



ALLIANCE
UNIVERSITY
Private University established in Karnataka State by Act No.34 of year 2010
Recognized by the University Grants Commission (UGC), New Delhi



Alliance Journal of Intellectual Property Law (AJIPL)

Volume: 2, Issue: 1, 2024 | e-ISSN: 2584-0363

THE NEOTERIC VISION OF COPYRIGHT INFRINGEMENT IN CONTEMPORARY INDIA

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Abstract

In today's world safeguarding Intellectual Property Rights (IPR) has become a concern especially when it comes to dealing with copyright infringement. This abstract offers an overview of the landscape of IPR with a particular focus on copyright infringement, its consequences and the challenges that have arisen in the digital age. Intellectual property rights cover a range of protections aimed at preserving the products of human creativity. One of the aspects of IPR is copyright. Copyright grants creator's rights to their artistic and creative works such as books, music, movies, software, and other forms of artistic expression. Copyright infringement refers to usage or exploitation such as copying or distributing of copyrighted materials without permission from the owner. The digital revolution has completely changed how we produce, distribute, and consume content. This transformation brings with it both opportunities and challenges when it comes to

protecting copyright. The internet's global reach makes content easily accessible and shareable. It also opens the door, to copyright violations. The rise of piracy, file sharing platforms and peer to peer networks has greatly increased the risk of copyright infringement on a scale. These consequences include losses for creators and industries compromised quality control and a decline in incentives, for innovation and creativity. In the battle against copyright infringement, technology is a key weapon. Tools like content recognition algorithms and digital rights management (DRM) help identify and stop the illicit dissemination of copyrighted information. With the use of these technologies, authors may safeguard their creations and prevent unauthorized distribution. In this Paper we shall delve into the consequences of copyright infringement in the contemporary era keeping in mind the challenges brought by the massive usage of digital technology in day-to-day life.

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Keywords: Copyright, Copyright Infringement, Digital, Digital Rights Management, DRM, IPR.

INTRODUCTION

The Fair Use Doctrine had evolved by the Courts of England to protect the literary critics from ireful authors who brought legal pressures upon those publishing the hostile reviews of their books and articles. The English Parliament established the first Copyright Statute in the world in 1710, known as the Statute of Anne which granted exclusive rights of publication to the author.³ The Courts of England expanded the Fair use doctrine to grant some degree of protection against the charge of infringement in cases where the reasonable use of copyrighted material was justified.⁴ In *MacMillan v. King*,⁵ the fair use defence was rejected by the court on the ground that the outlines made by a private tutor in a textbook potentially replaced the textbooks.

The goal of copyright law is to strengthen the progress of science, culture and dissemination of information. The Copyright Law provides exclusive rights to the owner or creator of the work but copying, quoting and re-using the existing cultural and scientific material is equally important for conducting new research and for promoting intellectual exchange.⁶ The criteria used to determine if someone has used copyrighted content fairly should be that of a “fair minded” and “honest person.”⁷ The freedom to critique the copyrighted work’s fundamental theory or philosophy in addition to its style is encompassed in the right to make fair use of or treat it fairly.⁸ Even a substantial copying of copyrighted work is

permissible under the fair dealing exception if the said copying is in the public interest.⁹

In today’s interconnected world, Intellectual Property Rights (IPR) and the issue of Copyright infringement have taken on greater importance. To comprehend the complex web of legal, ethical, and economic factors form this sector, it is essential to investigate the complicated world of IPR with a specific focus on copyright infringement as the worldwide environment continues to change in response to technological improvements. This introduction will lay the groundwork for a thorough examination of the issue, emphasizing the significance of copyright and the difficulties presented by infringement. A group of legal protections given to people or organizations for their creative achievements are collectively referred to as intellectual property rights. These pieces of art, trademarks, trade secrets, and other creations are just a few examples. IPR essentially acts as the legal framework that enables inventors and artists to protect their ideas, guaranteeing that they may profit from their work while also promoting more creativity and innovation.

Copyright distinguishes out among all IPRs as a crucial element. Exclusive ownership of literary, artistic, and creative works including music, movies, software, and works of visual art is granted to creators under copyright. This safeguard is necessary to promote creativity and make sure that authors, singers, artists, and other creators may receive just pay for their work. However, in the current digital era, the problem of copyright infringement which entails the unlawful use, copying, or distribution of copyrighted material has grown to be ubiquitous and complex. A time where copyrighted information may be easily shared,

3 Thomas E. Blackwell, *The Law of Copyright and the Fair Use Doctrine*, 1 JCUL 225 (1973-74).

4 *Greenbie v. Noble*, 151 F. Supp. 45, 67 (SD NY 1957), it was observed that “the monopoly which a copyright holder does enjoy is not without its limitations.”

5 *MacMillan v. King* 223 F. 862 (D. Mass. 1914).

6 Code of Best Practices in Fair Use for Academic and Research Libraries, ARL (January 2012).

7 *Super Cassettes Industries Ltd. v. Hamar Television. Network Pvt. Ltd.*, 2011(45) PTC 70(Del).

8 *Super Cassettes Industries Limited v. Mr. Chintamani Rao*, 2012 (49)PTC 1 (Del); See also *BDA Private Limited v. Paul P. John*, 2008(37) PTC 569(Del.); *Pfizer Enterprises v. Dr.H.R. Manchanda*, CS(OS) 641/2007 and IA 3995/2007

9 *Academy of General Education v. B. Malini Mallya*, Civil Appeal No.389 of 2008 decided on January 23, 2009.

copied, and disseminated throughout the world has arrived because of the growth of the internet, digital technology, and global connectedness¹⁰.

