

DIGITAL PIRACY IN THE STREAMING ERA: THE FAILURE OF COPYRIGHT ENFORCEMENT IN INDIA

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ABSTRACT

The fast growth of streaming services has changed the way copyrighted content is distributed and consumed by turning the industry into one that is no longer based on ownership but access. But this change has been coupled with the simultaneous rise of digital piracy which is another and an illegal network of content delivery. The paper is a critical analysis of the impact of copyright enforcement in India in solving the problem of digital piracy in the streaming age.

It claims that the Indian legal system including the Copyright Act, 1957 and the Information Technology Act, 2000 are very comprehensive in terms of binding statutory protection, but the enforcement mechanisms are still inadequate in structure. Piracy has continued due to not the lack of legalization, but to the technological asymmetry, the limitations of jurisdiction, and the responsive quality of the law. Dynamic injunctions and evolving interpretations of intermediary liability are judicial innovations that are flexible but do not give a systemic solution.

The article also emphasizes the fact that the accessibility and affordability of digital piracy are market determinants that perpetuate it as well as the enforcement gaps. It concludes that to ensure effective regulation, there should be a change towards an integrated approach comprising of legal reforms, technological enforcement and policy level interventions. In the absence of such adaptation, the copyright law can easily become irrelevant in the fast changing digital landscape.

Chapter 1 – Introduction

1. Introduction

The entertainment industry has undergone a significant change within the last two decades, and the transformation was caused by the emergence of digital streaming platforms, which have essentially changed the process of creation, distribution, and consumption of copyrighted content. Traditional distribution models have been substituted with access-based platforms like Netflix, Amazon Prime Video, and Disney+ Hotstar, with licensing agreements being the main determinants of success. Although this has increased accessibility and globalization, it has also unveiled loopholes in the structure of copyright

enforcement especially in cases of digital piracy.

Copyright law which has traditionally been modeled on physical distribution now functions in a borderless digital space whereby unauthorized duplication and distribution takes place at real time. It has brought a conflict between the legal protection and the technological reality. The facilitation of copying, as well as anonymity and cross-border distribution, has made the traditional enforcement mechanisms more and more ineffective.^[1]

This challenge is highlighted by the development of digital piracy as a parallel distribution system. Although there are

elaborate statutory provisions of the Indian law, piracy is still flourishing, and this is a cause of concern as to whether the enforcement is lacking or not the law is not protecting. The paper is thus aimed at analysing the efficiency of copyright protection in the streaming age, especially the digital piracy.^[2]

2. Scope of the Study

This paper is limited to the legal and practical examination of the digital piracy in the streaming ecosystem, specifically in the framework of the Indian copyright law. It looks at laws, judicial interpretations, and technological issues that come with the enforcement of copyright in the online world.

The limitations are limited to:

- Streaming site piracy.
- Indian legal system and chosen international principles.
- Court reactions to Internet copyright violations.

The paper does not go beyond other fields of digital content regulation like user generated content sites or the gaming sector, unless it is pertinent to piracy.

3. Aim and Objectives

3.1 Aim

The main objective of this paper is to critically analyze the effectiveness of the copyright protection mechanisms in resolving the digital piracy in the streaming age.

3.2 Objectives

- To examine how digital piracy has changed when it comes to streaming platforms.
- To study the legal environment of copyright protection in India.
- To assess the courts in response to online piracy.
- In order to define the structural challenges in enforcement mechanisms.
- To suggest the reforms aimed at enhancing the efficiency of copyright protection.

4. Research Questions

The following research questions lead this study:

- Are current copyright regulations in India sufficient to deal with streaming piracy in the digital age?
- What do you consider to be the major obstacles to enforcing copyright in a digital and cross-border setting?
- How much have judicial interventions been used to deal with online piracy?
- Is the fact that piracy still occurs to mean that law is not working or law is not being enforced?

