

# COPYRIGHT ENFORCEMENT IN INDIAN ENTERTAINMENT INDUSTRY

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Submitted by:

Binita Chauhan

SF0221009

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Supervised by:

Dr. Jupi Gogoi

Associate Professor of Law



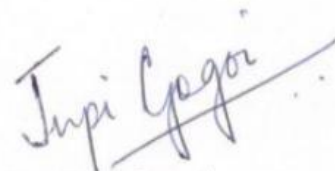
National Law University and Judicial Academy, Assam

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## SUPERVISOR CERTIFICATE

This is to certify that BINITA CHAUHAN is pursuing Master of Laws (LL.M.) from National Law University, Assam and has completed her dissertation "COPYRIGHT ENFORCEMENT IN ENTERTAINMENT INDUSTRY" under my supervision.

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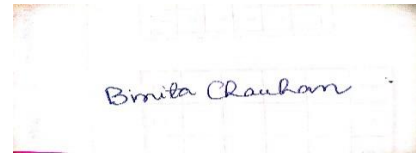


Dr. Jupi Gogoi

Associate Professor

## DECLARATION

I, BINITA V. CHAUHAN, pursuing Masters of Laws (LL.M) from National Law University and Judicial Academy, Assam, do hereby declare that the present dissertation titled “COPYRIGHT ENFORCEMENT IN INDIAN ENTERTAINMENT INDUSTRY” is an original research work and has not been submitted, either in part of full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

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## TABLE OF CASES

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1957 - THE COPYRIGHT ACT

1995 - THE CABLE TELEVISION NETWORKS (REGULATION) ACT

1952 - CINEMATOGRAPH ACT

2000 - INFORMATION TECHNOLOGY ACT

## TABLE OF ABBREVIATION

1.	AIR	All India Reporter
2.	AVGC	Animation, Visual effects, Gaming, and Comics
3.	BC	Berne Convention
4.	CB	Copyright Board
5.	CBFC	Central Board of Film Certification
6.	CAGR	Compound Annual Growth Rate
7.	DMCA	Digital Millennium Copyright Act
8.	DCCCC	Digital Curated Content Complaint Council
9.	FICCI	Federation of Indian Chamber of Commerce and Industry
10.	FCAT	Film Certificate Appellate Tribunal
11.	FFO	Film Facilitation Office
12.	GDP	Gross Domestic Product
13.	GOI	Government of India
14.	HC	High Court
15.	IPR	Intellectual Property Right
16.	IPRS	Indian Performing Rights Society
17.	ISP	Internet Service Provider
18.	IRM	Information Rights Management
19.	MEITY	Ministry of Electronic and Information Technology
20.	MPDA	Motion Pictures Distributors Association of India

21.	OSP	Online Services Provider
22.	OTT	Over The Top
23.	SC	Supreme Court
24.	TRIPS	Trade Related Aspects of Intellectual Property Rights Agreement
25.	TPM	Technological Protection Measures
26.	UK	United Kingdom
27.	UN	United Nation
28.	URL	Uniform Resource Locator
29.	WIPO	World Intellectual Property Organization
30.	WTO	World Trade Organization
31.	WCT	WIPO Copyright Treaty
32.	WPPT	WIPO Performances and Phonograms Treaty
33.	UCC	Universal Copyright Convention
34.	UNESCO	The United Nations Educational, Scientific and Cultural Organization

## **CHAPTER 1**

### **INTRODUCTION**

Copyright is a form of Intellectual Property Right which aims to safeguard the original work of the creator in a variety of industries including music, literature, and film. In the process, it aims to assist the artist in receiving financial rewards from their creative production. In fact, it is a collection of rights that includes, among other things, the rights to the work's adaptation, translation, and public communication. The composition of the rights may vary slightly depending on the work in question. “An artistic, literary or musical work is the brainchild of the author, the fruit of his labour, and so considered his property. So highly it is prized by all civilized nations that it is thought worthy of protection by national and international conventions”<sup>1</sup>. After a particular amount of time has passed, the work is considered to have lost its copyright and entered the public domain. Original literary, dramatic, musical, and creative works have copyright protection for as long as the author or artist is alive, followed by a 60-year period beginning the year after the author’s passing before entering the public domain. Given its extensive cultural past, India has consistently been a major player in the copyright industry. The actions that fall under the purview of copyright are widely practised and expanding in the nation. India’s copyright rules are on par with those of several developed nations in terms of legislation. Since its commencement in 1958, India's copyright legislation has undergone periodic amendments in order to keep up with technical advancements, such as in 1983, 1984, and 1994. The law of copyright in the modern era provides the legal framework for the creation of works by the entertainment industries, including publishing, film, broadcasting, recording, and the computer and software industries, as well as the traditional beneficiaries of copyright, the individual

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<sup>1</sup> *Gramophone Co. v Birender Bahadur Pandey* [1984] SCR (2) 664

author, composer, or artist. When it comes to content development, the Indian entertainment sector has advanced tremendously in recent years. When discussing content creation, it's also important to consider the uniqueness of the content and whether or not the IPR laws have been followed. IP rights are a crucial defence against any kind of infringement on the creativity and invention of the producers, recognising the creator's intellectual property and ensuring the public dissemination of original work. Because so many things with copyrights are exchanged abroad, globalisation has driven copyright issues to the fore. Internet use and social media have significantly increased as alternative media platforms along with the growth of the film industry. But concurrently with these developments, it has encountered numerous legal difficulties related to copyright and piracy. When it comes to the violation of intellectual property rights, particularly with regard to copyrights laws, legal concerns and issues of the Indian entertainment industry have long remained a key topic of discussion. The most significant and severe challenges brought on by piracy are faced by the entertainment industry. Unauthorized reproduction and distribution of cinematograph films and music are not new developments, but in recent years, the magnitude of the problem has grown to the point where it threatens the existence of the entire industry. The penalties for violating copyright had become increasingly severe. Despite all of this, there is a lack of awareness about copyright in the nation, while complete elimination of piracy may not be attainable, its worst impacts might be limited or neutralised.

### **1.1 Legal Framework Under Copyright Act, 1957**

In India, the Copyright Act of 1957, as well as the Copyright Rules of 1958, govern copyright protection. The Indian Copyright Act was the first statute created after independence based on the Berne Convention's provisions. The Copyright Act's main purpose is to promote authors, composers, artists, and designers to create original works

by providing them with the exclusive right to exploit the work for monetary gain for a limited time, usually for the life of the creator plus 50 years, and to protect the author or creator of the original work from unauthorised reproduction or exploitation of his or her materials. The right also extends to preventing others from exercising any other sort of copyright-related right without authorisation.

### **1.1.1 Statutory Definitions**

In section 1 of the Indian Copyright Act<sup>2</sup>, it is stated that it applies to the entire country. The work that is in the nature of an adaptation is likewise entitled to protection under section 2 (a) of the Act<sup>3</sup>, although the provision specifies a list of works that can be considered adapted work i.e.,

- (1) the transformation of the work into a dramatic piece in relation to dramatic works,
- (2) the transformation of a literary or creative work into a dramatic production through public performance or another method,
- (3) any condensed version of a literary or theatrical work, or any version of the work in which the plot or any action is conveyed exclusively or primarily via the use of photographs in a format suitable for publication in a book, newspaper, magazine, or other periodical of a similar nature,
- (4) any adaptation of or transcription for performance of a musical work,
- (5) with reference to any use of a work that involves rearranging or changing it.

According to the criteria of Section 13<sup>4</sup>, a work must be an original literary, dramatic, musical, or aesthetic creation, as well as a film or sound recording, to be protected by copyright. It's critical to remember that nothing will affect the independent copyright

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<sup>2</sup> The Copyright Act 1957.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.



protection in any work in which, or a substantial part of which, the film or sound recording is made, when it comes to copyright in cinematograph films or sound recordings. Section 14 of the Act<sup>5</sup> defines the set of rights associated with each piece of copyrighted work in a concise manner. Except for computer programmes, in the case of a literary, theatrical, or musical work, the rights are available to -

- (1) to reproduce the work in any material form
- (2) to issues copies of the work to public
- (3) to perform the work in public or communicate it to public
- (4) to make translation and adaptation of the work
- (5) to make cinematograph films or sound recording in respect of the work.

According to Section 14(d) of the Cinematograph Film Act, the author of a cinematograph film with copyright has the respective exclusive rights that is to make a copy of the film, including photographing any image from the film that is a part of it; to sell or give on hire; to offer for sale or hire any copy of the film; and to communicate the film to the public.

Additionally, for sound recordings, the rights include the ability to create any additional sound recordings that incorporate it, to give or sell or hire any copies of the sound recording, to convey it to the public, and to do any of the aforementioned in the past without affecting the latter.

### **1.1.2 Objective of Copyright Law**

The law of copyright is applicable to a wide range of situations, and because there are so many different actions that can violate copyright, everyone in a civilised society should be aware of it. The main objective of copyright is to promote and reward authors

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<sup>5</sup> Ibid.

for creating new works and make those works available to the general public for enjoyment through the grant of property rights. The idea goes that by granting creators certain exclusive rights that enable them to protect their creative works from theft, they benefit financially and the public as a whole gains access to the works that would not otherwise be produced or transmitted. Today, copyright subsists in variety of industry including those that produce, distribute and publish dramatic and musical works for performances, publication of musical works and cinema, television and broadcasting. The creation and distribution of books, magazines, and newspapers, as well as mediums of entertainment such as plays and music for performances, the publication of musical works, as well as the film, television, and broadcasting industries, are all served by copyright today.

## **1.2 Statement of Problem**

The purpose of Copyright Act, 1957, is to safeguard an original work of author against unauthorised reproduction of his work. Copyright refers to a person's intrinsic claim to his intellectual property, which arises from the depths of the human mind and manifests as works. The entertainment industry is the fastest-growing industry in India with copyright and all other right under Intellectual Property Right prominently dealing with the industry. The success of the industry has reached new heights. Bollywood films, which generate billions of rupees in income, are unquestionably the most successful in Indian cinema, followed by South Indian films and a few other regional films. The current era has also seen a significant advancement in terms of film scripts based on hard social realities, thus serving as a truthful reflection of society. But in the entertainment sector, copyright piracy poses a risk to artistic creations and expressions. Such works require protection from market piracy. However, keeping track of all instances of copyright infringement is extremely difficult today and to analyse how the

preventive measures are effective in combatting piracy. Piracy is a huge and growing concern in the entertainment sector around the world. The existence of piracy is considered to be harmful to a well-functioning economy. When businesses focus their marketing on the quality of their product, the spread of duplicated and reproduced goods has a negative impact on the real product's reputation and originality.

### **1.3 Research Aim and Objective**

1. To use copyright as a tool in the entertainment industry to safeguard the original work in the long run so that no one can access without authorization.
2. To examine the legal regime envisaged in WIPO, Berne Convention and related conventions along with the Copyright Act, 1957.
3. To evaluate the role of judiciary in giving effect to legislation under the Act.
4. To develop critical perspective of how violation of copyright is adversely affecting the attributes of the Indian entertainment industry.

### **1.4 Research Questions**

1. How the Copyright Act, 1957 subsists within the ambit of entertainment industry?
2. How the growth of digital medium and transition to digital era booming in entertainment industry?
3. In terms of content creation, quality and use of advance technology, how the entertainment industry safeguards from illegal and unethical violation of copyrighted work?
4. How piracy constitute significant and growing problem in the entertainment industry?

## **1.5 Research Hypothesis**

The current copyright system is limited, and significant improvements are required to increase the enforceability of intellectual property laws in light of recent developments in the entertainment industry, in order to address the challenges.

## **1.6 Research Methodology**

Research means to search or to find out and examine again. This is the very essence of the process of acquiring new knowledge and methods involved is an insight about the phenomenon or the problem. The methodology followed in this research is based on doctrinal form of research. The researcher draws the plan of research on the basis of legal principles based on the Copyright Act, 1957. These precepts and principles govern the given factual situation and propound the principle for future situations. Various secondary sources of materials are used in the study of the research which includes –

- (i) articles by eminent writers on the subject and related subjects
- (ii) articles from the internet source including Heinonline, Jstor.
- (iii) commentaries by various text books authors
- (iv) Supreme Court and High Court judgments
- (v) legal database including West Law and Manupatra

## **1.7 Research Design**

The present research study has an explanatory and descriptive research design. The entire study has been divided into six chapters according to the relevancy and its respective importance to the theme keeping in view the objectives, arena and hypothesis. The chapterisation is made as follows –

## CHAPTER 1 – INTRODUCTION

The chapter starts with an introduction to copyright regime in the intellectual property rights. The content holds the statutory framework of the Copyright Act, 1957 with important provision along with the subject matter of the act, which will elaborate the topic in further chapters.

## CHAPTER 2 – INTERNATIONAL COPYRIGHT LEGAL FRAMEWORK

This chapter deals with the relevant international conventions proposed relating to copyright regime in intellectual property rights. With brief understanding of its working in the international and national regime.

## CHAPTER 3 – LEGAL FRAMEWORK IN INDIA

This chapter deals with brief explanation of Indian legal system which include the Copyright Act, 1957, the Cable Television Network (Regulation) Act, 1995 and the Cinematograph Act, 1952. The later part of the chapter subsists the entertainment sector including the film industry, music industry and television industry.

## CHAPTER 4 – DIGITALIZATION OF ENTERTAINMENT INDUSTRY

This chapter deals with emergence of digital era in the copyright regime along with the digitalization of entertainment industry which include the emergence of OTT platforms, describing the operation of internet under copyright regime.

## CHAPTER 5 – INFRINGEMENT AND PIRACY IN ENTERTAINMENT INDUSTRY

This chapter deals with the infringement and piracy under the copyright regime in entertainment sector with brief discussion on the aspect of piracy, its implication on

copyright system. The later part of the chapter consists infringement in copyrighted works and in the segments of entertainment industry.

#### CHAPTER 6 – COPYRIGHT PROTECTION IN ENTERTAINMENT INDUSTRY

This chapter deals with the enforcement of copyright in entertainment industry which includes the statutory remedies mainly civil, criminal and administrative measures, the role of copyright society in protecting the proprietor's right. The later part consists of combatting of piracy with government initiative and judicial pronouncements.

#### CHAPTER 7 – CONCLUSION AND RECOMMENDATION

The final chapter is the concluding remark, including suggestion/recommendation with respect to copyright law in entertainment sector.

## CHAPTER 2

### INTERNATIONAL COPYRIGHT LEGAL FRAMEWORK

There have been worldwide agreements to defend IPR rights due to the growing relevance of IPRs in the current global context. Due to which the first international to address and endeavour intellectual property rights agreement was the World Trade Organization's (WTO) Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS) was signed in 1994, ascribing minimum level of protection and definite legal recognition. It was an agreement between all the members of the World Trade Organization (WTO) which comprise India. The WTO's TRIPS Agreement is an endeavour to limit the gap in the manner that these rights are safeguarded and implemented all over the world and to bring them under international principles. It lays out the minimum standard of protection and implementation that every administration needs to provide for the intellectual property held by nationals of individual WTO members. The purview of protection, rights granted, terms of the protection, interest of the right holders with the users, remedies and penalties provided by the agreement vary with fundamental purpose for the protection of intellectual property rights. In the second half of the 18<sup>th</sup> century, attempts were made to broaden the scope and subject matter of intellectual property. The first results of efforts to coordinate an international IP agreement to which governments would be committed were the 1883 Paris Convention and the 1886 Berne Convention for the Protection of Literary and Artistic Works. A critical role is played by the TRIPS in promoting trade knowledge and creativity, in settling disagreements regarding IP laws and guaranteeing WTO members the scope to accomplish their domestic policy objectives. Intellectual property rights (IPRs) have become a major topic of discussion in recent years and have emerged as a

major issue in global innovation policy. Early intellectual property law dealt with inventions, literary works, creative works, designs, and trademarks<sup>6</sup>. The scope of intellectual property continues to increase, despite its early historical ties to the concepts of monopoly and privilege. New or existing subject matter has been added to existing intellectual property systems, and new systems have been created to protect existing or new subject matter in the twentieth century<sup>7</sup>. The developed nations like the USA and large corporation, emphasis more on IPR protection. They believe it is vital to provide sufficient incentives for necessary creation and innovation. To catch up, developing countries must implement special policies to strengthen their absorption ability by building sufficient infrastructure and human resources. IPRs do not obstruct the development of skills. To acquire the knowledge of the most industrialized countries, developing countries should focus on active learning policies<sup>8</sup>.

## **2.1 World Intellectual Property Organization (WIPO)**

The World Intellectual Property Organization is an organization dedicated to stimulating creative activity and advancing intellectual property protection around the globe. This Convention was signed in Stockholm in 1967 and entered into force in 1970, however WIPO was recognized as a UN specialised agency in 1974. WIPO's aim is to create a complete, well-balanced, and effective system for intellectual property rights protection and enforcement<sup>9</sup>. Thus, Article 1 of the 1974 Convention states that

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<sup>6</sup> 'Intellectual Property Rights: An overview of leading organizations and conventions' Indore Institute of Law (2019) <<https://blog.ipleaders.in/leading-international-instruments-related-to-intellectual-property-rights/>> accessed 15 April 2022.

<sup>7</sup> Dr. Peter Drahor, 'The Universality of Intellectual Property Rights: Origin and Development' <[https://www.wipo.int/edocs/mdocs/tk/en/wipo\\_unhchr\\_ip\\_pnl\\_98/wipo\\_unhchr\\_ip\\_pnl\\_98\\_1.pdf](https://www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_1.pdf)> accessed 15 April 2022.

<sup>8</sup> Daniel Archibugi, 'The Globalisation of Intellectual Property Rights' <<https://www.globalpolicyjournal.com/articles/international-law-and-human-rights/globalisation-intellectual-property-rights-four-learned->> accessed 15 April 2022.

<sup>9</sup> WIPO Intellectual Property Handbook [2008] <[www.wipo.int](http://www.wipo.int)> accessed 15 April 2022.