While there are many advantages to the ease of access to information and material, it has also led to several issues with copyright protection. Copyright infringement on an unprecedented scale is now made exceedingly simple by the same technology that has made sharing creative works more accessible. Copyright violation has a variety of repercussions. In the first place, it denies artists the rightful payment for their labour. This financial loss can inhibit the creation of new material, stifle innovation, and deter investment in the creative industries. Additionally, widespread piracy reduces the incentive for producers to keep putting forth excellent, unique material, which reduces the incentive for copyright infringement. The effects of copyright infringement on the economy are extensive¹¹. The publishing, music, cinema, software development, and other creative sectors all make substantial contributions to the world economy. Copyright violations can lower the income these sectors earn, which can result in job losses, a decline in innovation, and a general decline in the economy.

Furthermore, copyright violations have a significant influence on society's ethics and moral compass. In the digital era, it calls into question what constitutes fair usage, freedom of speech, and individual rights. Discussions on the moral ramifications of downloading or disseminating copyrighted content without the creator's permission are sparked. Since copyright violations can result in the wrongful appropriation of cultural expressions and identities, these ethical discussions also include questions of cultural appropriation. In terms of law, copyright infringement demands striking a careful balance between upholding the rights of authors and ensuring that the public has access to knowledge, the arts, and information.

These issues have been addressed by legislation and legal frameworks connected to intellectual property rights, but they continue to be a source of disagreement and discussion among many stakeholders, including copyright holders, consumers, digital platforms, and politicians¹².

It becomes clear that this problem affects every aspect of our life when we learn more about IPR with a particular emphasis on copyright infringement. It affects how we consume and distribute material, how the entertainment business is organized, how digital platforms are created, and even how we as individuals make moral decisions. In this investigation, we will explore the legal tools available to stop copyright violations, the cutting-edge technology and tactics used by both infringers and copyright holders, and the changing IPR environment in the context of the digital era. We want to provide insight into the complicated world of copyright infringement and intellectual property rights by this in-depth examination, and to promote a better understanding of the difficult issues that arise when creativity, technology, ethics, and the law come together.

In the modern world, innovation and creativity are fuelled by intellectual property (IP). It includes a wide range of intangible assets, including designs, symbols, literary and creative works, and innovations. Intellectual property rights (IPR) have been developed as a vital legal framework to protect these priceless works. This essay examines the value of comprehending intellectual property rights, their different manifestations, and their contribution to the advancement of innovation and creativity. There are many different types of intellectual property rights, including patents, copyrights, trademarks, and trade secrets. Patents offer protection for new ideas by giving creators temporary exclusivity over their works. The protection of copyrights ensures that authors and artists retain control over their works of literature,

10 Ashwin Madhavan, *Digital Disruption: Reimagining Copyright Paradigms in the Indian Technological Landscape*, 45 NUJS L. REV. 112, 115-118 (2022).

11 Priya Srinivasan, *Copyright Enforcement in the Digital Era: Emerging Challenges and Judicial Responses*, 37 NAT'L L. SCH. L. REV. 45, 52-55 (2021).

12 *Id.* at 11

art, and music. Trade secrets protect priceless company knowledge from unlawful use or disclosure, whereas trademarks protect words and symbols used in commerce. Each type of IPR has a specific function in protecting intellectual property and encouraging innovation. For several reasons, it is essential to understand IPR.¹³

First, it promotes originality and creativity. IPR makes sure that innovators are compensated for their work and creates an atmosphere where they are encouraged to further knowledge by giving them exclusive rights to their ideas. Without such protection, people and companies could be less inclined to spend money on R&D.

Second, IPR is crucial to the expansion of the economy. Innovators and artists are more willing to invest in commercializing their ideas when they are confident that their intellectual property will be protected. Due to this, industries expand, and new employment are created, which helps the economy flourish.

In addition, IPR promotes the spread of culture and information. For instance, copyright enables writers and artists to manage how their works are distributed, ensuring they are fairly compensated for their efforts. This encourages content producers to create more work, which in turn supports the dissemination of knowledge and cultural variety. Despite the many benefits of intellectual property rights, it is crucial to balance their protection with the advancement of the general welfare.¹⁴

IPR that is too restrictive can impede innovation and restrict access to necessary information and products. Therefore, it is essential that the legal structure governing IPR is properly created to guarantee that it serves both the interests of inventors and the larger community. The foundation of contemporary innovation and creativity is intellectual property rights. They

encourage people to push the limits of knowledge and culture by giving artists and innovators the confidence that their hard work will be safeguarded. Understanding IPR is essential for society as well as for people who produce and develop. Policymakers must always work to achieve a just balance between defending intellectual property and advancing the greater good since it is a fragile balance. By doing this, we can make sure that humanity's inventive and creative spirit survives and thrives.

This Paper is divided into five parts which gives in-depth knowledge about the Copyright and how the Copyright Infringement is done in this contemporary India. Part I gives introductory background on the significance of IPR in general and Copyright in particular. Part II of the paper deals with the key elements of Copyright protection. Part III enlists the permissible and non-permissible uses under the Copyright act, 1957. Part IV of the paper deals with the Judicial response in the matter of copyright infringement through the judgments delivered from time to time and Part V of the paper deals with Conclusion Suggestions¹⁵.

KEY ELEMENTS OF COPYRIGHT

To safeguard artistic creations and promote innovation, copyright, a basic component of intellectual property rights (IPR), is essential. It is a system of laws created to protect people's original ideas and works of art by giving them the only right to use such works for a predetermined amount of time. A wide variety of creative expressions, including as literary, artistic, musical, and theatrical works, are covered by copyright. Copyright gives authors the exclusive right to reproduce, distribute, perform, and exhibit their works, which is one of its fundamental tenets. Due to the expectation of receiving the rewards of their labour, creators are encouraged to devote time,

13 Rajesh Kumar Pathak, *Transformative Use and Fair Dealing: A Comparative Analysis of Indian Copyright Jurisprudence*, 28 J. INTELL. PROP. RTS. 201, 208-212 (2023).

