, any person who, on behalf of another person, receives, stores, transmits or provides a recording of that recording, including telecommunication service providers, network services, Internet services, web hosting service providers, search engines, online payment sites, online auction sites, online markets and cybercafés”.*<sup>238</sup>

The Information Technology (Amendment) Act, 2008, which amended the earlier definition in the original statute, now includes this definition of intermediaries.

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<sup>237</sup> Shashank Pathak, *Information and Technology (Intermediaries Guidelines) Rules 2011: Thin Gain with Bouquet of Problems*, (Mar.13, 2019, 01:55 PM), <http://docs.manupatra.in/newsline/articles/upload/269ed933-8f47-4eb3-a6c3-da326c700948.pdf>.

<sup>238</sup> Section 2(1)(w), Information Technology (Amendment) Act 2008.

As far as the definition is concerned, it seems that any person, who provides a service regarding electronic messages, including the reception, the backup and the transmission thereof, would be considered as an intermediary.<sup>239</sup>

### **3.9.2. ROLE OF THE INTERMEDIARIES IN INDIA**

Internet has become an extremely important part of our day today life. Most of the shopping, payments and tweeting, social interactions all become possible because of Internet intermediaries whose services we often use. Hence their role nevertheless assumes importance and brings about fresh challenges. Internet often gives users a chance of anonymity because of which several users abuse these online platforms and commit several illegal activities not permitted by the law.

It is common knowledge that intermediaries facilitate the delivery of internet material to the end user, in common language. Internet Service Providers (ISPs) are only one of the numerous stakeholders in this chain. They help consumers connect to the internet via wired or wireless connections. E.g., Airtel and MTNL. Search engine websites like Google and Bing assist users in searching for particular information on the internet and provide links to related web pages.

Users may access a variety of websites thanks to webhosting companies like Godaddy.com, which supply server computer storage space for various websites' files. Platforms for storing and retrieving material include social networking sites like Facebook and Twitter, blogging platforms like Blogspot and Word press, auction sites like Ebay, and payment gateways like PayPal. All of these platforms are interactive.

Whether gateways should be viewed as simply messengers with no influence over the material they transmit (and hence no accountability) or should they adopt broader responsibilities and be held accountable, for example, are raised by this circumstance. While some regulation is needed in most jurisdictions to ensure that intermediates and

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<sup>239</sup> *Liabilities of Intermediaries Under Information Technology Act, 2000*, (Mar.13, 2019, 04:55 PM), [http://www.rna-cs.com/liability-of-intermediaries-under-information-technology-act-2000/#\\_ftn1](http://www.rna-cs.com/liability-of-intermediaries-under-information-technology-act-2000/#_ftn1).



law enforcement agencies may operate freely and collaborate with one other, this is not always the case.

### **3.9.3. THE ROLE OF INTERMEDIARIES IN CONSUMER CONTENT LIABILITY**

Avnish Bajaj, the CEO of Baazee.com, an auction site, was arrested for an obscene MMS tape that a user placed up for sale on the site, and the finest example of intermediary liability is this case. The Baazee case<sup>240</sup> demonstrated the legal concerns that corporations operating online face. In rare situations, intermediaries may be held accountable for offences committed by users while using their services, even when the content was not created by the intermediaries. The Delhi High Court concluded that the website that housed the MMS might be held accountable for ‘Sale etc...’ when examining a plea to dismiss the criminal proceedings against Avnish Bajaj in this instance. Section 292 of the IPC and Section 67 of the IT Act, 2000 both prohibit the publication of obscene content, including books, in electronic form. Baazee.com sparked an industry call for an amendment to Information Technology Act, 2000 that would shield service providers from user-generated content-related liability. Sec. 79 of the Information Technology (Amendment) Act, 2008 was changed to give intermediaries a safe haven of protection.<sup>241</sup>

### **3.9.4. SAFE HARBOR PROVISION UNDER THE INDIAN INFORMATION TECHNOLOGY ACT, 2000**

Due to their prominence in the online sphere and the fact that their business model differs significantly from the traditional brick-and-mortar model, governments around the world realised that these intermediaries needed to be shielded from legal liability arising from illegal content posted by users. Intermediaries are currently protected from this type of user-generated content in countries including the United States, the European Union, and India. As a result, this type of protection is commonly referred to as “safe harbour.” Legal action brought against intermediaries based on user-generated

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<sup>240</sup> Avnish Bajaj v. State, 150 (2008) DLT 769 (India).

<sup>241</sup> Intermediaries, users and the law- Analysing intermediary liability and the IT Rules, (Mar.15, 2019, 11:05 PM), <https://sflc.in/sites/default/files/wp-content/uploads/2012/07/eBook-IT-Rules.pdf>.

information is now protected under the modified Section 79 of the Information Technology Act, 2000.<sup>242</sup>

Only in circumstances where the intermediary operates only as a conduit and does not assist in the production or alteration of information or data is the “Safe Harbor” protected. That means that the safest ports are only safe if the appropriate government or agency is notified or receives real knowledge before, they may be compromised.<sup>243</sup>

There is no liability for information or data provided by a network service provider under the Information and Technology Act, 2000 (Section 79), as long as the person can demonstrate that the violation was committed without their knowledge and that they had taken all reasonable precautions to prevent it, or that they have exercised all due diligence to protect the violation from happening. Specifically for this part,

- “Network service provider” a person who acts as a middleman;
- “Third party information” is any information that a network service provider deals with in his position as an intermediary;

If an intermediary is shown to have helped, abetted, or coerced the conduct of an illegal act, the intermediary would be accountable and lose immunity.<sup>244</sup>

This notion of “notice and take down” was also adopted in Sections 79, which is common in many other countries. In the event that a computer resource owned by an intermediary is used to perform an illegal act and the intermediary fails to delete or block access to that content within a reasonable time, the intermediaries would lose its immunity.

Section 79 of the IT Act, 2000, on the other hand, allows ISPs (internet service providers) that act as intermediates to escape accountability if they can demonstrate their lack of knowledge and due diligence, although it does not define who would be

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<sup>242</sup> *Ibid.*

<sup>243</sup> Section 79 of the Information Technology Act, 2000 (India).

<sup>244</sup> Liability of Intermediaries under the Information Technology Act, 2000, (Mar.16, 2019, 10:20 PM), <https://www.rna-cs.com/liability-of-intermediaries-under-information-technology-act-2000>.

held accountable for such a violation in such a case. When a crime is committed involving the disclosure of third-party information or the transmission of data, this section will be problematic.<sup>245</sup>

### **3.9.5. ANALYSIS OF THE INFORMATION TECHNOLOGY (INTERMEDIARIES GUIDELINES) RULES, 2011**

A set of requirements for intermediaries to follow in order to be eligible for safe-harbour protection under the Act is laid forth in The Intermediaries Guidelines Rules. A safe harbour for intermediaries is provided under the Intermediaries Guidelines Rules. Intermediaries Guidelines Rule 3(2)7 identifies the kind of information that might be considered prohibited if placed online. Any content identified as unlawful by Rule 3 can be removed by writing to the intermediary, according to Rule 3(4)8. (2). The intermediary is required to delete the content within 36 hours of receiving a notification. In the event that the intermediary fails to comply with the deadline, the intermediary will not be able to claim safe harbour.<sup>246</sup>

A permanent injunction prohibiting defendant My Space from violating the plaintiff SCIL's intellectual property rights, such as the copyright for motion pictures and music, was sought by SCIL in this case. This case revolved around whether or not MySpace had awareness of violation and subsequently, whether the "safe harbour" protection afforded to intermediaries by Provisions of section of the IT ac was superseded by Section 81 of IT act's provisos.

Provision 79(2) of the IT Act does not apply to Myspace, according to the court. On record, there is no evidence that Myspace offered accessibility to the third party, or that it altered the recipient in the transmission. Myspace has uploaded its consumer contract and privacy policy in order to comply with the need of due diligence. In addition, under Section 79(3), the intermediary must be implicated or receive the objection by the person affected within 36 hours after obtaining such notification, and the intermediary

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<sup>245</sup> Information Technology Act, 2000.

<sup>246</sup> MySpace Inc.v. Super Cassettes Industries Ltd. (SCIL) [2011(48) PTC49(Del)]

must take action within that time. If SCIL can prove to MySpace that it delivered a notice and they didn't respond as required by the legislation, then they'll be able to proceed.

Lastly, it was noted that Parliament, through a modification to Section 81 of the Information Technology Act (IT Act), sought to create a different provision and system for intermediaries, as noted in the court's ruling on this subject. Section 81's proviso allows copyright holders to hold intermediaries directly accountable for copyright infringement in order to offer the copyright holder with a recourse against the intermediate.

Intermediaries argued that it would be difficult to remove information or take action within 36 (thirty-six) hours. On March 18, 2013, the government released a clarification indicating that the intermediary must reply to or acknowledge the complaint within 36 hours following receipt. Within 30 days of receiving the complaint, the intermediary has the opportunity to address it. The definition of remedy is ambiguous, and the regulations do not give any direction.

Being the study of research is Online Piracy of Movies in India: Legal Challenges, therefore, in this chapter discussion on the scope of copyright and nature of author's rights are critically dealt with. In the line, the next chapter will take up the issues of piracy, cause of piracy and how piracy is affecting entertainment industry and also the researcher has tried to find out what are the existing legal measures designed to regulate the rights of the copyright holder to deal with the dangers inherent in the fast-developing technological era.

## **CONCLUSION**

In this chapter the researcher has given an elaborative analysis of the different provisions from the Indian Copyright law pertaining to film industry along with the analysis from the Information Technology Act, 2000 and the different challenges posed by the Indian Film Industry in dealing with the issue of online piracy of movies. An examination of the rapid development of digital sharing technology and the wide range

of reactions to it reveals that laws alone will be unable to control Internet sharing activities. There has been a technological response to every law passed by the government. Law can never keep up with the pace of technological change, hence any attempt to govern technology through the law is doomed to failure. Legislative processes can take a long time, which is why this is happening. Furthermore, the legal answers also show that content owners are often the ones who begin the process of requesting changes in the legislation, which results in stronger protection for them. The implications of such developments on user access, particularly in regard to availability of data, are discussed in further detail in the succeeding Chapter.

## CHAPTER 4

### ONLINE PIRACY OF MOVIES AND ITS IMPACT ON INDIAN FILM INDUSTRY

In today's culture, the topic of piracy has become a very contentious one. However, this phenomenon is without a doubt the cause of the media industry's current transitional period. It has become more common for Internet users who had previously just been passively consuming the network to become personally involved and eventually even in charge of it. Since it is so simple to distribute copyrighted material throughout the globe, the Internet piracy movement was born. Various factors, including the product's availability or lack thereof, as well as people's misunderstandings about the product's effects, are to blame. It's important to take into account all of these factors, as well as the consequences they have on the industry, which might range from employment losses to higher sales. The industry has retaliated, but the strategies used have not always worked. In many cases, this is due to a lack of knowledge, but other organisations are taking advantage of the new market and adapting to it successfully. This chapter elaborates the origins and consequences of piracy, as well as the ways being taken to resist or acclimate to it.

To put it another way, India is one of the five largest source economies for counterfeit products, according to the OECD's Trends in Trade in Counterfeit and Pirated Goods (2019). According to the 2020 Notorious Marketplaces List, India continues to be home to a number of markets that support counterfeiting and piracy. However, certain Indian states, such as Maharashtra, continue to run specific criminal enforcement units, while others do not or suffer organisational difficulties. A national-level task force to combat intellectual property violations is still encouraged by the United States, given the scope and severity of the issue.<sup>247</sup>

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<sup>247</sup> 2021 Special 301 Report, Office of the United States Trade Representative, (Mar.09, 2021, 03:25 AM), [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf)

## 4.1. INTRODUCTION

The world wide web is one of the utmost significant advancements that mankind has produced to this point. In terms of communication, it is the fastest-growing. Traffic on the internet continues to grow at the rate of one million visitors per day every 100 days. It has the greatest influence on the transfer of information. It's changed everything about how, where, and how fast data can be sent. Material may be accessed, read, printed, and downloaded from any location in the globe using this platform. Nobody has complete control over the internet. So, it is often referred to as the anarchy of IT communication.

It has arisen as a new property form in the internet age and the rise of knowledge-based enterprises due to human intelligence and effort. Known as intellectual property, it is a new kind of asset. Applied arts, fine arts of technology, and works of literature, art, and design all fall under the umbrella term "Intellectual Property." You may buy, sell, or lease the rights to use the property. In addition to copyrights, patents, trademarks, and designs, this encompasses intellectual property. Intellectual property is distinct from other types of property in that its value and applications are hazy. Keeping it in a safe deposit box or bank vault is not an option. It's simpler to steal since it's freely accessible to the entire population. It's a work of the mind. Consequently, it is tough to guard.

High-speed Internet access has led to an increase in online piracy, as well as the growth of illicit linking, video streaming, and stream-ripping sites, many of which promote and benefit from adverts for genuine items. Piracy Devices (PDs) that come pre-loaded with software that enable users to bypass subscription services to access pirated material are also rising in popularity. As the epidemic spreads, internet piracy poses the biggest danger to India's burgeoning media businesses, which saw their revenue rise by 62% in March 2020.<sup>248</sup>

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<sup>248</sup> Lata Jha, *India sees big spike in film piracy post COVID-19*, 11 May 2020, 01:44 PM IST, (Jun.12, 2020, 03:25 PM), <https://www.livemint.com/news/india/india-sees-big-spike-in-film-piracy-post-covid-19-11589183182123.html>.

In India, piracy of recorded music is a big problem. India's music piracy rates are greater than in any other country save China, according to the IFPI's 2019 Music Consumer Survey. Despite this, legal streaming services like Gaana, JioSwift and Spotify have seen a significant increase in use. Internet users in India revealed that they had pirated music in the preceding month, 67% of the population. Among those ages 16 to 35, this figure jumps to 75%. According to a recent survey, 63% of Internet users have downloaded unauthorised music in the preceding month using streaming sites or applications. According to statistics from Muso, Indian customers made 365 million visits to music pirate sites between June and August 2020. Pgalworld.mobi received more than 37 million visits from India in the third quarter of 2020 based on Similar Web data; masstamilan.in received more than 24 million visits from India; savefrom.net received more than 58.5 million visits from India, which means that more people visit savefrom.net from India than any other country in the world. These two services, y2mate.com (28 million visitors) and, ytmp3.cc (18 million visits), are among the most popular stream-ripping services.

According to the video game industry, India has remained in fourth place in terms of the number of peers engaged in illegal sharing files of computer games on open peer-to-peer (P2P) platforms and infringing PC platform gaming for 2020. (Where it placed in 2019). From fourth place in 2019 to second place in 2020, mobile game piracy has seen a significant increase in India.

## **4.2. ANNALS OF CINEMA IN INDIA**

Despite the economic slump, the Indian entertainment and media business, notably the film industry, known as Bollywood, has witnessed strong development over the previous several years. Several Bollywood films have shattered box office records in the past several years, which may have inspired both foreign entertainment firms and Indian conglomerates to invest in Hindi cinema.

It is estimated that the Indian film industry produces 1,500-2,000 films annually in more than 20 different languages, making it the biggest in the world. This sector is led by



Bollywood, which contributes 43% of the income, followed by regional and foreign films with a share of 50% and 7%. Following Bengali, Kannada, and Malayalam films, Tamil and Telugu films account for around 36% of net box office income in the regional cinema industry.

As the number of English and other foreign language speakers grows, so does the number of dubbed releases of international films in the United States. Despite the enormous quantity of films and theatre attendance, the business remains minor when compared to other worldwide industries. With a gross realisation of \$2.1 billion, the film industry in India is substantially less successful than the film industry in the United States and Canada, which both generate a significantly smaller number of films (approximately 700 films). A lack of quality material, a lack of ticket sales and high occupancy are to blame.<sup>249</sup>

On July 7, 1896, cinema was first shown in India. At the Watson Hotel in Bombay, the Lumiere Brothers' Cinematography premiered six silent short films. Bombay's Meadows Street Photography Studio first began showing films on a daily basis in 1897.

When Professor Stevenson brought the country's first bioscope to India in 1898, he prompted Hira Lal Sen to begin shooting sequences of theatrical shows at the Classic Theatre in Calcutta; his debut was a contribution to this presentation. For the rest of his career, he made similar short films to be presented in theatres as intermission extras, at private screenings for the rich and famous, or in remote locations that the stage performers couldn't reach.

At a cost of 21 guineas, Harischandra Sakharam Bhatvadekar aka Save Dada purchased a cine-camera from London and made a video of a wrestling fight at Bombay's Hanging Gardens in 1897. After returning from Cambridge, Rangunath P. Paranjpye, who had

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<sup>249</sup> *Indian film industry grew at 27% in 2017*: FICCI, Money Control, (Jun.13, 2020, 02:35 PM), <https://www.moneycontrol.com/news/trends/entertainment/indian-film-industry-grew-at-27-in-2017-ficci-2520513.html>.

been awarded a distinction in mathematics by the Cambridge University, and M Mhownuggree, who filmed the first Indian news film, he captured their homecoming.<sup>250</sup>

In 1897, Harischandra Sakharam Bhatvadekar aka Save Dada, who had witnessed the event, bought a cine-camera from London and shot the first Indian documentary, a wrestling contest in Hanging Gardens, Bombay. Wrangler' Ragunath P. Paranjpye, who had received a distinction in mathematics from Cambridge University, returned to India in 1901, while M. M. Bhowmuggree, who had filmed the first Indian news film, returned to the country in the year before.

Cinema houses were established in major Indian towns during this era, such as one in Madras (built in 1900 by Major Warrick), the Novelty Cinema in Bombay, and the Elphinstone Picture Palace in Calcutta (set up by J.F. Madan in 1907). In addition, a number of tent-based cinema screenings were held. The travelling cinema was another popular method of distributing films. An Indian draughtsman for the railroads, Swamikannu Vincent, put up his own travelling cinema in the southern state of Tamil Nadu in 1904 and in the same year, Bombay-based Touring Cinema Co. was established.

N.G. Chitre and R.G. Torrey produced the country's first feature-length picture, titled *dalik*, in 1932. It was in 1913 when Dadasaheb Phalke presented the first full-length Indian e film, *Raja Harishchandra* (3700 feet opposed to *Pundalik's* 1500 feet). *Life of Christ*, a P.B. Mehta's American-Indian Cinema presentation, motivated Phalke to begin making films. He was believed that an indigenous film industry might be established by focussing on Indian subjects. Like Jesus, he continued, we would depict Rama and Krishna's lives in paintings. An honest king who sacrifices his kingdom and family for the sake of his beliefs is rewarded by the gods, who are impressed and return him back to his former grandeur in the film *Raja Harishchandra*. As a result, Phalke continued to create mythological pictures until talkies came along and commercialization of Indian cinema diminished his reputation.

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<sup>250</sup> Nowell-Smith & G Oxford *History of World Cinemas*. (Oxford University Press 1996), p.22.

In 1916, Universal Pictures established the first Indian agency in Hollywood. Rangaswamy Nataraja Mudaliar's Keechaka Vadham was the first South Indian feature film to be released in 1916. Draupadi Vastrapaharanam, starring Anglo-Indian actress Marian Hill as Draupadi, was released in the following year. Since then, India has become the world's leading film producer.

Historically, the Indian film business has been based on social relationships, where the arrangements/agreements were either oral or barely written, and the problems were typically settled without going to arbitration or litigation. This, on the other hand, meant that sufficient documentation of the chain of title was missing, causing confusion in the transfer of rights. India's film business has just recently begun to realise that formal contracts and intellectual property (IP) protection are essential. Since the Indian film business has undergone a major structural change in the previous decade, there was a pressing need for this project. Before, the films were sponsored by private money lenders, frequently mafia money, who were only concerned in collecting distribution rights or the box office and neglected residual revenue from the IP reuse. Since it was given "industry status" by India's government in 2000 and began getting finance from banks, Indian corporations such as Sahara and Reliance and international studios like Warner Bros. and 20th Century Fox, the films have received funding from a variety of sources. As a result of the demands of the banks, Indian firms, and international investors for written contracts and watertight contracts with cast and crew members, the producers were forced to have sufficient chain of title documents. To protect their merchandising rights, artists who had been reluctant to sign even a one-page contract before the year 2000 are now submitting comprehensive written contracts.

Even though this business has grown tremendously, the glittering world of Bollywood has been plagued by legal action due to IP rights violations and contract breaches (e.g., non-payment and non-fulfilment of commitments by talents, distributors and producers). A number of films, including Slumdog Millionaire and The Hurt Locker, have been affected by the issue, which has forced producers and distributors to spend

their days before the openings pacing courtroom floors rather than preparing for the premiere.

Sometimes, these controversies seem to crop up strategically, just before the release. The INR 20 million in damages were paid out to the Roshans before *Krazzy 4* was released, as music composer Ram Sampath had claimed that the title song of the film had been copied from melodies he had previously produced. *Jodha Akbar*, *Singh Is Kinng*, and *Ghajini* were all stymied by legal battles over remake rights and copyright infringement just five days before their scheduled release dates.

A few years ago, a number of unlicensed re-releases of international films in Indian languages were commonplace. However, no action was taken against these films, perhaps because international studios did not see India as a viable market for their products.

This surge in lawsuits is due to the globalisation of the Indian film business, as well as the admission of international actors in India. 20th Century Fox had sued BR Films, a Bollywood production studio, for allegedly plagiarising the plot and writing of their comedy *My Cousin Vinny* in the film *Banda Yeh Bindaas Hai*.

To avoid unnecessary litigation, proper due diligence and agreements throughout the documentation stage are essential. Legal considerations, such as intellectual property rights and contractual enforceability, must be considered before discussions begin in order to ensure that contracts are fool proof.

Since 1847, copyright law has been in place in India.<sup>251</sup> Many modifications have been made to copyright law in the nation as a result of technical advances and the rising globalisation of the economy.<sup>252</sup> IP rights are increasingly protected across the world as

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<sup>251</sup> See Prashant, “*History of Copyright in India*”, (Jun.23, 2020, 02:05 PM), <http://freedomforip.org>.

<sup>252</sup> Ayan Roy Chaudhary, “*The Future of Copyright in India*”, (Jun.23, 2020, 03:35 PM), <http://www.bileta.ac.uk/Document%20Library/1/The%20future%20of%20copyright%20in%20India.pdf>; see also Edwin Lai, “*Intellectual Property Protection in a Globalized Era*”, explaining that as the technology changes, products are subject to more Intellectual Property Rights, (Jun.23, 2020, 05:15 PM), <http://www.dallasfed.org/research/ecllett/2008/el0803.html>.

a result of this. Strengthened intellectual property (IP) rights are promoted by the United States of America.<sup>253</sup> In addition, the WTO Agreement on Trade Related Aspects of Intellectual Property sets forth the baseline criteria for IP protection that every member country must implement in its own laws. As a member of the WTO, India signed the TRIPS agreement in 1994, which required it to meet minimal levels of intellectual property protection. A result of these changes, in 1994, new provisions were added to the Copyright Act that made it easier to enforce copyrights.<sup>254</sup> The 1994 modification to India's Copyright Act strengthened the law's already robust safeguards for copyright protection. However, piracy is a major concern in India.<sup>255</sup> India's copyright rules are not up to international standards, according to the Indian government.<sup>256</sup> The country's new enforcement procedures have also failed to safeguard copyright. As part of the Special 301 provision, the United States is attempting to apply pressure on India to improve and strengthen the protection and enforcement of American intellectual property in India.<sup>257</sup>

As a result of copyright protection, India's economic growth might be considerably boosted. A look at the history of India's Copyright Act and its enforcement procedures is used in this study to show its flaws.

In Mumbai, India, on July 7, 1896, the country's first film was presented (the then Bombay). Over two million people are employed in India's massive film industry, which now produces more films than any other country. It was one of the fastest-

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<sup>253</sup> See USTR Special Report, The United States enacted the Special 301 provision under the 1988 Omnibus Trade and Competitiveness Act, which promoted the protection of U.S. intellectual property overseas, (Jun.23, 2020, 09:45 PM), [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2008/2008\\_Special\\_301\\_Report/asset\\_upload\\_file553\\_14869.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2008/2008_Special_301_Report/asset_upload_file553_14869.pdf).

<sup>254</sup> Overview: the TRIPS Agreement, (Jun.23, 2020, 11:05 PM), [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm).

<sup>255</sup> *Study On Copyright Piracy In India*, Sponsored by Ministry of Human Resource Development Government of India, (Jun.24, 2020, 01:35 AM), <http://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>.

<sup>256</sup> Special 301 Priority Watch List, (Jun.24, 2020, 02:35 AM), [http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2003/2003\\_Special\\_301\\_Report/Special\\_301\\_Report\\_Priority\\_Watch\\_List.html](http://www.ustr.gov/Document_Library/Reports_Publications/2003/2003_Special_301_Report/Special_301_Report_Priority_Watch_List.html), includes India in the Priority Watch List of the USTR as a country which has a weak intellectual property protection. The USTR Special 301 Report is an annual review of the global state of Intellectual Property protection and enforcement conducted by the USTR.

<sup>257</sup> *Supra* note 247.

growing areas of the economy in India's entertainment industry in 2001, which encompasses cinema, music, television, radio and live entertainment.<sup>258</sup> TV broadcasting, film and television production, and cable television earned the highest income. Approximately 1,000 movies are released each year by the film industry,<sup>259</sup> rakes in more than \$72 billion throughout the world each year in ticket sales.<sup>260</sup>

Unlike the United States, India boasts a diverse array of film production companies. This study, on the other hand, concentrates mostly on Bollywood, the centre of Hindi-language filmmaking. At least one Hollywood film has influenced roughly eight out of 10 Bollywood scripts during the past few years.<sup>261</sup> People outside of India had no idea about this prevalent issue until recently. Westerners, on the other hand, have become more aware of the cultural copy problem in India because to the Internet and greater worldwide communications. In 2003, best-selling novelist Barbara Taylor Bradford sued Sahara Television for allegedly using her book, *A Woman of Substance*, as the basis for a television series.<sup>262</sup> An order against Sahara by a lower court was overturned by the Indian Supreme Court, allowing the television show to run.<sup>263</sup> Bradford, despite her disappointment, decided not to pursue the matter any further.

Digital technology and computer software were added to areas usually covered by copyright by an amendment made to the Copyright Act of 1957 in 1994. (Such as original literary, dramatic, musical and artistic works, cinematography, films and sound

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<sup>258</sup> UK Film Council, *The Indian Media and Entertainment Industry*, (Jun.29, 2020, 02:35 AM), <http://www.ukfilmcouncil.org.uk/filmindustry/india/>.

<sup>259</sup> Stefan Lovgren, *Bollywood: Indian Films Splice Bombay, Hollywood*, NATIONALGEOGRAPHIC NEWS, (Jul.04, 2020, 01:35 PM), [http://news.nationalgeographic.com/news/2004/01/0121\\_040121\\_bollywoodfilms.html](http://news.nationalgeographic.com/news/2004/01/0121_040121_bollywoodfilms.html).

<sup>260</sup> *Bollywood Comes to Town*, SABC NEWS, (Jul.05, 2020, 09:35 PM), <http://www.sabcnews.com/entertainment/cinema/0,2172,58725,00.html>.

The article says the film industry grosses 480 billion Rand (the South African currency); since 1 Rand equals 0.1673 U.S. Dollars, the film industry grosses over 80 billion U.S. Dollars. *Forex Rates*, South Africa Online, (Jul.05, 2020, 11:15 PM), <http://www.southafrica.co.za/forex/>.

<sup>261</sup> Subhash K. Jha, *Whose Movie is it Anyway?* REDIFF.COM, (Jul.06, 2020, 11:35 AM), <http://www.rediff.com/movies/2003/may/19copy.htm>.

<sup>262</sup> *Author Loses India Plagiarism Case*, BBC NEWS, (Jul.10, 2020, 01:35 PM), <http://news.bbc.co.uk/2/hi/entertainment/3084401.stm>.

<sup>263</sup> *Ibid.*

recordings).<sup>264</sup> As a result of these changes, this Act is now fully compliant with all of the provisions of the Trade Agreement on Intellectual Property. In terms of copyright law, India's modified 1957 Copyright Act is one of the most contemporary in the world, according to (IIPA).<sup>265</sup> High pirate rates and inadequate enforcement tactics have kept India on the "Priority Watch List" even though the country has extensive de jure copyright protections. 99The copyright rules in India are very similar to those in the United States. For a film to be eligible for copyright protection, it must have been created from scratch.<sup>266</sup> "... [originating] from the producer and not a duplicate of some other copyrighted work" is the definition of originality.

### **4.3. CONTRIBUTION OF THE ENTERTAINMENT INDUSTRY TO THE ECONOMY**

The entertainment sector is dominated by movies, which account for a significant portion of revenue. There is a socio-cultural component to movies that exists in addition to the economic part of their significance.<sup>267</sup> An individual's psychology is strongly influenced by visual media, which can have a transformational effect on his or her attitude. They serve as a reflection of the shifting traditions, ways of thinking, and cultural orientations of society as a whole. While watching a movie, the vast range of emotions presented provides the viewer with a different perspective on life and its many facets. In both directions, the causality of the impacts of films on community and vice versa happens.

As previously said, movies serve as reflections of society and are influenced by the social environment, but they may also serve as a catalyst for change by changing the way society behaves, acts, and presents itself. A society's problems and the concerns

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<sup>264</sup> *Intellectual Property Rights in India*, Embassy of India, (Jul.14, 2020, 11:05 PM), [http://www.indianembassy.org/policy/ipr/ipr\\_2000.htm](http://www.indianembassy.org/policy/ipr/ipr_2000.htm).

<sup>265</sup> *Description of the IIPA*, International Intellectual Property Alliance, (Jul.15, 2020, 01:35 AM), <http://www.iipa.com/aboutiipa.html> (In 1984, six trade association representing different sections of America's copyright-based industry came together to form the IIPA. This private sector coalition monitors copyright law developments in more than 80 nations and works closely with the USTR.).

<sup>266</sup> P. Narayanan, *Copyright Law*, (Eastern Law House 1986).

<sup>267</sup> Sujit John, "IBM brings in analytics to Bollywood" *Times of India*, 17<sup>th</sup> March 2014, (Dec. 15, 2018, 04:25 PM), <https://timesofindia.indiatimes.com/it-services/ibm-brings-in-analytics-to-bollywood/articleshow/32196946.cms>.

that preoccupy the thoughts of its citizens may be easily depicted in films, as demonstrated by the development of the Hindi film industry, commonly known as Bollywood (Hindi film business).<sup>268</sup> Unlike the social ills plaguing society in the 1950's and 1960's, which included poverty, casteism, and the unbridled attack of capitalist system in a double economic system like India, the dominating themes in the 1970's and 1980's were escapist themes, which were fuelled by a notion of despair with the prevalent state of affairs, which was exacerbated in the 1980's by a sense of utter false belief with the system.

During the initial years of the twenty-first century, globalisation began to have an influence, and the global film industry began to get more involved in India. As a result, the situation began to shift. In response to this contact with foreign films, the Indian film industry was forced to alter its organisational structure and operating procedures.

The digitalization of the entertainment business is a serious danger. It is a result of the Digital Proficiency Scheme for Rural India, which was implemented. More sustainable and lucrative business models across all media industries have been promised as a result of this development. The year 2012 saw the beginning of the long-awaited digitalization of cable television.

In 2014, India ranked first on the list of the world's quickest growing smart phone markets.<sup>269</sup> The Government of India's Digital India programme had a significant part in making this expansion feasible. In 2014, India was put on the United States' International Piracy Watch List for the first time, joining a group of four countries where piracy is widespread.<sup>270</sup> India has inked co-production agreements with Canada

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<sup>268</sup> Reghu Balakrishnan "Carnival Cinema Plans Rs 500 crores investment in Madhya Pradesh," Business Standard, 14<sup>th</sup> Jan 2014, (Dec. 17, 2018, 02:55 PM), [https://www.business-standard.com/article/companies/carnival-cinemas-plans-rs-500-cr-investment-in-madhya-pradesh-115011400024\\_1.html](https://www.business-standard.com/article/companies/carnival-cinemas-plans-rs-500-cr-investment-in-madhya-pradesh-115011400024_1.html).

<sup>269</sup> *Marketers in India spend more on print than on television*: Report KPMG, (Dec. 17, 2018, 04:55 PM), <https://www.medianews4u.com/marketers-in-india-spend-more-on-print-than-on-television-report-kpmg/>

<sup>270</sup> Alex Ben Block, "India joins China, Russia, Switzerland on Piracy watch list", The Hollywood Reporter 24 June 2014, (Dec. 19, 2018, 01:05 PM), <https://www.hollywoodreporter.com/news/general-news/india-joins-china-russia-switzerland-714572/>.



and China, among other countries. Such Treaties not only let Indian film producers to profit from tax breaks, but they also allow them to take advantage of more relaxed visa requirements in partner nations.

In this chapter, the researcher has provided a comprehensive discussion of copyright law from both a national and international viewpoint. Because the Entertainment Industry is the focus of the study effort, the researcher has thoroughly explored all of the aspects, nature, scope, and description of the Media Industry. The breadth of copyright protections and the nature of author's rights will be discussed in greater detail in the following chapter, according to the researcher.

#### **4.4. THE PIRACY LANDSCAPE IN INDIA**

In recent years, the global film business has seen substantial upheaval. Consumers can download illicit copies of pre-recorded music using peer-to-peer (P2P) technologies and share movies in digital format utilising the online "file-sharing" technology that is already commonplace on broadband networks. For the past few years, file sharing has been the primary reason of the music industry's recent drop in size. Online piracy may have a significant impact on digital product's intellectual property rights. The rise of internet media has made it difficult to control the threat of copyright infringement to copyright-based businesses. Illegal downloads have replaced genuine CD purchases as a result of online piracy.

The entertainment business has been severely impacted by digitalization. It may be seen in the Rural India Digital Literacy Scheme. Media companies across the board have seen a rise in sustainable and successful business strategies as a result. It was in 2012 when cable's long-anticipated digitalization finally began. Efforts have been conducted in stages.

*The four metros made substantial progress in Phase 1 implementation. It's hoped that, in the long term, the industry would reap the benefits of expanded capacity to monetize*

*content, better transparency and fair revenue sharing across the value chain, reduced burden of carriage costs, and so on.*

*It is expected that the second phase of digitalization across the other 38 cities would proceed on the same lines, although with a little longer lead time. It is estimated that the entertainment sector is 77% digital. By 2020, India's digital sector is anticipated to be worth more than 3100 billion rupees (USD).<sup>271</sup>*

According to many, the Internet has been the fastest-growing communication tool of all time. Between 1 million and 70 million people used the Internet worldwide between 1990 and 1997, according to estimates.<sup>272</sup> There are already more than 4.5 billion internet users and more than 3.8 billion social media users worldwide in the beginning of 2020. More than half of the world's population will be using social media by the middle of this year, according to the most recent trends in the industry. However, there are still significant obstacles to overcome in order to ensure that everyone has equitable and fair access to life-changing digital connection across the world.<sup>273</sup> It is predicted that Asia and Latin America would have the fastest growth during the next several years.<sup>274</sup>

As the proportion of Internet users has climbed from 8% in 2006 to 22% in 2011, traffic on the Internet has grown exponentially.<sup>275</sup> It is becoming increasingly difficult for businesses to operate without access to the Internet in many parts of the world. This

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<sup>271</sup> *Value Creation and Capture: Implications for Developing Countries*, (Jul.15, 2020, 03:30 AM), [https://unctad.org/system/files/official-document/der2019\\_en.pdf](https://unctad.org/system/files/official-document/der2019_en.pdf).

<sup>272</sup> "Global Report", (Jul.19, 2020, 10:00 AM), <http://www.emarketer.com>.

From 1990-1997, the estimated number of users grew from 1 million to approximately 70 million.

<sup>273</sup> DIGITAL 2020: Global Digital Overview, (Jul.19, 2020, 11:35 AM), <https://datareportal.com/reports/digital-2020-global-digital-overview>.

<sup>274</sup> "U.S. Internet Users Surpass 100 million mark," New York Times (No. 11 1999), (Jul.21, 2020, 12:40 PM), <http://www.nytimes.com/library/tech/99/11/biztech/articles/10net.html>.

<sup>275</sup> Digital India Technology to transform a connected nation, McKinsey Global Institute, (Jul.21, 2020, 02:45 PM),

<https://www.mckinsey.com/~media/mckinsey/business%20functions/mckinsey%20digital/our%20insights/digital%20india%20technology%20to%20transform%20a%20connected%20nation/mgi-digital-india-report-april-2019.pdf>.

expansion is expected to continue for years to come, in part because of advancements in technology and reducing prices of computing and telecommunications.<sup>276</sup>

When discussing the Internet, the term “network of networks” is frequently used.<sup>277</sup> It is also called an “information superhighway”.<sup>278</sup> It’s a vital data conduit for the entire world<sup>279</sup> it is used to transport a vast amount of intellectual property.<sup>280</sup> Public telecommunications networks are brought together to form the Internet. A modem is all that is required to obtain access,<sup>281</sup> an “access provider,” a person who offers a “gateway” link to the Internet is frequently involved in the process<sup>282</sup> from any location, you may see, print or download the material you need. There is no one person who is in overall control of the Internet. It is, therefore, sometimes described as “information technology communications anarchy”.<sup>283</sup> Networks that are connected by gateways, which process data and convey messages from one network to another, are sometimes referred to as a network<sup>284</sup> the receiving network can utilise this.<sup>285</sup>

The ARPANET, a project funded by the United States Department of Defence, Advanced Research Projects Agency (ARPA) in 1968, is where the origins of the

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<sup>276</sup> The performance (of a chip) can be doubled, for half the price every two years. If this trend were to continue for another few years, there would effectively be zero cost computing and zero cost telecommunications. The world will thus evolve into an “infosphere” bathed in information. See Bishop R. “The Technology: where it is taking us” speech at WIPO’s International Conference on Electronic Commerce and Intellectual Property (September 1999), (Jul.25, 2020, 02:00 PM), <http://economy.wipo.int/>.

<sup>277</sup> J.H. Smith Graham, *Internet Law and Regulation* (Sweet and Maxwell 3rd ed., 2002) 1. Also see, Rodney D. Ryder, *Intellectual Property and the Internet* (Lexis Nexis Butterworths, 2002) 67; Jeffrey M Samuels, *Patent, Trade Mark and Copyright Laws* (BNA Book 2001).

<sup>278</sup> Meghna Das, *Information Superhighway*, (Jul.25, 2020, 04:35 PM), <https://webcreativity.com/blog/?Information-Superhighway&id=124>.

<sup>279</sup> See Webster’s Computer Dictionary, CBS Publishers, 2001: Data is the information as processed by a computer.

<sup>280</sup> *Supra* note 265.

<sup>281</sup> Introduction to Computer Applications and Concepts, (Jul.29, 2020, 09:45 PM), <https://courses.lumenlearning.com/computerapps/chapter/reading-the-internet/>

<sup>282</sup> *Supra* note 268.

<sup>283</sup> Krishna Kumar, *Cyber Laws Intellectual Property and E-Commerce Security* (Dominant Publishers and Distributors 1st ed., 2001) p. 69.

<sup>284</sup> *Ibid.*

<sup>285</sup> See Microsoft Press Computer Dictionary (1994) p. 220.

Internet may be traced.<sup>286</sup> When commercial service providers were allowed to link their networks to the Internet, it led to its rise in popularity.

Transmission Control Protocol/Internet Protocol (TCP/IP) is the glue that holds the Internet together in the physical world.<sup>287</sup>

As a result of the Internet's activity, the copyright law has been questioned because information may be copied and sent without deterioration, and every copy is identical. As a result of digitization, the cost of duplicating and distributing has dropped to almost nil. Can the conventional distinction between "original" and "copy" be applied to a communication medium where these distinctions have no meaning?

The extent and preservation of copyright owners' rights in the digital world is one of the most significant concerns in the field of copyright and associated rights. How should writers' rights be defined, and what exceptions and limits might be granted to such rights are some of the questions that have emerged. In this digital age, how do writers' rights get enforced and administered? Is it possible to sufficiently safeguard copyright holders' interests under the current global copyright rules?

The Internet's primary role is to transfer digital data between computers. Web-based technology is nothing more than an extension of the telephone system.<sup>288</sup> The Internet is capable of transporting any information that can be encoded in digital form.<sup>289</sup> Because of this, copyright items transferred over the Internet or kept on web servers are considered the same as copyright contents in other media. This does not mean that the fact that they are available online does not represent a waiver of copyright or an implicit

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<sup>286</sup> Barry M. Leiner, Vinton G. Cerf, David D. Clark, Robert E. Kahn, Leonard Kleinrock, Daniel C. Lynch, Jon Postel, Larry G. Roberts, Stephen Wolff, *Brief History of the Internet*, (Jul.21, 2020, 12:40 PM), <https://www.internetsociety.org/internet/history-internet/brief-history-internet/>.

<sup>287</sup> *Supra* note 268: These protocols allow the networks and the computers attached to them to communicate and to find other computers attached to the Internet. Thousands of networks around the world have adopted Internet protocols and linked into the Internet so that today it is virtually impossible to identify the physical boundaries of the Internet.

<sup>288</sup> Christopher Reed, *Internet Law: Text and Material* (Butterworth's 2000) p. 8.

<sup>289</sup> The most common types of information transmitted through the Internet are text, graphics, numerical data, images, sounds and video.

licence for anybody to download or reproduce the content without the copyright holder's consent.

Copyright owners should nonetheless preserve documentation of the work's origin and put a copyright notice on any content they upload online, even if they do not intend to profit from it. In the event that a third-party attempts to infringe on the copyright, the documentation will help prove the validity of the copyright.

In certain respects, the law of copyright is both contextual and contentious. In addition to attempting to safeguard the rights of writers and creative artists, it also seeks to settle conflicts between artists and authors whose rights may overlap. Copyright law is a package of rights, in which the author has the right to use, exploit, adopt and translate the work into any shape and media. However, methodical and scientific collection of some creative works also earns one the right to duplicate. Contextual and problematic copyright issues arise when the work is exploited and utilised in a variety of ways, making it more difficult to protect. Using the same work in several formats, forms, and languages and addressing different demographics or audiences raises the question of who owns the copyright, whether the original author or the person who adapted and repurposed the work. Copyright is utilised in a variety of ways in the media and cinematographic film industries, where this paradox is most apparent. The principle of copyright law is that ideas are not protected, but the commercialization of those ideas is protected. In the film and media industries, when a lot of creative works are combined to form a film or a documentary, the issue of copyright for the final product is an intriguing one. If an idea that was previously implemented is re-implemented by another individual in a new format, the tale will once again be intriguing. A new film that incorporates the names and people from an old film or documentary would not only be entertaining, but it would also be relevant and contentious if done so with precision or comprehension. In this context, let's explore the complexity of copyright law in terms of safeguarding and promoting diverse creative works, with particular reference to the sphere of cinematographic films and the media.

There is currently a trend among film producers of retaining the rights to their films. It is because of this that some creative artists may have qualms about royalty payments if their works are exploited for commercial reasons.<sup>290</sup> Copyright amendment Act of 2012 proposed independent rights for creators of literary and musical works in cinematography films. Authors will be able to collect royalties and other advantages from copyright organisations under the proposed legislation. Authors of works such as songs in films or sound recordings, for example, will receive royalties for commercial exploitation of their work as a result of this law. The revisions would implement a licencing system for all sound recordings to ensure that the copyright holder's interests are safeguarded while creating a sound recording of any literary, theatrical, or musical work.<sup>291</sup> It is criminal by imprisonment up to two years and a fine of up to \$10,000 for anybody who intentionally circumvents an effective technical device intended to safeguard any of the rights.<sup>292</sup> The amendment proposes a number of significant modifications to Cinematographic Films. Cinematographic film rights are set to undergo an unprecedented shift as a result of these reforms. As part of planned changes, creators of literary and musical works in cinematographic films would be granted independent rights.<sup>293</sup> In copyright law, writers are those who create works that can be protected by copyright, such as film screenplays, the lyrics of songs used in films, music compositions, and dance works. Among other things, the amendment aimed at protecting authors would cover script writers, lyricists, choreographers, and composers of music. If contemporary technology is not brought under the law, "unauthorised use of the original work should be stopped," it is stated. There needs to be a shift in the way people think about stolen items, thus respect for the original work is a requirement. There's a feeling, though, that the change needs to be more evenly distributed amongst writers and stakeholders. In *State of Andhra Pradesh v. Nagoti Venkataramma*,<sup>294</sup> Copyright Act revisions of 1994 were made to combat piracy, which had become an

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<sup>290</sup> Off course the performers would be generally paid by tire producer in terms of wages or in one time lumsum payment which may be felt as insufficient or not rewarding by the performance time and often.  
<sup>291</sup> Sreenivasulu NS & Hemanth Kumar HS, Nuts and Bolts of Copyright Amendment Bill, 2010, March 2011, Vol 1, Pt 3.

<sup>292</sup> It will bring the country's copyright laws in line with international standards in internet and digital technology and provide for stringent punishment.

<sup>293</sup> The bill ensures that the authors of the works, particularly songs included in the cinematograph film or sound recordings, receive royalty for the commercial exploitation of such work.

<sup>294</sup> 1996 (16) PTC 634 (India).

international concern due to rapid technological improvements, said the Supreme Court, which was commenting on the amendments. Copyrights were meant to be protected by legislation that sought to limit piracy and hold offenders accountable. Section 52-A was added to the statute as a result. Film and sound recordings might thereafter be effectively protected against piracy after that point. According to the court, “it is unnecessary for the prosecution to search down the owner of the Copyright to appear and adduce proof of copyright violation. Copyright infringements can go on even if there is no evidence that the copyright has been violated. This might lead to an infringement of copyright if sections 52-A and 52-B of the Copyright Act of 1976 are not adhered to.” It is becoming increasingly common in India for video/cable piracy to take away large swaths of cash from the makers of films, as well as from the legitimate marketplaces for copyright holders. Injunctions have been issued often by the courts to stop such conduct. In *Mirabai Films Pvt Ltd v. Siti Cable Network*,<sup>295</sup> India’s Delhi High Court issued an interim injunction barring cable networks from telecasting “Monsoon Wedding” on cable. In *Entertaining Enterprises v State of Tamil Nadu*,<sup>296</sup> the copyright in a cinematograph film was violated when a film was shown on videotape without permission. In USA in *MGM Studios Inc. v. Grokster Ltd*,<sup>297</sup> an important part of the ruling was that distributing devices with the intention of encouraging their use in copyright infringement was prohibited, as demonstrated by unambiguous speech or other intentional measures taken to encourage infringement. As piracy continues to plague the Indian entertainment sector, many industry organisations and initiatives are pushing for improvements in copyright legislation and enforcement. The following are some of the ideas that have been put forth:

- Ensuring that infringement matters are tried on a regular basis and that they are resolved quickly.
- Convicted criminals must receive a sentence of at least six months in jail.
- Allowing copyright owners to collect damages from those who violate their rights.

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<sup>295</sup> 2003 (26) PTC 473 (India).

<sup>296</sup> AIR 1984 Mad 278 (India).

<sup>297</sup> 545 US 913 (2005).

- Copyright legislation should be specially tailored to deal with Internet piracy.
- For software-related crimes, the appointment of a special public prosecutor has been made.

The Indian film industry is the largest in the world in terms of output and audience attendance,<sup>298</sup> considering the number of films made and tickets sold, the Indian film industry is the largest in the world<sup>299</sup> globally, it's the fastest-growing.<sup>300</sup> Among the Indian diaspora, as well as non-Indian people in several Asian and African countries, Indian film is a popular source of “soft power” for India.<sup>301</sup> However, the industry is plagued by high piracy levels. The Indian film industry suffers annual losses of \$1 billion in revenue and 600,000 job losses as a result of piracy, according to a recent industry study.<sup>302</sup> According to these numbers, even if one disagrees with how they were calculated, piracy is a widespread phenomenon in India. In Indian cities, pirated DVDs and illicit file-sharing and downloading are commonplace.

In India, there are a variety of methods for making and distributing unauthorised versions of films online (as in many other countries). Three of these are particularly remarkable, though. To begin with, companies in the production and distribution chain have leaked copies of film prints internally.<sup>303</sup> Pre-release prints of films, known as “screeners,” have been leaked through film festivals, industry insiders, and even the

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<sup>298</sup> UNESCO Institute for Statistics (2014). Diversity and the Film Industry: Analysis of the 2014 UIS International Survey on Feature Film Statistics, p. 9. (Aug.02, 2020, 10:40 PM), [http://uis.unesco.org/sites/default/files/documents/diversity-and-the-film-industry-an-analysis-of-the-2014-uis-survey-on-feature-film-statistics-2016-en\\_0.pdf](http://uis.unesco.org/sites/default/files/documents/diversity-and-the-film-industry-an-analysis-of-the-2014-uis-survey-on-feature-film-statistics-2016-en_0.pdf).

<sup>299</sup> Motion Picture Association of America (2016). Theatrical Market Statistics, p.7, (Aug. 02, 2020, 11:40 PM), [https://www.mpa.org/wp-content/uploads/2017/03/MPAA-Theatrical-Market-Statistics-2016\\_Final.pdf](https://www.mpa.org/wp-content/uploads/2017/03/MPAA-Theatrical-Market-Statistics-2016_Final.pdf).

<sup>300</sup> PricewaterhouseCoopers (2014). Global Entertainment and Media Outlook 2014-2018: India Summary, pp. 3-4. (Aug. 03, 2020, 12:40 AM), <https://www.pwc.com/gx/en/global-entertainment-media-outlook/assets/indian-summary.pdf>.

<sup>301</sup> Thussu, D., *Communicating India's Soft Power: Buddha to Bollywood*, pp. 127–154. Palgrave MacMillan: London.

<sup>302</sup> US-India Business Council & Ernst & Young (2009). The Effects of Counterfeiting and Piracy on India's Entertainment Industry, pp. 3, 31.

<sup>303</sup> For example, clips from Baahubali 2, a big-budget film, were leaked online before the film's release by a young graphic designer who was a part of the editing team. See Roy, G. 2016. Baahubali 2 War Sequence Leaked, Graphic Designer Arrested. NDTV. (Aug. 03, 2020, 02:15 AM), <http://movies.ndtv.com/regional/baahubali-2-scenes-leaked-graphic-designer-arrested-1628731>.



Indian film classification board.<sup>304</sup> It is also common for film pirates to utilise camcorders in movie theatres to make copies of films and distribute them online after the film has been released. To avoid detection, pirates are increasingly filming their activities using cell phones because of the advancements in mobile phone cameras.<sup>305</sup> Films may also be pirated from reputable sources and shared online, either via DVDs or streaming services like Netflix and Amazon Prime.

The reasons for the aforementioned actions might be different. Because of their love for the material, some people have shared copyrighted materials without any obvious financial gain. Many pirates are motivated by financial gain, though. Piracy, according to the Committee, is a “high-rewards” enterprise.<sup>306</sup> Some time ago, an Indian police operation against a major pirate apparently revealed over a million-dollar worth of pirated DVDs, according to reports at the time.<sup>307</sup> Advertising revenue from internet piracy has grown significantly in recent years. Nearly one-third of the ads were for “household” companies, according to a 2014 study by a British member of parliament who was functioning as intellectual property advisor to Prime Minister David Cameron at the time of the report’s publication.<sup>308</sup> A study found that most firms had no idea their ads were showing on these sites.<sup>309</sup> Study by FICCI and Strategic IP Information (SIPI) monitored 1143 pirate websites providing Indian films, and found 73% of them financed by adverts. Ads for well-known brands accounted for more than half of the results.<sup>310</sup>

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<sup>304</sup> For example, a major Bollywood film, *Uda Punjab*, was leaked online in entirety when the film was pending review with the Indian film classification board. See Datta, A.N. 2016. “Uda Punjab” leak: CBFC claims innocence as all fingers point at them. DNA, (Aug.05, 2020, 12:40 PM), <http://www.dnaindia.com/entertainment/report-uda-punjab-leak-cbfc-claims-innocence-as-all-fingers-point-at-them-2224252>.

<sup>305</sup> Pillai. S., *The Piracy Nightmare*, The Hindu, (Aug. 06, 2020, 12:40 PM), <http://www.thehindu.com/features/cinema/The-piracy-nightmare/article14593263.ece>.

<sup>306</sup> *Supra* note 296.

<sup>307</sup> Selvaraj. A. 2013. CB-CID Unearths Rs 7cr Worth Materials from Video Pirate. Times of India. (Aug. 06, 2020, 01:40 PM), <http://timesofindia.indiatimes.com/city/chennai/CB-CID-unearths-Rs-7cr-worth-materials-from-video-pirate/articleshow/18096084.cms>.

<sup>308</sup> Weatherley, M. (2014). “*Follow the Money*”: *Financial Options to Assist in the Battle Against Online IP Piracy*, (Aug. 06, 2020, 02:30 PM), [http://www.olswang.com/media/48204227/follow\\_the\\_money\\_financial\\_options\\_to\\_assist\\_in\\_the\\_battle\\_against\\_online\\_ip\\_piracy.pdf](http://www.olswang.com/media/48204227/follow_the_money_financial_options_to_assist_in_the_battle_against_online_ip_piracy.pdf).

<sup>309</sup> *Ibid.*

<sup>310</sup> Federation of Indian Chambers of Commerce (FICCI) and Industry & Strategic IP Information (SIPI) (2017). *Badvertising*. (Aug. 06, 2020, 03:40 PM), [http://verisiteglobal.com/Badvertising\\_Report.pdf](http://verisiteglobal.com/Badvertising_Report.pdf).

Some Indian academics and activists consider film piracy to be a noble cause. “A champion of cinema piracy” is Lawrence Liang’s self-described motto”,<sup>311</sup> WIPO’s efforts to combat piracy have been slammed by the Alternative Law Forum, a group that advocates for open access.<sup>312</sup> People who support piracy often point to the fact that it allows people to get their hands on the latest and greatest works of art. Even defendants in a copyright infringement case, who were accused of renting out DVDs without a licence, made this claim.<sup>313</sup> A case in point in 2014, two websites advertising pirated versions of a famous Bollywood film were traced to pirates residing in Latvia, purportedly with no cultural attachment to India and driven only by profit.<sup>314</sup> In the FICCI-SIPI survey, the most servers were found in North America, followed by Europe, and finally Asia.<sup>315</sup> Many options are now available in India to get licenced material at low pricing, such as YouTube, Netflix, and Hotstar, unlike a decade ago (an India-focused website run by the Star television network).

As of this year 2014, India has overtaken China as the world’s fastest-growing smart phone market.<sup>316</sup> In order to make this expansion possible, the Digital India programme played a critical role. In 2014, for the first time, the United States placed India in a list of four countries where piracy is rife.<sup>317</sup> Co-production Treaties were struck with Canada and China by India.<sup>318</sup> Indian film creators are able to profit from tax rebates and reduced visa requirements through such treaties.

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<sup>311</sup> Liang, L. 2014. Insights on Film Piracy. *Economic and Political Weekly* 47: 29, 30.

<sup>312</sup> Alternative Law Forum. Right02Copy, (Aug. 06, 2020, 04:45 PM), <http://altlawforum.org/productions/right02copy>.

<sup>313</sup> Warner Bros. v. Santosh 2 M.I.P.R. 25 (2009), Pg. 15. The defendants argued (unsuccessfully) before the court that that they were “solving the problem of an “artificial shortage” of entertainment in India.

<sup>314</sup> *Ibid.*

<sup>315</sup> Janaki Arun, Review: “Contemporary Challenges of Online Copyright Enforcement in India” (2019) by Arpan Banerjee, (Aug. 08, 2020, 12:45 PM), <https://www.algindia.com/review-contemporary-challenges-of-online-copyright-enforcement-in-india-2019-by-arpan-banerjee/>.

<sup>316</sup> E Marketer newsletter, 29 December 2014, KPMG Report 2014.

<sup>317</sup> The Hollywood Reporter “India joins China, Russia, Switzerland on Piracy watch list”, 24 June 2014, (Aug. 08, 2020, 01:35 PM), <https://www.hollywoodreporter.com/news/general-news/india-joins-china-russia-switzerland-714572/>.

<sup>318</sup> The Hollywood reporter, “India, china sign film co production,” 18th September 2014, (Aug. 08, 2020, 02:45 PM), <https://www.hollywoodreporter.com/news/general-news/india-china-sign-film-production-734016/>.

Despite the fact that India's Endeavour efforts to combat piracy in the recent past have been lauded. Yamraj and Nickkk DON, for example, were two of the most high-profile pirate syndicates to be busted.<sup>319</sup> Pirated DVDs cost as little as 30-40 rupees, whereas official multiplex tickets cost 150-200 rupees.<sup>320</sup>

#### 4.4.1. ELUCIDATION OF THE TERM PIRACY

Piracy is the act of making copies of a work without permission and reselling them on the open market for a significantly reduced price. A major danger to the entertainment industry has emerged as a result of this development. Piracy is on the rise because of the ease with which technology may be accessed. In today's world, it's a cinch to illegally download content. CD writers may be purchased off-the-shelf for a relatively low cost. To prosecute piracy-related offences when the topic of punishment arises in industrialised nations, whereas in Asian countries and especially India, the government has not paid adequate attention because of more pressing matters.

In terms of internet users, India has overtaken the United States as the second-largest country.<sup>321</sup> Over 213 million people in India were reported as having access to mobile internet as of January 2016.<sup>322</sup> New 4G services, a healthy increase in 3G subscribers, and the continuous acceptance of 2G by the public in rural areas have all played a vital part in making this possible, thanks to the Digital India Program. The screen phenomenon was fueled by the availability of low-cost smartphones and tablets. Around 10% of the population in India has access to a smartphone.<sup>323</sup> Smartphone penetration is substantially lower here than in the rest of the world, so there's a lot of room for growth.

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<sup>319</sup> The Hollywood Reporter, "China Asia-India the problem areas in camcorder piracy cases." 8th December, 2014, page 10, (Aug. 08, 2020, 03:35 PM), <https://www.hollywoodreporter.com/movies/movie-news/cineasia-india-china-problem-areas-755349/>.

<sup>320</sup> *Ibid.*

<sup>321</sup> AMAI-IMRB Internet in India Report, 2014, (Aug. 08, 2020, 03:55 PM), <https://cms.iamai.in/Content/ResearchPapers/e7cb87e7-74b3-4c2f-8bfc-09ccfd7fb265.pdf>.

<sup>322</sup> Economic Times, Sunday, January 10, 2016, (Aug. 08, 2020, 04:45 PM), <https://economictimes.indiatimes.com/archive/year-2016,month-1.cms>.

<sup>323</sup> KPCB Internet Trend Report, 2014, (Aug. 08, 2020, 05:45 PM), <https://www.kleinerperkins.com/perspectives/2014-internet-trends/>.

#### 4.4.2. ONLINE-PIRACY IN THE DIGITAL DOMAIN

When it comes to the virtual world known as “cyberspace” or “the internet,” borders aren’t clearly defined. While essential as a repository of knowledge, it is great for criminals who can exploit this environment to their advantage. On the increase are forms of cybercrime such as hacking, cyberstalking, spamming, and online piracy for movies and music.

We use the term “copyright” to describe the bundle of “exclusive rights” that most countries grant to authors in order to profit from their works. A person who claims that they have the right to something means that no one else is allowed to do so without their consent. The core principle of copyright protection is that new ideas require financial incentives to succeed. This is recognised by copyright law, which provides a legal basis for it. The commercial exploitation of copyright also generates revenue for creators, rewarding their particular innovation with monetary compensation.

India’s Supreme Court rightly acknowledged the importance of copyright in the country in the case of *R. G. Anand v. Delux Films*<sup>324</sup> the Court in this case held that:

*Copyright infringement is based on the morality of the Eighth Commandment: “Though shall not steal,” which provides the basis of the Copyright Act of 1957’s protections.*

Online copyright infringement is a worldwide problem. By “piracy,” we mean “unauthorised copyrighted work entire or in substantial part replication, importation, or dissemination.” Because of copyright infringement, property owners suffer. Because creative individuals, such as authors and painters, are not paid for their work, piracy harms society’s ability to innovate. There are several different types of piracy in the Copyright sector.<sup>325</sup>

A new dimension has been introduced to today’s communication process thanks to computer-aided communication tools such as email and the internet. The methods by

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<sup>324</sup> R.G. Anand v. Delux Films, A.I.R 1978 S.C.1613, (India).

<sup>325</sup> Justice Jayant Patel, *Copyright enforcement in India and Global world*, Vol. XLIII (2), GUJARAT LAW REPORTER, Pg. 41 (2002), (Aug. 08, 2020, 09:05 PM), <https://nludelhi.ac.in/download/publication/2015/Digital%20Library-Legal%20Educaiton%20and%20Research.pdf>.

which various kinds of information may be conveyed have likewise experienced a significant shift. However, they are the greatest danger to the realm of copyright since they have made human communication more time and cost effective. Many copyrighted items are used in today's communication channels, making them vulnerable to large-scale piracy when security measures are not taken.<sup>326</sup>

### **4.4.3. TYPES OF PIRACY**

**4.4.3.1. INTERNET PIRACY:** There are several ways to pirate intellectual property on the internet, including file sharing networks, pirate servers, websites that have been hacked and computers that have been infected with malware. Internet auctions are often used by hard-core pirates to sell illegally replicated DVDs.<sup>327</sup>

### **4.4.3.2. TV AND SIGNAL THEFT VIA ILLEGAL CAMCORDING OF CINEMATIC MOTION PICTURES**

The motion picture business must also address the issue of unauthorised movie recording in theatres, which is occurring in addition to the issue of pirate devices and applications. One of the most common methods for capturing the audio-visual material (whether it's the picture or sound or both) from a movie theater's screen or sound system is to utilise a digital recording device. As long as the film is made available on the Internet, it may wreak havoc on the worldwide market and the millions of dollars that are invested in making a feature-length picture. In 2020, the number of theatres that were shuttered due to the COVID-19 outbreak led to a considerable decline in illicit filming in theatres. Many films were not released in theatres in 2020 as a result of these closures, but the MPA expects that once the theatrical business recovers, huge illicit recording of films in theatres will restart.

A multifaceted approach is needed to tackle camcording. This includes: (i) enacting and enforcing anti-camcording legislation to outlaw the use or attempted use of an audio-

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<sup>326</sup> Ministry of Human Resource Development, *Study on Copyright Piracy in India*, (1999), (Aug. 08, 2020, 11:25 PM), <https://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>.

<sup>327</sup> Luigie Proserpio, Severino Salvemini and Valerio Ghirngelli, "Management Entertainment Pirates Determinants of Piracy in the software, music and movie Industries", p 34-36, 2015.

visual recording device in a theater to make or transmit a copy of all or part of a motion picture; (ii) educating the public about how unauthorized camcording hurts both businesses and the consumer; and (iii) working with the private sector to identify and prevent unauthorized camcording in cinemas. This strategy has been implemented in many foreign markets (including **Canada, Japan** and **South Korea**) with good results. **Mexico** has been a major source of camcorded movies uploaded to the Internet. **Mexico** was required by the USMCA to finally address camcording properly in its legal regime. In July 2020, as part of the USMCA implementation package of reforms, the Mexican Congress adopted the requisite changes to its Criminal Code (Article 424*bis*), which, if properly implemented, should significantly improve enforcement against camcording in Mexican theaters. The Country Reports in this submission highlight many other markets where an effective strategy against camcording has not yet been implemented and where new criminal laws are clearly needed. Enactment of criminal sanctions is not by itself enough; effective enforcement of these laws remains critical to addressing the problem.

#### **4.4.3.3. FILM AND TELEVISION PROGRAMME PIRACY THROUGH THE USE OF PIRACY DEVICES**

“Illicit Streaming Gadgets” (i.e., pirate devices and applications) have developed into a harmful piracy ecosystem (ISDs). Pirate devices and applications make it possible to download and stream information illegally, as well as to stream live television and athletic events without the permission of the broadcasters, undercutting the licence payments paid by distributors, on which content producers rely. There is an increasing danger to the Motion Picture Association (MPA) members from these gadgets and applications. You may find streaming devices preinstalled with infringing applications and TV/VOD subscription services online and in brick-and-mortar stores. When the legality of the devices (boxes), as well as their trafficking, is in question, the difficulty is much greater. It’s also possible to find infringing software through a variety of major and niche app repositories, including Google Play and the App Store. For the 2017 Notorious Markets Report, the U.S. Trade Representative focused on this topic.<sup>328</sup>

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<sup>328</sup> In its 2017 Notorious Markets Report, USTR spotlighted the growing problem of Piracy Devices (i.e., PDs), concluding that they “pose a direct threat to content creators, sports leagues, and live

It is difficult to enforce against these devices and applications since they are part of a sophisticated and integrated internet ecosystem that facilitates access to illegal audio-visual assets. The retailer/distributor or the software developer might be held accountable under the correct circumstances (if identified). It is possible for governments to take action against important distribution sites for illegally used devices, such as marketplaces (both online and physical) where such devices can be sold. For the copyright industries, many physical markets now increasingly provide items and services that enable piracy devices and applications, and/or booths or kiosks or “repair” businesses that offer to load unlicensed copyright content or pirate-enabling programmes on any device. These gadgets are harming lawful digital distribution of copyrighted material, and urgent action is needed to prevent further damage.