“for promoting creative intellectual activity and for facilitating the transfer of technology related to the industrial property to the developing countries in order to accelerate economic, social and cultural development”<sup>10</sup>.

## **2.2 Berne Convention, 1886**

The Berne Convention was the first international convention adopted in 1886, for the protection of literary and artistic works. Its purpose is to safeguard works and their author’s rights. According to Article 2(1) of the Convention<sup>11</sup>, “any production in the literary, scientific, and artistic field, whatever the mode or form of expression” must be protected<sup>12</sup>. It is founded on three basic principles; the principle of national treatment holds that works created in one of the contracting states must be afforded the same level of protection in each of the other contracting states as works created by its own nationals, the principle of automatic protection emphasises that protection should not be contingent on any formality being fulfilled and The principle of protection independence holds that protection is provided regardless of whether or not protection exists in the place where the work was created. It stipulates that each member country must provide imported creations with the same layer of security as domestic works.

## **2.3 WIPO Copyright Treaty, 1996**

The WIPO Copyright Treaty (WCT) is a specific agreement under the Berne Convention that deals with the digital protection of works and the rights of their authors. Following the adoption of the TRIPs Agreement, it became clear that the TRIPs Agreement did not address all of the issues created by the explosive rise of digital

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<sup>10</sup> Ibid.

<sup>11</sup> Berne Convention (adopted in 1886).

<sup>12</sup> ‘Guide to the Berne Convention for Protection of Literary and Artistic Works’ (published 1978, WIPO Publication) <[https://www.wipo.int/edocs/pubdocs/en/copyright/615/wipo\\_pub\\_615.pdf](https://www.wipo.int/edocs/pubdocs/en/copyright/615/wipo_pub_615.pdf)> accessed 15 April 2022.

technology, particularly through the Internet<sup>13</sup>. The Berne Convention's provisions were determined to be insufficient to respond to these developments. A number of significant new technological innovations occurred in the 1970s and 1980s, including reprography, video technology, compact cassette systems for home taping, satellite broadcasting, cable television, computer storage of works and electronic databases, and etc. The WIPO Diplomatic Conference on Certain Copyright and Neighbouring Right Questions adopted the WIPO Copyright Treaty in 1996 and WIPO Performances and Phonograms Treaty, 1996 (WPPT), to bridge this gap. The WIPO Copyright Treaty of 1996 (WCT) is a special agreement, as defined by Article 20 of the Berne Convention, that binds Contracting Parties that are countries of the Union established by that Convention to comply with Articles 1 to 21 and the Berne Convention's Appendix<sup>14</sup>. In order to strengthen the right of authors to reproduce their works, the WCT grants new rights, such as the right of distribution for authors of literary and artistic works and a qualified exclusive right to permit commercial rental to the public with respect to computer programmes, cinematic works, and works embodied in phonograms of the originals or copies of their work. Any public release of their works by wire or wireless means, including making them available in a way that enables users to access them at a time and place of their choosing.

#### **2.4 WIPO Performances and Phonogram Treaty, 1996**

In ensuring that artists acquire rights of attribution and integrity in their live aural performances or performances fixed in phonograms, the WPPT is related to Article 6 of the Berne Convention Paris Act. This is the first time that moral rights for artists

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<sup>13</sup> David Vaver, 'Principle of Copyright' World Intellectual Property Organization, (2002) <[https://www.wipo.int/edocs/pubdocs/en/copyright/844/wipo\\_pub\\_844.pdf](https://www.wipo.int/edocs/pubdocs/en/copyright/844/wipo_pub_844.pdf)> accessed 15 April 2022.

<sup>14</sup> 'Summary of the WIPO Copyright Treaty' (published 1996, WIPO Publication) <[https://www.wipo.int/treaties/en/ip/wct/summary\\_wct.html](https://www.wipo.int/treaties/en/ip/wct/summary_wct.html)> accessed 15 April 2022.

have been stipulated in an international agreement. It safeguards the performances of performers i.e., actors, singers, musicians, as well as the phonograms of phonogram producers. The WPPT's digital agenda addresses the rights that apply to the transmission and storage of performances and phonograms in digital systems, as well as technological safeguards and rights management data.<sup>15</sup>

## **2.5 Universal Copyright Convention, 1952**

The Universal Copyright Convention (UCC) is an international treaty that was drafted under the auspices of UNESCO. It was passed in 1952 with the goal of safeguarding literary, scientific, and artistic works such as music, theatre, and cinematography, as well as writing, engraving, painting, and sculpture<sup>16</sup>. It made the contracting state obligated to provide effective and adequate protection to the copyright proprietors and author's rights. These rights include, the reproduction right, the broadcasting right and the public performance right.

## **2.6 Rome Convention for Protection of Performers, Producers Of Phonograms And Broadcasting Organization, 1961**

This Convention deals with neighbouring rights, also known as related rights. It requires member states to preserve performance rights, broadcasting rights, phonogram producer rights, and etc. the Convention defines “performers” as actors, singers, musicians, dancers and other persons who act, sign, deliver, declaim, play in, or otherwise perform literary or artistic works<sup>17</sup>. It is also founded on the principle of

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<sup>15</sup> ‘Summary of the WIPO Performances and Phonograms Treaty’ (published 1996, WIPO Publication) <[https://www.wipo.int/treaties/en/ip/wppt/summary\\_wppt.html](https://www.wipo.int/treaties/en/ip/wppt/summary_wppt.html)> accessed 15 April 2022.

<sup>16</sup> Andre Kerever ‘The Universal Copyright Convention’ (1998) <<https://en.unesco.org/courier/news-views-online/universal-copyright-convention>> accessed 15 April 2022.

<sup>17</sup> ‘Summary of the Rome Convention for Protection of Performers, Producers of Phonograms and Broadcasting’ Organization (1961). <[https://www.wipo.int/treaties/en/ip/rome/summary\\_rome.html](https://www.wipo.int/treaties/en/ip/rome/summary_rome.html)> accessed 19 March 2022.

national treatment. The Rome Convention of 1961 responded to the particular circumstance of ideas being expressed in many ways in easily reproducible units by extending copyright protection to performers, with a focus on the economic rights components.

## **2.7 Geneva Convention, 1971**

Each Contracting State is required by the Phonograms or Geneva Convention to safeguard phonogram producers who are nationals of other Contracting States from the following: producing duplicates without their permission, importing them for public distribution, and disseminating them to the general public<sup>18</sup>. This Convention has a greater reach than the Rome Convention because it addresses not only the production of phonograms but also their importation and distribution. India is a party to the Phonogram Convention of 1971, which allows member states to protect phonogram manufacturers through the grant of copyright or special rights.

## **2.8 Brussels Convention Relating to The Distribution of Programme-Carrying Signals Transmitted by Satellite, 1974**

The Convention provides for the obligation of each Contracting State to take reasonable steps to prohibit the unauthorised distribution of any program-carrying signal broadcast by satellite on or from its territory<sup>19</sup>. The provisions of this Convention are not applicable where the distribution of signals is made from a direct broadcasting satellite.

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<sup>18</sup> 'Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms' (1971) <<https://www.wipo.int/treaties/en/ip/phonograms/#:~:text=The%20Phonograms%20Convention%2C%20adopted%20in,of%20such%20duplicates%2C%20where%20the>> accessed 19 April 2022.

<sup>19</sup> 'Brussel Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite' (1974) <<https://www.wipo.int/treaties/en/ip/brussels/>> accessed 2 April 2022.

## **2.9 Trade Related Aspects of Intellectual Property Rights (TRIPS), 1994**

TRIPS is a minimum standards agreement that permits members to provide more comprehensive intellectual property protection. Members are free to decide how to apply the Agreement's provisions in accordance with their own legal framework and practise. The purpose of the TRIPS Agreements is to advance adequate and effective intellectual property protection, ensure methods and procedures for enforcing intellectual property rights, remove barriers to lawful trade, and lessen distortion and obstruction of international trade<sup>20</sup>.

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<sup>20</sup> 'Agreement on Trade-Related Aspect of Intellectual Property Right' <[www.wto.org](http://www.wto.org)> accessed 20 April 2022.

## **CHAPTER 3**

### **LAW RELATING TO ENTERTAINMENT INDUSTRY**

#### **3.1 Legislative Framework in India**

The content on cinema halls, television and the internet are regulated by legislations such as The Copyright Act, 1957, Cinematograph Act, 1952, The Cable Television Network Regulation Act, 1995, and The Information Technology Act, 2000. At present there is no particular provision relating to Entertainment industry in particular.

##### **3.1.1 The Copyright Act, 1957**

Authors have distinct intellectual property rights known as copyrights. However, because of the widespread piracy in several sectors where copyright is in place, authors occasionally are unable to fully enjoy their rights. As a result, the rightsholders who receive royalties from the sale earnings suffer. The Copyright Act of 1957 was created to safeguard author's rights. India has given effect to its various provision by changing the existing intellectual property laws or enacting new ones. As a member state of WIPO, India was required to make its municipal legislation consistent with the terms of the TRIPS Agreement. In order to fully benefit the owners of the rights, India periodically modified the Copyright Act.

Along with consolidating and amending the copyright law, the act of 1957 added a number of new clauses and amendments. For the aim of registering books and other works of art as well as for a few other purposes, the Act calls for the establishment of a copyright office under the direction of the Registrar of Copyright. The Act established the Copyright Board, a body with the power to resolve certain copyright-related disputes. It is permissible to appeal some of the decisions made by the Copyright Board

and the Registrar of Copyrights. The act consist provision to identify the original owner of the copyright for certain types of works, governing the transfer of ownership and licensing of copyright including compulsory licensing, provision pertaining to ethical societies, telecasting privileges. There are both civil and criminal remedies and penalties for infringement with necessary exception to author's exclusive rights.

**The Copyright (Amendment) Act, 1983** - India is a signatory to both the Universal Copyright Convention and the Berne Convention. These two conventions are followed by the Copyright Act of 1957. Both of these conventions were updated in Paris in 1971, allowing developing nations to grant mandatory licences for the translation and reproduction of works of foreign origin needed for teaching, scholarship, or research as well as for the purposes of systematic instructional activities if these rights could not be obtained on freely negotiated terms under circumstances enabling their publication or ensuring their availability at costs reasonable in their context. The changes were made in order to take use of these advantages. There are additional provisions for the release of unpublished works whose authors are either deceased or unidentified or whose copyright holders cannot be located. Furthermore, the Copyright Board has the authority to resolve conflicts arising from such assignments, including allowing one party to withdraw from the assignment. In order to conduct systematic educational operations, broadcasting authorities are now allowed to transmit foreign works. Additionally, provisions have been made for copyright in publicly delivered lectures and speeches, as well as for the publication of the copyright register entries.

**The Copyright (Amendment) Act, 1984** - Since piracy became a global issue as a result of the rapid advancements in technology and has suspected alarming proportions everywhere, all the countries started to make efforts to meet the challenge by enacting strict legislative measures. At that point of time, the 1984 Amendment Bill was being

considered in parliament, the members of parliament also voiced their support for piracy measures. There are primarily three sorts of piracy in the modern world: (i) pirate of written works (ii) piracy of sound recordings and (iii) piracy of motion pictures<sup>21</sup>. In each of these situations, the pirate seeks to make quick cash at the expense of paying genuine royalties and taxes. The development of new methods for audio programme recording, fixation, and reproduction as well as the introduction of visual technology have considerably aided pirates. The development of new methods for audio programme recording, fixation, and reproduction as well as the introduction of visual technology have considerably aided pirates. The government suffers a loss of several crores of rupees due to tax evasion. Additionally, it was discovered that numerous uncertified video films are being presented on a big scale as a result of the recent video boom in the nation. In light of these facts, it was suggested to revise the Copyright Act of 1957 in order to effectively combat the widespread piracy in the nation.

**The Copyright (Amendment) Act, 1994** – A working group was established by the government in 1987 to examine the Act’s provisions and recommend appropriate amendments, taking into account advancements in communication technology such as video, satellite, and other means of simultaneous communication, in order to fulfil India’s obligations as a signatory to the Berne Convention and the Universal Copyright Convention.

**The Copyright (Amendment) Act, 1999** - The copyright Act was again amended in 1999, changing the definition of “literary work,” what constitutes a computer programme, extending the copyright period for performances from 25 to 50 years, and

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<sup>21</sup> Luigi Proserpio, ‘Entertainment Pirates: Understanding Piracy Determinants in the Movie, Music and Software Industry’ (2005)  
<[https://www.researchgate.net/publication/268254612\\_Entertainment\\_Pirates\\_Understanding\\_Piracy\\_Determinants\\_in\\_the\\_Movie\\_Music\\_and\\_Software\\_Industries](https://www.researchgate.net/publication/268254612_Entertainment_Pirates_Understanding_Piracy_Determinants_in_the_Movie_Music_and_Software_Industries)> accessed 15 April 2022.



adding new provisions granting the Central Government the authority to apply the provisions relating to broadcasting organisations and performers to those in certain other countries as well as the authority to impose restrictions on right of use.

**The Copyright (Amendment) Act, 2012** – The 2012 amendment act was inserted for the better assessment of the Copyright Act. This amendment included the cinematographic film and simplified, and a new clause was inserted adding a new definition of visual recording. Visual recording refers to the recording of images in any medium using any technology, as well as the storage of those images using any electronic means. Several things, such as the rental, lease, or lending of a lawfully acquired copy of cinematographic film for non-profit purposes by a non-profit library or educational institution, now do not fall under the definition of infringement. The producer’s right to store the film in any medium, whether electronic or otherwise, was expanded. Previously, only the copyright owner had this right. A new section 31B<sup>22</sup> provides for compulsory license for the benefit of persons with disability. Any individual or organization that works for the benefit and interest of people with disabilities may apply to the Copyright Board for a compulsory license to publish any work in which copyright exists for their benefit. A new section 31D<sup>23</sup> allows for statutory licences for broadcasting and sound recording of literary and musical works. In accordance with WPPT, a new provision for “commercial rental” has been included, as well as a new definition for “right management information” and exclusive performance rights. The Moral rights of performers are introduced by newly inserted section 38B<sup>24</sup>. The legal heirs of the author have been granted the right to paternity and right to integrity even after the expiry of the term of copyright. There is a new section

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<sup>22</sup> Ibid 3.

<sup>23</sup> Ibid 3.

<sup>24</sup> Ibid 3.

33A<sup>25</sup> that requires all copyright organisations to publicise their tariff scheme. Anyone who is offended by the scheme can file a complaint with the Copyright Board. The scope of fair dealing is expanded under Section 52 (1) (a) of the Copyright Act 1957. The statute formerly addressed fair dealing rights for “literary, dramatic musical, or aesthetic works.” It now includes all types of work except for computer programmers such as sound recording and cinematograph films. This will allow anyone to make personal copies of songs and movies, as well as copies for research and classroom use<sup>26</sup>.

### **3.1.2 The Cable Television Networks (Regulation) Act, 1995**

Broadcasting in India was exclusively governed by the State prior to the advent of cable television. The development of cable networks and satellite television in the early 1990s caught the Indian government off guard. The transmission and dissemination of television via foreign satellites were beyond the control of the government. Broadcasting in India was exclusively governed by the State prior to the advent of cable television. The development of cable networks and satellite television in the early 1990s caught the Indian government off guard. The transmission and dissemination of television via foreign satellites were beyond the control of the government. The Rajasthan High Court made the first mention of the requirement for obtaining a licence to run cable networks in the case of *Shiv Cable TV System v. State of Rajasthan*<sup>27</sup>. A cable network ban was issued in this instance by the district magistrate due to the networks unauthorised operation. The district magistrate's order was subsequently contested in the Rajasthan High Court on the grounds that it violated the fundamental right to freedom of expression through business and profession.

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<sup>25</sup> Ibid 3.

<sup>26</sup> Alka Chawla, ‘*Law of Comparative Perspective*’ Lexis Nexis (2013).

<sup>27</sup> *Shiv Cable TV System v State of Rajasthan* [1993] AIR Raj 197.

### 3.1.3 Cinematograph Act, 1952

The Cinematograph Act, 1952 was passed by Parliament in order to ensure that movies are shown within the bounds of Indian society's tolerance, that is, within the bounds of Articles 19(1)(a) and 19(2) of the Indian Constitution<sup>28</sup>. The Central Board of Film Certification (CBFC, also known as the censor board) is a regulatory body composed of a chairman and twelve to twenty-five members appointed by the Central Government. Its purpose is to grant certification or rejection, and regulate the public exhibition of films by cinematograph. Following the process outlined in Section 4 of the Act, the Board examines the film in its entirety and in light of current social norms in India. Following a comprehensive inspection, the Board may either issue a speaking order of rejection in accordance with the Audi alteram partem due process and natural justice concept, or it may issue the certificate, which is for ten years. However, after 30 days of receiving the ruling, anyone who requested for the certificate and is unhappy with the Board's decision may file an appeal with the Film Certificate Appellate Tribunal<sup>29</sup>. Thus, the Examining Committee, the Revising Committee, and FCAT are the three obstacles the movie must overcome. The movie is regarded as being outlawed if it is rejected by all three of these organisations. In order to combat copyright violations and piracy, the Cinematograph (Amendment) Bill, 2019 was presented in the Rajya Sabha. This legislation forbids the unauthorised recording of movies. The bill also seeks to punish those who engage in the unauthorised recording, transmission, attempt, or facilitation of the transmission of a copy of a film or a portion thereof with up to three years in prison and/or fines up to ten lakh rupees.

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<sup>28</sup> Gursharan Bhalla, 'Amendments to Cinematograph Act: What Film Industry Is Saying and Why It Is Controversial' (2021) < <https://www.indiatimes.com/news/india/amendments-to-cinematograph-act-what-film-industry-is-saying-and-why-it-is-controversial-543821.html> > accessed 20 April 2022.

<sup>29</sup> The Cinematograph Act 1952, s 5C.