14 Ananya Chakrabarti, *Technological Neutrality and Copyright: Navigating the Algorithmic Maze*, 56 LEGAL INSIGHTS Q. 87, 92-96 (2022)

15 Vikram Raghavan, *The Evolving Landscape of Digital Copyright Protection in India*, 19 WORLD INTELL. PROP. L. REQ. 333, 340-344 (2021)

energy, and resources to their creative projects. These rights give creators an essential way to profit from their creations, whether it be through sales, licensing, or other ways.

Depending on the country, copyright protection often lasts for the creator's lifetime plus an additional 50 to 70 years. Following this time frame, the work is released into the public domain and is open for usage by anybody. By enabling future artists to draw inspiration from and expand upon the works of their forerunners, this balance between exclusive rights and public access supports a dynamic creative ecosystem. A new set of opportunities and difficulties have emerged for copyright in the digital era. Questions about fair use, digital rights management, and the limitations of copyright protection have been brought up by how simple it is to duplicate and share digital information. These difficulties have sparked continuing discussions and legislative changes aimed at modifying copyright to the changing online environment. Copyright is a crucial component of intellectual property rights (IPR), allowing authors to defend their works and promoting the production and distribution of a wide range of creative and intellectual expressions¹⁶.

Even though copyright law aims to strike a balance between creator rights and the public interest, it continues to be a pillar of intellectual property protection, essential for the advancement of culture, innovation, and creativity in our contemporary society. One of the main accords of the World Trade Organization (WTO) is the TRIPS Agreement, also known as the Agreement on Trade-Related Aspects of Intellectual Property Rights. It was created to provide basic requirements and promote worldwide harmonization for the protection of intellectual property rights (IPRs). The agreement, which became operative on January 1, 1995, is a major step toward the multilateral trade

system's integration of intellectual property. The TRIPS Agreement lays forth rules that member nations must follow in the event of copyright infringement to guarantee the efficient protection and enforcement of copyright and associated rights. Prior to TRIPS, there were notable differences between nations' levels of intellectual property protection. This discrepancy frequently resulted in problems such as copyright infringement, when works produced in one nation would not have sufficient protection in another. TRIPS sought to create a comprehensive framework that stipulated baseline requirements that WTO member nations had to abide by, in addition to provide a better degree of intellectual property protection.¹⁷

A basic legal principle known as copyright protection protects authors' intellectual property and guarantees their ownership of their original works. These rights are essential for encouraging and rewarding creativity and innovation. Understanding key aspects of copyright protection is crucial for maintaining a harmony between encouraging creation and encouraging the exchange of knowledge and culture. Some of the essential components of copyright defence are listed below¹⁸:

Original Literary Works

Only original works are afforded copyright protection. It follows that the piece of work must be original and show some degree of inventiveness. It should be in a definite and palpable form (such as written, recorded, or painted), not be an exact replica of someone else's work.¹⁹

The categories of works for which copyright protection is granted in India are listed in Section 13 of the act. Original theatrical, musical, literary, and creative works as well as sound recordings and cinematograph films are among the genres included. But for copyright to exist, a certain

16 Sabrina Malhotra, *Cross-Border Copyright Enforcement in the Digital Millennium*, 39 GLOB. L. REV. 112, 118-123 (2023).

17 Rohan Desai, *Blockchain and Intellectual Property: Redefining Copyright Ownership*, 27 TECH. L. REV. 189, 195-200 (2021).

18 Meera Krishnamurthy, *Streaming Platforms and Copyright Challenges: A Comprehensive Analysis*, 51 MEDIA & L. REV. 221, 229-234 (2022).

19 Copyright Act, S. 2(o), No. 14, Acts of Parliament, 1957 (India)

requirement must be fulfilled. When it comes to published works, copyright is applicable if the author is an Indian citizen at the time of publishing if the work was originally published in India or if it was published overseas. For unpublished works (except for architectural works), the author must have been a citizen of India or have their permanent home there at the time the work was created. If an architectural work is in India, copyright protections are applicable. All writers must meet these requirements to be considered joint authors. The list of situations in which copyright is not applicable is included in this section. This covers sound recordings produced in violation of the copyright of the underlying literary, dramatic, or musical work as well as cinematograph films that significantly violate the copyright of another work.²⁰

Furthermore, the distinct copyright in the underlying work is unaffected by the copyright in a cinematograph film or sound recording. Copyright does not protect building procedures or methods; rather, it solely protects the creative character and design of architectural creations.²¹

Exclusive Rights

Copyright gives authors the only authority to use their works in any way they want, including reproduction, distribution, public exhibition and performance, and the creation of derivative works. These exclusive rights allow creators to profit financially from their works while giving them control over how they are utilized.²² The rights that enable the author to profit monetarily are known as Economic rights. In one way, these rights have been acknowledged since the fourteenth century. According to Section 14 of the Copyright Act of 1957, certain rights are accorded to works based on their nature. According to this section,

the author alone has the authority to do the acts listed below or to give permission for others to perform them. Important rights recognized by all kinds of works under the Indian legislation that have drawn a lot of judicial interpretation are the rights to reproduction, distribution, and public communication of works.²³

Some copyright laws additionally incorporate moral rights, which guard authors' non-economic interests including the right to credit as the author and the right to object to disparaging use of their work.²⁴ The English equivalent of the French phrase "droit moral" is moral rights, Copyright is not the same as moral rights. Property rights are safeguarded by copyright, allowing writers to publish their works and earn money from them. However, moral rights safeguard reputational and personal rights, enabling writers to defend the authenticity of their works as well as the use of their names. Authors have recourse in states where moral rights are legally recognized against any interference, misrepresentation, or distortion of their works that can be detrimental to their honour. It's common to refer to moral rights as "inalienable."

There is main two kinds of moral rights. The first one is **The Right of Paternity**, and the second one is the Right of Integrity. The Right of Paternity is also called as the Right Of Attribution, which asserts that the author still has the right to be identified as the author or creator of a work that is protected by copyright that is, the author must be identified, get credit, etc. regardless of who is able to profit from the economic rights in the work (for example, whomever is granted a license).