5. Hypothesis

The hypothesis underpinning the present paper is as follows:

On one hand, the Indian copyright system is legally sound, but on the other, its enforcement system is structurally weak to respond to the streaming age of digital piracy.

6. Literature Review

The recent debate about copyright in the digital era among scholars indicates that there is an increasing conflict between the old legal provisions and the new technological facts. According to the existing literature, even though copyright laws have developed to embody digital rights, the enforcement mechanisms are rather reactive and confined to jurisdiction.

Research on digital piracy highlights the effect of digital piracy on the entertainment sector, especially in the disruption of licensing based and controlled distribution revenue models. Simultaneously, studies reveal that there are issues with enforcement as well due to anonymity, transnational activities, and fast technological changes.

Nevertheless, little analysis is done that integrates digital piracy and streaming platforms and Indian copyright enforcement. The paper will aim at filling that gap by integrating doctrinal analysis and critical assessment of enforcement mechanisms.

7. Research Methodology

The research methodology of this study is doctrinal research approach, which is based on the analysis of primary and secondary sources of law.

7.1 Primary Sources

- Copyright law (Copyright Act, 1957; IT Act, 2000)
- Cases of copyright and online piracy.
- International treaties such as Berne Convention and TRIPS Agreement

7.2 Secondary Sources

- Copyright law books, journal articles and reports.
- Policies and institutional publications.

7.3 Method of Analysis

The study employs:

- Analytical approach to study statutory and judicial developments.
- Comparative method to evaluate the disparity between the legal text and the operational application.

8. Study Significance.

The importance of this study is that it is based on enforcing as opposed to legal provisions. Although the current literature tends to focus on legislative frameworks, the paper indicates the loophole between law and practice in the digital space.

This gap is important to understand in order to come up with effective policy responses that can balance rights of creators, platform responsibility and access to content by people.

Chapter 2 – Legal Framework Governing Digital Piracy in India

2.1 Introduction

Digital piracy in India is mainly controlled through the integration of the statutory law and judicial interpretation. Although Copyright Act, 1957 is the main foundation of copyright protection, the functions of the digital environment are supported by the Information

Technology Act, 2000 and changing judicial principles.

At a structural level, Indian legal frameworks seem to be holistic, as they identify traditional and digital infringements. Nevertheless, the point of concern is not that there are legal provisions, but rather whether these provisions can be effective in addressing the pace, magnitude and the cross-border aspects of online piracy.

2.2 Copyright Act, 1957: Statutory Basis of Protection

The copyright Act, 1957 forms the basis of the legal protection of the copyrighted works in India. It gives a set of exclusive rights to the copyright owners such as the right to reproduce, distribute and communicate the work to the masses.^[3]

When it comes to a digital streaming, the right of communication to the public is especially important, as streaming sites would not be able to exist without it and deliver the content to the audience in a legal manner. Direct violation of this statutory protection is unauthorized streaming or dissemination.

The Act in section 51 defines infringement in a general way, including unauthorized copying and transmission of a copyrighted work. This is a provision that forms the legal framework in dealing with any digital piracy including streaming, torrenting and unauthorized broadcasting.

Civil action (injunction and damages) as well as criminal penalties (prison and fines) are also included in the Act. This paper makes a powerful deterrence system. Nevertheless, the efficiency of these provisions cannot be full because of the difficulty in enforcement of these provisions in the digital environment.

2.3 Digital Amendments and Technology Security.

The Copyright (Amendment) Act, 2012 brought into play the provisions that would deal with the issue of digital infringement such as protection

of technological measures and rights management information. These were meant to bring the laws of India to meet the international requirements and acknowledge the importance of digital rights management (DRM) to avert illegal access.

Regardless of these developments, the actual effect of such provisions is not much. The protection mechanisms of technology are easily bypassed, and the enforcement mechanisms do not have the potential of responding in real time. This introduces disparity between legal rights to the digital rights and their real protection.