### 3.2 Entertainment as an Industry

Any activity that offers a distraction or allows people to amuse themselves during downtime is considered entertainment, and it may also bring about delight, pleasure, and laughter. People can actively engage in an activity they find interesting, like playing sports as a pastime, or passively consume an entertainment product, like going to a performance. One novel human concept that has persisted for as long as humans have existed on earth is the recourse for entertainment. Our fascination with being amused in various ways has long existed, whether it is through various segments involving movies, television, music, radio, advertisement, etc. However, in order to examine entertainment, we must first identify specific media, such as films, television, and music, that are considered to be sources of amusement for the general public. For a long time, the Indian entertainment sector was mostly unstructured and reliant on individual connections. The nature of the rights being granted and the scope of the modes in which they could be exercised were not always described exhaustively in agreements and understandings between parties, and documents typically merely reflected the basic understanding. After the Indian government recognised the entertainment industry as an “industry” in 2001, often referred to as the ‘corporatization’<sup>30</sup>. The Indian government’s legal recognition of the Indian film industry had both short and long-term implications for the Indian entertainment sector in general and the film industry in particular. It altered the public’s opinion of the film industry as well as the Indian intellectuals began to take Indian movies more seriously, contributing positively to the medium’s development and expansion. Foreign entertainment dignitary like 20th

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<sup>30</sup> Ashish Sharma ‘Media and Entertainment Industry in India: An Overview of Intellectual Property Rights and its Complexities’ (2019)  
<[https://www.academia.edu/35716184/Media\\_and\\_Entertainment\\_Industry\\_in\\_India\\_An\\_overview\\_of\\_Intellectual\\_Property\\_Rights\\_and\\_its\\_complexities\\_Deepak\\_Uniyal](https://www.academia.edu/35716184/Media_and_Entertainment_Industry_in_India_An_overview_of_Intellectual_Property_Rights_and_its_complexities_Deepak_Uniyal)> accessed 20 April 2022.

Century Fox and Disney began to pay attention to the Indian entertainment sector at the same time. Even while international involvement and participation in Indian films is not new, this corporatization provided the Indian entertainment business with dramatically better options in terms of collaborative collaborations, technical expertise sharing, distribution, funding, and copyrights. The focus shifted to adequate documentation and implementation of agreements between parties for assignment of copyrights in works being created, as well as the scope of such assignments. And in terms of financing, production, and other related operations, this has helped it become more professional and organised. As a result of regular amendments to the Indian Copyright Act, 1957 and an increase in disputes pertaining to ownership and exploitation of copyright in works, notably cinematograph pictures, parties are focusing on proper execution and recording of assigned rights. The purchase of rights for classic or older Indian films, on the other hand, is usually impeded by a faulty or inadequate form of title in copyright ownership over such films<sup>31</sup>. The entertainment in the globalising world is currently experiencing changes with the advancement of new technologies like the internet-based system, e-commerce, broadcasting, online produce, etc. The combination of market influences is progressively heightening the intricacy of dealing with the intellectual property right as being the centre of revenue generator. The media enterprises need to remain competitive and profitable in the era of digital age it need to subsist and adapt to increasing technical intricacies while proficiently dealing with intellectual property right. Also, cases concerning to digital content to media and entertainment industry are also at rise as these are frequently pirated in India. This has presented numerous original technical and lawful difficulties before the media and

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<sup>31</sup> Tejas Tare, 'Role of Copyright in Entertainment Industry', Legal Bites, Law and Beyond (2020) <<https://www.legalbites.in/copyright-in-media-and-entertainment-industry/>> accessed 20 May 2022.

entertainment industry. Indian Entertainment Industry has appeared as one of the advanced sectors in our country as its endowment to the GDP and its role in the cultural exchange and investment in creation of content is being acknowledged<sup>32</sup>. A field of creativity that informs, entertains and educate the mass through various outlets i.e., TV, radio, cinema, print media, music. Digital platforms, software industries, etc. which reinforces lot of innovative ideas and creative works. In the 21st century, the internet period and access to the latest technology and information has increased the potential use of this medium and thus, bringing out the sharing of original works of public creativity and public sharing in a large number<sup>33</sup>. This has brought innumerable difficulties in the protection of intellectual property rights to the broadcasting media industries including the creativity and originality of content generated by artificial intelligence. The government is constantly encouraging creativity, undertaking measures to prevent abuse and exploitation of original work, free and fair proclamation of original content while persistently undertaking measures to prevent abuse and exploitation of original work. Therefore, several critical issues related to this sector have come forth in India, making intellectual property rights more prominent in the entertainment fields.

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<sup>32</sup> Ibid.

<sup>33</sup> Manish Verma & Tanushri Mukherjee, 'Intellectual Property Rights and Indian Entertainment Industry: An Overview' Amity University (2017) <[https://www.researchgate.net/publication/318122730\\_Intellectual\\_Property\\_Rights\\_and\\_Indian\\_Entertainment\\_Industry\\_An\\_Overview](https://www.researchgate.net/publication/318122730_Intellectual_Property_Rights_and_Indian_Entertainment_Industry_An_Overview)> accessed 20 May 2022.

### 3.2.1 Original Dramatic Work

An original dramatic work is an intellectual invention of the human mind that takes significant autonomous talent, labour, or judgement, necessitates acting or dancing to be accurately depicted, and is of a distinct and permanent type to be able to be recorded. The Copyright Act, 1957 provides that “Dramatic work” includes any piece of recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include cinematograph film<sup>34</sup>. Lord Bridge in *Green v. Broadcasting Corporation of New Zealand* stated that a dramatic work must be capable of being performed<sup>35</sup>. A dramatic work can be defined as a work created in order to be communicated in motion, that is, through a sequence of actions, movements, irrespective of the technique by which this movement is retrieved or expressed. Also, in *Norowzian v. Arks Ltd.*<sup>36</sup>, the Court of Appeal determined that a dramatic work was any work of action capable of being performed in front of an audience, with or without words or music. As a result, dramatic work entails movement and action.

### 3.2.2 Original Musical Work

Musical works are notated musical compositions that have been written down in the form of sheet music, broadsheets, or another notation. A musical composition's sound recording is protected separately. Also considered literary works with their separate copyright from the musical score are lyrics, or the words of a song. Producers have exclusive legal ownership of musical works and recordings according to music copyright. The copyright owner has the exclusive right to distribute and duplicate the

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<sup>34</sup> The Copyright Act 1957, s 2(h).

<sup>35</sup> *Green v Broadcasting Corporation of New Zealand* [1989] 2 All ER 1056.

<sup>36</sup> *Norowzian v Arks Ltd.* [2000] FSR 363.

work, as well as the licence right to collect royalties. Musical work, according to Section 2(p) of the Act, is defined as music and its graphical notation, but does not contain any words or actions meant to be sung, spoken, or performed with the music. As a result, the Act distinguishes between a musical work and a song that may or may not contain music. However, a song that is sung and has music does not qualify as a musical work under the abovementioned provision. The Delhi High Court in *Star India Pvt. Ltd. v. Piyush Agarwal*<sup>37</sup> held that music was different from sound, and that music only referred to musical notes discovered on paper or other writing medium, not to what was heard. What was heard, and what laymen referred to as music, was actually a sound produced by a musician playing an instrument in terms of musical notes, which was the musical work and the subject of a copyright.

### **3.2.2.1 Owner in Sound Recordings**

In case of owner of a sound recording, the author in relation to a sound recording is the producer i.e., a person who takes the initiative and responsibility for making the work. Under the act, “sound recording” means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced. A right in a sound recording is distinct from a right in recorded material. A person might hold one type of copyright for a song and another for the recording of that song. The owner of the copyright for a sound recording is typically the person who also owns the recording equipment. The rights to the recording themselves, not the supporting works like the notes, chords, lyrics, etc., are owned by the owner of the copyright for a sound recording.

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<sup>37</sup> *Star India Pvt. Ltd. v. Piyush Agarwal* [2013].



### 3.2.3 Choreographic Work

Choreography is the art of arranging or designing of ballet or stage dance in symbolic language. It must be reduced to writing in order to qualify for copyright protection. The form of writing is immaterial. The term ‘writing’ may be defined to include any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded. A copyright on a choreography necessitates the creation of a fixed form of one’s work. The World Intellectual Property Organisation (WIPO) defines “fixation” as “work written on paper, stored on a disc, painted on canvas, or recorded on tape.” So, in order to secure a copyright in choreography, it must be reduced to a definite form, such as a written format or videotaped or otherwise but not incorporated in cinematography. Choreography can be fixed in the United States and the United Kingdom using any method, including videotaping. The choreographic work is clearly copyrightable, but the ambiguity caused by the absence of cinematography film as a form of fixation is unusual in India.

### 3.2.4 Cinematograph Films

For the purposes of copyright law, a cinematograph film is viewed in a broader context, including the script and dialogue, which are considered literary works, song lyrics, which are considered musical works, complete songs, which are considered sound recordings, posters and advertisements, which are considered artistic works, and so on. In *Entertaining Enterprises v. State of Tamil Nadu*<sup>38</sup>, it was determined that the definition of cinematograph film under Section 2(f) of the Copyright Act is broad enough to include any work produced using a method similar to the cinematograph, as well as the exhibition of a film on television using video tapes on which a

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<sup>38</sup> *Entertaining Enterprises v. State of Tamil Nadu* [1984] AIR Mad 278.

cinematograph film is recorded. The Copyright Act, 1957 defines “cinematograph film” to mean any work of visual recording that also contains a sound recording, and the term “cinematograph” is to be taken to include any work created using a method similar to cinematography, such as video films. The overall appearance and tone of a film’s visual story are established and supported by cinematography. It is the cinematographer’s obligation to make sure that every visual aspect is consistent and supports the narrative because every visual element that comes on screen in a movie has the potential to serve and enrich the narrative. Unlike literary, dramatic, musical and artistic works, the copyright act does not stipulate that cinematograph film to be original to qualify copyright protection.

#### **3.2.4.1 Ownership in Cinematograph Films**

When a person has financed and took responsibility and risk of making a cinematograph film and directed others to do the work for valuable consideration, such person is considered to be the owner of copyright<sup>39</sup>. According to the act, “author” in relation to cinematograph film is the producer of it who take the initiative and responsibility for making the work. It is contended that where a cinematograph film is made for valuable consideration at the instance of any person and in absence of any agreement, such person will be first owner of the copyright. Thus, when a cinematograph film producer commissions a composer of music or lyricists for a reward of valuable consideration for the purpose of making his cinematograph film or composing music. Then the producer becomes the first owner of the film and no copyright subsists in the composer of the lyric or music<sup>40</sup>.

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<sup>39</sup> *Ramesh Sippy v Shaan Ranjeet Uttamsingh* [2013] (55) PTC 95 (BOM).

<sup>40</sup> Jupi Gogoi ‘Conflict of Copyright in Cinematograph Film: Indian Scenario’ Indian Law Institute (2020)

<[https://www.academia.edu/44598911/CONFLICT\\_OF\\_COPYRIGHT\\_IN\\_CINEMATOGRAPH\\_FILMS\\_THE\\_INDIAN\\_SCENARIO](https://www.academia.edu/44598911/CONFLICT_OF_COPYRIGHT_IN_CINEMATOGRAPH_FILMS_THE_INDIAN_SCENARIO)> accessed 15 June 2022.

With regards to ownership, in the case of *Salim Khan v. Sumeet Prakash Mehra*<sup>41</sup>, the plaintiffs Famous Bollywood scriptwriters Salim Khan and Javed Akhtar requested a permanent injunction to prevent the defendants from showing, releasing, displaying, or conveying to the public anywhere in the globe the Hindi or Telugu version of “Zanjeer” or any other language version. The plaintiffs argued that since they had already created the story, scenario, and screenplay by the time Prakash Mehra, the producer of the first film, approached them, it was not a commissioned work as defined by section 17, proviso (b) of the copyright Act. A one-time permission to make the aforementioned film of the literary work was given to the producer, Prakash Mehra, and it was used when the film was made in 1973. The Plaintiffs nevertheless held the other rights in connection with the literary work. The defendant contended that when the appellants told their story, their father Prakash Mehra actually supplied a token, which was evidence of commissioned labour. In this instance, the court ruled in favour of the defendant. The court determined that under proviso (b) to section 17<sup>42</sup>, once a literary or musical work is incorporated into a film, the producer of the film becomes the first owner of the copyright in those works, unless the authors of those works and the producer of the film have an agreement to the contrary.

### **3.3 Broadcasting Right**

In today’s information-based society, a country’s social and economic progress is strongly reliant on information and knowledge production, dissemination, and absorption. Radio and television are the primary sources of information for the general public. Information reaches even the most remote regions of the country because to broadcasting. The term broadcasting refers to the transmission of speech and visual

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<sup>41</sup> *Salim Khan v. Sumeet Prakash Mehra* [2013] NMSL 768.

<sup>42</sup> *Ibid* 3.

images by radio, television and other electronic means like cable TV networks. The copyright owner u/s 14(iii)<sup>43</sup> has the exclusive right to communicate his work to the public or authorise communication to public of his work or any substantial part thereof. Communication to the public includes making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion regardless of whether any member of the public sees, hears or otherwise enjoys the work so made available. This right thus encompasses the primary right to authorize the initial broadcast of work and also the secondary rights of re-broadcasting that is the broadcasting organization, must obtain the consent or license from the copyright owner for the purpose of broadcasting their work. Once the broadcasting organization takes the license from copyright owners and broadcasts the work then the broadcasting organization will have a right in its broadcast according to s. 37<sup>44</sup>.

The broadcasting of content over television and by cable raises fundamental issues of copyright that will be influenced by the national rules of copyright law. The control of reception of broadcasted content and retransmission without authorization are serious challenges to the broadcasting laws as these acts involve copyright infringement of content producers. Even though some broadcasting laws place restriction on the basis of place of origin, it appears not possible to control the reception and transmission<sup>45</sup>. S. 39 incorporated by the Copyright (Amendment) Act, 1994 has recognised certain acts which would not infringe the broadcasting reproduction rights. Such acts which do not

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<sup>43</sup> Ibid 3.

<sup>44</sup> Ibid 3.

<sup>45</sup> Atharva Sontakke & Himaja Bhatt, 'Scope of Rights of Broadcasting Organization under Copyright Act, 1957', Jindal Global University, (2014)  
<[https://www.researchgate.net/publication/308199200\\_Scope\\_of\\_Rights\\_of\\_Broadcasting\\_Organizations\\_under\\_Copyright\\_Act\\_1957](https://www.researchgate.net/publication/308199200_Scope_of_Rights_of_Broadcasting_Organizations_under_Copyright_Act_1957)> accessed 1 June 2022.

infringe are: the making of any sound recording or visual recording for the private use of the making such recording or solely for the purpose of bona fide teaching or research, fair dealing of excerpts of broadcast in the reporting of the current events or such other acts with necessary adaptations and modifications which do not constitute infringement u/s. 52.

### 3.4 Performer's Right

When the Copyright Act of 1957 was first introduced after India attained independence, performer's rights were not mentioned. The Bombay High Court ruled in *Fortune Films v. Dev Anand*<sup>46</sup>, that because performer's rights are not recognized by the Copyright Act, they actors do not possess any copyright. Following this ruling, it was felt that the performer's right needed to be added to the copyright laws. Sections 38, 39, and 39A<sup>47</sup> were added to the copyright amendment in 1994 in order to respect the performer's rights. The term "performer" is defined in Section 2(qq)<sup>48</sup>, which includes actors, dancers, musicians, singers, acrobats, conjurers, snake charmers, jugglers, those giving lectures, and anybody else who puts on a performance. In the case of *the Indian Performing Rights Society vs. East Indian Motion Pictures Association*<sup>49</sup>, the apex court ruled that if the creator of a musical work has given permission to a cinematograph film producer to incorporate his works within the film, allowing him to appropriate his work by doing so in the film's sound track, the composer cannot stop the film producer from having the sound portion of the film edited.

The scope of protection provided by copyright law is not just limited to the artistic or performing works. In reality, it grants artists and performers some rights as well. A

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<sup>46</sup> *Fortune Films v Dev Anand* [1979] BOMLR 263.

<sup>47</sup> *Ibid* 3.

<sup>48</sup> The Copyright Act 1994, s 2(qq)

<sup>49</sup> *The Indian Performing Rights Society v East Indian Motion Pictures Association* [1977] SCC 1443.

performer may assert ownership over their creative works owing to the protection provided by copyright law. In this manner, the performer can prevent unauthorized usage of their work by third parties. These rights might also enable artists to sell licenses for their original works through which they may receive monetary compensation. In certain nations, a law of personality, a provision of competition law, or a ban on unjust enrichment provide some level of legal protection for artists. Those who create or use performances without permission may face criminal charges in the United Kingdom. The right to prevent others from using someone's image without their permission for commercial purposes is known as the right of publicity in the United States, though it can take many various forms depending on the state.

#### **3.4.1 Working of Performing Right Society**

Collective enforcement of copyright refers to a notion in which a society of owners of such works manages and protects copyright in works. It goes without saying that no one with copyright to a piece of work can keep track of all the uses others make of it. However, if he joins a national copyright society, that society will be able to better monitor the uses of that work made across the nation and collect the proper payments from those users thanks to its organisational capabilities and power. The copyright societies are able to have reciprocal arrangements with similar societies in other countries for collecting royalties for the uses of Indian works because the country is a member of international conventions. The Indian Performing Right Society Limited is an organisation registered under the Companies Act of 1956 that is limited by guarantee. It's a Non-Profit Organization. According to section 33 (3) of the Copyright Act of 1957, the Society is authorised to begin and conduct copyright business in musical works and/or any words or actions meant to be sung, spoken, or performed in conjunction with the music, as well as among the owners themselves. Thus, IPRS

persevered in its battle for a better copyright environment despite the challenges it faced. The scope of IPRS was determined in the case of *IPRS v. Jairam Mani*<sup>50</sup>, the IPRS brought an action against the defendant, operating an auditorium, whose liability arose as the owner of the premises to impose a requirement that event organisers obtain a licence from the IPRS. The defendant was forbidden by the Delhi High Court from hosting performances on its property unless it was guaranteed that the performers obtained the necessary public performance licence from the plaintiff.