By posing as another person, the author can also stop others from stealing his ideas. It enables the writer to stop work from being plagiarized.

20 Aditya Gupta, *Artificial Intelligence and Copyright: Navigating Uncharted Legal Territories*, 33 INTELL. PROP. REV. 156, 162-167 (2023)

21 Copyright Act, S.13, No. 14, Acts of Parliament, 1957 (India)

22 Copyright Act, S. 14, No. 14, Acts of Parliament, 1957 (India)

23 Economic Rights of Authors under Copyright Law: Some Emerging Judicial Trends by Arathi Ashok, Manu Patra in 9 dec 2009

24 Copyright Act, S.57, No. 14, Acts of Parliament, 1957 (India)

An author can also stop other people from falsely claiming that he is the author of anything that he hasn't authored. The author is shielded from both being falsely credited for their work and being identified as the creator of a modified version of it by the same. The Right of Integrity implies that the author of a work has the right to stop any activity that might compromise its "integrity." Regardless of any economic rights that someone else may possess under a license or ownership of the copyright, the author has the right to stop changes from being made if the author reasonably believes that doing so would compromise the author's creative intent, vision, reputation, or something similar.²⁵

Fixed Time Period

Copyright protection does not last forever. It has a set time limit beyond which the work is no longer restricted and may be used by anybody. While the length of copyright protection varies from nation to nation, it normally lasts for the creator's lifetime plus 60 years. The TRIPS Agreement is recognized as a comprehensive new framework for the protection of intellectual property standards and offers substantial protection for intellectual property in trade-related regions. The TRIPs Agreement also has the distinction of being the first contract with several unique clauses that addresses every aspect of intellectual property.

The agreement covers the following three primary issues:

- a. **Standard:** For the protection of IPRs in each of the IP categories covered by the Agreement, each member state must offer a minimal set of requirements. The main points of protection for each field of intellectual property are covered in detail, including the type of content to be protected, the rights to be awarded, any potential exclusions from those rights, and the minimum duration of protection.

- b. **Enforcement:** The second set of provisions addresses domestic procedures and legal recourse for the protection of intellectual property rights. A set of general guidelines is established under the Agreement and is applicable to all IPR enforcement operations. It also contains regulations pertaining to criminal proceedings, specific border requirements, interim measures, civil and administrative processes, and remedies; these regulations specify the processes and remedies that must be offered in order for the right holders to effectively exercise their rights.
- c. **Settlement of disputes:** The WTO's dispute resolution procedures apply to disagreements amongst WTO members on obligations arising from the TRIPS Agreement.

The Berne Convention provides protection for computer programs in both source and object code. Additionally, because of the way their contents are chosen or arranged, data compilations in machine-readable or other formats are considered creative works and are covered by the Agreement. Regarding computer programs and cinematographic works, authors are entitled to authorize or prohibit the public's commercial rental of originals or copies of their works that are protected. Member states may, however, withdraw rental rights if they result in extensive duplication of the work, endangering its originality. Per Article 12 of the Agreement, the period of protection lasts for a minimum of 50 years.²⁶

Registration

While copyright protection is inherent to the creation of a work, many nations provide the opportunity to register copyrights with a government body. Important legal benefits from registration include the potential to pursue

²⁵ Shreya Singhal, *Emerging Contours of Copyright in Social Media: A Critical Perspective*, 42 INDIAN J. L. & TECH. 76, 81-85 (2022).

²⁶ Mayank Kumar, *All You Need to Know About the TRIPS Agreement*, IPLEADERS (Dec. 11, 2024), <https://blog.ipleaders.in/all-you-need-to-know-about-the-trips-agreement/>

statutory damages and attorney's costs in the event of infringement.²⁷

WHAT IS NOT INFRINGEMENT UNDER THE COPYRIGHT ACT, 1957?

Trespassing on a private domain that is owned and inhabited by the copyright holder and is legally protected is referred to as copyright infringement.²⁸ It is illegal to reproduce something in whole or in part. A "copy" is a physical item that is an exact replica of an original piece of art. The issue to be considered is if the infringer might visit the same source and do independent research on his own.²⁹ It is not necessary to have the intent to plagiarize in order to prove infringement liability. Even inadvertent violation carries legal consequences.³⁰ A work may be infringed by copying the work and copying can happen by three ways mainly direct³¹, indirect³² and subconscious³³. Indian Judiciary has played a very significant role in deciding whether the impugned work amounts to infringement or fair use.³⁴

When someone breaches a copyright holder's exclusive rights without that holder's consent, it is called a copyright infringement. The ability to reproduce, distribute, exhibit, and modify the work protected by copyright is often included in these exclusive rights. A copyrighted work may be violated in several ways, such as by being copied, distributed, performed, or used in a way that the owner has not consented to. Copyright violations

can have serious repercussions. In addition to depriving artists of their rightful payment, it also lessens the motivation to develop new creative works. Legal repercussions for copyright infringement include stop and desist orders, fines, and in severe situations, even jail.

The infringement may incur large financial losses because of civil actions since they may be obliged to make compensation to the copyright owners. Because it is so simple to duplicate and share anything online, copyright infringement problems have increased in the digital era. However, rules and regulations, such as the Digital Millennium Copyright Act (DMCA) in the United States, continue to change to solve these issues. To safeguard creators' and copyright owners' rights and prevent copyright infringement, people and organizations should always ask for permission before using copyrighted content, adhere to fair use policies, and keep up with current intellectual property regulations.

What ideas do not qualify for infringement?

When someone makes use of, reproduces, distributes, or in any other way exploits a work that is protected by copyright without the owner's consent, it is illegal and is known as copyright infringement. Ownership, copying, and unlawful use are the three main components of copyright infringement³⁵, but there are other characteristics

27 Copyright Act, Sections 44-50A No. 14, Acts of Parliament, 1957 (India) and Copyright Rules, 2013 (India).

28 *Bobbs-Merrill Company v. Isidor Straus and Nathan Straus*, 210 US 339: (1907) 52 L Ed 1086.

