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## CHALLENGES OF COPYRIGHT ENFORCEMENT IN THE DIGITAL SPACE

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Digitalization has led to an increase in copyright infringement, which is one of its negative consequences. Several aspects of digitalization contribute to this growing threat to copyright protection:

**Piracy** – Piracy involves the unauthorized reproduction or distribution of copyrighted content, like software, books, music, and films. This infringes on the rights of the creators, performers, and artists who hold copyright over these works. In the case of software piracy, this refers to the illegal use or distribution of copyrighted software. Actions like copying, downloading, or selling software without proper authorization fall under software piracy. Other forms of piracy include using software without permission for personal or commercial purposes, producing pirated software, or sharing illegal copies through digital channels.

**Linking** – Linking occurs when a website connects users to another webpage through a hyperlink. While this can be useful, it can also infringe on the copyright owner's rights, especially when it involves linking to content that has not been authorized for public access. Linking can sometimes create the impression that two linked websites are the same or connected, which could potentially reduce the value of the original content. A notable case in this area is *Ticketmaster Corp. v. Microsoft Corp.*, No. CV 97-3055 RAP (C.D. Cal. 1997), where Ticketmaster sued Microsoft for deep linking to its website without permission. The court ruled that deep linking did not violate copyright laws, as it did not involve direct copying of content.

**Digital Media platforms** – The rise of social media platforms has made copyright violations more common. People often share images, videos, articles, and other creative content without realizing that this may infringe on copyright laws. There is a widespread misunderstanding that content on social media

is free to use, which leads to unauthorized sharing and distribution. It's important to remember that copyrighted materials should not be reposted or shared without the permission of the original creator.

**Fair Use Doctrine and Anti circumvention Law** – Copyright Act, 1957, § 52, No. 14, Acts of Parliament, 1957 (India). introduces the concept of fair use, allowing limited use of copyrighted works without the owner's consent, under certain conditions. This can apply to activities like research, criticism, commentary, or the publication of public speeches. Although, fair use should not be used to bypass the copyright owner's rights. Anti-circumvention laws provide additional protection to copyright holders by granting them exclusive control over their work for a set period, preventing unauthorized access or use. Unfortunately, India has yet to fully implement anti-circumvention laws, which limits the protection available to copyright holders in the country.

### Enforceability

In recent times, copyright owners face two primary challenges that are more pronounced than in previous copyright disputes. One of these is the increasing issue of copyright piracy, which now affects both individuals and global markets. The cost of infringing on copyrights has significantly reduced for personal users as creative content is increasingly digitized. With the expansion of peer-to-peer file-sharing networks, along with enhanced computer processing capabilities and larger storage spaces, unauthorized use of copyrighted material has become more widespread. As a result, it is now individuals, rather than just corporations, who are often the target of copyright enforcement actions.

The ease with which digital works can be copied and distributed has led to their rapid and global availability, further complicating efforts to protect copyright holders' rights. Consequently, defending these rights increasingly depends on international cooperation and the alignment of copyright laws across different nations.

### Multimedia Works

Copyright infringement in the realm of multimedia can take many forms, like unauthorized copying of a creator's work, distributing multimedia products for non-educational purposes, or other violations. Examples of such infringement include reproducing literary or artistic works without permission, and duplicating and selling sound recordings via multimedia platforms without the creator's consent.

"Multimedia" refers to a wide array of materials, like text, sound, video, images, graphics, presentations, and live recordings of speeches or performances. These types of works can be protected by various copyright categories, including literary, artistic, cinematographic, dramatic, sound recordings, and photography. The broad range of potential copyright protections available for multimedia works

creates challenges in adequately safeguarding the rights of creators and copyright holders, making it a complex issue to navigate.

### Databases

India does not have a distinct law for database protection like the European Union does. The country does not provide sui generis protection for databases because the government believes that the existing protections under the Copyright Act are sufficient, and there has not yet been a need for additional legislation.

As per Article 21, every citizen is entitled to fundamental rights, including the right to life, liberty, and privacy. The IPC criminalizes data theft, and since information stored on computers is regarded as movable property, it is included under this definition. Consequently, theft, misappropriation, or any criminal breach of trust involving such data is prohibited. In addition, the Indian Contract Act allows for the inclusion of confidentiality clauses in contracts to protect database-related information.

The ITA, offers legal protection for sensitive and private data in India. Information Technology Act, 2000, § 66E, No. 21, Acts of Parliament, 2000 (India). of the Act specifies penalties for privacy violations, and other sections address various aspects of safeguarding database rights.