### **3.5 Mass Media in Entertainment Industry**

The entertainment sector is made up of several verticals, such as movies, television, music, radio, and the internet. Additionally, there are several sub-segments, geographic regions, and consumer segment trends and drivers for each of the segments. The fact that various sub-verticals compete with one another, work well together, and collaborate to meet the rising worldwide demand for entertainment and information makes this vertical special. Additionally, the industry is dependent on a number of external factors and technological developments, such as social media, cloud storage, consumer analytics, wireless technology, mobile devices, digitalization, and internet connection speeds. Every generation has witnessed how well the sector has adapted to these developments. Music production and distribution have evolved during the 1990s as a result of content digitization. The emergence of the internet in the 2000s was a game-changer for all of the industry's sub-verticals.

#### **3.5.1 Film Industry**

The film industry is a significant part of the entertainment sector. Aside from their economic significance, movies also have a socio-cultural significance. Visual media

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<sup>50</sup> *IPRS v. Jairam Mani* [2011]

has a significant influence on human psychology and can change one's outlook. They serve as a reflection of society's changing traditions, ideas, and cultural orientation. The wide spectrum of feelings depicted in films also provides the audience with a unique perspective on life and its varied facets. The influence of movies on society and vice versa are caused in both directions. As proven by the evolution of the Hindi cinema industry, commonly known as Bollywood, the difficulties afflicting a society and absorbing the minds of people are easily observed in the movies. The Indian film industry was valued at INR 183 billion in 2019 and is predicted to expand at a Compound Annual Growth Rate (CAGR) of 7.3 percent from 2019 to 2024<sup>51</sup>. This “commercialization,” which has resulted in greater financial transparency in the Indian film industry, is a necessary condition for international cooperation. In numerous cases, the Indian film industry has used the term “inspired by” to provide wholly plagiarised content to the viewers. Due to a lack of stringent copyright enforcement, incidences of plagiarism have increased, depriving audiences of new, unique, and creative experiences in the form of film stories or other creative content<sup>52</sup>.

Another segment of protection of copyright is in the scripts used in movies or series of shows. When a writer has a concept, he needs to spread it around to other people in order to find funds for script development. The expression of an idea is protected by copyright law rather than the idea itself. A concept cannot be protected by copyright unless it is presented in a concrete form with sufficient information. Multiple storylines that are each capable of having their own copyright protection can be produced from a

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<sup>51</sup> Indian Brand Equity Foundation, 'Media and Entertainment Industry' (2022)  
<<https://www.ibef.org/industry/media-entertainment-india>> accessed 20 May 2022.

<sup>52</sup> Amlegals Legal Strategists 'Legal Challenges for Media and Entertainment Industry' (2021)  
<<https://amlegals.com/legal-challenges-for-media-entertainment-industry-amidst-covid-19/legal-challenges-for-media-entertainment-industry/>> accessed 20 May 2022.



single idea or simply just a concept note. Therefore, non-disclosure agreements (NDAs) would be the only method for the script writer to protect the notion or note<sup>53</sup>.

### **3.5.1.1 Bollywood Vs Hollywood: Adaptation and Remake**

The situation has changed as a result of globalization's impact in the early 2000s and the increased involvement of the global film industry in India. Bollywood, the Indian film industry in India, is one of the world's largest and has been growing both commercially and culturally. Through its captivating content, it has managed to maintain a foothold on its global audience. However, multiple complaints have surfaced in the industry, indicating a problem with unlicensed copying of Hollywood films. Such films are either labelled as adaptations or as being inspired from Western movies. The Copyright Act, 1957 under section 13 of the Act lists the works in which copyright exists, which includes cinematograph films under Section 13(1)(b). A cinematograph film is defined by Section 2(f) of the Act as a work including a visual recording and a sound recording. Bollywood has worked hard to broaden its appeal, expand its global reach, produce movies that sell numerous tickets and maximise profits, and carve out a space for itself in the international film industry. Remaking Indian versions of Hollywood films has been one strategy to boost box office success. Due to Bollywood's poor profitability, India's status as a developing country, and the presence of very different consumers for both film industries, the Western film industry previously did not pay much attention. However, from 2005 and 2008, India witnessed an economic boom. As a result, the Western film industry has started to pay close attention to Indian films<sup>54</sup>. The US and India are direct signatories to the 1866 Berne Convention for the

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<sup>53</sup> *Zee Tele Films Ltd. v Sundial Communication Pvt Ltd.* [2003] BOM CR 404.

<sup>54</sup> Arjun Shah, 'Is Bollywood Unlawfully Copying Hollywood? Why? What has Been Done About It? And How Can It Be Stopped?' *Emory International Law Review* (2012) <<https://scholarlycommons.law.emory.edu/eilr/vol26/iss1/15/>> accessed 10 May 2022.

Protection of Literary and Artistic Works, as revised by the Paris Convention in 1971. As WTO members, India and the US are bound by the 1994, TRIPS agreement. Different standards of tests are used by different jurisdictions when determining what constitutes illegal “derivative” work in Copyright. To evaluate if two works have a significant level of resemblance, both Indian and US courts apply a form of the ordinary observer test. If an ordinary observer of reasonable diligence would infer that the defendant illegally copied the claimant’s protected expression, the “Ordinary Observer” test assesses whether two works are substantially similar<sup>55</sup>. A copy must be sufficient to indicate that an infringement occurred, according to the Supreme Court of India<sup>56</sup>. The R.G. Anand’s landmark ruling on the subject notes that the standard is whether “a person with common memory is able to discern between the original and copied work after seeing or reading a work.”<sup>57</sup> While it took some time for the Courts to enter the conflict, they now deal with copyright infringement matters far more frequently and with logical justification. Thus, the system is gradually getting to the point where infringers won’t be able to claim inspiration as their cover for infringement. Before 2010, the standard response to any claim that a filmmaker or musician had plagiarised their work was that it had been inspired by previously released material. Bollywood producers have also had opportunities to file lawsuits against people who steal their films. A similar situation occurred in 2009 when the creators of the Bengali film ‘Poran Jaye Joliya Rae’ were charged with plagiarising the plot of the Bollywood blockbuster *Namaste London*. Vipul Amrutlal Shah was the sole owner of the script and screenplay for *Namaste London*. As the owner of the script, Mr. Shah filed a request with the Calcutta High Court asking for an order of injunction against the screening of

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<sup>55</sup> Modhura Roy ‘Substantial Similarity in Copyright’ (2010)  
<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1666910](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1666910)> accessed 10 May 2022.

<sup>56</sup> *R.G Anand v Deluxe Film*, [1978] SC 1613.

<sup>57</sup> *Ibid.*

Poran Jaye Joliya Rae after recognising that it is a major duplication of Namaste London. The respondents said that although if the plot was identical to the Hindi movie, the Bengali movie was still a unique work because it contained various situations that were “new to Bengali cinema.” The instances of *Star India v. Leo Burnett and Zee Entertainment v. Gajendra Singh*<sup>58</sup> were cited by the respondents. In both cases, the word “copy” was narrowly defined, and it was decided that a cinematograph film’s ‘copy’ refers to a ‘carbon copy’ or a ‘replication’ of the whole or a portion. The Bengali film “is substantial, if not a verbatim copy of the Hindi film as a whole,” so there is a prima facie violation of its story and screenplay in the Film, according to the Calcutta High Court, which also issued an ad-interim order granting an injunction on the film’s exhibition. However, for the first time in 2010, Twentieth Century Fox has brought legal action against Sohail Maklai Entertainment over the unauthorised Knockout remake of the thriller “Phone Booth” from Twentieth Century Fox<sup>59</sup>. The hostage is held prisoner in the phone booth while having important chats with the sniper in both films. The hostage is also interrupted by the invaders throughout the conversation in both films. Also, even though “Phone Booth” and “Knockout” focus on the problem of black money with a dash of extramarital affair, there can never be too many coincidences if one just uses inspiration as a source. Thereby, in this case, the courts for the first time declared that there had been a copyright violation and awarded Twentieth Century Fox damages.

### **3.5.2 Music Industry**

The Indian Music Industry is the world’s second-oldest non-commercial music industry group. It has played a critical and significant part in the development of this industry.

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<sup>58</sup> *Star India v. Leo Burnett and Zee Entertainment v. Gajendra Singh* [2008] (36) PTC 53 Bom.

<sup>59</sup> *Twentieth Century fox Film v Sohail Maklai Entertainment Pvt.* [2010].

The changing nature of music in India has been influenced by technological and societal changes. Every stakeholder has been given a platform to engage in the decision-making process. The Indian Music Association was founded in 1936 as the Indian Phonographic Industry. It was one of the first organisations in the country to use ex-police officers to oversee anti-piracy operations. The internet made a huge impact on India in the 1990s. With it, a growth phenomenon in the internet music market began. Various online music portals like as Music India Online, Saavn, Gaana, Spotify, etc where songs may be listened to or even downloaded for free became popular in the mid-2000s<sup>60</sup>. Since then, there has been a steady increase in the consumption of online music, which has been fuelled by India's mobile revolution and the arrival of faster internet speeds.

### **3.5.2.1 Rights of Film Producers Versus Music Composers**

Because of the unique convergence of music and film that has existed in India since the creation of cinema, musical numbers and songs can be construed to be incorporated as part of cinematograph films. A song is made up of multiple copyrights. To begin, the lyrics can be traced back to a literary work. The work is one-of-a-kind and uses the author's imagination to create a lyrical literary work within the boundaries and constraints of a musical metre, and the author retains the copyright. Primarily, the lyrics are literary work, and the work is unique to the author, who uses his creativity to compose a lyrical literary work within the boundaries and constraints of a musical meter, and the author owns the copyright. The tune, rhythms, and instrumental are also considered musical works that belong to the composer who composed the tune and accompaniment<sup>61</sup>. Furthermore, actors and actresses have a performing right, which is

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<sup>60</sup> A. Zentner, 'Measuring the effect of Music Downloads on Music Purchases' *Journal of Law and Economics*, (2016) < <https://www.journals.uchicago.edu/doi/10.1086/501082>> accessed 25 May 2022.

<sup>61</sup> Shrija Verma 'Indian Music Industry and The Copyright Controversy', *The IP Press* (2021) < <https://www.theippress.com/2021/01/29/indian-music-industry-and-the-copyright-controversy/>> accessed 25 May 2022.

likewise covered by copyright. After all of the sounds have been recorded, a larger composite right appears in cinematographic films, and a sound recording is formed from the combination. It is correct to conclude that even within a single song, copyright rights are numerous and varied. The Act also defines what is protected as copyright u/s 13 and includes four original literary, dramatic, musical, and artistic works, as well as others without the prefix original, such as cinematograph films and sound recordings, which are considered derivative works because they contain the original work in some combination or another. It expressly states that a cinematograph film or a sound recording contain separate copyrights in and of themselves, and that this does not preclude the independent and unique copyrights held by the constituents of such film or recording, each of which is entitled to and holds its own copyright

Supreme Court in the case, *IPRS Society v. EIMP Association*<sup>62</sup>, dealt with rights of producer of cinematograph films and rights of composer and lyricist. In the beginning, the only people who will have the right to record their music will be the composer and lyricist. The only people who will have the right to record their music will be the composer and lyricist. Firstly, once the producer has granted permission by the composer and lyricist, he creates the sound recording and broadcast it to the public via radio or another medium. Therefore, the producer's exclusive property in a sound recording cannot be interfered with by the composer or the lyricist. The copyright in the sound recording belongs to the producer, and the composer and lyricist have the same rights with regard to their individual musical and literary creations. Secondly The producer of the film or sound recording becomes the first owner of the copyright, completely negating the rights of the composer and lyricist, if the producer

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<sup>62</sup> *IPRS Society v. EIMP Association* [1977] SCR (3) 206.

commissions a composer of music or a lyricist to compose music or lyrics for the purpose of creating his cinematograph film for consideration<sup>63</sup>.

### **3.5.3 Television Industry**

The television industry saw a revolution in 1959 as a result of technological advancements, and television was also launched for the first time. For the first 17 years, the programme was in black and white and only slowly moved across the nation once it began. Following that, the government established a separate department known as “Doordarshan” under the Ministry of Information and Broadcasting. With the launch of INSAT-1A, India’s first domestic communications satellite, all regional stations were networked<sup>64</sup>. Later, in 1982, the government began to broadcast in colour. The government steadily loosened regulations, which helped the Indian television business expand. Later in the 1990s, the cable TV revolutionised home entertainment. In terms of the number of subscribers, India is the second-largest subscription television market in the Asia Pacific region. India will be one of the few nations to experience double-digit increase in television advertising until the year 2020. The country’s consumption of video on digital platforms is growing, but traditional television still dominates in terms of penetration and has a lot of untapped potential. The market leader in 2019 was cable TV, which was followed by satellite and terrestrial television. One of the main drivers of the growth of this market is the rising demand for TVs, particularly in rural areas. Through 2025, the TV market is anticipated to grow even more due to the developing entertainment sector's rising demand for international TV shows and channels. In the foreseeable future, it is projected that the Indian broadcasting and cable TV markets would experience rapid expansion. Favourable rules and regulations,

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<sup>63</sup> Copyright Act 1957, s 17.

<sup>64</sup> Nandini Laskman ‘Doordarshan Diplomacy’ (2014) Gate way House Report No. 11.

technological improvements, and expanding investment opportunities in the broadcasting and cable TV markets are the main drivers of industry growth in India.

Traditional media concepts are outdated, and the entire industry is going through a fundamental transformation. Streaming services are no longer just platforms for watching movies and TV shows; they are also investing in the creation and licensing of globally popular own content, putting them in direct competition with the traditional TV and video industry. Global content creators are developing their own streaming services at the same time that broadcasters and media firms are introducing their own on-demand options. After 2015, Over-the-top (OTT) services like Netflix, Amazon Prime Video, Hotstar, ZEE5, and others saw an increase in popularity in India. It put the Indian television business in jeopardy. To see their preferred shows, TV viewers must adhere to the TV channel schedule<sup>65</sup>. However, OTT service providers give their users the freedom to watch their preferred material whenever they want. Additionally, the widespread use of Internet connection in India enables OTT consumers to view material from any location. The TV sector should capitalise on its advantages, such as the vast reach it has compared to digital platforms. TV is a simpler and more direct approach for firms to advertise to and communicate with their target audience. However, the industry participants must find ways to give real-time data to marketers, which is otherwise made available by the digital platforms, if TV is to advance digitally.

### **3.5.3.1 Disruption of Television Industry**

The music industry experienced the first digital revolution, which saw a shift away from radio and physical music ownership such as cassettes, CDs, and websites for music downloads and toward music streaming digital platforms. A similar is happening in the

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<sup>65</sup> Sunil Ambalavelil, 'Intellectual Property Rights in OTT Platforms' (2021) <<https://thelawreporters.com/intellectual-property-rights-in-ott-platforms>> accessed on 15 May 2022.

television viewing habits. A digital revolution is currently taking place in the television industry. With the ability to watch what they want, when they want, and anywhere they want, online video streaming services have been taking off like wildfire. This has had negative effects on the TV business as a whole since networks, with their storied history of linear programming, are struggling to remain relevant. A variety of streaming services have begun to challenge the traditional bundles offered by cable and satellite providers as well. Content creators are working hard to create popular shows that will help TV networks and internet aggregators stand out from the competition and take advantage of consumer's shifting preferences<sup>66</sup>. To combat the digital growth, the TV sector therefore requires evolution rather than revolution. There are significant ramifications for the traditional subscription-TV industry from the growth of internet and mobile viewing. Because less traditional viewing equates to less value for the bundle, it has upset the price-to-value equation of the package. Customers now have an incentive to completely forgo pay TV or actively control their cable expenses as a result of this. In place of conventional cable and satellite carriers, a rising number of businesses, including Sony, Dish Network and Magine TV, etc, currently broadcast live linear channels online. These instances clearly depict how television industry is having a fundamental shift due to consumer's behaviour.

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<sup>66</sup> Neeraj Agarwal, 'The Digital Revolution is Disrupting TV Industry' (2016) <<https://www.bcg.com/publications/2016/media-entertainment-digital-revolution-disrupting-tv-industry>> accessed 15 May 2022.



## CHAPTER 4

### DIGITALIZATION OF ENTERTAINMENT INDUSTRY

Rapid technical advancements in recent years have drastically changed how entertainment is distributed on a bigger scale. The way individuals consume analogue films has changed as a result of the industry going digital. For instance, the development of 3D, 4D, and 5D movies is providing audiences with an immersive entertainment experience. According to surveys, a large percentage of Gen Z and Millennial customers are eager to pay for customisation because they want the deeper involvement that digital transformation offers<sup>67</sup>. The period of digitalization used in the entertainment sector improves the ability to access a variety of entertainment sources by making it simpler for a person to do so across numerous platforms. Without this upheaval, the future of entertainment would have been seriously jeopardised. Our preferred forms of entertainment have changed from radios, FM radios, Walkman, and stereos to apps like Shazam, Apple Music, Amazon Prime Music, etc, which offer curated playlists and a personalised user experience. Through interactive data transmission, digitization is bringing all of our requirements together in a single location and creating a central hub. With the consumer interfaces constantly evolving and new technologies appearing every day, this also depends on the media consumption patterns. The popularity of digital videos in the broadcast industry is forcing traditional broadcasters to reconsider their strategy and content. With respect to Netflix and Amazon Prime; their original material, accessible on mobile devices, and forward-thinking approach provide a welcome break for urban viewers. It is essential to ride this

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<sup>67</sup> Gunish Agarwal, 'Intellectual Property Rights and The Internet World' (2018) <<https://www.ijlmh.com/wp-content/uploads/2019/03/Intellectual-Property-Rights-And-The-Internet-World.pdf>> accessed on 30 April 2022.

transformation wave and gain from it in order to compete successfully in the new ecology. The usage of digitalization in the entertainment industry has produced a significant important element that has expanded the social ecosystem's frontiers in daily life. India's competitiveness depends on digitization, and the time could not be more ideal. The list of advantages is extensive, but the main issue at hand is how the contributing organisations should react. Understanding how drastically digitization may change people's lives and have a beneficial impact on society and the environment is the key to finding the solution. It has the potential to generate enormous value for India in the near future if properly implemented. Making the technological integration smoother is the main goal for the industry to run.