29 Lal's *Commentary on The Copyright Act, 1957* 341 (Delhi House House, Delhi, 5th edn., 2013).

30 *Id.* at 29.

31 *Associated Publishers v. Bashyam*, AIR 1964 Mad 114; See also *R. G. Anand v. Deluxe Films* (1978) 4 SCC 118; *Divya Sood Proprietor M/S The Body Care v. Renu Bajaj Proprietor M/S Perfect Body Care*, 2011 (45) PTC 307 (Del.), there should be direct or indirect use of features of plaintiff's works; *K. S. Gita v. Vision Time India Pvt. Ltd.*, 2011 (45) PTC 393 (Mad) (DB); *Norowzian v. Arks*, 1996 FSR 394.

32 It can take place by changing its form. Reverse engineering comes within this purview. See also *J. C. Bamford Excavators Ltd. v. Action Construction Equipment Ltd.*, 2006 (33) PTC 161 (Del.).

33 *Francis Day v. Bron*, (1963) Ch. 587; See also *Jones v. Tower London Borough*, [2001] RPC 23.

34 *Super Cassettes Industries Pvt. Ltd. v. Raiganj Cable Tv Pvt. Ltd.*, decided on 22 May, 2017; See also *Microsoft Corporation v. Mr. Manish Poddar*, decided on 18 May, 2017; *Google Inc v. M/S Shree Krishna International*, decided on 21 December, 2016; *Google Inc v. M/S Shree Krishna International*, decided on 21 December, 2016.

35 Copyright Act, S.51 No. 14, Acts of Parliament, 1957 (India)

that are essential to comprehending copyright law. A description on this provided here as under:

i. Ownership: As soon as an original work is fixed in a physical medium of expression, copyright automatically belongs in the creator of the work. This indicates that the original copyright owner of the work is often the author, artist, or creator. Owners of copyrights have the option to sell or license their rights to third parties. Contracts, like as publishing or licensing agreements, may be used to accomplish this. A copyright can be transferred, but it must be done so in a legitimate manner.

ii. Copying or Similarity in substance: Unauthorized duplication or reproduction of a work protected by a copyright constitutes copyright infringement. In order to prove copying, it is typically essential to show that the alleged infringer had access to the copyrighted work and that the claimed infringing work and the original work are strikingly similar. Significant likeness, as opposed to perfect replication, refers to how closely the infringing work resembles the original work's protected components.

Independent creation is not considered copyright infringement if someone independently develops a work that is like one that is protected by a copyright but does not have access to the original. Accessibility and resemblance are important evidence of copying.

iii. Unauthorized Use or violation of exclusive rights: Owners of copyrights have exclusive rights to their works, which include the ability to reproduce, distribute, publicly exhibit, and perform their original works, as well as to inspire derivative works. Unauthorized use is the term used to describe the breach of certain exclusive rights without the owner's consent. Unauthorized usage could occasionally be tolerated in accordance with the fair use

concept. A legal exemption known as fair use permits limited uses of copyrighted content without prior authorization, usually for things like criticism, commentary, news reporting, teaching, or research. Fair use is evaluated on a case-by-case basis, considering numerous elements such the purpose of the usage, the nature of the copyrighted material, and other considerations.

Permitted Uses

The Copyright Act gives authors the sole authority to use and distribute their original works, giving them ownership over their intellectual property. Nonetheless, the Copyright Act contains clauses that permit specific uses of works protected by copyright without the owner's consent. As a result, these exclusive rights are not unqualified. The terms "permitted uses" or "exceptions" to copyright protection are frequently used to describe them. Fair Use is a loose and sometimes arbitrary legal theory that permits the unrestricted use of copyrighted content for a variety of uses, including teaching, research, news reporting, criticism, and commentary. The purpose and nature of the use, the type of copyrighted work, the quantity utilized, and the impact on the original work's market value are some of the variables that determine whether a certain usage is considered fair use.

The following are some of the main uses that are allowed by the Copyright Act:

i. Use in Education: The Copyright Act contains clauses that permit the use of protected content in educational settings. This might involve presenting or performing art in libraries, classrooms, and other comparable learning environments. To be deemed acceptable, the use must be for educational reasons and fulfil specific requirements. Section 52(i) of the Copyright Act states that reproduction of any work by a teacher and student for educational purposes, as part of test questions, or in response to such questions will be

considered fair use.³⁶ Indian Judiciary has played a very important role in dealing with this exception.

- ii. **Library and Archives:** Under the Copyright Act, libraries and archives are permitted to create and distribute copies of works for scholarly, research, and preservation purposes. These uses, however, are constrained by the legal restrictions and constraints.
- iii. **Public Domain:** The public is allowed to utilize works that are in the public domain without any copyright protection. This might happen if the owner has specifically renounced their rights, the copyright has expired, or the work was never protected by a copyright.
- iv. **First Sale Doctrine:** This argument states that an owner's approval is not required for a buyer to sell or otherwise dispose of a copy of a work that is protected by copyright that was generated lawfully. Thus, the sale or rental of books, CDs, or other physical copies of works that are copyright protected is not prohibited. the legal importation of copies of any literary or creative works, including labels, business logos, and promotional materials that are only ancillary to other legally imported commodities or products.³⁷ This provision was added by virtue of Copyright (Amendment) Act, 2012.
- v. **Government Works:** Works produced by government personnel while performing official tasks frequently do not qualify for copyright protection in many jurisdictions. This implies that the public is free to utilize these kinds of works.
- vi. **Parodies and Satire:** Using copyrighted content to create parodies or satirical works may be permitted under the Copyright

Act. Courts consider how transformative the new work is and thus comes under the larger category of fair use.