The Copyright Act of 1957 also provides protection for databases. The Act was amended in 1994 to strengthen copyright protections by allowing the safeguarding of computer-generated works and acknowledging certain types of computer programs as literary works. The definition of "literary work" was expanded to include computer databases, tables, compilations, and software. A "computer database" is now explicitly recognized as a form of "literary work" under Section 2(o).

Database creators in India often rely on the country's copyright laws, treating databases as literary collections. Since India is a signatory to both the TRIPS Agreement and the Berne



Convention, it is important to carefully assess the eligibility of a company or database for copyright protection based on its originality.

Furthermore, the Copyright Act ensures that authorship rights are upheld, even for modern works. Although, the Act does not provide a clear definition of creativity, and Indian courts have not taken a definitive stance on the issue. As a result, each case is typically evaluated based on its specific facts and context. .

#### Multimedia

Copyright infringement occurs when someone uses or reproduces a work protected by copyright without the owner's permission. It happens when a third party violates the exclusive rights of the copyright holder, like the right to use the work for a specific duration. Music and movies are two of the most common areas where copyright violations frequently occur. Infringement cases can lead to contingent liabilities, which are financial provisions set aside in anticipation of a lawsuit. Common examples of infringement include using copyrighted software in a multimedia project without a valid license or incorporating copyrighted music into a project without authorization from the copyright holder.

Several factors contribute to the widespread infringement of copyright:

The internet's easy access makes it simple to copy digital media.

Many creators lack knowledge of copyright laws and their enforcement.

Advances in digital imaging technology make it easier than ever to duplicate visual content.

Copyright infringement can result in significant legal and financial consequences:

**Legal Action:** The copyright holder can pursue legal action against the infringer, which may lead to a civil lawsuit, criminal charges, or both.

**Damages:** If the copyright owner wins the case, they may receive compensation, which could include the profits gained by the infringer or the loss of income experienced by the copyright holder.

**Injunction:** The copyright holder may obtain an injunction to prevent the infringer from continuing to use the protected work without permission.

**Statutory Damages:** In some cases, copyright law allows the owner to claim statutory damages, which are set amounts that can be substantial, even if the actual damages cannot be proven.

In *Photoquip India Ltd. v. Delhi Photo Store*, (2007) (Del. HC) (India).

The plaintiff created machine drawings for the purpose of producing pilot moulds, which were then used to manufacture flashlights. The plaintiff obtained copyrights for both the drawings and the moulds. In a lawsuit for copyright infringement, the plaintiff claimed that the defendant had produced flashlights based on their drawings. The court ruled that the plaintiff's drawings were considered artistic works and concluded that the flashlights produced by the defendant could only be manufactured using the plaintiff's drawings. As a result, the court determined that the defendant had violated the plaintiff's copyright.

Given the differing opinions and rulings on the issue, it remains a topic that requires ongoing attention to track future developments. The current uncertainty has created confusion surrounding both copyright and design protection, and it is hoped that competent courts will soon provide clearer guidance on the matter.

#### Right to Distribution on the Internet

In India, the protection of internet-related copyright issues is primarily governed by the

Copyright Act, 1957, which safeguards original works like literature, music, films, and software. With the growing use of the internet, concerns over unauthorized distribution and sharing of copyrighted content have become more prevalent. The law extends to the online realm, addressing infringements occurring on websites, social media platforms, and other digital spaces. In addition, the Information Technology Act, 2000 (IT Act) provides a system to manage online copyright violations, including tackling piracy and the illegal sharing of protected works through digital means.

Despite the legal provisions, combating copyright infringement on the internet in India remains a challenge. The widespread use of social media and file-sharing platforms has made it difficult to prevent the unauthorized distribution of copyrighted materials. The Intermediary Guidelines under the IT Act mandate that online platforms remove infringing content once notified, but enforcement is often inconsistent. Moreover, legal action in such cases can be slow, and many users remain unaware of the potential legal risks of sharing copyrighted content. This has led to an ongoing struggle to find the right balance among protecting intellectual property and ensuring free access to digital information.