#### **4.1 Copyright in Digital Era**

One of the best inventions of the human mind is the development of digital technology. The entertainment sector now has a wide range of opportunities due to technological advances. The biggest dangers to copyright have long been the Internet. There are many levels of copyright protection for the information that is accessible on the internet. Online news, stories, photos, graphics, e-books, screenplays, videos, etc. are all examples of copyrighted works. It might be difficult to tell whether a work is a copy or a duplication of a protected work due to the abundance of information available on the internet. The idea that information obtained online and in the public domain can be freely copied is a widely held misconception. It is not always the case, though, it can be if the government has made the content accessible, the copyright's expiration date has past, or the owner has renounced their claim.

#### **4.1.2 Copyright and Internet**

A special agreement within the Article 2 of the Berne Convention is the adoption of WIPO Copyright Treaty which is related to the internet and digital technology which provide extensive rights to the member countries than those granted in the Berne Convention. Also, the Digital Millennium Copyright Act (DMCA) was passed with the goal of putting into effect World Intellectual Property Organization (WIPO) treaties, namely the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty and by controlling digital content, the DMCA aims to protect the rights of both copyright holders and consumers. DMCA plays a significant role in safeguarding copyrights and preserving a brand's reputation. An organisation, search engine, internet service provider, or site host may get a DMCA takedown notice under the Digital Millennium Copyright Act informing them that the content they are hosting, linking to, or publishing violates a copyright. The website or business should immediately remove/take down the allegedly copyrighted material after receiving such notice. The ISP has the authority to forcibly remove materials if the website or business fails to do so when requested to do so<sup>68</sup>.

The more significant Copyright (Amendment) Act, 2012 was passed into law. The primary goal of this legislation was to bring the act into compliance with the WIPO Performance and Phonogram Treaty of 1996 and the World Copyright Treaty of 1996. The requirements for the protection of copyright in works in the realm of digitization were expanded by the Copyright Amendment Act of 2012. Additionally, it established guidelines for the imposition of sanctions against offenders, managing information rights, the accountability of internet service providers, and the establishment of

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<sup>68</sup> Francisco Castro, 'The Digital Millennium Copyright Act: Provisions on Circumventing Protection Systems and Limiting Liability of Service Providers' *Journal of Intellectual Property Right*.

statutory permits for cover versions and broadcasting organisers. Additionally, it attempted to ensure that royalties were properly distributed among the work's creators and owners. The law also sought to establish some actions as exceptions, which indicates that some actions won't constitute infringement. The act's Section 52<sup>69</sup> lists specific actions that come under the definition of the Fair Use Doctrine. This section was passed in accordance with the TRIPS Agreement of 1995 and the Berne Convention of 1885. In the age of digitization, the Indian judicial system has also been crucial in defending the rights of copyright holders. According to Sections 13 and 63 of the Indian Copyright Act of 1957. literary works, images, sound recordings, and other creative works are prohibited from being duplicated without the copyright holder's consent. The governing aspect of copyright that these materials as they appear on the Internet is still unknown. The responsibility of ISPs is not at all covered under the Copyright Act of 1957. However, Section 79 of the Information Technology Act of 2000 makes reference to ISPs obligation which states in some circumstances, network service providers are not accountable. It is hereby stated for the avoidance of doubt that no person providing any service as a network service provider shall be liable under this Act, rules, or regulations made thereunder for any third-party information or data made available by him if he proves that the violation was committed without his knowledge or that he had used all reasonable efforts to prevent the violation. In the case *UTV Software Communication Ltd v. 1337x and ors*<sup>70</sup>, the plaintiff's company, the UTV Software Communication Ltd. are the ones who produce and distribute cinematic films around the world, including in India. The defendants included 30 websites, some of which were operated by John Doe, as well as the Department of Telecom, the Ministry

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<sup>69</sup> Ibid 3.

<sup>70</sup> *UTV Software Communication Ltd v. 1337x and ors* [2019].

of Electronic and Information Technology, and other ISPs. The plaintiff claimed that the defendant's websites hosted and allowed access to their copyrighted work, infringing on the plaintiff's copyright. In this case, the court designated Mr. Hemant Singh as an "amicus curiae" to help it decide the legal issues at hand. He argued that the Court should not issue any injunctions against a website that hosts legal content, and that it was the plaintiff's responsibility to present evidence to the Court that the website in question was only available for sharing, downloading, and infringing upon legal content, not just the plaintiffs, but also the content of other people. He acknowledged that online theft was a problem due to the advanced technology had made the issue worse. In light of the impact of excessive blocking, courts from around the world have determined that it is crucial to make sure that blocking injunctions are reasonable in order to maintain a suitable balance between the application of blocking orders and the rights of third parties. It was argued that blocking orders, which would restrict access to legal content in copyright situations, were a big worry. The blocking process encounters difficulties such the blocking of lawful content, invasion of privacy, large deployment costs, etc.

#### **4.1.3 Safe Harboring of Online Service Provider**

In the online world, the safe harbouring provisions protects the ones who provide fundamental infrastructure known as intermediaries. Intermediaries includes entities assorted internet service providers (ISPs), social media companies, cyber cafes, e-commerce cafe, etc. The first interpretation of intermediary provision in India was in the form of section 79 of the Information Technology Act, 2000 which provides wide scope of protection. The Ministry of Electronics and Information Technology has appraised the IT Rules, 2021 which signifies not just the liability of internet intermediaries but also to form a regulatory body for digital media and responsibilities

on internet intermediaries seeking to enjoy the legal immunities<sup>71</sup>. The new enactment is significant to social media intermediaries and the duties include the need to create a functional grievance redressal mechanism, accountable take down system with procedure for revenge porn cases, appointment of compliance officers, traceability requirement for certain specific purposes, deployment of automated filtering software, identification of a physical address for purpose of legal notices and the right of users to seek verification of their accounts. And if an intermediary refuse or neglect to abide by the responsibilities, they will lose the immunities which is offered by section 79.<sup>72</sup> Thus, making them legally liable for the acts of the third parties on their respective online platforms. Before such provision, internet intermediaries enjoyed unlimited and wide-ranging immunity from legal liability at no cost. In the first ever judgment that deals extensively with intermediaries' liability. *My Space Inc. v. Super Cassettes Industries Ltd*<sup>73</sup>. T-series, a well-known record label company, filed a suit against MySpace before the Delhi High Court for permanent injunction and damages to restrain MySpace from reproducing, adapting, distributing on its website any content the copyright of which existed with T-series. T-series alleged that MySpace was generating revenue by uploading material on its websites. The key issue which court identified in this case was the possibility of harmoniously reading Section 79 and 81 of the IT Act with Section 51 of the Copyright Act, 1957. Also, whether MySpace has the knowledge of infringement as to attract section 51(a)(ii) of the Copyright Act. The court held in favour of MySpace, stating that, the appellant cannot be held accountable for infringing content in the absence of specific information. Additionally, it contradicts with

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<sup>71</sup> 'Intermediaries, users and the law – Analysing intermediary liability and the IT Rule' Software Legal Law Centre Journal.

<sup>72</sup> Prashant Reddy, 'New IT Rules: The Great Stretching of Due Diligence Requirements Under Section 79' (2021) <<https://thewire.in/tech/new-it-rules-the-great-stretching-of-due-diligence-requirements-under-section-79>> accessed 30 June 2022.

<sup>73</sup> *My Space Inc. v. Super Cassettes Industries Ltd* [2016].

the “general awareness” test. The Court ruled that in order to be held liable under Section 51(a)(ii) of the Copyright Act of 1957, “actual knowledge” must be proven and that merely having a general awareness of the violation is inadequate. Before Section 51(a)(ii) of the Copyright Act, 1957 can be used, T-series must identify the precise infringing content on the MySpace website and notify MySpace of this information. The court ordered T-Series to give the appellant an updated list of "particular" works for which it has copyrighted together with the location/URL of those works. Online intermediaries are not completely immune from responsibility under Section 79 of the IT Act. It is necessary to interpret Sections 79 and 81 of the IT Act and Section 51(a)(ii) of the Copyright Act, 1957 in a consistent manner.

The ruling clarifies the legal obligations of online intermediaries and removes any doubt that may have existed following the sweeping injunction decision issued by a single judge in favour of T-Series and requiring MySpace to take down any infringing T-Series content. If an online intermediary has specific knowledge of the infringing content or has a reasonable belief based on information provided by the rights holder and fails to take action while knowing about it, they may be held accountable for infringement, as can be deduced from the judgement. The burden of proof for IP owners to demonstrate that the intermediary had actual knowledge of the infringement has been significantly increased by the judgement, despite its good legal interpretation of the requirements of the IT Act and Copyright Act. Clearly, it is difficult, if not impossible, to establish this. The ruling in effect leaves it up to the owner of the intellectual property to search through all of the information on a social media website and/or an e-commerce platform in order to find and report the infringement.

#### **4.2 Service Revolution in Indian Entertainment Market**

In the past decade, there has been a shift in the media and entertainment industry. The demand for streaming media has increased as a result of the widespread use of smartphones and simple access to the internet. Due to the OTT trend, which offered on-demand content based on customer preferences, it gained more traction. The Covid-19 pandemic, evolving customer preferences, and other external factors all contributed to the streaming wave, which has since become the most widely used way for people to watch videos across the country.

#### **4.2.1 Rise of Ott Platforms**

The distance between real life and virtual experiences has greatly decreased with the internet's exponential growth. With the availability of over-the-top (OTT) players like, Netflix, Amazon, Hulu, and others, the necessity of paying for international dialling is taken into consideration. The OTT services provide audio-visual content that can be accessed on a range of devices for free or a little fee, making keeping connected more convenient and affordable than ever before. In contrast to traditional networks that must abide by the regulatory laws of cable or satellite networks, OTT platforms are all communication services such as voice calls, instant messaging, and video streaming applications that are not directly controlled by the government or any telecommunications company. These platforms are not subject to any kind of regulation by the Union Ministry of Information and Broadcasting, Law and Justice, Electronics, Information and Technology, Telecom, or Central Board Film Certification. The government views these platforms as intermediaries over which they have no legal authority. However, in accordance with Rule 3(2)(b), (c), and (e) of the Information Technology (Intermediaries Guidance) Rules, 2011, intermediaries must use caution when showing, hosting, or publishing any obscene, pornographic, or illegal information and must not endanger minors. According to Rule 3(3), the intermediary is not



permitted to knowingly host or start the transmission of such content. Regulating agencies are in place in nations like Singapore and the UK to keep an eye on OTT sites. Additionally, consumers are becoming more comfortable using OTT services to watch movies and TV shows. According to FICCI-EY research on Media & Entertainment in 2020, OTT platform subscriptions doubled in 2019. Their share of the total digital segment revenues rose from 3.3% in 2017 to 13% the following year<sup>74</sup>. This change in consumer behaviour is brought on by widespread internet use, inexpensive data plans, and an increase in smartphone users. The marketing of creative works is facilitated by OTT platforms. These platforms benefit from free exploitation of the content they make available in the Indian market. In India, the majority of the digital media was unregulated, and content producers had unrestricted creative freedom. The defences against censoring OTT platforms have been made repeatedly. Since these services are subscription-based on demand, viewers can choose to pay just for the content they actually want to see. Numerous conflicts have developed as a result of Indians consuming more OTT content, and concerns about obscenity and dignity are also being raised. According to a YouGov survey, 1005 respondents, or 57%, support some internet streaming content filtering. They believe that these sites post a lot of objectionable stuff that is inappropriate for public consumption. Adults over the age of 40 make up the majority of those who favour censorship. The fact that content on OTT platforms is available via subscription on demand, where viewers may choose to pay and choose what to watch, is one of the greatest arguments against such restriction. In addition to this, movie piracy is another reason why filmmakers choose the OTT approach. OTT is a significant advance for the many artists who lack the funds to use

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<sup>74</sup> 'Digital advertising increased to 33% of total advertising in 2021 from 2019: FICCI-EY Report 2022' The FICCI Entertainment Division Report (2022).

film to express their creative ideas. And even with the introduction of film censorship, numerous movies have been the subject of heated debates over time. Therefore, there is no reason to believe that the content will not encounter any opposition following censorship on OTT platforms. Additionally, the information offered on these platforms is reasonably priced, written in regional language, deals with regional content, gives them access to a free trial, and cheap deal to the customers. However, there is currently a need for a body to control the content that OTT platforms offer. According to a recent report, Ministry of Electronic and Information Technology (MEITY) has declined to enact censorship but instead intends to create a self-regulatory organisation. To cope with the content offered by these platforms and prevent the enforcement of the Government's own restrictions on them, Hotstar, Sony Liv, Jio, and Eros founded the Digital Curated Content Complaint Council (DCCCC)<sup>75</sup>. Even if the content on these sites violates numerous national laws, the Supreme Court continues to monitor it. A significant concern is whether the platform will be governed by a self-regulatory agency or by legitimate law that establishes a statutory entity to oversee and filter the content streaming on such platforms.

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<sup>75</sup> 'Media and Entertainment' Make in India Report (2020).

## **CHAPTER 5**

### **INFRINGEMENT AND PIRACY IN ENTERTAINMENT INDUSTRY**

#### **5.1 Defining Piracy**

A prevalent claim levelled against acts of piracy is that the perpetrators are just stealing. Piracy is described as the act of copying, stealing, duplicating, transferring, and selling another person's intellectual property (IP) without that person's express authorization, written approval, or payment of any royalties that are owed to them. The term "piracy" was frequently used in mediaeval times to refer to the act of raiding or looting, which entailed ship-borne looters attacking residents of another ship or a coastal area with the primary goal of taking their possessions, such as cargo or other goods. But the definition evolved with reference to IPR. In Piracy in today's scenario refers to unlawfully taking and infringing another person's work and passing it off as one's own, is a more pertinent and frequently used.

##### **5.1.1 Impact of Piracy**

Copyright infringement is widely acknowledged as a serious crime that not only harms society's creative abilities by denying authors their lawful dues, but also causes financial losses to all those who have invested money in bringing out copyrighted materials in various forms for end-user usage. Because a high number of copyrighted products are exchanged abroad, globalisation has pushed copyright challenges to the forefront. As a result, copyright protection is a top issue on many countries national agendas, particularly in the developing world. It has undoubtedly become a major issue in international affairs. According to the Motion Pictures Distributors Association of

India (MPDA), India has one of the world's highest rates of video piracy<sup>76</sup>. Copyright piracy is a threat to artist's creative input. Piracy in cinematographic works occurs when a film is unlicensed reproduced in numerous formats. It takes a lot of creativity on the part of the author to come up with unique plots for any new script, advertisement melody, or theme content for shows. The authors then approach financiers, producers, and agencies to transform their writing into visual representations and give it a new dimension. In the midst of all of this, there is a risk that these documents will be misappropriated by a third party due to the lack of documentation of sharing, which could result in the loss of the legible credits that were supposed to be given to the owner. Among the numerous forms of piracy, internet piracy has been increasingly popular in recent years. The development of external websites that stream unlicensed content is a cause for concern, as accessing content through third-party applications does not contribute to the creator's revenue and may even impair their earnings prospects. An illegal reproduction of copyrighted content for resale in the grey market at much cheaper prices. Because of the availability of access to technology, piracy has gotten more common over time. Because of geographical or economic limitations, customers do not have optimum access to a variety of movie contents, leading them to consume more pirated copies. Movies that have been pirated are popular since they are often cheap or even free. Pirates are able to charge impractically low prices for their products by bypassing legitimate costs of manufacturing, acquisition, and other regulatory

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<sup>76</sup> N.K. Nair A.K. Barman & Utpal Chattopadhyay, 'Study of Copyright Piracy in India' Ministry of Human Resource Development (1999)  
<<https://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>>  
accessed 15 June 2022.

duties. Because production costs are minimal, the pirate sector is primarily focused with volume output, which generates higher profit margins<sup>77</sup>.

### **5.1.2 Evolution of Piracy**

The age of quick communication has arrived in the modern world owing to electronic media, a person sitting in the most remote part of India can watch a live performance occurring in distant locations like America or Africa. Oral or written messages can now be transmitted instantly over the world via telephone and fax. The Internet and computer-aided communication technologies like E-Mail have given modern communication a new dimension by enhancing its speed, information, and affordability. These days, a text message, a painting, and even a movie tune can all be stored or accessed by a single device. While all of these have improved human communication in terms of cost and time efficiency, they also pose the greatest danger to the copyright industry. Even though piracy initially appeared by the end of the fourteenth century, it was only in 1710 first copyright legislation in the modern sense was established in 1710. For a specified period of time, authors had the right to reproduce their works under the “Queen Anne's Statute” law. The rights of book authors were the only ones covered by the 1710 statute, and the freedom to reprint was one of those rights. There was no inclusion of any other creative work. Indian copyright has come a long way since it was first implemented under British rule. The first copyright law was passed in 1847 by the governor general of India at the time. This law was in existence in the nation up until 1958, when the Act of 1957, a new copyright law, took effect.

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<sup>77</sup> Deloitte Facing Piracy, ‘Digital Theft in the Film Entertainment Industry’ Deloitte Development LLC (2014) < <https://www2.deloitte.com/us/en/insights/industry/technology/future-of-the-movie-industry.html>> accessed 20 May 2022.