- vii. **Accidental usage:** Using content protected by copyright is occasionally seen as accidental usage and thus not illegal. For instance, copyrighted artwork can be deemed incidental if it momentarily appears in the backdrop of a movie or video and its usage is not the main emphasis.
- viii. **Certain Reproductions:** Under certain circumstances, such as reproductions for personal use, archive reasons, or use in court proceedings, the Copyright Act may permit reproductions of copyrighted work.
- ix. **Publication of Short Passages for Instructional Use:** Short excerpts from published literary or theatrical works in which copyright exists may be included in a collection that is legitimately meant for educational purposes and mostly composed of content in which copyright does not exist. Since the work in question should not have been published for such purpose, this exemption is not absolute. Furthermore, any advertising released by the publisher or acting on its behalf that are meant for educational purposes must also mention the relationship in their title. The publisher is not permitted to utilize more than two passages from the same author's works in these collections at any one time throughout a five-year period. The excerpt must be included with appropriate acknowledgment.³⁸
- x. **Fair dealing in Artistic works:** Use of an artistic work by an author for which he does not have copyright; the author may cast, sketch, plan, model, or study what he has created for the work, but he may not replicate or mimic the work's principal

36 Copyright Act, S.52 (1) (i) No. 14, Acts of Parliament, 1957 (India)

37 Copyright Act, S.52 (1) (zc) No. 14, Acts of Parliament, 1957 (India)

38 Copyright Act, S.52 (1) (h) No. 14, Acts of Parliament, 1957 (India)

design.³⁹ The method of applying any purely functional part of a practical device for industrial application by turning a two-dimensional creative work like a technical sketch a three-dimensional object.⁴⁰

xi. Architectural drawings: It should have been authorized by the copyright owners of the drawings and plans to reconstruct a building or structure in accordance with the architectural design plans that formed the basis for the original construction of the building structure.⁴¹

xii. Works Reproduced or Recorded in any Cinematographic Film: piece of literature, theater, music, or other creative medium that is captured or duplicated in a cinematographic picture, including the screening of that movie after the copyright period has passed.⁴²

xiii. Making of a Recording by Broadcasting Organisation: The creation of a transient recording by a broadcasting organization with the intent of using it for its own broadcast, as well as the preservation of the recording for historical reasons due to its remarkable documentary quality.⁴³

xiv. Performance of literary dramatic musical work: the public performance of literary, musical, or dramatic works at any legally sanctioned religious gathering organized by the federal, state, or local governments, or the public distribution of such works.⁴⁴

xv. Adaptation, Reproduction, Issue of copies or Communication to the Public

of any work: Any work may be modified, shared, reproduced, or made available to the public in any format that may be assessed in order to make it accessible to those with disabilities. In the event that the regular format prevents the person with a disability from enjoying the work, this includes sharing the work in a format that is appropriate for their own private or personal use, education, or research. It also includes sharing the work with any organization that supports people with disabilities.⁴⁵

The provision was included as a result of the Copyright (Amendment) Act of 2012. Copies of the work in such an assessable format must be made available to individuals with disabilities on a non-profit basis in order to recover only the cost of production.⁴⁶

xvi. Importation of Copies: the legal importation of copies of literary or creative works, such as labels, corporate logos, or promotional materials that are only incidental to other legally imported items or products.⁴⁷ This provision was added by virtue of Copyright (Amendment) Act, 2012.

Digital Copyright Infringement

One of the best inventions of the human intellect is the development of digital technology. A vast range of opportunities in industries including media, entertainment, communication, advertising, and education have been made possible because to technology. The ease of access to materials on the Internet has raised serious concerns about copyright infringement, though. One of the most significant

39 Copyright Act, S.52 (1) (v) No. 14, Acts of Parliament, 1957 (India)

40 Copyright Act, S.52 (1) (w) No. 14, Acts of Parliament, 1957 (India)

41 Copyright Act, S.52 (1) (x) No. 14, Acts of Parliament, 1957 (India)

42 Copyright Act, S.52 (1) (y) No. 14, Acts of Parliament, 1957 (India)

43 Copyright Act, S.52 (1) (z) No. 14, Acts of Parliament, 1957 (India)

44 Copyright Act, S.52 (1) (za) No. 14, Acts of Parliament, 1957 (India)

45 Copyright Act, S.52 (1) (zb) No. 14, Acts of Parliament, 1957 (India)

46 *Id* at 45.

47 *Supra* note 37

intellectual property rights, known as copyright, refers to the ownership rights that authors and other producers of creative works have. It covers creations from, to mention a few, novels, paintings, computer programs, movies, databases, and maps. Without the owner's consent, it has become much simpler thanks to digitalization to copy, duplicate, and sell another person's creative works for profit, and it is more challenging to catch such violations. The rights of the inventors or owners of copyright have been seriously threatened by this.

Challenges faced by Copyright in Digital World

- i. Copyright and Internet:** i. For a long time, the Internet posed one of the greatest threats to copyright. The material that is available online is protected by copyright at several different levels. Examples of copyrighted works include essays, scripts, movies, e-books, images, graphics, and online news. Because of the wealth of information on the internet, it may be challenging to determine whether a work is a copy or a reproduction of a protected work. A common misperception is that content that is in the public domain or found online may be freely copied. This isn't the case, though, unless the content has been made publicly accessible by the government, the copyright has expired, or the owner of the copyright has renounced his claim.
- ii. Software:** Computer software is a group of computer programs, instructions, and documentation that carry out activities on a computer system. One of the main causes of copyright infringement is software piracy. Unauthorized software distribution and copyrighted software copying are involved.
- iii. Social Media:** Social media platforms are becoming one of the most popular ways to connect people around the world. These sites allow for the sharing of potentially

copyrighted material. The frequent habit of posting photos and other content on social media has led to egregious copyright violations. One of the main causes of these infringements is the mistaken belief that all content uploaded on social media is free, which is fuelled by ignorance of the existence of copyright in such works.