The Copyright Law doesn't provide for ISP liability directly. Although, S.51 (a)(2) might be extended to include the same. The Delhi HC, in *MySpace Inc. v. Super Cassettes Indus. Ltd.*, (2011) (Del. HC) (India). has intricate upon the fixations of ISP liabilities and website owner as:

The legal system of Indian copyright law includes both civil and penal provisions designed to protect the interests of creators. Although, the system is not without its challenges, which should be addressed to improve its effectiveness. A major concern is the enforcement of these provisions, highlighting the need for a more efficient administrative system to ensure compliance with the law. The increasing presence of the internet also calls for

multinational enforcement strategies, which would involve harmonizing domestic laws to facilitate the protection of copyrights across borders in the digital age. Differences in the fundamental theories and practices of national copyright systems pose significant obstacles to effective global and domestic enforcement, which impacts the protection of authors and other rights holders.

Recent amendments to Indian copyright law have opened up opportunities for creative legal approaches, allowing businesses to adapt and innovate more effectively. These changes provide companies with the tools to manage and navigate the evolving landscape of copyright protection, helping them address the challenges posed by digital transformations. By leveraging these legal adjustments, businesses can better align their operations with the new regulatory environment and ensure more effective management of their intellectual property.

*Kelly v. Arriba Soft Corp.*, 336 F.3d 811 (9th Cir. 2003). In this case, the court ruled that the defendant's operation of a "visual search engine," which displays "thumbnails" of copyrighted images without the owners' consent, does not violate the Copyright Act or the DMCA. The search engine presents these thumbnails without identifying copyright management information and removes them from the web page where the image was originally posted. When users click on a thumbnail, a full-size image opens in one window, while another screen shows the original web page containing the image. This was an improvement from the previous version of the search engine, where clicking on the thumbnail would only display the full-size image and a link to the source webpage.

The defendant does not seek permission from image owners before including their images in the search engine's database. Although, they offer instructions for website owners to block the web crawler if they do not want their images

included. The plaintiff, who holds the copyright to 35 images included in the search engine, initially posted these images on two websites for promoting a book he authored. After the plaintiff raised objections, the defendant removed the images from the database. The plaintiff then filed a lawsuit, accusing the defendant of copyright infringement and a violation of DMCA.

The court ruled that the defendant's actions were considered fair use under the Copyright Act, and did not infringe upon the plaintiff's copyright or violate the DMCA. As a result, the court granted summary judgment in favor of the defendant, dismissing the plaintiff's claims.

#### Preventive Measures Against Copyright Infringement

The Copyright Act provides both civil and criminal remedies for copyright infringement, as outlined in Chapters XII and XIII. Civil remedies may include temporary or permanent restraining orders, compensation for damages, account renditions, and the confiscation and destruction of infringing copies. In addition, legal measures like the detention of infringing goods by customs authorities can be executed. Criminal penalties are also prescribed by the Act for certain infringements. Under Copyright Act, 1957, § 63, No. 14, Acts of Parliament, 1957 (India), individuals who knowingly infringe or assist in infringing copyrights are subject to a minimum sentence of six months in prison, with a potential maximum sentence of three years, along with a fine of up to fifty thousand rupees, or both. In response to the ease with which works can be copied and distributed online, copyright holders have adapted by using advanced technologies to prevent unauthorized use of their protected content.

Modern copyright challenges can be categorized into three main areas: (a) Emerging sectors like computer software, databases, and multimedia projects. (b) Issues surrounding broadcasting, streaming, digital reproduction, and distribution. (c) Concerns related to the

management and administration of copyright in the digital era.

Historically, innovation within the visual industries has led to the creation of alternative methods of artistic expression, which later became subjects of copyright protection. For instance, the advent of photography introduced the concept of "photographs," the development of analogue technology gave rise to "phonograms," and filmmaking created a new category of works, including films and cinematographic works. Similarly, the rise of digital technology has resulted in the emergence of new forms of creative works, like databases, computer programs, and multimedia content, which initially raised questions regarding their eligibility for copyright protection.

**Software Functions:** A computer program consists of a series of instructions that, when encoded in machine-readable format, enable a computer to perform a specific task. It can also guide, perform, or achieve a particular function or outcome through the processing of information. The question of the most appropriate intellectual property protection for computer programs has been widely debated on the international stage for many years. Arguments for and against copyright and patent protection, as well as the potential for new methods of safeguarding computer software, have been explored. The requirement that computer software – whether in object code or source code form – be protected as intellectual property was formalized through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which emerged from the Uruguay Round of global trade negotiations.

The protection of broadcasts as a literary work has been a subject of much debate. Even with the restrictions of the Berne Convention on compilations, questions arose regarding the protection of content. The TRIPS Agreement explicitly stated that "compilations of



information and other materials, which, because of the arrangement or organization of underlying content, constitute artistic works, should be protected as such, regardless of whether they are in a computer-readable format or another form."

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