#### **4.4.3.4. ILLEGAL INTERNET PROTOCOL TV (IPTV)**

A second form of piracy is from services that provide access to stolen telecommunication signals or channels and offer on-demand infringing film and episodic television content to a global audience via dedicated web portals, third-party applications, and piracy devices configured to access these services. In the U.S., these illegal services are valued at over \$1 billion in piracy subscriptions alone (and estimated profit margins range from 56% for retailers to 85% for wholesalers worldwide).<sup>329</sup>

There are now over a thousand illegal IPTV services worldwide, offering hundreds of channels sourced from multiple providers, along with VOD content of unauthorized movies and television programs. Many of these illegal services are subscription-based for-profit services, with monthly or yearly user packages. The technical infrastructure of these services is often vast and complex, making the identification of content sources and service operators extremely challenging. IPTV services have been a driving force

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performance, as well as legitimate streaming, on-demand, and over-the-top (OTT) media service providers.” USTR 2017 NM Report at 8-9, (Aug. 08, 2020, 12:50 PM), <https://ustr.gov/sites/default/files/files/Press/Reports/2017%20Notorious%20Markets%20List%201.11.18.pdf>.

<sup>329</sup> See, *Money for Nothing: The Billion-Dollar Pirate Subscription IPTV Business*. Digital Citizens Alliance and NAGRA (August 2020), (Aug. 12, 2020, 12:50 PM), <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/DCA-Money-for-Nothing-Report.pdf>.

in the emergence of a number of related illegal businesses, including ones engaged in the re-sale of IPTV services or the theft, distribution and sale of channel feeds. The marketing and sale of these IPTV services is often carried out by a network of global IPTV re-sellers who purchase subscriptions at wholesale prices and re-sell them for a profit, further complicating investigations. These services rely on infrastructure and support services, including from hosting providers, media servers, and panel hosts, sometimes without the knowledge or approval of the illegal services or product (but sometimes in cooperation with these services), which is why criminal enforcement against these large-scale operations is the most effective deterrent.

Satellite signals are usually encrypted so infringers must circumvent the encryption to access content. Thus, enforcement actions (and regulations) need to focus on: (i) prohibiting the trafficking in pay-TV or signal theft devices or technologies; (ii) the unlawful decryption of encrypted cable or satellite signals; and (iii) the forwarding of decrypted signals (whether lawfully or not) without the authorization of the rights holders of the content or of the signal. These actions can help foster the licensing of broadcasters and cable casters, and weed out unlicensed television distributors. These types of piracy can take many forms. Retransmission piracy occurs when a local cable operator accesses and distributes (by retransmission) unauthorized U.S. domestic channels. Alternatively, the cable operators may also be engaged in IPTV piracy when they use their own fibre optic network to establish and distribute an IPTV service that obtains film and television content and then transmits it from the cable system headend (i.e., the main distribution point). This is common for TV (and sports programs) offered by cable or satellite systems that are downlinked and distributed in foreign markets without any consent or payments.

**4.4.3.5. PEER-TO-PEER PIRACY:** A Peer-to-Peer network's unlawful file sharing poses the greatest challenge to the media industry's present revenue model. Provide an overview of P2P file-sharing networks in order to better understand how the media business may utilise this information in court and how P2P software developers and users can be held culpable. Without the need for a centralised server or gatekeeper, all participants (peers) store resources and interact directly with each other. Search mechanisms are offered in P2P systems to locate the suitable node in real time whereas



the address of the server is fixed in conventional client/server systems. P2P systems have developed into a variety of architectures that differ mostly in their search and storage approaches.

New P2P file-sharing networks such as Napster and BitTorrent employ a central directory to store and search for content. Sharing information about material is done through a central database under the Napster paradigm. You may use this database to find the IP-addresses of nodes that host specified material, and then download it straight from one of those nodes. In a centralised system, it is easier to locate all the files and trace individuals who give and download them, which raises the risk of developers being sued.<sup>330</sup>

**4.4.3.6. THEATRICAL CAMCORDER PIRACY:** Within a few hours of a film's release, illegal copies of the film's DVDs and Blu-rays surface online.<sup>331</sup> This influences the distribution cycle, performance, and employment. Theatregoers using recording devices (camcorders, voice recorders) are subjected to cam-coding as they enter the theatre.

**4.4.3.7. CINEMATOGRAPHIC WORKS:** Cinematograph includes any works generated by equivalent processes, such as video films, the definition states. Visual recordings, such as those found on CD, VCD, and DVD, are usually regarded as cinematic work.

**4.4.3.8. CABLE PIRACY:** The term "cable piracy" refers to the practise of illegally distributing films via cable networks. Without authorization from the rights holder, many films, especially new releases, are aired on cable television networks. Satellite

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<sup>330</sup>Sanjay Goel, Paul Miesing & Uday Chandra, *The Impact of Illegal Peer-to-Peer File Sharing on the Media Industry*, (Aug. 12, 2020, 01:25 PM),

[https://www.researchgate.net/publication/259729302\\_The\\_Impact\\_of\\_Illegal\\_Peer-to-Peer\\_File\\_Sharing\\_on\\_the\\_Media\\_Industry/link/5c701aa9299bf1268d1df998/download](https://www.researchgate.net/publication/259729302_The_Impact_of_Illegal_Peer-to-Peer_File_Sharing_on_the_Media_Industry/link/5c701aa9299bf1268d1df998/download)

<sup>331</sup> FICCI-KPMG REPORT 2015, (Aug. 12, 2020, 02:25 PM),

[https://assets.kpmg/content/dam/kpmg/pdf/2015/03/FICCI-KPMG\\_2015.pdf](https://assets.kpmg/content/dam/kpmg/pdf/2015/03/FICCI-KPMG_2015.pdf)

channels are typically structured and do not play films without purchasing the correct rights, making piracy an uncommon occurrence.

**4.4.3.9. SOFTWARE PIRACY:** Using software illegally, then copying and distributing it without the owner's permission is the initial step in software piracy. Small and large businesses alike are victims of widespread software piracy.

**4.4.3.10. OPTICAL DISC PIRACY:** The illegal production, sale, distribution, or trading of digital disc copies of motion pictures for the illicit production and distribution of motion pictures is known as optical disc piracy.

**4.4.3.11. INTERNET AND MOBILE PIRACY:** Because of the poor enforcement methods, piracy is only going to rise as technology advances. The mobile phone market in India grew at the quickest rate in the world. Using the internet for piracy includes obtaining copyrighted material from websites and sharing it with others via peer-to-peer file-sharing. It is possible to compress these files further and transfer them to a mobile phone from a computer or the internet.<sup>332</sup>

**4.4.3.12. PARALLEL IMPORT:** Copyright owner's authorization has not been obtained prior to the importation of items that have been approved for manufacturing or distribution in the exporting nation.

Due to fast technological advancements, piracy has become a global concern. In the case of *State of Andhra Pradesh v. Nagoti Venkataramana*,<sup>333</sup> it was held that all governments are pursuing tough legislation and enforcement steps to deal with the problem, which has reached worrisome proportions throughout the world. While debating a bill to alter the Copyright Act, 1957, members of Parliament also raised concerns about piracy and the need for stronger anti-piracy measures.

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<sup>332</sup> Internet and Mobile Association of India sets up committee to work on fighting online piracy, (Aug. 12, 2020, 03:15 PM), <https://economictimes.indiatimes.com/tech/internet/internet-and-mobile-association-of-india-sets-up-committee-to-work-on-fighting-online-piracy/articleshow/55897029.cms>

<sup>333</sup> AIR 1998 SC 611 (India).

Pirates have benefited enormously from the development of new means for capturing, storing, and reproducing audio programmes, as well as video technologies. Several crores of rupees are believed to be lost by film makers and other copyright holders. Tax evasion costs the government billions of rupees in lost revenue. In addition, there are indications that uncertified video films are being presented on a huge scale due of the current video boom in the country. Furthermore, a great number of video parlours have cropped up all throughout the nation, where they charge entrance fees to show such films on video tapes. Because of this, the Copyright Act of 1957 should be amended to effectively address the widespread piracy in the country.

Following are the revisions to the Act that are included in the Bill:

- (i) As a first step, to enhance the maximum penalty for copyright infringement, which now stands at three years in jail, with a minimum penalty of six months, and a fine of up to 2 lakhs, with the minimum of Rs. 50,000/-;
- (ii) Provide for higher penalties for second and subsequent convictions;
- (iii) Declare infringement of copyright an economic offence, thus it will not be subject to the limitation period provided for in the 1973 Criminal Procedure Code for offences.

#### **4.4.4. CAUSES OF PIRACY**

The cost of certain copyrighted material is prohibitive for most individuals. Because of this, there has been an increase in the number of dishonest traders. Reverse marketing is also being caused by these devious dealers. It appears to be the primary source of piracy, and consumers are the only ones who can stop it. Piracy is a problem that can be solved by educating the public. The reasons for your support are listed below.

- Insufficient communication by government authorities on the negative effects of utilising an unlawful good.
- Deterrent punishment is lacking.

Traditional businesses like cigarettes and textiles, as well as high-tech ones like computer software and music CDs, have been assisted by the rise of digitalization and the availability of old manufacturing equipment.

#### **4.4.4.1. LACK OF EMPLOYMENT:**

Although it is impossible to demonstrate a clear correlation between piracy and unemployment, we can firmly state that unemployment is an economic and social disaster.<sup>334</sup> A large number of unemployed people are forced to engage in labour-intensive activities such as unlawful manufacturing and sale of commodities in order to make quick money and reap large profits due to the huge volume of unemployed people.

#### **4.4.4.2. POOR ENFORCEMENT MECHANISM:**

The executive machinery's laxity is a major contributor to piracy. There was a lack of efficient anti-piracy enforcement mechanisms. On the one hand, the right holder is sluggish and the police are inactive. Involvement of the police in preventing murders, riots, and terrorist operations, as well as in enforcing the rule of law. In addition, the size and complexity of India necessitates a police force that is insufficient.

#### **4.4.4.3. MISCONCEPTIONS:**

Misconceptions regarding piracy are a major contributor to copyright infringement, and dispelling these myths is one of the most difficult challenges. It's possible to lower costs, expand availability, and tighten legislation, but altering the public's perception and awareness of piracy will take time. A generational shift is also taking place in the way people view the internet and downloading as part of their daily lives. Since the advent of the computer, there has been less of a physical component to piracy, which makes it simpler to persuade someone born before the computer that it's wrong. Essentially, all you have when you download a music is a bunch of data on your computer. Taking without permission, especially on the internet, makes no sense, especially because one is normally anonymous.<sup>335</sup>

#### **4.4.4.4. INEFFICIENT POLICING:**

There is a lack of interest in copyright matters among police officers, who prefer to focus on more serious crimes like murder, rape, and theft. Law and order are the

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<sup>334</sup> Rafael Rob & Joel Wald Fogel, "Piracy on the High Music Downloading, Sales and Displacement and Social Welfare in a sample of college students", *The Journals of Law and Economics* 49th ed.

<sup>335</sup> Alexander Peter Snelling "Digital Piracy: How the media industry is being transformed", (Aug. 12, 2020, 03:55 PM), <https://riunet.upv.es/bitstream/handle/10251/35922/Memoria.pdf?sequence=1>.

responsibility of the state under our form of government. Our police system is focusing its attention on a variety of concerns, but copyright is not one of them. There is a big difference in the priorities of the Indian police when it comes to life and liberty and economic offences. Copyright infringement cases should be given top attention by the police.<sup>336</sup>

#### **4.4.4.5. INEXPERIENCE POLICE SYSTEM:**

Government decides to lead capacity building and stakeholder awareness raising at copyright enforcement advisory council meeting. There are a number of obstacles that must be solved before the government can accomplish its goal of better enforcement machinery. Section 64 of the Act<sup>337</sup> gives police officers who are not sub-inspectors the authority to act on their own accord. The following is a list of ideas that has been identified:

- There must be enough police officers on the streets.
- Appointment should be made by a qualified individual.
- Copyright problems should be the exclusive focus of any training.
- They should be able to tell the difference between authentic and counterfeit products.
- Foreign training should be made available.

#### **4.4.4.6. NAIVE JUDICIAL SYSTEM:**

For India's copyright enforcement to be strengthened, the Indian court system must play a significant role.<sup>338</sup> The judiciary must treat all of these copyright concerns matters seriously. Although many cases are pending in the courts, the judiciary must play an important role in preserving copyright cases. The government should give training and set up a judicial academy in order to improve the capability of the judiciary.

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<sup>336</sup> Priti H Dosh, "*Copyright Problem in India Affecting Hollywood and Bollywood*". 26 SFKTLR 295. Discussing the damage cause to the Indian film industry due to Piracy,p. 3-9, 2008.

<sup>337</sup> Any police officers not below the rank of a sub inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, whenever found, and all copies and plates so sized shall, as soon as practicable, be produced before a magistrate.

<sup>338</sup> Jishnu Guha, "Times for India's Intellectual property Regime to grow up", page 13, March 2009.

Our copyright concerns should be a source of strength for our FDI and economic growth. Judges presiding over cases involving copyright should undergo specialised education. There are a lot of pending cases in court. It takes a long time for a court case to come to a conclusion. Investors are reluctant to invest in India's economy because of the lack of copyright protection in the country.

Copyright owners are reluctant to file lawsuits because of the lack of enforcement mechanisms. The government should make it easy for rights holders to file a lawsuit and receive swift justice. Judicial obligation is to interpret the law in a way that preserves the balance between private and public interests. When imposing punishment, the court should strive to make it dissuasive. While the court is making its decision, there is a lack of a deterrent strategy.

#### **4.4.5. FACTORS AFFECTING ONLINE PIRACY**

There is no single solution to the question of why piracy takes place. Online piracy of music, films, and sound recordings can be caused by a variety of sources. An individual's unwillingness to pay for a download is not enough to explain why this problem exists.

The reasons of each of these issues are outlined in detail below:

**4.4.5.1. OBTAINING BENEFITS AS THE ITEM IS FREE** - Piracy is a popular pastime for many people who want the advantages of a certain product for free. The illicit download market for free media, such as music and movies, is the most prominent form of internet piracy. There are many people who work hard to create these works, and they are affected by the use of these creative works without paying for them, according to opponents of the online piracy market; this includes the large number of people who work to support these works (publishers, design engineers, sound technicians, and so on).

**4.4.5.2. DOING IT BECAUSE IT IS CONVENIENT AND QUICK**- The rise in internet piracy might be connected to the rise in technology, which has made it easier

and more convenient to engage in piracy. Online piracy may be done from the comfort of one's own home using a computer and a fast broadband connection, or even a good smart phone. Online piracy may be done swiftly because to the evolution of technology and the speed of the internet. No longer a time-consuming undertaking. Consequently, it is more convenient to participate in this type of behaviour.

#### **4.4.5.3. THREAT OF BEING DISCOVERED IS LOW OR NEGLIGIBLE -**

Because of the nature of internet copyright infringement, identifying the perpetrator is frequently challenging. Since infringers are seldom tracked down and punished, this is an uncommon occurrence as well. There is no fear of getting caught because of the lack of a face for internet piracy, thus the infringer continues to infringe. Piracy is not a deterrent for most individuals who download music from the internet because they believe they will get away with it.

#### **4.4.5.4. PROBABILITY OF BEING PUNISHED IS LOW-**

When it comes to digital copyright infringement, it might be difficult to pinpoint the culprit. This is also a rare occurrence, owing to how difficult it is to find and prosecute those who violate intellectual property rights. Infringers continue to infringe because of the lack of a face for online piracy, which makes them feel safe. As long as they feel they can get away with it, most people will illegally download music from the internet.

#### **4.4.5.5. ILLUSION THAT THE CONTENT AVAILABLE ONLINE IS FREE-**

Many individuals are under the mistaken impression that simply by subscribing for an internet connection, they have free reign to download and duplicate anything they want. In other cases, people don't realise that the stuff on the internet is copyrighted, and they might be fined for doing so.

#### **4.4.5.6. PERCEPTION THAT COPYRIGHT OWNER IS A WEALTHY CORPORATION THAT THE INDUSTRY MAKES A LOT OF MONEY-**

People believe that because the copyright holder is regarded to be affluent, he or she will not be impacted by their copying. We read in the press all the time how much money a specific movie made in the crores, and most of the time we hear about the high fees that

celebrities charge or receive for participating in various projects. As a result, when most people think of movies, they envision something glitzy and opulent. Because of this, many people believe that internet piracy does not harm anyone and does not strain the wallets of performers because the music and film industries generate a lot of money. In addition, because they are making a lot of money and the sector is booming, they view their actions as inconsequential and irrelevant.

**4.4.5.7. INADEQUATE SUPPLY CONDITIONS** - Sometimes real copyrighted content is unavailable. Products that are lawfully available online may also be prohibitively expensive. As a consequence, there is a demand for things, but there is a lack of supply, so people look for other ways to acquire them, and piracy occurs.

**4.4.5.8. ORIGINAL PRODUCTS BEING UNAFFORDABLE-** Most film and television producers do not release their work simultaneously in all territories. It is not uncommon for Indian movies to be distributed in foreign nations months or even years after they have been released in India. Meanwhile, it takes some time for English-language films to arrive in Indian cinemas. Due to a lack of genuine copies, many turn to illegal methods like piracy to distribute their favourite works.

**4.4.5.9. PEER PRESSURE-** There is a lot of pressure on teens and college students to appear pleasant and significant to their friends. As a result, it is often believed that this age group engages in piracy in order to become popular with their peers and gain attention. As a result, many in this age bracket assume that piracy is the “in” thing to do because their peers are doing it as well. They also share this material with their friends.

**4.4.5.10. CHEAP MOBILE DATA RATES-** According to a report<sup>339</sup> India has become as the world’s most affordable mobile data provider. On the worldwide

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<sup>339</sup> *Mobile Data Rates Cheapest in India, Costliest in Zimbabwe: Study*, Gadget 360 by NDTV, (Aug. 16, 2020, 01:25 PM), [://gadgets.ndtv.com/telecom/news/mobile-data-rates-cheapest-in-india-costliest-in-zimbabwe-study-2003327](https://gadgets.ndtv.com/telecom/news/mobile-data-rates-cheapest-in-india-costliest-in-zimbabwe-study-2003327).



average, Indians spend Rs. 600 for 1 GB of data. After China, India is the second-largest market for smart phones, with more than 430 million users. A GB of data costs \$6.66 in the United Kingdom and \$12.37 in the United States, according to research from this year. As a result, consumers may be more likely to engage in piracy since they do not have to worry about the costs associated with mobile data.

#### **4.4.6. TOOLS FOR INFRINGEMENT OF COPYRIGHT ON THE INTERNET**

Internet copyright infringement can be categorised as follows:<sup>340</sup>

*4.3.6.1 Browsing on the internet*

*4.3.6.2 Caching*

*4.3.6.3 Linking*

*4.3.6.4 Framing*

*4.3.6.5 Peer-to-Peer file sharing and copyright infringement.*

*4.3.6.6 BitTorrent Protocol*

*4.3.6.7 Bot and Bot Nets*

*4.3.6.8 Pharming*

*4.3.6.9 Trojan Horse*

*4.3.6.10 Key Loggers*

##### **4.4.6.1 BROWSING ON THE INTERNET**

Internet surfing is comparable to browsing at a bookshop, but for one major difference: you cannot actually buy anything. One “flicks” through a book in a bookshop while “reading” it. Reading and flipping through the pages of a book do not fall under copyright holder’s jurisdiction. The browser, however, will “copy” (download) the data into the local computer’s memory when you surf World Wide Web sites on the Internet, for example. This is an essential feature of the current browsing technology. It has been clarified by the Amendment Act of 2012 that the preservation of a work or performance merely in the technical process of electronic transmission or communication does not constitute copyright infringement.

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<sup>340</sup> Sangarsh Panday, *Cganging mechanisms in copyright ontology: Digital Rights Management*, December 2010, MIPR, Vol 3, Pt 3, p 155.

The United States Supreme Court in *ACLU v. Reno*<sup>341</sup> the nature of Internet surfing was explained in this way:

A “hypertext” formatting language known as HTML and “browsing” tools are used on the Internet. HTML documents may be shown on the web that include text, graphics, audio, animation, and moving video. Including hyperlinks in HTML documents allows for the flexible assessment and organisation of data and the easy discovery of similar content, even when the data is spread across several computers all over the world and is saved in different formats.<sup>342</sup>

Internet surfing is a kind of reproduction under the UK Copyright Designs and Patents Act, 1988 and the MAI judgement from the United States.<sup>343</sup> The EC Directive, on the other hand, states that surfing results in a temporary copy on RAM, which is excluded from the reproduction right. Any literary work that does not violate copyright laws is regarded as “reading” and “using” under this Directive. According to a number of authors, the mere act of browsing does not constitute copyright infringement.<sup>344</sup>

The US Court in *Religious Technology Centre Netcom on Communication Services*<sup>345</sup> considered digital browsing to be a fair use if there was no business or profit motive. Fair use is likely when someone reads a copyrighted work online and then decides not to buy a copy from the copyright owner since there is almost no market for licencing temporary copies of digital works onto computer displays to facilitate browsing.

A user’s browser will be protected by the “innocent infringer” theory, which permits a judge to award no damages in proper circumstances if he or she does not realise that

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<sup>341</sup> 929 F. supp. 824 (3rd Cir. June 11, 1996), (Aug. 16, 2020, 02:45 PM), <http://www.aclu.org/court/edadec.html>.

<sup>342</sup> *Ibid.*

<sup>343</sup> See *Century 21 Canada Limited Partnership v. Rogers Communications Inc* , 2011 BCSC 1196. *Newspaper Licensing Agency Ltd. v. Meltwater Holding BV* [2010] EWHC 3099 (Ch).

<sup>344</sup> Andrew Grosso, *Copyright and Internet: A Footnote, a Sleight of a Hand, and a Call to Reason.* , *Federal Law 4* (January 1997); also see P. Samuelson, *The Copyright Grab*, *Wired 4* (1995). (Aug. 16, 2020, 04:25 PM), <http://www.catalow.com/logic/does/ii-browse.html>. See section 52 (a) and (b) inserted in Copyright Act 1957 in 2012.

<sup>345</sup> 907 F. Supp. 1361 (N.D. Cal. 1995) (USA)

the message contains copyright material. However, users should not be concerned about a finding of direct infringement: it is exceedingly implausible from a practical standpoint that a copyright owner could show such infringement or sue such a person.

“Browsing” may be a concern since certain nations may not apply fair dealing and implicit licencing as extensively as the Netcom case. The WIPO Copyright Treaty should add “browsing” as an example of “certain specific instances” in Article 10 (2) or “non-commercial fair dealing” like “research and private study” in the definition of “fair dealing”.

For the following reasons, educational institutions in the United States are preferring offline browsing of websites to “live” Internet access or online surfing.<sup>346</sup>

- (i) There are only so many resources that can be made available to schools. It’s impossible for them to provide each student with a phone or modem.
- (ii) The information that kids see is completely within the authority of the teachers. Forbidding pupils from seeing undesirable content is impossible without an active Internet connection.
- (iii) Teachers can limit the amount of time students spend searching the Internet by discovering websites and copying those onto laptops for students to use when they are not connected to the Internet.
- (iv) There are times when even with a fast modem, a website’s loading time is excruciatingly sluggish. Educators, instructors, researchers, and students can greatly benefit from offline web surfing or local caching. Classrooms with web browser-capable computers but no modem, phone line, or other Internet connection may access a wide range of Internet content.

Since “copying” was done without authorization when this software was first published in the United States a few years ago, some companies have vowed to prosecute those

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<sup>346</sup> Priyal Thaker, *Domain Name and Copyright Issues on Internet: A Trans-Jurisdictional Perspective*, (Aug. 16, 2020, 03:55 PM), [https://www.academia.edu/25255590/Domain\\_Names\\_and\\_Copyright\\_Issues\\_on\\_Internet\\_A\\_Trans-jurisdictional\\_Perspective](https://www.academia.edu/25255590/Domain_Names_and_Copyright_Issues_on_Internet_A_Trans-jurisdictional_Perspective)

who copy websites. In the end, these lawsuits were dismissed or settled out of court. Prior to make a hard-drive duplicate of a website, it is best to seek permission from the website's owners/administrators. If a website owner is concerned about their work being stolen, they should put up a warning notice.<sup>347</sup>

Copyright issues arise while viewing the web offline. The researcher thinks this is obvious evidence of computer storage of material that falls under the author's exclusive right of reproduction. However, under the 2012 amendments' Explanation to section 52 (a), storage for private or personal use, including study, would be covered under the doctrine of fair dealing.

#### **4.4.6.2. CACHING**

Caching, often known as “mirroring,” is the act of storing a full website or other complete collection of content for later consumption. Internet browsers employ this method to save “browsed” content in the RAM of the browser machine.<sup>348</sup> The goal of caching is to alleviate network congestion caused by repeated downloads of data by speeding up the retrieval of previously accessed material. In most cases, cached content is kept at a location that is closer to the user's location or on a more capable machine. Caching is a time-saver in the workplace.<sup>349</sup> A browser programme accomplishes it on its own, with no input from the user. browser-related occurrences are known as “cached copies.”<sup>350</sup>

#### **CACHING IS NORMALLY OF TWO TYPES:**

(i) Offline Web Browsing: Local Caching is the same thing. On the end user's computer, either in RAM or on the hard disc, or any mix of both, it happens.<sup>351</sup>

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<sup>347</sup> *Supra* note 346.

<sup>348</sup> Richard S. Vermut, *File Caching on the Internet: Technical Infringement or Safeguard for Efficient Network Operation?*, (Aug. 17, 2020, 01:25 PM), <https://cyber.harvard.edu/metaschool/fisher/ISP/cache1.html>.

<sup>349</sup> Januska Jennifer, *The Great Canadian Cache Grab: Rethinking Browsing as Copyright Infringement*, (Aug. 17, 2020, 02:25 PM), <http://www.cata.law.com/logic/docs/35-browse.html>.

<sup>350</sup> *Supra* note 349.

<sup>351</sup> Local Caching, (Aug. 17, 2020, 04:05 PM), <https://docs.microsoft.com/en-us/windows/win32/fileio/local-caching>.

(ii) Caching at the server level, rather than at the end user's computer level, is known as proxy caching.<sup>352</sup> Caching's rationale and purpose are explored in detail: The simplest approach to enhance online speed is to avoid using the Internet at all. So, caching is all about keeping copies of frequently used stuff close to hand. For example, browsers like as Mosaic and Netscape remember the most recently visited websites. In this approach, the data may be read from memory rather than from a computer in another part of the nation.<sup>353</sup>

The Internet's present bandwidth constraints are the primary reason for the necessity for caching, which is a result of two factors: 1) Internet use has increased dramatically in the previous several years. There are a large number of people who have PCs with low-speed modems by today's standards.

**CACHING CARRIES WITH ITS CERTAIN DISADVANTAGES TO THE OWNER OF THE COPYRIGHTED MATERIAL:**

(i) It is the copyright owner who controls the version of material in print media, but with caching, the ownership of the version shifts from the website administrator to the end user's Online Service Providers. The OSP may, for example, continue to provide the previous version of the information even after the website owner has changed it. Because most caching is invisible to the user, this results in this.

(ii) When a website owner is told that their site includes libellous or copyrighted information, it is possible that the website may be taken down. Despite the fact that the website owner may delete it from its site, the internet service provider may continue to distribute it, which might result in continuous responsibility for them.

(iii) A site's ability to restrict who has access to what data might be compromised if caching is used. If a website owner desires to restrict access to a site's content to just those who have paid, they can do so by using a password. Using a proxy server, an unauthorised user may input the password, download the information, and allow others to copy the work.

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<sup>352</sup> Proxy Cache, (Aug. 17, 2020, 05:45 PM), <https://www.sciencedirect.com/topics/engineering/proxy-cache>

<sup>353</sup> Steve Steinberg, *Speeding up the Web*, *WIRED magazine* 3 (1995). (Aug. 17, 2020, 08:25 PM), <http://www.hotwired.com/wired/3.12/departments/geek.page.html>.

Work creators can use technical measures to prevent their content from being duplicated or limit access to copies rather than putting out a legal spider web to trap innocent insects. Password locking is the most prevalent feature on many of these gadgets. There is a cost associated with accessing full-editions of the Encyclopaedia Britannica and Wall Street Journal online, for example. Users are given a password that they can use to access the site for a limited time.

#### 4.4.6.3. LINKING

It's important to note that links are just a reference to a website's URL, which falls under the category of facts. Linking is one of the most powerful ways to spread information on the Internet. They come in three varieties:

- (i) It is possible to link to multiple sections of the same document intra-page. There may be an option to return to the beginning of a lengthy document, for example.
- (ii) Linking documents within the same server is known as a "intra-system" connection. A university's intra-system connection could connect the homepages of two separate departments on the server.<sup>354</sup>
- (iii) Connecting documents from separate servers via inter-system links is the third option. Through the World Wide Web, millions of papers may be connected together.<sup>355</sup>

When generating connections, it is vital to understand the technical components of the process. Document A can be connected to another without the author's permission or knowledge. When it comes to linking to a specific word or image in B, A cannot do so unless that word has its own URL address.<sup>356</sup> First of all, it's a one-way street. A's connection to B can be followed by anyone who is viewing A. That user has the ability to go back in time. There's no way for a user who's starting at B to connect to A and even if they did, they wouldn't be aware of the link's existence. If the document is not

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<sup>354</sup> *Inter- vs Intra-*, (Aug. 18, 2020, 02:25 PM), <https://www.dictionary.com/e/inter-vs-intra/>.

<sup>355</sup> *Ibid.*

<sup>356</sup> *Connecting to Other Websites*, (Aug. 18, 2020, 04:15 PM), <https://fairuse.stanford.edu/overview/website-permissions/linking/>.

loaded into the user's computer's RAM (random access memory) before the user can "see" it, the user will not be able to see the content on their monitor.<sup>357</sup>

The last several years have seen a lot of people saying that it should not be allowed. The issue stems from a misunderstood definition of what a link is. If a user clicks on a link to a web page, it does not generate a copy of that page on the user's computer or that of the web creator. Linking is akin to citing other people's work in a similar way.<sup>358</sup> In fact, it has been suggested that copyright owners offer "implied permissions" to other Internet users by putting their content online. Access to the Internet would be severely impacted if links were banned, as it would be incredibly difficult to locate information.

With reference to the issue of copyright, links sprang to prominence in *Shetland Times Ltd. v. Dr. Jonathan Wills and Zet News Ltd.*<sup>359</sup> Both parties provided an Internet-based news service in this instance. In October 1996, "Shetland News" used hypertext connections to the related news pieces in the online edition of "Shetland Times." These users were able to go right over Shetland Times' homepage, which is full of advertisements, and instead focus on the linked articles. Both of the defendant's websites and the plaintiffs were cable programmes, and the plaintiffs contended that the defenders had infringed copyright. The judge granted an interim injunction and ordered that the defenders' website erase all connections to the "Shetland Times" until the final ruling. Hypertext links are not protected by copyright, and the legal argument was not whether connections infringed copyright, but whether headlines constitute literary works and therefore be protected by copyright law.<sup>360</sup>

Links should not be copyrighted since they are facts.<sup>361</sup> The copyright of a compilation of facts, on the other hand, is protected. Compilation of facts is a major issue in a major

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<sup>357</sup> *Supra* note 359.

<sup>358</sup> *Linking, Inlining and Framing*, (Aug. 18, 2020, 09:15 PM), <https://www.egyankosh.ac.in/bitstream/123456789/7670/1/Unit-9.pdf>.

<sup>359</sup> Ian Lloyd, *Information Technology Law* (Butterworths 1997) pp.359 – 364.

<sup>360</sup> *Ibid.*

<sup>361</sup> *R.G. Anand v. Deluxe Films*, AIR 1978 SC 1613. Where the court held that actual events and facts are not copyrightable.

case, *Feist Publications Inc. v. Rural Telephone Service Co.*<sup>362</sup> According to the Supreme Court of the United States, the selection and arrangement of facts in factual compilations must be unique.

Links, like URLs, may be described as collections of URLs, using the same analogy. As a result, the descriptions of the links are copyrightable if they are original. The linkages themselves, however, would be unaffected by this protection.

In *Ticket Master v. Tickets.com*, US District Court Judge Harry Hupp ruled on March 27, 2000.<sup>363</sup> held that:

Since no copying is done, there is no violation of a copyright in the act of hyper linking. When a user clicks on the link, they are sent to the original author's website. There is absolutely no deceit in what is taking place at this point in time. Although this is more efficient and faster than going through the cards in a library card index, it is still similar.

While reading is copyright-compliant, browsing is not and can be done by anybody in a library without the consent of the copyright holder, as discussed above. Links to documents do not breach reproduction rights, hence they cannot be seen as contributing to infringement. As an example of compilation, a link might be incorporated in a literary work.

It has been added to section 52 of the Copyright Amendment Act of 2012, which deals with non-infringement. The clause reads:

(c) if a copy of a work or performance is temporarily or inadvertently stored for the purpose of giving access or integration via electronic connections, access or integration, the right holder has not explicitly banned such links, access or integration.

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<sup>362</sup> (1991) Feist, 499 US 340. In *Eastern Book Company v. D.B. Modak*, the Supreme Court of India held that minimum of creativity be present in order that a compilation of judgments can be called copyrightable and hence protectable.

<sup>363</sup> The case is quoted in *Margaret Kubiszyn Smith, Emerging Legal Guidance on Deep Linking*, (Aug. 18, 2020, 11:05 PM), [https://casetext.com/case/ticketmaster-corp-v-ticketscom-inc-2?\\_\\_cf\\_chl\\_jschl\\_tk\\_\\_=pmd\\_0G0rnGDg25PeG1547FUJEijePl6584BYzvtYvRY4BrQ-1631264745-0-gqNtZGzNAjujcnBszQel](https://casetext.com/case/ticketmaster-corp-v-ticketscom-inc-2?__cf_chl_jschl_tk__=pmd_0G0rnGDg25PeG1547FUJEijePl6584BYzvtYvRY4BrQ-1631264745-0-gqNtZGzNAjujcnBszQel).



If the copyright owner has filed a written complaint, the person responsible for the storage of the copy must refrain from facilitating access to the copy for twenty-one days or until he receives an order from the competent court prohibiting such access, and if no such order is received before the expiration of that twenty-one-day period, the person responsible for the storage must cease to facilitate access.

#### **4.4.6.4. FRAMING**

Framing was added to the Netscape Navigator browser in 1996 as a unique feature. It's possible to create "frames" on a website that can be used to include several windows that can be scrolled independently of each other. A "frame" is a section of a web page that functions as a separate browser window and "frame" the context of a secondary, "target" web page or web site, as the name suggests.<sup>364</sup> To sell advertising on its own site, one website operator can exploit intellectual property held by another firm.

To hide a website's domain name while it's framed within another website, the URL or domain name must be hidden. As an alternative, the URL and web page border from the previously accessible site are preserved, but the content of a target site is shown within this boundary. To add insult to injury, users cannot just bookmark a target site since their browser will remember the framer URL. Framers are accused of violating copyright law by either replicating or generating a derivative work based on the original work, according to the content owners.

Multiple scrollable parts can be created by framing the screen. Because of this, and in spite of the numerous litigations surrounding frames,<sup>365</sup> in the end, there are no rules. Out of court settlements have been reached in all cases, which may have been determined by the balance of power between the parties instead of facts or technology.

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<sup>364</sup> Margaret Kubiszyn Smith, *Website Framing: Trademark and Copyright Issues*, (Aug. 20, 2020, 11:05 PM), <http://www.gigalaw.com/articles/2000-all/kubiszyn-2000-04-all.html>.

<sup>365</sup> *Washington Post Co. v. Total News, 97C v. 1990 (PKL) (S.D.N.Y.)* (Aug. 20, 2020, 01:15 PM), <http://www.ljx.com/internet/complain.html>.

In *Perfect 10 Inc. v. Amazon.com*.<sup>366</sup> according to the court, Google's HTML instructions route a user's browser to the computer of a website publisher, which saves the full-size photographic image. These HTML instructions are not a substitute for presenting the original. Text rather than a picture is used for the HTML instructions. Second, the appearance of unauthorised pictures on the user's computer screen is not caused by HTML instructions themselves. HTML only provides the user's browser with the image's URL. Afterwards, the browser communicates with the computer that has the copyrighted image. User activity causes an infringing picture to be shown on the user's computer screen. Contrary to the Trademark Act, the Copyright Act does not provide any protection to copyright holders from activities that induce consumers to feel they are reading an individual Google webpage while Google may make it easier for customers to obtain photos that are infringing on their rights.

#### **4.4.6.5. PEER-TO-PEER FILE SHARING AND COPYRIGHT INFRINGEMENT**

Transferring a file from one computer to another utilising capabilities supplied by the Internet or by server sites in other systems is known as Peer-to-Peer File Sharing (P2P). The reproduction right may have been infringed by the copying of the recording, etc. onto the computer hard disc of the transmitting computer and may also have been infringed by the person receiving a transmitted file if the required authorisation has not been acquired. Intermediary transmission points may be the source of infringement. Depending on local legislation, other rights may be infringed, including those of communication to the public, on-demand availability, distribution, and display, among others. According to the US Supreme Court's decision in the case involving the making of materials accessible for download from websites, *UMG Recordings Inc. v. MP3.com Inc.*<sup>367</sup> alleged infringement occurred when the defendant made its database of thousands of sound recordings available for download without the permission of the relevant copyright owner.<sup>368</sup> According to reports, certain legal measures have already been taken against service providers including Grokster and Morpheus. If you're a fan

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<sup>366</sup> 487 F.3d 701 (9th Cir. 2007) (USA).

<sup>367</sup> (2000) 92 F. Supp 2d 349 SDNY. (USA).

<sup>368</sup> Statutory damages of \$25,000 for each CD will fully copied without authorization were awarded, some thousands of CDs being involved; the parties subsequently settled an amount of \$53.4 million to be paid as damages.

of *KaZaa v. BUMA/STEMRA*,<sup>369</sup> Fast Track software given by defendant allowed users to transmit data without needing a centralised server, the Amsterdam Court of Appeal found.

In this way, it is a temporary Internet network that allows users of the same networking application to connect and read data straight from one another's hard drives. Direct connection indicates that the file transfers from one machine to another without passing via any intermediary servers. To put it another way, P2P is a communication model where both parties have equal capabilities and can start a conversation at any time. Communication nodes may have both server and client capabilities in some P2P scenarios. To minimise server "bottlenecks," P2P was initially designed to allow several users to access the same server simultaneously, but it didn't take off until Napster exploited P2P technology to promote file sharing.<sup>370</sup>

In 1999, Shawn Fanning created Napster, a P2P programme that paved the way for the rise of P2P. After its debut as an unstructured peer-to-peer system, Napster required a central indexing and peer finding service. Peer-to-peer file sharing is widely regarded as the first of its kind. When it comes to P2P music piracy, the first case was determined in 2010 in *A & M Records v. Napster*.<sup>371</sup> There were Napster users throughout the world and the music they possessed on their computers, which they were eager to share with other users. Using a central server, Napster was able to monitor its users for copyright infringement. In other words, Napster was aware of the infringing act, which is a necessary condition for it to be considered an indirect infringement of copyright.<sup>372</sup> The U.S. Court of Appeals ruled that Napster was responsible for copyright infringement. Shortly after losing a legal case, Napster stopped the downloading of any copyrighted material. Following an injunction, Napster shut down its network in July of that year.

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<sup>369</sup> 29 March 2002, note in [2002] EIPR N-130.

<sup>370</sup> See Raman Mittal, *P2P Networks: Online Piracy of Music, Films and Computer Software*, *Journal of Intellectual Property Rights* 440-46 (2004).

<sup>371</sup> 239 F.3d 1004 (9th CIR. 2001) (USA).

<sup>372</sup> Colin Nasir, "Taming the Beast of File-sharing-Legal and Technological Solutions to the Problem of Copyright Infringement over the Internet: Part 1," *Entertainment Law Review* 1 (2005).

Due to legal action against Napster at the time, Gnutella, eDonkey 2000, and Freenet were launched. The first decentralised file-sharing network was Gnutella, which was released in 2002. When compared to Napster, Gnutella had no central server to keep track of all songs available on the network. Additionally, Gnutella supported a wide range of client programmes that could connect to the network.

In March 2001, Niklas Zennstrom, Janus Friis, and Priit Kasesalu unveiled Kazaa and the FastTrack proprietary protocol. It is possible to identify and convert five or ten of the high-quality computers that are sharing the file in question from a total of 100 into super nodes using the FastTrack protocol”,<sup>373</sup> they take care of things like listing them.

The files must be indexed in P2P file sharing to ensure that they may be found. A variety of indexing strategies are available in P2P networks. The first appeal court in *MGM v. Grokster* (the Grokster case) has interpreted this in the following manner:

Each computer in a network that uses a peer-to-peer distribution system has access to the same information as every other computer in the network, therefore there is no need for a central server. Some sort of cataloguing system is needed because the data in a peer-to-peer network is not centralised.

### **NAPSTER CASE**

Peer-to-peer networking's first legal case was the Napster lawsuit. Shawn Fanning wanted to show his pals the music he had on his computer. He came up with the idea of creating software that would allow music stored on one computer to be transferred to another. It was a concept that no one else had come up with. He quit college at the age of 17 to develop this programme. Napster has made it possible to transmit music in the MP3 format. It must be downloaded and installed on a computer in order to do so. Napster may now be accessed by the computer thanks to this. The Napster server looks for other users online who may have the requested music file when a request is made. Music files can be downloaded if Napster connects two computers directly to one other. It's a file-sharing programme. The Napster server is only a conduit for computers to

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<sup>373</sup> A super node is a modern computer with a broadband internet connection.

communicate with one other, but it does not accept or store unauthorised music at any time. Music files (MP3) may be transferred from one PC to another. In order to index, Napster is employing the first way of indexing, a centralised server. About 25 million people were using Napster at one point in time. This allowed them to download music that may have been copyrighted by someone else for free.

Legal action against Napster was brought by a number of record labels to stop it from engaging in, or encouraging other people to engage in, the illegal downloading and distribution of copyrighted music.

### **THE KAZAA CASE**

Napster-like P2P file sharing software is distributed by Kazaa, a Dutch firm. To be clear, unlike Napster, their programme does not restrict itself to MP3 files and does not utilise identical technology in any way. Indexing the files is done using a third way. In the United States, Kazaa is being sued. Legal action against Kazaa was taken in Holland throughout the course of this case to ban it from selling file-sharing software or face a daily fine of \$124,000. This judgement was affirmed by the Supreme Court of the Netherlands in December 2003, which said that the use of free software like Kazaa does not constitute copyright infringement. A lawsuit against Grokster and Smart Cast (the Grokster case) has been decided, while the one against Kazaa is still pending in the US.

### **PIRATE BAY CASE**

Torrent Freak is a corporation based in Sweden. It uses BitTorrent Tracker features to facilitate file sharing over the Internet with the aid of other computers. For violating copyright law, the company's founders were tried in a Swedish court. Their defence was based on the fact that no copyrighted content was hosted on their own server. They were fined and sentenced in 2009. But there are claims that the judges were influenced by political prejudice. Their appeal is pending as well.

#### **4.4.6.6. BITTORRENT PROTOCOL**

The BitTorrent protocol was created by Bram Cohen in July 2001. For the transport of huge files, BitTorrent has become a popular protocol. Ipoque, a German firm that

develops bandwidth management solutions for universities and Internet service providers, has officially issued its 2008/2009 Internet traffic report. Analysis of Internet traffic from throughout the globe totalled more than one petabyte. P2P traffic accounts for 45-78 percent of all Internet traffic; P2P traffic accounts for 27-55 percent of all Internet traffic.<sup>374</sup> A wide range of BitTorrent clients are available to suit a number of operating systems and hardware configurations.

BitTorrent is similar to other file-sharing technologies in that it allows users to connect directly to each other for online file-sharing. As a result, each consumer of a file (downloader) becomes a file/data supplier (uploader). Rather than requesting and downloading the file from the file holder, a user of BitTorrent additionally makes a copy of the file or a portion of the file accessible to other BitTorrent users. User participation in file-sharing is essentially made possible by this technology.

Creating a “.torrent” file is a prerequisite for getting BitTorrent started. The name of the file, its size, hashing information, and the URL of the tracker are all contained in a “.torrent” file. The “.torrent” file is subsequently sent to the user or uploaded on a website or web server, depending on the user’s preference. A tracker file maintains a log of each BitTorrent user’s activity and organises information and actions. One of its most useful features is a list of files that each user is downloading, as well as contact information for other downloaders who are also downloading same items. The tracker file’s metadata allows the downloaders to keep tabs on one another and establish connections. When a seed file is uploaded, rather than a fragmented one, a file is made available.

Packet switching is used to download big files of music, software, films, and games into smaller packets of information (fragments) that can be sent between computers. In a BitTorrent network, each downloader receives fragments not only from the original uploader, but also from other downloaders who are linked to the BitTorrent network.

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<sup>374</sup> Jahn Arne Johnsen, Lars Erik Karlsen, Sebjørn Sæther Birkeland, *Peer-to-peer networking with BitTorrent*, (Aug. 21, 2020, 01:55 PM), <https://web.cs.ucla.edu/classes/cs217/05BitTorrent.pdf>.

When a user requests a missing piece, other users can either download it from them or submit it to them.

In order to prevent bottlenecks, users often request from other user's file pieces that are the rarest and least available. Consequently, each downloader of a file is also a contributor to the network. Automatically organised packets are created when a downloader gets all fragments needed to finish a whole file. The seed file is only available as long as the seeder (the person who provides the whole file) remains connected to the BitTorrent network long enough for other users to finish downloading all of the file's pieces. When a user downloads a full file, they become known as a seeder. There are several advantages to using a BitTorrent protocol, such as reducing traffic and the bottleneck caused by search/query response time. This, in turn, results in improved resilience and greater performance in downloading capacity.<sup>375</sup> Private and independent BitTorrent networks, known as Darknets, also exist that employ invitation systems to limit registrants, but these networks are not publicly accessible.

Copyright law contains two sorts of infringement, one where the copying individual is accused of committing an infringement, and the other where the copying individual purports to have authorised a third party to do an infringement, or has in some way contributed to a third party's infringing act. In India and the United Kingdom, copyright law explicitly states that any authorization to conduct an act that infringes copyright becomes a violation of copyright itself. A copyright infringement occurs when someone does or authorises another to perform any of the copyright-restricted actions without the owner's permission.<sup>376</sup> A copy of a work created without the permission of the copyright holder is an infringing copy.<sup>377</sup> One of the exclusive rights of a patent, copyright, or trademark owner is infringed upon by an infringer.<sup>378</sup>

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<sup>375</sup> Ong, R, *The war against P2P: Has it gone too far?*, International Journal of Intellectual Property Management 26-43 (2008).

<sup>376</sup> Section 51 (India) & U.K Copyright, Design and Patent Act, 1988  
Section 16(2), *Falcon v Famous Players Film Company* (1926) 2 K.B. 474 (authorise means "sanction, approve, countenance")

<sup>377</sup> Though Berne Convention does not define the term infringing copy but provides for seizure of infringing copies of a work.

<sup>378</sup> Infringement is an act that interferes with one of the exclusive rights of a patent, copyright or trademark owner. Black's Law Dictionary, 8,h ed., Thomson & West.

Direct or indirect copying are both acceptable methods of copying. Copying the written text of a book is an example of direct copying, which occurs when the author's work is replicated in a manner comparable to the original work. For example, the rights of performers and phonogram makers are violated when a phonogram's playback is duplicated and played back on a sound recording without the owner's permission, which is known as indirect reproduction. In both instances, the copyright holder's rights have been violated. Copies that are made into three-dimensional works or vice versa are considered to be indirect copies in creative works.

#### **4.4.6.7. BOT AND BOT NETS**

It is possible for an attacker to remotely manage a victim's computer over a communication channel like as IRC, P2P, or HTTP. Bots are programmes placed discreetly on a user's machine. An attacker can use these channels to command a 'botnet,' a collection of infected machines, from a single location (an abbreviation for robot network)

#### **4.4.6.8. PHARMING**

Malicious hackers use this tactic to infect computers by redirecting them to a malicious site from a genuine one.

#### **4.4.6.9. TROJAN HORSE**

This is an unapproved software that hides its actions by operating within an authorised programme disguised as a legitimate one.

#### **4.4.6.10. KEY LOGGERS**

Software or hardware intended to discreetly monitor and record every keystroke is known as a Key Logger. Computers, their operations, and their data are scanned as soon as someone presses a key on a keyboard. An external controller receives the data immediately.



A new breed of digital copyrights has been added to the spear of copyright law, which may be protected based on the proof of originality. Digital copyright management and protection is a hot topic right now. The proliferation of cyberspace players, entities, and organisations has complicated the application of classic copyright law standards. Under these sections are those who would be liable for digital copyright content in the online: Internet Service Providers (ISPs)  
Bulletin Board Service Operators (BBSO)  
Commercial Web page owner/operators.

## **4.5. IMPACT OF PIRACY ON INDIAN FILM INDUSTRY**

### **4.5.1. MUSIC INDUSTRY:**

INR 1,068 crore per year is estimated to be generated by India's recorded music industry.<sup>379</sup> To gain an estimate of how many jobs the music business generates, a researcher looked at the workforces of big record companies (which earn the majority of industry revenue). Between 500 and 600 people work for the top 12 record firms, according to the statistics. Another 200-300 small labels employ three to four people on average, according to industry discussions. The recorded music industry directly employs 1,460 people, according to this estimate, which is based on many sources.<sup>380</sup>

IPRS and PPL members in addition to those employed directly are also members of these organisations, which have a significant impact on the music industry in India. These organisations have a membership list that includes companies and individuals. Writers, composers, and publishers make up the majority of the organization's 4,164 members.<sup>381</sup> PPL presently has 325 members.<sup>382</sup>

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<sup>379</sup> IFPI, *Global Music Report*, 2019, (Aug. 23, 2020, 01:15 PM), [https://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/IMI%20report\\_singlePage.pdf](https://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/IMI%20report_singlePage.pdf).

<sup>380</sup> *Deloitte analysis*, (Aug. 23, 2020, 02:05 PM), [https://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/IMI%20report\\_singlePage.pdf](https://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/IMI%20report_singlePage.pdf).

<sup>381</sup> *IPRS annual report FY 17*, (Aug. 23, 2020, 03:35 PM), <https://www.iprs.org/wp-content/uploads/2019/02/IPRS-Annual-Report-2017-18.pdf>.

<sup>382</sup> *Ibid.*

Many movies, particularly musicals, include a strong musical component. The Sound of Music (1965) and My Fair Lady (1964) are two such films, both of which have remained popular owing to the strength of their music.

In India, nearly every film is a musical. Music has long played a significant part in Indian cinema. Song lyrics and plot lines are intertwined in this film.

Music has a big impact on the story in various Indian films. In addition, there have been a number of cinematic storylines based on music. Many Indian films, notably Bollywood ones like Gully Boy (Rockstar), Rock On (Rockstar), and Boys (Rockstar), have musical themes (Boys).

Filmmakers initially sell the rights to the film's official soundtrack because this is the money that goes into creating the film. As a film producer, you may use digital platforms, television, and theatres to pay back the costs of making a film. This can lead to an increase in interest in the film, which can lead to an increase in the bidding for satellite, digital, and theatrical distribution rights.

Based on the statistics above, we anticipate a 12 percent lower revenue share for films due to music. Accordingly, we allocate INR 2,090 crores of film industry income to music.

The film industry employs over 2.8 million people.<sup>383</sup> By applying the lower 3% (the cost allocation for music by producers) to this overall employment figure, 5,590 FTEs of film industry employment may be assigned to the music sector.<sup>384</sup>

In spite of a challenging 2014 and 2015, India's music industry looks to be on the upswing. The sector grew by 24.5 percent from INR 858 crore in 2017 to INR 1,068 crore in 2018. In spite of these challenges, the Indian music industry has the potential

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<sup>383</sup> Deloitte - *Economic Contribution of the Film and Television Industry in India*, 2017, (Aug. 23, 2020, 04:55 PM), <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/about-deloitte/in-about-deloitte-economic-impact-of-the-film-television-and-osv-industry-noexp.pdf>.

<sup>384</sup> *Ibid.*

to become one of the world's leading music marketplaces if they can be addressed.<sup>385</sup> Piracy, on the other hand, is the most significant issue for the business. India has seen a boom in the use of smartphones, as well as in the number of illegal material downloads. More than seven out of ten Indian internet users admitted to illegally downloading music, according to a recent survey.<sup>386</sup> Due to unlawful P2P programmes, streaming apps, stream ripping websites, or even infringing websites in India or neighbouring countries like Bangladesh and Pakistan, the recorded music industry loses \$250 million a year.<sup>387</sup>

India's entire music industry is plagued by piracy despite the fact that international piracy has declined in recent years. Because of the expenses connected with music creation and dissemination, the music business is being stifled by piracy, making it impossible for artists, music publishers, and record companies to make a profit from their work. Due to the perception that music is an intangible product, piracy has a greater influence on music sales.<sup>388</sup>

#### **4.5.2. DECREASE IN SALES OF LEGAL COPIES:**

The amount of additional authorised copies that would be sold if all unlawful copies were made isn't the same number of copies made illegally. Customers who would not otherwise purchase the items are convinced to do so by the pirates because of the substantial discounts. For non-commercial purposes, additional copies are also produced (e.g., making a copy for a friend). The difference between getting a copy for free from a friend and paying the street price is significant since some of these copies would not have been purchased if they had to pay the market price.

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<sup>385</sup> India currently ranks 15th amongst the recorded music markets in the world, per IFPI-GMR Report, 2019, (Aug. 23, 2020, 08:05 PM), <https://www.firstpost.com/entertainment/decoding-global-music-report-2019s-findings-on-india-and-what-it-could-mean-for-record-industrys-future-8394031.html>.

<sup>386</sup> *Audience Net – IFPI Survey*; (Aug. 23, 2020, 08:55 PM), <http://indianmi.org/be/wp-content/uploads/2018/10/Digital-Music-Study-2018.pdf>.

<sup>387</sup> Indian music industry aims to be a top-10 music market by 2022, IMI-Vision 2022 Report, 2018, (Aug. 23, 2020, 09:45 PM), <https://musically.com/2018/10/19/indian-music-industry-aims-to-be-a-top-10-music-market-by-2022/>.

<sup>388</sup> *MUSO Global Piracy Report*, 2018; (Aug. 23, 2020, 10:30PM), <https://www.digitalmusicnews.com/2019/03/25/stream-ripping-muso-study/>.

#### **4.5.3. RETAIL PRICE EFFECTS OF PIRACY:**

In terms of retail prices, unauthorised commercial copying has a substantial influence. Illegal copies are so inexpensive and high-quality that because there is little demand for legitimate versions, some individuals choose to purchase them instead. Legal copies might have a beneficial or negative impact on the market value.

Price-conscious customers are more likely to buy illegal copies if the bulk of the price-conscious consumers do not. There will be less price-sensitive demand for legitimate copies, which will lead to a rise in the profit-maximizing pricing of the maker.

The street price will drop if the price sensitivity of clients is not significantly changed. Piracy increases the price elasticity of demand for legal copies since all buyers are equally likely to buy from a pirate if given the chance. Taking into account lost revenue from legitimately sold copies as well as revenue from pirated copies (whose prices were depressed as a result of piracy) is required for estimating the cost to rights holders).<sup>389</sup>

Another interesting fact revealed by the Motion Picture Distributors Association (MPDA) is that India ranks as the world's fourth-largest country for film downloads (MPDA). Surveys conducted by the Envisional internet firm found that file-sharing networks like BitTorrent and cyberlockers, together with web-based file hosts like RapidShare and HotFile are the leading sources of piracy in India. Illegal camcording exacerbates the situation on the day of a movie's premiere in theatres and multiplexes. The industry is eagerly awaiting a new Cinematograph bill that tackles this issue.

#### **4.5.4. EMPLOYMENT LOSSES DUE TO PIRACY:**

The Organization for Economic Co-operation and Development (OECD) and the European Union Intellectual Property Office (EUIPO) have calculated that between 4.2 and 5.4 million jobs will be lost worldwide as a result of piracy and counterfeiting in 2022, a rise of 110 percent. The total cost of counterfeiting, which ranged from \$737 to \$898 billion in 2013, is expected to rise to \$1.54 to 1.87 trillion dollars in economic and

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<sup>389</sup> The Effects of Piracy, (Aug. 23, 2020, 11:15 PM), <https://cs.stanford.edu/people/eroberts/courses/cs181/projects/1999-00/dvd-css/piracy.htm>.

social terms by 2022, according to a recent report. When it came time for MASCRAGE 2017 (Movement Against Smuggling and Counterfeit Commerce) to better understand the connection between illegal trade, organised crime and terror financing, a FICCI-KPMG study was issued.<sup>390</sup>

#### **4.5.5. AFFECTS LEGAL STREAMING SERVICE:**

Instead of being kept on a user's hard drive, compressed movie and audio files are streamed over the Internet. It's not necessary for a user to wait for a file to download in order to use streaming media to play it back. Streaming and playing media on demand is possible because it is sent in a continuous stream of data. It is possible to pause, rewind and fast-forward the video in the same way as if it were downloaded.<sup>391</sup> Netflix, Amazon Prime, Hulu, and HBO Now are all legal streaming services. It is well-known that online piracy harms content suppliers. Due to a lack of royalties, streaming services like Netflix and Amazon would lose \$52 billion in subscription and advertising revenue between 2016 and 2022.<sup>392</sup> Since legal streaming is negatively affected by illegal streaming, we may argue that piracy is harmful.

#### **4.5.6. SOCIAL IMPACT DUE TO PIRACY:**

According to the conclusions of this study, morality in the country is being lost because of piracy. A large number of children and adolescents are affected. Youth unemployment has several negative implications, including an increase in organised crime and corruption on the global scale, as well as a rise in terrorist attacks worldwide. The content they receive from pirate sites regularly exposes teenagers and pre-teens to malware, remote access trojans, pornography, gambling, and adult dating. This is because they are always seeking for new ways to entertain themselves. Children as young as 12 and 13 are the primary targets of hackers who use their access to private information for extortion. According to the Australian Digital Alliance, pirate websites

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<sup>390</sup> *A Worldwide Loss of Around 5M jobs Due to Counterfeiting, Piracy*, Holostik, (Aug. 24, 2020, 12:25 AM), <https://holostik.com/newsroom/worldwide-loss-around-5m-jobs-due-to-counterfeiting-piracy>.

<sup>391</sup> *Streaming Media, What is Tech Target*, (Aug. 24, 2020, 01:45 AM), <https://whatis.techtarget.com/definition/streaming-media>.

<sup>392</sup> *Both Consumers and Content Creators Lose with Piracy Apps*, Innovation Files, (Aug. 24, 2020, 03:15 AM), <https://medium.com/@ITIF/both-consumers-and-content-creators-lose-with-piracy-apps-b8ad6a0dcfca>.

expose preteens and teens to sexually explicit content for the first time. The prevalence of pre-teen and adolescent internet pornography, particularly in the Asia Pacific region, is a growing worry for European and Asian governments and academia. It's estimated that one in ten 12- and 13-year-old British children are frightened that they have become addicted to online pornography. There have been a number of research undertaken to better understand the impact of this developing worry. Additionally, 782 of these high-risk ads were for malware, pornography, adult dating, gambling, network marketing, and other unregulated products on 835 pirated sites. On video-streaming sites, 50% of HRAs were uncovered, whereas on link-sharing sites, 32% were discovered. Approximately 115 million page visits were made each day on these sites.<sup>393</sup>

#### **4.5.7. ECONOMIC IMPACT**

The movie industry is a major economic driver for the nations where films are produced, helping to grow the economy and create jobs. Every time a movie is sold, displayed, or broadcast; the economy takes a hit because of piracy. As a result of film industry piracy, jobs and cash have already been lost in a number of countries. Because of the unlawful usage of camcorders, movie theatres and video stores, as well as the people who work there, may face financial ruin. People who are part of criminal organisations such as gangs and other gangs sometimes benefit from this unlawful behaviour.

#### **4.5.8. CONSUMERS**

A wide variety of high-quality films must be made available to audiences in order to combat piracy. Companies in the entertainment industry are eager to experiment with new ways of providing information via technology. Technical advancement can be stifled by piracy, on the other side. Because of the harmful impact of piracy on the film business, consumers will suffer. Movies and music are a major source of entertainment for the people of India. Customers, on the other hand, will suffer as a result of piracy.

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<sup>393</sup> *Badvertising: When ADS GO Rogue*, FICCI, SIPI & VERI-SITE, Building Respect for Intellectual Property Database (2017), (Aug. 24, 2020, 04:55 AM), <https://sipi-ip.com/in-the-press/sipis-badvertising-report-cited-on-wipos-recent-brip-building-respect-for-intellectual-property-database/>.

#### **4.5.9. DESTABILISES THE LEGAL INDUSTRY**

There will be increased insecurity and instability as a result of increasing internet piracy, which will harm the rule of law and the lawful market economy. Safe environments are crucial for society's growth of knowledge and culture. Artists' rights must be protected and a conducive environment must be created for their work. A strong legal system is needed to ensure that citizens' rights are upheld.

#### **4.6. SURGE FOR FREE FILMS AND TV SHOWS: PIRACY DURING COVID19**

More and more individuals are seeking out methods to entertain themselves at home instead of venturing out into the world. Playing computer games and puzzles might help alleviate boredom in a lot of people's lives these days. Streaming usage and new subscriptions to OTT services like Disney+, Netflix, HBO Now, and Showtime have increased dramatically in recent months.

*Piracy, on the other hand, is on the rise.*

Due to coronavirus concerns, many people were quarantined and have converted to online piracy, according to one study. Muso, a London-based digital piracy analysts' firm, released a report on Monday that demonstrates a 40 percent increase in congestion on pirate sites in the U.S. and U.K. just after the stay-at-home directives were issued by those countries.

The data explores websites that illegally stream and download films. The United States and U.K. sites have had a 41.4% and 42.5% increase in usage over the steadily for the past 7 days of March, respectively, compared to the prior 7 days of February. According to Muso, the increase in usage of illegal content sites, such as those frequented by pirates, has been noted in other European countries, such as Italy (66 percent), Spain (50.4 percent), and Germany (35.5 percent). The spike in piracy aligns with the period when each country issued the lockdown orders.

Muso pointed out that after more countries implemented strict control measures and forced citizens to isolate themselves, the demand for illegal content via piracy had increased exponentially. Entertainment demand has led users to legal services by creating a greater need for privacy. Nearly 16 million people signed up for Netflix worldwide during the month of January. And in spite of the drop in subscribers, Disney+ is seeing a rise in subscriptions.

“Paid-for or licenced content,” asserts Andy Chatterley, CEO of Muso, “is closely linked to piracy and unlicensed consumption trends.” “Netflix has seen a dramatic increase in subscribers, and we have observed a significant increase in site visits to movie piracy sites.”

In all country surveyed visits to TV piracy sites were higher than those of film piracy sites. However, TV piracy sites did not see the jump in usage that film sites did.

Due to the cancellation of sports seasons and live TV, the delay of movie releases, and the closure of theatres, demand for amusement even in the form of illegal entertainment has remained and is unlikely to dissipate as long as people are forced to stay indoors.

Despite the increase in illicit movie downloads, illegal TV piracy sites still rank first among all two. In the US, there was only an 8.7% increase in viewership as opposed to film downloads. Muso recorded over six hundred million visitors to TV pirated content throughout the final week of March, whereas cinema piracy sites saw just about a hundred and thirty-seven million hits. In the United States, they discovered almost 1 billion accesses to unlawful TV and cinema sites in March.

The Muso study points out that the 2011 film “Contagion” isn’t exactly “the most in-demand title” but is an important one to watch nevertheless. “The number of people watching ‘Contagion’ streaming sites grew by 30,418 in a single day, while the coronavirus was designated a global emergency, which occurred on January 30th, 2020.”