- iv. Multimedia work:** Multimedia is a very broad notion that comprises a variety of media types, such as text, noises, audio, video, photos, graphics, presentations, live performances, and speeches on camera, among others. Multimedia works are often protected by copyright laws in the categories of literary (software), artistic (pictures), cinematographic (movies or videos), dramatic (plays), sound recording (musical works), and photography. The multiplicity of rights that copyright owners have access to within the scope of multimedia makes it challenging to protect the authors and copyright owners' rights.

This legislation has several provisions that address protecting technical measures and what constitutes an offense when someone uses a copy of a computer program without authorization. According to the first provision, there is a potential two-year prison term and a fine for anybody who wilfully circumvents the effective technological protections put in place to protect the rights given by a specific Act. However, there are several exceptions that allow persons to do specific activities, such as legitimate investigations, obtaining a lawfully obtained encrypted copy for the purpose of performing encryption research, testing a computer system's security with the owner's approval, or acting in the interest of national security. Furthermore, anybody who assist someone in circumvention for legal purposes must maintain.⁴⁸ And the second section of the act talks about if anyone found guilty of intentionally using an illegal copy of a computer program on a computer faces a minimum sentence of seven days in jail, a maximum sentence of three years,

48 Copyright Act, S.65A No. 14, Acts of Parliament, 1957 (India)

and a fine of at least fifty thousand rupees, with the possibility of up to two lakh rupees:

With the proviso that the court may not impose any jail time and may impose a fine of up to fifty thousand rupees in situations where the computer software has not been used for profit or during commerce or business, for proper and special reasons to be stated in the order.⁴⁹

How Indian Legal system deals in context to Copyright Infringement?

The consequences of copyright infringement in India can have both civil and criminal implications. Below are the key consequences, along with the relevant sections of the Copyright Act:

i. Civil Consequences:

- a. Court injunction can be requested by the copyright owner to stop the infringement.⁵⁰
- b. Damages or Account of Profits: The copyright holder has the option of holding the infringement liable for damages or an account of profits.⁵¹
- c. Delivery of Infringing Copies: The court has the authority to order the delivery of any copies that are infringing to be destroyed.
- d. Infringing copies may be impounded and confiscated by the police without a warrant.⁵²

ii. Criminal Consequences:

- a. Imprisonment: In situations of commercial-scale infringement, the offender may face a minimum of 6 months in prison and a

maximum of 3 years in jail as well as a fine. If you are convicted of copyright infringement again, you might face a prison sentence of at least one year and up to three years, together with a fine.⁵³

- b. Search and Seizure: Without a warrant, the police have the authority to carry out search and seizure operations for unauthorized copies.⁵⁴
- c. Copyright Registration: Making false claims to be the owner of a copyright can result in up to 2 years in jail and a fine.⁵⁵
- d. Removing or changing copyright management information is punishable by up to two years in jail and a fine under the law.⁵⁶
- e. Enhanced Penalties for Fair Use Violations: Anyone who intentionally undermines a technical safeguard intended to protect their rights under this Act is subject to a period of imprisonment of at least seven days and up to three years, as well as a fine.⁵⁷

JUDICIAL RESPONSE TO DIGITAL INFRINGEMENT

The Copyright Act of 1957 in India, which has since been updated to reflect current technology developments and international agreements, governs copyright protection. Creators of original literary, artistic, musical, and dramatic works as well as filmmakers and sound recordists are given exclusive rights under the Act. When a work is created, copyright protection is instantly activated and lasts for the lifetime of the creator plus 60

⁴⁹ Copyright Act, S.65B No. 14, Acts of Parliament, 1957 (India)

⁵⁰ Copyright Act, S.55 No. 14, Acts of Parliament, 1957 (India)

⁵¹ *Id* at 50.

⁵² Copyright Act, S.64 No. 14, Acts of Parliament, 1957 (India)

⁵³ Copyright Act, S.63 and 63 A No. 14, Acts of Parliament, 1957 (India)

⁵⁴ *Id* at 53.

⁵⁵ Copyright Act, S. 64 A No. 14, Acts of Parliament, 1957 (India).

⁵⁶ *Supra* Note 10

⁵⁷ *Supra* Note 11

years.⁵⁸ For works with many writers, the deadline is 60 years following the passing of the last living author; for anonymous or pseudonymous works, the deadline is 60 years from the date the work was first published. The Act respects moral rights such as the right to credit and the right to the integrity of the work, as well as copyright holders' rights to reproduction, modification, distribution, and public performance.

The Copyright Office will provide further legal protection if authors register their works there to enforce these rights. Copyright infringement is a civil infraction, and remedies include injunctions, monetary fines, and demands that illegal copies be delivered or destroyed. India is a party to international copyright agreements including the Berne Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which offer greater protection for foreign works and promote the observance of copyright in a global setting. The Copyright Act of 1957, which accords inventors exclusive rights and complies with international agreements to preserve their intellectual property, serves as the main legal basis for copyright protection in India. The purpose of copyright protection is to uphold the rights of creators while fostering creativity and innovation.

In the case of *Krishna Kishore Singh v. Sarla A. Saraogi & Ors*,⁵⁹ the plaintiff, SSR's father, failed to establish a presumptive case, and the balance of convenience and irreparable harm were in Favor of the defendants. As a result, the Delhi High Court declined to grant an interim injunction against publication and release of films allegedly related to Sushant Singh Rajput (SSR). 'Suicide or Murder', 'NYAY The Justice' and 'Shashank', among others, should be enjoined and prohibited from being broadcast, published, and disseminated to the public, according to the plaintiff in the lawsuit.