2.4 Information Technology Act, 2000 and Intermediary Liability.

The Information Technology Act, 2000 complements the regulation of the online piracy especially with the concept of intermediary liability.

Section 79 offers safe harbour to intermediaries to protect them against liability of third-party content under the condition of due diligence and action taken on receiving the knowledge of illegal content.^[4]

This is an essential provision when it comes to digital piracy, since the vast majority of violating content is stored or transferred by third parties in the form of the sites, platforms, and service providers.

The demand of actual knowledge however, presents a major setback. The intermediaries are not under obligation to take the initiative of overseeing the content, and action is normally taken after being notified. This builds a time lag of pirated material that is still available thus compromising enforcement.

2.5 Judicial Approach to Digital Piracy

The Indian courts have tried to adjust legal solutions to the issue of digital piracy.

Introduction of dynamic injunctions is one of the greatest advancements that have been made especially in cases of rogue websites. Courts have realized that the conventional injunction

will not be effective in dealing with piracy sites that would continually switch the domain name or those that would use mirror sites.

Also, the intermediary liability has been defined by the courts because the platforms cannot invoke immunity in matters where they know there is infringement and they have the ability to do something about it.

These changes show that there is a change in judicial methodology towards a more adaptable and responsive one. Nonetheless, they are very reactive as they deal with infringement once it has taken place instead of avoiding it.

2.6 Global Framework and its Impact.

The Indian copyright laws are affected by the international treaties like the TRIPS Convention, which provides a standard of protection and enforcement of the intellectual property rights.^[5]

These treaties stress the importance of the adequate enforcement systems and the collaboration on the cross-border level. Nonetheless, the application of these standards in the digital realm is still a problem especially in jurisdictional aspects and variations in the enforcement ability of countries.

2.7 Structural Limitations of the Legal Framework

However, the Indian legal system has a number of structural weaknesses, although it is quite comprehensive:

- Jurisdiction restriction of law: Copyright laws are territory limited whereas piracy is worldwide.
- Reactive enforcement model: The legal redresses are activated after infringement has taken place.
- Reliance on complaints: The system is dependent on the right holders to take action.
- Technological lag: The speed of technology is much faster than that of the legal processes.

By imposing these restrictions, one can see a basic incompatibility between the legal framework design and the nature of digital piracy.

2.8 Critical Evaluation

A legal review of the situation shows that it is not the lack of legislative weaknesses but operational inefficiency.

The Copyright Act, 1957 has a robust statutory basis, and the IT Act is used to supplement the statutory basis, which touches on the intermediary roles. Adaptability is also evidenced by such judicial innovations as dynamic injunctions.

Nonetheless, the paradigm is still essentially reactive, piecemeal and limited in jurisdiction. It is not meant to work in a situation where infringement is immediate, anonymous and international.

Such a structural misfit has a major adverse impact on the deterrent impact of the copyright law and enables piracy to thrive in the face of the law.

Chapter 3 – Judicial Approach to Digital Piracy in India

3.1 Introduction

Judicial system in India has been instrumental in terms of influence in the copyright law enforcement in the digital world. Where no comprehensive statutory systems have been established to address digital piracy, the courts have sought to fill it by innovation in interpretation and flexibility in their processes.

Nonetheless, even with such endeavors, judicial intervention continues to be mostly reactive such that it responds to cases of infringement after they have been committed instead of stopping them. This chapter will look at some of the most important judicial advances and determine how well they will counter the digital piracy.

3.2 Dynamic Injunctions and Rogue Websites.

The identification of rogue websites and the advent of dynamic injunctions have been some of the best judicial reactions towards digital piracy.

In *UTV Software Communication Ltd. v. 1337X.to*, the Delhi High Court recognized the fact that piracy websites could be blocked using a constantly changing domain name, mirror sites as well as proxy servers, and that the same rights holder could block their future versions without the need to initiate further litigation.^[6]

This was a significant change to the old form of injunctions which was confined to a certain URL or domain. The judiciary was also showing readiness to change legal solutions to technological realities by acknowledging the dynamic state of digital piracy.