### **5.1.3 Copyright Piracy**

Copyright piracy is a common phenomenon worldwide. Piracy is defined as the unlicensed production, importation, or dissemination of all or a significant portion of works that are subject to copyright<sup>78</sup>. The owner of a copyrighted work has certain exclusive rights in connection to that work as the owner. Being the owner, the creator of a copyrighted work has some exclusive rights in relation to that work. These include the freedom to copy, publish, adopt, translate, and publicly perform. The owner may also, if he so chooses, sell, assign, licence, or bequest the copyright to a third party. Any of the aforementioned actions taken in relation to a copyrighted product by a person other than the copyright owner or his authorised party constitutes a copyright violation. Thus, copyright theft is similar to any other form of theft in that it causes financial damage for the property's owners. In addition to causing financial harm, piracy has a negative impact on a society's ability to be creative since it deprives creative individuals like authors and artists of their rightful compensation<sup>79</sup>.

#### **5.1.3.1 Online Content Piracy**

Regardless the term it stands by, piracy is the illegal copying of protected work that violates the owner's copyright. The making of unauthorised copies of anything that is protected by copyright, including as music, software, and movies, as well as streaming that content without permission thus upsurge online content piracy. Digital piracy is a well-known concept that caught the public's attention as the internet and its widespread use gained popularity. With the development of new platforms and social media,

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<sup>78</sup> 'Copyright and Piracy Infringement' University of Toledo (2002)

<<https://www.utoledo.edu/it/security/awareness/Copyright.html>> accessed 15 May 2022.

<sup>79</sup> Shubham Shakti & Vanshika Jhakhnadia 'Copyright and Entertainment Industry: An Overview' International Journal of Law Management (2021) <<https://www.ijlmh.com/paper/copyright-and-entertainment-industry-an-overview/>> accessed 15 May 2022.

enormous amounts of content are produced. If the content is original or is regarded as such in the terms of copyright, then everyone is the author of it. The material can be in the shape of a literary work, an artistic creation, music, or even a film. The film business is most at risk from piracy, various Torrent websites are frequently used to get pirated content, as downloading pirated content is simpler and easier from different website. Any protected item, including a straightforward video, song, or movie, that is downloaded using torrents is being used against the owner's copyright. By putting a notice that someone claim copyright in the work, some preventative measures could be taken to discourage possible infringers from copying the content. Technology may be used to identify plagiarism of online content on other websites. Despite being available online, illegal content is ignored and goes unnoticed by the people. Therefore, users should be watchful and careful not to steal the work of other users lest they expose themselves to legal risk, face accusations of plagiarism from other platform contributors, or face content shaming. The condition is that the individual posting the content must be aware of the terms of engagement with the media platform where it is uploaded as well as the platform's rights with regard to the content. The creator of the content has no right to complain if the platform uses it if the person has consented to the platform's requirement that any content put on the platform would transfer ownership to the platform. Since there is no rational way to distinguish between crimes committed digitally and crimes committed in the real world, there is no difference between digital copyright infringement and copyright infringement in the physical world<sup>80</sup>.

## **5.2 When Copyright Is Infringed Under the Act?**

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<sup>80</sup> *UTV Software Communication Limited v. 1337X and Ors.* [2019].

Unauthorized use of a work protected by copyright is referred to as copyright infringement. Thus, infringing on the owner's rights, such as the right to reproduce, distribute, display, or perform the protected work, is the unlawful use of another person's copyrighted work. Since copyright is only given for a specific amount of time, it is not an infringement if the work is reproduced or other actions are taken after the copyright's allotted time has passed. The type of work in which copyright in present will determine the owner's exclusive rights. As a result, the nature of the work will determine the kinds of actions that constitute infringement. A copyright is violated under the specified Section 51 of the Copyright Act. According to Section 51 of the Act<sup>81</sup>, a person who does an act that only the copyright holder is authorised to do without the holder's consent is considered to be infringing on the copyright. Unless he was unaware or had no cause to suspect that such consent will result in the breach of copyright, a person permits the use of the location for communication, selling, distribution, or exhibition of an infringing work. A person who reproduces another person's work in any way without their permission is importing infringing copies of that work.

### **5.2.1 Infringement of Copyright by Copying**

In order to prove copyright infringement in court, a copyright owner must provide evidence of their ownership of the rights to the original work, proof of copying, and "substantial resemblance" between the original and the allegedly infringing work. The plaintiff must demonstrate that the defendant's work is "substantially similar" to the plaintiff's work in order to establish any copyright infringement. As a result, the infringement test has two crucial parts. First, did the defendant genuinely steal the

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<sup>81</sup> Ibid 3.



plaintiff's work, and second, are the stolen elements significant enough to warrant legal action and would protect the expression. The lay observers test, or more accurately, the audience's visceral response, is the traditional method for determining whether two things are substantially similar. The main goal of the test is to evaluate whether a typical layperson would recognise the claimed copy as coming from the work that is protected by copyright. Then, in order to assess if there is or is not a substantial similarity, the average observer is used as a benchmark. The alternative strategy is applicable to the majority of literary works, including books, screenplays, musical compositions, and visual art. This test consists of two distinct tests. First, the extrinsic test examines whether the broad concepts of the allegedly infringing work and the original work were significantly similar, and second, the intrinsic test examines whether the protectable expression of both works was significantly similar.

The Indian Supreme Court's landmark ruling in *R.G. Anand v. Delux Films*<sup>82</sup> clarifies the idea of substantial likeness. R.G. Anand, the author of the play *Hum Hindustani*, filed a lawsuit against the production company Delux films for allegedly copying his play verbatim. The Indian Supreme Court ruled that despite some similarities, the movie did not violate the play's copyright because they differed significantly. The variances were found in the climaxes, themes, characters, and stories.

### **5.2.2 Infringement in Segments of Industry**

Being a wide sector, the degree of misuse in the entertainment sector is very high. When a live performance by an artist is videotaped or broadcast on television without that artist's consent, that performer's rights have been violated. In a cinematographic work, piracy typically occurs when the film is improperly copied in video formats

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<sup>82</sup> Ibid 37.

and/or shown on cable networks without receiving the required consent from the film producer (the right holder). In reality, there are an a plenty of other ways that copyrighted materials be illegally copied.

#### **5.2.2.1 Copyright in Cinematographic Film**

The nature of copyright in cinematographic works is more complicated because there are often multiple rights that overlap in a single work. The “theatrical right,” or the right to screen films in theatres, is the first right in a movie. The owner of the copyright is the producer. Producers sell their theatrical rights to distributors, who then negotiate terms with theatre owners for public showings. Territorial and temporal restrictions apply to the theatrical rights. Video cassettes with movies are also made available. Nowadays, watching movies at home has really surpassed seeing them in theatres in terms of popularity. The creators transfer the video rights to a different company, who creates video cassettes for market sale. These cassettes are solely intended for “home watching,” which means that one can purchase a copy of it to watch at home with family and friends. These cassettes cannot be used to broadcast the movie on satellite or cable. Because purchasing separate sets of rights, known as “cable rights” and “satellite rights,” is necessary to broadcast movies over cables or satellite channels. Any cinematic production would be incomplete without music. Nearly 80% of the country's music market is made up of movie soundtracks. Even though the film's producer holds the copyright, the music included in the movie is the result of the work of a different set of creative individuals, including the composer, lyricists, etc., each of whom is a rightsholder in their own right. Typically, the producer sells this licence to a record label, which then releases cassettes and CDs of the songs for sale. The question of copyright in cinematographic works is extremely complicated due to the prevalence of a significant number of rights in a single work and the involvement of numerous right

holders. There are two main types of cinematic work piracy: “video piracy” and “cable piracy.” In India, there are two different kinds of video frauds. One is the case when no video rights for movies have ever been sold (by the producer), but video cassettes are readily available for purchase or loan. And two, when a party purchases a video right (legally), but other people (pirates) also create and sell cassettes. Unauthorized film transmission over a cable network is known as cable piracy<sup>83</sup>. As was already indicated, getting the correct permission from the right holder is necessary in order to show a movie on a cable network. However, it happens frequently that movies, especially recent releases, are screened through cables without this authorization, which is equivalent to piracy. Due to widespread video or cable piracy, everyone involved in the legal distribution of films, from the producers to the theatre owners, suffers significant losses. The government suffers because pirates avoid paying taxes like the entertainment tax at theatres, excise duty, and sales tax at the locations where legal goods are produced and sold.

#### **5.2.2.2 Copyright in Sound Recording**

In several instances, both in India and abroad, it has been argued that similar recordings violate the original sound recording even when they were lawfully made in accordance with the statutory mechanical licencing requirements. However, the courts have rejected this irrational argument that each sound recording is the recording of a distinct performance by a different group of musicians, resulting in a new sound recording that can be covered by copyright. It was explicitly stated in the case of *Mars Recording Private Limited v. Saregama India Limited*<sup>84</sup> that it would not constitute an

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<sup>83</sup> Karan Singh, ‘An Overview of Copyright in Cinematograph Film in India’ (2021) <<https://swaritadvisors.com/blog/copyright-for-cinematography-film/>> accessed 10 June 2022.

<sup>84</sup> *Mars Recording Private Limited v. Saregama India Limited* [2015].

infringement of copyright in a sound recording if the same has been made with the approval or by licence of the copyright owner. If negotiated consent cannot be obtained, a person may legally make a sound recording of a copyrighted sound recording by using the authorised procedure and subject to the applicable conditions. However, it must be made clear that this does not give the person the right to duplicate or replicate the sound recording. In case of the process of remixing a musical composition starts with the separation of the rhythms, which are then slowed down, sped up, or combined. The actual work is always reorganized as a result of this electronic modification of the original composition. The remix consequently turns into a musical adaptation. Remixing music without the composers consent so infringes on their exclusive right to change their musical creation. The dual goals of copyright—first, to protect the author's voice; second, to promote innovation in works—are both directly attacked by this breach. In the case of *Super Cassette Industries v. Bathla Cassette India Pvt. Ltd*<sup>85</sup>, a matter of injunction was made stating that the defendant had copied and shared the plaintiff's remix of the song "Chalo Dildar Chalo" from the original musical score of the movie "Pakeezah." The fundamental question in this case was whether version recordings qualify as original works and are protected under Section 52(1)(j)<sup>86</sup>. In rejecting the plaintiff's appeal, the Delhi High Court stated that they had remixed the song without the owner's consent and that anyone who breaches Section 13(3)(b) of the Act<sup>87</sup> is ineligible for protection under Section 52(1)(j) of the Act<sup>88</sup>.

Indian music has gained recognition outside of its own country. There is a significant market for Indian music in nearby nations like Pakistan and West Asia as well as in far-

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<sup>85</sup> *Super Cassette Industries v. Bathla Cassette India Pvt. Ltd* [2015].

<sup>86</sup> *Ibid* 3.

<sup>87</sup> *Ibid* 3.

<sup>88</sup> *Ibid* 3.

off nations like the United States, Canada, and the United Kingdom. Some of these overseas nations, most notably Pakistan and West Asia, are known for pirating Indian music<sup>89</sup>. Similar to international audio items, Indian soil is also a target for piracy. Three different kinds of piracy affect the sound recording industry. First, there is a direct approach for copying songs from various legal cassettes and CDs and adding them to a single cassette or CD. After that, these are marketed by being packaged to look distinct from the original products. Second, there is piracy, which involves copying music and packaging them to resemble the originals as closely as possible by utilising the same label, logos, etc. These goods deceive consumers into believing they are purchasing genuine goods, which is misleading. The third type of music piracy is bootlegging, which involves making unlicensed recordings of an artist's performance and then duplicating and selling those recordings on the open market. All of them take place without the performers, composer, or recording company's knowledge<sup>90</sup>.

Thus, even high-profile members of the Indian music industries have been implicated in similar offences, yet the country's legal system does nothing to stop infringement. The general people in India are unaware of copyright violations and the Indian courts do not properly enforce these laws, which has the effect of stifling creativity.

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<sup>89</sup> K. L. Hui & I. Png, 'Piracy and the Legitimate Demand for Recorded Music, Contributions to Economic Analysis & Policy' (2016) <

<https://ideas.repec.org/a/bpj/bejeap/vcontributions.2y2003i1n11.html>>

<sup>90</sup> Ibid.

## **CHAPTER 6**

### **COPYRIGHT PROTECTION IN ENTERTAINMENT INDUSTRY**

According to the phrase “ubi jus ibi remedium,” which means, where there is a right, there is a remedy. No one has the right to exploit another man's labour or property for himself. Piracy has become the primary concern as a result of the information technology and digitalization revolution, and it has expanded the threat in a geometrical progression. As a result, it is imperative that we reinforce our enforcement infrastructure. India's copyright rules are effectively unenforced. TRIPS and other international agreements have been criticized in this regard for their weak requirements on resource distribution. However, nothing changed when India modified its 1957 Copyright Act in 1994.

#### **6.1 The Berne Convention and Its Enforcement Mechanism**

Berne convention being the first convention on copyright contains mechanisms for enforcement for the protection to decide who may use their works, under what circumstances, and how.

According to Article 13 of the Berne Convention, member countries have the authority to set reservations and conditions that are solely granted to the composer of a musical work and to the author of any other works. It shouldn't be detrimental to the writer's rights.

According to Article 16 of the convention, copies of a work that are stolen may be seized in any Union nation where the work is legally protected. Reproductions made in a nation where the work is not protected or is no longer protected are likewise subject

to the rules in the previous sentence. The seizure must be carried out in accordance with each nation's legal requirements.

Article 26 of the Convention, the measures that would make it difficult to put this Convention into practise should be adopted by each consenting state in accordance with its constitution. Each nation must be able to implement the provisions of this Convention under its domestic law at the time it submits its instrument of ratification and adoption. Since the beginning of 1980, the WIPO has focused more of its attention and effort on issues related to copyright enforcement. From 1986 to 1988, several and effective strategies to stop music and video piracy were developed. To develop strategies to combat piracy and counterfeiting, expert groups were constituted.

## **6.2 Indian Policy on Copyright Enforcement**

To simply put, India's copyright rules are not being enforced. This is due to the inadequate resource sharing provisions of the TRIPS Agreement and other international agreements which have drawn immense criticism. The majority of copyright violations include the illicit duplication of films on videos or DVDs and their broadcast on local cable networks. By the criteria of the Television Networks (Regulation) Amendment Bill of 2000, which requires cable operators to obtain copyrights of the films they transmit, it is impossible to control more than 10,000 cable operators without a regulating body. The general people and enforcement authorities are largely ignorant of copyright laws and other relevant matters, which is the main cause of the high level of piracy. As a result, convictions and penalties are uncommon. There are two distinct concerns with the policies related to copyright law, and there is disagreement between developed and developing nations<sup>91</sup>. While developing nations were not as eager for

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<sup>91</sup> Greg Walz-Chojnacki 'Copyright Law and the Implication on Developing Countries' [2017] <<https://uwm.edu/news/copyright-law-and-the-implications-for-developing-nations-tomas-lipinski>>

robust copyright laws and felt sufficient with fewer copyright products, developed nations were oriented toward strong copyright protection. Because they own and control the majority of the intellectual property, thus, developed nations are more interested in having robust copyright laws than developing nations, which prefer less copyright protection because it restricts access to knowledge. Because they believe that tight copyright laws would inevitably limit excessive access to knowledge and technology. Additionally, they think that more stringent copyright laws would result in massive fees flowing to copyright owners from underdeveloped nations. The developed nation, on the other hand, contends that stricter copyright regulations would offer financial incentives to the country's authors, draw in foreign business, and reduce economic dependence.

### **6.2.1 Statutory Remedies**

To ensure that they can profit from the time and effort they have put in, copyright creators develop new works and obtain copyright protection. The owner has the only right to sell his work and grant a license to a third party so they may use it. The owner of the copyright may pursue legal action, i.e., the enforcement of the copyright, against the infringer, in the event that someone copies or reproduces the holder's copyright work without consent. Both civil and criminal penalties are available for copyright infringement under the Copyright Act. The owner of the copyright shall be entitled to all remedies by way of injunction, damages, accounts, and other relief as are or may be provided by law for the infringement of a right<sup>92</sup>. By granting specific exclusive rights to the creators and owners, the Copyright Act of 1957 broadens protection for creative

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<sup>92</sup> 'Remedies Against Copyright Infringement' DPIIT, MCI Chair on Intellectual Property Rights & Centre for Intellectual Property Rights Research and Advocacy National Law School of India University, Bangalore, (2021) <<https://iprlawindia.org/wp-content/uploads/2021/04/RANGISETTI-NAGA-SUMALIKA.pdf>> accessed 03 April 2022.



artistic works. The owners of copyrights have been granted specific remedies in the event of infringement. There are three different types of remedies for copyright infringement. They are administrative, criminal, and civil remedies. Practically speaking, civil remedies are the most frequently applied. Administrative remedies are the least used, while criminal remedies are used less frequently overall.

#### **6.2.1.1 Civil Remedies**

The most frequent legal actions taken by authors to address copyright violations are primarily civil in nature. Section 55 of the Copyright Act, 1957 provides civil remedies for a copyright who has been wronged. There are two types of civil remedies for copyright violations. civil remedies that are prohibited civil remedy and compensatory civil remedy. Under the category of restricted civil remedies, are the Interlocutory injunctions, Mareva injunctions, Anton Piller orders, and permanent injunctions. Interlocutory injunction, also known as interim induction, is the most significant restricted civil remedy.

The Hon'ble Court mandated that a specific procedure be followed by the court in order to grant the guidelines while considering an application for the grant of a temporary injunction in the landmark supreme court case *Seema Arshad Zaheer and others vs municipal corporation of Greater Mumbai and others*<sup>93</sup> in the year 2006. The court noted that just a limited number of conditions must be satisfied before the court can exercise its discretion. First, there must be prima facie evidence; second, the plaintiff's rights must be protected when granting a temporary injunction; in this case, the balance of convenience is in the plaintiff's favour; and third, the harm must be repairable if a temporary injunction is granted, as it has been in almost every case involving copyright

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<sup>93</sup> *Seema Arshad Zaheer and others vs municipal corporation of Greater Mumbai and others* [2006].

infringement. In *Macmillan and Company Ltd. v. K and J Cooper*<sup>94</sup>, it was decided that the plaintiff had established a strong enough case to warrant the issuance of a temporary restraining order under Civil Procedure Code Order XXXIX Rule 2 against the defendant who had published a book that contained excerpts from the plaintiff's published work. In this case, it was decided that there was a prima facie case to be made for the issuance of injunction.