Netflix's recent quarterly report noted a remarkable 15.8 million new customers, raising the total number of viewers to almost 180 million. That is, if you count subscribers.

Soderbergh's 2011 film "Contagion," which details a fake worldwide epidemic, has seen an uptick in interest because of coronavirus fears. Warner Bros. reported that at the ending of December 2019, the film was No. 270 in their archive of films, but has risen to No. 2 by the beginning of January 2020.

The pirates were not unaware of the demand growth. Even while only a few hundred "Contagion" pirates downloaded each day before the movie's theatrical release, they swelled to scores of thousands once the movie hit theatres. As a response to heightened demand, YTS, a prominent torrent site, released two additional high-quality Blu-ray rips of varying resolutions.

After taking such measures as the closure of schools and the easing of the requirements for families to remain home, Irdeto found a massive increase in piracy downloads. Irdeto's daily average P2P traffic rose 11.5% from 9,600 GB downloads to 10,750 GB in the latter half of March.

After implementing state-mandated policies like closing schools and making it easier for families to keep their children at home, Irdeto noted a large spike in pirate downloads. The daily average Peer to Peer traffic measured by Irdeto climbed 11.5 percent in the latter half of March from 9,600 GB everyday downloads to 10,750 GB. Nearly 50 million people have subscribed to the newest Disney+ streaming service since it was released five months ago.

Since the implementation of social distance and lockout measures in March, according to statistics from internet piracy data specialist MUSO, content piracy has surged considerably, with unparalleled increases for cinema piracy. When comparing the final 7 days of March to the very last 7 days of February 2020, MUSO's data shows that visits to film piracy websites have increased in the following ways:

- Italy + 66%

- India + 63%
- Spain + 50%
- Portugal + 47%
- Canada + 45%
- UK + 43%
- USA + 41%
- France + 41%
- Germany + 36%
- Russia +17%

Increasing visits to internet film piracy sites during the final week of March demonstrates that as more governments implemented lockdown and caused individuals to self-isolate, interest for content through piracy increased enormously.

***Total visits to piracy sites in March 2020***

- USA 1,082,933,014
- Russia 727,169,953
- India 581,207,923
- France 394,045,905
- UK 300,150,947
- Canada 284,522,464
- Germany 256,947,543
- Spain 236,747,290
- Italy 197,697,732

- Portugal 54,681,500<sup>394</sup>

#### **4.6.1. RELATIONSHIP BETWEEN ISOLATION AND THE RISE IN OTT STREAMING SERVICES**

Due to the outbreak of the Corona Virus Pandemic, individuals are now confined to their homes all across the world. This increased internet use has given a boost to online piracy. Being at home is a good time-waster for people because of the free and simple access to premium content that is provided by piracy.

In addition, the ban on piracy websites in the world's largest countries, such as China, India, and the United States, helped lead to widespread usage. As more and more governments enforce their internet lockdowns, it is clear that the number of active piracy website users will soon exceed the one billion marks. Another indication of this is the increasing popularity of online film viewing, which has been seen as a response to the ban.

Since the shutdown, memberships to Netflix, Amazon Prime, and other video-streaming services have soared. Not everyone has become a movie fan overnight, but their living rooms now provide plenty of entertainment options because of these platforms. The breadth and diversity of the programming available on these sites is way better than anything on normal TV. These platforms have also created television shows and movies that are exclusively released on them.

Various studies and reports have concluded that torrent downloads have surged dramatically. But this dramatic surge in piracy is a very real problem, and it must be addressed.

It has constantly been a struggle for governments to control use of websites used for piracy. It's also going to be more difficult to rein in excessive piracy given the current level of Coronavirus epidemic. And these are the grounds why it must be stopped:

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<sup>394</sup> Colin Mann, *Data: Lockdown drives increase in digital piracy* April 27, 2020, (Aug. 26, 2020, 11:05 AM), <https://advanced-television.com/2020/04/27/data-lockdown-drives-increase-in-digital-piracy/>.

- The decline in revenue from copyright owners' results.
- The prosperity of a country suffers when it happens.
- The creators of the original content are being demoralised.
- That would result in employment losses.
- Sharing is not identical to it.
- It's like stealing.

#### **4.6.2. INDIA SEES BIG SPIKE IN FILM PIRACY POST COVID-19**

The percentage of online movie piracy increased in India by 62% in the final week of March, compared to the final fortnight of February 2020. *Rajkumar Akella*, an honorable associate of the Telugu movie sector anti-piracy chamber, has stated that “A lot of illegal material in India is spread through sites that consumers technically employ for other aspects.” Akella mentions communications and audio technologies like Telegram and networking media like Helo that they believe can be useful to filmmakers and content creators because they recognise concerns about copyright infringement but also seek to drive traffic.<sup>395</sup>

A senior technology solutions firm executive noted that Indians as a community are exceedingly price conscious, but not security sensitive. According to the source, the private details of individuals are not secure because some of the sites they visit have spyware installed on them.

*The speaker went on to say, “yet, we appear to not mind the virus hidden on these sites can destroy our data and our personal computers.” Some examples of sites giving free movies using torrents are Stremio, Popcorn Time, 123Movies, and Tamil Rockers.*

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<sup>395</sup> India sees big spike in film piracy post covid-19, (Aug. 26, 2020, 01:45 PM), <https://www.livemint.com/news/india/india-sees-big-spike-in-film-piracy-post-covid-19-11589183182123.html>.

*Akella* points out that smaller producers will be hurt more than their larger counterparts by video streaming piracy during this shutdown. As a result of the closure of theatres and the lack of box office systems, film producers and VoD providers are likely to either operate on revenue-sharing basis or split earnings based on the performance of the film on the platform. The theft of their content by pirates will rob them of their revenue.

Rather than only movies, Internet originals are also pirated. Sacred Games season 2 of the crime drama from Netflix had illegal films detected circulating on the messenger app Telegram and other websites throughout the web in August 2019. Hungama Digital Media's original, Damaged, has been downloaded more than 169,000 times across torrent platforms since its June 2018 launch. According to Irdeto, a virtual ecosystem management and media and amusement solutions supplier, piracy takes \$2.8 billion of annual revenue from the Indian entertainment and amusement business. Among the world's five most popular P2P download countries, India has the number three spot.

The *Envisional Ltd.* study, which provides trademark protection services, found that Indians were the biggest gang of viewers to Indian entertainment torrent sites and the biggest or similarly group of individuals who visit significant international BitTorrent sites such as Mininova, Torrentz, and The Pirate Bay.

Netflix's cheapest mobile-only package, for example, costs ₹199 a month, while Amazon bundles its video, music, and shopping features for ₹129 a month or ₹999 a year. YouTube Premium costs ₹129 a month, and ZEE5 is priced at ₹99 per month. Disney+ Hotstar, with VIP and premium subscription levels (priced at ₹399 and ₹1,499 a year, respectively), offers more exclusive features. However, there are some things you might desire that you cannot get on one platform and, when you have exhausted all the options and are not willing to pay more money on subscriptions in a time when being shut down, the only option is piracy.<sup>396</sup>

#### **4.6.3. PAID CONTENT ON OTT PLATFORMS HAS GIVEN RISE TO DIGITAL PIRACY AMID THE PANDEMIC**

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<sup>396</sup> *Supra* Note 395.

Due to the spread of the COVID-19 pandemic, movie theatres and multiplexes were forced to close in many parts of the country, creating an opportunity for the OTT players to become substitute forums for new movie releases. This has been a success for the digital market, the production houses, and the viewers. Though watching a new release on the big screen is more exciting than doing so in one's living room, with popcorn and other movie snacks, it is the sole substitute for those who don't want to be spoiled.

But a similar growth in digital piracy, especially because of new technology, has also occurred with the widespread OTT release of films. It is estimated that losses to OTT companies in India from piracy will reach \$3.08 billion by 2022, according to Digital TV Research.

Many more causes force producers to put their movies on the OTT platform,

1. *Movies are evolving at a rapid pace. Our understanding of the world and its information is always evolving. The release of a picture should happen inside a timely manner, else the cash and work of many is wasted.*
2. *Many movies have already been produced, and most of the others are close to reaching the end, so producers and filmmakers were aware that their movies would have difficulty getting a spot in the theatres for a significant length of time, even after the elimination of the lockout obstacles.*
3. *There is doubt over the new limits to be put on theatres, such as worries about the public going to movie halls.*
4. *It lessens our dependence on so-called celebrities who claim they attract viewers, but instead deliver the storey, director, producer, DOP, music, dialogue writer, and so on.*
5. *Producers and directors wish for their movie to be the finest. One wants to keep the investment safe, while the other wants to keep as many people as possible seeing her/his film for as long as possible.*

6. *The producer is financing the picture, and it is ready for release. We have no choice but to confront him without the drama of a break in the action. This is a rare occurrence, not a new precedent.*<sup>397</sup>

'Radhe,' starring Salman Khan, has been the largest Indian film release on OTT thus far in 2018. Although the movie had a big launch on ZEE5 & Zee Studios by becoming the fastest movie to stream on the ZEE5 platform and getting 1 million views on Zee Studios, it was also the target of piracy, as it was pirated on networks like Telegram & WhatsApp soon after its premiere on digital. After making the decision to combat piracy, the film studio filed a criminal complaint through the Mumbai Cyber Unit. Like Arshad Warsi, Salman Khan used Twitter to tell anyone involved in the illegal copying of his film not to view a pirated copy of 'Radhe'.<sup>398</sup>

According to "*Subhashish Gupta*, MD, Brightcove India & SAARC," "clients who are consuming more information over digital media are becoming increasingly accustomed to streaming services. Therefore, the chances of accessing data are larger. However, digital dissemination is not a primary cause of crime."

He further added, "We invest in our product's security by implementing features like as DRM (Digital Rights Management), forensic watermarking, flow concurrency, and mid-stream rights checking. Even the Academy Awards believes in us, trusting us to keep their data private when they vote for the Oscars. It has long been known that by making it simple for customers to receive content by having global releases and price-competitive prices, customers are more likely to utilise legal services rather than illicit ones. However, it's possible that there will forever be a small group who refuses to pay."<sup>399</sup>

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<sup>397</sup> COVID'19 Impact: Accepting the Co-existence of OTT with Theatrical Release in India  
Muhammed Salih, Department of Chemical Engineering, (Aug. 26, 2020, 03:50 PM),  
[https://www.researchgate.net/publication/341879486\\_COVID%2719\\_Impact\\_Accepting\\_the\\_Co-existence\\_of\\_OTT\\_with\\_Theatrical\\_Release\\_in\\_India](https://www.researchgate.net/publication/341879486_COVID%2719_Impact_Accepting_the_Co-existence_of_OTT_with_Theatrical_Release_in_India).

<sup>398</sup> Paid content on OTT platforms has given rise to digital piracy amid the pandemic, (Aug. 26, 2020, 05:15 PM), <https://www.adgully.com/paid-content-on-ott-platforms-has-given-rise-to-digital-piracy-amid-the-pandemic-105648.html>.

<sup>399</sup> *Supra* note 398.

As to *Taurani*, piracy in the cinema industry is negligible since certain audience members are not going to see movies on television or mobile devices, but rather in theatres, because the cinema experience is completely different. Despite this, mobile-streaming services with no downloads are currently the biggest single threat to piracy because most people would rather use stolen content than pay for a service that lets them watch their favourite movies on their phones. For this reason, piracy is a greater danger to OTT than it is to cinema.”<sup>400</sup>

## CONCLUSION

The present chapter has highlighted the historical development of the concept of cinema with simultaneous growth of the issue of online piracy of movies in India. The chapter has also put emphasis on the meaning of the term piracy, its different types from tangible form to the latest technologically developed means of it. Also, the chapter has portrayed the causes of piracy, factors which plays major role in piracy, the different tools involved in this infringement activity and its overall impact on the entertainment industry. Not only this, the chapter has also highlighted the impact of COVID19 which has surged the tendency of people for free viewing of films and T.V. shows.

Therefore, in order to arrive at specific well-defined conclusions, the investigations depended on the assistance of others. There is no doubt that online transmission of material is becoming more common. The rise in legal file-sharing activity is encouraging for the entertainment business. Second, the research shows that the content industries must alter their business structures in order to boost income. For optimal content distribution, it appears that a shift beyond traditional to electronic distribution methods and an expansion in streaming capabilities are necessary. Unauthorized file exchange cannot be totally eradicated, which brings us to our final point: the content industry must realise this. They will have to come up with new ways of doing business in order to take advantage of this.

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<sup>400</sup> *Supra* note 397.



With each of their films failing to make money at the box office, the producers' fraternity loses a considerable amount of money, which in turn has a negative influence on the distribution and exhibition sectors in the value chain, which in turn has a negative impact on the whole industry.

When it comes to copyright protection, the fact that Hindi film industry produces more feature films than any other may be gauged by the fact that it only gets about two percent of the cash generated by Hollywood. Hollywood is the world's largest film business, and India is just a negligible market for Hollywood despite accounting for 1/6th of the global population and having the fourth largest economy. Other industries, including as music, television, and video games, are also affected, and the fundamental cause of this discrepancy is the growing threat of piracy to copyright protection in the Hindi film business in particular and the Indian film industry in general.

Regulatory insights are also provided by the research. Governments should take note of these findings, which show that tough legislation is not always necessary to combat illegal file sharing. Analysis of the consequences for each jurisdiction must be done thoroughly. It also shows that a long-term solution to the problem of unauthorised file sharing cannot be achieved by taking harsh infringement proceedings against file sharers.

As a result of this research, it is clear that there must be an active and impartial evaluation of the consequences of illegal downloading on various stakeholders in each particular situation. In addition, it is impossible to measure the societal benefits of file sharing in research like these. Prior to enacting any regulations on online file sharing, governments should conduct a thorough review of the issue.

## CHAPTER 5

# ROLE OF JUDICIARY AND ADMINISTRATIVE FUNCTIONARIES IN ADDRESSING ONLINE MOVIE PIRACY IN INDIA

To better understand copyright infringement, this chapter provides an overview of significant judicial and administrative trends and actors. Live blocking, broadcast signal piracy, online broadcasting, and licencing are all examined in light of technical advancements. It also examines potential alternatives to typical legislative tactics to reducing copyright violations and encouraging the consumption of legal material. These initiatives include establishing administrative structures with protections and streamlining court proceedings throughout the world. An overview of recent legislative changes in India is also included.

### 5.1. INTRODUCTION

Even when dial-up Internet was still in its infancy, there were legal worries about online copyright infringement. Vice President Al Gore spearheaded the creation of the Information Infrastructure Task Force during first Clinton administration to outline the ideology of the United States congress a “National Information Infrastructure”. Towards the end of 1995, an ad hoc was formed to examine the potential impact of the Internet, which was only getting started at the time, on copyright law.

The NII has enormous promise for enhancing our quality of life. There will be more and more information and entertainment resources available in a shorter period of time, all of which may be supplied rapidly and affordably from and to nearly any location in the world. So, for example, households and companies all throughout the United States and the world can now have access to hundreds of “television” channels, thousands of musical records, and literally millions of “magazines” and “books”.<sup>401</sup>

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<sup>401</sup> Information Infrastructure Task Force (1995). Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights, p. 8.

However, “no more than slight clarification and limited adjustment” to current copyright legislation was considered adequate to handle the problem of Internet development “upsetting the equilibrium” between copyright owners and users, according to the research.<sup>402</sup>

Faster and less expensive broadband Internet connections have transformed online piracy in at the very least four significant approaches since the internet access during the initial keypad period, roughly two decades ago. Before broadband Internet became widely available, the biggest worries about piracy revolved around little files like MP3s and PDFs, both of which were quite easy to share via dial-up connections. Video files up to several gigabytes in size are becoming the norm when it comes to file sharing for movies and television shows. Second, the proliferation of websites offering low-cost (sometimes free) online storage implies that a large number of files of this type may be uploaded and shared without difficulty. When it comes to sharing huge video files in the dial-up era, putting them onto tangible media such as discs and hard drives media this was the best widely used and viable strategy available. Third, the world wide web has advanced to the point in which elevated information could even be conveniently conveyed and made accessible via YouTube, Dailymotion, and Vimeo as well as domestic variations of these internet sites from such a century in which consumers can now only obtain reduced video content material utilising apps such as RealPlayer as well as Windows Media Player. (Such as Youku in China). The proportion of Online surfers has risen dramatically in developing nations and economies in growth, with China and India just at peak of the very list. Top 10 economies include Brazil, Russia, and Indonesia in that order.<sup>403</sup>

According to Ginsberg and the IITF Working Group, the opinions they expressed still apply presently. When it comes to online copyright rules, many of them may be traced prior to the keypad days, where existing rights were expanded to include the Internet.

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<sup>402</sup> Patrick Frater, *Online piracy in India a global problem*, (Aug. 28, 2020, 09:15 PM),<https://www.hollywoodreporter.com/news/online-piracy-india-global-problem-92365>.

<sup>403</sup> International Telecommunications Union (2017). Internet users by region and country, 2010-2016, (Aug. 28, 2020, 10:45 PM),<https://www.itu.int/en/ITU-D/Statistics/Pages/stat/treemap.aspx>.

While this is the case, they seem to be enough to fix the issue nearly all significant internet infringements (although sometimes requiring judicial creativity in their application). It's possible that the widespread use of internet piracy is not a result of "law lag" (the idea that the law always lags behind technology), but rather a result of concerns that fall outside the jurisdiction of law.<sup>404</sup> The fact is that piracy can only be controlled in bursts because of the worldwide nature of the Internet and file sharing. Another issue that has emerged as a result of the growing practise among younger people of downloading copyright material from the internet is that they feel entitled to what is not theirs for free, as stated by the High Court of Ireland".<sup>405</sup> In this case, the law has a very limited role to play. Online copyright protection in India's film business has been hindered by physical piracy, storing pirated content outside of India, and a lack of civil and criminal judicial infrastructure.

## 5.2. EVOLUTION OF INTERNET

First, a government investigation conducted in the late 1990s discovered that film salons and cable companies in India were the key distribution routes for pirated films. Because of widespread video or cable piracy, "all parties engaged in the genuine transaction of films—from the creators to the theatre owners"—lost "heavily," according to the report, as did the government.<sup>406</sup> As a result of this, a high-ranking committee against piracy was established by the government over a decade later. The Committee anticipated that piracy would "explode" in India as broadband Internet usage grew, in contradiction to the earlier study's findings.<sup>407</sup> Even though India's Internet population has expanded tremendously since 1990, when represented as a proportion of the population, it is still just 30 percent. As a result, internet speeds in India might be sluggish. In a recent study, Today's 4G downloading speeds were shown to be among

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<sup>404</sup> Hurlbut, B. (2015). Remembering the Future: Science, Law, and the Legacy of Asilomar. In Jasanoff, S. & Kim, S. (Eds.), *Dreamscapes of Modernity: Sociotechnical Imaginaries and the Fabrication of Power* (pp. 126–151). Chicago: University of Chicago Press. Hurlbut is generally critical of the concept of law lag, stating: "[T]he notion of law lag is an expression of the imaginary of governable technological emergence. Law inevitably lags, and must lag, if science is to be free to generate novelty".

<sup>405</sup> *EMI v. Eircom* (2010) I.E.H.C. 108, ¶ 5.

<sup>406</sup> National Productivity Council. (1999). *Study on Copyright Piracy in India*, p. 14. (Aug. 28, 2020, 11:25 PM), <http://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>.

<sup>407</sup> Ministry of Information & Broadcasting. (2009). *Report of the Committee on Piracy*, pp. 45–6.

the worst in the globe. Because of this, in contrast to developed nations, physical piracy, including street sellers' sales of DVDs, is a popular method of consuming pirated movies in India, which substantially undermines internet policing.<sup>408</sup>

A significant portion of Indian film's earnings comes from its outside audiences, particularly those living in wealthy nations. In these nations, the majority of significant Indian films are shown in theatres. Due to higher ticket costs than in India, these audiences are so important to some producers that they are their major market focus.<sup>409</sup> However, a significant portion of this population also watches pirated films.<sup>410</sup> Indian film business lacks the means to enforce its copyrights globally. Many foreign governments have expressed interest in working with India's film industry, but so far little progress has been made.<sup>411</sup>

Marc Galanter has noted that Indian regulations are "notoriously incongruent" with "attitudes and concerns."<sup>412</sup> and many types of litigation are plagued by "delays of Bleak House proportions".<sup>413</sup> Many millions of cases are outstanding in Indian courts, according to official data, and there is a serious lack of judges.<sup>414</sup> When it comes to criminal copyright enforcement, state governments rather than the federal government are in charge of the problem. When it comes to criminal copyright enforcement, state governments rather than the federal government are in charge of the problem. Copyright enforcement is weakened in less developed nations, where corruption and inefficiency are commonplace.<sup>415</sup> When a criminal matter goes to trial, the complainant is put

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<sup>408</sup> US Trade Representative. (2014). Out-of-Cycle Review of Notorious Markets, p.16 (listing bazaars in India where pirated DVDs are sold); Liang, L. & Sundaram, R., (2011). India. In Karganis, J. (Ed.), *Media Piracy in Emerging Economies* (pp. 339–398, 348–50). New York: Social Science Research Council.

<sup>409</sup> Banerjee, A. 2011. A Case for Economic Incentives to Promote "Parallel" Cinema in India. *Media & Arts Law Review* 16: 21, 23–6.

<sup>410</sup> For example, according to one report, the hit Bollywood film *Kaminey* was downloaded illegally 350,000 times within a week of its release, with a third of the downloads originating from outside India. Frater, P. 2009. Online Piracy in India a Global Problem. *Hollywood Reporter*. (Aug. 28, 2020, 02:30 AM), <http://www.hollywoodreporter.com/news/online-piracy-india-global-problem-92365>.

<sup>411</sup> Banerjee, A. 2016. *Copyright Piracy and the Indian Film Industry: A "Realist" Assessment*, *Cardozo Arts & Entertainment Law Journal* 34: 609, 639–40.

<sup>412</sup> Galanter, M. (1967). The Uses of Law in Indian Studies. In *Language and Areas: Studies Presented to George v. Bobrinskoy* (pp. 37–44, 38).

<sup>413</sup> Galanter, M. 2010. World of Our Cousins. *Drexel Law Review* 2: 365, 368.

<sup>414</sup> Government of India (2012). National Court Management Systems, Policy and Action Plan.

<sup>415</sup> *Supra* Note 414.

through even more hoops to jump through. Many criminal copyright prosecutions have “not achieved effective and deterrent effects,” according to one analysis, with difficulties such as defendants being granted bail, significant delays in the trial process and a lack of convictions.<sup>416</sup> When a criminal matter goes to trial, the complainant is put through even more hoops to jump through. Many criminal copyright prosecutions have “not achieved effective and deterrent effects,” according to one analysis, with difficulties such as defendants being granted bail, significant delays in the trial process and a lack of convictions.”<sup>417</sup>

### 5.3. COPYRIGHT LAW IN INDIA

Progress cannot be made without creativity; hence no civilised society can afford to neglect this essential demand. Creativity is essential for a society’s economic and social progress. We can see that India’s copyright legislation complies with the international criteria set out in the TRIPS Agreement by studying the country’s copyright law. Indian copyright law is based on the Berne Convention for the Preservation of Literature and Art Works of 1886 and the Universal Copyrights Convention.<sup>418</sup>

After going into force in January of 1958, India’s Copyright Act of 1957 has undergone nearly six revisions since then: in 1983 and 1984; in 1992; in 1994; in 1999; and most recently in 2012. Indian copyrights are governed by both the Indian Copyright Act of 1957, as revised from time to time, as well as the Indian Copyright Rules of 2013. Since May 30, 2019, the Department for Promotion of Industry and Internal Trade has opened a public comment period for its Draft Copyright (Amendment) Rules.<sup>419</sup> Under the legislation, copyright is provided to authors of literature, theatrical, melodic, and

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<sup>416</sup> International Intellectual Property Alliance (2014), Special 301 Report on Copyright Protection and Enforcement, p. 43 <http://www.iipa.com/rbc/2014/2014SPEC301INDIA.PDF>.

<sup>417</sup> Vardhman v. Chawalwala (2009) 41 P.T.C. 397, ¶ 3 (S.C.).

<sup>418</sup> Vijay Pal Dalmia, *Copyright Law in India- Everything You Must Know*, (Aug. 30, 2020, 02:30 AM), <http://www.mondaq.com/india/x/655852/Copyright/Copyright+Law+In+India+Everything+You+Must+Know>

<sup>419</sup> Aryan Babele, *Summary: Copyright Amendment Rules, 2019*, (Sept. 09, 2020, 01:40 AM), <https://www.medianama.com/2019/06/223-highlights-copyright-amendment-rules-2019>.

creative works, as well as cinema and sound recording producers. That's not all it also encompasses rights to the work's distribution and translation into other languages.<sup>420</sup>

### **5.3.1. "WORK" PROTECTED IN INDIA**

Copyright law protects the copyrights of artistic works, such as an artwork, piece of art, drawing (including a graph, map, or painting strategy), an inscription, an image, works of architectural style or arts and crafts; dramatic works; literary works (including computer programmes; tables; compilations; and computer databases); musical works; sound recordings; and cinematic works.<sup>421</sup>

Literary, dramatic, musical, and creative works, as well as films shot on film and recordings made on audio tape, are all covered under the Indian Copyright Act. Books and computer programmes are also protected as literary creations under the statute.<sup>422</sup>

Exclusive rights granted to the copyright holder are known as copyrights. In order to exercise these rights, you must be the copyright holder or have been granted a licence by the copyright owner to do so. Reproduction and publishing are two further areas in which copyright holders have control over their works.<sup>423</sup>

### **5.3.2. MEANING OF COPYRIGHT INFRINGEMENT**

As a result of digital technology, it is more difficult for copyright holders (such as record corporations) to manage the works once they are given to the public, making it more accessible to the general population. Law and business models are scrambling to keep up with this new technology, which has transformed the relationship between content providers and their clients. IP covered by copyright law can be defined as

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<sup>420</sup> *Insights into the Copyright Act, 1957* (Sept. 11, 2020, 02:30 PM), <https://www.rna-cs.com/an-insight-into-the-copyright-act-1957-and-the-rules-made-therein>.

<sup>421</sup> Section 2 (y) of the Indian Copyright Act, 1957.

<sup>422</sup> Section 13 of the Indian Copyright Act, 1957.

<sup>423</sup> Section 14 of the Indian Copyright Act, 1957.

anything that is illegally distributed or reproduced in any way, including but not limited to piracy.<sup>424</sup>

In the context of copyright infringement, the term “piracy” is employed. Piracy is a modern phenomenon that involves making digital copies of someone else’s work. If someone can get a copy of their work for less money or for free or through a trade, copyright holders fear that their profits will be squandered. The copyright owners can file a claim for infringement regardless of whether the content is sold, distributed for free, or given to family members. One of the three most common kinds of online piracy is that of music piracy. The most popular and essential outlets for internet piracy are these three, notwithstanding the existence of additional kinds of online piracy.<sup>425</sup>

Copyright infringement can be categorised into three categories:

- Direct Infringement
- Vicarious Infringement
- Contributory infringement

Copyright infringement may be defined as a breach of a copyright owner’s exclusive rights that is done without their express consent. As a result, copyright holders have the sole ability to make and show the copyrighted work. Copyright infringers do not necessarily need to have a clear goal in mind when calculating statutory damages. As a result, anyone who violates copyright law will face legal consequences.

To bring a direct infringement lawsuit, the owner must prove two things. To begin with, the copyright holder must prove that they have a valid copyright, and secondly, the copyright holder must duplicate the main parts of the original work. To show copying, the best approach is to provide real proof of copying of the original work, or to establish that a third party had access to the original work and an inference can be drawn that,

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<sup>424</sup> Piracy by Technopedia, Technopedia, (Aug. 21, 2020, 09:15 PM), <https://www.techopedia.com/definition/545/piracy>.

<sup>425</sup> *All the Facts on Online Piracy*, Insurances Laws, (Aug. 21, 2020, 11:25 PM), <https://insurance.laws.com/online-piracy>.



copying has taken place and there are significant similarities between the two works. As soon as these components have been shown, it will be considered a direct infringement of the Act to utilise alleged copies in any one of the ways stated in the Act, such as replication, distribution, etc.

The term “vicariously accountable” is used when someone else infringes on another person’s work. Concert halls may be held liable if the band they hire violates the terms of their contract by performing infringingly. In order to make the suspected infringer vicariously responsible, two things must be shown against him or her. They were in complete command of their conduct and reaped a direct monetary benefit from infringing on their liberties. In addition, it is not essential for a vicariously liable party to be aware of the actual infringing actions of the principal infringer. Another way of putting it is that the knowledge of an infringing act is a consideration that the court must consider when determining whether or not a violation is contributory.

### **5.3.3. COPYRIGHT ENFORCEMENT IN INDIA**

Civil remedies, criminal remedies, and administrative remedies are all available under Indian copyright law. For copyright infringement, the following are necessary: evidence of ownership, considerable resemblance between the original and infringing copy, and proof that copying constitutes an infringement. It is possible to take legal action against copyright infringement in the form of civil actions, which can include injunctions, damages and an accounting of earnings.<sup>426</sup>

Taking criminal action against copyright infringement is also possible under the Copyright Act of 1957. Additional penalties for piracy in India have been strengthened since 1984, when copyright law was amended. An infringer of copyright might expect to serve three years in jail and pay a fine of 50,000-2 lakh rupees, depending on the severity of their crime and the country in question.<sup>427</sup>

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<sup>426</sup> Section 55 of the Indian Copyright Act, 1957.

<sup>427</sup> Section 63 of the Indian Copyright Act, 1957.

It is worthwhile to mention here a very notable case of *Time Warner Entertainment v. RPG Netcom Ltd.*<sup>428</sup> highlights the effectiveness of injunctions in India in the context of piracy, and it should be mentioned here. Defendants in this lawsuit were in the cable television sector, whereas the plaintiff, Time Warner Entertainment, was a major US movie production company. The plaintiff's research discovered that the defendant was displaying the plaintiff's copyrighted movies on their cable television network without the plaintiff's approval. Because of this, the Plaintiff filed an application with Delhi's High Court for a permanent injunction against the defendant to prevent it from violating its rights. While it is relatively uncommon for copyright holders to file a lawsuit against someone who has already made a movie, it is unusual for them to do so against someone who has not even made one yet. An injunction was issued against the defendants after the court reviewed the facts of the case and determined that the plaintiff's previous works were being copied. Permanent injunctive relief was issued to prevent the defendants from transmitting or broadcasting films and other works referenced in the petition without a licence from Plaintiff.<sup>429</sup>

In addition, a remarkable and significant case involves music copyright violation is of *Ram Sampath v. Rajesh Roshan.*<sup>430</sup> Composer/theme-tune creator The Thump was the plaintiff in this music patent lawsuit. "Krazzy 4" is the name of the defendant's film. Four tracks in the film were alleged to be significant and/or plagiarised versions of the musical composition 'The Thump', according to the lawsuit. "Untrained ear test," which was used by the court, found evidence of violation of the rights of musical compositions. When determining if a copy of a piece of the earlier piece of music into the future piece of music constitutes substantial infringement, the following aspects must be taken into account:

1. Compare and contrast different work by highlighting commonalities and contrasts.
2. Decide whether or not the original can survive even without duplicate.
3. Find the heart of the piece of music you are listening to. By comparing the duration of the portion copied, it is not possible to identify the soul of a piece of music. It does not matter how lengthy a piece of music may be; if only a little portion of it is

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<sup>428</sup> Time Warner Entertainment vs. RPG Netcom Ltd, AIR 2007 Delhi 226 (India).

<sup>429</sup> *Ibid.*

<sup>430</sup> Ram Sampath v. Rajesh Roshan, 2009 (40) PTC 78 (Bom) (India).

duplicated, the entire composition would be considered a violation of copyright. It's important to keep in mind that an infringer's goal is to replicate "the appealing," "the catchy," and "the grain and leave of the chaff," since he knows that this is what would pique the interest of the target audience and not the mundane.

4. These are only a few examples of the various criteria that might be considered in determining a person's eligibility for benefits.

Even though the portion of the defendant's work that was duplicated was only six seconds long, it was repeated five to six times. So that the listener will be drawn back to the musical piece when he or she hears it again. It was clear that a lot of work had been done in the process of copying.

The court may also order a search and seizure of infringing products as part of the criminal action conducted against copyright infringement, and the infringing items may then be transferred to the real copyright owner. Second and subsequent convictions, however, are subject to a one-year sentence and a fine of Rs. 1 lakh, although the top limit remains the same as for first convictions.<sup>431</sup> Other administrative remedies include the Copyright Board's authority in topics such as copyright assignments and the Registrar of Copyrights' authority in prohibiting infringing items from entering India.<sup>432</sup>

In Section 31D of the Indian Copyright Law does not apply to Internet music, whether it is streamed or downloaded, according to a ruling by the Bombay High Court in April 2019 (*Tips Industries v. Wynk Ltd. & Anr*). When a 2016 Department of Industry and Internal Trade interpretation was rejected by the court as being *extra vires*, the court rightly determined that only conventional radio and television broadcasts was intended by the Act, not Internet transmissions. Unfortunately, India's government has not removed its understanding of the legislation and the uncertainty in the music business is hurting the industry. Online enforcement has also received a number of good court judgments. Even in circumstances where domains are used to reach infringing sites, the

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<sup>431</sup> Section 63A of the Indian Copyright Act, 1957.

<sup>432</sup> Section 19 A of the Indian Copyright Act, 1957.

Delhi High Court has allowed a permanent site restriction to curb an obviously infringing site in India. To date, over 1,000 domains have been ordered blocked by the Delhi High Court, reducing the number of piracy visits from India with some of the most notorious websites in the world. In July 2019, the Delhi High Court also authorised dynamic domain blocking for yet such an unauthorised webpage (*Warner Bros. Entertainment Inc. v. Https: Hindilinks4u.To*). As another beneficial development in 2020, the Cinematograph Act will be amended so that an important problem in India can be addressed appropriately through the creation of legislation to enforce camcorder usage. An audio-visual recorder device would be prohibited from being used to transmit or produce a duplicate of a motion picture while it is being screened at a motion picture screening venue under this proposal.

## **5.4. THE CURRENT COPYRIGHT REGIME'S PROVISIONS ON PIRACY AND THE ROLE OF INDIAN JUDICIARY**

### **5.4.1. COPYRIGHT LEGISLATION IN INDIA**

In India, copyright infringement is defined under the Copyright Act, 1957, which also specifies the exceptions to it. A copyright holder's civil remedies are covered in Chapter XII, while criminal penalties are covered in Chapter XIII. A current trend in copyright law across the world is a transition from civil remedies to criminal ones, especially to fight infringement for economic gain occurring online and on a large scale. As a result of limited state capacity and the distinctions between individual and commercial infringement, this chapter examines Union and state legislation addressing copyright infringement to establish a compromise between copyright holders' and users' rights.

Commercial gain, personal use, and internet service providers acting inadvertently or intentionally as conduits for infringement are the most common reasons for copyright violations.<sup>433</sup> However, under copyright law across the world, these distinctions are rarely taken into account. Copyright law in India is no exception.

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<sup>433</sup> Nandini CP, '*Criminalization of Copyrights Infringements in the Digital Era with Special Reference to India*', 2017, in Sinha M., Mahalwar V. (eds) *Copyright Law in the Digital World*, Springer, Singapore, (Sept. 25, 2020, 02:30 AM), [https://link.springer.com/chapter/10.1007/978-981-10-3984-3\\_14](https://link.springer.com/chapter/10.1007/978-981-10-3984-3_14).

#### 5.4.1.1. UNIFORM PENALTIES FOR OFFENSES

The Copyright Act does not discriminate between copyright infringement by an individual user for non-commercial reasons and commercial infringement.<sup>434</sup> Section 63 of the Act has a proviso,<sup>435</sup> this exemption is left largely to the discretion of the courts, and individuals who transgress without any ‘benefit in trade’ are given a reduced sentence.

Non-commercial vs commercial piracy has a significant impact on public policy enforcement. As a result of this misallocation of precious resources, researchers have claimed that the existing legislation wastes time and money by bringing in cases that might be dealt with more efficiently under private legal remedies or soft law procedures.<sup>436</sup> The Agreement on Trade-Related Aspects of Intellectual Property Rights also recommends criminal punishment exclusively for commercial copyright infringement.<sup>437</sup>

Sections 65A and 65B of the Copyright Amendment Act of 2012 provide new protections against the circumvention of technical safeguards and for rights management information.

According to Section 65A’s provisions, anybody found guilty of intentionally violating any of the Act’s rights by evading or defeating an effective technical measure to do so is subject to imprisonment up to two years and a fine.<sup>438</sup>

There are, however, several exceptions to this rule that enable third parties to assist in circumvention, as long as they keep a thorough record of who they helped and why. In

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<sup>434</sup> The WTO Panel Report DS362 defining counterfeiting or piracy ‘on a commercial scale’ refers to counterfeiting or piracy at the magnitude or extent of typical or usual commercial activity with respect to a given product in a given market: (Sept. 25, 2020, 09:30 PM), [https://www.wto.org/english/tratop\\_e/dispu\\_e/362r\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/362r_e.pdf), p. 7.577.

<sup>435</sup> Offence of infringement of copyright or other rights conferred by this Act.

<sup>436</sup> Arul Scaria, Cambridge University Press, 2014, ‘Piracy in the Indian Film Industry: Copyright and Cultural Consonance’, p. 159.

<sup>437</sup> Article 61, TRIPS Agreement, (Sept. 25, 2020, 11:30 PM), [https://www.wipo.int/edocs/mdocs/aspac/en/wipo\\_ipr\\_pnh\\_11/wipo\\_ipr\\_pnh\\_11\\_ref\\_t13.pdf](https://www.wipo.int/edocs/mdocs/aspac/en/wipo_ipr_pnh_11/wipo_ipr_pnh_11_ref_t13.pdf).

<sup>438</sup> Section 65A of the Indian Copyright Amendment Act, 2012.

order to reduce the high rate of illegal access and copying of intellectual items and digital infringement of Copyright, this measure was enacted.<sup>439</sup>

Protecting access control data like copyright info or an ISBN code that is required for authentication was also a part of the deal. A fine of up to \$150,000 and up to two years in jail await those who disperse, transfer for dispersion, broadcast, or interact to the general populace without power, duplicates of any task or effectiveness recognising that digital rights managerial data has been eliminated or amended without jurisdiction.<sup>440</sup>

The cinematic medium, as well as the tools and technology that go along with it, as well as the people that watch it, have all changed dramatically through time. TV channels and cable networks have proliferated across the nation; new digital technology has been introduced; piracy has been a concern, notably the publication of pirated versions of films on the internet, which has resulted in massive losses to the film industry and government coffers. A long time ago, the film business pushed for government consideration of amending the statute that prohibits recording and piracy. The Cinematograph Amendment Bill, 2019 has been approved by the Union Cabinet to alter the Cinematograph Act, 1952. The Ministry of Information and Broadcasting proposed it. The new law attempts to combat film piracy by making illegal videotaping and duplicating of films punishable.<sup>441</sup>

Film piracy is a major problem; hence the Amendments include: A new Section 6AA has been added to restrict the recording of unlawful material. After Provision 6A of the Cinematograph Act of 1952, the following section should be added.

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<sup>439</sup> Bhuvana S. Babu, *Technological Protection Measures*, (Sept. 26, 2020, 01:30 AM), <https://www.bananaip.com/ip-news-center/technological-protection-measures-under-the-copyright-amendment-act-2012/>.

<sup>440</sup> Section 65 B of the Indian Copyright Amendment Act, 2012.

<sup>441</sup> Lata Jha, *Union Cabinet approves amendment to Cinematograph Act*, (Sept. 28, 2020, 01:30 AM), <https://www.livemint.com/industry/media/union-cabinet-approves-amendment-to-cinematograph-act-to-tackle-film-piracy-1549518226819.html>.

**6AA: “No one shall be authorised to use any audio-visual recording device to knowingly manufacture or transmit, or try to make or transmit, or abet the creation or transmission of, a copy of a film or portion thereof without the written consent of the creator.”**

Section 7 was amended to include Penal Provisions for Violation of Section 6AA Provisions. The following subsection (1A) will be added to Section 7 of the primary act: **“Section 6AA of the Indian Penal Code states that anybody who violates the requirements of the section will be punished by imprisonment for up to three years or a fine of up to 10 lakh rupees, or both.”**<sup>442</sup>

#### **5.4.1.2. ENFORCEMENT OF PENALTIES AND IMPRISONMENT**

‘Imprisonment,’ in criminal law, is often reserved for crimes with a greater degree of seriousness than those for which ‘fines,’ are assessed. The wording ‘imprisonment or fine’ is used in a number of laws to imply that the courts have the option of imposing either penalty depending on the nature of an offence. Both jail and fines are possible punishments because the word ‘or’ implies ‘and’. The Copyright Act uses the words “imprisonment and fine” in a number of places, which does not allow for judicial discretion when it comes to criminal penalties for copyright violations.<sup>443</sup>

There are no formal rules for sentencing in India, although a number of government committees and court rulings have emphasised the necessity of such recommendations in order to reduce the amount of ambiguity in sentencing. In addition, a number of court rulings demand that the severity of the punishment be commensurate to the severity of the offence.<sup>444</sup> It is important that the sentence be tailored to the facts and circumstances of each case so that mitigating or aggravating elements be taken into consideration. The

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<sup>442</sup> Ministry of Information and Broadcasting, The Cinematograph (Amendment) Act, 2019 (Sept. 28, 2020, 03:30 AM), <https://www.prsindia.org/billtrack/cinematograph-amendment-bill-2019>.

<sup>443</sup> The concept of prescribing imprisonment and a fine can be seen across most IP legislation in India, including the Trademarks Act, 1999 (see sections 103, 104 and 105), the Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act—see sections 39, 40, 41) and the Semiconductors Act, 2000. The Patents Act, 1970 is however much more rational in its treatment of offences, and in all cases gives the option of imprisonment or a fine. Even the Designs Act of 2000 prescribes nothing more than a recoverable contract debt, or an injunction, depending on the remedy sought, for piracy of a registered design. Surprisingly, the GI Act also has penalty provisions prescribing imprisonment or fines in certain provisions (see sections 42, 43 and 44).

<sup>444</sup> *Soman v. State of Kerala*, (2013) 11 SCC 382, p. 13 (India).

penalty should also be equitable and proportionate to the type and severity of the offence.<sup>445</sup>

In this sense, a more reasonable approach to criminal punishments may be to use a graded or rationalised punishment process that advances from fines and social service to incarceration.

Even though little is known regarding the impact of milder punishments and enforcement techniques in India, it is crucial to highlight this. There is some empirical evidence that punitive penalties, even criminal ones, may not be helpful in encouraging lawful behaviour and may rather increase copyright aversion among copyright violators. There is no evidence to imply that raising criminal penalties necessarily fosters IP innovation, and excessive fines might be harmful.<sup>446</sup>

The expenses of enforcing the law can be significantly reduced if different types of penalties are gradated in a fair and reasonable manner. As a result, not only should laws be reformed to ensure that fines are graduated and commensurate to the individual violation, but enforcement and judicial remedies must also be improved.

#### **5.4.1.3. LEGISLATIVE ISSUES IN THE STATE**

Even while piracy is illegal, several state legislatures in India have tried to deal with it by imposing harsh penalties, and some of them have even included it within the scope of law for other purposes. In several states, the *Goondas Acts* have been adopted in various forms with the primary goal of preventing and restricting the criminal activity of “goondas” and others mentioned in the legislation, such as drug trafficking, sex trafficking, land crimes, physical violence and similar offences. Preventive detention is common in these laws, which cover a wide range of actions, some of which are unrelated to piracy.

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<sup>445</sup> Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648, p. 69 (India).

<sup>446</sup> Irina D Manta, *Harvard Journal of Law and Technology*, Vol 24, No 2 Spring 2011, ‘The Puzzle of Criminal Sanctions for Intellectual Property Infringement’, (Oct. 08, 2020, 01:30 AM), [https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1194&context=faculty\\_scholarship](https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1194&context=faculty_scholarship), pp. 515, 518.



On top of that, there are ramifications for freedom of speech,<sup>447</sup> competency in the legislative branch,<sup>448</sup> more fundamentally, it was initially designed to keep the public safe,<sup>449</sup> infringing on the copyrights of others,<sup>450</sup> it is challenging for legislators to employ statutes dealing with more serious and violent crimes to criminalise piracy because of the excessive penalties that go much beyond the remedies given by the Copyright Act.

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<sup>447</sup> See Gautam Bhatia, Outlook, 5 August 2014, ‘Goondagiri of the Goonda Act’, (Oct. 12, 2020, 03:30 AM), <https://www.outlookindia.com/website/story/goondagiri-of-the-goonda-act/291593>; Nehaa Chaudhari, SpicyIP, 13 August 2014, ‘Guest Post: Karnataka’s ‘Goondas Act’ – An examination’, <https://spicyip.com/2014/08/guest-post-karnatakas-goondas-act-an-examination.html>; Anja Kovacs, Internet Democracy Project, 16 March 2018, ‘Unshackling expression: A study on laws criminalising expression online in Asia’, available at <https://internetdemocracy.in/reports/unshackling-expression-a-study-on-laws-criminalising-expression-online-in-asia/>; Balaji Subramanian, SpicyIP, 18 June 2016, ‘Subramanian Swamy and the Constitutionality of Copyright Criminalisation – Part II’, <https://spicyip.com/2016/06/subramanian-swamy-and-the-constitutionality-of-copyright-criminalisation-part-ii.html>.

<sup>448</sup> See Prashant Reddy, SpicyIP, 3 May 2009, ‘Beware Mumbaikars: The Slumlords’ Act could detain you for a year for simply buying a pirated DVD’, (Oct. 12, 2020, 01:35 PM), <https://spicyip.com/2009/05/beware-mumbaikars-slumlords-act-could.html>; T Prashant Reddy, N Sai Vinod, Journal of Intellectual Property Law & Practice, Volume 7, Issue 3, March 2012, ‘The constitutionality of preventing ‘video piracy’ through preventive detention in Indian states’, <https://doi.org/10.1093/jiplp/jpr214>, pp. 194-204; Nehaa Chaudhari, Amulya Purushotama, 28 August 2014, ‘Guest Post: Karnataka Goondas Act – A note on Legislative Competence’, <https://spicyip.com/2014/08/guest-post-karnataka-goondas-act-a-note-on-legislative-competence.html>

<sup>449</sup> See, for example, the Statement of Objects and Reasons, Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Gamblers Act, 1985: ‘The activities of certain anti-social elements like bootleggers, drug offenders, gamblers, goondas, immoral traffic offenders and slum grabbers have from time to time caused a feeling of insecurity and alarm among the public. The even tempo of life especially in urban areas has frequently been disrupted because of such persons.

(2) In order to ensure that the maintenance of public order in this State is not adversely affected by the activities of these known anti-social elements, it is considered necessary to enact a special legislation to provide as follows:

(a) to define with precision the terms ‘bootleggers’, ‘drug offenders’, ‘gamblers’, ‘goondas’, ‘immoral traffic offenders’ and ‘slum grabbers’.

(b) to specify their activities which adversely affect public order, and

(c) to provide for preventive detention of the persons indulging in these dangerous activities.

3. Tamil Nadu and Maharashtra State have introduced specific legislation for dealing with these categories of anti-social elements as these classes of offenders could not be effectively dealt with under the National Security Act.

4. It is proposed to make a similar legislation in Karnataka also in public interest.’ [emphasis added]

<sup>450</sup> Nehaa Chaudhari, Amulya Purushotama, 28 August 2014, ‘Guest Post: Karnataka Goondas Act – A note on Legislative Competence’, (Oct. 12, 2020, 04:35 PM), <https://spicyip.com/2014/08/guest-post-karnataka-goondas-act-a-note-on-legislative-competence.html>; Balaji Subramanian, SpicyIP, 18 June 2016, ‘Subramanian Swamy and the Constitutionality of Copyright Criminalisation – Part II’, <https://spicyip.com/2016/06/subramanian-swamy-and-the-constitutionality-of-copyright-criminalisation-part-ii.html>.

## 5.5. TRENDS IN JUDICIAL DECISION-MAKING

Significant legal developments pertaining to copyright infringement are discussed in this section of the chapter. It examines new judicial trends on live blocking, broadcast signal piracy, online broadcasting, and statutory licencing in light of technological advancements.

The enforcement of court site blocking has improved significantly over the past year. For copyright holders, the transition to electronic filing and virtual hearings has been very beneficial as a result of the COVID-19 outbreak (such as the necessity to endorse each sheet of petitions, which might be in the tens of thousands of pages). “Proxy portal” sites, which are mostly used to avoid site banning orders, are now being targeted by the courts. There is a clear correlation between these measures and a decrease in pirate site visits.

*UTV Software Communication Limited and another v. 1337x. to and others*,<sup>451</sup> An ex-parte judgement by the Delhi High Court has resulted in India’s first dynamic injunction, allowing the injunction holder to use the court order to ban content-infringing websites without having to file new lawsuits for each incident of infringement. Relief comes in the form of an injunction against rogue websites that distribute unlicensed copies of cinematographic films to the general public. Websites were found liable of harboring copyright infringing content and could not claim no immunity under the Indian Copyright Act, 1957, or the safe harbour concept apply to mediators by the Information Technology Act, 2000[1]. It also ordered MeITY and DoT to investigate the feasibility of formulating a technologically practicable policy under which content infringers might get a warning from the Department of Telecommunications (the “DoT”).

In *Eros International Media Limited v. Bharat Sanchar Nigam Limited*,<sup>452</sup> petition was filed for an ex parte interim relief for the movie Dishoom where the Hon’ble High Court is of the view that it perhaps time to consider what it is we really mean when we say this is a ‘hybrid’ action. The hybridity is not only because a ‘John Doe’ (or ‘Ashok

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<sup>451</sup> (2019) 78 PTC 375 (Del) (India).

<sup>452</sup> Eros International Media Limited v. Bharat Sanchar Nigam Limited, Suit (L) No. 755 of 2016, dt. 26<sup>th</sup> July, 2016 (India).

Kumar’) action combines principles of a representative action with an invocation of inherent powers of the Court to gain orders against a person or persons unknown; the hybridity is actually now a combination of several distinct jurisprudential innovations: a form of an Anton Pillar order of compelled compliance; an asset-blocking variant of the Mareva injunctions; the rules and regulations Order 1, Rule of the Code of Civil Procedure, 1908 (“CPC”); parts of Order 38 and 39 of the CPC and, of course, CPC Section 151.

The John Doe element lingers in a vestigial form. Increasingly, there are many named defendants, all services providers of one stripe or another. The small clutch of Ashok Kumars at the end of the cause title are supposed to represent, usually, those unidentified persons responsible for actual copyright infringement- for illegally uploading illicit content for Internet downloads and streaming; making bootleg CDs and DVDs, etc.

*Star India Pvt. Ltd. v. Moviestrunk.com*,<sup>453</sup> there are a number of unique film rights held by the defendant in this case because of his business dealings in India. ‘Mission Mangal’ is one of the films being considered for release. An 80-person indictment has been filed. 7 defendant-websites (Defendant Nos.68 and 69), 7 defendant-websites (Defendant Nos.70-78), ISPs (Defendant No.70-78) and two departments of the Indian government (Defendant Nos.79 and 80) make up the list of defendants who are accused of violating Plaintiff’s copyright.

Because their movie ‘Mission Mangal’ was being disseminated on several online sites without their permission, the plaintiff filed a lawsuit. There were a number of defendant websites which were rendering copies of the film available to the general public for watching or downloading. On August 5, 2019, a court issued an ex-parte injunction “restraining Respondent Nos. 1 to 67 from in whatever way unauthorizedly streaming, downloading, communicating, or distributing the cinematograph film ‘Mission Mangal’, including any extracts or clippings thereof,” in the Plaintiff’s favour, as a

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<sup>453</sup> (2020) 82 PTC 166 (Del) (India).

result of this filing. ISPs have been required to restrict access to such websites, and the Department of Telecommunications and the Ministry of Electronics and Information Technology have been asked to issue notices ordering service providers to do so. Due to the defendant's websites failing to comply with any notifications or summons, this matter was decided *ex parte*.

Section 14 of the Copyright Law of 1957 was allegedly violated, according to the complainant. Infringing on someone else's intellectual property is when you use someone else's work without their consent.

The plaintiff, on the other hand, argues that now the accused websites are "rogue websites," principally engaged in the dissemination of unauthorised copies over the internet. According to *UTV Software Communication Ltd. and Others vs. 1337x.to & Ors.*, the complaint relied on the test for 'rogue websites' established in that case.

Despite the defendant's efforts to discredit the plaintiffs, the court ruled in favour of the plaintiffs, finding that the defendant's websites were in reality rogue operations dedicated to dealing with, communicating, and disseminating illegal copies of protected works. The fact that the registrant of the defendant websites is in some way questionable, in addition to the character of the activity, leads to the inference that the respondent domains are rogue websites. The defendant's websites failed to adhere with legal notices, failed to appear in court after being summoned, and showed a flagrant disregard and ignorance of the plaintiff's intellectual property rights, all of which were deemed gross violations by the court. Court fees and attorney's fees are also deductible from a plaintiff's damages. Within two weeks, the plaintiff will provide a declaration of the actual costs.

According to the ruling in *Novi Digital Entertainment Pvt. Ltd. & Anr. v. Five Desi & Ors.*,<sup>454</sup> the primary purpose of an unreliable website is to distribute illegal and infringing content to the general public, the identity of its owners is obscured or

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<sup>454</sup> (2019) 80 PTC 435 (Del) (India).

untraceable, it does not respond to legal notices, and it contains directories or indexes that aid in copyright infringements. An aggrieved party may also be eligible for a dynamic injunction, which allows mirror/redirect/alphanumeric websites to be incorporated into an injunction if they are able to give access to the enjoined site.

In *Espn Software India Pvt. Ltd. v. Tudu Enterprise and Others*,<sup>455</sup> according to the Delhi High Court, the plaintiff's channels were classified as paid channels. Subscribers that went through a legitimate distributor were able to see these. The defendants in this case, who violated Section 37(3) of the Copyright Act, 1957 by using plaintiff's transmission networks channels and showing events to their subscribers in violation of the copyright laws, could have only accessed it through authorised users because it was protected by Section 37(3) of that Act. An appeal was made to determine if the defendants' actions while broadcasting plaintiff-owned networks channels were unauthorised. The defendants were in breach of Section 37(3) of the Copyright Act because they had not signed a licencing agreement with the plaintiff's distributors and consequently had no ability to broadcast programs over their cable operators.

In *Fox Star Studios India Ltd. v. John Ceedge and Others*,<sup>456</sup> the complainant is seeking a permanent injunction, profits accounts, delivering up, damages, and other relief for alleged copyright infringement. The plaintiff believes that many websites are infringing on its copyright in connection with the imminent release of its film *Bang Bang* on October 2nd, 2014. The plaintiff is the producer/copyright owner of various cinematograph films, including without limitation, the upcoming film and its past releases, *Bullett Raja*, *Citylights*, *Finding Fanny*, *Humshakals*, *Mundaasupatti*, *My Name is Khan* etc. It was submitted that it is necessary that access to the whole websites, which may be characterized as rogue websites, itself be blocked as opposed to URLs since URLs/links could very easily be changed to overcome/circumvent an order of injunction passed against such URLs. It is necessary that access to such websites itself be blocked as opposed to mere URLs being restrained. The plaintiff has produced

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<sup>455</sup> (CS/OS/384/2011) (India).

<sup>456</sup> *Fox Star Studios India Ltd. v. John Ceedge and others*, CS(OS) No. 2975/2014, Dated 29<sup>th</sup> September, 2014.

prima-facie evidence against the 72 owners of websites to establish that the owners of those websites are also previously involved in the piracy of the copyright in the various movies. Despite of communication by the producer(s), they continue with their illegal activities and bad practices which cannot be allowed by this Court who is totally against the piracy of copyright including movies; it is almost equivalent to duplicate the currencies. Piracy is being committed and unlawful earnings are being amassed by the website owners, who are peering beyond the veil and cackling at the movie makers. For our country's well-functioning system, copyright theft is a plague that must be curtailed and dealt with harshly.

In *Balaji Motion Pictures Ltd. & Anr. v. Bharat Sanchar Nigam Ltd. & Ors.*,<sup>457</sup> after being notified by the complainants or their designated representatives, or by the Chief Investigator of the Internet Police Station, of the 482 Html tags connections and/or other active Webpage that enclosed or rumoured to contain an unauthorised or illicit copy (or portions thereof) of the film "Great Grand Masti," the defendants were ordered to take initiatives to block access to those URLs/weblinks. If any of the 482 URLs were discovered to be active, the complainants would be free to file a lawsuit against them. An injunction was passed restraining the intermediaries and cable/DTH operators from making any broadcast or making available any form of download of this film without a specific written authorization from the Plaintiffs.

In *Eros International Media Ltd & another v. Bharat Sanchar Nigam Ltd. & 49 Others*,<sup>458</sup> the suit was under Order VII Rule I of CPC, 1908 and order IV Rule 1 of O.S. Rules, 1956 R/W Sections 51, 52, 55 and 62 of the Copy Right Act, 1957 and the Copy Right Amendment Act, 2012, in order to prevent unauthorised copying, transmission, communication, display, release, upload, download, exhibit, play, or otherwise communicate in and/or with the plaintiff's copyright-protected film, the defendants and anyone else involved in infringing on the film's intellectual property

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<sup>457</sup> Balaji Motion Pictures Ltd. & Anr. v. Bharat Sanchar Nigam Ltd. & Ors., Suit (L) No. 694 of 2016, Dated 4<sup>th</sup> July, 2016 (India).

<sup>458</sup> Eros International Media Ltd & another v. Bharat Sanchar Nigam Ltd. & 49 Others, Suit (L) No. 755 of 2016, Dated 26<sup>th</sup> July, 2016 (India).

rights be ordered to block all websites/web pages including those hosting contents related to the film's copyright protection.

In *Balaji Motion Picture Limited & Anr. v. Bharat Sanchar Nigam Ltd. & 49 Ors.*,<sup>459</sup> an urgent application moved against a number of defendants. Some are Internet Service Providers ('intermediaries' within the meaning of Information & Technology Act, 2000); others are cable operators; and some are unknown persons, those known as 'John Doe' or 'Ashok Kumar' defendants. The Suit is a hybrid action. It combines principles under order 1 Rule 8 and section 151 of the code of civil procedure, 1908 with the well-known John Doe or Ashok Kumar principle in respect of a film entitled "UDTA PUNJAB". All that the Plaintiffs seek to do is to restrain potential damage and loss on account of pirated and illicit copies being made available online. The action is, therefore, a quia timet action. Thus, some reliefs were granted in blocking the sites as well as in prohibiting the copying and distribution specific and in relation to the film in question with an ad-interim injunction in terms of prayers sought. In addition, there was also an injunction restraining the Defendants from permitting access to all pages of any websites, including those listed in the Petition, and which contain or are said to contain links to illicit downloads of the film in question.

In *K Sera Sera Digital Cinema Ltd. v. Pen India Ltd. and Ors.*,<sup>460</sup> it was for this reason that producer Viacom 18 filed a FIR against Informant for internet piracy against producers and show hosts of the movie "Kahaani 2" who are the digital film service providers and have managed to enter into such an anti-competitive configuration with a view to limiting/controlling "Kahaani 2." Viacom 18's investigations found that the copy delivered to Informant for electronic integration had been the source of pirated copies. One can conclude that Opposing Party 1's complaint that Informant failed to respond to the issue of internet piracy stated in a prior news piece had some merit. As a result, movie piracy may be tracked back to distributors as well.

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<sup>459</sup> Balaji Motion Picture Limited & Anr. v. Bharat Sanchar Nigam Ltd. & 49 Ors, Suit (L) No. 633 of 2016, Dated 16<sup>th</sup> June, 2016 (India).

<sup>460</sup> K Sera Sera Digital Cinema Ltd. v. Pen India Ltd. and ors, Case No. 97 of 2016, Dated 21<sup>st</sup> June, 2017 (India).

In *M/s. R.K. Productions Pvt. Ltd. v. Bharat Sanchar Nigam Limited & 19 others & Creative Commercials Media & Entertainment Ltd. v. Bharat Sanchar Nigam Limited & 44 others*,<sup>461</sup> CS 208 of 2012 was registered by M/s RK Productions Private Limited in the Indian Patent Office. Creative Commercials Media and Entertainment Ltd. filed C.S. No. 294 of 2012. Both lawsuits were brought on behalf of John Doe. Ashok Kumar, an Indian unknown, took the place of the original “John Doe.” The first case is a film called “3” in Tamil. The plaintiff is seeking a permanent injunction preventing the accused and other unknown persons from copying, recording, reproducing, or allowing, camcording or conveying or enabling everyone else to converse or providing access or disseminating or recreating or showcasing or distributing or displaying or posting or uploading or displaying or playing and in any other way interacting the plaintiff’s movie “3” in any way, In other words, without the plaintiff’s express permission or in any other way that would violate or violate the complainant’s copyright in the aforementioned cinematograph film “3,” the defendants may distribute the film in any format, including but not limited to CD, DVD, Blu-ray, Video players, Cable Television, direct to home services, online service providers, multimedia messaging services, usb drives, hard drives, and tapes.

Claiming that the plaintiff’s rights with respect to the film “3” would be jeopardised if an order prohibiting production of “Dhammu” were not obtained, Creative Commercials Media & Entertainment Limited filed a second complaint in C.S. No. 294 of 2012 seeking the same remedy. According to the ruling for interim injunction, a specific URL in which the infringing video is stored, not the whole website, is the subject of the injunction. In addition, the plaintiff/applicant must tell the respondents/defendants of the specific URL where the infringing video is stored, and the defendants must take required actions to ban such URLs within 48 hours of receiving such details from the plaintiff/applicant.

In *Taj Television Ltd. & Anr. v. Rajan Mandal & Ors.*,<sup>462</sup> a number of cable companies, parties, and networks have been found to be illegally distributing Ten

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<sup>461</sup> *M/s. R.K. Productions Pvt. Ltd. v. Bharat Sanchar Nigam Limited & 19 others & Creative/Commercials Media & Entertainment Ltd. v. Bharat Sanchar Nigam Limited & 44*, C.S. No. 208 of 2012 & C.S. No. 294 of 2012 respectively, Dated 30<sup>th</sup> October, 2012 (India).

<sup>462</sup> *Taj Television Ltd. & Anr. v. Rajan Mandal & Ors.*, [2003] F.S.R. 22, Dated 14<sup>th</sup> June, 2002 (India).



Sports and making enormous profits. Broadband infringement and the unorganized structure of the cable sector make enforcing rights against cable providers a near-impossible endeavour. If you have ever seen a “John Doe” order passed by a court in any of these countries: Canada; America; England; Australia; and others. All of these countries’ legal systems are fundamentally comparable to our own. As a result, given the unusual events and circumstances of each case, Indian courts would be justified in issuing “John Doe” orders in the interest of fairness. Because of the uniqueness of cable piracy and the unorganised essence of the telecommunications sector, the speed with which the cable operators can erase any trace of infringement, and the likelihood that rights enforcement of a conservative nature will efficaciously redress the plaintiff’s grievance, the cable operators are encouraged to take action. The Hon’ble Court believes that, notwithstanding the fact that courts in India are not unable to issue John Doe orders, the instructions made in the following paragraphs may safeguard the rights of the complainants and serve the objectives of justice in this matter.

#### **5.5.1. JOHN DOE ORDERS**

For copyright infringement in Indian courts, the John Doe/Ashok Kumar orders are among the most often utilised remedies Injunctive orders are made against defendants who cannot be identified,<sup>463</sup> with anti-piracy measures which are designed to prevent copyright infringement when new content is released. The Delhi High Court was the first court in India to issue John Doe orders,<sup>464</sup> the United States, Canada, England, and Australia were all involved in the process.

No one can disagree that John Doe orders are a legal way to pursue copyright infringement cases against unnamed infringers. Piracy of various forms, such as Game of Thrones or an old movie, is difficult to distinguish since there is no court precedence to guide us in this regard. As a result of this, copyright holders may have to file multiple lawsuits to protect new works, which may be costly and time-consuming for smaller authors. In certain cases, injunction rulings have had an unintended impact on genuine

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<sup>463</sup> Under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908.

<sup>464</sup> *Taj Television Ltd. & Anr. v. Rajan Mandal & Ors*, [2003] F.S.R. 22 (India).

web companies. A few remedies for dealing with copyright infringement are presented in the following paragraphs.