Nonetheless, dynamic injunctions are still limited in their effectiveness. The piracy networks keep going around the blocks orders by using newer domains and other access mechanisms, which means that the judicial redress is still a step away behind the technological advancements.

3.3 Intermediary Liability and Safe Harbour Doctrine.

Intermediary liability is the question of the application of copyright in the digital environment because the majority of pirated materials are made available or delivered by online services.

The Supreme Court in *Shreya Singhal v. Union of India* made it clear that the intermediaries receive the actual knowledge of the illegal content by the court order or government notification only, which veils the protection of safe harbour by the Information Technology Act, 2000.^[7]

Although this method shields middlemen against undue liability, it also creates a structural delay in the enforcement. Social sites do not need to actively screen content and copyrighted material is often left online until official notification is made and implemented.

Consequently, it places a lot of responsibility on the copyright owners to ensure that they are constantly detecting and reporting the cases of infringement. Such a reactive model weakens the anti-piracy efforts considerably.

3.4 Platform Responsibility and Knowledge Standard

The level of responsibility laid on digital platforms has also been dealt with by judicial interpretation.

In *Super Cassettes industries v Myspace*, the High court of Delhi ruled that intermediaries are not entitled to invoke the safe harbour protection where they are aware of infringement and do nothing about the same.^[8]

This ruling is an effort to strike a compromise between platform immunity and accountability. Nonetheless, the use of knowledge as the initiating factor remains a constraint to proactive enforcement.

The platforms are motivated to take action only when they are notified about it and not to take proactive action. This gives a room in which infringement can take place severally before a case of infringement is filed.

3.5 Legal constraints of dealing with digital piracy.

In spite of the progressive trends, the judicial approaches have their limitations:

- Reactive character of adjudication: The courts do not take any action until disputes are presented before them.
- Slow processes: Court cases are usually at variance with infringement in real time.
- Reliance on enforcement agencies: The orders of the courts have to be properly implemented and this is not always the case.
- Technological limitations: The judicial solutions are unable to deal with decentralized and anonymous piracy networks entirely.

These restrictions point out some inherent structural problems with the use of courts as the main means of fighting digital piracy.

3.6 Critical Evaluation

The evaluation of judicial reactions has been critically evaluated and the resulting trend is paradoxical. Indian courts have been flexible on one hand, through the introduction of phenomena, like dynamic injunctions, and the clarification of intermediary liability. Conversely, these are not enough to deal with the magnitude and the pace of digital piracy.

Juridical creativity has enhanced the legal instrumentation of the rights holders however it has not fundamentally changed the enforcement landscape. The system is still run in a case-by-case manner, and it does not provide a systemic solution but instead requires constant intervention.

Furthermore, the use of the notice-based enforcement and post-infringement remedies show a larger problem in the system: the system is built to solve the problems, rather than to avoid them.

Chapter 4 – Structural Failures in the Enforcement of Digital Piracy

4.1 Introduction

Digital piracy is still conducted on large scale in India despite the presence of a wide-ranging legal system and development of judicial responses to it. Such continuation means that the problem is not just legislative but structural.

The inability to enforce is based on the incompatibility between the copyright law design and the digital technology reality. Where the law exists within territorial, procedural, and reactive boundaries, piracy exists within unstructured, cross-territorial, and very quick-moving networks.

The chapter discusses the most prominent structural issues that violate the efficiency of copyright enforcement in the digital space.

4.2 Technological Superiority of Piracy Networks

Digital piracy is flourishing on technological systems that are more dynamic than legal processes.

Piracy networks use:

- To overcome geographical barriers, Virtual Private Networks (VPNs) are used.
- Mirror and proxy websites to evade blocking orders
- P2P networks that do not have a centralized control.