In the case of *CBS v. Lambert*<sup>95</sup>, a Mareva injunction was issued over the fact that the main assets were automobiles, and the order included a clause requiring the defendant to reveal their whereabouts. If the plaintiff cannot find the assets when trying to enforce any final judgement obtained, then the prevention of disposal is not much value. As a result, such injunctions are usually issued ex parte. In *Mirabai Films Pvt. Ltd. v. Siti Cable Network and others*<sup>96</sup>, the appellant was the "Monsoon Wedding" film's producer, and the respondents were cable television operators who offered cable Internet access, cable television networks, and other various related services in various parts of the nation through their associate/subsidiary companies, distributors, franchisees, assignees, head ends, and cable operators. The appellant claimed that the respondents had a history of airing pirated versions of movies and that they planned to do so with "Monsoon Wedding" as well. If they were not stopped, the appellant would suffer irreparable harm and loss. The court while granting temporary injunction said that "we have no doubt that appellant had done its part as it claims that it owned the film's copyright and enjoyed its exclusive right to deal with it, be that in its marketing, distribution, selling it, or communicating with it by any means, including through cable networks in the films or any right to engage in its exhibition or communication had

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<sup>94</sup> *Macmillan and Company Ltd. v. K and J Cooper* [1923] 26 BOMLR 292.

<sup>95</sup> *CBS v. Lambert* [1982] CA.

<sup>96</sup> *Mirabai Films Pvt. Ltd. v Siti Cable Network and others* [2003] PTC 473 Del.

gone uncontested in the absence of respondent's writ." Additionally, it argued that the balance of convenience was that even a single broadcast by the respondents and their distributor, franchisees, which could reach many lakhs of homes at once, would cause it irreparable loss and harm.

The plaintiff in *Barbara Taylor Bradford v. Sahara Media Entertainment Ltd*<sup>97</sup>. claimed that the defendants had violated her copyright in the 1979 bestseller 'A women of substance'. When interpreting the *Fraser v. Euans*<sup>98</sup> ruling, the division bench of the Calcutta High Court stated, "We do not know what the serials would be like; we do not know the situations which will be depicted. The scenes that will be shown are unknown to us. The specifics of the plot are unknown. The only thing we do know is that one of the production team members, who makes up a sizable portion of the team, told a fishing journalist that the serials were based on the plaintiff's book and that they had been Indianized and modified". As per the necessary requirement for injunction, this is insufficient. The proviso to Section 55(1) of the Copyright Act, 1957 states that the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies, as the court may in the circumstance, if the defendant proves that at the date of infringement, he was not aware and had no reasonable ground for believing that copyright subsisted in the work. In the case, *Ghaffur Bux v. Jwala Prasad*<sup>99</sup>, the court stated that, the publication of the pirated work will be stopped if it is particularly large and the pirated component can be distinguished from the legitimate portion. Nevertheless, if the two cannot be

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<sup>97</sup>*Barbara Taylor Bradford v Sahara Media Entertainment Ltd* [2003] 47 SCL 445 Cal.

<sup>98</sup> *Fraser v. Euans*[1969] CA.

<sup>99</sup> *Ghaffur Bux v. Jwala Prasad* [1920].

distinguished, the court will not hesitate to issue an injunction to prevent the publication of the entire work.

Upon a hearing in private and without the defendant appearing, the courts in the United Kingdom issue orders *ex parte* in the case, *Anton Piller K.G. v. Manufacturer Processes Ltd and Others*<sup>100</sup>, allowing the plaintiff and his attorney to inspect the defendant's property. The order gives the plaintiff's attorney the ability to seize copies, papers, and other relevant assets that are being used in violation of the law, or it can force the defendant to hold onto infringing stock in order to secure or preserve the evidence. The order is called the "Anton Piller Order." The order only permits admission and inspection with the defendant's consent, which is in fact not a search warrant. So, trespassing would mean entering the defendant's property without authorization. If the plaintiff is still not permitted to enter without permission, despite the defendant being required by the court in personam to grant it, he will be found in contempt of court. Conditions for making Anton Piller Order is that an Anton Piller order is only made in the most extreme circumstances. It is usually related and combined with a Mareva restraining order. But if the two are taken together can significantly impact the defendant's business. Therefore, before the court issued three requirement which must be taken into consideration.

- (i) The plaintiff must demonstrate that he had a compelling first claim.
- (ii) There must be convincing proof that the defendant is in possession of papers or objects and that the likelihood that he will destroy them is very real before and after the inter parties' application is made in order for the plaintiff to

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<sup>100</sup> *Anton Piller K.G. v Manufacturer Processes Ltd and Others* [1976] 1 All ER 779.

establish that he has suffered, or is likely to suffer, very serious and irreparable harm if an order is not made.

With regards to compensatory civil remedies, the intent to award of damages is meant to put the plaintiff back in the position he was in before the infringement. Therefore, such damages are compensatory. In the case, *Twentieth Century Fox's Film Corporation v. Sohail Maklai Entertainment Pvt Ltd & Anr*<sup>101</sup> was filed in the Bombay High Court before the movie was scheduled for release. Because reputable industry sources had alerted the plaintiffs to the films striking similarity, they claimed copyright infringement. A sniper holding a guy prisoner in a phone booth and forcing him to confess to having an extramarital affair was the central plot of the movie Phone Booth. While a man was similarly confined in a phone booth in the movie Knock Out, the focus was on Indian politicians. The responders argued that no one could claim to have invented the concept of a movie centred around a phone booth. The movie's release was stopped by a single bench court, but the respondents were able to overturn the order by appealing to a division bench. In response to the appeal, the respondents were given permission to release the film as long as they had deposited Rs. 1.5 crore with the Court. The Court finally found the respondents guilty of copyright infringement. Furthermore, the Phone Booth creators were not permitted to commercially exploit their film in any way. According to reports, this case involved India's biggest settlement for copyright violation.

#### **6.2.1.2 Criminal Remedies**

The copyright holder has the option to initiate criminal proceedings against the violator. The legal recourse can be applied to both stop future violations and to punish the

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<sup>101</sup>Ibid 38.

offender. It is distinct from and unrelated to other treatments. The pending of a civil lawsuit does not cause the suspension of a criminal case involving the same issue. Furthermore, the simple fact that a disagreement is civil in nature cannot be used to dismiss a criminal case. Because criminal cases can be resolved more rapidly than civil ones, criminal remedies are more effective. Additionally, criminal processes immediately harm an offender's reputation and social standing, as a result of which, an offender may occasionally negotiate an out-of-court settlement to maintain their good name. The sections from 63 to 70 of the acts<sup>102</sup> addresses copyright-related offences. Anyone who intentionally violates a work's copyright or any other right granted by the Act (apart from the resale sharing right in original copies as allowed by section 53A) or actively assists in the violation is in violation of Section 63. Copyright violations are offenses that are punishable by imprisonment for a period that must not be less than six months but may go as long as three years, as well as penalties that must not be less than Rs. 50,000 but may go as high as Rs. 2 lakhs. When the violation was not committed for financial benefit during the course of a business or trade, the court has the authority to reduce the minimum term of imprisonment and minimum fine. The minimum sentence of imprisonment is increased to one year for second and subsequent convictions, and the minimum fine is increased to Rs. 1 lakh. However, in cases where the violation was not committed for financial gain or in the course of a trade or business, the minimum sentence may be reduced for good cause and special considerations that must be mentioned in the judgement. The maximum penalty, however, remains unchanged. The violation of Section 63 of the Copyright Act of 1957 is a non-bailable offence. In relation to an offence punished under Section 63 of the Act, the provisions of Section 438 of the Criminal Procedures Code may be used.

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<sup>102</sup> Ibid 3.

The Copyright (Second Amendment) Act of 1994 added a new Section 63B<sup>103</sup> that defines knowing use of an infringing copy of a computer programme as an offence that carries a minimum seven-day sentence and a maximum three-year prison term as well as a minimum fine of Rs. 50,000 and a maximum fine of Rs. 2 lakhs for those found guilty. However, where the computer programme has not been utilised for financial benefit or in the course of a trade or enterprise, the court may instead impose a fine that may reach Rs. 50,000/- instead of a jail sentence for adequate and particular grounds to be mentioned in the judgement.

Before the Copyright Amendment Act of 1984, police could only seize copies that were infringing once a magistrate had recognised the violation as an offence under Section 63<sup>104</sup>. Furthermore, such seizures did not cover the plates used to make infringement copies, they could only be made of illegal copies. The police were given further authority according to the Copyright Amendment Act of 1984. After the modification, Section 64<sup>105</sup> states that any police officer who is not below or who aids in the infringement of copyright in any work may confiscate all copies of the work and all plates used to make unauthorised copies of the work, wherever located, without obtaining a warrant. The constitutionality of Section 64 was contested in *Girish Gandhi v. Union of India*<sup>106</sup> on the grounds that the power conferred to the police officer was arbitrary and, as a result, violated a fundamental right because no procedure was specified in the section. While rejecting this argument, the court maintained that Section 63 made it clear that a police officer had the authority to seize materials if necessary.

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<sup>103</sup> Ibid 3.

<sup>104</sup> Ibid 3.

<sup>105</sup> Ibid 3.

<sup>106</sup> *Girish Gandhi v Union of India* [1997] AIR Raj 78

According to Section 52A<sup>107</sup>, it is required to provide specific information on sound recordings and video films, such as the name and address of the person who created the work, the owner of the copyright to those works, etc. According to section 68A<sup>108</sup>, anyone who publishes a sound recording or a video clip in violation of clause 52A<sup>109</sup> is subject to a fine as well as a possible three-year sentence in prison. **In *State of Andhra Pradesh v. Nagoti Venkararamane***<sup>110</sup>, the Supreme Court considered whether a violation of the Copyright Act, 1957, required proof of the owner of the copyright in order to be found guilty. The court noted that the purpose of enacting Section 52A<sup>111</sup> was to stop piracy of cinematograph films and sound recordings and to safeguard the rights of copyright owners and the general public. In the event of a violation of the rules, the Act required that the guilty be punished. Therefore, it would not be necessary for the prosecution to search down and locate the copyright owner in order to present proof of copyright infringement.

### **6.2.1.3 Administrative Measures**

Under administrative remedies, one may request that the Registrar prohibit the import of copies that are infringing and give the owner of the confiscated copies. to obstruct the importation of labour, a practise also referred to as border control measures. 2013 saw a comprehensive revision of this clause. The following steps might be used to summarise the technique outlined in the section.

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<sup>107</sup> Ibid 3.

<sup>108</sup> Ibid 3.

<sup>109</sup> Ibid 3.

<sup>110</sup> *State of Andhra Pradesh v Nagoti Venkararamane* [1997] AIR 1997 Raj 78.

<sup>111</sup> Ibid 3.



- (i) First, the right owner must give a written notice to the customs commissioner or another designated official under the federal excise department.
- (ii) The Commissioner's order is the next step. After reviewing the facts and punishing the violator, the commissioner may issue an order.
- (iii) In the third phase, custom agents may detain the products they have seized. An alert will be given to the offender and the copyright owner, who have 48 hours to respond. The order from a competent court directing their disposal within 14 days after the date of the detention is the last stage<sup>112</sup>.

Piracy is becoming an international business; it is no longer just a national concern. There are a lot of illegal copies being transferred from one country to another all around the world. The legitimate business is currently being seriously undermined from a global standpoint. One of the most effective ways to stop infringement is through border control. Nowadays, it is easier to use executive authority to prohibit the circulation of unauthorized copies across the border. In accordance with Section 53<sup>113</sup>, the Registrar of the Copyright may order those copies of works manufactured in India that would violate copyright not be imported upon application from the owner of the copyright in any work or by his lawfully authorised representative and upon payment of the required fee. The World Custom Organization established the following rules to tighten border controls for copyright enforcement. The goal of establishing this guideline is to safeguard the entertainment sector from the issue of piracy. The authorities who are imposing border controls to enforce intellectual property rights for the first time, as well

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<sup>112</sup> Ibid 3.

<sup>113</sup> Ibid 3.

as those who are conducting or considering legislative reviews or reforms, are the two groups for which this guide is designed.

#### **6.2.1.4 Copyright Societies**

The idea of copyright societies has been established by the legislature to increase the enforcement of copyright. For the purpose of defending and facilitating the rights of copyright owners, copyright societies are playing a crucial role. The performance rights societies were covered by Sections 33 through Section 36<sup>114</sup> prior to the passage of the Copyright (Amendment) Act, 1994. Previously, this society conducted business by providing or granting licences for the performance in India of any work protected by copyright. However, the scope of such a society's influence was restricted to the creation of musical, theatrical, and literary works. Provisions relating to copyright societies were stated in the Copyright (Amendment) Act, 1994, which went into effect in 1994. Later, the 2012 amendment played a vital role as it created compliance with the international standards established by the WIPO Copyright Treaty, commonly known as WCT, and the WIPO Performances and Phonograms Treaty, generally known as WPPT<sup>115</sup>. This modification is particularly significant in terms of the copyright societies. The rights of the authors were not previously recognised by the copyright society. This led to a number of legal disputes between the authors, the owners of the rights, and the copyright organisations. But with this change, the word “author” was added to the provisions. The inclusion of authors in the copyright society insured that the administration of each copyright society's governing body would consist of an equal

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<sup>114</sup> Ibid 3.

<sup>115</sup> ‘Intellectual Property Rights: An overview of leading organizations and conventions’, Indore Institute of Law (2019) <<https://blog.iplayers.in/leading-international-instruments-related-to-intellectual-property-rights/>> accessed 15 June 2022.

number of authors and owners and that there would be no distinction in the distribution of royalties between authors and owners of rights.

Following are the Registered Copyright Societies in India –

- (i) Musical work The Indian performing right societies limited. IPRS is a non-profit making copy authorized under Section 33 of the Copyright Act, 1957 to operate as copyright societies for musical work.
- (ii) For sound recording is the Phonographic performance limited.
- (iii) For performer (Singer's right) India Singers Right Association.
- (iv) For Reprographic Phono copying works Indian Reprographic Right Organization.

Under section 33, clause 3<sup>116</sup> The central government may take consideration for the interests of the authors and other owners of rights. Subject to any conditions that may be required, such an association of people was registered as a copyright society in the interest and convenience of the general public, particularly of the group of people who are most likely to request licences in regard to the applicant. As long as more than one copyright society is not typically registered by the central government to conduct business in relation to the same category of works. After the Copyright (amendment) Act of 1994 entered into force, Section 33 clause 1<sup>117</sup> states that no person or association of persons shall begin or carry on the business of issuing or granting licence in respect of any work in which Copyright exists or in respect of any other right conferred by this act, unless under or in accordance with the registration granted under Section 33, subsection 3. According to Section 34 of the Act<sup>118</sup>, a copyright society may accept

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<sup>116</sup> Ibid 3.

<sup>117</sup> Ibid 3.

<sup>118</sup> Ibid 3.

from a right holder exclusive authorization to manage any right in a work through the issuance of licences or the collection of licence fees, or both. A right holder shall have the right to revoke such authorization without affecting the rights of the copyright society under any contract.

Section 34 of the Act<sup>119</sup> specifies the authority of copyright organisations. A copyright organisation may accept the author's and other owner's exclusive consent for any copyrighted work. They accept this exclusive power in exchange for issuing licences, collecting licence payments, or both. An author or other rights holder may revoke a search authorization without impairing the copyright society's rights under any contractual obligations. The copyright society may enter into an agreement with any foreign society or organisation administering rights similar to those under this act to entrust the rights managed by the said society in India to the said society in the foreign country, and vice versa. However, such a society should not discriminate between rights in India and other works with regard to the conditions of a licence or the distribution of money received.

The provisions for the Tariff Scheme are laid out in Section 33A<sup>120</sup> of this Act according to Indian law. According to this Section, each copyright society may publish its Tariff Scheme in accordance with the 2013 Copyright Rules. According to the section, anyone who feels wronged by such a plan may appeal to the appellate board. Following such an appeal, the board will conduct an investigation and, if required, issue instructions to eliminate any irrational elements. Till the appeal is resolved, the offended party must still make payments to the copyright organisation. The board may also set an interim tariff and provide the parties instructions during an investigation.

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<sup>119</sup> Ibid 3.

<sup>120</sup> Ibid 3.

When reading Section 18 combined with Sections 30 and 33, there may be some confusion in the minds of many people. According to Section 18 of the Act, the creator or owner of a work has the freedom to assign a copyright to anybody they like. On the other hand, Section 30 of this Act gave the holders of copyright the authority to grant a licence. But Section 33 specifically forbids anybody else from granting a licence, with the exception of those who have registered as copyright societies under this Act. The Act leaves this issue in the legislation unresolved, which causes uncertainty. The Delhi High Court ruled in the case of *Event and Entertainment Management Association v. Union of India and others*<sup>121</sup> that Novex Communication Pvt. Ltd., which is not a registered copyright society under Section 33, is nonetheless permitted to conduct business under Sections 18 and 30. However, the Bombay High Court barred Novex Communication Pvt Ltd. and limited its ability to issue licences in the case of *Leopold Cafe and Stores v. Novex Communication Pvt Ltd*<sup>122</sup>. The people became confused as a result of these two opposing verdicts. There was still no formal resolution to the problem of a conflict between these sections.