## **5.5.2. CASES OF LEGAL ENTERPRISES BEING IMPACTED BY INJUNCTIONS ORDERS**

### **5.5.2.1. SPICYIP'S CASE**

Saregama India Pvt. Ltd. filed a complaint against the popular IP commentary and blog in February of this year, and Google Inc. allegedly de-indexed one of the blogs as a result. On November 28, 2018, Saregama handed Google a list of 99 URLs, one of which was SpicyIP. A blog entry on a particular Bollywood song's history was the subject of the errant URL. An investigation discovered no mention of the song, other than to describe the circumstances at issue. It was because of US Copyright law that Google de-indexed the blog first, before notifying anyone. After several requests and communications with Google, the post was restored on the 21st of January.<sup>465</sup>

### **5.5.2.2. ARCHIVE CASES LIKE THIS ONE**

At some point in 2017, the Madras High Court issued Ashok Kumar orders to restrict 2,650 websites as a short-term remedy for copyright violations involving specific films. 'Lipstick Under My Burqa' director Prakash Jha Films and Red Chillies Entertainment, Private Limited, Mumbai filed copyright infringement lawsuits against 'Harry Met Sejal'. A total of 42 defendants, as well as eight dubbed Ashok Kumar, were included in the indictment. According to High Court ruling, Internet Archives, an online repository of works in the public domain, was one of the well-known sites restricted. The Internet Archives, one of the world's greatest archives of legally free books, videos, and other historic archived information, was not contacted, nor was a particular URL specified for banning the domain name itself.<sup>466</sup>

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<sup>465</sup> Divij Joshi, SpicyIP, 12 February 2019, '*SaReGaMa Pa-rdon Me, You Have the Wrong Address: On the Perils and Pitfalls of Notice and Takedown*', (Oct. 15, 2020, 08:35 PM), <https://spicyip.com/2019/02/saregama-pa-rdon-me-you-have-the-wrong-address-on-the-perils-and-pitfalls-of-notice-and-takedown.html>.

<sup>466</sup> Venkatasubramanian, India Legal, 24 August 2017, '*Who is Ashok Kumar?*', (Oct. 15, 2020, 10:35 PM), <http://www.indialegallive.com/constitutional-law-news/courts-news/anonymous-copyright-infringement-who-is-ashok-kumar-33450>.

### 5.5.2.3. WHEN IT COMES TO INDUNA CASE

It was in 2016 when the Bombay High Court took action against many websites for copyright violation. Just because the term “Great Grand Masti” (the film) appeared on Induna’s website, the site was barred from selling legal movie CDs and DVDs. The plaintiff’s technological companies engaged by Balaji Motion Pictures utilised automatic crawlers to trace any online mention of the movie’s name and included even those sites that had just published reviews of the film, without any evidence of infringement, in their list.<sup>467</sup>

### 5.5.3. LEGAL STATUS OF JOHN DOE ORDERS IN INDIA

Order No. 30 A petitioner who believes he or she is at risk of committing a copyright infringement by using information he or she has created or has information about a copy of his or her works for financial gain can go to court and seek John Doe’s order, according to Rule 1 of the Code of Civil Procedure (Code of Civil Procedure).<sup>468</sup>

An injunction can be issued under 1908 Code of Civil Procedure Order 39, Rule 1 and Rule 2, allowing the court to make the order John Doe. Globally and internally, the order of John Doe has been recognised and approved for the enforcement of IP rights. Although John Doe’s orders have begun to be issued by Indian courts, they must yet demonstrate their efficiency in execution.<sup>469</sup>

However, it has been suggested to seize counterfeit products in the case of trademark or copyright infringement as part of John Doe’s application. This also applies to persons who have not been identified but are believed to be involved in the production and selling of counterfeit goods. There have also been instances of applicants submitting fake John Doe labels, artwork, and packaging in the Indian court system.<sup>470</sup>

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<sup>467</sup> Shammad Basheer, ‘*Of Bollywood “Blocks” and John Does: Towards an IP Ombudsman?*’, SpicyIP, 24 August 2016, (Oct. 18, 2020, 11:35 PM), <https://spicyip.com/2016/08/of-bollywood-blocks-and-john-does-towards-a-neutral-ombudsman.html>.

<sup>468</sup> Arul George Scaria, *Piracy In The Indian Film Industry: Copyright And Cultural Consonance*, 92 (Cambridge University Press, May-2014).

<sup>469</sup> *Ibid.*

<sup>470</sup> *Supra* Note 467.

### 5.5.3.1. ONLINE PIRACY: THE LAW IN THE COURT

From the case of *Taj Television Limited v Rajan Mandal*,<sup>471</sup> India's philosophy of John Doe orders was born. Cable providers were handed a John Doe order by the Delhi High Court to prevent them from broadcasting the Cup Final football championship without permission. Prior to the release of any significant film or athletic event, a John Doe order was sought. *Channel 2 Group Corporation v Http://Live.Mycricketlive.Net/ and Others*<sup>472</sup> has received an ex-parte interim restraining order from the Delhi High Court against the illegal aural broadcasting of the ICC World 2019. Forewarned of a possible infringement of its audio rights, Channel 2 Group Corporation filed an application for just a John Doe order/Ashok Kumar order, citing a variety of defendants, including numerous radio stations, internet service providers, and unknown defendants. High Court cited *Star India Pvt. Ltd v. Piyush Agarwal*,<sup>473</sup> which said that anybody who wishes to communicate ball-by-ball live scoring or match warnings without a licence can do so, providing a duration gap of fifteen min is preserved in broadcasting such information. By its ruling of 30 September 2013, the Supreme Court affirmed this fifteen-minute difference in time standard in *Star India Pte Ltd v. Akuate Internet Services Pvt. Ltd.*<sup>474</sup> An ex-parte ad-interim court order conferred by the High Court of Justice, prohibiting the accused persons from transmissions, communicating or distributing any audio or airwaves broadcasting of the topic ICC tournament, whether in real-time or after the event has concluded, was based on the above-mentioned principle. A defendant who complies with the interim injunction, however, may freely communicate the score update, retaining a 15-minute lag. John Doe orders against unidentified defendants were also part of an interim order issued by a judge. It was ordered that any websites or URLs that violated the petitioner's copyright and broadcast production rights should be removed from search engine results pages as soon as they are reported by the plaintiff. Upon notifying the ISPs of the infringement, the plaintiff requested that they prohibit access to the infringing website's unlicensed content. The ISPs obliged.

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<sup>471</sup> [2003] F.S.R 24 (India).

<sup>472</sup> [CS (COMM) 326/2019, I.A. 8510/2019 and 8508/2019] (India).

<sup>473</sup> 2013 (54) PTC 222 (Del) (India).

<sup>474</sup> SLP (C) No 29633 of 2013 (India).

An additional recent landmark case that has moulded the rulings relating to tackling illegal downloading in India is *UTV Software Communication Ltd. v. 1337X.TO and Others*.<sup>475</sup> In this case, the Delhi High Court made a significant development in the form of “*dynamic injunction*,” which eliminates the need for rights-holders to go through the time-consuming process of obtaining a judicial order in order to issue blocking orders to Internet service providers (ISPs). Consequently, the plaintiffs have been granted permission to file an application with The Delhi High Court (an administrative position) for the purpose of extending an existing injunction order against a website to another similar “*mirror, redirect, or alphanumeric*” website that contains the same content as that of the previously blocked or enjoined website. Following in the footsteps of Singaporean legislation, the court stated that, in order to combat the possibility of piracy, it can grant the plaintiff permission to include mirror/redirect/alphanumeric websites in the complaint. The court highlighted the need of judicial review when approving this relief. Affidavits will be necessary in connection to a petition for implementation in order for the plaintiff to prove that the newly accused website is a mirror, redirect, or alphanumeric website with adequate proof. The Joint Registrar would give instructions to the Internet service providers (ISPs) to block access to such mirror/redirect/alphanumeric sites in India if he or she is satisfied with the above-mentioned statement.

The Hon’ble jury also instructed the Ministry of Electronics and Information Technology (GOI) to investigate the feasibility of developing a technologically feasible method to warn audiences of breaching substance to abstain from viewing/downloading such infringing material or else be liable to legal consequences. Website blocking is a time-consuming exercise, and the majority of young subscribers may not be aware that they are accessing, viewing, and/or downloading infringing content.

This verdict represents a significant step forward in the effort to prohibit websites that house illegal materials by simplifying the enforcement procedure for copyright owners

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<sup>475</sup> [2019(78) PTC 375(Del)] (India).

more straightforward. It would be fascinating to observe if the court's directives are implemented in the shape of tangible regulations, and whether India will experience a moment when people are warned that the information, they are viewing is infringing on their intellectual property. We cannot, however, deny that the vast majority of consumers are conscious of piracy and defend it in the guise of "free usage." Future improvements in anti-piracy might concentrate on making material more accessible and available to consumers, which would be extremely beneficial to the anti-piracy campaign.

When it came to unidentified defendants, such as Internet service providers (ISPs) and unknown content creators who violate copyright laws, the Bombay High Court enlarged the regulations that must be followed not only by the implementation officials, but also by the judges and the complainant in *Eros International and Anr v. BSNL & Others*.<sup>476</sup> Prior to demanding banning of any allegedly unlawful connections, the court has required copyright holders to check and authenticate these links, and advocates and general counsels have been instructed to verify these links a second time. It is essential that the plaintiff provide all evidence in a sworn affidavit in accordance with Order 39, rule 1 of the CPC.

It is recommended that courts analyse and verify the legitimacy of the list before issuing a John Doe order, or assign this responsibility to a neutral third party.

Websites blocked by ISPs must include a statement explaining why they were blocked, the location of the copyright holder, and a proclamation that anybody who feels wronged, including spectators, has two days to initiate a litigation. Additionally, this judgement reduced the duration of the restriction to twenty-one days, following that the complainant would be required to obtain the prosecutor's discretion to prolong the limitation until the block was lifted.<sup>477</sup>

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<sup>476</sup> C.S. No.620 of 2016 (India).

<sup>477</sup> *Ibid.*

When it comes to copyright concerns in India, the Indian judiciary has taken John Doe's ruling as a guideline. In Bollywood, this immediately became popular owing to the fact that piracy and illegal duplicating were prevented. The case of *Viacom18 Motion Pictures v. Jyoti Cable Network and Ors*<sup>478</sup> is important to remark in this respect. Jyoti Cable Network and other unnamed cable providers were ordered by the Court to stop infringing on Viacom 18 Motion Pictures' copyrights by a temporary injunction known as a "John Doe" order according to CPC, 1908, Order 39, Rules 1 and 3.

These courts' Internet service providers will be able to ban websites on behalf of content owners, such as Viacom18, as long as they are bound by a John Doe order issued by one of these service providers. This does not necessitate verifying each individual block of the yard. Additionally, this was supposed to block the complete URL rather than just the URL itself. How long this block will be valid is fascinating.

Following the judgement of the Bombay Superior Court in EROS case, the court noted that John Doe orders only apply to URL or subsections of that website which may infringe or has violated copyright at an earlier period. As a general rule, restricting certain URLs improves the likelihood that pirate copies will be repeated on the same website and minimises collateral harm. The side consequence of the John Doe order is that many people who are not participating in piracy or copyright activities have been affected by it.

It was only recently that Bollywood began to benefit from John Doe's order and was seen as an alternative to combat against piracy, which was an added advantage. In July 2011, some internet service providers stopped access to file sharing, as well as an order authorised by the Delhi High Court, which sparked a wave of applications seeking an order from John Doe.

In the future, content owners will be able to force Internet service providers (ISPs) to ban websites at their request. As a result, it is crucial to realise that blocking particular

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<sup>478</sup> *Viacom18 Motion Pictures v. Jyoti Cable Network and Ors.*, CS(OS) 785/2012 (India).

URLs would increase pirate copies on the same website, and it will also ensure that the collateral damage is minimised.

Many artists, filmmakers, and other creatives have been involved in legal battles for their right to freedom of speech and expression in India's courts. Artists' freedom of speech has been supported by the Supreme Court of India on several occasions. In this context, it is vital to mention the following instance, which has set a precedent for innovation and intellectual capacity.

In yet another case of *Viacom18 Media Private Limited & Ors. v. Union of India & Ors*<sup>479</sup>(Popularly known as Padmavat case). After four states, namely Gujarat, Rajasthan, Madhya Pradesh, and Haryana, issued an order placing a ban on a film called "Padmaavat," Viacom18 Media Private Limited & Ors. filed a writ suit before India's Supreme Court to challenge the ban on the film's theatrical release. As a public interest measure, the four states issued the orders to prohibit screenings in their jurisdictions. In January 2017, Petitioners began filming in Jaipur, which sparked a series of protests. Petitioners and the crew were beaten by members of karnisena, who vandalised and severely destroyed the film's settings (A Rajput cast group). It was criticised by members of karnisena, who accused the petitioners of misrepresenting Rani Padmini's history by showing inappropriate portions in the film. Once more, the Hon'ble Supreme Court of India had to decide whether or not Article 19(1) of the Constitution and Section 6 of the Cinematograph Act, 1952 allowed for a film's screening to be halted.

Dipak Misra, the Chief Justice of the Supreme Court of India, presided over a three-judge bench that ruled in favour of a stay on notifications issued by four states and a prohibition on other states from issuing notifications/orders that barred the screening of the film in any form. It was noted that the state has a duty to uphold the law and order. Hon'ble Court in final lines of interim order stated that the state's commitment to ensure public order is fundamental whenever the film is shown in public, citing the preceding judgements. Freedom of speech and expression is recognized under Article 19(1) of the

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<sup>479</sup> *Viacom18 Media Private Limited & Ors. v. Union of India & Ors*, Writ Petition (Civil) No(s).36/2018 (India).



Constitution of India. It has been reiterated by the Supreme Court in this decision that such notices and orders can be stayed, thereby protecting the rule of law in instances. As a result, the temporary injunction in this case is a gift to artists and filmmakers since it upholds the principle of freedom of expression.

The case of *Sagarika v. Dishnet*<sup>480</sup> deserves a mention over here. A significant aspect of this case is that it illustrates the difficulties that Indian law enforcement has when it comes to enforcing the law online. Website-blocking injunctions have proven to be a useful tool for copyright holders. Nonetheless, this isn't a perfect solution.

The Calcutta High Court shut a pirated music website in this case. Directed by the court restriction of Songs.pk, it is the only criterion "the order of blocking shall be restricted to" one particular webpage, as well as "should not otherwise interfere with internet access". After then, the domain name was changed to www.songspk.pk. Even before a right owner goes to court yet, opportunity to try and stop an updated version of the webpage, in the meanwhile, there may have been a substantial number of infringements on that website.

While it's possible for courts to be careful and insist on banning only particular infringing pages in the absence of Supreme Court decisions, it's still possible for them to prohibit the entire site. As long as the identical webpage is restricted, offenders can easily move to another, accessible webpage. Regardless though the situation is dire a judge blocks a website in its entirety, the restricted website may still be able to move to a different website entirely.

Piracy is a major problem for the film business in India, where John Doe's request has recently become an important weapon in the filmmakers' arsenal. As a means of avoiding such classes, John Doe made the request. Making the most of their advantages in India requires the establishment of efficient processes for their implementation.

It may also be concluded from the explanation of John Doe's control that the usage of his control is still in its infancy. A fuller understanding of John Doe's order, its inherent

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<sup>480</sup> *Sagarika v. Dishnet*, Civil Suit 23 of 2012 (Cal. H.C) (India).

legal application, and the willingness of Indian judicial systems to enforce John Doe’s orders will be critical to its execution. The enforcement mechanism of John Doe’s order is totally dependent on how Indian courts throughout India treat and implement John Doe’s order.

#### **5.5.4. NOTICE-AND-TAKE-DOWN**

For online intermediaries that hold “incidental or temporary” connections to illegal content, the Copyright Act and Copyright Rules establish the “notice-and-take-down” regime. If an intermediary receives a complaint from a copyright holder, they must discontinue enabling access to the relevant information within 36 hours if they are satisfied that such material violates copyright. After receiving a complaint, the intermediaries must refrain from enabling access for 21 days or until a competent court order them to do so, whichever comes first.<sup>481</sup> In a recent case<sup>482</sup> earlier this year, the Delhi High Court ruled that intermediaries were not liable for copyright infringement unless they had “real knowledge” that the item in question was copyrighted. IT Act Sections 79 and 81<sup>483</sup> and Section 51(a)(ii) of the Copyright Act<sup>484</sup> online intermediaries must have real and not broad knowledge of the infringement, seek redress that is precise and describe the exact material that is being violated by an online intermediary.<sup>485</sup>

This issue of intermediary responsibility is a complex one, and the courts must analyse the definition of an intermediary, the role they play in each instance, and the extent of their actual knowledge. It is proposed that the IT Act offer clarification on the different types of intermediaries and the differing degrees of responsibility that they would have to carry in such instances of intermediary liability.<sup>486</sup>

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<sup>481</sup> Section 52(1)(c) of the Copyright Act, 1957. See also Rule 75(3) of the Copyright Rules, 2013.

<sup>482</sup> Myspace v. Super Cassettes, FAO(OS) 540/2011, (Oct. 25, 2020, 12:35 PM), <http://lobis.nic.in/kdir/dhc/SRB/judgement/24-12-2016/SRB23122016FAOOS5402011.pdf>.

<sup>483</sup> Section 79 - Exemption from liability of intermediary in certain cases; Section 80- Act to have overriding effect.

<sup>484</sup> [(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or]

<sup>485</sup> In this case, the plaintiff was directed to provide an updated catalogue of ‘specific’ works in which it held copyright along with the location/URL of such work on the appellant’s website to the appellant as and when the plaintiff detected infringement.

<sup>486</sup> In the Whatsapp traceability case, the Supreme Court had asked the Central Government to finalise the Draft Information Technology [Intermediaries Guidelines (Amendment)] Rules as soon as possible,

### 5.5.5. NOTICE-AND-STAY-DOWN

Copyright infringement by internet intermediaries has been dealt with using the notice-and-stay-down approach. It is an alternative to the notice-and-take-down method, which compels copyright holders to notify such intermediaries' whenever infringing content is posted. Due to the enormous number of information being uploaded, copyright holders have claimed that this can be costly and ineffectual.<sup>487</sup> As a result, they contend, they may be denied the opportunity to make money from their work on an equal footing.<sup>488</sup>

Intermediaries must remove and prohibit further uploads of illegal content under the notice-and-stay-down procedure after they receive notice from a copyright owner.<sup>489</sup> In the absence of explicit criteria in the legislation, it has been criticised for its consequences for privacy and freedom of expression)<sup>490</sup> in addition to other issues.<sup>491</sup> Article 17 (formerly Article 13) of the EU Copyright Directive should be mentioned in this connection<sup>492</sup> under pressure from digital rights and Internet governance experts, put in place a liability scheme geared at encouraging the content-sharing platforms to

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(Oct. 25, 2020, 01:55 PM), <https://www.medianama.com/2019/09/223-supreme-court-to-meity-intermediary-guidelines-status/>.

<sup>487</sup> See European Commission, 14 September 2016, 'Commission Staff Working Document: Impact Assessment on the modernisation of EU copyright rules', SWD(2016) 301, (Oct. 28, 2020, 11:05 AM), [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=17211](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=17211), p 140

<sup>488</sup> *Ibid.*

<sup>489</sup> See Felipe Romero-Moreno (2019) 'Notice and staydown' and social media: amending Article 13 of the Proposed Directive on Copyright, *International Review of Law, Computers & Technology*, 33:2, 187-210, (Oct. 28, 2020, 01:15 PM),

<https://www.tandfonline.com/doi/full/10.1080/13600869.2018.147590> 6.

<sup>490</sup> Rishabh Dhara, *Centre for Internet and Society, Intermediary Liability in India: Chilling Effects on Free Expression on the Internet*, (Oct. 28, 2020, 02:55 PM), <https://cis-india.org/internet-governance/intermediary-liability-in-india.pdf>.

<sup>491</sup> See Felipe Romero-Moreno (2019) 'Notice and staydown' and social media: amending Article 13 of the Proposed Directive on Copyright, *International Review of Law, Computers & Technology*, 33:2, 187-210, (Oct. 28, 2020, 04:05 PM),

<https://www.tandfonline.com/doi/full/10.1080/13600869.2018.147590> 6; European Commission, 14 September 2016, 'Commission Staff Working Document: Impact Assessment on the modernisation of EU copyright rules', SWD(2016) 301,

[https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=17211](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=17211), pp 140-141; Daphne Keller, the Centre for Internet and Society, Stanford Law School, 5 October 2017, 'Problems with Filters in the European Commission's Platforms Proposal', <http://cyberlaw.stanford.edu/blog/2017/10/problems-filters-european-commissions-platforms-proposal>.

<sup>492</sup> EU Copyright Directive, (Oct. 28, 2020, 07:15 PM), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.130.01.0092.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.130.01.0092.01.ENG).

use automated content recognition capabilities.<sup>493</sup> When rightsholders do not provide permission, Article 17(4) states that intermediaries shall be held accountable for any illegal transmission to the public.

### 5.5.6. DYNAMIC INJUNCTIONS

Recent work by the Delhi High Court has looked into employing dynamic injunctions as a novel means of addressing internet piracy, in the case of *UTV v 1337x.to*.<sup>494</sup> To ensure that an injunction might be extended to other webpages (web addresses or IP ports of other networks) that provide the ability to view a webpage that has been blocked, the relief was written such that the copyright holder could approach the court's Joint Registrar. Because of this judgement, website blocking injunctions can now be issued for sites other than those specifically named in the court order, making it easier for copyright holders to enforce their rights. It was previously studied by the Singapore Supreme Court, and applied to 'Flauntly Infringing Online Locations' or FIOLs, which 'mainly or substantially disseminate infringing content.'<sup>495</sup>

According to the Delhi High Court, assessing what FIOLs were in this instance was based on a number of considerations, including whether the websites had indexes and categories that made it easier to infringe on intellectual property.<sup>496</sup> According to the study, it also looked at qualitative and quantitative techniques (where blocking is warranted because websites host 'overwhelmingly illegal' content) as well as those that are more quantitative (where only infringement material can be found on the relevant websites).<sup>497</sup>

It was decided by the bench in *UTV v 1337x.to*. that copyright holders should not be required to identify each piece of infringing content, and that a quantitative approach

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<sup>493</sup> João Pedro Quintais (Institute for Information Law (IViR)), 7 June, 2019, Kluwer Copyright Blog, (Oct. 28, 2020, 10:05 PM), <http://copyrightblog.kluweriplaw.com/2019/06/07/the-new-copyright-directive-a-tour-dhorizon-part-i/>.

<sup>494</sup> *UTV v 1337x.to*, MANU/DE/1244/2019. Also see *Warner Bros. Entertainment Inc v. TamilRockers.com & Ors*, CS(COMM) 419/2019, which relied on *UTV v 1337x.to* and also provided dynamic injunctions as a remedy to the plaintiff.

<sup>495</sup> *Disney Enterprises Inc, and Others vs. M1 Ltd and Others*, [2018] SGHC 206.

<sup>496</sup> *Ibid.*

<sup>497</sup> See *Eros International Media Ltd. & Anr. v. Bharat Sanchar Nigam Ltd. & Ors.*, Suit No.751/2016 (India).

would imply that nearly no website would be judged to be violators if they included a modest quantity of lawful content.

According to the Court's decision in the aforementioned case, when it comes to assessing when it is appropriate to block a website in its whole, it must evaluate the type and scope of the infringement in order to strike a "fair balance" between IP rights, free speech, and commerce.<sup>498</sup> But in this case, the Court did not check to see if the requirements it had laid down for each defendant were met, so it prohibited the websites in their entirety.<sup>499</sup>

Copyright owners and consumers alike can benefit from standardised norms and methods for third-party verification of website listings. Courts in Singapore, for example, have used evidence that infringing websites have been blocked in other jurisdictions, or have a significant traffic, or have failed to comply with take-down notices issued by the plaintiffs, or have posted instructions for circumventing measures to disable access to the infringing websites.<sup>500</sup>

It was urged by the Delhi High Court that the Ministry of Electronic and Information Technology and the Department of Telecom consider creating a policy wherein users of copyrighted content are provided warnings and are penalised if they do not cease watching such content.<sup>501</sup> Identifying the precise issues that need to be addressed and tailoring the method and sanctions accordingly is key in the formulation of this policy.

### **5.5.7. OTHER CENTRAL AND STATE GOVERNMENT INITIATIVES AND MAJOR LEGISLATIVE TRENDS IN INDIA**

Here, we'll take a look at potential alternatives to typical legislative methods for preventing copyright infringement and encouraging the consumption of legal content. These initiatives include establishing administrative structures with protections and

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<sup>498</sup> *Ibid.*

<sup>499</sup> Divij Joshi, SpicyIP, 12 April 2019, 'Breaking: Delhi High Court Issues India's First 'Dynamic' Website Blocking Injunction for Copyright Infringement', (Oct. 30, 2020, 09:25 PM), <https://spicyip.com/2019/04/breaking-delhi-high-court-issues-indias-first-dynamic-website-blocking-injunction-for-copyright-infringement.html>.

<sup>500</sup> *Supra* note 499 .

<sup>501</sup> *Supra* note 499.

streamlining court proceedings throughout the world. An overview of recent legislative changes in India is also included.

### **5.5.7.1. CINEMATOGRAPH (AMENDMENT) BILL, 2019**

In 2019, a bill to modify the Cinematograph Act of 1954 was submitted in the Indian Parliament<sup>502</sup> and to penalise the illegal recording of films (camcording) in movie halls by introducing new Section 6AA of the Criminal Code. An audio-visual recording device cannot be used to replicate or transmit a film without the express permission of the film's producer, which is the purpose of this law. Individuals who illegally copy a film may face maximum to 3 years in jail, a penalty of INR ten lakh, or a combination of the two penalties.<sup>503</sup>

A few specialists have voiced their opposition to the law<sup>504</sup> for employing ambiguous terminology like “exhibition facility” and “fair dealing rules,” as well as overriding the Copyright Act.<sup>505</sup> As a result, the measure does not distinguish between commercial and personal usage of the work. Punishments, including imprisonment, are also outlined in the law. However, the industry has praised the measure as a significant step toward generating real deterrence and giving remedy against online piracy and unlicensed material.<sup>506</sup> The effectiveness of this technique in combating Indian film piracy is still being tested, given it is a relatively new trend.

### **5.5.7.2. DRAFT COPYRIGHT (AMENDMENT) RULES, 2019**

The DPIIT issued the Draft Rules in May 2019,<sup>507</sup> in an effort to ensure that the Copyright Act is properly implemented, and to bring it into line with other relevant

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<sup>502</sup> Ministry of Information and Broadcasting, Government of India, 3 January 2019, ‘*Public comments sought on Cinematograph (Amendment) Bill*’, (Nov. 02, 2020, 09:05 PM), <https://mib.gov.in/sites/default/files/Public Notice - Amendment of Cinematograph Act Bill.pdf>.

<sup>503</sup> Information from PRS Legislative Research, Cinematograph (Amendment) Bill, 2019, (Nov. 02, 2020, 10:35 PM), <https://www.prsindia.org/billtrack/cinematograph-amendment-bill-2019>.

<sup>504</sup> See Section 52, Copyright Act, 1957, (Nov. 02, 2020, 11:45 PM), <http://www.copyright.gov.in/Documents/CopyrightRules1957.pdf>.

<sup>505</sup> *Ibid.*

<sup>506</sup> Shubham Borkar and Priya Rane, Mondaq, 27 February 2019, ‘India: The Cinematograph Amendment Bill, 2019’, (Nov. 04, 2020, 12:45 PM), <http://www.mondaq.com/india/x/784368/broadcasting+film+television+radio/The+Cinematograph+Amendment+Bill+2019>

<sup>507</sup> Comments on the Draft Copyright (Amendment) Rules, 2019 concerning Statutory Licensing, (Nov. 04, 2020, 03:15 PM), [https://dipp.gov.in/sites/default/files/Draft\\_Copyright\\_Amendment\\_Rules\\_2019.pdf](https://dipp.gov.in/sites/default/files/Draft_Copyright_Amendment_Rules_2019.pdf)

legislation in light of technical improvements in the digital era, according to the DPIIT website. Expanding statutory licencing to include online broadcasts as well as increasing transparency requirements for copyright organisations are some of the primary features of the Draft Rules. Moreover, the introduction of digital payment of fees, communication, and application is also included. Existing rules for copyright registration in computer programmes will also be changed by the Draft Regulations.

There is no way of knowing now how the Draft Rules would affect copyright infringement in India if they are finalised.

### **5.5.7.3. DIGITAL RIGHTS MANAGEMENT**

To the Digital Rights Management (DRM) legislation, two new amendments were made in 2012.<sup>508</sup> The first clause deals with the protection of technical safeguards against being circumvented. An infringer may face up to two years in jail and a fine if he or she avoids adopting an appropriate technological measure that would safeguard one of the copyright law's rights in order to infringe on those rights, as stated in this paragraph.<sup>509</sup> Secondly, there is a provision for the preservation of news about the rights management process. Anyone who deliberately removes or alters material related to the administration of rights without authority faces a fine and up to two years in prison, according to this provision of law.<sup>510</sup> Distributing or broadcasting any work or provision without the proper authority is punishable by fines and/or imprisonment, as are those who know the news Rights Management has been withdrawn or amended without authorization.<sup>511</sup> Additional penal measures are also indicated in the new guidelines, which are in complement to the present injunctive relief that are in existence under copyright law.<sup>512</sup>

To combat digital piracy, as well as to promote India's participation in the organisation to the WIPO Copyright Treaty and WIPO Performers and Phonograms Treaty, the major goal of the new provisions was clearly stated in Parliament and in the draught

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<sup>508</sup> The Copyright (Amendment) Act, 2012.

<sup>509</sup> Sec. 65(A) of the Copyright (Amendment) Act, 2012.

<sup>510</sup> Sec. 65B (i), of the Copyright (Amendment) Act, 2012.

<sup>511</sup> Sec. 65B(ii), of the Copyright (Amendment) Act, 2012.

<sup>512</sup> Proviso to Sec. 65B, of the Copyright (Amendment) Act, 2012.

bill submitted to Parliament.<sup>513</sup> India's new copyright legislation primarily relies on the two WIPO Internet Treaties to ensure that copyright owners and their protected property may be safeguarded in the linked networks of the digital world, as discussed.<sup>514</sup>

#### **5.5.7.4. NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY, 2016**

There have been a number of structural and policy measures made by the GOI and other ministries within the Indian government to fight this emerging danger. Intellectual property rights administration, management and enforcement have been strengthened as a consequence of continual and unceasing improvements, as well as comprehensive and far-sighted legislative and administrative changes (IPRs).<sup>515</sup>

**NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY, 2016:** Using IPR for “India’s economic growth and socio-cultural development, while preserving public interest,” India issued its National IPR Policy in 2016, with the stated goal of raising awareness of IPR as a “marketable financial asset and economic instrument.” It outlines seven goals. On top of that, *it was suggested that fact-finding investigations be started with important stakeholders in order to examine and investigate the reasons and extents of piracy and counterfeiting.*

**Objective 3** Films that are illegally copied should be punished by criminal penalties under the Cinematographs Act, 1952, according to the Policy’s Objective 3. To combat both online and offline piracy, the Policy emphasised the need of public awareness and severe enforcement methods. The following is a list of some of the most critical procedures to be taken in order to combat piracy.

- At the national and overseas level, efforts are being made to improve regulation metrics by coordinating and transmitting content, highest quality procedures,

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<sup>513</sup> Rajya Sabha, *Verbatim Debates* ,3-4, (Nov. 04, 2020, 05:45 PM), [http://1164.100.47.5/new\\_debate/2251170520\\_12/20.00pmTo21.00pm.pdf](http://1164.100.47.5/new_debate/2251170520_12/20.00pmTo21.00pm.pdf).

<sup>514</sup> *Ibid.*

<sup>515</sup> *National IPR Policy in 2016*, Government of India Ministry of Commerce and Industry Department for Promotion of Industry and Internal Trade, (Nov. 04, 2020, 09:05 PM), <https://dpiit.gov.in/sites/default/files/national-IPR-Policy2016-14October2020.pdf>.



and intellectual ability, and also assessing how jurisdictional challenges among enforcement agencies affect the magnitude of IP infringements in various industries.

- To better understand the scope of piracy and the causes behind it, as well as how to counteract it, we are conducting fact-finding investigations with stakeholders.

Article 51 of the TRIPS Provision designates “pirated copyright goods” as products that are replication created without the permission or an individual dutifully accredited by the registered proprietor in the nation of manufacturing and therefore are created either straightforwardly or inadvertently from a news piece in which the creating of this duplicate would have comprised a violation.

- Soft regulation measures, such as the formation of an independently verified registry, are also advocated for inclusion in the National IPR Policy, 2016. (Either through a Court-appointed body or through an external agency to assist Courts in verification).
- Though the Policy has many excellent aspects, it does not go into detail on what drives innovation and creativity in India, nor does it commit to a timetable for accomplishing its goals. The policy also fails to offer appropriate suggestions to help companies understand, manage, and defend their IPR, encourage simpler coordination of enforcement actions, aid copyright holders in commercialising and selling their rights, and build systems of knowledge exchange in the country.
- Making existing legislation more effective would require, for example, differentiating between various infringement types and infringers, particularly by harmonising differences with other laws such as the IT Act; accounting for various intermediaries and their respective responsibilities; grading penalties under the Copyright Act on the basis of such differentiation; accounting for challenges posed by content streaming platforms, for example.
- Adjudicatory and redressal systems need to be reformed to be more effective, for example, no technical member of the Intellectual Property Appellant Board has been nominated for copyright as of August 2019.

- There are various ways to manage the backlog of cases, such as forming up IP courts or other administrative frameworks that have protections to help the courts, to consolidate expertise and address the backlog. There must be a judicial review of any administrative system that has rationalised powers. Additionally, an IP ombudsman might be established up to assist injunction orders, and possibly check information submitted by the parties in such circumstances.

#### **5.5.7.5. THE CELL FOR IPR PROMOTION AND MANAGEMENT (CIPAM)**

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CIPAM (Cell for IPR Promotion and Management) has also been established within the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, GOI, as a result of the implementation of the National IPR Policy. An important WIPO support centre, it has made significant steps to raise awareness and increase enforcement of intellectual property rights.

An anti-piracy effort has been started by CIPAM, Viacom18, the Film and Television Producers Guild of India, and the Film and Television Producers Association of India. Anti-piracy messages have been delivered by a number of high-profile celebrities in these videos. PVR Cinemas, India's largest theatre chain, is one of the places where these videos are presented before the screening of films. There have been more than 300 infringing websites, with an average of 186 million views a month, suspended by CIPAM's partnership with India's National Internet Exchange and the Maharashtra Cyber Digital Crime Unit (MCDCU).

CIPAM has also smartly arranged its operations around children and educational institutions in order to raise awareness of intellectual property rights from an early age. Video clips made by Nicklodean have also been developed for the purpose of educating youngsters about intellectual property rights (IPRs). The slogan "Say No to Piracy" has been used in a series of anti-piracy videos featuring cartoon characters. As part of its

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<sup>516</sup> Government of India Ministry of Commerce and Industry Department for Promotion of Industry and Internal Trade, (Nov. 06, 2020, 01:25 PM), <https://cipam.gov.in/#>

efforts to increase awareness about the value of intellectual property rights (IPRs), initial IPR character has been identified in India as well “IP Nani” (Nani is a Hindi word that literally translates as maternal grandma). Many animated animations illustrating the significance of IP rights have been created in conjunction with EUIPO. Students in high school are being taught about intellectual property rights using posters, pamphlets, and presentations that are both visually appealing and educational. CIPAM’s official website offers the content in many languages, and it may be downloaded for free.

More than 100 schools have participated in Intellectual property education campaigns, which started in 2017 with the assistance of the World Trademark Association, aim to raise public understanding of intellectual property rights. Interested teachers and educational institutions can contact CIPAM to request assistance with an IP awareness campaign at their school. IPRISM, an annual IP competition for college and university students, has been started. An IP-related film or comic book can be submitted for consideration in this competition, which gives students with a national platform to display their creative abilities. It has been estimated that over 200,000 students have been reached through IPR awareness programmes in more than A total of ten thousand educational entities in India, one lakh undergraduate learners and staff members, and three thousand rural pupils have all been accessed by satellite.

The efficient implementation of intellectual property interests is a primary goal of the National IPR Policy. Capacity strengthening of enforcement institutions, including judiciary, police, and customs, must be part of the National IPR Policy in order to ensure efficient enforcement of intellectual property rights. This toolkit was developed by CIPAM and FICCI to assist law enforcement officers in the field of IP offences, even copyright infringed upon, as well as trademark infringement.

***The toolkit provides:***

- (i) a list of legislative rules relating to intellectual property infringement,
- (ii) a guide to filing a formal objection,
- (iii) list of items to be searched for and confiscated, &

- (iv) Monitoring and confiscation procedures in IP crime cases have been recommended.

Police agencies in all state and significant industrial organisations around the country have received the toolbox.

CIPAM has created a training campaign for enforcement agencies in order to enhance the enforcement system. It is the goal of the training programmes for police officers to educate them on their responsibilities and authorities when it comes to IP crimes. The participants are mainly police officers who are currently on duty or on probation. To ensure that police officers have a wide understanding of IP and associated issues, several training programmes have been developed. The training programmes are led by academics, attorneys, and industry specialists.

WIPO and the National Judicial Academy, India (NJA) have also collaborated with CIPAM on IPR High court and district court judges can benefit from education and sensitization campaigns.

#### **5.5.7.5. MAHARASHTRA CYBER DIGITAL CRIME UNIT (MCDCU)<sup>517</sup>**

It is a combined effort by the cyberspace cops and the Motion Picture Association of America, the Indian Motion Pictures Producers' Association, the Producers Guild, and the Indian Music Industry to combat digital crime in Maharashtra's Cyber Digital Crime Unit (MCDCU) (IMA). A new anti-piracy unit, MCDCU, was founded in August 2017 and is headed by Special Inspector General of Police Brijesh Singh, who successfully effectively shut down more than 200 of the most prominent pirate websites with an average of 172 million visits each month. As a result, the MCDCU has become one of the largest and most powerful organisations. MCDCU has been recognised as a worldwide intellectual property advocate by the US Association of Commerce.

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<sup>517</sup> *MCDCU: Protecting Vital Information of its Stakeholders*, (Nov. 09, 2020, 04:15 PM), <https://www.theprotector.in/mcdcu-protecting-vital-information-of-its-stakeholders/>.

## 5.6. NATIONAL EXECUTING AGENCIES

India's government has been vigorous in performing inspections and executing regular investigations to prevent piracy and the sale of pirated DVDs and CDs, in partnership with state officials. Changes and activities in the following areas are also noteworthy.

**Efforts to Prevent Piracy in the E-Commerce Strategy Proposal:** A first version of the E-Commerce Regulation<sup>518</sup> had been finished and made accessible to the general public by the beginning of 2019. A wide range of stakeholders' interests are considered in the policy draught, including those of investors, manufacturers, small and medium-sized enterprises (SMEs), traders, retailers, and new businesses. In order to combat piracy, the following steps have been implemented:

1. Measures to prohibit the internet distribution of unauthorised content have been entrusted to intermediaries. As part of the process, they will select "trusted entities" that will receive priority treatment for complaints.
2. It is the responsibility of websites and e-commerce platforms to immediately remove or prohibit access to copyrighted information that has been reported by copyright holders.
3. To detect "rogue websites," a group of industry stakeholders will be formed. Rogue websites are ones that are primarily devoted to piracy. As soon as the "Infringing Websites List" (IWL) is verified, the following information will be provided: A list of rogue websites identified in the IWL must be taken down or disabled by internet service providers (ISPs), payment gateways must not allow payments to or from these websites, search engines must remove these websites, and advertisers and advertising agencies must not host advertisements on these websites.

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<sup>518</sup> Sakshi Shairwal, *Legal & regulatory framework governing e-commerce in India*, (Nov. 12, 2020, 02:35 PM), <https://www.lexology.com/library/detail.aspx?g=6c3e377f-e607-4fa2-869b-54f9731ecdb6>.

### **5.6.1. INDIAN MUSIC INDUSTRY**

India's second-oldest music business group, IMI, was founded in 1936 as an Indian phonographic industry. One of India's oldest and largest non-profit organisations was established in 1994 as a business in West Bengal and is linked with the International Federation of the Phonographic Industry (IFPI). Saregama, HMV, Universal Music India (India), Tips & Venus, Sony BMG India, Crescendo, Virgin Records, Magna Sound Milestone and many in addition to various provincial and local brands account for more than 75 percent of the production in corporate recordings that are members of the International Music Industry (IMI).<sup>519</sup>

Former police officers were recruited to help with anti-piracy efforts, making it one of the country's first groups to do so. Julio Ribeiro (former Mumbai police commissioner, general director of police in Punjab, and Indian ambassador to Romania) was engaged by IMI in 1996 to lead its anti-piracy efforts. A former police officer serves as the head of each of the three anti-piracy regions: North/Northeast; West/South; and East/East. IMI has workplaces in Calcutta, Mumbai, New Delhi, Chennai, Bangalore, and other Indian locations, where it monitors, enforces law, and gathers intelligence to combat piracy. As of 2004, IMI has handled over 5,500 cases and seized over 25 lakh CDs.<sup>520</sup>

### **5.6.2. MOTION PICTURE ASSOCIATION OF AMERICA**

For the last 15 years, the Motion Picture Association of America and its worldwide equivalent, the Motion Pictures Association, have been operating in India without legal permission. Walt Disney, Paramount, Sony Entertainment, Twentieth Century Fox, Universal Studios, and Warner Bros., are all members of the Disney-Paramount-Sony alliance. Since 1995, they have worked together to train law enforcement officers for joint forays into Mumbai and Delhi. Movie distributors Movie Distributors Association of India (Pvt.) Limited, a new subsidiary of MPA, have also announced the opening of

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<sup>519</sup> Blaise Fernandes, *Why combating music piracy in India is a losing battle*, *The Economics Times*, (Nov. 12, 2020, 11:35 PM), <https://economictimes.indiatimes.com/industry/media/entertainment/view-why-combating-music-piracy-in-india-is-a-losing-battle/articleshow/76182858.cms?from=mdr>.

<sup>520</sup> *Ibid.*

their first Indian office in Mumbai (MDA). Working with the Indian film industry and the Indian government, it aims at promoting the preservation of film and TV rights.<sup>521</sup>

More than 30,000 piracy cases were examined and over 12,400 raids were carried out with the assistance of the MPA operation throughout Asia and the Pacific, according to its own statements in 2006. In total, thirty-five million unlawful optic dvds, fifty industrial disc manufacturing units, and four thousand four hundred eighty-two floppy disk recorders were confiscated, and eleven thousand cases were filed against the perpetrators of the illegal dvd trade.<sup>522</sup>

### 5.6.3. INDUSTRY ENFORCERS

T-Series and Yashraj Films, two leading Bollywood film and music firms, have created anti-piracy tools to tackle piracy in specific areas.

Gulshan Kumar started **T-Series**, Super Cassettes Industries Limited, more than 25 years ago, and the firm has frequently been at the forefront of police investigations to ensure that its content is protected by copyright. This year, T-Series has begun a campaign against hackers and digital material thieves, as announced earlier this year. Several of their films, including *Billu*, *Ghajini*, *Aap Ka Suroor*, *Apne*, *Fashion* and *Karz* etc., having been illegally seized downloaded and duplicated to several CDs and USB sticks. A police complaint was made against the store Classic Video in Mangalore for violating the author's rights.

**Yashraj Films**, Film studio Yashraj Films has taken part in anti-piracy campaigns in India and abroad. Another ex-Mumbai police officer has been brought in to help with anti-piracy searches around the country. Because of this, Yashraj Films also has established anti-piracy bureaus in the United Kingdom and the United States, as

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<sup>521</sup> Karen Thorland, *The Anti-Piracy Landscape in The Motion Picture Industry A Many-Pronged Attack*, (Nov.13, 2020, 11:15 PM), [https://www.loeb.com/-/media/files/publications/2007/11/the-antipiracy-landscape-in-the-motion-picture-i\\_/files/click-here-to-download-a-pdf-of-the-article/fileattachment/me\\_insights\\_article\\_thorland.pdf](https://www.loeb.com/-/media/files/publications/2007/11/the-antipiracy-landscape-in-the-motion-picture-i_/files/click-here-to-download-a-pdf-of-the-article/fileattachment/me_insights_article_thorland.pdf).

<sup>522</sup> *Supra* note 521.

evidenced by the repatriation of its films to these nations. The Yashraj Films website provides information regarding piracy crackdowns in the United States and Europe.

These anti-piracy agencies have succeeded in casting a shadow of illegality over the problem of piracy in the creative sectors.<sup>523</sup>

## 5.7. INITIATIVES THAT DO NOT ENGAGE THE COURTS

Digitized theft of intellectual property is possible by employing a number of technologies means. One or both of the following processes may be used to interchange and exhibit copyright-protected media from the customer's multimedia device or desktop to the Internet provider.

### 5.7.1. CONTENT IDENTIFICATION

This helps rights holders take measures to combat digital piracy by identifying copyrighted material. It is possible to automatically identify copyrighted information if it is shared on networks or file-sharing services. Internet service providers, neighbour systems, file-sharing platforms, internet hosts for subscriber information, consumer electronics, and peer computers are all potential beneficiaries of the technologies. It is possible to identify material using a variety of methods, including digital watermarks, fingerprints and metadata.<sup>524</sup>

### 5.7.2. WATERMARK TECHNOLOGY

**WATERMARK:** When used with audio and video files, watermarking makes it possible for content recognition software to identify the source of the audio or video files. Watermarks are placed in movie premieres so that the studio can identify the source of the recording even if someone films the movie with a camera and subsequently distributes the footage. For optical media such as DVDs and Blu-ray discs, watermarking is also used with DRM to prevent and identify illicit copies.<sup>525</sup> In

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<sup>523</sup> *Ibid.*

<sup>524</sup> Robb Topolski, *Re: [p2pi] Follow-Up from Comcast Presentation*, June 6, 2008, (Nov.16, 2020, 01:45 PM), <http://www.ietf.org/mailarchive/web/p2pi/current/msg00072.html>.

<sup>525</sup> Jeffrey Lotspiech, *The Advanced Access Content System's Use of Digital Watermarking*, International Multimedia Conference, Proceedings of the 4th ACM international workshop on Contents protection and security, 50 (2006).



order to prevent the illegal distribution of licenced material, watermarks are an essential part of the protection process.<sup>526</sup>

### **5.7.3. AMBIENT LIGHTING SOLUTION**

It refers to a Phillips-patented system that efficiently curbs film industry-threatening camcorder piracy. Video frames are clogged with noise, objects, and colouring thanks to a new method that makes use of liquid crystals. Any unlawful recording will have stripes on it, making it useless, due to a light being emitted at a specific frequency out of time with the video material itself. Because 3D moviegoers wear synchronised polarised active shutter glasses, this light does not degrade the quality of their experience. The video will be distorted if a camcorder attempts to record the screen.<sup>527</sup>

### **5.7.4. BLOCKING PIRACY INDEXING AND TRACKING WEBSITES**

Filtering critics have concentrated on the purported shortcomings of filtering and tend to overlook complementing or independent alternatives to filtering. Websites and technology that exist solely for the purpose of facilitating digital piracy are the subject of an alternative approach to the issue. It's impossible to argue with the fact that allowing digital piracy is a lucrative business, and the exploitation of unlawful activity is unacceptable. Identifying such sites is also quite easy, since they typically refuse to react to genuine deletion notices, or do not reply in a timely manner, and post indexes of unlawful information.

This includes The Pirate Bay, which was recently found to be involved in unlawful activity by a Swedish court. "The court determined that by utilising the services of Pirate Bay, the music files, movies, and computer games had been transferred to the

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<sup>526</sup> Dominic Milano, *Content Control: Digital Watermarking and fingerprinting*, (Nov.16, 2020, 04:15 PM), [https://www.digimarc.com/docs/default-source/technology/resources/whitepapers/rhozet\\_wp\\_fingerprinting\\_watermarking.pdf](https://www.digimarc.com/docs/default-source/technology/resources/whitepapers/rhozet_wp_fingerprinting_watermarking.pdf).

<sup>527</sup> ZDNet, *Charlie Osborne for Between the Lines*, 29 August 2017 'Philips takes on cinema piracy with new ambient light technology', (Nov.17, 2020, 02:35 PM), <https://www.zdnet.com/article/philips-takes-on-cam-piracy-with-new-ambient-light-technology/>.

amount that the prosecution had described in his case archives constitute an unlawful transfer to the public of copyright protected representations.”<sup>528</sup>

In addition to a year in prison and a \$3,620,000 fine, The Pirate Bay’s four co-founders were sentenced to life in prison. However, even if a tracking tool for bittorrent has ceased operating, the website continues to function, thanks to a resource curation method described as Distributed Hash Tables (DHT), which is more difficult to block. Using a torrent is no longer necessitated by the usage of a tracker, as explained by the Pirate Bay. Searching for co-workers using DHT is a breeze without the requirement for a service.”<sup>529</sup>

It appears that the Pirate Bay is attempting to avoid any potential legal culpability by halting its ‘crawler’ service for the time being. As an intermediary for illicit file-sharing networks, The Pirate Bay acts as a sort of lawyer for the pirate industry, even if it does not really send or receive any data packets itself.

There was no denying, even before the Swedish court’s ruling, that the Pirate Bay served criminal aims. The Pirate Bay provides not just thorough, hand-created indexes of illegally pirated television episodes and music, but also access to illicit copies of videogames, programs, and literature. In order to keep the site running, the website depends on marketing revenues.

The site was ordered to be taken down by the court, so it should not be a surprise. When it comes to websites like these, it’s astonishing that internet service providers haven’t done anything about it because it’s so simple to do so. You can use DNS queries or connections to the IP addresses that host these pirate sites to ban these websites.<sup>530</sup> Black hole listings can be updated as easily as new domains may be created. A

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<sup>528</sup> Mehan Jayasuriya, *Forcing the Net Through a Sieve: Why Copyright Filtering Is Not a Viable Solution for U.S. ISPs*, (Nov.17, 2020, 09:35 PM), <http://www.publicknowledge.org/paper/pk-filtering-whitepaper>.

<sup>529</sup> Ellen Messmer, *Botnet production eerily like commercial code practice*, Network World, October 13, 2009, (Nov.17, 2020, 01:15 AM), <http://www.networkworld.com/news/2009/101309-botnets-commercial-code.html?fsrc=netflash-rss>.

<sup>530</sup> *Utv Software Communication Ltd. v. 1337X.To and Ors on 10 April, 2019*

legislative order to ban sites such as The Pirate Bay may not be in the best interest of a single Internet service provider, since this would lessen the appeal of the sites to users who want to engage in digital piracy. These websites' IP addresses might be blocked by their internet service provider (ISP). Both options may need the publication of DNS or Internet Protocol (IP) address updates in real time that should be blocked.

Despite the fact that blocking is an option, this technology may be utilised for both good and bad. According to the latest estimates, seven countries have tried and failed to restrict accessibility to some websites. Despite the fact that restricting technology can be employed, to advance democracy and consumer rights, like with any other technology, they can also be misused. A non-profit group called the Internet Watch Foundation compiles a list of objectionable websites and distributes it to Internet service providers in the United Kingdom.<sup>531</sup> “Content of sexual abuse of minors housed throughout the world, as well as illegal obscenity in the UK” is the Internet Watch Foundation’s stated goal, according to its mission statement.”<sup>532</sup> However, these methods are far from flawless, and there have been rare instances where valid content has been compromised. As a result, systems of this type must allow for the correction of incorrect classifications. Conroy has proposed a nationwide strategy to censor online material, including a ban on child pornography and other “offensive” information that violates moral standards.<sup>533</sup> In order to avoid limiting genuine freedoms of speech and transparency, a government must be vigilant when developing rules to guarantee that technology is not exploited and that mistakes made may be remedied. In the fight against spam and distributed denial of service (DDoS) attacks, real-time blacklists have proven to be valuable tools. Piracy might benefit from the same regulations as other forms of illegal activity. In a civilised community, some forms of content and conduct are prohibited.<sup>534</sup>

#### **5.7.5. BLOCKING STOLEN CONTENT WEBSITES POSING AS LEGAL CONTENT PROVIDERS**

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<sup>531</sup> *Supra* Note 530.

<sup>532</sup> *Ibid.*

<sup>533</sup> Digital Millennium Copyright Act, H.R. Rep. No. 769, 105th Congress, 2nd Session at 73 (1998) (Conference Report on the DMCA).

<sup>534</sup> *Ibid.*

There is a considerable amount of pirated digital content accessible for download or streaming on websites in addition to P2P networks. A sponsored content template and an advertising template are the most common formats for this type of site, much like on legal websites.

A few clicks of the mouse are all that is needed to locate and watch full-length Hollywood films for free on the Internet today. It is possible to see movie indexes and TV shows online for free at sites like Watch Movies ([www.WatchMovies-Online-tv](http://www.WatchMovies-Online-tv)) and Movie2k ([movie2k.com](http://movie2k.com)). To download and share videos for a period of time, these websites include links to streaming services such as Movshare, Stream 2K, Megavideo, Divxstage, and Novamov, which allow users to do so without incurring a charge to them. Websites like Livestream.com and Justin.tv record and distribute live programmes. Online users, especially those from foreign countries who would not otherwise have access to programmes such as NBA, NFL, and MLB games, can hack live sporting events through this type of piracy. In China, where millions of people stream U.S. sports programmes online, this type of piracy is particularly prevalent.<sup>535</sup> Because bandwidth and storage costs are very low and may be offset by advertising, hackers utilise websites to spread pirated information. As well as profiting from the sale of illegal advertising content, many marketed websites offer online copyrighted content.

Other websites appear to be legal businesses in order to sell stolen content online. In many cases, the pirate sites appear to be legal online businesses, such as iTunes or Amazon. Legalsounds.com, a Russian music retailer, charges a monthly fee to use its services. Customers who wish to legally download digital music might easily get confused by the legalsounds.com website, which has a legally valid service contract with the terms and conditions of a genuine service. It's no surprise that many people are complying with the law when a site is called "legalsounds.com" and boldly states "download music for free, legally" on its homepage. It is possible that consumers might think they were not breaching the law. It's safe to say that the proposed content is

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<sup>535</sup> Robert D. Atkinson, *Google E-mail, What's All the Fuss About?* Progressive Policy Institute, 2004, (Nov.25, 2020, 01:15 PM), [http://www.ppionline.org/ppi\\_ci.cfm?knlgAreaID=140&subsecID=288&contentID=252511](http://www.ppionline.org/ppi_ci.cfm?knlgAreaID=140&subsecID=288&contentID=252511).

authentic and up to the task of being made available to the public. The same is true of the Russian film download site ZML.com.<sup>536</sup>

It is illegal for these sites to advertise anything that is not true, but the internet allows them to appear, change their names quickly and move on before law enforcement has a chance to stay on top of things. Additionally, some sites are located in countries in which the service is legal or even the administration has no interest in it. In order to prevent broadband consumers from gaining access certain sites, an ISP filtration tool may well be the best option in the case of nationwide internet counterfeiting. Again, Rights holders and Internet service providers (ISPs) might share the burden of initial demand under such a scheme. In order to deal with online crimes in real time, real-time methods like these are absolutely necessary.<sup>537</sup>

#### **5.7.6. BLOCKING INTERNET USERS FROM PIRACY SEARCH ENGINES**

Google, for example, blocks accessibility to illegal material on their engine results pages, a non-filtering adherence method. Facilitating the download of illegal content, like as BitTorrent files, using internet engines like Google, has no convincing justification. In order to find pirate sites, you may run a custom search on Google for torrent files.

As a matter of principle, there is no justification for search engines to avoid advertising on pirate sites. As a consequence, such providers must be able to correlate adverts with inquiries in order to avoid illegal domains from appearing in their listings. Google had to deliberately reinstate The Pirate Bay to its former place after it was accidentally deleted from search engine results a few a while ago.<sup>538</sup> A promise to not assist websites that engage in unlawful activity is all that search engines need in order to stop promoting piracy. There are certain search engines that have the ability to remove hacked information from search results pages. Because of this, these sites must know

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<sup>536</sup> *Supra* note 535.

<sup>537</sup> *Ibid.*

<sup>538</sup> Greg Sandoval, 'Google: Pirate Bay Booted Off Search by Mistake,' CNET News, (Nov.25, 2020, 03:35 PM), [http://news.cnet.com/8301-1023\\_3-10366570-93.html](http://news.cnet.com/8301-1023_3-10366570-93.html).

that the government or others who oppose genuine attempts to combat digital piracy will not attack them.<sup>539</sup>

## **5.8. INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE**

The Worldwide Intellectual Property Alliance (IIPA) works closely with the US Trade Representative as an international lobbying group for the US media sectors. Established in 1984, this private sector alliance represents seven trade organisations representing US enterprises that create copyright-protected media including software and cinema. In order to better protect and enforce copyrights throughout the world, this bill was introduced. They regularly highlighted their displeasure with India's anti-piracy measures in their reports. The MPAA (Motion Picture Association of America) and the BSA (Broadcasting Sports Association) are two additional US lobby groups that IIPA works closely with (Business Software Alliance). International and regional piracy debates are heavily influenced by the findings of the International Institute for the Prevention of Piracy (IIPA). In recent years, Indian film, music, and software sector organisations have undertaken anti-piracy efforts that are reminiscent of the IIPA in their emotionality and independence.<sup>540</sup>

## **CONCLUSION**

The tools of piracy are becoming increasingly sophisticated as technology advances. Pirates have begun to overcome Digital Rights Management as well as unlawfully aggregate and distribute material from practically all over-the-top (OTT) platforms on illicit streaming services as content consumption shifts to mobile devices.

Since our legislation and enforcement processes are constrained by regional and international borders, these hackers have really no identity as well as no jurisdictional

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<sup>539</sup> *Ibid.*

<sup>540</sup> *Enforcement of Anti-piracy Laws by the Indian Entertainment Industry*, Center for Internet and Society, (Nov.25, 2020, 09:05 PM), <https://cis-india.org/a2k/piracy-and-enforcement>.

limits. A copyright owner may hesitate to take action against a foreign pirate because of the high expenses of identifying and bringing him or her to justice.

The only way to make a dent in piracy is to go to court and ask for an injunction to force Internet service providers to ban stolen content. Injunctions like John Doe commands and dynamic court orders (injunction orders that enable extension of respondents via bureaucratic process thereby providing more versatility and velocity) have been issued by courts, even though it is analogous to dealing with the symptoms but not the illness.

As soon as one connection is removed from the site, a new one appears and continues to broadcast the same material. Because that individual is in a foreign country, there are no viable means for shutting down or bringing the pirate to justice at this time.

No anti-piracy legislation improvements have been implemented, despite many revisions in other areas of the law aimed at strengthening institutional functioning or decreasing crime rates. Although the anti-piracy laws' implications were answered in every court case, no modifications were introduced to enhance its implications.

It is impossible to stop piracy once it has begun; it will continue to occur in a loop as modernised technology advances throughout the world. Software piracy can only be stopped and controlled if the interests of software firms and their consumers are safeguarded. There must be adequate protection of interests via laws, the economy at risk, and administrative authorities with improved enforcement mechanisms to make that achievable. Every level of government has a duty to play in ensuring that the laws are kept up-to-date as the world changes. Piracy is on the rise, and it may be in the best interest of software developers to lower the price of their products in order to lessen the frequency of digital piracy.

## **CHAPTER 6**

### **GLOBAL PROTECTION AGAINST ONLINE PIRACY OF MOVIES: TRENDS IN U.S., U.K., CHINA AND INDIA**

The Online piracy crime came to light as a result of digitization, the ease with which high-speed networks were made available, and other circumstances that contributed to the emergence of camcorder piracy. This form of illicit taping and downloading was seen as a violation of the Copyright Protection Act of 1986. Many pieces of legislation have been enacted in the United States to prevent movie piracy, including the NET Act (No Electronic Theft), 1996, the Computer Fraud and Theft Act, 1986, and the Digital Millennium Copyright Act, 1998. For the purposes of Indian law, the identical act is considered to be plagiarism, and section 65 (A) (B) of the Copyright Act, 2012 forbids the commission of such an offence. Other statutes, such as the Information Technology Act of 2000 and the Civil Procedure Code of 1908, can be used to contest jurisdiction. In addition to legislation, there are volunteer groups such as the MPAA, FACT, STOP, and Anti-Piracy organisations that work to protect consumers.

#### **6.1. COMPARATIVE APPROACH TO GLOBAL PROTECTION AGAINST ONLINE PIRACY OF MOVIES**

##### **INTRODUCTION**

The problem of cross-border copyright enforcement is particularly relevant in the digital age: infringing websites and servers may be located in other countries, where the laws of one country do not apply to individuals, companies or websites hosted beyond its borders. This chapter briefly examines the international legal framework governing IP, and the multilateral and technological options available to copyright holders.

The researcher has tried to give her best to collect numerous ways to identify internet based unauthorized copying and examine them so as to evaluate which methodology is the best. Various specific measures are adopted that address the problem in various



ways. In order to obtain better insights on the dilemma of web - based copyright violation, the study has adopted a comparative approach.

## **6.2. WHY DOES CROSS-BORDER INFRINGEMENT MATTER?**

A significant problem related to digital IP infringement is the inability of local or national enforcement agencies to exercise their legislative mandate across borders. For instance, websites with pirated content from one country may be hosted in another, making it difficult to enforce a country's domestic laws. The main objective of this chapter is to consider how international players can strategies and collectively improve IPR enforcement governance. Copyright law still differs from country to jurisdiction, which is why concerns like digital content portability, copyright infringement, and copyright licencing models are becoming prominent on legislative agendas across the world. As the digital market expands and regional material is delivered internationally, copyright regulations that span national lines are becoming more important to businesses.

### **6.2.1. JURISDICTION'S BATTLE**

The efficiency of the legal system is determined by the rules governing its operation, principles, and jurisdiction. A court must be able to hold a hearing if it has jurisdiction. It refers to the court's ability to hear a matter and render a decision. Ineffective and void are the terms of any judgement acquired outside the jurisdiction of the court. Personal Jurisdiction and Subject Matter Jurisdiction are the most common ways to establish jurisdiction. Courts can only hear cases that fall within their jurisdiction, such as corporation law cases, which are handled by NCLT. "In personam jurisdiction" refers to the jurisdiction granted by a court over a case based on where the parties or their property are located. A person residing inside the borders of a court state is subject to its jurisdiction. A connection between two jurisdictions is necessary before one court could exert jurisdiction over the territory of the other. As a general rule, when two parties from different countries enter into a contract, they are bound by the legislation of the nation in which they reside. However, with online jurisdiction, the traditional

concept of territory is not popular. People from all around the world, regardless of where they live, can trade with one other via the Internet.

When it comes to cybercrime, this jurisdiction legislation does not apply, as it involves parties from other states, several entities with a digital link, and multiple jurisdictions. As the world became increasingly digitalized, so did the problems associate with policing cybercrime. Cyberspace crime was formerly thought of as online crime because there are no physical borders on the internet. Large-distance conversations can be made instantly across long distances using the internet, and webpages all around the globe can be quickly accessed via the internet as well. The internet makes it possible for anyone, wherever in the world, to commit a crime, and this article focuses on crimes involving pirated movies.

However, it is easy to determine who has jurisdiction over this offence because it includes a website where files are being uploaded and downloaded. Piracy occurs when unauthorised copyright holders upload their recorded movies to websites where the public can download them for free. Because of this, pirates who use the internet to distribute their works do so within a single jurisdiction and are therefore subject to the regulations of that jurisdiction. Accordingly, it is implied that anyone engaging in WWW (World Wide Web) and any other online activity is subject to punishment under any state law when the same or another state user lodges a complaint.

Therefore, it is important to look at the details of each case when deciding where to prosecute an online piracy offence, because one pirate case could involve three different jurisdictions.

- Pirates are subject to the laws of their own state.
- The laws of the state in which the incident happened are the ones that apply.
- The standards of the individual who was harmed or who brought a claim, if applicable.

Because of this, one of the biggest issues with cybercrime is whether it should be viewed as a physical area or as a world unto itself, free of numerous constraints. To

pirate a film, one must illegally copy the work of the copyright holder at a theatre and then upload it to a file-sharing service to make it available to the general public. Copyright infringement is punishable by law as such matters are litigated in states. Cross-border regulations make it harder to punish a person responsible even when the violation can be tracked down.