Such technologies enable the offenders to be anonymous and reoccurrent even after enforcement measures have been taken. Legal solutions, including blocking of websites or takedown orders, therefore, have only short-term effects. The law, on the contrary, follows the formal processes, which are much slower. This brings an imbalance in structure whereby piracy is evolving more rapidly than enforcement can react to it.

4.3 Jurisdictional Limitations

The copyright law is by nature territorial as opposed to the global operation of digital piracy.

Most piracy sites are located outside India and thus the local authorities have a hard time having jurisdiction. Although the court may pass blocking orders, the application is restricted to certain areas under the jurisdiction of Indians.

The international copyright principles impose an obligation on the member states to offer protection and enforcement mechanisms but do not guarantee the same or a coordinated action across borders. This means that the piracy networks take advantage of the jurisdiction loopholes to evade the law.^[9]

This makes the enforcement environment a fragmented environment where a court of law in one jurisdiction can have little effect in global piracy activities.

4.4 Reactive Nature of Legal Enforcement

One of the major weaknesses of the existing framework is that it is reactive in nature.

The lawsuit is normally filed when:

- infringement has occurred
- violations are detected by the rights holders.
- official grievances are made.

The infringement of copyright is not acknowledged and dealt with under the Copyright Act until unauthorized acts have occurred, which is not practical in the online realm whereby content can be shared in real time, and on a large scale.^[10]

When legal remedies are taken, the infringing content has usually already reached a large audience by the time the enforcement measures have been put in place, making them rather ineffective.

4.5 Safe Harbour and Delayed Accountability.

Intermediary liability framework of safe harbour also makes enforcement difficult.

Intermediaries must only take action when they are actually aware of illegal content. This causes a delay between the time of infringement and its deletion.^[11]

During this period:

- pirated material is still available.
- it can be reproduced and re-disturbed several times.
- enforcement is thrown off its preventive effect.

Although safe harbour benefits are needed to save the digital platform to undue liability, they decrease the effectiveness and speed of anti-piracy efforts.

This is an expression of a wider conflict between protection of platforms and good enforcement.

4.6. Institutional and Procedural Constraints.

Institutional drawbacks also undermine enforcement.

Authorities often face:

- inability to have technical capabilities to monitor advanced networks of piracy.
- scanty monitoring and enforcement resources.
- judicial and administrative delays.

Also, it is largely enforced through coordination of various stakeholders such as courts, government agencies, internet services providers, and platforms. There is no integrated enforcement strategy, which decreases the overall efficiency.

4.7 Economic and Behavioural Dimensions of Piracy

Although piracy has been regarded as a strictly illegal activity in legal analysis, the behavioral and economic factors also determine why it continues to persist.

The piracy is commonly motivated by:

- absence of affordability of content.
- late or limited accessibility to regions.
- convenience among the users.

This is not a justification to pirate but it shows why enforcement can never be used to eradicate piracy. The only approach that cannot help is a purely legal approach to stop the underlying incentives which keep the demand of pirated content.

4.8 Critical Analysis

The persistence of digital piracy shows a weakness in the enforcement model.

To start with, technology is structurally ahead of the system. Legal processes are fixed and dynamic processes, whereas piracy is dynamic.

Second, enforcement is not centralized and rather relies on unilateral action. Rights holders must shoulder the responsibility of detection and reporting of infringement resulting in partial and ineffective enforcement.

Third, the framework is too reactive and it responds to violation after it has been perpetrated instead of preventing it.

Lastly, such solutions as technological solutions and the intervention at policy level are not

adequately incorporated into the law, instead, conventional legal solutions that are not suitable to the digital world are used.

Combined, these aspects prove that the ineffectiveness of enforcement is not an accident but a problem.

Chapter 5 – Recommendations and Conclusion

5.1 Introduction

Digital piracy remains a persistent problem even when a legal framework and changing judicial reactions are in place, which proves that the problems of enforcement are structural, as opposed to incidental. The constraints identified in the case studied in the prior chapters are technological asymmetry, jurisdictional constraints, and reactive aspects of the legal mechanism.