Thus, it can be observed that the Indian law remedies offered for copyright infringement are gradually catching up to those offered internationally. Perhaps what is needed is for these therapies to be applied more effectively. However, it must be remembered that copyright rules were never meant to create a total monopoly in view of the further creative remedies being adopted periodically. The intention of copyright law is to achieve a balance between the rights of creators to make a profit from their works and the benefits that public derives from utilising and expanding those works. In order to

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<sup>121</sup>*Event and Entertainment Management Association v Union of India and others* [2011] W. P. (C) 5422/2008 & CM APPL 10648/2010.

<sup>122</sup>*Leopold Cafe and Stores v. Novex Communication Pvt Ltd* [2014].

do this, the classic copyright doctrines, such as the “fair use” doctrine, were devised<sup>123</sup>. These conventional principles are becoming obsolete as a result of the communication and information technology revolution. In the shape of the Internet, this digital communication technology is posing a significant challenge to copyright rules. To combat this, copyright laws have undergone a complete makeover, adding numerous layers of protection in the form of technological safeguards and through contract rules in addition to copyright laws.

### **6.3 Combatting Copyright Piracy**

All forms of creative, musical, theatrical, and literary work are protected in India by the Copyright Act of 1957, including the work of producers and cinematographers. The Indian Government has been forced to implement strict restrictions to protect the interests of film producers and distributors as a result of the rise in internet piracy. One of the measures taken by the government to fight the persistent threat of online piracy in India is the revision to the Copyright Act. By revising piracy laws in India, the Copyright (Amendment) Act, 2012 has revolutionised the country’s copyright regulations. Technological Protection Measures (TPM) utilised by copyright owners are safeguarded under Section 65A against any evasion or violation. Copyright holders employ TPM to safeguard their ownership interests in the protected work. A person who avoids TPM in order to violate the owner’s IPR is subject to a fine and a sentence of up to two years in prison. The Information Rights Management provisions of the Copyright (Amendment) Act are found in Section 65B. (IRM). IRM guards’ confidential data against unauthorised and illegal human access<sup>124</sup>. According to the

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<sup>123</sup> Indian Brand Equity Foundation, ‘Media and Entertainment Industry’ (2022) <<https://www.ibef.org/industry/media-entertainment-india>> accessed 30 June.

<sup>124</sup> Sweta Shalini, ‘The Legal Battle Against Piracy in India’ (2018) <<https://www.myadvo.in/blog/the-legal-battle-against-online-piracy-in-india/>> accessed 5 July 2022.

legislation, removing or altering IRM without authorization and with purpose to do so is a crime that carries a prison sentence. The Indian courts have issued a new type of ruling called a “John Doe Order” in an effort to combat the issue of online piracy in that country. In a “john doe order”, only a brief description is provided to identify the accused because their identity was unknown at the time the petition was filed. The Indian film industry is utilising john doe orders to combat online movie piracy on hundreds of torrent websites before new films are even released. Websites that offer torrent downloads or free movie downloads but are suspected of giving illicit access to unreleased films are prohibited beforehand.

The Information Technology Act, 2000 limits the definition of piracy to the unlawful use of computers or a network of computers, whereas the Copyright Act serves as a general supervisor to monitor acts of piracy and punish the perpetrators appropriately. Any data that is subsequently transferred or duplicated from that system onto an external storage device is considered to have been stolen. The amount of gain or unfair advantage made as a consequence of the default, where quantifiable; the amount of loss caused to any person as a result of the default; and the frequency of the default are considered to determine how much the pirate will have to pay in compensation<sup>125</sup>. However, if Internet Service Providers can demonstrate that they had no prior knowledge of the act of piracy committed, they are excluded from the terms of this Act. After the 2012 amendment various investigation offered helped to the owners from such violation, one such instance was where the Kerala Anti-Piracy Cell tracked the IP addresses of over 1000 individuals who were involved in the unlawful upload and download of the movie “Bachelor Party” online in 2012, which led to the biggest

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<sup>125</sup>Ibid.

crackdown on internet piracy in India<sup>126</sup>. The action was done in response to a complaint made by a movie channel that had acquired the film's distribution rights.

The Indian music industry is battling its age-old challenge of piracy with the newly emerged category of audio streaming platforms. The survey claims that there has been a surge in the use of pirated material online in India as a result of the growing adoption of smartphones and reasonably priced data plans<sup>127</sup>. In recent research conducted in India, 76% of those polled admitted to using pirated software to access musical content, demonstrating how pervasive piracy is in the nation.

### **6.3.1 Governmental Initiative**

The Indian government (GOI) and its various departments are aware of this technological threat, and they have launched a number of structural and policy-level steps to counter it. The administration, management, and enforcement of intellectual property rights have been strengthened as a consequence of ongoing improvements and broad, long-sighted changes at the legislative and administrative levels. The National IPR Policy, which brought about drastic and significant changes, was first introduced in 2016 and marked the beginning of India's march toward the wholesome protection and enforcement of IPRs<sup>128</sup>. The GOI adopted the Policy with the intention of encouraging creativity and innovation and acknowledging the importance of IPR for economic growth. By creating an ecosystem that is supportive of these goals in terms of IP consciousness, invention, enforcement, and commercialization, the Policy lays

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<sup>126</sup> 'How Content Piracy has evolved with the Rise of OTT', Campaign India (2021) <<https://www.campaignindia.in/article/how-content-piracy-has-evolved-with-the-rise-of-ott/469731>> accessed 5 June 2022.

<sup>127</sup> Ibid.

<sup>128</sup> Department For Promotion of Industry and Internal Trade '*Creative India; Innovative India*' (2016) <<https://dpiit.gov.in/policies-rules-and-acts/policies/national-ipr-policy#:~:text=The%20Union%20Cabinet%20has%20approved,roadmap%20for%20IPRs%20in%20India.>> accessed 5 June 2022.



forth India's strategy for fostering creativity and innovation. The policy's goal is to raise public understanding of the advantages of IPRs from an economic, social, and cultural standpoint<sup>129</sup>.

The Cinematographs Act of 1952 needed to be appropriately amended in order to include punitive penalties for the unlawful copying of films, according to Policy. To address offline and online piracy, it emphasised the necessity for public education and strict enforcement measures. The Government of India has undertaken a number of initiatives, including digitising the cable distribution sector to attract more institutional funding, raising the FDI limit in cable and direct-to-home (DTH) satellite platforms from 74 percent to 100 percent, and giving the film industry status to facilitate easy access to institutional finance. The Government of India's Ministry of Information & Broadcasting established the Film Facilitation Office (FFO), which serves as a single point of contact for producers and production firms to receive the necessary filming licences. The government's major initiatives in the film sector in the interim budget for 2019–20 include praising the entertainment sector as a significant employer and announcing that Indian filmmakers will now have access to the single window clearance system that has previously only been available to foreign filmmakers<sup>130</sup>. More self-regulation will be incorporated into the regulatory regulations. To combat the threat of piracy, the government promised in the budget to include anti-camcording clauses to the Cinematograph Act. The entertainment sector has praised the introduction of the single window clearance system as a significant development that might help increase

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<sup>129</sup> The Economic Times 'Make in India: Government plans for centre for excellence for entertainment industry' (2016) < <https://economictimes.indiatimes.com/industry/media/entertainment/media/make-in-india-government-plans-centre-of-excellence-for-media-entertainment-industry/articleshow/50997755.cms>> accessed 30 May 2022.

<sup>130</sup> Smrita Sinha & Manisha Singh, 'Combating Copyright Online Piracy in India: Government's Initiatives and Judicial Enforcement' *Lex Orbis*, 2020 < <https://www.lexorbis.com/combating-copyright-online-piracy-in-india-governments-initiatives-and-judicial-enforcement/>> accessed 30 May 2022.

tourism while asserting that anti-camcording measures will support the sector's expansion<sup>131</sup>. In collaboration with IIT Bombay, the government is planning to establish a Centre of Excellence where AVGC courses would be offered to support entrepreneurship and foster new businesses in the industry. The rapidly growing digital infrastructure in the nation and the ongoing developments in the AVGC (animation, visual effects, gaming, and comics) sector, according to the Minister for Information and Broadcasting, have the potential to turn India into the preferred post-preferred post-production hub of the media and entertainment industry<sup>132</sup>. The Indian film business generated over 23,800 crores in revenue annually in 2020, which is roughly one-third of the government's budget for the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) for the years 2020–21<sup>133</sup>. The Indian Government has taken a few further efforts to improve enforcement in the nation in addition to modifying the Copyright Act. A council dedicated to advise the government on how to strengthen copyright enforcement has been established. For police officers, seminars and training programmes are organised. To regulate video stores and cable companies, necessary legislation was created. State governments are urged to establish IPR units to handle copyright and other IPR offences only. Despite all of this, the country has not done a good enough job of enforcing IPR infringement, particularly copyright violations, and piracy still exists in all areas of copyright works, including musical works, video films, and software.

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<sup>131</sup> The Centre for Internet & Society, 'Enforcement of Anti-piracy Laws by Indian Entertainment Industry' (2010) <<https://cis-india.org/a2k/blogs/piracy-and-enforcement>> accessed 30 May 2022.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

### 6.3.2 Judicial Enforcement

The fundamental guidelines of copyright law had to be relied upon by the judiciary. However, the Indian judicial system has shown some success and efficiency in handling cases of infringement, but a larger view of the situation still shows a redundant approach on the part of the court<sup>134</sup>.

The R.G. Anand judgement was a turning point in copyright history and is still supported by the law today. Even today, Indian courts still abide by the rules that the Court established in this case:

(i) If the reader, spectator, or viewer is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original after having read or seen both works, that is one of the surest and safest tests to determine whether or not there has been a violation of copyright.

(ii) No issue of copyright infringement emerges when the same theme is used, but it is handled and presented in a different way, resulting in an entirely new work.

(iii) When the same concept is being developed in diverse ways, it is obvious that because the source is shared, parallels will inevitably emerge. The courts should decide whether or not the similarities are on fundamental or significant parts of the style of expression used in the copyrighted work in such a situation. Copyright would be violated if the defendant's work consisted solely of a literal restriction of the work that was protected by copyright, with a few minor variations here and there. In other words,

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<sup>134</sup> Upendra Baxi, 'Copyright Law and Justice in India' Journal of the Indian Law Institute (1986) <[https://www.academia.edu/8133806/1986\\_Copyright\\_Law\\_and\\_Justice\\_in\\_India\\_JILI\\_Vol\\_28\\_4\\_pp\\_497\\_540](https://www.academia.edu/8133806/1986_Copyright_Law_and_Justice_in_India_JILI_Vol_28_4_pp_497_540)> accessed 12 May 2022.

the copy must be significant and material in order for it to be actionable and establish the defendant's guilt of piracy right away.

(iv) Lastly, it becomes more challenging for the plaintiff to demonstrate piracy when the issue is whether a film producer or director violated the copyright of a theatrical play. It is obvious that a film, as opposed to a stage play, has a considerably wider approach, discipline, and background, allowing the defendants to introduce a variety of circumstances to give the notion a colour and complexion that differ from how the original work has expressed it. However, if a viewer has the impression after watching a film that it is mostly a replica of the original play, there may be evidence of copyright infringement<sup>135</sup>.

In relation to online content creation, the court duly understood what constituted infringement under copyright with series of cases which follows the case of *Sameer Wadekar and Anr v. Netflix Entertainment Service Pvt. Ltd. & Ors*<sup>136</sup>, the lawsuit was filed on the grounds that the Defendant had allegedly violated the Plaintiff's copyright by stealing his work script "Vetaal" and turning it into a web series without his permission. The Plaintiff's major argument was that the web series "Betaal" in Netflix and his work shared a number of similarities, and that he had previously shown his work to someone who was a known associate of the Defendant. Therefore, he alleged copyright infringement and requested an injunction to prevent the web series publication. The Bombay High Court carefully examined both works and came to the conclusion that there were insufficient similarities to label the web series a plagiarised version of the Plaintiff's literary work. The most intriguing and unusual feature was

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<sup>135</sup> Anuja Saraswat, 'Analysis of R.G. Anand v. M/S Deluxe Films and Its Relevance in Recent Time' (2022) < <https://www.mondaq.com/india/copyright/1149674/analysis-of-rg-anand-v-ms-deluxe-films-and-its-relevance-in-recent-times>> accessed 30 July 2022.

<sup>136</sup> *Sameer Wadekar and Anr v Netflix Entertainment Service Pvt. Ltd. & Ors* [2020] LD-VC-70.

revealed by the court to be the name Betaal, which derives from the Hindu mythology Vetalam. The court made references to King Vikramaditya and Vetaal/Betal, two well-known Hindu mythological figures, in this context. Such tales are widely known, hence the court ruled that no injunction could be given. The issue of copyright infringement by various streaming websites that continue to give users access to unauthorised content was the subject in the case of *Star India Pvt. Ltd. v moviestrunk.com & Ors*<sup>137</sup>. A copyright infringement lawsuit was launched in this case by the plaintiff, a company that produces and distributes movies, against a number of defendants that operate various streaming services for allegedly unlawfully streaming the plaintiff's movie "Mission Mangal." The Government of India ministries that make notices on the shutdown of the contested websites were also named as defendants in the lawsuit by the plaintiff. The Plaintiff had looked into the websites of the Defendant's privately before the premiere of the Plaintiff's movie "Mission Mangal," and had provided the results of those searches as evidence to the court. The evidence presented to the court included pictures from each of the Defendant's sites that showed the Plaintiff's movie was made available for download and viewing on the Defendant's site prior to the movie's scheduled release date. The Delhi High Court ordered those internet service providers (ISPs) who were providing services to the Defendant's websites to prohibit access.

In relation to music industry, in the case of *T-series v. Guruji.com*<sup>138</sup>, the T-Series filed a complaint with Guruji.com, stating that the website had taken advantage of their music and video collections. Guruji.com was violating T-Series copyrighted materials while posing as a search engine and has ties to other music piracy websites including

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<sup>137</sup> *Star India Pvt. Ltd. v moviestrunk.com & Ors* [2020] MANU/DE/0585/2020.

<sup>138</sup> *T-series v Guruji.com* [2008].

songs.pk, musicplug.in, bollymobile.in, etc. T-Series said that all music seekers on Guruji.com were routed to a music player that was once more linked directly to numerous online sites that distributed illegal music. The website responded that it had done what is typically anticipated of a search engine by just assisting the users by guiding them toward music content, doing its utmost to defend its position on the copyright violation issue. According to the verdict, the case was in favour of T-series and Guruji.com had to take down the music and song search engine connections from its website.

The critical analysis of these cases and related judgments clearly states how Indian judiciary occasionally gives better insight and raises awareness with regards to the copyright law in the entertainment industry, detect the various types of infringement, the changes made to the law, and their effects if the sector is to continue to grow.

## CHAPTER 7

### CONCLUSION AND SUGGESTIONS

The current study reveals that copyright infringement and piracy are a threat that deprives creative people of their rightful compensation and privileges. As a result, the real difficulty is how to effectively enforce the law. As is well known, laws are made for society, and in order for them to be successfully implemented, both society and the government must take responsibility for them. The goal of copyright regulations is to safeguard and defend the author's creative works while providing him with certain long-term financial benefits. The entertainment and media industries are covered under the copyright laws. In the world of entertainment outlets, copyright is extremely important since it protects the creator's rights and enables the proprietor to improve the original work without worrying about being stolen. The entertainment sector needs to be protected from dishonest practises, which are growing in popularity among the general public at a startling rate. The entertainment business should take specific precautions to guard against piracy. The few cases cited highlights that it is imperative to give the subject of preserving and securing originality and creativity in the Indian media and entertainment sector substantial consideration. It is essential to make the utmost use possible of the methods available to combat incidents of infringement and defend intellectual property rights.

**SUGGESTIONS** – Although the industry has been implementing strategies against the infringement and piracy of original work under Copyright Act or any act which deems to coordinate with its implementation, but the resources or implementation power is limited and hereby it must depend on assistance from the Centre or State and its enforcement agencies. The Central Government's role is primarily advisory in nature.

However, up until now, the government has not placed enough focus on educating the general public and disseminating best practises regarding copyright concerns. Understanding copyright dimensions and their swift evolution in the areas of infringement and violation is necessary with regard to capacity building strategies. As a result, it is now necessary to establish an effective and efficient force to handle such violations. Because the current police force lacks adequate technological and educational resources, it is necessary to increase their skill set in order to solve this urgent problem. When there is a case of infringement or piracy, the police should file a formal complaint. Police personnel should treat IPR issues with the same level of gravity as they would other offences. Additionally, the Public Prosecutor must be fully aware of the macroeconomic effects of copyright concerns on the broader economy. The severity of the problem also necessitates the creation of a productive forum where all interested parties can communicate and make decisions about how to solve it, as well as actions to increase enforcement in the entertainment sector. Copyright registration is evident in the court of law, therein legally valid without further justification. However, in order to increase the effectiveness of the copyright legislation, copyright registration should be made mandatory. To combat this threat, intelligence needs to be improved. Data on entertainment industry piracy should be gathered by both state and national intelligence services. To combat the issues of piracy and copyright infringement, there is a greater need for coordination in the gathering, sharing, and feedback of intelligence between the union and the states. Given that the internet is a worldwide phenomenon, it is crucial to use global practises when enacting legislation to address copyright issues in cyberspace. India must therefore adopt laws that comply with the current international accords in existence. This could contribute to not only tougher rules but also to the growth of e-commerce in India. India must



therefore abide by a few clauses in agreements like the WIPO internet treaties. To stop online piracy and data infringement, online licencing might be a terrific concept. Online licencing enables technological innovation. An effective online licencing system will lessen the likelihood of falling victim to online piracy and assist in regaining the trust of customers. A clear understanding of which jurisdictions should be used in situations of online piracy is also crucial. Regarding the jurisdiction in situations of online piracy, there is a lot of confusion. What specifically would establish jurisdiction in matters like these is still unclear under the IT act and the Code of Civil Procedure. Therefore, it is crucial to have precise jurisdictional rules. Quick action is especially challenging because different states have varied laws and procedures regarding online copyright infringement. Therefore, it is critical that all domestic cyber laws governing online copyright infringement be uniformly harmonised.

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