### **6.3. COPYRIGHT VIOLATION ON THE INTERNET IS A COMPLICATED PHENOMENON TO WHICH A VARIETY OF ELEMENTS, INCLUDING AS:**

#### **6.3.1. OTHER COUNTRIES AND STATES' COMPLIANCE PROCEDURES -**

As content are now-a-days available on the online platform and widely circulated, measures taken in one nation can have consequences in other countries also.

#### **6.3.2. TECHNOLOGICAL DEVELOPMENT-**

Fixed-line broadband, infrastructural facilities, 3G wireless and wifi networking and the proliferation rate of a spectrum of linked gadgets will all have some impact on the amounts of legal and unlawful usage of copyright restricted content on the internet.

Camcording counterfeiting happens when a person enters a cinema with whatever form of video recorder, such as a video camera, mobile phone, recorder, or other similar device, with the purpose of intentionally recording playback of the any portion of the film screening in the theatre. This is referred to as camcorder piracy in the industry.<sup>541</sup> While this type of conduct is deemed illegal, a camcorder crime takes place only after a movie has been released in theatres, in which case the released movie is copied and uploaded to file-sharing websites within one day or hour of its release, thereby making it available to the general public for viewing. In most cases, such unlicensed films are available for free download; one may access the website from any device connected to the internet and download the movies that have been posted. This conduct is also useful to an individual who does not like to watch a movie in a theatre because it eliminates the need to pay admission fees. The one and only distinction among viewing a film in

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<sup>541</sup> What is Camcorder Piracy?, (Dec.15, 2020, 09:05 PM), <https://www.fightfilmtheft.org/camcorder-privacy.html>.

a cinema and downloading it illegally is because the image when duplicated in a theatre is of worse quality than the print when downloaded illegally.

As the movies are posted to a file-sharing network, such as torrents, they are continuously pirated. Uploaded and downloaded without permission from copyright holders, this sort of piracy is illegal. Even prior to actually the official release, WEB-DL piracy extends beyond the simple posting of movies to a website. There was a recent example of copyright infringement in which the movie “*Udta Punjab*” was leaked online ahead of its scheduled release date on two independent file-sharing networks of Torrent.com. Deepak Kumar, a 25-year-old man, was detained and charged under the Information Technology Act and the Copyright Act of 2012. *The Secret Life of Walter Mitty*, a recent Hollywood movie, was also leaked before its release. Ellen DeGeneres’ watermark was present on the pirated file, implying that someone on the security staff had leaked the material. It was discovered, however, that the film had been leaked via an unknown movie piracy network during the inquiry.

### **6.3.3. THE AVAILABILITY AND AFFORDABILITY OF LEGAL SERVICES -**

Online legal services for music, films, TV, books, games, software, etc. were limited in number and not generally available in diverse areas throughout the majority of the preceding decade.

The internet’s intangibility makes establishing jurisdiction over disputes over it a tricky proposition. Online copyright infringement may include many nations or regions. It then becomes a matter of which state’s laws would apply. It might be dependent on where the substance came from. Depending on where the content is stored, or even where it will be utilised or presented, it can also be decided. For example, one jurisdiction may have an entirely different definition of what constitutes illegal copyright infringement than another one. Even within a same country, the laws might diverge. This makes it nearly impossible to penalise a person.

Additionally, identifying whether or not such an infringement has occurred is a major concern. It is increasingly difficult to identify whether or not an individual is

accountable for any violation due to the rising complexity of the online. When there are competing regulations in different nations, the situation becomes even more difficult to solve. Finally, it is tough to penalise someone because of the inability to do so as well as the enormous expenses.

Consequently, it is critical to establish clear guidelines for determining jurisdiction in online copyright infringement. As a result, it is impossible to pinpoint the work's origins.<sup>542</sup>

Numerous concerns of this nature should be viewed from a global viewpoint. Each country's implementation is unique, but similarities and variations may be recognised and by which the scope of study can be broadened and improved prospects put in place, even at the implementation level.

#### **6.4. REGULATORY ISSUES**

Digital technology has been used by rogue service providers to enable a wide range of piracy that harms rights holders' investments in the creation and distribution of new and current products and services. Cloud computing and streaming technology, for example, are used by cyberlockers and other platforms that do not have licences for the content they make available. To further avoid the TPMs, there are a number of stream-ripping software that may be used to illegally obtain licenced streams (i.e., music that can only be streamed online). Stream-ripping is the most common method of internet music piracy. Because of this, enforcement methods and trade agreements to handle enforcement must be flexible, agile, efficient, and effective.

There is still extensive online piracy of media software, despite industry attempts to detect P2P and straight download activity. This affects lawful markets across the world.

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<sup>542</sup> Kalyani, *Online Piracy and Copyright infringement*, Latest Law News, (Dec.16, 2020, 11:15 PM), <https://www.latestlaws.com/articles/online-piracy-and-copyright-infringement-issues-and-challenges-by-kalyani>.

Russia, Ukraine, Brazil, India, and Kazakhstan are the top five countries to monitor in 2020 for illegally sharing video games over P2P networks.

According to the motion picture industry, there were an anticipated 9.8 billion P2P downloads of wide-release movies, primetime television, and VOD content in 2018. According to estimates, more than 50.5 billion individuals throughout the world accessed streaming pirate sites on pc and cellular devices in 2019. An average of 8.9 million people a month visited the 10 most popular streaming sites in the globe in 2019. Legitimate business can benefit greatly from effective enforcement. Online movie sales increased by 7 to 10 percent after Megaupload and its linked sites were taken down, while movie rentals increased by 4 to 7 percent. In the United States, box office earnings would rise by 14 to 15 percent if piracy could be removed from the theatrical window).<sup>543</sup>

#### **6.4.1. ONLINE AND MOBILE NETWORK PIRACY**

It's becoming more common for both licenced and illegal companies to offer digital distribution of copyrighted items like music, movies and television, journal articles, and video games, including. For artists and copyright holders all across the world, the prevalence of illegal services (including those that misinterpret the law in order to avoid paying for licencing) is a major roadblock.

According to the International Federation of the Phonographic Industry (IFPI) Worldwide Music Report 2020 found that licenced music streaming income accounted for more than half of all global recorded music revenues in 2019. However, piracy and unauthorised downloads of music are still widespread, according to the survey. IFPI's Music Consumer Study 2019 showed that licenced streaming services, which offer large libraries of music for consumers on hundreds of services worldwide, often with both a free tier (ad-based) and a premium (subscription) service, have continued to expand in popularity and use. 34,000 people across 21 key music markets worldwide were polled for IFPI's Music Consumer Study, which sought to better understand global

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<sup>543</sup> The data included in this paragraph is based on: an analysis of Mark Monitor and GDPI data; Similar Web data, based on streaming sites (with at least 10,000 removal requests) according to Google Transparency Reports; and Danaher, et.al. "The Impact of the Megaupload Shutdown of Movie Sales."

music consumption online and discovered extensive use of mobile devices to listen to music. In **Mexico** 95% of Internet users listened to streaming music on their phones; in **China** 96%, in **South Korea** 90%, and in **India** 97%. Although streaming has been a huge success, illegal downloads are still a serious problem, with stream-ripping being the most frequent type of infringement.<sup>544</sup>

The International Intellectual Property Association (IIPA) continues to advocate four methods to deal with the issue of digital piracy: Legal frameworks that: (i) prevent or otherwise induce online infringement; (ii) criminalise online infringement, and (iii) provide strong incentives for neutral network service providers to work with rights holders to curtail the use of their proprietary networks; and (iv) provide strong incentives for neutral network service providers to work with rights holders to curb their proprietary networks and their proprietary networks.

USTR's "Special 301 Out-of-of-Cycle Review of Notorious Marketplaces" has successfully identified large-scale illicit markets as the first stage."<sup>545</sup> It is stated in the Country Reports that several Internet domains and services labelled as Notorious Marketplaces by the U.S. Trade Representative (USTR) have been shut down. US Trade Representative should encourage trading counterparts to either transform sites and services into licenced distributors of materials and recordings, or these infamous marketplaces should be shut down followed by illegal enforcement proceedings if necessary.

There are multiple stages in establishing legal frameworks to prevent illegal services from operating or emerging: (i) ensuring that all relevant copyright and related rights (as well as effective TPMs and RMI protections) are provided, starting with the minimum standards mandated by the WIPO Internet Treaties and adoption of global best practises for copyright protection in the digital environment; (ii) maintaining the

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<sup>544</sup> IFPI issues Global Music Report, (Dec.18, 2021, 11:15 AM), <https://www.ifpi.org/ifpi-issues-annual-global-music-report-2021/>.

<sup>545</sup> The most recent report is USTR's Out-of-Cycle "2020 Review of Notorious Markets for Counterfeiting and Piracy" (January 2021), (Dec.20, 2021, 11:15 PM), [https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20\(final\).pdf](https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20(final).pdf) (NM 2020 Report).

full breadth of copyright rights, even if ISP liability restrictions are in place; (iii) in accordance with the Budapest Convention and worldwide best practises, classifying internet piracy as cybercrime (iv) the reduction of barriers to collaboration among all industry players (including Internet service providers) in the digital supply chain.

ISPs and related platforms might face legal and criminal responsibility if they are granted extensive protection from civil and criminal liability under some proposals. International IP Association (IIPA) members urged foreign leaders to include specific wording in legislative recommendations to guarantee that any blanket immunity does not apply to IP infringement and that such immunity hinders enforcement of IP.

Copyright safe harbours should only extend to passive and impartial entities that do not infringe. Provisions that immunise those who encourage or support violation of copyright also raise questions. Argentina, Brazil, Namibia, and Nigeria have made disturbing recommendations, while the laws of Canada and Chile include troubling elements. Since online intermediaries are in the greatest position to help in the mitigation and avoidance of online piracy, it should be a shared duty with balanced duties among online intermediaries and content owners. In the absence of legal incentives to encourage ISPs and other internet intermediaries to fully collaborate with rights holders, such intermediaries have little motivation in doing so.

Injunctive relief is an effective third step, particularly for unlawful markets based in one nation but serving customers in another. An effective response is required when a nation hosting illicit services rejects to take meaningful measures against its own infamous markets, which harms adjacent markets or trading partner's marketplaces. In response to this "offshoring" of enforcement duties, responsible nations have developed methods and mechanisms to block or prevent accessibility to foreign rogue sites located within their own borders. To ensure that ISPs disable access to copyright-infringing websites, authorities and courts in over 35 countries-including Australia, Belgium, Brazil, Denmark, France, Germany, Ireland, Italy, Peru, Portugal, Singapore, South Korea, Spain, Sweden and the United Kingdom-use injunctive relief or administrative orders. One important market, Japan, has to do more to deal with "off-shore" infringements effectively in 2020, an amendment was passed that said that connecting



sites will be held liable for infringement, although it's too early to say if this would have any effect. In summary, the United States government should pay special attention to the vast range of legal and administrative measures available to impose limits under specific situations when alternative domestic remedies are inadequate. Injunctive relief has been found in studies over the past decade to diminish use of pirated sites and boost traffic to genuine copyright-protected material providers. If the service provider cannot be recognized or avoids service of legal process, these measures are still applicable.

Developing inter-industry collaboration is the fourth phase since Internet services (including piracy services) are enabled and interconnected by a wide range of supporting services. To combat the systematic online infringement of copyrights, all participants in the e-commerce ecosphere, including online advertising players, ad networks, and the suppliers of advertising placement and related services; payment processors; web hosts; url. name authorities and registries; and search engines, need to work together. It is a sensible economic approach for all Internet intermediaries to work together to defend the Internet from dangers to its security, stability, and growth, including e-commerce in items and services secured by copyright. More can and should be done by the governments of many nations to encourage and support the development of best practises for a safer online marketplace. This includes making ensuring that industry agreements, especially those granting enforcement rights, represent the demands of industry stakeholders and that all copyright owners have access to any remedies outside of a legal framework.

#### **6.4.2. STREAM-RIPPING AND CIRCUMVENTION OF TECHNOLOGICAL PROTECTION MEASURES (TPMS)**

Content providers and licenced services have made it feasible for customers to access so much lawful material in electronic form on so many multiple platforms in so many different forms because to the widespread usage of TPMS. Authors and owners of copyrighted works have used TPMS to regulate and govern public access to their works, which has resulted in a wide range of new online services. TPMS also help to keep prices on these new services competitive. Therefore, these technical restrictions are necessary for new company models. TPMS also prevent the theft of digital and physical media (such as CDs, DVDs, and Blu-ray discs), as well as mobile and on-demand

content (such as e-books and video games), as well as conditional access (such as pay-TV and pay-per-view content).

In order to get unauthorised access to or duplicate material without permission, business models exist that are based only on providing services and/or manufacturing and distributing technology, software, devices, components, and tools that circumvent TPMs. Flvto.biz and Mp3juice.cc, two sites recognised by the U.S. Trade Representative in its 2016 Notorious Markets report, are examples of stream-ripping services cited in future Notorious Markets reports, for example in 2020.<sup>546</sup> Making accessible rights are violated and TPMs are circumvented by stream-ripping services. This type of music piracy has been the most common in the last few years due to the rapid growth of services like stream-ripping. Music that was licenced for streaming on a video site like YouTube can be permanently downloaded and streamed avoiding the need to pay for a licenced a paid download or a free download streaming membership or gaining access to the stream on the licenced pedestal using stream-ripping sites, services, and applications. Streaming services and outlets for legal downloads are both harmed by this practise. Legal action was taken against YouTube-mp3.org, the leading site, by record labels in the United States and the United Kingdom distributing unlawfully stream-ripped music, the site was shut down in September 2017 as a result of those actions.<sup>547</sup>

## 6.5. UNITED STATES

The United States has been the primary marketplace for pirated films since its inception. A large number of camcorder videos were captured on DVDs and marketed in local marketplaces after being smuggled into foreign countries. These copyright breaches were prosecuted in accordance with the copyright laws in effect at the time; however,

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<sup>546</sup> *Out-of-Cycle Review of Notorious Markets, Office of the United States Trade Representative December 2016*, (Dec.20, 2020, 02:05 AM), <https://ustr.gov/sites/default/files/2016-Out-of-Cycle-Review-Notorious-Markets.pdf>.

<sup>547</sup> Claire Livingstone, *World's largest music stream ripping site shuts down after successful international legal action from record industry*, (Dec.21, 2020, 09:45 PM), <https://www.wiggin.co.uk/insight/worlds-largest-music-stream-ripping-site-shuts-successful-international-legal-action-record-industry/>.

the vintage act does not apply digital piracy, in which the tangible exchange of copyright material has decreased dramatically as a result of the development of digital revolution and high-speed networks. The copyright laws have undergone numerous revisions as a result of technological advancements. In 1986, the Computer Fraud and Abuse Act was created, and it has been revised nearly six times since then to keep up with technological advancements. It is currently codified in the United States Code, Title 18, Section 1030. The federal government is granted authorization to intervene and take action over any online deception that has happened, which has in turn had an adverse impact on the businesses and economics of that state, so granting the federal government jurisdiction over computer-related felony concerns.

Because of the expansion of digitisation and high-speed networks in the mid-1990s, the United States Congress introduced a law to prevent online copyright infringement in order to combat this growing concern. The No Electronic Theft Act, 1997, was eventually enacted to deter persons from sharing and downloading unauthorised copyright material by imposing fines and prison sentences. This rule applies even if a person does not gain financially from illegal uploading and downloading; still, the action of unlawful uploading and downloading is deemed prohibited under the law. As a result of this legislation, online copyright infringement is now classified as a federal crime on two levels: first, the commercial value of the downloading and uploading must be at least \$1000, and the punishment for violating this level will be one year in prison or \$100,000 in fines, or both. It's the extreme degree, in which if at least 10 duplicates have been duplicated within 180 days and the person who is accountable for this should have gained a minimum of \$2500, the guilty party for this can be fined up to \$250000 or imprisoned for up to five years.

In 1998, the DMCA (Digital Millennium Copyright Act) was established to safeguard against people who infringe DRM (Digital Rights Management). It is a revision to Title 17 of the United States Code. The primary goal of this legislation was to outlaw the creation and dissemination of copyright content, often known as digital rights management (DRM). Those ISPs whose platforms are utilised for illicit distribution of copyright content should ban such websites as well as accessibility to illegal material

after they have been informed by the copyright holders were the only recourse available under law, which meant that the remedies were restricted.

### **6.5.1. PROCEDURAL HISTORY**

The Digital Millennium Copyright Act of 1998 serves as the foundation for online copyright enforcement (DMCA). The Digital Millennium Copyright Act (DMCA) is designed to implement two 1996 WIPO accords into US law. The WIPO Copyright and Performances and Phonograms Treaties are put into effect by Title 1 of the DMCA. When these accords were ratified, they sought to recognise international copyrights as well as allow copyright owners from other countries to file lawsuits against infringement without having to first register their work with the US Copyright Office. As a result of these modifications, it is now illegal to get around technical obstacles that prevent people from acquiring or making use of works to which they do not have a legitimate claim.<sup>548</sup> In addition, Title 2 of the DMCA includes measures to modernise US copyright law to cope with online copyright infringement. Introduction of the *Online Copyright Infringement Liability Limitation Act* (OCILLA), allows online service providers copyright liability limitation if they have specified policies and procedures in place.<sup>549</sup>

### **6.5.2. APPROACH BASED ON LEGAL AND REGULATORY FRAMEWORK**

According to the DMCA 1998, notification and takedown are based on the Online Copyright Infringement Liability Limitation Act (OCILLA).

Providers can avoid responsibility for infringing activity on their network or for providing access to websites that include infringing content if, after becoming aware of the presence of such material, they take steps to remove it from their network,<sup>550</sup> policy that provides for the suspension of network connection for serial infringers and notifies its subscribers of this, adopts it and puts it into practise <sup>551</sup> and is willing to assist

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<sup>548</sup> Brett Keller, *Full Summary of the Digital Millennium Copyright Act*, (Dec.21, 2020, 12:45 AM), <https://futureofmusic.org/article/full-summary-digital-millennium-copyright-act>.

<sup>549</sup> *Ibid.*

<sup>550</sup> Section 202 of the DMCA United States Code.

<sup>551</sup> According to Section 202 of the DMCA, United States Code, *'the service provider must have adopted and reasonably implemented, and informs subscriber and account holders of the service provider's system or network of a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system who are repeat infringers'*.

copyright owners in their efforts to track down a suspected infringement and bring legal action on their behalf through summons.<sup>552</sup>

Along with the DMCA, the “Centre for Copyright Information” is a coalition of artists, content creators, and service providers (CCI). Recording Industry Association of America (RIAA), Motion Picture Association of America (MPAA), AT&T Cablevision, Comcast, Time Warner Cable, and Verizon are all members of the CCI’s Advisory Council.<sup>553</sup> With the help of the Copyright Alert System (CAS), they have created a system aimed to “educate consumers about the significance of copyright protection and to deliver information about online copyright infringement,” according to their website.<sup>554</sup> However, the service providers are working at the same time capable of meeting the second safe harbour criterion. There are no strings attached to the CAS. All participants have signed a Memorandum of Understanding that explains the CAS and lays out the duties and responsibilities of each member and the processes they must adhere to. CCI’s “Advisory Board” provides advice and consultation on all aspects of the programme, including the design and execution of educational programmes and the CAS.

Three legislations related to intellectual property were signed into law as part of the Consolidated Appropriations Act 2021 in December 2020, including the Protecting Lawful Streaming Act. An unintended loophole in copyright law that authorised major marketing businesses to mitigate severe repercussions for illegally streaming copyrighted works was closed with widespread bipartisan and bicameral support by Congress, the Copyright Office, legal regulation and federal bodies, and various stakeholder communities. When criminal sanctions for violations of digital streaming’s public performance rights are combined with those for breaches of reproduction and

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<sup>552</sup> *Supra* note 550.

<sup>553</sup> For a full list of members, see the signatories of the CCI’s ‘Memorandum of Understanding, Final List (Dec.29, 2020, 01:45 AM), <http://www.copyrightinformation.org/wp-content/uploads/2013/02/Memorandum-ofUnderstanding.pdf>.

<sup>554</sup> Copyright in the Digital Era: Country Studies, Enquiries into Intellectual Property’s Economic Impact, 93, OECD (2015).

distribution, the PLSA provides prosecutors with a powerful weapon to prevent illegal behaviour and protect copyright owners and authors.<sup>555</sup>

### **6.5.3. THE MEANS OF ENFORCING**

Federal courts in the United States are the only place where copyright infringement cases can be litigated. Specific violations may also be prosecuted as criminal misdemeanours or felonies by the U.S. Department of Justice in certain cases. In addition, the Justice Department has released a guide on pursuing intellectual property crimes.<sup>556</sup>

Infringing content will be flagged by the content owner or his representative, who will then notify the internet service provider. The service provider must act “immediately” to “remove or disable access to the content” upon receiving information.”<sup>557</sup>

The DMCA permits counter notifications to be made in order to lessen the impact of misleading notices being sent out by third parties. Section 202 of the Digital Millennium Copyright Act, which adds Section 512 (g) (3) to the US Code, details the notification’s components. Following receipt of a counter-notification, the device must be reconfigured or the blockage must be lifted within 10-14 working days if appropriate evidence indicates that it was the result of an error or identification error.

Copyright holders can use the Copyright Alert System (CAS) to track down allegedly infringing P2P content, gather proof in the form of the infringer’s IP address, and report this information to their ISP. The ISP then sends a notice letter to this user, which includes instructional material about copyright and legal sourcing. Each notification letter that a subscriber receives boosts the content’s potency. ISPs have the option to temporarily disrupt a customer’s internet access after receiving a sufficient number of letters. Internet service providers are required to keep a history of their customers’

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<sup>555</sup> Kevin Madigan, Protecting Lawful Streaming Act Signed Into Law: What You Need to Know, (Jan. 19, 2021, 01:45 PM), <https://copyrightalliance.org/protecting-lawful-streaming-act-signed/>

<sup>556</sup> *Supra* note 550.

<sup>557</sup> *Supra* note 554.

usage. To learn more about these infringers, either the perpetrators or the copyright owners might issue a citation.<sup>558</sup>

Modernizing felony copyright law by making unauthorised streaming punishable by the same penalties as unlawful downloading and dissemination is the goal of the PLSA. The law adds a new section 2319C, headed “Illicit digital transmission services,” to title 18, the United States Code, which details the banned activities that would now be subject to increased penalties under the new provision.

One must do three things to be in compliance with the law: be wilful, be acting for commercial profit or personal financial gain, and provide or supply digital transmission services to the general public. The act defines a digitized distribution service as “a service that has as its principal objective the public performance of works by means of digital transmission. To put it another way, the “wilful” and “for the purpose of commercial profit or private financial gain” criteria are standards derived straight from current criminal copyright legislation.<sup>559</sup>

By including insight from service providers, platforms, and end users, the PLSA’s provisions ensure that only the most outrageous perpetrators are subject to felony penalties: all who actually function promotional online streaming that are designed primarily, advertised, or have hardly a substantial use other than unauthorised broadcasting of copyrighted content. Pirate IPTV (Internet Protocol Television) services resemble genuine broadcasting services by offering a large number of movies and television shows, as well as other unlawful “tube” conduits viewers to broadcast unlicensed material over the Internet through subscriptions.<sup>560</sup>

#### **6.5.4. CONSEQUENCES**

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<sup>558</sup> International Comparison of Approaches to Online Copyright Infringement: Final Report, Intellectual Property Office, 88 (2015).

<sup>559</sup> Ibid.

<sup>560</sup> *Supra* Note 558.

If infringing behaviour occurs on a service provider's network, OCILLA shields the service provider from legal prosecution for permitting infringing material to be accessed.<sup>561</sup>

It is possible for rights holders to sue for damages in the amount of \$750 to \$30,000, depending on the court's consideration, for each copyright infringement for which an individual or a group of individuals are accountable. For intentional infringement, the court has the power of escalating this amount to \$150,000 and decreasing it to not lesser than \$200 if the offender was unaware of its existence.<sup>562</sup>

To begin with, all CAS messages are instructional in nature, with at least the first five being in the form of warnings. A "mitigation measure copyright alert" is delivered only when the user has received at least five notices. ISPs have the option to temporarily disconnect a user's internet connection following the posting of a "mitigation measure copyright warning":

- Reducing transmission speeds for a short period of time;
- ISPs can temporarily downgrade a subscribing customer's service to the poorest Internet access services above dial-up that are available in the subscriber's neighbourhood, or an equivalent bandwidth through rate low quite so to adversely affect a subscriber's fiber internet accessing service (256-640kbps).
- For copyright notifications, the ISP may temporarily reroute users to a landing page until they get in touch with them;
- Restriction of internet access for a specified amount of time, as set by the participating ISP at its own discretion;
- For further mitigation measures, the ISP can apply any of the Mitigation methods specified above or any other temporary mitigation measures that the ISP chooses.<sup>563</sup>

#### **6.5.5. PUTTING INTO ACTION, KEEPING AN EYE ON, AND OPTIMISING**

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<sup>561</sup> Section 202 of the DMCA inserting Section 512(d).

<sup>562</sup> Title 17 of the United States Code Section 504(c)(2).

<sup>563</sup> Section 4(g)(iii) of the *MOU on the 'Mitigation Measure Step'*.



Only in February 2013 did the CAS come into effect, whereas the DMCA was authorised in 1998.<sup>564</sup> To my knowledge, there does not appear to be a requirement to routinely examine how successful the systems of alerts and procedures are.

To a large extent, the first process of evaluating seems to be focused on measurements like the number of alerts received at various levels rather than an evaluation on how notifications affect the amount of infringement or on the usage of legal online services themselves. In its first annual review of the programme, the CCI reported that just 8% of the accounts receiving warnings during the analysis period were Mitigation-alerts, with less than 3% of those accounts reaching the final mitigation level.<sup>565</sup>

## **6.6 UNITED KINGDOM**

### **6.6.1 IN-DEPTH LOOK AT THE BRITISH STRATEGY**

People who engage in infringing actions and those who provide infringing content and facilitate access to such material are the focus of the UK approach:

- Each of the four main internet service providers, including BT, Sky, TalkTalk, and Virgin Media, has committed to implement a voluntary programme to identify and block individuals who are accessing copyrighted material. Copyright owners will be able to track down those who are illegally distributing files over peer-to-peer (P2P) networks, and the ISP will then notify the account holder of the suspected infringement. An educational campaign sponsored by substantial money from the UK government is a key component of this initiative, which is intended primarily for educational purposes. The Creative Content UK plan was implemented in phases commencing in 2015, with an educational multi-media campaign and alerts sent out shortly thereafter.;
- The Copyright, Designs and Patents Act, 1988, allows copyright infringement victims to pursue legal action against websites that provide access to illegal material (CDPA). For violating copyright under the CDPA, website owners might face fines and/or prison time. Part of a process of notification and

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<sup>564</sup> *The Copyright Alert System, Phase one and beyond*, CCI, 1, (2014), (Jan.09, 2021, 01:45 PM), [http://www.copyrightinformation.org/wp-content/uploads/2014/05/Phase-One-And\\_Beyond.pdf](http://www.copyrightinformation.org/wp-content/uploads/2014/05/Phase-One-And_Beyond.pdf).

<sup>565</sup> *Ibid.*

response, the owners of copyrights identify content that is infringing on others' intellectual property rights and take measures to remove the content or request Internet service providers to prevent access to the content. It is possible for ISPs to delete or prevent access to illegal content stored in the United Kingdom if the rights holder has informed them of its existence under Sections 18 and 19 of the Electronic Commerce Act 2002. As a result of this, they avoid any potential liability for copyright infringement that they would otherwise be held responsible for.<sup>566</sup>

- Court injunctions against Internet service providers (ISPs) can be obtained by copyright holders to prevent subscribers from accessing infringing material. Because it's more difficult to serve notice and removal orders to sites located outside of the United Kingdom, this is an especially pressing matter.<sup>567</sup>
- For the investigation and prosecution of intellectual property offences, the police maintain a distinct and autonomous enforcement division, the Police Intellectual Property Crime Unit (PIPCU). With an emphasis on cyber offences, this division aims to tackle substantial and systematic intellectual property crime. By communicating with site owners, interrupting advertising income, and de-registering domain names, 'Operation Creative' is one of PIPCU's most important activities.<sup>568</sup>

### 6.6.1. PROCESS AND BACKGROUND

Copyright piracy is a relatively new internet problem that has been subject to independent assessments and consultations. P2P file sharing is a huge threat to the creative industries, according to the Growers Review of the Intellectual Property Framework in the UK.<sup>569</sup> Following the Growers Review in the summer of 2008, the

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<sup>566</sup> Aditi Mene, *Piracy and illegal file-sharing: UK and US legal and commercial responses*, (Jan.10, 2021, 11:40 PM), [https://uk.practicallaw.thomsonreuters.com/15027956transitionTypeDefault&contextData\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/15027956transitionTypeDefault&contextData(sc.Default)&firstPage=true&bhcp=1).

<sup>567</sup> Section 97A of the Copyright, Designs and Patent Act 1988. (UK) .

<sup>568</sup> *City of London Police Report*, (Jan.10, 2021, 03:15 PM), <http://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/pipcu-news/Pages/PIPCU-goes-global-in-its-pursuit-of-illegal-websites.aspx>.

<sup>569</sup> Gowers Review of Intellectual Property, December 2006, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228849/0118404830.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228849/0118404830.pdf).

government invited numerous internet service providers and rights holders to sign a Memorandum of Understanding to raise awareness of the illegality of consumer P2P file exchange. Simultaneously, discussions were launched on ideas to include ISPs and set explicit obligations on OFCOM to handle copyright violations.<sup>570</sup>

“Digital Britain: The Interim Report” was issued in January 2009, after the consultation. It stated the need for more laws. The proposed law would oblige internet service providers to notify offenders that their actions are prohibited and gather information that would be made anonymously available to rights holders. Holders of rights can seek a court order to gather personal information needed to prosecute criminals. The initial results and recommendations came from “a British government white paper issued in June 2009”. After been proposed to Parliament in November of 2009, and receiving Royal Assent in April of that year, the Digital Economy Act of 2010 is now law.

The Digital Economy Act of 2010 governs the proposed notification mechanism (DEA). According to OFCOM’s code of fundamental obligations, internet service providers are required to alert users of suspected infringements of intellectual property rights and to help rights holders in initiating legal action against those responsible. If these first responsibilities failed, the DEA allowed for further obligations to be imposed on internet service providers, such as downgrading connections or combating customer offences.

Copyright holders lose an estimated \$400 million per year due to the illegal distribution of copyrighted products (such as television shows, movies, music, entertainment, and video games), according to collaborative impact studies with the DEA. A net profit (measured in terms of present value clear computed over 10 years) might reach £ 1.2 billion if the expected expenses of implementing the plan were compared against the benefits for right holders.<sup>571</sup>

### **6.6.2. APPROACH BASED ON LEGAL AND REGULATORY FRAMEWORK**

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<sup>570</sup> OFCOM is the UK government approved regulatory and competition authority for the broadcasting, telecommunications and postal industries of the United Kingdom.

<sup>571</sup> *Supra* note 567.

The CDPA allows for legal action against infringers. If someone intentionally violates copyright by releasing a work to the public, they are committing a crime. This is true even if they have no reason to suspect that they are doing so.<sup>572</sup>

These provision operates in conjunction with the regulations on trade electronic (EC Directive) of 2002, which incorporate UK legislation into Directive 2000/31/EC of the European Union E-Commerce Directive Commission - No host or storage network operator is accountable for the violation of the author's rights in the content they host or store on their platform., provided that, knowing that it is counterfeit material, the provider of service promptly removes the material or blocks a link, if the provider of service knows that it is counterfeit material. Because they might be held accountable for copyright infringement, internet service providers should comply with rights holders' requests to delete or prevent access to illegal content.<sup>573</sup>

In accordance with Section 97A of the CDPA, rights holders may request that ISPs block access to counterfeit content located outside the United Kingdom by filing a lawsuit. The Copyright and Related Rights Regulations, 2003 included the EC Directive on copyright into the CDPA.<sup>574</sup>

The DEA might offer the legal foundation for consumers downloading unlawful information. After DEA was delayed, BPI, MPA, and the four major ISPs formed a Copyright Alert Program. The CAP has a similar notification system in place since 2015, but it is mostly instructional and results in no repercussions. Government-backed cooperation of content publishers and ISPs, the CAP is a member of. The CAP will assist educate the public on the value of internet content, its legality, and help prevent copyright infringement.

### **6.6.3. THE MEANS OF ENFORCING**

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<sup>572</sup> Section 2A of the CDPA, 1988 (UK).

<sup>573</sup> A further condition for hosting providers to escape liability is that they have no knowledge of unlawful activity, and are not aware of facts that would have made it apparent that unlawful activity took place, or the material hosted infringed copyright (Section 19 (1) of the Electronic Commerce Regulations 2002).

<sup>574</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the Harmonization of Certain Aspects of Copyright And Related Rights In The Information Society.

The first step in enforcing a copyright is for the rights holder to identify the violation. The alternatives available to a copyright owner who discovers infringing online content, there are several examples, such as a website that provides access to copyright-infringing material or principally serves to assist in copyright infringement:

- When a website has a high amount of counterfeit content, it is necessary to notify its operator, host provider, or independent registrar in the relevant jurisdiction and request that the content be withdrawn (cease and desist stop);
- The access provider must be notified and given notice of the desire to remove the account. The act must be genuine and honest, and any withdrawal requests must adhere to the e-commerce directive's rules on withdrawal requests. Websites and other content hosted in the United Kingdom will often benefit from this;
- A High Court judicial review under section 97A of the CDPA can be used to require an Internet service provider to act, for example, subscribers can be prevented from accessing illegal content by blocking their access to the offending website. ISPs were afraid to entirely prohibit access to websites because of a lack of legal protection. As a result of the rising number of court judgments mandating ISPs to restrict access, the procedure has been streamlined.; and
- A criminal offence may only be proven with the assistance of PIPCU. It is expected that the rights holders would notify PIPCU of the infringing website, along with proof of its involvement in copyright infringement. When a website is found to be in breach, PIPCU will conduct a thorough investigation and tell the site owner and the authorities of the illegal activities. If the site's owner does not cooperate with the authorities, the site is added to a List of Infringing Websites (IWL) large companies and marketing firms and a plea to discontinue marketing on this site. Counterfeiters' money supply is being cut off from the platform. Domain name registrars for the PIPCU website will send an official letter asking them to suspend the domain name until further notice, as the website is already operational.

- Under UK copyright law, to make it easier for criminal copyright infringement.<sup>575</sup>

It is possible for rights holders to identify illicit P2P file sharing and send an ISP notification as part of the Creative Content UK initiative once it is operational. Rights holders in this situation must give the IP address of the appropriate ISP with the evidence. ISP will then have to notify the account holder that illegal activity has happened and tell him of his legal options, in accordance with the alleged crime notification procedure.

#### 6.6.4. CONSEQUENCES

- There are no penalties for those who participate in the voluntary programme. All notifications are educational in nature. It is possible to be punished or imprisoned for operating a fake website in the United States. Subsection 2A of the CDPA states that a person who commits an offence is subject to criminal prosecution.
- The maximum penalty for a summary conviction is a fine of up to £50,000 or three months in prison, or both; and
- Indictment carries a maximum penalty of two years in jail or a fine of not more than \$5,000, whichever is greater.<sup>576</sup>

The PIPCU is also targeting advertising income from sites that are listed on the IWL. Ads on copyright infringing websites have been replaced by “official force banners” that warn visitors to leave and advise them to do so. This is part of PIPCU’s “Project Sunblock”.<sup>577</sup>

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<sup>575</sup> *Copyright: Laws and Procedure*, (Jan.12, 2021, 07:15 PM), <https://iclg.com/practice-areas/copyright-laws-and-regulations/united-kingdom>

<sup>576</sup> Section 4A of the CDPA 1988 (Jan.22, 2021, 08:45 PM), <http://www.legislation.gov.uk/ukpga/1988/48/section/107#commentary-c1935540> (Last accessed on Oct 20, 2019).

<sup>577</sup> International Comparison of Approaches to Online Copyright Infringement: Final Report, (Jan.22, 2021, 10:45 PM), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/549462/International\\_Comparison\\_of\\_Approaches\\_to\\_Online\\_Copyright\\_Infringement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/549462/International_Comparison_of_Approaches_to_Online_Copyright_Infringement.pdf).

### 6.6.5. PUTTING INTO ACTION, KEEPING AN EYE ON, AND OPTIMISING

The High Court of the United Kingdom issued its first restraining order in 2011,<sup>578</sup> following a series of court decisions, around 40 websites have been blocked.<sup>579</sup>

Several international infringing websites were attempting to become inaccessible as a result of the civil action taken by the copyright owner, according to the IP Crime Group's 2013 report. The United Kingdom also reports annually on the number of files, links, and websites that have been successfully removed by copyright owners, according to the IP Crime Group's report.<sup>580</sup> Monitoring its influence on copyright infringement levels is a key component of this system.

PIPCU officially began operations in September, 2013. An initial three-month trial plan was implemented by PIPCU, which resulted in the introduction of the IWL. It was discovered that there was a clear and good trend, with a 12 percent decline in the advertising of the main home-building brands on the detected unlawful websites, according to PIPCU.<sup>581</sup> However, there has been no more information on the system's effectiveness after its introduction. As a last step, PIPCU requested that persistent infringing websites' domain registrars suspend the domain. The PIPCU resulted in the closure of many prominent copyright infringing websites in May 2014<sup>582</sup> initiated to infringing sites that were forwarded to a page of domain suspension produced 2.5 million visits.<sup>583</sup>

## 6.7. CHINA

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<sup>578</sup> Twentieth Century Fox and others v British Telecommunications PLC 2011 Judgment (Jan.22, 2011, 11:05 PM), <http://www.bailii.org/ew/cases/EWHC/Ch/2011/1981.html>.

<sup>579</sup> IP Crime Group Annual Report 2012-2013, (Jan.23, 2011, 01:05 PM), <http://www.ipo.gov.uk/pro-policy/pro-crime/pro-crime-report.htm> 44.

<sup>580</sup> IP Crime highlight report 2013-14 reported that PRS for Music successfully removed 73,333 files during 2013, embodying 2,339,118 infringed musical works and the BPI removed 72,000,000 links to infringing digital material (Jan.23, 2011, 03:25 PM), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/318338/IP\\_crime\\_highlight\\_report.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318338/IP_crime_highlight_report.PDF).

<sup>581</sup> Protecting creativity, supporting innovation: IP enforcement 2020, (Jan.23, 2011, 04:45 PM), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/571604/IP\\_Enforcement\\_Strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/571604/IP_Enforcement_Strategy.pdf).

<sup>582</sup> *Supra* note 574.

<sup>583</sup> *Ibid.*

### 6.7.1. THE CHINESE WAY OF THINKING

China's online marketplace, which is backed by the world's largest Internet user base, continues to grow, and the country now ranks first in the world in terms of movie screens, with more than 70,000 displays, in general, the bulk of them are 3D-ready IMAX and China Mega Screen are only two of the numerous upgraded formats available. According to revenue, the Chinese music market is now the seventh largest in the world, and the fourth biggest music streaming market in terms of revenue. Sales of video games in the country are likely to top \$41 billion until 2020, pertaining to industry estimates. However, chronic and expanding piracy, as well as growing market access issues, hinder, if not completely eliminate, the capacity of rights holders to distribute copyrighted content in China, preventing rights holders from realising the full potential of their investments in the country.

Worldwide, digital piracy has risen to become among the best serious challenges to the protection of intellectual property rights. China, of course, is not out of the question. In contrast to other nations, piracy has been a tradition in China since the country's intellectual property laws came into effect. The Chinese people and the Chinese government were initially unaware of the existence of intellectual property rights, which was a problem. Thus far, the execution of copyright legislation has been abysmally ineffective. As a result of international criticism, China has been pushed to further up its enforcement of intellectual property rights in the past several years. Chinese officials have expressed reservations about completely complying with international legal responsibilities, although the country has made significant strides in adapting itself to the world economy.<sup>584</sup>

International investment into China's economy has resulted in an upsurge in intellectual property output in China. The open-door policy of the Chinese government<sup>585</sup> that was

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<sup>584</sup> Graham J. Chynoweth, *Reality Bites: How the Biting Reality of Piracy in China is Working to Strengthen Its Copyright Laws*, 2, DUKE LAW & TECHNOLOGY REVIEW, 6 (2003).

<sup>585</sup> The Open-Door Policy is regarding China's international trade policy introduced after Deng Xiaoping took office in 1978; it is termed as China's policy of opening up to the outside world. BBC News, Open Door Policy, (Jan.24, 2021, 09:25 PM), [http://news.bbc.co.uk/2/shared/spl/hi/in\\_depth/china\\_politics/key\\_people\\_events/html/ 8.stm](http://news.bbc.co.uk/2/shared/spl/hi/in_depth/china_politics/key_people_events/html/ 8.stm).



the first step toward a more robust copyright legislation in the 1970s.<sup>586</sup> As a result, China's government has made a number of efforts to join the international community for the protection of intellectual property.<sup>587</sup> In 1980, China became a member of the World Intellectual Property Organization,<sup>588</sup> and has since signed numerous international treaties to protect intellectual property rights, this includes a number of international agreements such as the Paris Convention for the Protection of Industrial Property (1985), Madrid Convention on International Registration of Marks (1989) and Berne Convention for the Protection of Literary or Artistic Works (1989).<sup>589</sup>

No cases may be used by courts in China since it is not a country with a jurisprudence. Although the Supreme People's Court's judicial interpretations must be adhered to by all jurisdictions; as a result, they might be considered as legal basis in some circumstances.<sup>590</sup> Besides the fundamental laws and interpretations of copyright by the China court, government organisations such as the National Copyright Administration, the Ministry of Information, and the Council of State also give guidelines and methods for copyright control in China.

When it comes to copyright concerns, China's legal structure dictates that copyright law will be the most important legal tool.<sup>591</sup> Copyright Law Article 1 describes the purpose of copyright in China. Creative and scientific works and copyright rights are protected by the Copyright Act, which encourages the creation of works that support copyright building an advanced socialist society ethically and materially and promoting progress and flourishing in the development of socialist culture and science through the protection of author' rights in their works. Because copyright law is designed to promote culture and state research, the public's interest in exercising its rights should

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<sup>586</sup> Naigen Zhan, *Intellectual Property Law Enforcement in China: Trade Issues, Policies and Practices*, 8 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 63 (1997-1998).

<sup>587</sup> *Ibid.*

<sup>588</sup> The official website of WIPO, (Jan.24, 2021, 11:35 PM), [http://www.wipo.int/treaties/en/ShowResults.jsp?search\\_what=C&country\\_id=38C](http://www.wipo.int/treaties/en/ShowResults.jsp?search_what=C&country_id=38C).

<sup>589</sup> The official website of WTO, (Jan.24, 2021, 01:45 AM), [http://www.wto.org/english/thewto\\_e/countries\\_e/china\\_e.htm](http://www.wto.org/english/thewto_e/countries_e/china_e.htm).

<sup>590</sup> Jessica Haixia Jia, *Internet Copyright Regulation – China, Copyright Infringement in the Network Environment - China's perspective, Computer Law & Security Report*, Vol. 19, 111(2003).

<sup>591</sup> *Ibid.*

not be jeopardised, which is why it's important that the public's interests are protected.<sup>592</sup>

### 6.7.1. GOVERNING LAW AND REGULATIONS

Legislators and copyright holders see copyright infringement as a severe crime, a threat to financial stability, a threat to jobs, and a lack of motivation for creative innovation in addition to the harm done to consumers.<sup>593</sup> A conviction for digital piracy can result in up to seven years in jail or a fine and imprisonment if the offence is significant and the intent is to profit, and the amount of illegal proceeds is also taken into account.<sup>594</sup>

Ministry of Public Security and Supreme People's Court have adopted more explicit guidelines for the implementation of intellectual property rights criminal law because the criminal law is too broad to apply. This defined the circumstances in which digital piracy is illegal: *It is illegal to benefit from other works without permission from their copyright owners by openly broadcasting them on information networks without permission from the copyright owners in the following circumstances: (1) CNY 50,000 (US \$ 8,025) has been spent on unlawful activities; (2) Some pieces have been broadcast more than 500 times; (3) publish other works in which the public has clicked in excess of 50,000 instances; (4) more than a total of 1000 members have signed up; (5) the amount does not meet either of those criteria, but it does meet half of the other half.; and (6) conditions that are more serious.*<sup>595</sup>

The Chinese government's concern on digital piracy may be seen in criminal laws and regulations. China has the most internet users in the world, as previously stated. However, profit-making is a prerequisite for criminalising digital piracy. For Internet

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<sup>592</sup> Article 4 of the Copyright Law of China.

<sup>593</sup> Robin Andrews, *Copyright Infringement and the Internet: An Economic Analysis of Crime*, B.U.J.SCI. & TECH.L. Vol.11, 1 (2011).

<sup>594</sup> Article 217 of the Criminal Law of China.

<sup>595</sup> Article 13 of *Opinions on Some Issues concerning the Application of Law for Handling Cases of the Crime of Intellectual Property Infringement*, the Supreme Court of China, the Ministry of Public Security (2011).

users who have copyrighted resources that they want to share with others, this implies that they will not face criminal charges. Copyright infringement is all it is.<sup>596</sup>

### 6.7.2. CONSEQUENCES

It was announced in 2012 that the country's Supreme Court was considering a stricter interpretation of China's Internet Infringement Laws, which would make it more difficult for websites to promote copyrighted works of art on the internet. Unlicensed works might be utilised and exhibited in particular ways, such as on a commercial site that ranks material according to popularity. Companies could be held responsible for this, according to this view. In addition, corporations may be held liable if they allow users to put unauthorised content on their systems with their knowledge. Companies have one business day and five business days to remove unlawful movies and other unlicensed works after being officially notified of copyright infringement, according to the judicial interpretation.<sup>597</sup> In January 2013, China's Ministry of Industry and Information Technology (MIIT) announced plans to create an online centre for intellectual property and copyright issues. For this reason, MIIT intends to establish a centre for third-party mediation and conflict resolution as a cost-effective alternative to litigation. The MIIT has set up a dispute resolution centre for intellectual property and copyright issues over the Internet. MIIT and technology firms anticipate to employ third-party mediation and conflict resolution as a less expensive and time-consuming alternative to litigating their disputes.<sup>598</sup>

In 2013, the United States urged China to do more to combat internet piracy. Writing in its annual trade compliance report to Congress, the U.S. Trade Representative (USTR) stated that China's intellectual property regulatory system needed "urgent

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<sup>596</sup> *Ibid.*

<sup>597</sup> Kan, Michael, *China tightens online pirated content laws*, Computerworld, (2012) (Jan.27, 2021, 01:45 PM), <http://www.computerworld.com/article/2503533/internet/china-tightens-online-pirated-content-laws.html>.

<sup>598</sup> Shu, Catherine, *Chinese Government to Open Mediation Center for Online Piracy Disputes*, TechCrunch, (2013) (Jan.27, 2021, 03:05 PM), <http://techcrunch.com/2013/01/22/chinese-government-to-open-mediation-center-for-online-piracy-disputes/>.

improvements”.<sup>599</sup> It is stated in the report that “*counterfeiting and piracy continue to exist at unacceptable levels and to cause serious economic harm to US companies in a wide range of industries,*” and that the country is “*affected by widespread online piracy, which has become particularly prevalent for copyright piracy.*” Furthermore, according to the research, “*illegal music downloading accounts for almost 99 percent of all music downloads in China, and websites that allow users to broadcast pirated content have emerged as the preferred means for Chinese citizens to access illicit content.*”<sup>600</sup> With the unveiling of a new set of anti-piracy and anti-counterfeiting measures in 2014, China indicated that it would be focusing its efforts on internet-based crimes. Misleading advertising and illicit video and audio websites will be prohibited as part of a countrywide campaign aimed at preventing the illegal distribution of counterfeit goods.<sup>601</sup>

#### **6.7.2.1. INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE PRIORITY ACTIONS FOR 2021** <sup>602</sup>

*Enhance administrative enforcement, notably through increasing the efficiency of enforcement:*

- imposing penalties to discourage infringement is one method that has been shown to be successful in preventing or restricting infringement;
- for serial infringers, infringers that release large volumes of infringing content, and for infringers who have been penalised previously, awarding fines without the need for rights holders to file additional complaints;
- Increase the level of openness by alerting rights holders of administrative proceedings’ outcomes, for example;

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<sup>599</sup> *2013 Report to Congress on China’s WTO Compliance*, Office of the United States Trade Representative, (2013) (Jan.27, 2021, 06:55 PM), <http://www.ustr.gov/sites/default/files/2013-Report-to-Congress-China-WTO-Compliance.pdf>.

<sup>600</sup> Kate Tummarello, *U.S. presses China on ‘rampant’ online piracy*, The Hill, Dec. 26, 2013, (Jan.28, 2021, 06:55 PM) <http://thehill.com/policy/technology/194037-us-presses-china-on-rampant-online-piracy>.

<sup>601</sup> *China to crack down on online piracy, counterfeit goods*, Chinadaily.com, April 2014, (Jan.28, 2021, 10:15 PM) [http://www.chinadaily.com.cn/china/2014-04/14/content\\_17432977.htm](http://www.chinadaily.com.cn/china/2014-04/14/content_17432977.htm).

<sup>602</sup> INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2021 Special 301 Report On Copyright Protection And Enforcement, (Feb.05, 2021, 09:35 PM) <https://www.iipa.org/files/uploads/2021/01/2021SPEC301REPORT.pdf>.

- When criminal criteria are fulfilled, copyright matters should be transferred between administrative and criminal authorities more quickly, making it clear that such transfers are only necessary if there is “reasonable suspicion”; and
  - NCAC and the Ministry of Industry and Information Technology (MIIT) have established a method to take down infringing websites operating without a business licence.
- *Further effective actions against the internet piracy ecosystem should be taken with enhanced openness, including:*
- A ban on all piracy websites, whether they are based in China or elsewhere, such as dsdlove.com, dytt8.net, dy2018.com, dygod.net, ygdy8.com, gaoqing.la, mp4ba.com, btbt.co, piahua.com, vodxc.com, lbdly.com,
  - cloud-based services that support piracy, such as Baidu Pan, should be encouraged to issue timely and consistent takedown requests, use rigorous screening technologies to detect illegal content, and take more effective measures to suspend or dismiss persistent infringers;
- *Enhance the effectiveness of targeted and deterrent enforcement measures such as criminal prosecutions while maintaining public accountability against:*
- Devices for Piracy Prevention (including those against specific piracy applications) production; distribution and exporting;
  - the manufacture, distribution, and exportation of circumvention devices and software components;
  - unauthorized movie broadcasts in mini-VOD locations;
  - unauthorized camcording;
  - unauthorized broadcasting of movies and music;
  - services trafficking in, or providing access to, unauthorized copies of journal articles; and;
  - hard goods piracy (including against production and supply of high-quality counterfeit books and optical discs, USB flash drives containing high volumes of infringing sound recordings, and video game machines containing hundreds or thousands of infringing video games).<sup>603</sup>

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<sup>603</sup> *Supra* note 599.

### 6.7.2.2. LEGISLATION:

In accordance with international best practises and Chinese international commitments, implement the copyright law amendments as soon as possible, including regarding broadcast and publicly perform rights for sound recordings, imposing “punitive” damages in accordance with enhanced thresholds, providing appropriate and efficacious protections for TPMs, transitioning the burden of proof to the alleged infringer, and ensuring that exceptional cases and constraints to copyright protections conform with the three-step test.<sup>604</sup>

Implement additional reforms to promote the growth of China’s creative industries, taking into consideration modifications advocated by the IIPA and member organizations in several previous files, including, in particular, the Creative Industries Development Plan:

- guaranteeing that there is a recourse for applications that facilitate infringement (particularly if illegal information is stored remotely), notably by rejecting the “server concept”;
- forbidding the illegal rebroadcast of live broadcasts through the Internet;
- clarification that the safe harbours from monetary responsibility are available only to passive and impartial intermediaries who do not participate in infringing actions;
- extending the duration of protection in accordance with international practise;
- the Guidelines, which include important measures to improve copyright protection and enforcement, like reducing felonious tolerances, optimising actual proof mechanisms, creating a watchlist of repetitive copyright infringements, as well as controlling webpages to “eliminate illegal data, restrict or disengage counterfeit goods web links, [and] prevent the propagation of breaching data”;
- Criminal IPR Guidelines from 2011 are being revised in order to facilitate more effective and frequent criminal investigation and prosecutions;

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<sup>604</sup> *Ibid.*

- in accordance with the Guidelines, increasing the criminal standard to ensure that dissuasive criminal sanctions are applicable against all cases of commercial scale piracy;
- circumventing TPMs or traffic in circumvention items, such as hardware and software elements, is defined as a distinct criminal offence;
- According to the Guidelines, no-fault prohibitions against ISPs in digital rights instances, including those against access providers, can be issued against ISPs in cases where substance is hosted outside China or the identities or positions of website owners are unknown, mandating them to cease offering direct connections to non - authorised copyrighted content; and
- ensuring appropriate application of the e statute, particularly ensuring that Article 43 does not really allow infringing items to dodge accountability by simply objecting to complaints of infringing activity by sellers.<sup>605</sup>

### **6.7.2.3. CHINA'S ONLINE MARKETPLACE AND COPYRIGHT PIRACY UPDATES**

Many licenced digital services are accessible in China's booming online economy, allowing users to access a wide variety of legal music and video games, movies, television shows, and other works. Chinese firms are investing extensively in content and entertainment, with increasing numbers of founder and finance from China. There are forecasts that in 2019, Chinese consumers would listen to music for about 18 hours per week, with roughly three-quarters of that time spent on social media or apps, making it the world's sixth biggest music market in 2019.<sup>606</sup> The threat of piracy is real, though. According to the music business, 74% of Chinese Internet users acknowledged to download unlicensed audio in the month prior, with stream-ripping from unlawful content on UUC sites being a major concern. Web traffic to both authorized and well-known pirate sites surged significantly in 2020 because to the COVID-19 outbreak. Many piracy and compliance obstacles and concerns in China were been addressed in

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<sup>605</sup> *Supra* note 599.

<sup>606</sup> IFPI Music Listening in 2019, P23, (Feb.12, 2021, 11:55 PM) <https://www.ifpi.org/wp-content/uploads/2020/07/Music-Listening-2019-1.pdf>.

previous filings to the Special 301 forum, and also IIPA files in WTO adherence assessments, as well as other discussion forums.<sup>607</sup>

Internet piracy, including the unauthorised downloading and broadcasting of IIPA partners' copyright information through pirate networks, applications, and equipment, has grown considerably in consecutive years and represents a major problem. For instance, in 2019, China stood 25th in the universe in the volume of linkages by contemporaries engaging in the illicit file-sharing of chosen video games on accessible peer-to-peer (P2P) platforms, and 21st in the globe for smartphone game titles. Several internet providers profit economically from extensive ISP safe harbour provisions, which enable these providers to forgo acquiring licences for copyrighted content accessible on its networks. This adds to the dilemma. Increasingly comprehensive investigative measures are required to successfully address China's internet infringement environment since it represents the biggest danger to genuine enterprises.<sup>608</sup>

Piracy websites remain a major concern, including illegal download sites; P2P piracy sites; deep linking sites; "hybrid" sites, such as *3dmgame.com*, which offer both hosting and torrenting services; cyberlockers; BitTorrent indexes, trackers, or clients; forums; streaming sites; social media websites; and online marketplace/auction sites selling pirated goods, Piracy Devices, circumvention devices, high quality counterfeits, USB flash drives containing a high volume of infringing sound recordings, and video game machines containing hundreds or thousands of infringing video games. Notorious piracy sites that disrupt the music and audio-visual marketplaces include *rrys.tv*, *5movies.to*, *btbtdy.net*, *92flac.com*, *sq688.com*, *51ape.com*, *2btbtt.co*, *subhd.tv*, *dSDLove.com*, *dytt8.net*, *dy2018.com*, *dygod.net*, *ygdy8.com*, *gaoqing.la*, *mp4ba.com*, *btbtt.co*, *piaohua.com*, *vodxc.com*, *lbdly.com*, *yimp3.com*, *musicool.cn*, *xh127.com*, *panduoduo.net*, *bjhyx.com*, *xxswitch.com*, and *feilongshanzhuang.com*.<sup>609</sup>

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<sup>607</sup> *Supra* note 602.

<sup>608</sup> *Ibid.*

<sup>609</sup> USTR identified *Dytt8.net* in its 2020 Review of Notorious Markets for Counterfeiting and Piracy (January 2021), (Feb.18, 2021, 01:25 AM) [https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20\(final\).pdf](https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20(final).pdf) ("2020 Notorious Markets Report").



Despite recent improvements, the pirate app ecosystem (which includes mobile and portable devices as well as televisions) is still a source of worry. More and more apps are being developed that collect illicit information housed on remote servers, yet the “server principle” is still a legal grey area.”<sup>610</sup> A prominent producer of audiovisual gear and peripherals that may be customized to permit the implementation of third-party, pre-loaded, or subsequent purchase infringing programmes (i.e., Piracy Devices) enable consumers to acquire illegal content.<sup>611</sup>

As a result of Android’s openness to third-party applications dissemination and activation, consumers may circumvent the big app stores to obtain illegal material. Piracy applications can be found in many third-party app stores, but because new ones keep popping up, it’s tough for rights holders to keep track of them all, making it nearly impossible for them to do so.<sup>612</sup> Tian Kian Kan is an instance of an application that enables the violation of audiovisual material. There are additional applications made or maintained by Chinese companies that aim global markets for media. *Tian Lai K Ge* is a prominent Singing app in China and Hong Kong that infringes on copyright laws. The application piracy environment poses an increasing threat to China, and the country ought to do much to prevent it.<sup>613</sup>

#### **6.7.2.4. CIRCUMVENTION DEVICES:**

There are considerable quantities of online video game piracy because of China’s role as the nation’s leading distributor and producer of computer game circumvention gadgets and programming elements. In order to download and play illegal video games on “modded” consoles using “game copiers” or “modification chips,” TPMs are often

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*Dytt8.net* receives around 9.5 million visits per month, and is ranked 480 on Alexa and 328 on Similar Web. The site, which uses a user-friendly interface to provide direct links to third party storage providers, remains a particular threat to legitimate services both within and outside of China.

<sup>610</sup> Certain Chinese IP judges have unfortunately embraced the “server principle,” interpreting current law to require that infringement only occurs when the infringing content resides on the server or device of the operator of the app.

<sup>611</sup> 2019 Special 301 Report, (Feb.12, 2021, 04:15 AM), [https://ustr.gov/sites/default/files/2019\\_Special\\_301\\_Report.pdf](https://ustr.gov/sites/default/files/2019_Special_301_Report.pdf).

<sup>612</sup> Piracy apps are sometimes advertised and distributed through traditional websites that provide a portal allowing users to download the app to their devices. App operators may also advertise and distribute their apps through bulletin boards, social media, or other chat functions through apps.

<sup>613</sup> *Supra* note 609.

bypassed using these devices. Infringing games can be played on handhelds or consoles using these devices. In addition to harming console producers, illicit downloads of practically all games for consoles, including those created by third parties, are a major problem. In order to maintain some level of compliance, these gadgets are offered by thousands of sellers in web stores and online marketplaces. In order to seriously stop the illegal downloading of video games, more focused and transparent enforcement activities, and deterrent-level criminal punishments and penalties against the producers, suppliers, and exporters of circumvention devices and software components are required.<sup>614</sup>

#### **6.7.2.5. THERE IS STILL A CONCERN WITH UNAUTHORISED VIDEOTAPING:**

In 2020, there was a significant decline in unlawful camcording in China and throughout the world owing to theatre closures and delays in the release of several movies due to the pandemic, which led to a significant fall in illicit camcording. As the quality of China's camcorded films has grown, they are posing a threat to the legitimate theatre and home entertainment sectors.<sup>615</sup> A developing issue is the live-streaming of movie theatre screenings online. Chinese courts inherited criminal punishments for unlawful camcording in 2020, including to members of a large pirate syndicate, a cinema manager who manufactured and distributed illegal videotapes to mini-VOD theatres, and a cinema employee and collaborator for marketing unlawful videotapes to big pirated websites.<sup>616</sup> Enactment of a particular criminal statute prohibiting the use of audio-visual recording devices to produce or transmit a copy of the audio and/or video

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<sup>614</sup> *Ibid.*

<sup>615</sup> During 2019, a total of 29 camcords (13 audio and 16 video) were forensically matched to cinemas in China, compared to 24 camcords (11 audio and 13 video) in 2018. The 2020 camcord statistics are anomalous due to the widescale closure of theaters due to the COVID-19 pandemic.

<sup>616</sup> As reported, in 2019, Yangzhou Police of Jiangsu Province broke up a film piracy syndicate, and seized a cloned server dubbed "phantom number one" (No. A15591). In September 2020, the Yangzhou Intermediate People's Court found four principal defendants criminally liable for copyright infringement, and issued custodial sentences ranging from four to six years, as well as fines. Also in 2020, the Court of Huishui County issued a fine and a two-year prison sentence against a cinema manager who made camcords at Haohuahong Cinema, Huishui County, Guizhou Province, and sold them to mini-VOD cinemas. In August 2020, the court of Pingluo County sentenced an employee of the Golden Phoenix Cineplex Pingluo, Shizuishan City, Ningxia Hui Autonomous Region and an accomplice for using a theater surveillance camera to camcord new release films, including "Avengers: Endgame," "Captain Marvel," and "Shazam!," and selling the camcorded copies to pirate websites, including *www.415.net*, *80ys.net*, *90sdy.com*, and *tqys.net.cn*.

of a cinematographic/audio-visual work from a performance in an exhibition venue is required for a more complete solution. In addition, as described below, the Copyright Law must be updated to outlaw the unlawful rebroadcast of works online in order to deal with live-streaming. Additional efforts must be made by China's government, movie theatre owners, and individuals involved in the theatrical distribution chain to prevent illegal filming under present regulations.<sup>617</sup>

#### **6.7.4. THIRD AMENDMENT TO THE CHINESE COPYRIGHT LAW**

In November 2020, the National People's Congress (NPC) ratified modifications to the Copyright Protection, which would take effect in June 2021, after decades of IIPA and other players agitating for development.

On June 1, the National Copyright Administration of the People's Republic of China (NCAC) released its annual report on the adequacy and effectiveness of the country's protection and enforcement of digital copyright. In 2020, the NCAC registered a total of 5,039,543 works whose authors filed claims to copyright, an increase of 20.37% from the previous year. The "Sword Net Action", an annual campaign aimed at cracking down on online piracy and copyright infringement, was carried out last June, when 3,239,400 links to pirated content were removed and 2,884 infringing websites and apps were shut down.<sup>618</sup>

##### **6.7.4.1. HIGHLIGHTS OF THE THIRD AMENDMENT, JUNE 2021**

With respect to copyrightable subject matter, the new amendment broadened the coverage of Article 3.<sup>619</sup> Instead of having a delineated list that includes "works of literature, art, natural sciences, social sciences, engineering and technology," the

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<sup>617</sup> *Supra* note 612.

<sup>618</sup> *China releases 2020 report on digital copyright protection*, June 11, 2021-14:03 BJT(06:03 GMT) chinaiptoday.com, (Feb.23, 2021, 09:15 PM), <http://english.ipraction.gov.cn/article/ns/202106/346653.html>.

<sup>619</sup> Feng Xiaoqing, *The Status of Object of Copyright: Research on the System of Works Protected by the Amended Chinese Copyright Law*, 68 J. COPYRIGHT SOC'Y U.S.A. (forthcoming 2021); He Huaiwen & Wu Xinyuan, *The Audiovisual Works and Their Protection Under Chinese Copyright Law*, 68 J. COPYRIGHT SOC'Y U.S.A. (forthcoming 2021); Zhang Chenguo, *What Are Works: Copyright Law Subject Matter in the Transition to the Digital Era: Perspectives on the Third Amendment to the Chinese Copyright Act*, 7 QUEEN MARY J. INTELL. PROP. 468 (2017) [hereinafter Zhang, *What Are Works*].

amended provision covers all works in the fields of literature, arts, and sciences, as long as those works are original<sup>620</sup> and have been “expressed in a certain form.”<sup>621</sup> These two new requirements are similar but not identical to the originality and fixation requirements in U.S. copyright law.<sup>622</sup> To address questions concerning whether short videos, animations, game contents, or other unconventional audio-visual creations fit within the category of “cinematographic works and works created by a process analogous to cinematography,”<sup>623</sup> Article 3 further replaced this category with a new category of “audio-visual works,” which includes but is not limited to cinematographic works.<sup>624</sup>

#### **6.7.4.2. COPYRIGHT OWNERSHIP OF AUDIO-VISUAL WORKS IS SPECIFIED**

Regarding the different rights under the copyright regime, the new amendment provides clarifications in select situations. *Article 17* states that authors hold the copyright in films, television programs, and other audio-visual works involving multiple parties while “screenwriters, directors, cinematographers, lyricists, composers, and so forth” enjoy the right of attribution and, when provided for in contracts, the right to receive remuneration.