Based on this, in order to deal with digital piracy, there should be a change in terms of the response that is more of legal rather than multi-dimensional enforcement model in which legal, technological, and policy-based responses can be integrated.

5.2 Strengthening Technological Enforcement Mechanisms

Integration of technology in the enforcement strategies is one of the most important reforms.

The systems of laws are not enough in the digital world where copyright violations take place as they happen. Thus, enforcement should include:

- Content recognition systems that are based on AI.
- Automated takedown mechanisms
- Live tracking of copyright violations.

Although technological protection is acknowledged in the law, it is not implemented very well. The enhancement of the use of Digital Rights Management (DRM) and anti-circumvention technologies can have a significant impact on decreasing the number of unauthorized accesses.

Nonetheless, technological enforcement should be fair in terms of the protection against over-blocking and abuse.

5.3 Reforming Intermediary Liability Framework

The existing safe harbour provision in the Information Technology Act, 2000 focuses on platform protection whilst restricting proactive protection.

There is also a need to be more balanced through:

- middlemen are urged to embrace the proactive surveillance systems.
- shorter response times are required.
- responsibility is enhanced without the absolute liability.

Section 79 offers conditional immunity, yet its application has caused delays in action to deal with infringing content. 2 Reform should aim at lowering the procedural lag and still adopt protection against bona fide intermediaries.

5.4 Enhancing Speed and Efficiency of Legal Processes

The speed of legal remedies is important in the effectiveness of enforcement.

Reforms should include:

- rapid procedures on copyright infringement on the internet.
- easy ways of blocking rogue sites.
- faster time time in the issuance of injunctions.

Analog methods of time in law cannot coincide with the real-time aspect of digital piracy. The deterrent value of the copyright law can only be upheld by accelerating the process of enforcement.

5.5 Strengthening International Cooperation

Online piracy is international, whereas the process of enforcement is domestic.

In order to fill this gap:

- the coordination of jurisdictions is more necessary.

- There should be an increased enforcement of international mechanisms.
- Data sharing and cooperation across the borders should be increased.

International agreements create some minimum standards of enforcement but the enforcement is not consistent because of the absence of the global coordination, the piracy networks will keep using the differences in jurisdiction.

5.6 Improving Accessibility and Market Solutions.

Enforcement of the law cannot wipe out piracy in the event that market conditions are still not addressed.

Enhancement of accessibility can decrease the motivational factor to pirate by:

- making more content more accessible in other areas.
- embracing low costs pricing models.
- lessening artificial limitations on distribution of content.

Although piracy cannot be explained under these reasons, these reasons can be used to supplement the legal measures and decrease the demand of pirated materials.

5.7 Integrated Enforcement Approach

The most important aspect of an anti-piracy strategy is the integration.

A good structure should be a combination of:

- statutory and judicial remedies (enforcement of the law)
- technological (automated detection and prevention) tools.
- policy interventions (market and access interventions)

The existing system of fragmentation makes enforcement weak. The meaningful impact requires a coordinated approach by the courts, government agencies, platforms, and the rights holders.

5.8 Conclusion

Digital piracy is one of the core problems of the successful work of copyright law in the streaming environment. Even though there is a detailed statutory framework and an advanced judicial development, the enforcement mechanisms are still poor.

The main problem does not lie in the lack of the law, but in the incompetence of current systems to work in a digital, borderless, and fast-changing environment.

As has been shown in this paper, the failure to enforce has been structural due to technological advantage of piracy groups, a lack of jurisdiction, and the use of reactive legal redress.

To solve this dilemma, there is the need to change the old ways of handling the law to a comprehensive enforcement model that involves law, technology and policy.

Until these reforms are incorporated, digital piracy will persist in jeopardizing the sustainability of streaming ecosystem and make copyright protection less practical.

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