Beyond the rights for authors, the new amendment enhanced the neighbouring rights of broadcasting organizations, performers, and sound recording producers. Article 10 clarifies that the broadcasting right covers the public dissemination and rebroadcast of

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<sup>620</sup> The term *duchuangxing* in Chinese is generally translated as originality, even though its literal meaning is closer to “independent creation.”

<sup>621</sup> Copyright Law of the People’s Republic of China (promulgated by the Standing Comm. Nat’l People’s Cong., Sept. 7, 1990, amended Feb. 26, 2010, effective Apr. 1, 2010).

<sup>622</sup> See 17 U.S.C. § 102(a) (2018).

<sup>623</sup> For complications raised by these audiovisual creations, see Li Mingde, *Intellectual Property Law Revision in China: Transplantation and Transformation* [hereinafter Li, *Intellectual Property Law Revision*], in GOVERNANCE OF INTELLECTUAL PROPERTY RIGHTS IN CHINA AND EUROPE 65, 71 (Nari Lee et al. eds., 2016) [hereinafter GOVERNANCE OF IPRS]; Zhang, *What Are Works*, *supra* note 14, at 474–75; Gui Hongxia et al., King & Wood Mallesons, *The Amended Copyright Law and Its Potential Implications*, CHINA LAW INSIGHT (Dec. 2, 2020), <https://www.chinalawinsight.com/2020/12/articles/intellectual-property/the-amended-copyright-law-and-its-potential-implications/>; Savannah Hardingham et al., K&L Gates, *Amendments to China’s Copyright Law*, NAT’L L. REV. (Feb.23, 2021, 11:25 PM), <https://www.natlawreview.com/article/amendments-to-china-s-copyright-law>.

<sup>624</sup> *Ibid.*

copyrighted works “by wired or wireless means.”<sup>625</sup> Article 47 further extends to broadcasting organizations the right of communication through an information network. These amended provisions not only enable the Copyright Law to better reflect the present-day reality regarding the dissemination of copyrighted content, but also remove the ambiguity concerning whether the broadcasting right covers webcasts and online live broadcasts. To reduce complications between the different and potentially overlapping rights, Article 47 states further that radio and television stations, in exercising the rights granted in the provision, cannot affect, restrict, or infringe upon the copyright or related rights enjoyed by others. With respect to performers, the new amendment added a rental right as well as a new provision covering performances for hire. For those performances, Article 40 grants to performers the rights to be identified and to protect the image in their performance from distortion while allowing performing units to freely use such performance within their business scope. The amended provision is consistent with Article 5(1) of the Beijing Treaty on Audio-visual Performances (“Beijing Treaty”) of the World Intellectual Property Organization (“WIPO”), which entered into force in China on April 28, 2020.<sup>626</sup> Finally, Article 45 requires remuneration be paid to sound recording producers when their recordings are publicly performed or broadcasted.

#### **6.7.4.3. A PUNITIVE COMPENSATION SYSTEM FOR INFRINGEMENT IS SET OUT, AND THE MINIMUM STATUTORY COMPENSATION IS SPECIFIED**

In the area of copyright enforcement and remedies, Article 54 greatly increased the amount of pre-established or statutory damages, setting a new floor of RMB 500 (over \$78) while raising the ceiling from RMB 500,000 (over \$78,000) to RMB 5,000,000 (over \$780,000).<sup>627</sup> In cases of serious wilful infringement, the provision grants punitive damages of up to five times the compensation amount, which is to be determined based on actual losses, illegal incomes, or royalties.<sup>628</sup> Compared with

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<sup>625</sup> Copyright Law of the People’s Republic of China (promulgated by the Standing Comm. Nat’l People’s Cong., Sept. 7, 1990, amended Nov. 11, 2020, effective June 1, 2021) (China)

<sup>626</sup> Beijing Treaty on Audiovisual Performances art. 5(1), June 23, 2012, (Feb.25, 2021, 09:25 PM), <https://wipolex.wipo.int/en/treaties/textdetails/12213>.

<sup>627</sup> Lee Jyh-An, *Formulating Copyright Damages in China*, 68 J. COPYRIGHT SOC’Y U.S.A.

<sup>628</sup> Zhang Guangliang, *Punitive Damages for Copyright Infringement in China: Interpretations, Issues and Solutions*, 68 J. COPYRIGHT SOC’Y U.S.A.

copyright law in the United States, Europe, and other jurisdictions, the inclusion of both pre-established and punitive damages is somewhat unusual.<sup>629</sup> Nevertheless, such inclusion shows the Xi Jinping Administration’s resolve to provide stronger deterrents against copyright infringement. As President Xi declared before the release of the 2020 amendment drafts, it is important to “put in place a punitive compensation system to significantly raise the cost for offenders.”<sup>630</sup> The drive to increase penalties for copyright infringement is understandable, considering that the Chinese intellectual property system has been repeatedly criticized for providing inadequate compensation to rights holders.<sup>631</sup> Similar changes can be found in the 2020 Amendment to the Patent Law, which took effect at the same time as the amended Copyright Law, as well as the earlier amendments to the Trademark Law and the Law Against Unfair Competition.<sup>632</sup>

#### **6.7.4.4. PROOF-OF-CONVICTION AND DELETION OF INFRINGING COPIES**

Copyright Law, like the newly changed patent law, has shifted the burden of proof, allowing courts to compel an alleged infringer to hand up relevant account books and documents if evidence of infringement has been given but they are kept by the accused infringer. If the offender disagrees with the court’s order or produces fraudulent records and materials, the people’s court may utilise the claims of the rights holder and the evidence presented to establish the compensation amount.

A copyright dispute case’s trial will also include an order for the destruction of any violating copyright replicas as well as the components, techniques, and equipment used in their production, or a sequence to prevent the aforementioned components, techniques, and devices from entering commercial channels without compensation.

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<sup>629</sup> Peter K. Yu, *Digital Copyright Reform and Legal Transplants in Hong Kong*, 48 U. LOUISVILLE L. REV. 693, 718–19 (2010).

<sup>630</sup> Xi Calls on G20 to Join Hands in Forging High-Quality Global Economy, XINHUA NET (June 29, 2019), (Feb.26, 2021, 12:25 AM), [http://www.xinhuanet.com/english/2019-06/29/c\\_138182571.htm](http://www.xinhuanet.com/english/2019-06/29/c_138182571.htm).

<sup>631</sup> OFF. OF THE U.S. TRADE REPRESENTATIVE, 2021 SPECIAL 301 REPORT 42 (2021).

<sup>632</sup> Law Against Unfair Competition of the People’s Republic of China arts. 17–18 (promulgated by the Standing Comm. Nat’l People’s Cong., Sept. 2, 1993, amended Nov. 4, 2017, effective Jan. 1, 2018) (China).

Indeed, the modifications shift the burden of evidence in favour of the rights' holder. Due to a dearth of assistance by the accused, the plaintiff's claim will determine the amount of damages that will be awarded, while a court's decision to destroy the unauthorized versions (and any other stuff used for making them) will reinforce the copyright's enforcement.

For this reason, Article 54 empowers the copyright owner to transfer the burden of evidence from the suspected infringement to the copyright holder where proof production has been difficult. An alleged infringement might be ordered by the court to submit pertinent books of accounts or even other documents within his or her control in order to determine compensation, according to the clause. Authors and agencies tasked with enforcing copyright laws were given further authority by the passage of Article 55<sup>633</sup> both at the national and regional levels.<sup>634</sup> However, some critics have expressed worries about aggressive enforcement, despite the fact that copyright owners and the authorities and commercial groups that support them have welcomed the expansion in enforcement capabilities swiftly,<sup>635</sup> taking into account the fact that copyright is still a personal matter.<sup>636</sup>

#### **6.7.4.5. THE DEFINITION OF TECHNICAL MEASURES IS SET OUT**

Among the new articles in the modified Copyright Law are provisions relating to technical protection measures (TPM), a range of technologies that safeguard copyright and rights associated with copyright.

In the area of technological protection measures and rights management information, *Articles 49 to 51* brought into the Copyright Law<sup>637</sup> the relevant provisions laid down in the regulations for protection of the right of communication through an information

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<sup>633</sup> Xie Huijia & Chen Liuxi, *The Amendment of Copyright Administrative Enforcement in China*, 68 J. COPYRIGHT SOC'Y U.S.A.

<sup>634</sup> *Supra* note 628.

<sup>635</sup> *Supra* note 628.

<sup>636</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

<sup>637</sup> Xie Lin, *Inconsistent Anti-Circumvention Legislation and Its Future in China: Towards a Harmonized and Balanced Approach*, 68 J. Copyright Soc'y U.S.A.

network.<sup>638</sup> Introduced in May 2006, those regulations had been in force for more than a decade. Not only did the Third Amendment extend the anti-circumvention protection regime beyond the right of communication through an information network, Article 50 added new exceptions for research on encryption and software reverse engineering.

Accordingly, the new Copyright Law allows for their implementation while prohibiting their destruction or circumvention, as well as the provision of technological assistance elsewhere for the purpose of doing so, except expressly permitted by regulation or regulatory policy.

According to the revised Copyright Law, TPM may be bypassed in the following cases, provided that the techniques, gadgets, or elements used to bypass technological metrics are not made accessible for use by everyone else, and that the other privileges appreciated by a registered proprietor in compliance with the statute are not violated:

- for educational or scientific purposes, a small number of published books that are not available through usual means can be provided;
- non-profit distribution to people with learning disabilities of previously printed materials that they otherwise would not be able to acquire;
- the fulfilment of legislative obligations;
- computer its application, or internet security monitoring; or
- carrying out investigations into encrypted data and invert designing.

A penalty may also be levied as a result of the infringement of this ban, as stated above. The modified Copyright Law does not entirely repeal the TPM clause. While an earlier edition of the modified Copyright Law said that copyright holders might use TPMs as legal means to safeguard their rights from being infringed upon, this new edition explicitly states that TPMs can be used as such.

By incorporating TPM as one of the procedures that a registered proprietor must adopt to safeguard the copyright, the revision broadens the law's purview, redesigning the

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<sup>638</sup> Regulations for Protection of the Right of Communication Through an Information Network (promulgated by the State Council, May 10, 2006, effective July 1, 2006) (China).



updated Copyright Law to better meet new demands for copyright protection brought on by technological advancement.<sup>639</sup>

#### **6.7.4.6. INVESTIGATIVE POWERS**

The Copyright Law, 2021, was amended to include a novel section that gives copyright regulators extra authority when prosecuting potential encroachments.

Finally, to promote consistency and coherence with the recently adopted Civil Code,<sup>640</sup> which took effect on January 1, 2021, the new amendment replaced the words “citizens” and “other organizations” in multiple articles with “natural persons” and “non-legal-person organization,” respectively.

As a matter of fact, copyright authorities have been granted new powers under the updated CL:

- inquire into the potential criminal activities by questioning the responsible stakeholders;
- execute physical inspections of the properties and personal property of both entities;
- review and create copies of important documents such as agreements, invoicing, accounting records and more; and
- detain or confiscate the suspected unlawful conduct locations and objects.

The CL further states because when copyright officials use these rights, the parties involved must help and collaborate with them.

Including such a clause is critical, and should not be taken lightly. In reality, the ability to take action against probable breaches, whether by retaining any conceivable proof of

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<sup>639</sup> Error! Hyperlink reference not valid., *China’s Copyright Law Amended: Key Changes*, (Feb.28, 2021, 01:25 PM), <https://www.china-briefing.com/news/china-copyright-law-amended-key-changes/>

<sup>640</sup> Civil Code Of The People’s Republic Of China (promulgated by the National People’s Congress, May 28, 2020, effective Jan. 1, 2021) (China).

the illegal conduct, or by gathering pertinent data, is indisputably beneficial to the preservation of copyright.<sup>641</sup>

Copyright owners throughout the world were quick to condemn China when it joined the World Trade Organization at the beginning of the new millennium because of its dearth of copyright security and restricted access to markets to Foreign media items.<sup>642</sup> Although China was formerly seen as a backwater, it has since become the world's "biggest digital games marketplace," the seventh-largest musical business, the fourth-largest online streaming market, and the nation's biggest film market,"<sup>643</sup> Although the implementation of intellectual property rights continues a major concern. Only when COVID-19 epidemic hit Europe and the US, recreational facilities were forced to close while continuing accessible in China, underscoring the significance of China as a marketplace for international movies unseen before.

Nevertheless, the adoption of the Third Amendment indicates that Chinese copyright law has been moving in the same promising direction as patent and trademark laws, even though the pace of reform may have been slower than what rights holders, policymakers, and commentators would like.

## **6.8. INDIA**

### **6.8.1. OVERVIEW OF THE INDIAN APPROACH**

For the past few years, the film industry has been attempting to meet the problems posed by new digital technologies, particularly internet piracy. As a result of a significant drop in revenue and a general economic downturn in the entertainment industry. Generally speaking, the Indian judiciary is employing orders for judicial involvement in the fight against online piracy. These orders serve as a mechanism for compelling Internet service providers (ISPs) or websites to prohibit all content that constitutes piracy, such

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<sup>641</sup> *Supra* note 637.

<sup>642</sup> WANG SHUJEN, FRAMING PIRACY: GLOBALIZATION AND FILM DISTRIBUTION IN GREATER CHINA 61–71 (2003); Mary Lynne Calkins, *Censorship in Chinese Cinema*, 21 HASTINGS COMM. & ENT. L.J. 239 (1999); Carl Erik Heiberg, Note, *American Films in China: An Analysis of China's Intellectual Property Record and Reconsideration of Cultural Trade Exceptions Amidst Rampant Piracy*, 15 MINN. J. INT'L L. 219, 234–38 (2006).

<sup>643</sup> INT'L INTELL. PROP. ALLIANCE, IIPA 2021 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT 12 (2021), (Mar.08, 2021, 02:05 PM), <https://www.iipa.org/files/uploads/2021/01/2021SPEC301REPORT.pdf>.

as hypertext links and uploaded videos. When a film is released, it is entirely up to the discretion of the film's producers as to whether or not to get distribution rights for the film. The unlawful duplication and publishing on the website to make them available to the public for free download is regarded unlawful and would constitute copyright infringement as a result of the copyright protection in effect at the time of the action. Obtaining a movie from a website is not illegal; however, downloading a movie without the permission of the respective copyright owners is ethically wrong and unconstitutional, and is therefore penalised underneath the Copyright Act 2012.

Because of its vast populace and position as the world's second marketplace for Online services and handsets, India is critical to the continuing and prospective expansion of the information generation and distribution industries. Counterfeiting, market entry barriers, censoring of multimedia league subject matter, wide explanations of legislated licences for televising musical compositions and audio recordings, felonious compliance challenges, insufficient period of safeguarding, inordinate regulatory oversight of legal protections transactions, and incredibly broad exclusions as well as unsure exclusions that could Many of these issues can only be addressed by ensuring that India's copyright laws are in line with international best practises and standards. This would make India a more attractive destination for content creators and distributors.<sup>644</sup>

As a result of the Indian Copyright Act, which was passed in 1957, has been brought in accordance with the international standards of organisation and harmony. The Act sets the minimal principles for protecting the rights of writers and rewarding their ingenuity. Artists, authors, actors, architects, musicians, and others have their work protected.

The contemporary technical landscape is the result of technical development. The power of hardware-based data innovation is growing rapidly. It's possible to collect information in a novel way thanks to advancements in system performance, memory size, and disc storing ability. After the passage of the Information Technology Bill in

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<sup>644</sup> India's digital future, Mass of niches, KPMG in India's Media and Entertainment report 2019, (Mar.08, 2021, 04:25 PM), <https://assets.kpmg/content/dam/kpmg/in/pdf/2019/08/india-media-entertainment-report-2019.pdf>

1999, the Information Technology Act 2000 was created as a response to the expanding advances in technology.

Illegal downloading and copying of digital materials, such as software, music, films, audio books, and other goods is referred to as “digital piracy.”<sup>645</sup> Counterfeiting with authors rights and the use of private details is now acknowledged as a worldwide issue. Here are a few examples:<sup>646</sup> The Motion Picture Association of America (MPAA) estimated global digital piracy losses at \$ 18 billion in 2005<sup>647</sup> while the Recording Industry Association of America (RIAA) reported 12 billion of dollars a year loss in the music industry. In addition, studies suggest that piracy results in losses of about \$ 40 million for each major Hollywood film.<sup>648</sup> It goes without saying that Bollywood is also not immune to piracy and lost almost \$ 4 billion in 2007.<sup>649</sup>

India had 734.82 million fiber Web users by the conclusion of October 2020.<sup>650</sup> India is the nation’s second Digital market in terms of total users, behind only China. For example, in India, the recorded music market’s total income climbed by over 70% in 2019 thanks to an increase of 25% in the use of licenced streaming services.<sup>651</sup> It is predicted that by 2023 India will have more than 500 million online video viewers, making it the second largest Video-on-Demand (VOD) market behind China. Video is expected to account for more than 77% of all Internet traffic in India by 2022, according to a recent report.<sup>652</sup>

Despite persisting issues with piracy and flaws in the criminal enforcement system, the Indian government and business worked together in 2020 to make important

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<sup>645</sup> Sulaiman At- Rafee & Kamal Rouibah, *The Fight Against Digital Piracy an Experiment*, Telematics & Information Journal, (2009) (Mar.08, 2021, 07:25 PM), [www.elsevier.com/locale/tele](http://www.elsevier.com/locale/tele).

<sup>646</sup> *Supra* note 642.

<sup>647</sup> MPAA, 2005. *Copyright Industries in the US Economy: The 2004 Report*. Retrieved on (Mar.10, 2021, 08:05 PM), [http://www.mpa.org/piracy\\_Economies.asp](http://www.mpa.org/piracy_Economies.asp)

<sup>648</sup> De Vany & D. Walls, *Estimating the Effects of Movie Piracy On Box-Office Revenue*, Review of Industrial Organization 290–301 (2007).

<sup>649</sup> Joshi, *Virtual Bites: Digital Piracy Robs Bollywood*. (Mar.10, 2021, 09:45 PM), <http://www.businessstandard.com/india/storypage.php?autono=328043>.

<sup>650</sup> Telecommunications Regulatory Authority of India, Press Release 101/2020 (Dec. 23, 2020), (Mar.10, 2021, 11:25 PM), [https://www.trai.gov.in/sites/default/files/PR\\_No.101of2020\\_0.pdf](https://www.trai.gov.in/sites/default/files/PR_No.101of2020_0.pdf).

<sup>651</sup> IFPI, 2020 Global Music Report 96.

<sup>652</sup> *India’s Digital Future*, KPMG, August 2019, (Mar.09, 2021, 12:55 AM), <https://assets.kpmg/content/dam/kpmg/in/pdf/2019/08/india-media-entertainment-report-2019.pdf>.

improvements to court enforcement. Delhi High Court strongly affirmed persistent website filtering as a remedy to curb internet infringement in India towards the end of the year.<sup>653</sup> The court system has vastly enhanced upon this preliminary beneficial precedence in a series of follow-on decisions in 2019 and beyond. “*Dynamic*” instructions that enable for the incorporation of supplemental realms attempting to access the webpage by now obstructed, and thereafter “*doubly dynamic*” instructions that enable for extra realms to be obstructed even though the incident is already being proven in court, are instances of court’s initiatives that adequately confront effectively develop types of illegal downloading. 155 websites and more than 1,300 domains have been blocked in India as a consequence of successful court cases in 2019 and 2020.<sup>654</sup>

### **6.8.1. MECHANISM OF APPLICATION IN INDIA**

It should be noted that the Information Technology Law defines a “computer resource” as “*a computer, a computer system, a computer network, data, computer databases or software*”.<sup>655</sup> In accordance with the description, this concept is wide intended to allow for the most intrusive possible infiltration into any digital communication gadget or channel, notably cellular communications. Many of these acts are directly or indirectly related to piracy, according to the IT Act, which provides both civil responsibility and criminal penalties for a wide range of computer-related crimes. Losses and reimbursement are included under the Information Technology Act’s injunctive relief.

Regulatory and technical measures can be used to protect creative rights in the internet age. Nevertheless, these technical safeguards are vulnerable to being circumvented by way of subversion technologies.<sup>656</sup> That’s why legislative coverage for these procedures is so critical, and that’s why the copyrighted information itself is protected in addition to the technological protections.<sup>657</sup>

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<sup>653</sup> UTV Software Communication Ltd. v. 1337x.TO and ors., 2019.

<sup>654</sup> Warner Bros. Entertainment Inc. v. Tamilrockers, 2019.

<sup>655</sup> Section 2(k), Information Technology Act, 2000.

<sup>656</sup> *The Impact of the Internet on Intellectual Property Law*, World Intellectual Property Organization, Program Activities, (Mar.12, 2021, 12:55 PM), [http://www.wipo.int/copyright/en/ecommerce/ip\\_survey/chap3.html](http://www.wipo.int/copyright/en/ecommerce/ip_survey/chap3.html).

<sup>657</sup> Severine Dusollier, *Some Reflections on Copyright Management Information And Moral Rights*, (Mar.12, 2021, 02:15 PM), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/cjla25&div=19&id=&page=>

Digital Agreements, such as the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty, provide an international legal framework for intellectual property protection. According to the accords, “*the remedy to the device’s issues lies in the device itself.*”<sup>658</sup> Electronic rights management information, such as encryption of copyrighted data, and digital IDs, which treaties commonly refer to as “Digital Rights Management,” are all laid down in this agreement (DRM).<sup>659</sup> Contracting parties are required to furnish sufficient legitimate safeguards and efficient legal recourse against the subversion of efficient technological metrics, such as digital rights management mechanisms, that might very well be utilised by writers for the enjoyment of the privilege, or to restrict the actions in relation to showings or audiovisual works, as stipulated in the treaty obligations. It has been made available in line with Part 11 of the WCT and Part 18 of the World Intellectual Property Organization’s Performances and Phonograms Treaty.

Multiple governments have also said that these measures would apply not just to circumvention, but also to the planning for and execution of circumvention actions. The signatories to the WCT were also urged to develop, in addition to their respective Digital Rights Management legislation, a regulatory regime to monitor and prevent preliminary actions that might lead to circumvention of intellectual property rights.<sup>660</sup> Because of this, the Government of India amended the Indian Copyright Act, adding sections 65A and 65B to protect intellectual property rights.

### **6.8.2. LEGISLATIVE ACTIONS IN INDIA**

The Copyright Act was enacted in 1957. The Act is compliant with most international copyright conventions, including the Berne Convention, the Universal Copyright Convention and the TRIPS Agreement. The most recent amendments which were made in the year 2012 as a means of bringing India into compliance with WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

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<sup>658</sup> *Ibid.*

<sup>659</sup> *Ibid.*

<sup>660</sup> WIPO Copyright Treaty (WCT), (Mar.12, 2021, 04:55 PM), <https://www.wipo.int/treaties/en/ip/wct/>.

Laws also provide for provisions with regard to enforcement of intellectual property protection mechanisms. When it comes to unauthorized versions in India, the Indian Copyright Act calls for the tightening of immigration controls by the immigration service to prevent their entry and disposition, as well as the use of civil actions against those who do so.<sup>661</sup>

Violation of intellectual property rights is punishable by a least of six months in prison under the Copyright Act. It also stipulates for penalties of up to Rs. 2 lakh and imprisonment for approximately to three years, or a combination of the two. Furthermore, underneath this clause, every individual whoever engages in the unlawful duplication, selling, download, or installation of software is subject to criminal prosecution.<sup>662</sup> Additionally, the Copyright Act gives any police officer with the level of Sub Inspector or above the authority to confiscate without a court order any copies that are illegal as well as the materials that are being used to make them.<sup>663</sup>

A falsified electronic record is the essential component of a fake product, which is offered to the general public under the guise of authenticity. As a result, the Indian Penal Code also has provisions for punishing fraudulent practices.<sup>664</sup>

There are several places on the web that offer free or subsidized software downloads, as well as applications that can be exchanged for the software. Then there are a number of internet- based bidding websites selling pirated or violating copyrighted software. According to Indian law, the proprietors of these websites are therefore liable for copyright breaches including facilitating illegal downloads of copyrighted content.<sup>665</sup> Sections 65 A and 65B, as already mentioned above, also go in this direction<sup>666</sup> and are discussed in detail in the previous chapter.

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<sup>661</sup> Section 53, Indian Copyright Act, (1957).

<sup>662</sup> Section 63, *Ibid.*

<sup>663</sup> Section 64, Indian Copyright Act, (1957).

<sup>664</sup> Section 468 and 471, Indian Penal Code, 1860 (India).

<sup>665</sup> Section 120B, Indian Penal Code read with Section 63 of The Copyright Act, 1957(India).

<sup>666</sup> Lawrence Liang and Ravi Sundaram, *Media Piracy In Emerging Economies, Social Science Research Council*, (Mar.15, 2021, 01:15 PM), <http://piracy.americanassembly.org/wpcontent/uploads/2011/06/MPEE- PDF-Ch8-India.pdf>.

The fair use provision of the law also applied to the e-world. Information that is temporarily and unnecessarily stored, as well as the unauthorized reproduction and distribution thereof, constitute an offence within the meaning of Section 51 of the Act<sup>667</sup> in the nature of civil and criminal liability. However, the fair use provisions only confer immunity on these perpetrators for reasons of education and in addition to research. This exemption does not apply to online piracy. Using copyrighted material without permission on the Web leads in a service supplier's operation being suspended.<sup>668</sup> If you read the fair use exception for transitory or unintentional storage of works along with retention privileges and the specification of an offence, it demonstrates ISP's culpability.<sup>669</sup>

In the fight against copyright theft, market value differentiation is a critical tool. For a long time, it was thought that all genuine digitized items were distributed in a single form.<sup>670</sup> To maximise their profit margins, digital service providers often offer a variety of variants of the same item in addition to cost discriminate.<sup>671</sup> As a consequence, the scholar believes that examining the relationship involving finished piracy and corporate variant control systems is critical if we are to achieve meaningful outcomes.

### **6.8.3. POINTS OF FAILURE**

Online piracy is not just a legal problem, it is a multidimensional issue involving several issues. For example, sometime back the movie *'The Interview'* was published on online video platforms by Sony Pictures. But this publication was limited only to the United States. Anyone who would like to see the movie outside the US, in fact, could not see it legally. So, if they wanted to see the movie, they had to pirate it, even if they were willing to pay for it. Even when Sony launched the film on online video platforms, the disconnect between content supply and demand is an important part of piracy.

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<sup>667</sup> Section 51, Indian Copyright Act, 1957

<sup>668</sup> Peter Eckersley, *Virtual Markets for Virtual Goods: An Alternative Cooperation of Digital Copyright*, 13-14, Melbourne, Australia: Intellectual Property Research Institute of Australia, The University of Melbourne, 2003, (Mar.15, 2021, 04:05 PM), <http://www.cs.mu.oz.au/~pde/writing/virtualmarkets.pdf>.

<sup>669</sup> Section 52 (c), Indian Copyright Act,1957.

<sup>670</sup> Martin Pierz, Joel Wandfogel, *The Oxford Handbook of The Digital Economy*, 137 (2012).

<sup>671</sup> *Supra* note 667.



Also, the facelessness attached to the crime creates several other problems with regard to enforcement. Moreover, in our country enforcement mechanisms are weak and needs to be strengthened. Law apart from being perfect and ideal should result in justice. The probability of a person being punished in cases of online piracy of music and films is quite low. This is detrimental for the observance of rule of law in the country.

Also, when we talk about the issue of goods in digital platform, it certainly needs a different consideration. The management of digital rights should be tackled in a different manner as the nature of the physical and digital goods is different. Ideally, when we sell physical goods to consumers, the title of the products sold is entirely transferred to them. The seller has no further rights to the object, with some exceptions falling under the principle of 'first sale'. But this is changing in digital goods and DRM. With digital products, even if you buy the goods the original owner already has the goods. Therefore, you are not really the owner of the product in question. Hence in such a situation to manage the rights of the right holders in a digital era is a challenge in itself.

Countries are experimenting with different ways in approaching the problem It should be noted that last year, the United Kingdom took a slightly different approach to piracy as part of its *Voluntary Copyright Alert Program (VCAP)*. Although it is not exactly a 'decriminalization' of piracy, the system indicates a change of position regarding the prosecution of consumers for pirated content, at least for the ISPs participating in the voluntary program.

Because to dynamic streaming platforms like Spotify, more people are listening to audio and more money is being made by artists and record labels in the music business as a whole. As long as the user may select their own music, streaming services are interactive. However, while the music industry's expansion has been helpful in many ways, it has had a devastating effect on album and song sales, both in the traditional and digital realms. With the move from music owning to streaming content, money is moving away from musicians and composers and into the wallets of huge streaming businesses. These boosted earnings have not been dispersed among all worthy parties. Copyright holders are increasingly depending on streaming payments since they are

earning far fewer royalties from music sales.<sup>672</sup> While the movie business as a whole is expanding at a breakneck speed, legislation is not keeping pace. Interactive streaming services, such as on-demand video, require specific legislation in India, as do on-demand video and the associated licencing.

#### **6.8.4. ISSUES WITH MARKET ACCESS, IN INDIA**

It is impossible to overstate the detrimental economic consequences of market accessibility restrictions in India. A few of the more aggravating market entry impediments that IIPA members faced in 2020 include the following items:

***Caps on FDI:*** Though FDI in Indian televised news networks has been increased from 26% to 49% in consecutive years, FDI in news networks over 49% needs government permission. Digital news outlets are still subject to a 26 percent cap on foreign direct investment (FDI). Non-news channels, on the other hand, can accept 100 percent FDI with government clearance.

***Local Body Amusement Tax:*** During 2017, India implemented a state-wide unified goods and services tax (GST). Taxes on cinema tickets range from 12 to 18 percent, depending on the ticket cost. In contrast, Local Body Entertainment Tax (LBET), collected by state legislatures (Madhya Pradesh, Tamil Nadu, and Kerala) has been kept out from the GST, which has prompted state legislatures to seek to tax entertaining items in addition to the GST. “One Nation, One Tax” and the GST model’s goal of eliminating several high tax rates are being undermined by local body levies, which dramatically raise the tax burden on exhibitors. IIPA calls on the government of India to include all municipal taxes into the GST.

***Excise:*** There are high tariffs imposed on recreation software and hardware items such as computer game activation cards and PC video game products. With the help of IIPA,

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<sup>672</sup> Arthur Chang, *Outdated and Ineffective: The Problems with Copyright Law*, Claremont Journal Of Law, (Mar.17, 2021, 03:15 PM), <https://5clpp.com/2018/04/11/outdated-and-ineffective-the-problems-with-copyright-law/>.

India may lower tariffs on commodities that promote digital trade in India by joining the extended Information Technology Agreement.

***Proposal for a law requiring the registration of newspapers and periodicals:*** This law, which was first introduced in November of this year, might have negative consequences for American publishers of journals and books who are already present in India or who wish to penetrate the Indian market. An INR 50,000 (approximately \$700) fine will be imposed on print press proprietors, as well as monthly publishers, if they fail to register and get a Certificate of Recognition from the Print Registrar General. If the law is passed, it may possibly apply to any print or digital publication, regardless of whether it was produced in India or not. This is unnecessary. Undefined criteria litter the law, making it a difficult read for producers of newspapers and magazines. The law, for example, does not clearly explain the criteria for determining whether an application press or publication is suitable for registration, or the reasons that would make an applicant media or publication acceptable.

***Involuntary disclosure of non-personal information:*** When the Ministry of Electronics and IT's "Executive Committee on Non-Personal Data" presented a report in July 2020, it proposed that "non-personal data" be shared with the Indian government and business competitors in the country. Unless copyrighted products are specifically exempted, this plan raises fundamental questions about the capacity of content owners in India to maintain high levels of data security. It also drastically hampers competitiveness in the Indian market.<sup>673</sup>

#### **6.8.5. REGULATORY INCONSISTENCIES IN INDIA**

As a result of the lengthy congestion of administrative and penal cases, India has struggled with judicial enforcement. New petitions for violations or criminal procedures may need years to settle as a result of these backlogs. The state of the

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<sup>673</sup> Jake Ewerdt, *Director for Innovation and Intellectual Property Office of the United States Trade Representative Special 301 Submission*, (Mar.17, 2021, 05:15 PM), [https://spicyip.com/wpcontent/uploads/2020/03/BSA\\_2020Special301\\_Review\\_Comment.pdf](https://spicyip.com/wpcontent/uploads/2020/03/BSA_2020Special301_Review_Comment.pdf).

institution has been brought to its knees by the judicial mindset and the prevalent interpretation of copyright law.

In addition, as noted in the Indian Constitution's State List, legal compliance in India is organised at the state level rather than by the national government. When it comes to receptiveness to Western-style legal reasoning and practise, the true difficulty is with how police, the law, and the courts are organised in India's legal system, despite its strength.<sup>674</sup> Since different actors in this segment have widely different grades of impact over the authorities, they rely on the state and immediately begin enforcement efforts in complicated local political contexts. They play an essential part in mobilising police and applying pressure to authorities by pushing cases through overburdened Indian courts.<sup>675</sup>

Institutions throughout the globe have been debating India's intricate penal system processes. Fresh 'accelerated' creative domain tribunals are recommended by the Global Intellectual Property Alliance (IIPA) studies on India's counterfeiting problem.<sup>676</sup> India's extensively dispersed police forces need stronger national coordination in the present regulatory framework, as well as tougher border monitoring procedures.<sup>677</sup> Because of this, there is a responsibility to establish harsher enforcement measures, such as those included in the current version of the copyright legislation, as well as a requirement for a nationwide anti-piracy plan to be developed. Digital piracy, however, would continue to be unabated until such safeguards are implemented, as was also underlined in the IIPA findings on India. It was that "*what India desperately needs, and particularly the copyright industries in India, is a national anti-piracy strategy at the central government level, with the potential to create links with state governments . . . In a meaningful and enforceable manner.*"<sup>678</sup>

India is a signatory to the Berne Convention, the Geneva Phonograms Convention, the WTO TRIPS Agreement, and the WIPO Internet Treaties, among other international

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<sup>674</sup> The Indian Constitution.

<sup>675</sup> *Supra* note 671.

<sup>676</sup> *Ibid.*

<sup>677</sup> *Ibid.*

<sup>678</sup> IIPA (International Intellectual Property Alliance), 2009, India: *IIPA Special 301 Report on Copyright Protection and Enforcement*, Washington, DC: IIPA (2009).

agreements. While the Indian government claims that the legislation is now compliant, IIPA members consider that the existing legislation falls short of complete conformity in several areas. Changes to the Copyright Act of 1957, last updated in 2012 (implemented in the Copyright Rules, 2013, which went into effect on March 14, 2013), are required in order to properly execute the WIPO Internet Treaties and to accord with global standards, including:

***Section 52(1)(c)***

- It should be made clear that service providers are liable to responsibility in the case of copyright infringement for failing to remove infringing content from their services or networks as soon as they become aware of their violation.
- Demand that Internet service providers (ISPs) use preventative and restraint measures that have been shown to be effective, including blocking access to content that has been recognised by the rights holder as causing infringement;
- Make it clear that ISPs are included in the definition of “person” in this section.
- Rights holders should not have to get an injunction court order within 21 days of reporting their notice of infringement to prohibit illegal content from being reinstalled; and
- Make Rule 75 sub-rule (3) (Chapter XIV) more effective by providing intermediaries 36 hours to remove information in accordance with suggestions so that illicit content may be taken down more quickly online.

**6.8.6. INTERMEDIARY LIABILITY AND DIGITAL MEDIA ETHICS CODE RULES FOR INFORMATION TECHNOLOGY**

For intermediate platforms, the new 2021 Information Technology (IT) Rules, published on February 25, 2021, by the Ministry of Electronics and Information Technology (MeITY), expand the scope of the new legal requirements. Although the 2021 IT Rules raise intermediary platform responsibility and requirements, the notice and takedown regime remains inefficient.

- A copyright infringement takedown procedure is included under Rule 3(1) of the IT Rules for 2021. However, it instructs the Internet service provider (ISP)

to remove copyrighted content only if it is contacted by a government agency. In addition, the IT Rules of 2021 set a takedown deadline of 36 hours, which allows unlawful information to remain online for much too long.

- A grievance resolution system is included in Rule 3(2) of the 2021 IT Rules, which requires intermediaries to delete or block access to content they host, store, publish, or transmit within 24 hours of receipt a grievance from an individual or any other person. In addition, under the Rule, only material or content that uncovers the confidential area about such an entity, demonstrates such an oneself in full or partial nudity, shows or portrays such an individual in any sexual gesture or behaviour, or is in the disposition of impersonation in a digital form, such as artificially transformed images of such an individual, can be included. Copyright violation, according to the recorded music business in India, must be included in the list of content that must be removed within 24 hours of obtaining a report from an individual and any person.

Digital services in India, such as User Upload Services, have several options to avoid responsibility for content that violates third-party copyright rights under existing regulations in the country. However, despite the music industry's best efforts, government-sponsored changes to the applicable statutes have been woefully insufficient. Platforms now have more responsibilities under the newly established 2021 IT Standards, however these rules are still unclear. The 2021 IT Rules, on the other hand, do not go further enough to fix the system's shortcomings. Legislative action may or may not be taken as a result of the National E-Commerce Policy, which was released in 2019.

Indian Copyright Act limits ISPs' responsibility for copyright infringements through ***ISP Safe Harbor Provisions***. Because these provisions are not restricted to truly neutral as well as passive ISPs that have no knowledge or control of the information; (ii) they do not inhibit the abuse of these safe harbours by services engineered to enable or facilitate copyright infringement; and (iii) the takedown framework under Section.52(1)(c) primarily requires rights holders to take down content, these regulations are extremely problematic from the point of view of robust protection of

copyright online and its enforcement mechanisms, because: For these purposes, the introduction of a judicial order required breaks international norms.

Any information, data, or communication links provided or hosted by an intermediary are not subject to responsibility under Section 79 of the IT Act. Legal ambiguity and gaps in copyright enforcement are the outcome of the Copyright Act's and the IT Act's contradictory clauses. To avoid the re-emergence of the same illegal content, it is imperative that the *Notice and takedown (NTD)* is contemplated under Section 51(iii)(c). India's Notice and Takedown, on the other hand, is a far cry from the worldwide model.

As a starting point, it might have a chilling impact on the freedom of expression and speech. Whenever an Internet Service Provider (ISP) gets a warning, it is more likely to delete or prohibit access to warned content without verifying its truth. Non-compliance with the notification might be disastrous to an ISP's future. The ISP, on the other hand, has nothing to lose by limiting access to the warned content.

An ISP is envisioned as a court in the NTD scheme, with authority to decide whether a copyright claim is valid or not. Even more alarming is the fact that copyright infringement allegations are mired in legal jargon, and ISPs are not really experts in this area. As a result, the NTD lays a heavy burden on the shoulders of Internet service providers (ISPs) & takedown system be strengthened.

It's a scary possibility since ISPs have the capacity to remove content based on a copyright complaint, no matter how ill-founded it is, under NTD regimes. In the Indian context, the absence of counter notice mechanisms in the Indian Copyright Act further complicates the problem. ISPs are more likely to get bogus notifications in this situation, as the likelihood of such notices is greatly increased. A citizen's entitlement to right of free speech and expression might be revoked on the most tenuous of pretexts.

Indian Constitution guarantees the right to free speech and expression in Article 19(1)(a). This, it is argued by the authors, would violate this basic right.

As a result of Article 19(1), giving ISPs the authority to deprive citizens without sufficient protections, ISPs are violating the right to free speech and expression.

In the event that an accusation of copyright infringement turns out to be unfounded, Section 60 of the Copyright Act provides a general remedy for everyone who has been wronged. The Copyright Act should include a clause that penalises ISPs for sending notifications based on bogus and baseless assertions of copyright.

There is no time limit in the Copyright Act or the guidelines made thereunder for an ISP to delete content in which a complaint has been received.

There are strict time constraints for Internet service providers (ISPs) in the Information Technology (Intermediaries guidelines) Rules, 2011. If the IT Act's Section 81 is applied to the Copyright Act, it is unlikely that the IT Act's Rules would be relevant.

Section 51(ii)(c) with its proviso is another problem that is not clear. Section 51(iii)(c) states that if the person accountable for storing content does not get a court order after 21 days of receiving a written complaint, he may reinstate accessibility to the notified materials. There is no requirement placed on the ISP to reinstate access to the material for which a complaint has been received by the inclusion of the term "may" in this section.

***In other words, may the ISP claim that the complainant's ability to assert that the ISP had real knowledge of the violation was forfeited since the ISP failed to provide a Court ruling within the required term of 21 days?***

Internet music streaming and download services are not covered by the Indian Copyright Law (Section 31D), the Bombay High Court ruled in April 2019 (Tips Industries v. Wynk Ltd. & Anr). When a 2016 Department of Industry and Internal Trade interpretation was rejected by the court as being extra vires, the court rightly determined that only conventional tv and radio broadcasts was intended by the Act, not Internet transmissions. In spite of this, the Indian government has refused to change its understanding of the legislation, which is damaging the music industry. According to a number of recent court rulings, internet enforcement can be a success. Even in



circumstances where urls are exploited to access pirated sites, the Delhi High Court has allowed a persistent site restriction to curb an obviously violating site in India. In July 2019, the Delhi High Court also authorised dynamic domain blockage of some other intruding webpage (Warner Bros. Entertainment Inc. v. [Https: Hindilinks4u.To](https://Hindilinks4u.To)), as well as the motion picture industry observes that in approx, the Delhi High Court has decided to order over 1,000 domains to be blocked, reducing piracy visits from India with some of the most notorious websites in the world.

It's possible that the Cinematograph Act will be amended in 2020, and if so, a huge problem in India will be addressed in an appropriate manner. This would have been a beneficial development in 2020. While a movie is being shown in a theatre, it would be illegal to have an audiovisual recording device in your possession if you want to transmit or create a duplicate of it (in whole or in part, and whether the audio or video elements are used).

## **CONCLUSION**

In this present chapter the researcher has made a comparative study on the laws regulating online piracy of movies. The researcher has identified U.S.A., U.K., and China with the Indian laws for the same. However, interestingly, the study revealed that, The Online Copyright Infringement Liability Limitation Act is the basis for the DMCA 1998's notification and takedown procedures (OCILLA). By adopting a policy that allows it to suspend a user's network connection if they are found to be a serial infringer and notifying their subscribers, suppliers can escape accountability for intruding action on one's network or allowing access to infringing content on third-party websites. If providers do this, they can help copyright holders avoid legal liability. The DMCA permits counter notifications to be made in order to lessen the impact of misleading notices being sent out by third parties.

There is a system in place for content owners to seek down allegedly illegal P2P content, collect proof in the form of an IP address, and submit this information to their ISP via the Copyright Alert System (CAS). After receiving a notification letter from the Internet service provider (ISP), this user is sent instructions on copyright and legal

sources. The power of the material increases with every notice issued that a subscriber gets. A customer's internet connection can be temporarily suspended if an ISP receives a significant number of letters. Data on how their clients use the Internet is requested by Internet service providers (ISPs).

It is possible to take legal action against the creators of pirated material thanks to Copyright, Design & Patent Act, (CDPA). To intentionally violate a third party's copyright by making a work available to the general public is a felony act that carries criminal penalties, regardless of whether it is done for profit or not, and regardless of whether the perpetrator believes either has reasonable grounds for believing that doing so infringes that third party's copyright. A cloud vps or data transfer service provider can't be held responsible for the violation of the author's rights if he or she removes or blocks access to a piece of counterfeit material as soon as he or she is aware that it is being used, provided that he or she does so within a reasonable time after becoming aware that the material is being used. A copyright infringement lawsuit might be brought against internet service providers if they do not comply with demands from rights holders to delete or prevent access to infringing content.

Copyright owners throughout the world were quick to condemn China when it joined the World Trade Organization at the beginning of the new millennium because of its dearth of copyright security and restricted access to markets to foreign media items. Although China was formerly seen as a backwater, it has since become the world's "biggest digital games marketplace," the seventh-largest musical business, the fourth-largest online streaming market, and the nation's biggest film market," Although the implementation of intellectual property rights continues a major concern. Only when COVID-19 epidemic hit Europe and the US, recreational facilities were forced to close while continuing accessible in China, underscoring the significance of China as a marketplace for international movies unseen before.

Nevertheless, the adoption of the Third Amendment indicates that Chinese copyright law has been moving in the same promising direction as patent and trademark laws, even though the pace of reform may have been slower than what rights holders, policymakers, and commentators would like.

A quick response by India's highest courts to copyright-related issues, as illustrated by the aforementioned instances, speaks volumes about the legal system's responsiveness to concerns about infringements on intellectual property rights. However, it must be determined if these tactics have reached a point where the judiciary is required to impose greater constraints on them. There has been an increase in the amount of John Doe judgments & ex parte injunctions lack of sufficient awareness of the effects they have on entirely legal actions.

Internet providers and other online services are also protected under the Indian Information Technology Act, which grants immunity in circumstances where they can show that they have implemented reasonable due diligence procedures to avoid infringements. Even though these rules are not adequately defined, courts may give this exemption. There are various parts in the law that must await judicial interpretation because there are conflicting viewpoints and precedents must be established before they can be applied.

Film piracy is the focus of the Cinematograph (Amendment) Bill, 2021. Employing an electronic recording device to intentionally produce or transmit, or try to make or transmit, or aid in the creation or transmission of, a copy of a film without the author's express permission is prohibited by the new section 6AA introduced by the Bill. A new sub-section 1A is proposed in Section 7 to outline the penalty for violating this component, as well. There is a punishment with not just under three lakh rupees and imprisonment for a period of 3 months to three years, as well as a penalty of up to five percent of the assessed gross cost of production or both. The proposed section 6AA would not apply to activities listed within Provision 52 of the Copyright Law, 1957, as a result of the caveat included in the punishment clause.

## **CHAPTER 7**

### **PIRACY THROUGH ONLINE STREAMING: INDIAN OUTLOOK**

#### **7.1. INTRODUCTION**

Copyright application of the law is a multi-step procedure that is intertwined in many ways. It is only through first-hand experience with the relevant statutes that we can truly grasp the complexities involved. As a result, researcher has chosen participants randomly through a questionnaire for the empirical study from a wide range of background involved in copyright enforcement.

There are two advantages to doing this exercise. This gives us an idea of whether or not copyright theories are supported by empirical evidence. This method gives a deeper comprehension of something like the native considerations which impacts regulation in an exceptional setting such as India, within where the copyright compliance is still in its infancy as well as the aspects relevant to India can indeed be identified.

As a means to better understand the implementation of copyright for the safeguard of the amusement business sector, various respondent's views were sought through the method such as questionnaire, which was designed to gather information from a variety of clusters. The actors have indeed been chosen in that kind of a manner also that breadth and intensity of the interpretation are not subverted, however the wide range of diverse disciplines is managed to maintain. People who are tech - savvy and use mobile phones, notebooks, ipads, or personal computers were taken into consideration when making a decision on the survey questionnaire. A total of 200 plus people were sought to complete this survey by the study's investigators. The researcher used this evidence-

based approach to examine the issue of internet-based copyright infringement from a variety of angles.

The whole section summarises a few of the key points raised by survey participants in related to internet piracy's reasons, cognitive influences, & regulation alternatives. As a result, it offers a wide range of viewpoints & perspectives from the participants, but also new ideas for dealing with internet illegal downloading.

Observations based on the researcher's survey show that the use of smartphones in countries like India is at an all-time high and continues to rise. It also serves as a reminder that music and movies are important forms of entertainment in India. A surprising majority of those polled said they will indeed not choose to download if approved or legit editions were readily accessible for a small fee. Even more importantly, if they are informed that downloading content online is illegal, they are less likely to do so. Indian copyright piracy is exacerbated by the lack of consciousness of intellectual property laws, according to the findings. The fact that the overwhelming majority of respondents agreed on the need for robust enforcement mechanisms is another noteworthy finding. Respondents' views on the morality of copyright infringement also have a significant impact on their actions. It is clear, however, that anti-camcording legislation should be in place to help reduce the amount of online

piracy. Online piracy is a crime that has no deterrent because people are not afraid of getting caught or punished for it.

## 7.2. ANALYSIS OF THE DATA COLLECTED EMPIRICALLY THROUGH ONLINE- QUESTIONNAIRE

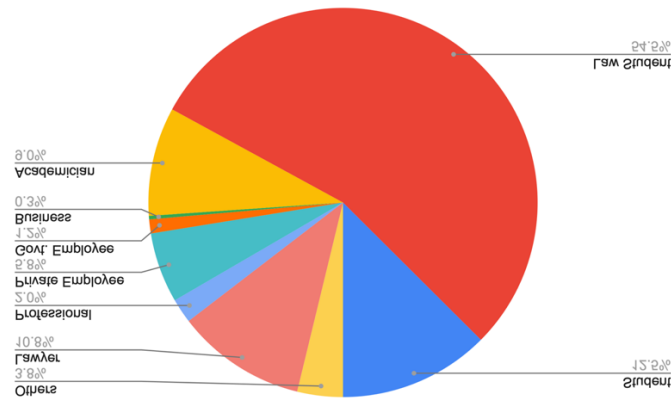


Figure 1: Pie-chart representing Status of the respondents.

Many times, the profession of an individual has been found to be a significant factor in their piracy behaviour. People belonging to the category of student, more specifically the law students have been identified more likely to engage in piracy-related activities, according to data collection. Piracy has been found to be more common among those who are more technologically savvy.

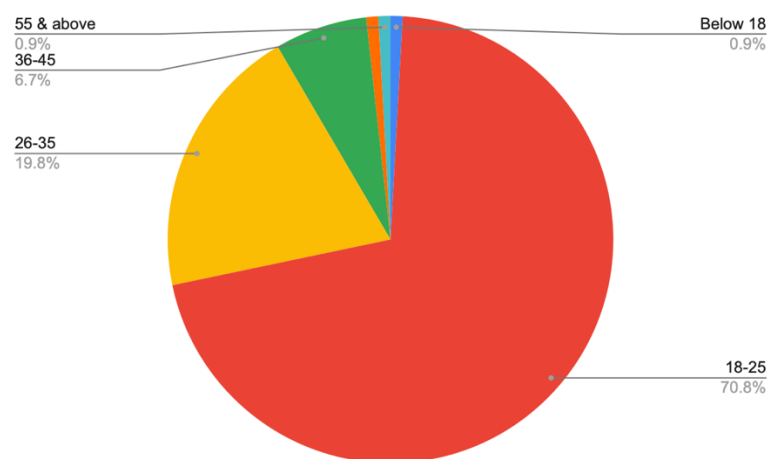


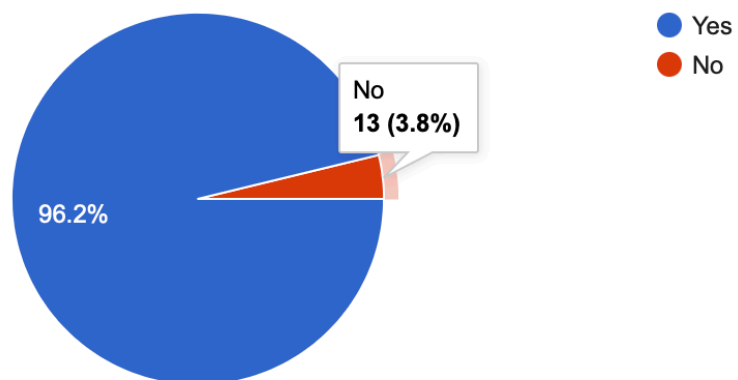
Figure 2: Pie-chart representing age group of the respondents.

In many cases, it has been found that piracy attitude is influenced by the age group of the individual citizens involved. Young adults (18-25 followed by 26-35 years old) have been found to be the most likely to engage in piracy-related activities, according to a number of research studies. But there has been a link made in some studies between the piracy activities of tech-savvy individuals. People who are technologically savvy are extra inclined to interact in illegal downloading.

In this survey, a question was asked about the respondent's age ranges. According to the survey, 70.8% of respondents were between the ages of 18 to 25 years, while 19.8% of respondents were between the ages of 26 and 35, 6.7% of respondents were between the ages of 36 and 45 and 0.9% of respondents were between the ages of 55 and above along with the age group of below 18 years.

### Do you watch movies?

343 responses



**Figure 3: Pie-chart representing Frequency of watching movies by Respondents.**

The purpose of this question was to learn whether or not the survey participants see movies. We can deduct from the pie-chart that 96.2% of those polled said they watch

movies in their spare time. In addition, only 3.8% of those polled in negation and said they do not watch movies.

### 1. Do you watch movies?

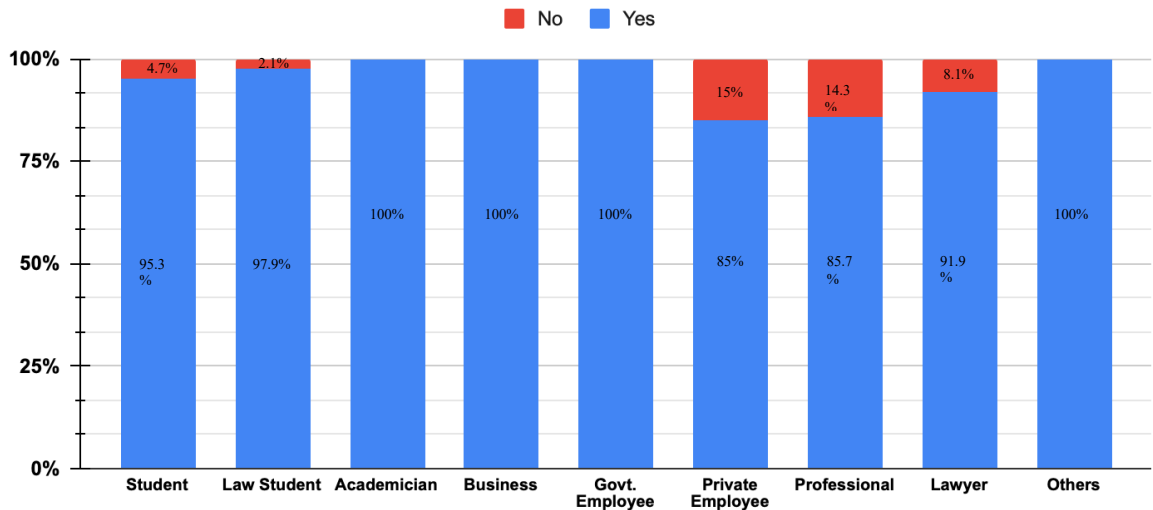


Figure: 3

In a nation such as India, films are clearly a significant supply of amusement. According to the researcher’s findings, there are three distinct social classes in India: extremely low middle tier, upper middle category, and those who are considered to be affluent. People in poor countries have restricted expendable cash, so the portion they can splurge on amusement is also extremely low or constrained, giving them an incentive to access and view substance instead of paying money to televise it.

Are you aware of the term “Online Piracy of Movies”?

343 responses

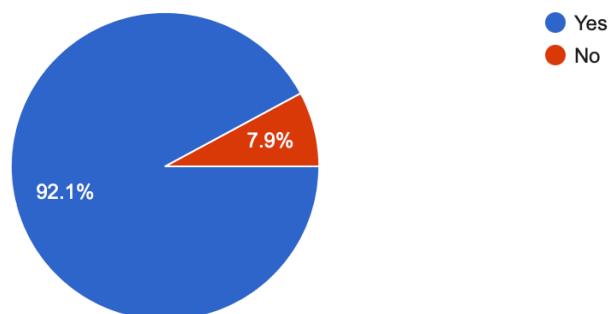


Figure 4: Pie-chart representing awareness of the respondents with the meaning of the term Online Piracy.



Individuals these days do not regard internet piracy to be a serious problem. Instead, they see it more just a minor inconvenience. People do not give one second consideration towards such fact because their illegal operations might potentially harm someone else. The ability to effect improvement within such area is extremely limited except & till the importance of such problem gets recognised. Prior understanding regarding fundamental importance of intellectual property laws has been still developing, and if human beings wish to successfully battle this growing problem of internet piracy, it really is imperative that this consciousness be raised towards a more elevated level.

## 2. Are you aware of the term “Online Piracy of Movies”?

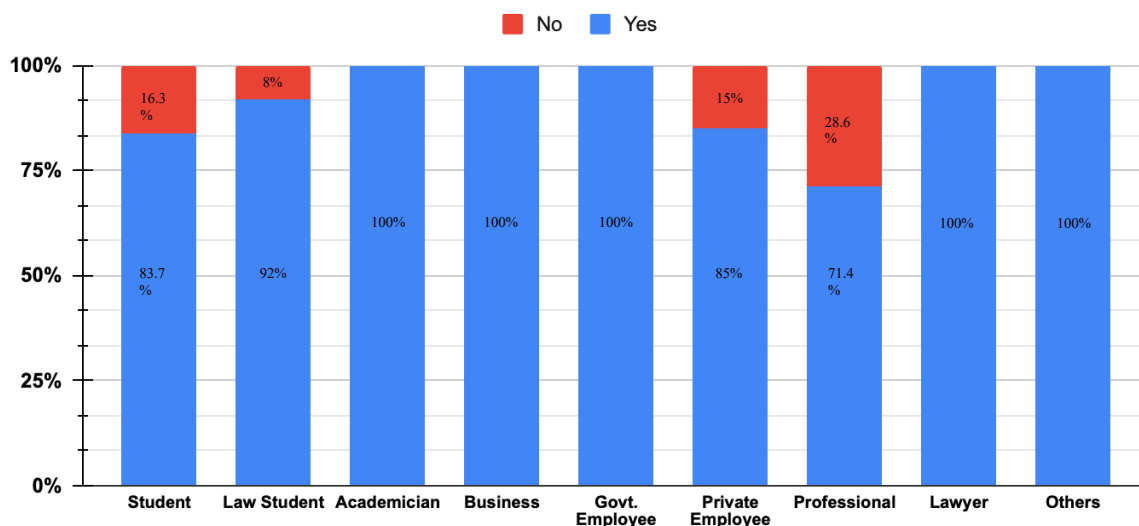


Figure: 4

Researcher’s goal was to assess the awareness of people about their understanding of the term internet piracy by asking this question. Approximately 92.1% of those polled, thinks online piracy is a crucial subject, while 83.7% are students, or 92% law student, 100% academician, 100% business man, 100% Govt. Employee, 85% Private Employee, 71.4% Professional, 100% lawyer & 100% others thought it was absolutely vital. Furthermore, 7.9% of those polled said they simply did not think online piracy was indeed a big deal nor they are aware of this perspective.

Through what medium, movies are being mostly watched by you?

343 responses



Figure 5: Pie-chart representing the mediums mostly used to watch movies by the respondents.

3. Through what medium, movies are being mostly watched by you?

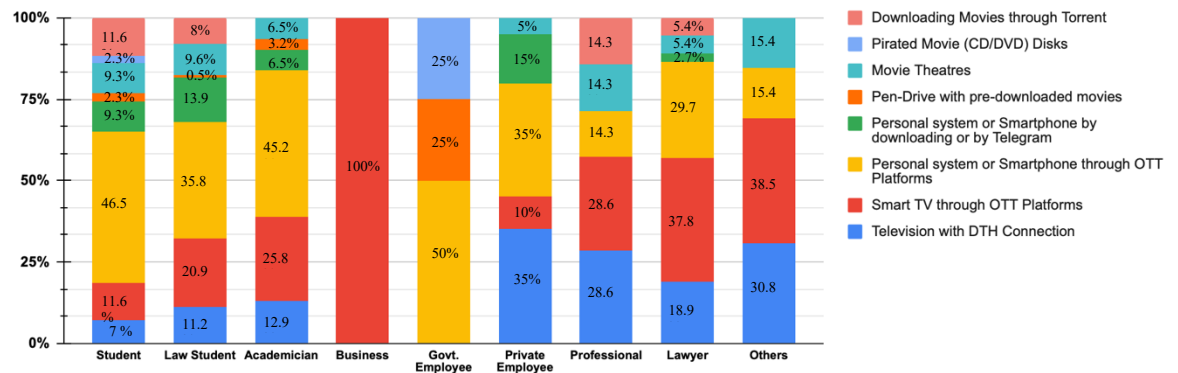


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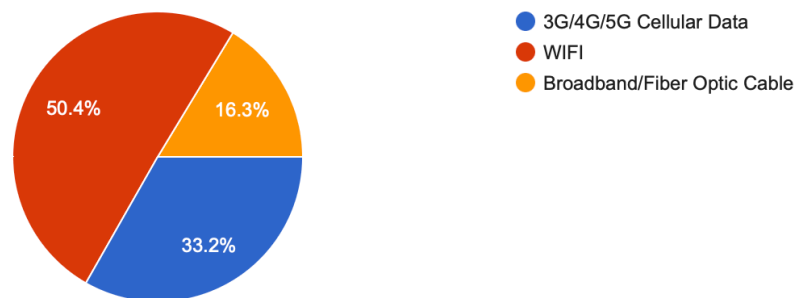
Obviously, since we all know, electronic devices have transformed the contemporary society & rendered lifestyle simpler as well as greater comfortable for humans. To conduct anything from workstation job to supermarket purchasing to credit card disbursements and cinematography from lengthy commute and leisure activities, we rely upon current technology such laptops, ipads, mobile handsets, workstations, and so forth.

In order to better comprehend how individuals, consume films, the researcher posed such query. About 36% overall of those surveyed, answered that they prefer Personal System or Smart phone through OTT Platforms for watching movies and further from figure 5 it reflects 46.5% student, 35.8% law student, 45.2% academician, 50% Govt. employee, 35% Private employee, 14.3% other professional, 29.7% lawyer & 15.4%

others category has given the same view. We can also deduce from the figure above that 22.2% overall of respondents watch movies on their smart tv through OTT Platform, amongst which figure 5 reflects 11.6% student, 20.9% law student, 25.8% academician, 10% Private employee, 28.6% other professional, 37.8% lawyer, 38.5% others. But in spite of these different types of subscription-based platforms which now a days provide easy and faster medium of enjoying new release movies it has been observed that still around 10.5% overall of the respondents are still involved in the practice of using their smart phone or personal system for downloading movies by Telegram. Apart from this 6.7% overall respondents take the recourse of Torrent for downloading movies, 1.2% overall depend on pen-drive for downloaded movies and 0.6% overall on pirated movies CD/DVD disks. However, only 8.7% overall of the respondents go to the movie theatres which is very less in proportion and might be one of the reasons for the surge in COVID-19 and closure of multiplexes and movie theatres.

Data or Network Services mostly used by you for watching movies

343 responses



**Figure 6: Pie-chart representing Data/Network services used by the Respondents for Online entertainment.**

Researcher’s goal throughout asking inquiry was to learn more about participants’ existing broadband networks. The study found that the majority of participants have been using WIFI services which is 50.4% followed by 3G/4G/5G Cellular Data, 33.2% and broadband/fibre Optic Cable, 16.3%.

#### 4. Data or Network Services mostly used by you for watching movies

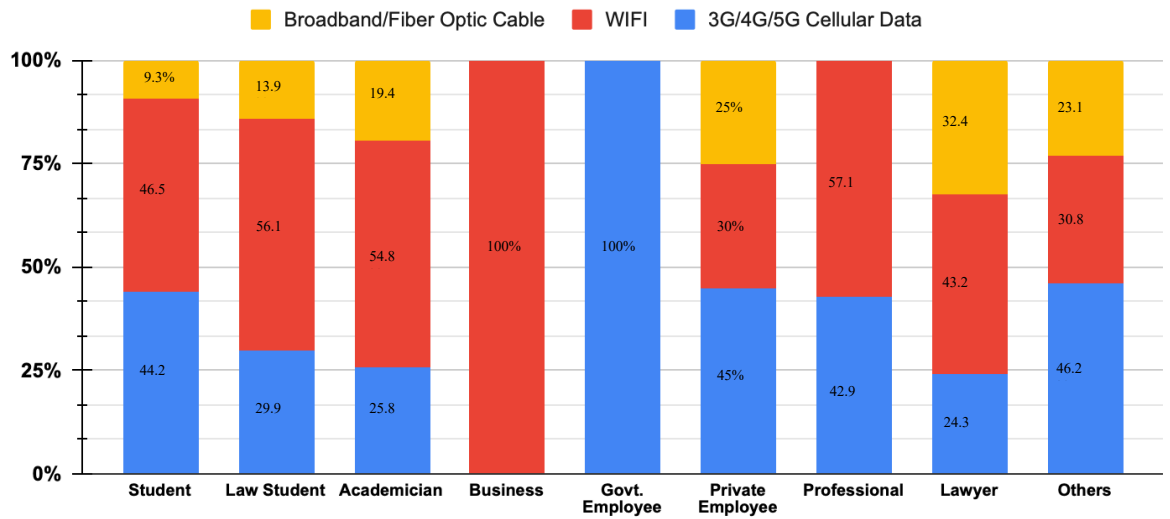


Figure: 6

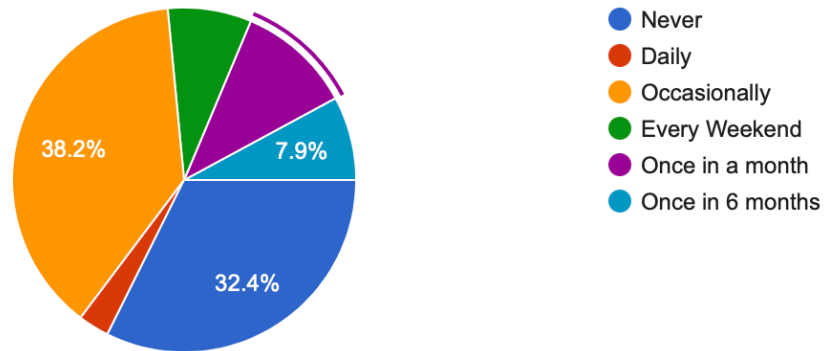
There is a wide range of Wi-Fi networks available. “Wireless fidelity” is what Wi-Fi symbolizes for. Users could share data across gadgets on a network utilising such technique. While originally designed primarily computers, Wi-Fi is now used significantly across smartphones, tablets, as well as other portable gadgets including in home entertainment systems like as tv & Media machines.

We may expect quicker and efficient downloads and uploads of films, audio, as well as other files as WIFI is being used by a larger percentage of respondents, where in 50.4% overall 46.5% are students, 56.1% law students, 54.8% academician, 30% private employee, 57.1% professional, 43.2% lawyer and 30.8% others. Moreover, as there are 2 different ways to access the web while using a smart phone: over a 3G or WiFi connection. The basic distinction among 3G/4G/5G Cellular data & Wi-fi internet connectivity includes their respective ranges. WiFi’s range is limited just a few metres, but that’s more than plenty for any average house / workplace. Third Generation(3G), Fourth Generation(4G) & Fifth Generation(5G) networks are employed to link smart phones to the Internet. Based upon your location as well as the network’s availability, you may be able to travel long distances before dropping contact. And according to the survey, 33.2% of those surveyed reported to have been utilising 3G/4G/5G services, which is reportedly less as because WIFI provides much faster connection speed then 3G/4G/5G cellular data. Therefore, we can assess from the figure that in 33.2% overall

44.2% are students, 29.9% law students, 25.8% academician, 100% Govt. employee, 45% private employee, 42.9% professional, 24.3% lawyer and 46.2% others. And also, an estimated 16.3% percent of those polled do not make use of either WIFI nor 3G or 4G technology, instead opt for alternatives.

How frequently do you download movies from the Internet for watching movies?

343 responses



**Figure 7: Pie-chart representing the frequency of movie downloading habit from internet for watching movies.**

Researcher was interested in finding out how frequently participants view films in this inquiry. The findings of the researcher are a bit skewed. Approximately, 38.2% responded that occasionally they download movies from the internet to watch movies followed by 32.4% respondent who never download, 10.8% once in a month, 7.9% once in 6 months, 7.9% every weekend and 2.9% daily.

5. How frequently do you download movies from the Internet for watching movies?

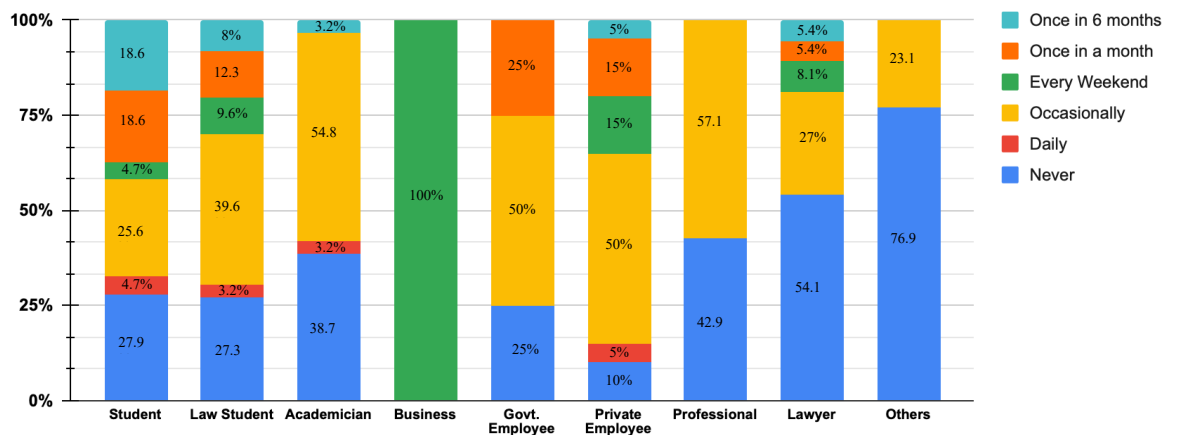


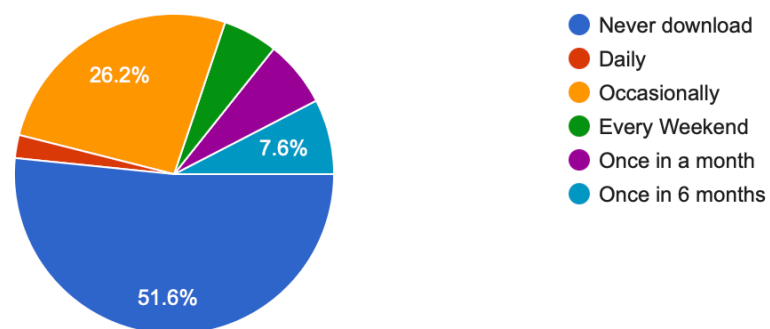
Figure 2

Around 38.2% overall responded that occasionally they download movies from the internet to watch movies wherein 25.6% are students, 39.6% law students, 54.8% academician, 50% Govt. employee, 50% private employee, 57.1% professional, 27% lawyer and 23.1% others. whereas 32.4% overall respondent who never download includes 27.9% are students, 27.3% law students, 38.7% academician, 25% Govt. employee, 10% private employee, 42.9% professional, 54.1% lawyer and 76.9% others, whereas 10.8% overall once in a month are 18.6% are students, 12.3% law students, 25% Govt. employee, 15% private employee, 5.4% lawyer. 7.9% overall download once in 6 months includes 18.6% are students, 6% law students, 3.2% academician, 5% private employee, 5.4% lawyer. 7.9% overall every weekend download movie whose percentage is 4.7% are students, 9.6% law students, 15% private employee, 8.1% lawyer and 2.9% overall daily from which 4.7% student, 3.2 law student, 3.2 academician, 5% private employee.

However, one thing which the researcher can infer from this question is that movies are a major source of entertainment and often quite a large percentage of respondents watch movies by downloading from the internet.

How often do you download movies from unauthorized source and without any payment?

343 responses



**Figure 8: Pie-chart showing Frequency of watching movies from unauthorized sources by Respondents without payment.**

When you stream a film that you have not purchased, you are violating the terms of the copyright holder's authorization or jurisdiction by doing so. It's illegal to utilise

copyrighted material without permission. Nowadays film counterfeiting on the internet is indeed a huge problem. Torrent sites, the Pirate Bay, and the like are all places where you can find infringing content. How frequently do participants watch movies via unlicensed sources? This is exactly the question researchers sought to analyse through this figure.

6. How often do you download movies from unauthorized source and without any payment?

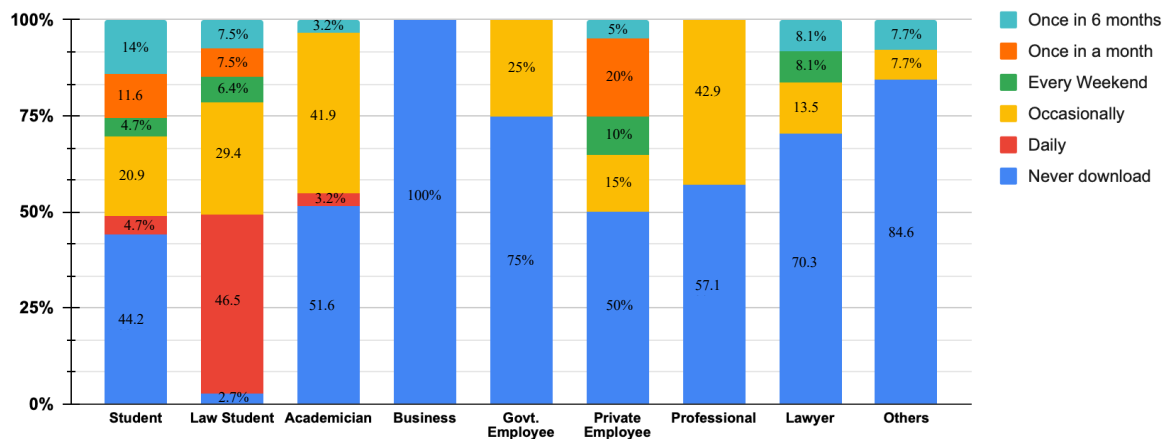


Figure 3

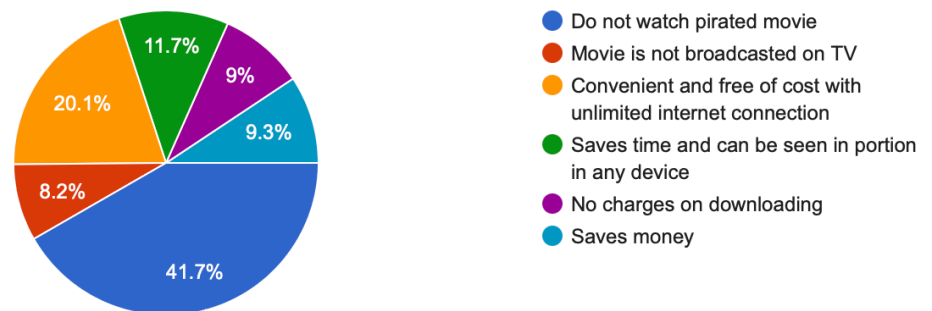
The inference that the researcher can draw from the result obtained is that there are overall 51.6% of the respondents who responded that they never see movie from unauthorized source, who includes 44.2% are students, 2.7% law students, 51.6% academician, 75% Govt. employee, 50% private employee, 57.1% professional, 70.3% lawyer and 84.6% others, whereas 26.2% overall respondent who download occasionally includes 20.9% are students, 29.4% law students, 41.9% academician, 25% Govt. employee, 15% private employee, 42.9% professional, 13.5% lawyer and 7.7% others, whereas 6.7% overall once in a month are 11.6% are students, 7.5% law students, 20% private employee. 7.6% overall download once in 6 months includes 14% are students, 7.5% law students, 3.2% academician, 5% private employee, 8.1% lawyer. 7.7 others. 5.5% overall every weekend download movie whose percentage is 4.7% are students, 6.4% law students, 10% private employee, 8.1% lawyer and 2.3% overall daily from which 4.7% student, 46.5 law student, 3.2 academician.

However, 51.6% overall of respondents never see movie from unauthorized source and 26.2% respondents overall occasionally or very often resort to seeing movies from

unauthorized sources then also the interpretation of the data reflects that the number is huge even among 343 respondents, whereby it has been found through analysis that 2.3% overall on daily basis are indulged in downloading of movies from unauthorized sources and without any payment from which 4.7% student, 46.5 law student, 3.2 academician. As a result, it's impossible to overlook this reality that countless persons view films obtained illegally.

#### Reasons for watching pirated movie

343 responses



**Figure 9: Pie-chart representing the reasons behind watching pirated movie.**

For a variety of factors, an individual might well be accessing unauthorized materials. Owing to circumstances beyond one's control, certain shows are neither longer accessible in television either are hacked therefore one does not need to pay for the content. As a result, the fact that the media is free of charge may serve as an additional motivation for certain people that indulge in illegal downloading. Therefore, the essence of such an offense remains anonymous and thus can be carried on within very privacy of someone's residence with in this internet age. As a result, we may argue that unauthorized downloading is motivated by a wide range of causes.



### 7. Reasons for watching pirated movie

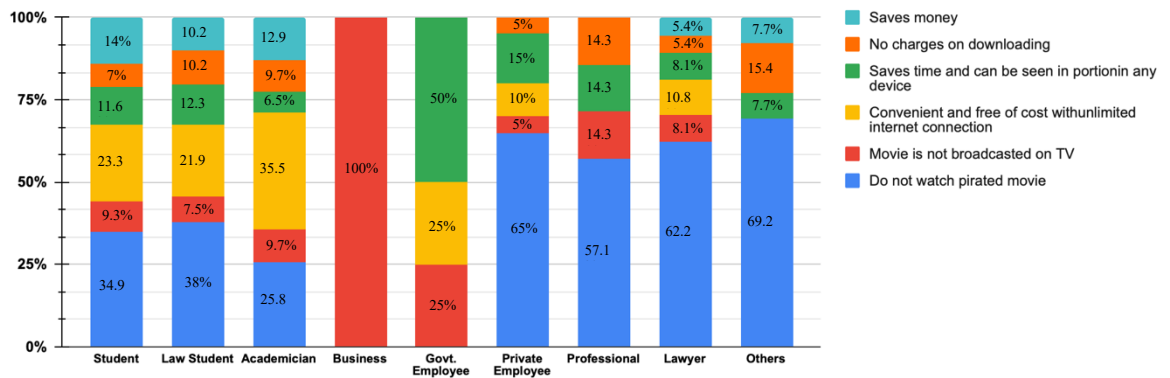


Figure 4

One purpose of such query was that to gain insight into why participants were downloading unauthorised materials. Where it has been found that 41.7% overall of people who took the poll said they do not watch pirated movies, includes 34.9% students, 38% law students, 25.8% academician, 65% private employee, 57.1% professional, 62.2% lawyer and 69.2% others.

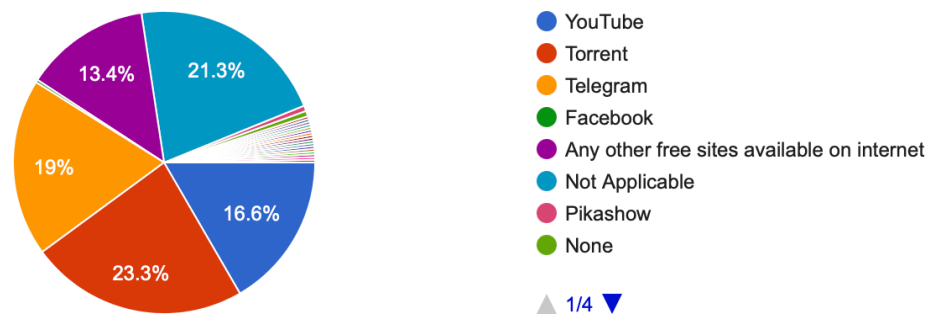
An estimated 20.1% overall of those surveyed admitted to *pirating content since it is convenient and free of cost with unlimited internet connection*, who are 23.3% students, 21.9% law students, 35.5% academician, 25% Govt. employee, 10% private employee, 57.1%, 10.8% lawyer. A whopping 11.7% overall of those polled admitted that it *saves time and can be seen in portion in any device*, are 11.6% students, 12.3% law students, 6.5% academician, 50% Govt. employee, 15% private employee, 14.3% professional, 8.1% lawyer and 7.7% others. Consider the case of a moderate film that is not all that well and may indeed not star either of biggest names. Those who seem to be undecided about whether and otherwise not to see a it should do so. A few people could just wish to see it at first when released or in portion. Hence the decision of downloading an illegally obtained copy of the film via torrent. 9.3% overall of those polled indicated *claimed that it saves money* who includes 14% students, 10.2% law students, 12.9% academician, 5.4% lawyer and 7.7% others. The much more obvious cause for illegal downloading is that film producers as well as technology firms charge for one's creations, & this ignites the nation's biggest filesharing internet sites. Unrestricted films and Tv shows are all those folks need from the entertainment industry. And those who are prompt sufficiently to take advantage of the plethora of pirated internet sites as well

as other internet sites that allow them to. Because of this, the content producers are harmed financially.

9% overall claimed that piracy is something they do because it is handy and free of cost they can download the content, and includes 7% students, 10.2% law students, 9.7% academician, 5% private employee, 14.3% professional, 5.4% lawyer and 15.4% others, and 8.2% overall of respondent claimed that they watch pirated movies because the movies are not broadcasted in television, includes 9.3% students, 7.5% law students, 9.7% academician, 25% Govt. employee, 5% private employee, 14.3% professional, 8.1% lawyer. The supply chain used by media companies is what drives these kinds of raiders. In some cases, a tv program may only be available on cable media platforms, and besides a subscriber to Netflix or other may be able to watch it. When it comes to cable, he may not be interested in paying for it merely for one tv series. A streaming site might very well be where he discovers this. People who desire to watch as well as listen to subject matter legitimately have to deal with shoddy billing processes established up by ecommerce websites & streaming platforms such as Apple iTunes as well as Netflix. Like a mode of payment, the majority of such facilities only accept lending vouchers, with only a few accepting debit cards.

In order to watch pirated movies, source mostly used

343 responses



**Figure 10: Pie-chart representing the sources mostly used to watch pirated movies.**

In the aforementioned query, the investigator attempted to gain insight into the participants' usage downloading apps. There are majorly 23.3% respondents who watch pirated movies by taking the recourse of Torrent, 19% who use Telegram, 16.6 who use

You Tube, 13.4% are dependent on any other free sites available on internet, and only 21.3% are those who claimed that this question is not relevant for them.

#### 8. In order to watch pirated movies, source mostly used

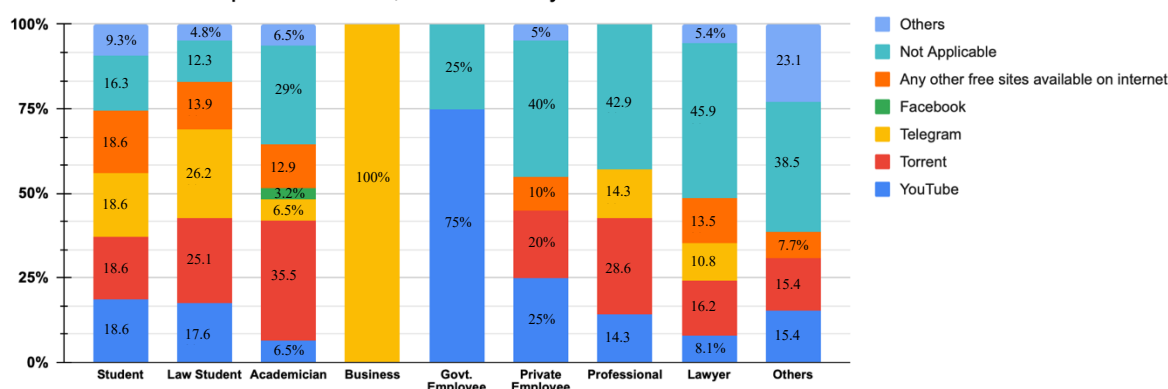


Figure 5

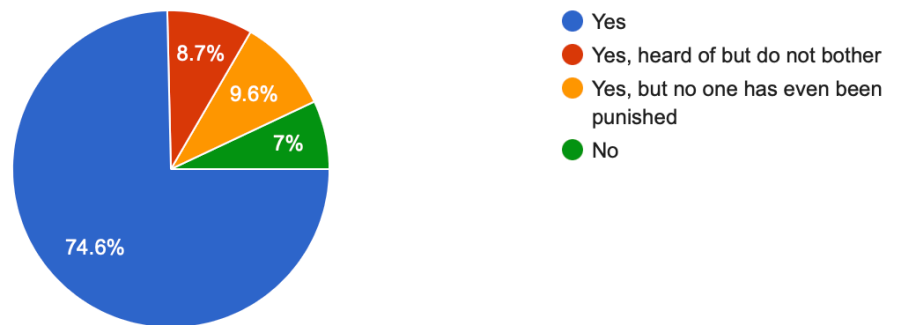
As we can see, the trend over time, is more for the Torrent sites and Telegram to fill their voids of watching pirated movies. In a manner, in India, especially amongst the youth online consumers, teenagers especially people who view material on smart phones, Telegram effectively supplanted torrenting whenever it pertains to illegally downloading films. This is illegally transmitting proprietary information, which in itself is unauthorized copying. When it comes to torrents and file-sharing services, numerous online consumers do not even comprehend this. Despite the fact that many do. Data transmitted across BitTorrent is known as a torrent. Film, team playing, melody as well as application are all examples of database types. A torrent is really an archive that seems to be in progress throughout transfer of data & is consequently regarded to as such. Information, layout, magnitude, creator, etc. are all included in the digital download folder. Different types of subject matter can always be viewed, shared, as well as downloaded using Torrent. Madras Rockers has been shut down by the Government of India as downloading is unlawful. In spite of the restriction, the site continues to unlawfully release a large volume of films across a variety of cinema sectors thanks to regular changes to its url address. According to India Today Tech,<sup>679</sup>

<sup>679</sup> Yasmin Ahmed, *Move over torrents, Indians now use Telegram to pirate movies and TV shows*, India Today, New Delhi, September 16, 2020, Arthur Chang, *Outdated and Ineffective: The Problems with Copyright Law*, Claremont Journal Of Law, (Nov.27, 2021, 03:15 PM), <https://5clpp.com/2018/04/11/outdated-and-ineffective-the-problems-with-copyright-law/> <https://www.indiatoday.in/technology/news/story/move-over-torrents-indians-now-use-telegram-to-pirate-movies-and-tv-shows-1722374-2020-09-16>.

while they inquired about the legality of streaming series and films on the Telegram messaging service, a respondent replied, “100percent unlawful.” Telegram’s Channels functionality and ability to transmit huge files have made it a favourite choice for pirates. People use Telegram as a chat programme because of its encryption, privacy, and ease of sharing. Groups can be created using bot services for easier management and huge channels can be utilised by members of the group for receiving notifications from the bots. Unlike Telegram, which has a file upload limit of 1.5 GB, WhatsApp enables subscribers to upload files up to 100 MB in size. Telegram’s terms of service explicitly say that the firm has a zero-tolerance stance against the sharing of copyrighted or stolen content. However, due to the encryption, the app is unable to see what its users are sharing.

Piracy is a crime and downloading from illegal sources is penalised by law. Are you aware?

343 responses



**Figure 11: Pie-chart representing respondents’ awareness of the existing laws regarding downloading from illegal sources is penalised by law.**

Multiple investigations have indicated that the country’s understanding of intellectual property concerns seems to be still within its infancy. This has been found as many persons who illegally access and otherwise distribute unlicensed video seem unaware that they are engaging in a felony.

9. Piracy is a crime and downloading from illegal sources is penalised by law. Are you aware?

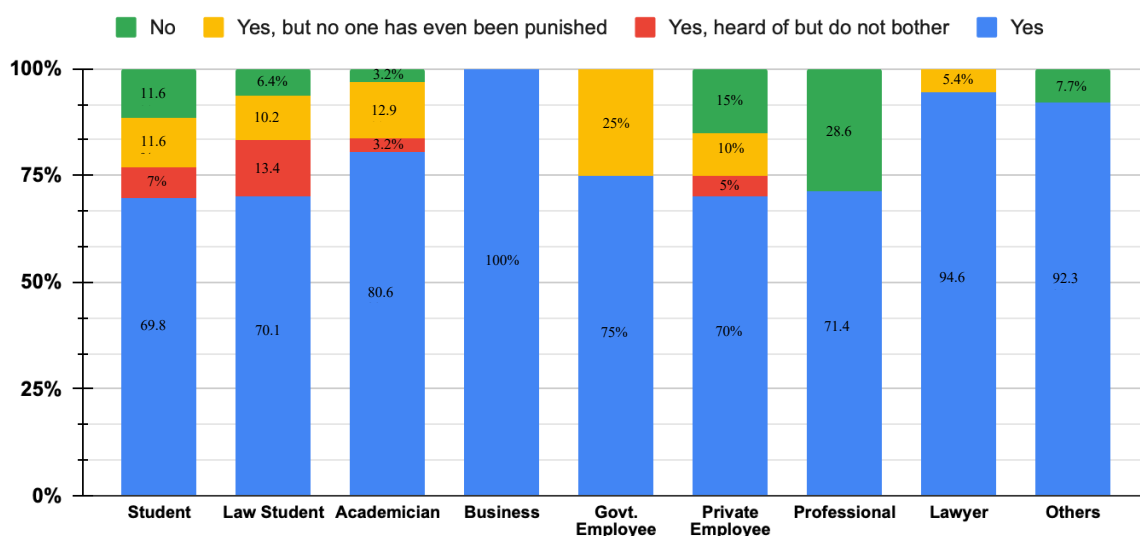


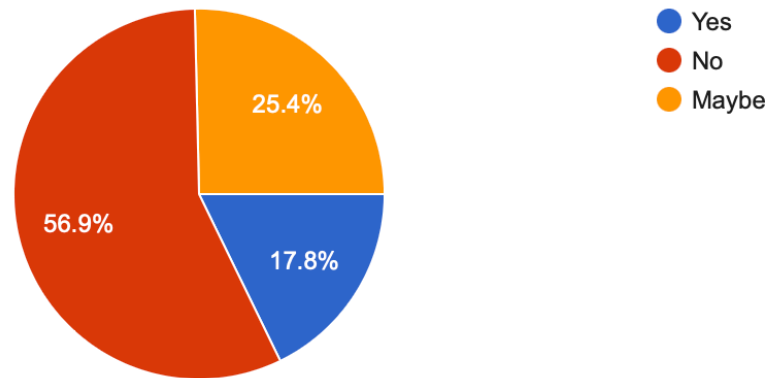
Figure 6

It was the researcher's goal to trace out if citizens seem to be familiar with the legal consequences of attempting to obtain a webpage out of an unpermitted location. Only 7% overall, which includes 11.6% students, 6.4% law students, 3.2% academician, 15% private employee, and 7.7% others of respondents are ignorant that downloading from an unauthorised source is piracy and that it is punished by law, 8.7% overall which includes 7% students, 13.4% law students, 3.2% academician, 5% private employee, whereas 9.6% overall which constitutes 11.6% students, 10.2% law students, 12.9% academician, 25% Govt. employee, 10% Private employee, 5.4% lawyer are aware of this fact but still they are indulged in the process of downloading from illegal sources as because they have never heard anyone to be penalized for this offence, where it can be analysed that though we have strict penalizing provisions under the Indian Copyright Act under section 63, 63-A, 65 and 65-A, but still people are not aware of it and there is no fear of being punished accordingly. 74.6% overall of those surveyed knew that downloading from an unauthorised source is piracy, which includes 69.8% students, 70.1% law students, 80.6% academician, 75% Govt. employee, 70% private employee, 71.4% professional, 94.6% lawyer and 92.3% others. The foregoing analysis concludes that now the wider populace is fully cognizant of the actuality that infringement of copyright is undesirable. As a result, those who acknowledge that now the work of someone else may not really be replicated or recreated for the purpose of any gain.

Sociocultural factors impact the above actuality, and that might well vary across distinct clusters depending on their level of learning and sensitivity.

If you get or download a copy of pirated movie, do you share it with others?

343 responses



**Figure 12: *Pie-chart representing the respondents views on the transmission of pirated material.***

The worth of new expression is safeguarded by intellectual property law. Trying to take some kind worth from the holder without their consent is what you do when you make illegal content of their original thinking. The act of illegal downloading is a criminal offence. Sadly, many young people as well as grown-ups believe that exchanging application, sports, songs, digital booklets, photos, etc. seems to be simply a way to save money. Despite the actuality that something that is commonly depicted like a criminal offense, online piracy is far from that. There are majorly 56.9% respondents who claimed that they do not share downloaded copy of the pirated content, 25.4% responded that maybe some times they do, and 17.8% asserted that they share downloaded copy of the pirated content.

10. If you get or download a copy of pirated movie, do you share it with others?

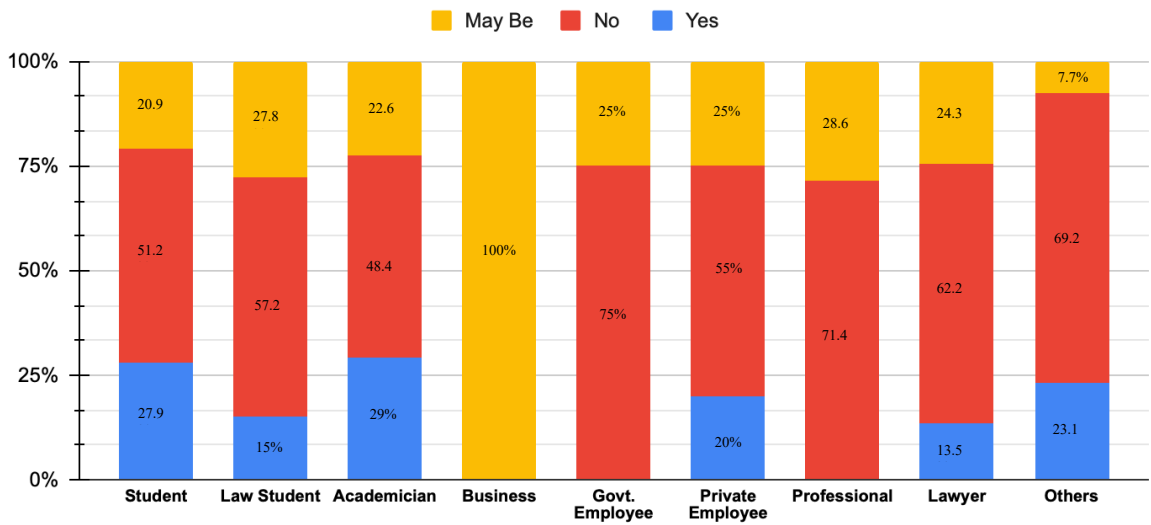
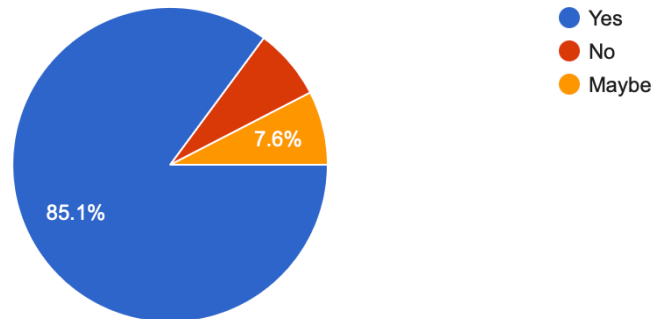


Figure 7

When asked whether they would distribute a version of an illegally downloaded film to anyone else, the researcher sought to learn about the participant’s attitude. 56.9% overall of those polled stated that this was not the case, which includes 51.2% students, 57.2% law students, 48.4% academician, 25% Govt. employee, 55% private employee, 71.4% professional, 62.2% lawyer, and 69.2% others. There is a 25.4% overall chance that someone will share their pirated version if those who obtain one, which effectively means essentially 20.9% students, 27.8% law students, 22.6% academician, 25% Govt. employee, 25% private employee, 28.6% professional, 24.3% lawyer, 7.7% others consented to provide it. It really is a big problem unless if the wider populace thought it was illegal, individuals would not do it. However, a handful of earlier studies have already shown that people do not see it as ethically questionable, & thus do not care to share it with someone else only when they obtain a version.

Are you aware that online internet piracy causes losses to the creators and law protects the rights of film maker in India?

343 responses



**Figure 13: Pie-chart representing respondents’ awareness on the fact that Online Piracy causes losses to the creators and how law protects the rights of film maker in India.**

In our country, according to numerous research, the general public’s understanding of concerns relating to intellectual property rights is still at a very preliminary phase. This has been found because the majority of individuals who obtain or post unlicensed material are completely ignorant of the notion that what they are accomplishing is punishable like a criminal offence.

11. Are you aware that online internet piracy causes losses to the creators and law protects the rights of film maker in India?

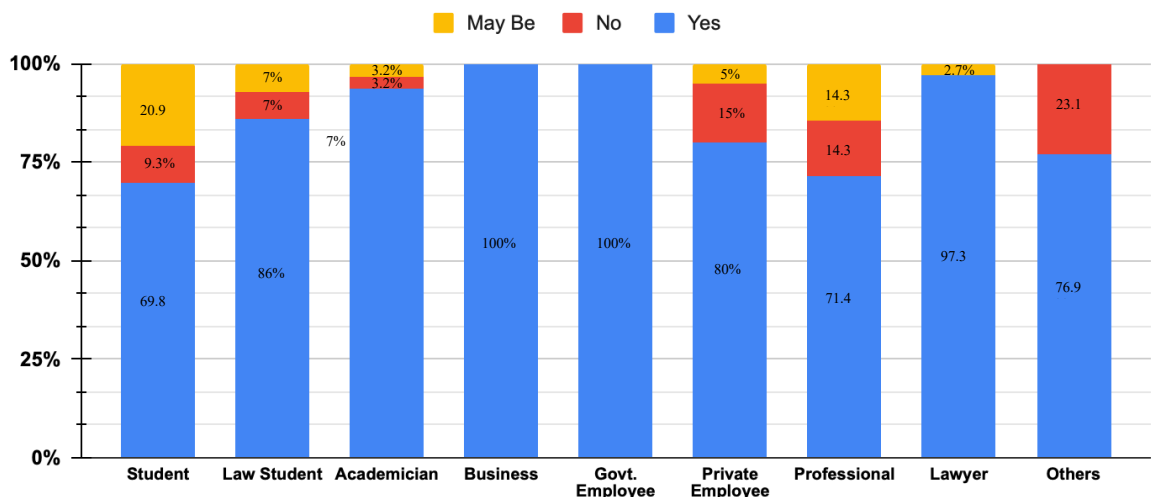


Figure 8

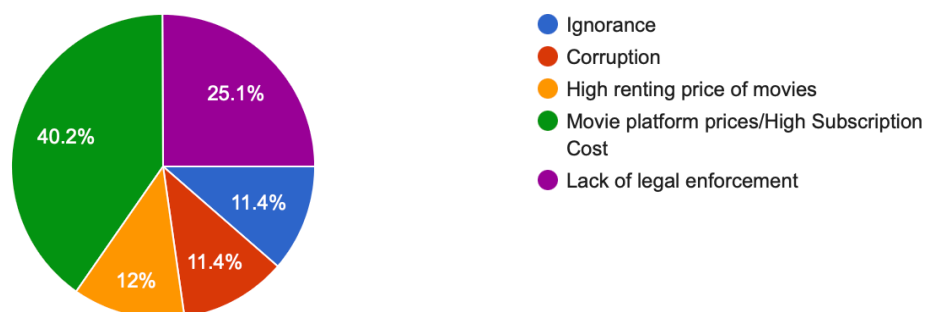


People’s attitudes toward online copyright piracy are vastly diverse from one another. Many persons believe that just since people subscribe for internet connectivity, individuals have always had the right to acquire everything those who want from the web without causing damage to anybody else. Furthermore, it has something that do also with overall operation of the system. The updated version is not lost as a result with one user’s downloads, hence there is zero evidence of a damage. As a result, the general public’s opinion of the offense of illegal downloading is that it causes little financial harm towards the authors. Data, on the other hand, have quite a distinct tale to convey. In the wake of excessive rates of infringement, numerous investigations & publications have revealed that creative people have suffered enormous damages as a result of the practise.

It was the researcher’s goal to trace out if citizens seem to be familiar that online internet piracy causes losses to the creators and law protects the rights of filmmaker in India. Amongst all the respondents 85.1% consented that they are aware of this fact and overall, it consists of 69.8% students, 86% law students, 7% academician, 100% Govt. employee, 80% private employee, 97.3% professional, 62.2% lawyer, and 76.9% others. 7.6% overall which includes 20.9% students, 7% law students, 3.2% academician, 5% private employee, 14.3% professional, and 2.7% lawyer were of the view that they are somehow acquainted with this fact and is aware of the fact that online piracy causes losses to the creators. Whereas 7.3% overall respondents are not at all aware of this that online internet piracy causes losses to the creators and law protects the rights of filmmaker in India.

Online piracy of movies in India is caused by what, in your opinion?

343 responses



**Figure 14: Pie-chart representing the causes of online piracy of movies in India.**

Several reasons could be there for online Copyright piracy in India. Ignorance, corruption, high renting price of movies, movie platform prices or high subscription cost and lack of legal enforcement are some of the major reasons for online copyright piracy. Awareness in the area of Intellectual Property is a major issue not just in India but globally as well. While assessing this it has been found that the most highlighting cause is the movie platform prices or high subscription cost which is 40.2%, followed by lack of legal enforcement 25.1%, 12% due to high renting price of movies, 11.4% corruption and 11.4% ignorance.

## 12. Online piracy of movies in India is caused by what, in your opinion?

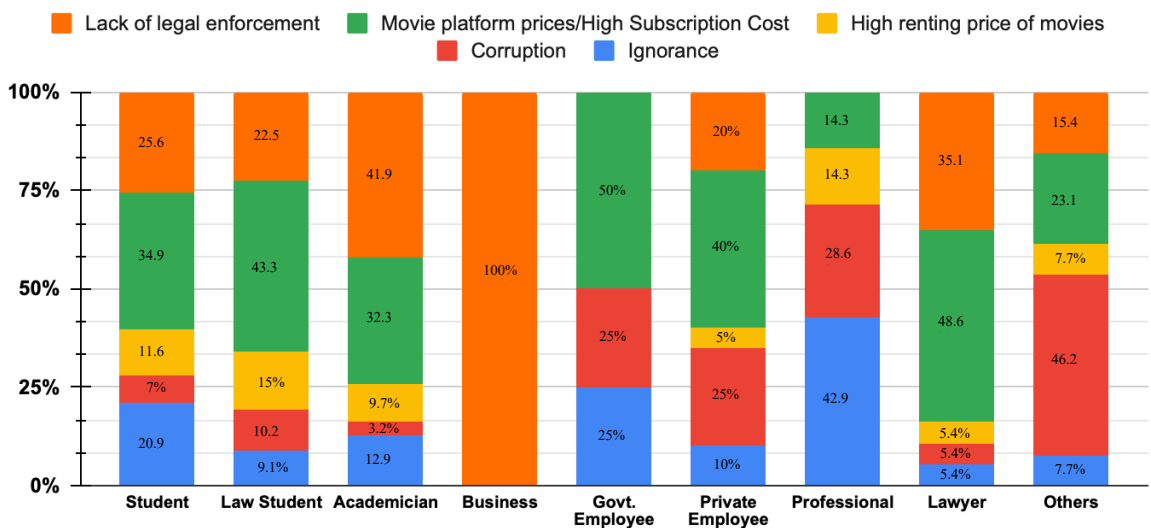


Figure 9

Therefore, the analysis comes up with the major reason for online piracy now a days is high subscription cost of movie platform which is around 40.2% overall including 34.9% students, 43.3% law students, 32.3% academician, 50% Govt. employee, 40% private employee, 14.3% professional, 48.6% lawyer, and 23.1% others. The new surge of Covid-19 reportedly resulted in a significant increase in illegal downloading in India. Based on the findings of a prominent executive of the consultant group EY India,<sup>680</sup> genuine rights holders can lose up to 5 times the amount of revenue people earns from

<sup>680</sup> Digital piracy rises amid pandemic; original content creators lose money: EY, Business Line, PTI | New Delhi, June 6 | Digital Piracy | Updated On: Jun 06, 2021, (Dec.17, 2021, 03:15 PM),

legitimate shows. Moreover, because OTT services do not provide unlimited access to regulated material, this transfer of structured material away from cinemas and toward OTT channels has led to a surge in illegal downloading. Addressing if there seems to be an increase in illegal downloading, he stated that cinemas as well as all strategic venues wherein individuals used to go forth for amusement have already been closed as a result of the limitations put in place to combat the virus. One study estimate that piracy in India would cost OTT providers \$3.08 billion in income by 2022, whereas the worldwide expense of online distribution piracy is estimated to surpass \$52 billion by that year, according to Digital TV Research.<sup>681</sup>

And the second biggest reason that has been identified by the researcher is lack of legal enforcement which is at 25.1% overall respondents, which includes 25.6% students, 22.5% law students, 41.9% academicians, 20% private employee, 35.1% lawyer, and 15.4% others. From this data we can analyse that the Copyright regulation is also low in the nation, which is yet another major element that could lead individuals to pirate. According to the Copyright Act, it is a criminal offence to engage in copyright piracy. Although numerous comparable laws have been passed, the implementation of anti-piracy laws has proven to be completely ineffectual. For piracy, there is no real risk of getting caught and penalised in India.

The enforcement apparatus, namely the police, and the right holder's passive attitudes, are both to blame for the laxity in the enforcement process. No one can disagree that arresting pirates is not high on the police's priority list. Police departments across the country say that the reason for this is that they have to deal with increasingly difficult issues, such as riots, murders, and terrorist activity. The breadth and complexity of India's challenges necessitates a force and enforcement apparatus that are insufficient. This has the unintended consequence of depriving minor offences like copyright piracy of the attention they deserve from law enforcement. Additionally, the police are unable

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<https://www.thehindubusinessline.com/info-tech/as-digital-piracy-rises-amid-pandemic-original-content-creators-losing-money-ey/article34743362.ece>.

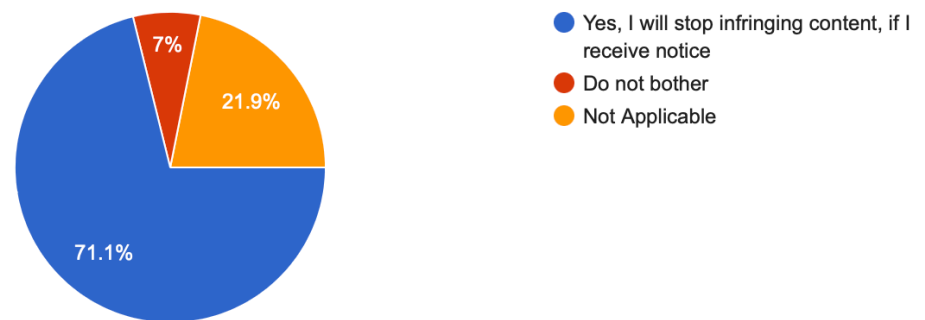
<sup>681</sup> *Ibid.*

to tell an unlicensed product from a legitimate one due to their dearth of expertise with local copyright rules, which is acknowledged by the force.

Followed by 12% due to high renting price of movies, 11.4% corruption and 11.4% ignorance.

Will you stop downloading/uploading/engaging in piracy if you receive a warning or notification from copyright owners/Internet service providers?

343 responses



**Figure 15: Pie-chart representing the opinion of the respondents if they will stop downloading/uploading/engaging in piracy if they receive a warning or notification from copyright owners/Internet service providers.**

We live in a time whereby Digital rights content may be simply copied & distributed across the world. It is vital that now the previously secured content be safeguarded from potential infringements. Copyright owners can seek redress by sending Take Down Notifications with ISPs, informing them whether a certain domain publishes information that violates the rights of the copyright owner. A demand is made toward the host website to remove the illegal material, as well as all of the required details. A membership of the World Trade Organization, India has implemented Internet Service Provider (ISP) liability requirements underneath the Copyright Act of 1957 as well as the Information Technology Act of 2000 and the regulations promulgated pursuant to section. Is a warning or a notice effective in stopping them from engaging in illegal downloading operations? The data received against this query is 71.1% of the respondent responded that they will stop downloading infringing content if they receive any such notice, whereas 21.9% of the respondent said that this question is not applicable for them and 7% of the respondent responded that they do not bother of any

such warning or a notice in stopping them from engaging in illegal downloading operations.

13. Will you stop downloading/uploading/engaging in piracy if you receive a warning or notification from copyright owners/Internet service providers?

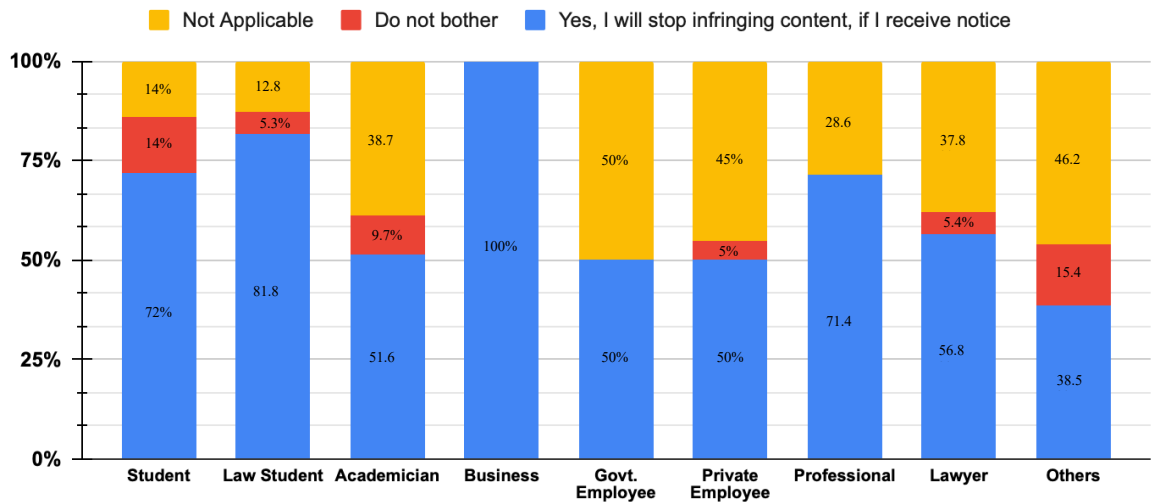


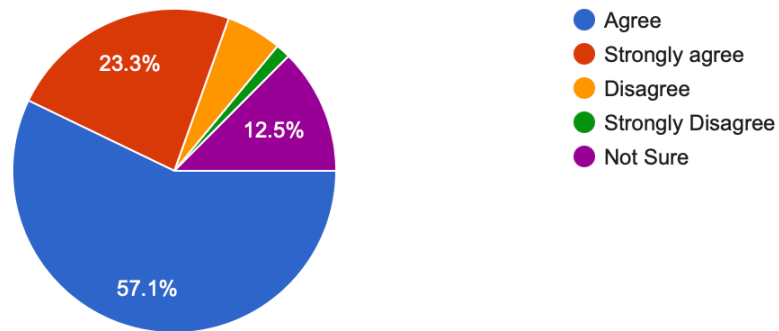
Figure 10

Throughout such an enquiry, the researcher sought to learn what participants would reply if they were given a caution or notice for having to download or publishing infringing material. The data received against this query is 71.1% of the respondent responded that they will stop downloading infringing content if they receive any such notice, whereas 21.9% of the respondent said that this question is not applicable for them and 7% of the respondent responded that they don't bother of any such warning or a notice in stopping them from engaging in illegal downloading operations. The tools of illegal downloading are getting increasingly sophisticated as technology advances. By collating & attempting to make unlawfully obtainable material from nearly every Channels on unauthorised broadcast sites, raiders had already begun bypassing Digital Rights Management (DRM) & shifting content consumption to handheld gadgets. Since our regulations & regulation techniques were always constrained by jurisdiction as well as foreign borders, all such raiders have neither facial expression and also no jurisdictional limitations. A copyright holder may hesitate to take initiative against a foreign pirate because of the restrictive expenses of identifying & bringing him or her to justice. It's possible that the facelessness of crime is a contributing factor. As a result, people do not think they will get caught. High-profile infringers are rarely punished, and exemplary damages are rarely awarded. Over time, the infringers have become

habitual offenders, and they believe that they will not be caught even if they commit an offence. The purpose of this question was to determine whether or not respondents believed that piracy was sufficiently deterred in their minds.

Do you believe that stricter enforcement of copyright laws would deter individuals from pirating movies or copyrighted content?

343 responses



**Figure 16: Pie-chart representing the views of the respondents on whether they believe that stricter enforcement of copyright laws would deter individuals from pirating movies or pirated content.**

In the aforementioned inquiry, the researcher sought to learn from its survey participants how much they would reply to the question that if tough regulations & stringent punishments have been enacted than will it deter individuals from pirating movies online. When asked whether or not the question applied to them, about 57.1% of those who responded said they believe and think that up to certain extent may be stricter punishments will help to deter illegal downloading of copyright protected content. However, about 23.3% of those polled, said that they strongly believe and even they will stop downloading altogether and instead opt to buy media if harsh laws and severe penalties were enacted. 12.5% of those polled said they are not sure of it and whether it would cut back on downloading and people will start buying legitimate media. Furthermore, 5.5% of those polled said that they disagree with this fact that people will reduce their downloads, if laws the legislature comes up with more stringent laws to deal with this issue. At the same time, 1.5% said they strongly disagree and would continue downloading as usual.

14. Do you believe that stricter enforcement of copyright laws would deter individuals from pirating movies or copyrighted content?

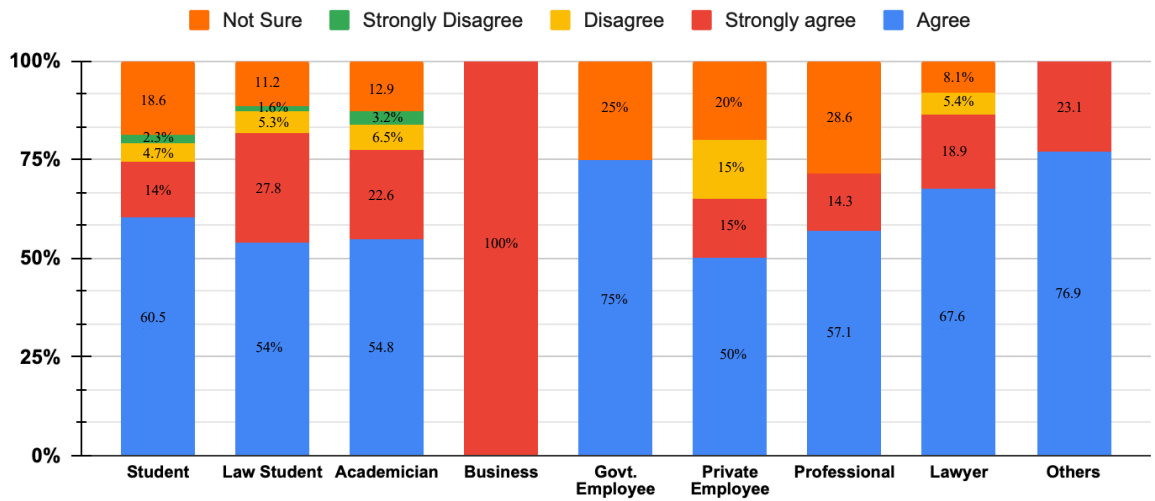


Figure 11

There is a lack of enforcement due to laxity on the side of the enforcement apparatus, such as the police, and a lack of enforcement on the side of rights holders. There is no doubting that arresting hackers is not a top priority for the police. As a result of their “not so serious” stance regarding piracy, rights holders are equally to fault. However, the efforts of the right holders to prevent piracy have been weak, save from the makers of music and computer software. As a result, in the coming years, all rights holders will need to start large awareness campaigns aimed at combating piracy. As a result, it has been seen that only 1.5% of the participants believe or they strongly agree that stricter enforcement may deter individuals from pirating movies which is very meagre.

## CHAPTER 8

### CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS

#### 8.1. CONCLUSION

Many people hail the Internet as a tremendous decentralised tool which not only eliminates conventional information censors like newspapers and magazines, but also opens up a wider range of knowledge sources and makes it easier for anyone to acquire that knowledge. It's clear that the leading record labels' tight grip on distribution platforms and the hefty expenses of setting up a structure meant that new entrants to the entertainment industry faced significant obstacles. As a result, independent artists had virtually little chance of being successful against big multinationals in this circumstance. Because of this, artists had two choices: they could stay independent and target tiny, niche audiences or they could sign long agreements with big labels through an effort to reach a wider audience.

The current chapter is devoted to providing a synopsis of the research being conducted. The purpose of the study was to look into the Indian film industry's copyright laws to deal with the menace of online piracy of movies. Film-making professional's attitudes toward copyright were examined as part of a specific research project. Ultimately, a framework for changing the copyright climate in the Indian film business was proposed.

- Especially the film industry has been challenged by the widespread and unchecked distribution of movies, which are protected under copyright laws. So much for their copyright being protected. Lawful sales have grown less as a result of the Internet's penetration. If an illegal copy of a movie replaces a trade that otherwise might have been achieved, copyright holders and broadcasters suffer. Indirectly, consumers today to indulge in unauthorized data exchanging reduce revenues of copyrighted material. In addition to displacing genuine commerce, online piracy prevents new competitors from reaching a crucial number of consumers since the amount companies can demand as well as the appetite for their goods are both constrained by piracy.



- Digital video piracy has grown considerably in recent years. Since then, it has become an enormous problem. Digital piracy has a number of negative consequences, including losses for producers, a deterioration of the country's creative climate, losses for the government and other stakeholders, unethical business activities, corruption, and so on. As soon as possible, efforts should be done to ameliorate this problem so that the movie industries are not harmed by the significant losses. Clearly, there has never been more internet piracy, and it is causing great harm to the movie industries.
- Intellectual piracy has been overstated due to a dearth of regulation and understanding on copyright problems. The nation's legal mechanisms are insufficient. Police officers, who might have a significant impact on the fight against piracy, often lack basic legal background. Additionally, there is indeed a dearth of employees whose exclusive focus is always on investigating and prosecuting violations of copyright. Within the eyes of the authorities, copyright-related offences take a backseat to much greater pressing issues. Also, there is a poor level of awareness amongst end-users. The large percentage of customers do not really pay attention to copyright notices when purchasing creative products. Consumers do not care purchasing unauthorized items, although if they realize they are doing so, as much provided that pricing is reasonable.
- The responsibility of the national administration is primarily consultative. It is true that the policemen as well as various governmental entities play a massive part in implementation, yet Government seems to have a long road ahead to travel before it can be considered a success. Administration really has not put enough attention upon educating its general public about copyright infringements or exchanging effective practises up to certain extent. Facilities, particularly includes capacity enhancement, is woefully deficient & urgently needs to be improved.
- Understanding the scope of copyright & its dynamic changes in misuse and breach is critical to implementing capacity-building initiatives. It has resulted in the need for a robust and expedient enforcement agency to deal with similar breaches. In order to cope with such serious situation, it is necessary to upgrade

the current enforcement personnel's level of expertise, that is equally technically & understanding underequipped. In addition, a singular entity could deal with these infractions; cooperation and confluence between governmental and corporate authorities are needed effectively deal with and uncover the source of the phenomenon. In addition, increasing gravity of such situation necessitates for creation of such a productive platform whereby various relevant parties can discuss as well as make decisions about how to deal with this crisis, as well as measures to improve compliance with in movie business. This meeting will not merely provide a place promoting discussion, but it would equally bring together people representing a wide range of backgrounds. Here is indeed a dearth of collaboration among the various Departments of the Indian Government, as previously discussed. In order to identify, comprehend, or address illegal downloading concerns, the Ministry of Home and the Ministry of Commerce must work jointly. Since the average generation in India is 28 years of age, the country enjoys a shared prosperity that encourages technological innovation & acceptance by a wide range of people. Because of its second-highest internet subscriber count, it's clear as well as reaffirmed that this has been the case. Another important factor is the expansion into remote and semi-rural regions. There really are sure to be infractions, however it's important to identify if they are purposeful or if they are the result of a paucity of information.

- Copyright law in India is comparable to that of most developed nations, including administrative and penal remedies.<sup>682</sup> Deliberate failures in both the criminal justice system and the enforcing apparatus have indeed been documented in a number of investigations.<sup>683</sup> In civil and penal matters,

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<sup>682</sup> Under Indian law, copyright infringement is deemed to be a civil wrong for which plaintiffs are entitled to seek remedies that include an injunction, damages, or an account of profit. See The Copyright Act, 1957, No. 14, § 55, Acts of Parliament, 1957 (India) [hereinafter Copyright Act]. Cases of wilful copyright infringement are also deemed to be criminal wrongs punishable with fine and imprisonment, with enhanced penalties for repeat offenders. See Copyright Act, Sections 63, 63A. An aggrieved copyright owner has a choice of seeking civil or criminal remedies, or both. See *Sumeet Machines v. Sumeet Research*, (1993) 13 P.T.C. (Madras H.C.) 75 ¶ 13 (holding that “no provision had been engrafted in” Indian copyright legislation “interdicting or inhibiting both civil and criminal actions being proceeded simultaneously before competent forums.”).

<sup>683</sup> See G.I.P.C. 2016 Report, (identifying the “[p]oor application and enforcement of civil remedies and criminal penalties” in India as a weakness); USTR, SPECIAL 301 REPORT 37 (2014), (Dec.29, 2021,

copyright holders suffer additional difficulties because to the heavy workload & tardiness of Indian judiciary.<sup>684</sup> As a proportion of all prosecutions, the volume of illegal copyright instances registered each year in India is minimal, as well as the frequency of sentences considerably fewer, as per government figures.<sup>685</sup>

- As a matter of traditional opinion, bringing charges against an infringer in state trial is “so much expedient” alternative for copyright holders. Moreover, it is a lesser affordable choice. Penal actions for copyright infringements, on the other hand, face a number of challenges. In addition, there are two significant

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11:15 PM), <http://www.ustr.gov/sites/default/files/USTR%202014%20Special%20301%20Report%20to%20Congress%20FINAL.pdf> (stating that India has a “weak IPR legal framework and enforcement system.”); TAYLOR WESSING 2014 REPORT, supra note 59, at 42 (stating that “enforcement lets it [India] down”); Liang & Sundaram, India, (describing the ineffectiveness of raids against street vendors). Arguably, one of the main reasons why criminal enforcement is weak is that India suffers from a nationwide shortage of police personnel. According to one report, India has an average of one police officer for every 1,037 residents, well below the Asian average ratio of 1:558 and the global average ratio of 1:333. See Broken System: Dysfunction, Abuse, and Impunity in the Indian Police, HUMAN RIGHTS WATCH, 1, 26 (August 2009), <https://www.hrw.org/sites/default/files/reports/india0809web.pdf>.

<sup>684</sup> In India, to quote Galanter, “[d]elays of Bleak House proportions are routine in many sorts of litigation.” Marc Galanter, Foreword: World of Our Cousins, 2 DREXEL L. REV. 365, 368 (2010). According to the Indian government’s own data, nearly 30 million cases are pending before Indian courts, and there exists a severe shortage of judges. See National Court Management Systems (NCMS) Policy and Action Plan, Supreme Court Of India, 4–6 (2012), (Dec.30, 2021, 11:25 AM), <http://supremecourtindia.nic.in/ncms27092012.pdf>.

<sup>685</sup> According to India’s National Crime Records Bureau (NCRB), the annual number of criminal cases registered under the Copyright Act has wavered in the period between 2004 and 2014, from a high of 7,889 in 2010 to a low of 5,241 in 2015. This number represents between 0.1 to 0.2% of all cases registered in just the category “Special and Local Laws,” which refers to around twenty statutes dealing with specific criminal offenses. The annual number of cases resulting in convictions under the Copyright Act has been much lower than the annual number of cases registered (2,739 in 2010, 2,897 in 2011 and 2,358 in 2012). See Cases Registered, Cases Charge sheeted, Cases Convicted, Persons Arrested, Persons Charge sheeted and Persons Convicted During 2010–2012, National Crime Records Bureau (2013), (Dec.30, 2021, 01:35 PM), [http://ncrb.nic.in/CD-CII2012/Additional\\_Tables\\_CII\\_2012/Additional%20table%202012/CR%20CS%20CV%20PAR%20PCS%20PCV%20under%20SLL%20crimes%20during%202010-2012.xls](http://ncrb.nic.in/CD-CII2012/Additional_Tables_CII_2012/Additional%20table%202012/CR%20CS%20CV%20PAR%20PCS%20PCV%20under%20SLL%20crimes%20during%202010-2012.xls); Crime head-Wise Cases Registered Under Special and Local Laws (SLL) Crimes During 2001–2012, National Crime Records Bureau (2013), [http://ncrb.nic.in/CD-CII2012/Additional\\_Tables\\_CII\\_2012/Additional%20table%202012/SLL-CH-2001-2012.xls](http://ncrb.nic.in/CD-CII2012/Additional_Tables_CII_2012/Additional%20table%202012/SLL-CH-2001-2012.xls); NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2012, 41 (2013), <http://ncrb.nic.in/CD-CII2012/cii-2012/Chapter%201.pdf> [hereinafter NCRB REPORT]. Moreover, it is very likely that these numbers include cases of trademark counterfeiting, as: a) it is de rigueur for owners of logo and device marks to file complaints simultaneously alleging infringement under the Copyright Act; and b) the NCRB’s data does not even have a separate category for cases registered under trademark legislation, mentioning only the Copyright Act as the relevant statute in the category “Theft of Intellectual Property.” See, e.g., NCRB REPORT at 123, <http://ncrb.nic.in/CD-CII2012/cii-2012/Chapter%209.pdf>.

regulatory hurdles that content holders must overcome. Indian law allows law enforcement to perform a search without the need for a permission, however authorities frequently vitiate this benefit by demanding upon copyright protection documents as proof of copyright holders prior to executing searches. A copyright clearance document could take a very considerable period for acquire in India, making it just a clearly erroneous requirement and a waste of time for a search. Court system are prohibited from exercising forearms sovereignty in penal cases, which might also require copyright owners to litigate lawbreakers far off from big cities, which seem to be preferred sites for civil cases. Prosecutors confront additional difficulties whenever criminal trials go to court.

- Piracy victims face many difficulties in pursuing legal action against the perpetrators of the crime. When it comes to copyright infringement, civil action is usually viewed simply a costly as well as time taking approach. Conversely, the expense of lawsuit in India is significantly cheaper than that in western nations.
- Indian law also gives litigants in civil copyright violation actions the freedom to choose their preferred venue from among a plethora of possibilities. “Horizontal” thread buying is possible in whatever Indian state, even though the claim for damages did not happen there nor the accused nor the complainant actually live there; and “vertical” thread retail is possible in at one of High Courts- Delhi, Bombay (Mumbai), Calcutta (Kolkata), as well as Madras (Chennai)- by going to file the case in one of these high court instead of a district judge, in which the accused may be located. Using statutory IP violation procedures, Indian attorneys frequently acquired ex-parte judgments of inspection and confiscation straight by High Courts throughout the months. Thus, professionals are increasingly advising their clients to pursue injunctive relief rather than penal ones.
- Throughout civil IP violation instances in India, the temporary injunctive relief phase is the most common phase of litigation. Even if the violation is obvious, the amount of damage awarded in such instances tend to be extremely minimal. As a result, in civil violation activities, an ad interim court order is sought by

the majority of complainants. And via Anton Piller as well as John Doe orders, the High Court of Delhi has become very lenient in awarding of that kind rulings *ex parte*. As a result, the court has become the greatest popular venue for complainants in IP litigation, with some assumptions stating that the judge hears 70% over all IP instances in India. Internet providers (ISPs) have indeed been ordered to restrict intruding webpages with in framework of cinema pirate attacks by a multitude of rightsholders who already have acquired broad-based John Doe commands out from four main High Courts (especially Delhi).

- Initially, some ISPs blocked the whole webpages, rather than independent Hyperlinks only within webpage wanting to host illegal material because of the wider phrasing of certain website-blocking commands.<sup>686</sup> An Intermediary was ordered by a consumer forum to compensate a dissatisfied consumer in addition to drawing critiques from free-speech proponents. When the High Court of Madras imposed a web page obstructing command against numerous Servers & Ashok Kumars, this was able to rectify this shortcoming. Particularly infringing information should only be obstructed for those Web addresses, according to the judge's ruling.<sup>687</sup> The accused were also given a forty-eight-hour time limit in which to eliminate the allegedly infringement material. A crucial component of this decision was to uphold the constitutionality of these website-blocking commands or to rule that Internet providers cannot use a safe-harbor defence in order to prevent them.<sup>688</sup>

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<sup>686</sup> See Kunal Dua, Confusion Reigns as Indian ISPs Block Vimeo, Torrent Websites, NDTV (May 17, 2012), (Jan.05, 2022, 02:05 PM), <http://gadgets.ndtv.com/internet/news/confusion-reigns-as-indian-isps-block-vimeo-torrent-websites-223340>; Nikhil Pawa, Update: Files Sharing Sites Blocked In India Because Reliance BIG Pictures Got A Court Order, MEDIANAMA (July 21, 2011), (Jan.05, 2022, 02:45 PM), <http://www.medianama.com/2011/07/223-files-sharing-sites-blocked-in-india-because-reliance-big-pictures-got-a-court-order>.

<sup>687</sup> *Vodafone v. R.K. Productions* (2013) 54 P.T.C. (Mad. H.C.) 149, ¶ 4 (India) (quoting an earlier order where the court had stated that “the interim injunction is granted only in respect of a particular URL where the infringing movie is kept and not in respect of the entire website.”).

<sup>688</sup> The court stated, “[w]ithout the ISPs, no person would be in a position to access the pirated contents nor would the unknown persons be in a position to upload the pirated version of the film. Therefore, the ISPs are necessary parties to the suit . . . . The ISPs are business driven by volume of customers and downloading. Therefore, they are gaining when multiple persons are illegally downloading such materials.” The court also observed that Indian civil procedure rules required details of defendants to be disclosed only “so far as they can be ascertained.” In cases where “the violators are many in number, the plaintiffs could not identify each and every” defendant, and thus an “Ashok Kumar suit is maintainable.” The court also referred to provisions of the Information Technology Act of 2000, No. 21, Gazette of

According to the latest court rulings, website-blocking commands are a popular method of enforcing intellectual property rights. Such commands, even so, as well have their flaws. A pirate, for illustration, can change their Web address perhaps if certain Web addresses are obstructed. In yet another case, an illegally downloaded music site which had been obstructed by the Calcutta High Court had done just that. Many assert that even with the latest Delhi & Bombay High Court commands enabling the obstructing of the whole internet sites, a thief might simply switch to another web address, defeating the intent of a John Doe attempt. Despite the best efforts of a few decided content owners, new infringing websites cannot be immediately blocked. As a result, there have always been leaks because there is no genuine obstructing methodology.

Furthermore, the issue of website-blocking commands just being applicable in India was brought to the forefront whenever an internationally filesharing webpage proclaimed its rejection to abide to national court orders. This is really a major issue for the Indian cinema, given the high volume of movie illegal downloading occurring outside of India. The copyright laws of Indian films have really been “primarily poorly enforced” in the international market, according to the marketplace.

As a whole, the situation for copyright holders in India is not great, and though latest website-blocking commands are indeed a domain of progress. To get a command of this nature, one must typically resort to civil lawsuits in major city appeals courts, which gives affluent Bollywood production enterprises an advantage over fairly small ones. As a result, hardly very few downloads might also result in widespread illegal downloading if genuine blockage is not really possible, which implies that an illegally downloaded copy can still be made public.

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India, section I(2) (June 9, 2000) [hereinafter Information Technology Act], along with the decision of the Delhi High Court in *Super Cassettes v. Myspace*, (2011) 47 P.T.C. (Del. H.C.) 49 (2011) (India). Section 79 of the Information Technology Act states, inter alia, that “an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by” the intermediary). However, § 81 of the same statute contains a proviso stating, inter alia, that “nothing contained in” the Information Technology Act “shall restrict any person from exercising any right conferred under the Copyright Act.” Information Technology Act. In *Super Cassettes*, the court accordingly held that the safe-harbor rule in § 79 covered “internet wrongs” such as “auctioning, networking servicing, news dissemination, uploading of pornographic content,” but not wrongs “relating to . . . copyright infringement.” 47 P.T.C. 49.

The researcher spent a lot of time reading various books, articles, journals and reports on the topic at hand in order to conduct a thorough systematic review. When it comes to online copyright infringement, **Chapter 1, Introduction** examined how the world wide web and high-speed internet links had already shifted the dynamic behaviour of this problem. Several findings on the subject keep citing the researcher's copyright infringement statistics. There seems to be no way to deny the existence of illegal downloading or the damage it causes to a range of relevant parties since findings vary & accurate copyright infringement assumptions seem to be hard to procure. Furthermore, to better explore the importance, the researcher consulted a wide range of sources, including academic journals and books. This section comprises an overview of the most significant journals, publications, & findings that the researcher has investigated. A number of unresolved queries arose for the researcher as he was reading the literary works. The researcher structured the survey questions predicated upon the evaluation of publications & started the voyage forward with to find the solutions to those questions.

Internet piracy is discussed in length in the **second chapter, "Historical Evolution and Development of Copyright Law,"** which also covers the history of piracy as it has evolved through time in various forms such as peer-to-peer (P2P) and online piracy. After 1910, when the technique of piracy grew into the practise of duping or utilising positive prints in generating fresh negatives to make an endless number of duped prints, the Quiet Era 1895-1929 will be addressed. By the 1960s, the new type of unauthorised film recording known as "cam rips" had been established. VHS cassettes were introduced to the public in 1979, ushering in a new era of home video recording. Next came the digital age, during which piracy moved online due to the fact that pirates could choose to obtain content in physical (on DVDs, VCDs, etc.) or digital form.

***To combat internet piracy, our nation has enacted a number of legislation and rules, which the research study discussed extensively in Chapter 3.*** After discussing the background & source of copyright legislation in India, the researcher moves over to the current situation. The Information Technology (Intermediaries Guidelines) Rules, 2011, have been the subject of extensive discussion by the analyst. Middlemen' obligations & responsibilities are examined. Also covered in this section are the

legislative actions taken in India to combat internet piracy. For example, current regulations against internet copyright violation and particular laws and treaties which are designed to combat illegal downloading in the technological environment both need to be investigated in depth for copyright safeguard legislation. The researcher has indeed made an effort throughout the said chapter to attract interest to the pre and post production rights of a film maker. This chapter has also highlighted the various challenges faced by the Indian film industry. Our efforts to combat illegal downloading can lead to legislative changes, such as tougher sentences, tougher penalties, as well as punitive damages. In the long run, quick-fix solutions to the problem of online piracy may be counterproductive. Understanding and reforming policies and laws with in field of internet-based copyright infringement are, even so, more critical than it has ever been. IP regulations, according to this analyst, must be implemented gradually & based on the real need. In such a scenario, it's possible that the law would not accomplish what it was intended to. Therefore, once trying to make improvements to copyright act to fight illegal downloading, domestic demands must be factored into the equation.

*According to the findings presented in Chapter 4, the study examined how India's film industries operate. Understanding the opportunities and problems confronted mostly by cinema industries.* Researchers also looked into the elements which affect internet illegal downloading of movies. The researcher as well discussed the impacts that illegal downloading will have on the relevant parties, such as impacting the imaginative holders and administration, decrease of tax income, deterring the copyright holders from developing novel subject matter, dangers to data security, and so forth. Moreover, the chapter has also highlighted the impact of COVID19 on the surge in the online piracy activity and the growth of the OTT platforms which gave rise to digital piracy amid the pandemic.

If you want to comprehend an issue thoroughly, you need to determine what the main issue is or what the current methods are for dealing with that as well. Unless we are cognizant of current solutions, we may not be able to see how they could be improved. The court's stance on internet copyright violation is very assertive. More Indian Supreme Court & High Court orders are being issued under John Doe & ex-parte commands, demonstrating this. Appellate courts, on either hand, must exercise



restrictions and take into account the effect of these kind of commands on lawful actions. Dynamic judicial system is a good thing, but that should not lead to the court system taking on risky cases. *Therefore, in the 5<sup>th</sup> chapter, the researcher has focussed on the Indian legal system which has taken a leading role in copyright protection in the fight against film piracy.* The Indian film business is therefore pushing towards legal binding structures and procedures, supported by rigorous rules and robust enforcement of the law.

*Using a comparative approach, the researcher examines how different countries laws approach the problem of online piracy in Chapter 6.* The researcher also has looked into the legal positions in countries such as the United States, the United Kingdom, France, China, and Canada. In this chapter, a researcher has also discussed some of the most significant cases of online piracy. Additionally, the researcher has noticed how well these nations are dealing with illegal downloading in all of these nations. The Copyright Alert System (CAS), as mentioned in the United States, is a consensual framework that allows network operators to notify perpetrators of about their unlawful acts and also to alert serial violators of the repercussions. Also, it was implemented in the United Kingdom. We can see that neither of such structures worked. Some argue that this scheme failed because the penalties for internet piracy were just too weak, making them ineffective at tackling the problem. As a result of one's findings, the researcher noted that a scheme that starts with instructing lawbreakers & wraps up with harder metrics against them can be implemented in India.

*According to Chapter 7, surveys were answered by researchers in order to conduct empirical investigation and gain a deeper understanding of online piracy.* This survey was completed by 340 people. Researcher attempted to evaluate reactions to a questionnaire that had been planned by researcher. The reactions provided valuable insight into the problem's complexities and possible solutions for the researcher.

Recent changes to the Copyright Act, 1957, made in 2012, are certainly a positive development. The WIPO Copyright Treaty (WCT) and WIPO Performers and Phonograms Treaty (WIPO PPT) have been incorporated into Indian copyright law by

the Copyright Amendment Act of 2012. (WPPT). Sections 65A and 65B were incorporated to bring about these changes.

First duplicates of illegal downloads are frequently captured on smartphones, according to research. Record keeping in movie theatres has never been easier, faster, or more comfortable than it is today, thanks to smartphones and webcams of high quality. Until recently, we had no way of dealing with the practise of filming movies in theatres with a camcorder. The Cabinet, on the other hand, has mentioned in the bill, and the Cinematograph Act of 1952 has been amended. If you use any audio recording device to copy or transmit a film or part thereof, you are breaking the law. Section 6AA has been added, which prohibits this. For the first time, penalties for breaching the regulations of section 6AA of the Cinematograph Act 1952 are added to section 7.

Because the issue of internet piracy of movies is so complex, eradicating it all at once will not be possible. However, there are a number of ways in which the issue can be addressed. The authors believe one of the most important aspects of this issue is to raise public awareness about it. Intellectual property awareness is a significant worry in India and around the world, according to a number of studies. Online piracy can be lessened in the long run by increasing people's awareness and sensitization to the problem. Several workshops and training programmes can be launched at the school and college levels to raise awareness in this regard. A person's life is built on the foundation laid by primary institutions. A person's life will be changed for the better if they are made aware of the importance of environmental issues while they are still growing up.

Additionally, the public's attitude and perception of online piracy is a major issue that needs to be addressed. People's views on the current issue are wildly divergent, as recent polls have shown. A lot of people don't assume internet-based counterfeiting is ethically wrong or a form of theft, and it can have a negative impact on both the creative industry and those who produce it. It's not going to happen overnight that people's mindsets and perceptions change in society. Some dedicated effort by the government and legislatures over a length of time is all that is required to achieve this goal.

Collaboration and community involvement can also generate adequate protracted advantages in curbing the problem at hand.

The legal frameworks in place in our country are rudimentary at best. In addition, there seems to be massive malfeasance at every level of government. There is a massive backlog of cases on the judiciary's plate. It takes a long time for justice to be served. Most people have lost faith in the judicial system as a result of its sluggishness. Online piracy is a new phenomenon for police officers, and they lack the training and resources to deal with it. Because of this, if we want to take on online piracy head on, we'll need more aggressive enforcement measures. Enforcement mechanisms must be bolstered as a matter of urgency and are an absolute necessity. Enhancing the legal modalities in the country will require the creation of intellectual property court system or tribunals and the training of police officers, among other things.

As a result, people in our country are breaking the law on a daily basis because there is no deterrent to copyright infringement. Deterrence can be achieved by punishing high-profile offenders and publicising their actions widely in the media. The importance of setting good examples when addressing this critical issue cannot be overstated.

Another important consideration when addressing the problem at hand is the use of innovative and fruitful technologies. Certain technological measures, such as encryption and dynamic watermarking, should be implemented to combat the threat of file sharing of films. Researchers believe that people turn to pirated products when there is a lack of legitimate sources to satisfy their needs. Researcher believes that products should be priced reasonably. People may turn to illegal downloading or other possibilities if the item lines are too expensive. This was a question that was included in the survey as well. This is evident from the responses we received. Some 67% of respondents also agreed that if the music or film was available at a reasonable price, they would not download an unlicensed copy of it. As a result, the researcher recommends that the price of legitimate copies be reasonable and affordable.

### **8.1.1. ANSWERS TO RESEARCH QUESTIONS**

The researcher has tried to answer each of the research questions raised in this research below in detail.

***Q.No.1. How far the existing laws are sufficiently deterrent to minimize the dangers inherent in the techniques of online piracy of movies and its impact on Indian Film Industry?***

In the researcher's opinion, laws pertaining to this topic are in line with international best practices. Online piracy can, however, be dealt with using existing measures that can be improved. When commercial piracy occurs, Article 61 of the TRIPS agreement mandates that member countries provide criminal remedies. There are monetary fines and prison sentences all over the world because of this provision. The researcher, on the other hand, contends the notion that a more robust IP system will lead to greater innovation need, which to be reexamined and reassessed. As a result of the 2012 amendments to the Indian Copyright Act of 1957, the rights of creators and those relating to digital copyrights have been strengthened. Copyright Act, 1957 gives both civil & criminal remedies. Civil remedies, such as injunctions, damages, and accounts, are discussed in Section 55 of the Copyright Act, 1957; however, criminal remedies are discussed in Sections 63 to 70 of the Indian Copyright Act, 1957. A fine of up to two lakh rupees may be imposed as part of the punishment. The Marrakesh Treaty of 2013 was also ratified by India as the first country, making it possible for people with visual impairments to have access to copyrighted works. Electronics and digital copyrights are also covered by the Information Technology Act, 2000. WCT and WPPT were incorporated into the Copyright Act of 1957 as a result of 2012 amendments. In addition, provisions for TPMs and RMIs have been added to the agreement.

However, no anti-camcording legislation has been passed in India as of yet. A simple definition of anti-camcording is that filming subject matter in cinemas employing a mobile phone, camera, or any other electronic device is prohibited. It's becoming increasingly common in the United States for young college students to be paid to record a good copy of a movie from the theatre. To distribute these files, they are then posted on file-sharing sites such as BitTorrent. These young people try to involve in these activities without thinking about the consequences, and many times they are

enticed into doing so by the promise of a quick payday. There is an urgent need to stop filming in the theatres. Cinematograph Act 1952 has recently introduced anti-camcording regulations in order to prevent piracy. Movie piracy is a serious problem, and this is a positive step in the right direction.

***Q.No.2 In terms of internet based illegal downloading, have the notable copyright reforms of 2012 been beneficial?***

In today's digital world, pirated content can be easily accessed thanks to electronic emerging technologies and the world wide web. Music, movies, TV shows and more can be streamed from online markets like Amazon Prime, iTunes and other OTT platforms. To make unlawful downloads and uploads easier for internet pirates, this media library has been created. These options have resulted in a massive increase in illegal production and distribution, causing artists, businesses, and publishers to suffer enormous financial losses.

For the sake of international cohesion in the fight against cyber-based video piracy, any new legislation enacted should be in accordance with existing international treaties. The World Intellectual Property Organization Internet Treaties, which lays out specific measures that countries can take to safeguard copyright and other related rights, are an important step in that direction. The Copyright (Amendment) Act, 2012 has made significant changes to the existing law in India, but better laws in line with these treaties are still needed. For copyright infringement cases involving the internet, it is critical to rewrite existing legislation to incorporate special clauses that deal with the issue of jurisdiction and concise legislation concerning responsibility in these kinds of instances.

***Q.No.3. Whether the enforcement, monitoring and administrative mechanisms designed to set and maintain high standards of regulations efficient and effective to control this menace?***

The police appear to have little interest in enforcing copyright laws. India's judicial system and law enforcement system are already heavily burdened by much more severe offences, so media piracy is not a high priority for them to a certain extent. Copyright

infringement is a non-emergency issue for law enforcement because they have more pressing concerns. The law enforcement officers consider copyright infringement cases to be cases of economic offences, and thus cannot take cognizance of the case. The label owner is frequently required to show a certificate from the Copyright Registrar's office by police officers, despite the fact that enrollment of copyright is optional and automatically acquired under copyright law. In the case of evidence of ownership, officers largely follow the general rules of tangible property offence. Because of this, the overall conviction rate appears to be very low. Some producers of pirated content are found to rent rented housing without a lease agreement and thus claim that the specific housing does not connect to them. Because of this, it is imperative to adhere to the mandate of section 100 of the Code of Criminal Procedure. It is a requirement of the law that the infringing items be retrieved in the existence of two local residents who are members of the public. Whenever the letting agent of the rented property is also called as a witness, the effect is amplified. There are also not enough officers trained to deal with piracy issues, given that the policeman-to-population ratio in the country is so low.

Misrepresentation of copyright ownership has led the police to insist on copyright registration certificates, as previously mentioned. Misrepresentation of intellectual property rights in India is a crime, and the manual could help resolve this issue by advising officers to start enforcing this provision. As a possible criminal law reform, the creation of units like the PIPCU of the London Police could be implemented. The PIPCU's anti-piracy functions include efforts to disrupt the revenue sources of pirate websites, one of which is particularly noteworthy. The Telangana Intellectual Property Crime Unit (TIPCU), modelled after the PIPCU, was recently established by the state of Telangana in response to reports of widespread piracy of Telugu films. Another state might be interested in replicating TIPCU's success, although some states might question the wisdom of allocating scarce assets for this objective.

This failure in implementation of copyright law is exacerbated by the judiciary's stance and prevalent analysis of copyright law, as well as the above-mentioned impediment to enforcement. There is a huge backlog in both civil and criminal proceedings. Many

cases necessitate financial commitments that go far beyond what the injured party is entitled to receive as compensation. It takes longer and costs more money to litigate when there is such a large backlog of cases that need to be resolved. Defending and prosecuting lawsuits becomes a huge financial burden for all parties involved. There are also a small number of cases that have been reported. There are few verdicts under copyright law because of the lengthy due process, which results in lengthy delays in resolving the cases. In addition, copyright infringement cases are plagued by delays in the filing of investigation reports. Although police are granted seizure without warrant powers under section 64 of the Copyright Act, 1957, even a brief delay in filing an investigation report result in significant revenue loss for the complainant because the market will be flooded with infringing goods by the accused. Because entertainment products have a short shelf life, any delay in enforcing copyright laws causes significant financial harm to the rights holders.

If found guilty, those who violate the Copyright Act, 1957's provisions will face harsh penalties, but the chances of being caught and convicted are extremely low. In copyright violation cases, bail is extremely easy to obtain, and as a result, the accused are free to produce and sell the crafted material from a variety of locations after their release. Again, experts in this field say that the personal enforcement system in Indian copyright law is almost failing, trying to weaken the protection for right holders in terms of civil remedies. There are very a smaller number of courts for copyright infringement cases, and only a small number of judges have the expertise to handle intellectual property cases. Aside from that, courts in developing economies tend to view copyright infringement lawsuits as "luxury" cases because of the socio-economic concerns they raise.

Creating specialized IP courts across India will necessitate that the appointed judges to these courts have a thorough understanding of the current IP landscape. There is a problem with the awarding damages in Indian IP law, for example. This means that judges designated to such court system could well be notified of how damages are calculated in other countries, both developed and developing, not just in the United States. According to the National IPR Policy, judicial training academies should incorporate IP courses and workshops. As a first step, the press release of a guidebook

for judges could be implemented. On legal and technological issues as well as developments in other jurisdictions, a handbook could be included.

***Q.No.4 Whether in comparison to developed countries like USA, UK, China, India should adopt any of the measures which might be helpful in combating the problem of Copyright Piracy?***

Online copyright piracy is a major problem in countries around the world, and countries are working to find solutions. Anti-piracy laws in countries such as Japan and Germany are extremely strict. Fines for piracy in these countries can run into the tens of thousands of dollars. Around 2013 in the United States, the US Copyright Alert System was launched. Operation Creative was also launched in the United Kingdom at the same time. Preparation and investigation are required for both of these systems, but they are both worth the effort in the long run. This is a good example of how public-private alliance and collective initiatives can be used to combat online piracy through voluntary agreements. Online piracy in India can be combated through such cooperative efforts. Recent efforts by Indian authorities to combat online piracy have been successful. The National Intellectual Property Rights Policy was approved by the Union Cabinet in May 2016. WTO and TRIPS regulations allow this policy. The policy calls for a reexamination of current intellectual property (IP) laws in order to correct any flaws. The current IPR policy focuses primarily on raising awareness and enforcing IPRs. A number of steps have been taken in India to promote and protect intellectual property. Benefits have yet to reach the innovators and creators. In a country like India, intellectual property enforcement remains a major challenge. Although it has chosen to take some measures and amended the Copyright Act, 1957, India does not really have a definitive strategy to cope with online infringement. Online piracy is indeed very distinctive from physical piracy, and we need to be aware of this when discussing piracy. Although existing laws have been amended to address the issue of digital piracy, the legislation and rules are still too expansive to adequately address the immense level of technical advancement that serves as a significant mediator of internet piracy.



***Q.No.5 What is the public's perception of online piracy, and how does this influence their performance?***

The fact that there is a law governing and dealing with piracy behavior is well-known to most people. People may not recognize the title of the law governing these particular aspects, but they are aware that such a law exists. Sensitization in this area, on the other hand, is critically needed. It's critical to keep up with the latest developments in intellectual property law in today's world. The digital medium is more important than ever in our age of information technology. However, as we all know, technological advancement has its drawbacks. These are long-term habits that can help reduce piracy levels by raising awareness and sensitizing people to these issues. Educating the public about copyright laws can be accomplished in a number of ways. In India and around the world, IP sensitization is an issue that needs to be addressed. Furthermore, many people believe that because they are spending for internet service, piracy is perfectly acceptable. People also believe that there is no harm done by engaging in such behavior. The researcher believes that people's attitudes and beliefs about a particular crime have a significant impact on how laws are enforced in our country. To stop a perceived activity that is not even considered a crime by the majority of people is a very difficult task. Taking something from someone without their permission is wrong and we should not do it. If we do, we should be prepared to face the consequences of our actions. Examples of this include crimes like theft, robbery, and the like. These crimes have been ingrained in our value systems since childhood. Because many people do not think it's illegal to illegally download music or movies online, they are more likely to participate in counterfeiting actions themselves because they think it's flawlessly common to do so. As a result, individuals who have this kind of attitude are more likely to be involved in piracy activities. The peer pressure to be seen as important and to follow in the footsteps of one's peers has also been noted. It is therefore very "in" and "normal" among teenagers to participate in piracy behavior, and many teenagers do so since their mates are doing it. In addition, by posting the pirated content, the pirates feel recognized and important. It appears that people's views on the internet are changing.

**8.1.2. TESTING OF HYPOTHESES**

***Hypothesis:1 - There are existing legal framework to curb the menace of online-piracy of movies in India with lacunae in its implementation.***

The advancement of technology has had a massive effect on copyright legislation. When it comes to internet intellectual property legislation, copyright statute is widely regarded as the most promising tool at our disposal. Customer's listening and purchasing habits have changed dramatically as a result of new technology. Technology has made it possible to fix work on a variety of materials. Copyright-protected material is no longer restricted to the borders of a single country, as the entertainment industry has come to learn. As an outcome, there is a price distinction between both the author's & corporate colleague's recorded version as well as the procreation of that video. The advancement of digital technology has made it much easier and handier for raiders and bootleggers to generate unauthorised variations of the initial work. Digital media has made it possible for copyrighted works to be easily transmitted and used in a variety of ways. It has become all too common for consumers to engage in illegal downloading & communicating. Intruding duplicates have been marketed at a lower price, which significantly harms the initial publishers, shareholders, & vendor's ability to reap a financial & ethical remuneration for one's work and contributions. There had already every time been a problem with unauthorized copying. It's impossible to guarantee full immunity from copying. It has also become quite difficult to impose because of societal expectations. The pragmatic restrictions of copyright legislation regulation have been levied by the widespread utilisation document switching and peer-to-peer connections. It's becoming increasingly difficult for the legal protections supervisor of copyright to find a middle ground between internet services, content owners, & other interested parties on the world wide web.

To combat copyright infringement, new and amended laws have been introduced. Judiciary, too, tried to impose penalties prescribed by the law. Why should people pay full price for an original movie when people can get a better one for much less money on the internet? This is the key question that needs to be addressed. A growing number of consumers are downloading illegal movie from unlicensed websites, according to a recent study. Consequently, legitimate movie file sales are directly impacted, providing customers with new avenues through which to access illegal movie. It is widely agreed

that the substitution effect is critical in the discussion of losses and the evolution of film structure. Piracy reduces demand for the original copy of a movie by substituting it for pirated movie, which results in lower revenues for the distribution channels, record labels, and other rights holders.

P2P file sharing networks have been blamed for a significant drop in music format sales as a result of their proliferation. In cyberspace, downloading MP3 files from the internet is considered to be one of the least heinous crimes. It is a common misconception among music pirates that they will not be detected while downloading illegal music files. Unlicensed music downloading has become an integral part of our social fabric, despite its illegal status. Meanwhile, the music business has been unable to come up with a viable model for its operations as well. Stricter legislation and stricter enforcement will not be sufficient to curtail the unauthorised distribution of movies, as is evident.

When an international file-sharing site refused to comply with Indian court orders, the concern of website-blocking orders only being pertinent in India came to the fore. This is a major problem for Indian cinema because of the massive number of film illegal downloading taking place outside India. India's movie industry also can come up with more effective approaches for enforcing its international copyrights. A worldwide organisation with portrayal in crucial foreign markets is possible for the Indian cinema. The geographic & concurrent movie industries could also be represented by such an organisation, in addition to Hindi cinema. Law enforcement agencies around the world may be able to work with the association in conjunction with Indian diplomatic missions. There may be a yearly subscription fee, but it would be greatly reduced for smaller production companies who join the connection. An organisation could strategically pursue civil & felon action against raiders who pose a danger to different representatives with the money it receives from enrolment dues. Damage awards in developed nations are much higher than those in India, so civil litigation could be used to seek restitution from pirates by pursuing large damages awards. It is also possible for the association to lobby the Indian govt to push for greater copyright regulation in other countries. Domestic application of the law in India is unlikely to undergo

significant transformation in the near future due to the numerous limitations that Indian judiciary and law enforcement must deal with. A handful simplified and yet substantial changes might also be made, though. Appropriate remedial notices authorised by the federal & state govts could be used to address the matter of police officers requiring copyright registration certificates. As a result of these notifications, police raids could be carried out on the basis of a notarized affidavit rather than a copyright registration certificate. It is possible that in place of a notarized declaration, an Indian government censors' certificate, which is required for public screenings in India, would suffice.

The researcher's claim that enforcement of law is lacking, is correct. The current situation necessitates the implementation of a robust and effective enforcement mechanism. Investing less in R&D and providing less of an inventive and supportive environment are two of the many consequences of a weakened regulation methodology, which impedes the nation's aggregate financial, societal growth. Economic incentives for innovation and new investment can be created by a robust regulation regime. Despite the fact that the copyright law complies with TRIPS, its enforcement has been criticised for its alleged slackness and ineffectiveness in several reports. Our country has a sluggish regulation framework due to a number of factors, including a slow dispensation of justice, undertrained law enforcement officers, and more. An inquiry into enforcement was made in a questionnaire. Furthermore, 57.1 % of those polled said that if copyright law were implemented more, it would deter people from illegally downloading copyrighted material. In addition, 25.1% of respondents thought that a lack of enforcement was the primary cause of Indian copyright piracy on the internet. The fact that 7% of respondents said they are not worried about being caught is also noteworthy. Because of this, the country's enforcement mechanisms are ineffective. IP protection and enforcement can only be improved if specific institutional efforts are made in conjunction with collaborative efforts to foster an IP-friendly culture in the country.

The question of copyright jurisdiction must be addressed in the modern day. In most cases, the laws of the nation where the violation occurred have jurisdiction. In other words, whether an act constitutes copyright infringement, trademark infringement, or

patent infringement relies on the legislation of the nation in which the conduct occurs. Thus, Singapore's laws will apply to any violation that takes place there. French law applies if a person in France downloads images that were previously protected by a copyright in the United States. If the infringement happens in many jurisdictions, the matter becomes even more difficult to deal with.

Infringing material is frequently removed from the Internet after only a few days or even hours. Right holders are put in a difficult position since they must act quickly in order to limit the harm. They are now responsible for ensuring that their own rights are protected.

Anonymously downloading or stealing copyrighted content is possible on a broad range of websites. It is becoming increasingly difficult to distinguish between content suppliers and content carriers. Deterring infringement by punishing providers of digitized data can be done, but this may limit growth in the very value-added services that give the internet its meaning.

***Hypothesis: 2 - Acquiring the legal rights and remedies by the copyright holders is a herculean task.***

Copyright law in India is comparable to that of most developed nations, including administrative and penal remedies. Deliberate failures in both the criminal justice system and the enforcing apparatus have indeed been documented in a number of investigations. In civil and penal matters, copyright holders suffer additional difficulties because to the heavy workload & tardiness of Indian judiciary. As a proportion of all prosecutions, the volume of illegal copyright instances registered each year in India is minimal, as well as the frequency of sentences considerably fewer, as per government figures.

As a matter of traditional opinion, bringing charges against an infringer in state trial is the "so much expedient" alternative for copyright holders. Moreover, it is a lesser affordable choice. Penal actions for copyright infringements, on the other hand, face a number of challenges. In addition, there are significant regulatory hurdles that content holders must overcome. Indian law allows law enforcement to perform a search without

the need for a permission, however authorities frequently vitiate this benefit by demanding upon copyright protection documents as proof of copyright holders prior to executing searches. A copyright clearance document could take a very considerable period for acquire in India, making it just a clearly erroneous requirement and a waste of time for a search. Court system are prohibited from exercising forearms sovereignty in penal cases, which might also require copyright owners to litigate lawbreakers far off from big cities, which seem to be preferred sites for civil cases. Prosecutors confront additional difficulties whenever criminal trials go to court.

Indian law also gives litigants in civil copyright violation actions the freedom to choose their preferred venue from among a plethora of possibilities. Throughout civil IP violation instances in India, the temporary injunctive relief phase is the most common phase of litigation. Even if the violation is obvious, the amount of damage awarded in such instances tend to be extremely minimal. As a result, in civil violation activities, an ad interim court order is sought by the majority of complainants. And via Anton Piller as well as John Doe orders, the High Court of Delhi has become very lenient in awarding of that kind rulings ex parte. As a result, the court has become the greatest popular venue for complainants in IP litigation, with some assumptions stating that the judge hears 70% over all IP instances in India. Internet providers (ISPs) have indeed been ordered to restrict intruding webpages with in framework of cinema pirate attacks by a multitude of rightsholders who already have acquired broad-based John Doe commands out from High Courts.

***Hypothesis:3 - As far as movie piracy is concerned, there is little public consciousness in our nation.***

In fact, the researchers above hypothesis about the low public awareness about illegal downloading of movies is correct. The thesis found that a lack of public consciousness of online piracy is a major barrier to the protection of intellectual property rights. In addition, the importance of intellectual property to the development of the nation and the gravity of the offence is severely diminished.

“Intellectual Property: Rights, Needs, and Awareness” is a conceptual study on intellectual property that found that most survey participants from 203 academic

institutions in four states just were not cognizant of the advantages of IP as well as other associated problems. Additionally, about 35 percent of respondents were unaware of intellectual property rights (IPRs). 394 If this is the case, we can infer that the general level of awareness is low. It has also been discovered that small and medium-sized businesses (SMEs) are unaware of the importance of intellectual property (IP) and the numerous financial advantages it provides.

Having a lack of understanding of intellectual property (IP) issues will have a significant impact on commerce, culture, and individual lives. The Office of the United States Trade Representative's Special 301 Report, released in April of this year, placed India on a list of countries to monitor closely. However, India has taken steps to improve and raise awareness of IP issues, according to the same report. There were 19 IP sensitivity highway demonstrates in 18 Indian states, according to the survey, & CIPAM in India really does have a strong online presence. In the questionnaire, the researcher also addressed the issue of piracy awareness. When asked what they believed was the primary cause of online copyright piracy, the people who took the survey said There were approximately 11.4 % who thought a dearth of IP consciousness was the primary cause of online copyright infringement. According to the survey, 85.1% of respondents believe that online piracy harms the country, while 21.9% of respondents say they will continue to download/upload/engage in illegal downloading even though they start receiving an alert or notices from copyright holders/Internet services, even if they are warned.

## **8.2. SUGGESTIONS**

The succeeding suggestions are made in beam of what has just been asserted.

- 1. ACKNOWLEDGEMENT FOR THE EFFORTS OF CREATIVES:** It's past time moviegoers showed some respect for the work of the many people who work behind the scenes to bring the magic of the screen to life. The names of hundreds of people appear on the screen after the film ends. It is only right that those who contributed to the film's production should be compensated for their efforts. Creative and innovative activity will decline and eventually stop if rights of

innovators are infringed and the creators do not receive sufficient safeguards once their rights are infringed. As a result, it is impossible to ignore the rights of creative people in a democratic society that strives to progress. Respect and protection should be given to creative and original work. People must be educated and made aware of the importance of valuing individual creativity in modern society.

- 2. THE COPYRIGHT ACT OF 1957 NECESSITATES REVISIONS:** Online copyright theft should be taken into consideration when revising India's copyright law. The mere existence of a law is not enough to accomplish its goals. Laws need to be evaluated to see if they are actually accomplishing the goals for which they were created. India's copyright law was recently updated in 2012. However, technological and digital advancements are occurring at a rapid pace. As a result, the law must keep up with technological advancements and social shifts. It is therefore necessary to review the copyright regime on a regular basis, and make necessary adjustments. In order to protect the rights of creators, the Indian current legislation for Indian copyright legislation encompasses a set of penal and civil provisions. Instead of simply increasing the severity of the penalties, a more nuanced strategy is needed. Whether or not a crime can be made worse by committing additional misdemeanours. A point of worry is the compoundability of Copyright Act, 1957 violations. The Copyright Act is compoundable for two reasons. Firstly, the cases will be processed more quickly, and secondly, the right holders will be compensated. Even more so, the general populace regulation machinery is not equipped to handle bulk violation instances as well as challenges. This is a major problem. A solution based on changing the law as a result of mounting stress is not an option. In addition to the needs of India's citizens, the country's socioeconomic and political conditions must be taken into account. The Indian legal system needs to be strengthened in light of the country's unique situations and necessitates. Copyright registration ought to be mandated. The enrolment of a copyright is a presumption of the facts stated within it and must therefore be admissible at trial in all court system without any further proof. Copyright Act, 1957, Section 63A permits the court to sentence



repeat offenders to a highest period of 3 years. To end up making this law more efficient and disincentive, stiffer penalties must be implemented. Further, because the least penalty for utilising an intruding software program is just 7 days, the legislature must enhance this penalty in terms of making the Copyright Act, 1957 as impactful as it can possibly be.

Wide variations in punishments for piracy still exist across the globe. About six months to three years is the maximum punishment for piracy in India; in Hong Kong, China, the maximum sentence is eight years; and in the United Kingdom, the maximum sentence is 10 years. Due to lenient sanctions in certain nations, the police are unable to conduct complete investigations, including obtaining search warrants, for certain types of crimes. It's critical, as the Indian Copyright Act stipulates, that a sentence of at least one year in jail be applicable upon trial.

3. **PROJECT FOR INCREASED RESOURCES:** Academies for training should be established by the government, which should also provide training. There should be an adequate number of trained practitioners available to serve as instructors. The government should place a high priority on raising public awareness about the importance of incorporating the Copyright Act in letter and spirit. The copyright law should be simplified by training a dedicated group of researchers. Copyright Law is a difficult field to work in because of its complexity. In order to increase our FDI and make undertaking venture in India easier, we need to resolve copyright challenges.
  
4. **A REASONABLE BALANCE OF CHANCES SHOULD BE USED:** As a fundamental essence of our criminal justice system, "beyond reasonable doubt" is perhaps one of the greatest crucial components. Habitual criminals benefit from the implementation of this principle, and it has become a means of escape for them. If you want to avoid this, you should use the 'balance of probability' principle. As a result, it's a more effective deterrent than the previous one. With more hope for a resolution, both the plaintiffs and the entertainment industry

members will feel more confident in their ability to get it. As a result, India's business and economic climate will improve.

5. **TAX- BENEFIT:** Offering copyright affiliations with tax advantages could really benefit them use the cost saving to fund anti-piracy as well as capacity-building efforts in the country. As a result of this assistance, right holder communities will also be eligible to offer more assistance and capability development to those in need. Cooperative efforts like these will help to elevate consciousness about copyright safeguard challenges facing the country, and also encourage increased coordination and much more effective implementation for Indian and international innovators and copyright owners.
6. **AWARENESS:** Even the law enforcers are not familiar with all the nuances of the Copyright Act, making its regulation even more complicated. Since their demands necessitate training and awareness programmes, they must be organised to meet those needs. If the present rate of digital revolution does not match up with regulation, consciousness, sensitizations and faster rebuttal to the grievances, it can be said that burgeoning digitization poses a serious threat to the entertainment business, hindering or trying to stab the creative rewards that encourage creativeness. Right holders are reluctant to file copyright infringement lawsuits, as evidenced by the lack of effective enforcement mechanisms and a strong deterrent strategy.
7. **REPOSITORY CARE AND SUPPORT:** In copyright violation and illegal downloads cases, there really is no information on serial offenders. As a result, the government should keep track of all aspects of IPR implementation in one centralized database. An archive of law breakers and information on IPR instances should be included in dataset, as should information on IPR's geographic as well as transcendental dispersion.

8. **THE NATIONAL IPR POLICY:** This policy should serve as a catalyst for radical changes in the IPR issues in India, including the rationalisation of rules and regulations as well as the encouragement of investigation into the factors that cause of advancements and violation. It also provides a possibility to upgrade the Copyright Act to compensate for digital integration, a continually evolving data scenery, and technological advances.
9. Pre-established or legislative remedies should be available to copyright holders. A case where it may be challenging for a rightsholder to demonstrate the scope or degree of their losses is a good candidate for this approach. Once they had this information, they could then decide how much money to give out. In nations such as the United States, Canada, & Israel, these remedies are attainable and are an adequate solution in an arena where it would be difficult to determine the level of infringement.
10. It is imperative that the Indian government cooperate with the governments of other nations in order to progressively integrate regulations & anti-piracy compliance mechanisms, as well as criminal procedural legislation, so that national enforcement agencies may work together more effectively. Trade organisations such as the World Trade Organization (WTO) can be used to promote the safeguarding of intellectual property interests throughout the globe, especially in nations that have been recognised as important producers of illegal copies.
11. **“CARROT AND STICK” TECHNIQUE:** Using “reward for information” programmes to entice the public to contribute information that might contribute to piracy prosecutions would be an example of a “*carrot and stick*” technique for combatting piracy. An incentive programme for theatre employees who patrol the auditoriums searching for illegal camcorder use should be considered. Legislative steps to render in-cinema camcoding a serious defendant should be introduced at

the same time. The Motion Picture Association of America has created a similar programme in the United States, and the contents of this programme should be scrutinised.

12. **CEASE AND DESIST NOTICES:** However, only with the cooperation of ISPs can the issue of “stop and desist” orders against Internet downloaders be effective, since film producers will not generally be capable to locate uploaders as well as file sharing sites absent ISP co-operation. Internet Service Providers Judicial enforcement over specific Web users should be reserved as a last choice and solely be utilised against specially chosen large scale users in order to reduce the danger of poor general populace perceptions & optimize the restriction effects.

### **8.3. RECOMMENDATIONS**

1. **CAMCORDING LAWS:** Copyright law forbids “authorising” specific actions without a copyright person’s permission, such as “to make a copy of” a film “through the storages of that in whatever form of expression by digital communication” for the first suggestion. In an international scenario, the term “authorization” has really been interpreted to signify “condemnation, authorise, contemplate,” most of which have “the component of authorization but rather prefer with what is being quipped to also be approved, as to if this be specific or to be inferred.” The Indian copyright law, on the other hand, appears to place no obligation on theatre employees to prevent the recording of performances. The law seems to only allow movie house staff to effectively enable unauthorised camcording, which is usually the case in only a small percentage of cases. “The obligation should be cast on the theater/multiplex providers to make sure that audiences don’t really bring a camcorder within the movie theatre,” and “this could be decided to make a situation of permission issued to movie theatres & cinemas by the district authorities,”.

However, there may nevertheless be two specific drawbacks. Some relatively small Indian cinemas do not even have security screening or manual strip search procedures because they lack the resources to implement them. It could be costly

for these theatres to have safety machinery installed or surveillance operatives hired just to diagnose video recorders. It's also becoming more common to record data on smart phones as the effectiveness of their webcams improves. Cell phones, which cannot be refused admission by theatres because they can be used to capture, undermine the effectiveness of verifying members of the audience for camcorders. If theatres want to prevent cameras from being used during film screenings, they should perform inspections within the movie theatre. Throughout each surveillance, an individual might walk the hallways and perform 3 to 4 regular monitoring. Hostesses, who are a common sight in each and every Indian movie theatre, might assume this role as well as the cinemas would not be encumbered by it. By sending one's own assessors to theatres, content owners can also help. Additional efforts had also recently been applied in the United Kingdom, where theatre staff use nocturnal spectacles to observe screens.

Regrettably, until recently, currently no specific legislation existed in India. It was only lately, however, that the Cinematograph Act of 1952 was amended to include a novel section 6AA prohibiting the utilisation of the certain audio - visual recorder in terms of making or distribute copies of a movie or portion of a movie. Additionally, Section 7 of the identical act is revised to include a penalty for breaking Section 6AA provisions. This is really a positive move in the fight against illegal downloading on the internet.

2. **EXCELLENT INVESTIGATING AGENCIES AND SPECIAL CELLS: IP** violence is a serious issue that needs to be addressed by state law enforcement agencies. For huge piracy litigation concerning multiple states, the Centre has a solely devoted IP cell. It's also important that initiatives to prevent digital piracy are put in place. Law enforcement cops as from base to the tip should be trained to investigate in such a way that the scope for misusing the law is minimised. In copyright cases, police forces have failed to take the necessary action. They prioritise cases involving killing, robbery, sexual assault, and other serious offences. Prioritizing copyright infringement instances is a good idea for the police. In order to conduct investigations into infringements of copyright, police

officers must be properly trained. Copyright is an issue that needs to be brought to their attention and education. To that end, specialised training programmes & trainings should indeed be established. IP offices at the provincial level should indeed be given extra funding in the short to medium term. There should be a rise in the total count of authorities territories with devoted IP cells. To combat internet and digital breaches, copyright stakeholders and ISPs and cellular services must regularly hold counselling sessions to promote larger collaboration & speedy as well as efficient cures. All enforcement agencies in the state should have cybercrime security personnel on duty. The Central Bureau of Investigation must establish centrally controlled IP violence blocks (CBI). Online copyright law should be investigated in a methodical, synchronised & effective fashion by a Cyber Crime Investigator entity.

- 3. REQUIREMENT FOR THE ESTABLISHMENT OF DEDICATED INTELLECTUAL PROPERTY RIGHTS COURT SYSTEM:** Our copyright regulation will be strengthened significantly if the Indian judiciary plays a pivotal role in this effort. All copyright cases must be taken seriously by the judiciary. Even though our legal system as a whole, from the lower courts to the Supreme Court, places a high value on other legal issues, copyright has gotten short shrift. Many cases are still pending in the courts, and the judges are doing everything they can to resolve them. All judicial deputies are being trained in copyright enforcement. Judges have an obligation to ensure that private and public rights are protected by interpreting the statute in such a way as to avoid conflicts. When it comes time to hand down a sentence, the Court must consider how it can serve as a warning to others in the future. Even though India's jurisprudence on copyright laws is at an infancy phase, the chance to end up making the copyright law more rigorous ought to not be overlooked. The global society will indeed be hesitant to put money in India's entertainment world if the original developers' concerns are not addressed. For this reason, highly skilled court system for intellectual property regulation is needed, and justices who are knowledgeable in the field should always be assigned. Moreover, having a set of classic functioning processes in place for law enforcers is critical. Having a board of judges and

prosecutors who are experts in intellectual property law can speed up the procedure in both civil and criminal cases.

4. **DRAFT E- COMMERCE POLICY:** Policy Measures to prevent the online distribution of pirated content may be required by intermediaries. Despite this, the 2021 Draft Policy allows for the creation and identification of “rogue e-commerce entities” that host pirated content to be created by a group of industry players and certain trusted parties. Intermediaries, such as broadband providers and internet sites, may well be designed to stop direct exposure to the recognised forum, and marketers and advertising companies could be needed to abstain from displaying their adverts on such portals once they have been ascertained. The initiative is being led by the Department for Promotion of Industry and Internal Trade’s (DPIIT) Cell for IPR Promotion and Management (CIPAM). Moreover, Draft Policy 2021 states that e-commerce drivers should create security measures to validate the integrity of products and sellers in accordance with E-Commerce Rules. The e-commerce framework may be obligated to blacklist the vendor if the vendor fails to show the authenticity of the goods within a decent length of time. To combat counterfeiting, the government plans to hold both the vendor as well as the e-commerce controller responsible. This policy’s core element appears to be that of fair play and it proposes ideas to address the current inequities in the e-commerce industry. The government is likely to take steps to ensure that all market participants have an equal chance to succeed.
  
5. **CURRICULUM AND AWARENESS RAISING FOR THE WIDER POPULACE:** The low level of consciousness of copyright illegal downloading is a major issue in this area. It is not uncommon for the public to view online copyright piracy as no worse than any other form of theft. As a result, it is necessary to change the public’s perception. It will take time for the process of “sensitization” to bear fruit, although in the long term it will be an effective way to combat online copyright piracy. Intellectual Property can be taught at the high school and college levels. Educating students about intellectual property should be a part of the school curriculum. Intellectual property should be made more

widely known through nationally and internationally workshops. In order to combat the growing problem of web - based copyright infringement, as much sensitivity must be created.

It is the mission of Office of Policy and International Affairs (OPIA) of the US Patent and Trademark Office to educate, instruct, and build capacity on intellectual property safeguard, monetization, and regulation all around globe, as well as online. For the advantage of U.S. interested parties, such programmes are made available to patent and trademark authorities, judges and lawyers, law enforcement agencies & border officials, international lawmakers, & U.S. relevant parties. Partnership with Intellectual Property Attaches & other US government agencies is common when OPIA programmes are carried out.

Some other US Government entities introduce international government and corporate leaders here on educational tours to encounter with IP experts and attend US organisations that are accountable for devising, safeguarding, and boosting IP in the United States of America. The Department of State's International Visitors Leadership Program is one example of a programme that tends to bring clusters from all over the globe to the United States to gain knowledge regarding intellectual property as well as connected investment and commerce concerns.' As part of its global engagement, the United States government collaborates with other governments to offer technical assistance and training, as well as to build capacity and share best practises in the field of intellectual property safeguard as well as implementation.

6. **AMENDMENTS:** Pass legislation amending the Copyright Act and the Criminal Procedure Codes in order to completely abide with the WIPO Internet Treaties by: (i) defining TPMs correctly, guaranteeing punitive measures to be applied to all these actions of circumvention & trafficking in gadgets, software modules as well as assistance that sidestep, as well as offering civil and felon penalties; and; (ii) adoption of standards and penalties for the illegal abolishment of rights management information.



7. **KNOW YOUR CUSTOMER BUSINESS:** Address online piracy by introducing “Know Your Business Customer” (KYBC) regulations commitments for internet drivers to recognise themselves on one ‘s webpage, and also commitments for listed companies to understand their customers, and requiring web host, fee, marketing, web address, and surrogate content providers to do venture with hardly recognised corporate enterprises.
  
8. **INTERMEDIARY LIABILITY AND DIGITAL MEDIA ETHICS CODE RULES IN INFORMATION TECHNOLOGY:** For intermediary portals, the new 2021 Information Technology (IT) Rules, published on February 25, 2021, by the Ministry of Electronics and Information Technology (MeITY), expanded the context of responsibilities significantly. Even though the 2021 IT Rules enhance intermediating system credibility and commitments, the notification and take - down system remains ineffective. For instance, the 2021 IT Rules include a takedown method for grievances of copyright violation in Rule 3(1). Even so, it instructs the Internet service provider (ISP) to remove intruding material only when it is made aware by a government entity. To add insult to injury, the closing date for abolishment set forth in the 2021 IT Rules (36 hours) is just too lengthy for breaching substance to stay online. Add a new paragraph to Rule 75 sub-rule (3) (Chapter XIV) granting intermediaries 36 hours to remove content in accordance with recommendations in order to more effectively combat the speed at which illegal content is distributed online.
  
9. **ISP SAFE HARBOUR PROVISIONS:** Constraints on ISPs’ liability for copyright infringements are set forth in the Indian Copyright Act. Because they do not limit the use of these safe harbours to totally neutral and silent ISPs that have no expertise of or regulate over the information, such clauses are hugely troubling from the standpoint of robust copyright online protection and enforcement, and the takedown framework under Section.52(1)(c) essentialia for these purposes, the incorporation of a judicial order requirement breaks international rules. By virtue of Section 79 of the IT Act, any info, data, or communications network provided or sponsored by a mediator are excluded from

the intermediary's responsibility. Ambiguity & lacunas in copyright regulation consequence from the inability to determine how well the two pairs of legislation in the Copyright Act & the IT Act converse. Improve the notice and takedown framework so that the identical infringement of copyright content doesn't re-emerge.

**10. MOVING DATA PROTECTION LEGISLATION FORWARD:** More information being shared by platforms could be counter intuitive in a country without a data protection legislation to protect citizens from the abuses of any party. The 2019 Personal Data Protection Act must be passed as soon as possible in this frame of reference.

**11. A NEW BUSINESS MODEL FOR THE FILM INDUSTRY IS REQUIRED TO APPEASE THE "ON-DEMAND" CREATION:** A large number of people, however, assume that illegal downloading also has a great deal to offer. They don't see this as an issue, but rather as a chance that can be taken advantage of. A few people believe that if one individual has gone to the trouble of posting as well as accessing illegal movies, and therefore is definitely passionate about the job of that originator can indeed be substantiated. Thus, the efforts of the innovators he has economically disadvantaged can be made available to the public. This means that even if someone accesses the pirated copy, it will still be of worth towards the marketer. It's time to reconsider business strategies and look for substitutes rather than enacting tight rules. Consumption patterns keep changing, and the film industry's revenue approach has to stay current. The Online world had also lately become the driving force behind the shift in consumer consumption. "On-demand" customers are the result of the growth of the Internet. Users can now get one's amusement whenever, wherever, and however they wish it thanks to the Internet. Customers are no longer ready to compromise for anything less after experiencing the authority to control the allocation of recreation at the keystroke of a mouse. Because of the Internet's ability to distribute content around the world instantly and for free, the pirated framework has pleased users. In order to recoup and hold onto the revenue losses

from the “on-demand” generation, the film business sector should concentrate on what user’s desire & build a business template that rivals what consumers currently receive from illegal downloading. Transitioning to the Online platform is just the beginning, however. To be a success, the film industry must provide consumers with a better alternative to piracy than what is currently available. It’s going to take a lot of trial and error to figure out what alternatives to piracy people will actually use. As a result of this, the movie industry’s piracy problem may be solved by the following business model. Taking a cue from *Hulu.com* (“Hulu”), the tv awhile back changed its marketing design to take advantage of the growing popularity of streaming online video. Hulu is a stream media site operated by 3 of the 4 significant television stations; NBC, Fox, and CBS. There is no cost to use the homepage to view HD video streams of Shows and movies. The majority of the user’s browser is accessible for 24 hours just after the show’s original air date. Users, in general, are gaining whatever they want from television programmes. The Hulu webpage already has achieved wonderful achievement. Because of the high efficiency of the good or service as well as the positive feedback from customers, this company has seen rapid growth in its notoriety over the past few years. However, the issue too continues to remain for the tv industry is whether or not Hulu can be a viable replacement or complementary business strategy for broadcast tv. Organizations that profit from piracy spend financial resources to reverse engineer the new tech rights holders use to keep their information safe. Because online piracy crosses borders, rights holders face additional difficulties that are not directly related to advanced technologies. Piracy has flourished because of the sluggish encrypted technological advances used by some TV transmission channels. To combat piracy, the business sector believes there should have been an all-encompassing strategy instead of a fragmented strategy. A John Doe order is the finest that broadcasting companies can hope for, and they’ll have to rely on ISPs to enforce it. The raiders, on the other hand, are able to do that by switching their settings.

12. **DIGITAL WATERMARKING:** Because of technological advancements, digital watermarks are almost always necessary. If technology is to blame for the

problem, then it must be possible for new tech to rectify the issues on its own. In the fight against internet-based copyright illegal downloading, there are many technical techniques that, if used correctly, can really be efficacious.

**13. TAKE-DOWN NOTIFICATION STRATEGY:** Using an appropriate take-down notification strategy if the copyright protected material is found on numerous intruding web pages by the holders. A takedown notice informs a third party or web page supervisor of the breach of the copyright owner's privileges by the third party's material on their webpage. Notification to intermediating or webpage supervisor, requesting removal of subject matter intruding on intellectual property rights. The Digital Millennium Copyright Act governs takedown notices in the United States. India does not have any laws governing the issue. A copyright take-down notification can be sent in accordance with the Copyright Rules, 2013. Rule 75 dialogue regarding the prerequisites of copyright violation notification as well as the aspects which it could perhaps encompass.

**14. DEVELOPING MORE COST - EFFECTIVE STRATEGIES:** Consumers currently have few choices when it comes to cinema fares. Seating arrangements in movie theatres are also a major factor in the pricing of most options. In order to attract a diverse range of customers, movie theatres should use several different pricing strategies. It can offer special deals and discounts to students in school and college, as well as to regular visitors. There should also be affordable options like Netflix and Amazon Prime for legitimate modes such as home video or video on demand. Such pricing strategies and the availability of a wide range of options for movie-goers could reduce the number of people downloading copyrighted works, thus reducing the supply of pirated goods in the market.

**15. NETFLIX MODEL:** When it comes to over-the-the-top (OTT) content, no one beats Netflix. It has a number of creative IP tactics to its credit. In order to secure long-term success and competitive advantage, it is its primary goal. In order to achieve this goal, Netflix relies heavily on intellectual property protection. For its overarching plan, it uses constant innovation to maintain its leadership position

in the industry. Rather of relying on a single intellectual property design to safeguard its core services and defend against future infringement actions, Netflix uses a number of intellectual property designs to do so.

Netflix has secured multiple patents for different developments from the time of its postal DVD subscription business, including its renting administration method, the rental processing system, and the type of envelopes it uses, etc. For example, Netflix has patented its computer-implemented approach for renting, as well as its service of providing services to its customers without charging them late fees. As a result of the use of a text-containing picture in digital images and the identification of previously streamed sections of a media title, Netflix has yet another key patent. Netflix uses novel approaches to protect its intellectual property rights in the intellectual property arena. *Narcos* and *Stranger Things* are two of Netflix's most popular shows, but it also borrows content from other studios or media companies. Netflix obtains written permission from other organisations before airing their material on Netflix. A good example of this is Netflix's *Rogue One*, that is a movie based on a comic book. It is possible to show copyrighted productions with permission by signing a contract or obtaining a licence. Only after complying with a slew of limitations and paying the required payments to the content's original authors can one receive such licence. Netflix employs a variety of novel ways to secure its original programming.<sup>689</sup>

16. **AD-SUPPORTED VIDEO-ON-DEMAND (AVOD) TREND:** If you want to be successful in the over-the-top (OTT) streaming market, you should provide free streaming services that are supported by ads. Free video stream services allow viewers to watch a few commercials without an issue. As a result, by adopting the AVoD model, the appetite for illegal content will be significantly reduced.<sup>690</sup>

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<sup>689</sup> *Intellectualis Toils & Turmoil: Where IP, Media and Entertainment Converge*, (Feb.06, 2022, 12:30 PM), [https://christuniversity.in/uploads/departmentactivities/Intellectualis%20October%202020\\_20210408044711.pdf](https://christuniversity.in/uploads/departmentactivities/Intellectualis%20October%202020_20210408044711.pdf).

<sup>690</sup> Rakesh Ranjan, *Beat OTT Video Piracy like a Pro-Proven strategies to Protect your videos from Illegal streaming*, (Feb.07, 2022, 02:30 AM), <https://www.muvi.com/blogs/beat-ott-video-piracy.html>.

17. **RATES DEPENDENT ON THE SUBSTANCE:** For us, content-based pricing is the greatest strategy to combat the piracy of over-the-top (OTT) video on the internet. Users would just have to pay a predetermined sum to access their selected material in your streaming shop. You do not have to buy a month's worth of shows if you only want to pay for one, so you can save money. If implemented, OTT consumer's monthly budget stress can be reduced, so they can be discouraged from engaging in illegal activities like piracy.
18. **ALTERNATIVE COMPENSATION SYSTEM (ACS):** It is also possible to legally download free music through the Alternative Compensation System (ACS). People would be able to tell the difference between legal and illegally downloaded music if they had a way to legally get it. The ACS requires copyright owners to enrol respective creations with the appropriate authority so that a biometric may be assigned to each one and a tally of downloads can be kept. The file is free to distribute or put online. On the other hand, sales tax will be levied on items that are necessary for the upload, download & distributing, such as computers, Media players, bootable CD/DVD and burners, and so on. Legal music and movies may be downloaded for free if this approach is adopted, eliminating the need to visit unlawful sites and employ illicit methods to access the same content. Similar to Google Music, the search terms will be supplied through an ad-supported site that is solely available to online consumers.

#### **8.4. MAJOR FINDINGS**

Piracy may be grouped under three basic rules: accessibility, authenticity, and affordability are all factors:

- The hackers will seize an opportunity if there is a shortage of a product.
- customers will pay pirates a lower price if somehow the value of a product of material is deemed to be excessively expensive, or greater than that which they feel justifies their costs considering the quality of the content.
- The hackers will offer an early alternative if the restrictions whereby a product is available are judged to be overly restrictive.

- Questions that indicate that banning infringing content is a pragmatic and straightforward option generate answers that are relatively positive. Strong resistance is generated by queries that give the impression that restricting or screening is chaotic, in the sense that it is apt to sweep up (or “censor”) lawful content or involve monitoring of users. Given the contentious record of attempts to block illegal websites and proactively differentiate pirated from non-infringing data, we regard the latter premise as being considerably more plausible than the former.

Young people who are aware of copyright laws are more likely to engage in online piracy, according to the findings of this research. Law enforcement authorities are lax when it comes to copyright enforcement. Even if the pirate thinks piracy is wrong, he continues to do it nevertheless. Because of the low rates and ease of downloading, illicit downloads are a popular choice for this person. According to the study’s findings, persons who are aware of copyright laws are not deterred from engaging in illegal copying. Campaigns aiming at educating people about copyright law will not be successful if this is the case. The study also found a link between piracy and a lack of regard for ethical principles. Anti-piracy programmes based on moral arguments, such as “a pirate is a thief” would be ineffective in their efforts to combat piracy. According to the findings of the survey, a significant portion of the populace is engaged in illegal downloading. The report clearly shows that the laxity of law enforcement organisations is a contributing element in the growth of piracy in the internet era. This demonstrates that common practise and the law are at odds. Either by stepping up enforcement to bring the law into line with reality or by making changes to the law to accommodate it, the friction can be alleviated. In our opinion, the latter is a better option because it is more practical. Consequently, allowing non-commercial data transfer would be an efficient way to address the danger of illicit downloading. P2P users would be decriminalised, artists would be compensated, and the court system and Internet service providers would be spared from massive punishment.

Whenever it concerns to movie censorship, there is a great deal of partisanship at play. The Constitution's protection of freedom of creative expression had to be limited only in extreme cases. Access to OTT platforms like Netflix, Hulu or Amazon Prime is now available for free or at a low cost online thanks to the rise of digital media. Surprisingly, the threshold of supervision for this kind of medium is less than for cinemas. In addition, unlike movies, they are subjected to post-censorship rather than pre-censorship. According to recent studies, consumers nowadays prefer to watch TV shows and movies online rather than at a theatre. Because of this, it is imperative that the two sets of rules be harmonised. Furthermore, Article 14 prohibits discrimination because the rules governing traditional and new media are different and, ironically, conventional media restrictions are more onerous. The principle of equality is embodied in Article 14, which mandates that the government treat equals equally. Classifications that do not have reasonable classifications or discernible differences can be challenged under Article 14. In the current situation, there is no rational foundation for imposing severe regulations on movies, despite the fact that virtual media is more accessible.

Piracy can never be completely abolished, as seen by countless cases of highly developed countries, such as the United States. Piracy is predicted to evolve with time, and some kinds of piracy may disappear altogether. Keeping a close eye on the process and being ready to act quickly if something goes wrong is critical. The strategic goals are expected to be implemented by a variety of governmental agencies working together. It is envisaged that in light of the good steps, the Indian market would begin to shift toward lawfully acquired content in the near future. Government, society, and the sequence of events are all impacted by media, especially digital media. Human growth, socioeconomic advancement, governance and democracy all benefit from an objective and fair media coverage. This will help safeguard and expand the public interest in these subjects.



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# **ANNEXURES**

## **ANNEXURE 1: QUESTIONNAIRES**

## QUESTIONNAIRES

1. Name:
2. Email id:
3. Mobile No.:
4. Age Group:

Below 18

18-25

26-35

36-45

46-55

55 & above

6. Educational Qualification:

Matriculation

Higher Secondary

Graduate

Post Graduate

Others

7. Occupation

Student

Law Student

Academician

Business

Govt. Employee

Private Employee

Professional

Lawyer

8. If from India, Name of State or Union Territory:

Andhra Pradesh

Arunachal Pradesh

Assam

Bihar

Chhattisgarh

Goa

Gujarat

Haryana

Himachal Pradesh

Jharkhand

Karnataka

Kerala

Madhya Pradesh

Maharashtra

Manipur

Meghalaya

Mizoram

Nagaland

Odisha

Punjab

Rajasthan

Sikkim

Tamil Nadu

Telangana

Tripura

Uttar Pradesh

Uttarakhand

West Bengal

Andaman and Nicobar Islands

Chandigarh

Dadra & Nagar Haveli and Daman & Diu

Delhi

Jammu and Kashmir

Lakshadweep

Puducherry

Ladakh

9. If not from India, Name of the country:

10. Do you watch movies?

Yes

No

11. Are you aware of the term “Online Piracy of Movies”?

Yes

No

12. Through what source, movies are being mostly watched by you?

Television with DTH Connection

Smart TV through OTT Platforms

Personal system or Smartphone through OTT Platforms

Personal system or Smartphone by downloading or Telegram

Pen-Drive with pre-downloaded movies

Movie Theatres

Pirated Movie Disks

Downloading Movies through Torrent

13. Data or Network Services mostly used by you for watching movies

3G

4G

5G

WIFI with Cellular data

Others



14. How frequently do you download movies from the Internet for watching from unauthorized source and without any payment?

Never

Occasionally

Every Weekend

Once in a month

Once in 6 months

15. Reasons for downloading pirated movie content

Do not download

Movie is not broadcasted on TV

Convenient and free of cost with unlimited internet connection

Saves time and can be seen in portion in any device

16. In order to watch pirated contents, source mostly used

YouTube

Torrent

Telegram

Facebook

Any other free site available on internet

17. Piracy is a crime and downloading from illegal sources is penalised by law. Are you aware?

Yes

Yes, heard of but do not bother

Yes, but no one has even been punished

No

18. If you get or download a copy of pirated movie, do you share it with others?

No, I do not share

Yes, I share it with others

19. Are you aware that online internet piracy causes losses to the creators and law protects the rights of film makers in India?

Yes

No

20. Online piracy of movies in India is caused by what, in your opinion?

Ignorance

Corruption

High renting price of movies

Movie platform prices

Lack of legal enforcement

21. Will you stop downloading/uploading/engaging in piracy if you receive a warning or notification from copyright owners/Internet service providers?

Yes, I will stop infringing content, if I receive notice

No, I will still continue to infringe copyright content

22. Do you believe that stricter enforcement of copyright laws would deter individuals from pirating copyrighted content?

Agree

Strongly agree

Disagree

Strongly Disagree

Not Sure

**ANNEXURE 2:**  
**THE CINEMATOGRAF (AMENDMENT) BILL, 2019**