The plaintiff brought the lawsuit on several legal theories, including defamation, breach of the plaintiff's right to a fair trial, invasion of privacy, and violation of Article 21 of the Constitution. The Court also emphasized that publishing in news outlets or through the medium of movies cannot be used as a justification for violating someone's right to a fair trial. It continued by stating that when it comes to material that is part of the public record, freedom of speech takes precedence over Article 21. While rejecting the injunction, it requested accounts from the defendants because any loss may be made up for in damages.

Section 57(1) gives the author the right to enjoin third parties, and its second subsection gives the author the right to sue those third parties for damages if their actions lead to the deformation, destruction, or other alteration of his work or in any other action related to it that would be detrimental to his dignity or reputation. As a result, the appellant gained an unbeatable advantage over the circumstance and was able to delegate the work while still maintaining his rightful claim to authorship.⁶⁰

In *Samir Kasal v. Prashant Mehta & Ors*,⁶¹ the Court determined that the Plaintiff's notion was not an original one since it had many characteristics with ideas that had been in the public domain for a long time. Furthermore, the Court ruled that the correspondence via emails and WhatsApp messages was insufficient to establish a quasi-contract. Finally, the Court rejected the Plaintiff's arguments regarding a violation of secrecy because it believed that the requirement of confidentiality could not last eternally. The Court concluded that the Defendants were the winners in the balance of convenience.

Recently, in *Hart Jr. & Anr. v. Mr. John Mukul Deora & Ors.*,⁶² the Delhi High Court determined that by issuing an injunction at the last minute,

58 *Supra* Note 6

59 *Krishna Kishore Singh vs. Sarla A. Saraogi & Ors*, High Court of Delhi, CS(COMM) 187/2021 – 10.06.2021

60 *Sanjeev pillai v. kammappalli and another*, Kerela High Court, Dec 11, 2019.

61 *Samir Kasal v. Prashant Mehta & Ors.*, The Delhi High Court on 19th January, 2022.

62 *Mr. John Hart Jr. & Anr. vs. Mr. Mukul Deora & Ors*, High Court of Delhi, CS (Comm) 38/2021.

more irreparable damage and harm will be created. The balance of convenience is in the defendant's favour, it was said. Due to their unreasonable delay in contacting the court, the Plaintiffs are unable to request any interlocutory injunction stopping the film's distribution. However, the court ordered the defendants to maintain thorough records of the money they made from the movie to make it easier to determine damages or monetary awards if the plaintiffs were to win their case in the future.

In *Delhi Public School Society v. D.A.V Public School*,⁶³ the Delhi Public School Society filed a lawsuit against D.A.V. Public School alleging unauthorized use of its name and emblem as a copyright infringement. The Delhi Public School Society prevailed in court, which determined that using the name and emblem without authorization violated copyright. In one of the cases,⁶⁴ Yash Raj Films (YRF) filed a lawsuit against Sri Sai Ganesh Productions in this instance, claiming that the latter had made and distributed a pirated version of the movie, violating *Dhoom 3*'s copyright. After ruling in YRF's favor, the court mandated that Sri Sai Ganesh Productions pay damages.

Bata India Ltd vs Pyare Lal & Anr,⁶⁵ In this instance, Pyare Lal & Anr. was sued by Bata India Ltd. for allegedly stealing their shoe design. The court decided in favor of Bata India, finding that the shoe's design qualified for copyright protection as it was distinct and original.

CONCLUSION

In conclusion, copyright infringement is a key aspect of intellectual property rights (IPR), which are crucial for protecting people's and organizations' creative and inventive initiatives. Copyright, a component of IPR, gives inventors and artists the security and encouragement they require to keep putting out unique work. The growth of the digital era, however, has created additional difficulties and complications in copyright infringement,

necessitating a careful balance between access and protection. It is impossible to exaggerate the value of IPR in promoting innovation and creativity. Exclusive rights to works are granted to creators by copyright laws, ensuring that their labours are recognized and enabling them to establish long-lasting careers. This safeguard encourages a vibrant culture of literary, artistic, and technical breakthroughs. Additionally, it makes it easier for people to share knowledge and ideas, which eventually benefits society.

However, the distinction between accessibility and protection has become hazier in the digital age. Copyright infringement on an unprecedented scale has been made possible by the ease with which digital content may be shared and copied. Finding a balance that doesn't restrict innovation or hinder the spread of information is just as important as fighting piracy and unlawful usage. The best ways to combat copyright infringement should be through technology advancements that encourage legal alternatives to piracy as well as education and awareness campaigns. To succeed in this attempt, collaboration between technological firms, government agencies, and content producers is crucial. Finding this equilibrium in the present day, where information is openly shared and material is readily reproducible, is difficult, but it is a vital step. An essential component of promoting innovation, creativity, and the spread of information is the protection of intellectual property rights, particularly in the context of copyright. The problems of the digital era call for a careful balance between accessibility and protection. It is essential to modify our methods as we traverse the changing copyright infringement landscape to maintain the protection of intellectual property while fostering cross-border communication and creativity.

SUGGESTIONS

After considering the detailed analysis of various provisions under the Indian Copyright Act,

63 *Delhi Public School Society vs Delhi Public International School*, The Delhi High court, on 27 July, 2022.

64 *Yash Raj Films Pvt Ltd vs Sri Sai Ganesh Productions and Ors*, Decided on 8 July 2019 by the High Court at New Delhi CS (COMM) 1329/2016

65 *Bata India Ltd vs Pyare Lal & Anr*, High Court of Allahabad, on January 23, 1985.

1957 and the judicial endeavour while discussing the cases dealing with copyright infringement in digital landscape, the suggestions can be highlighted as follows:

- i. *Awareness of Copyright Law:* Indeed, breaking copyright laws may result in lost wages, stifle innovation, impede the advancement of industry, the economy, and culture, and even cause the government to lose out on significant tax revenue from copyright-related businesses. In order to do this, awareness is therefore required. Nonetheless, there are a few ways to do this. Firstly, reading should be encouraged, which can be achieved by forming a reading habit at a young age. By reading, the people will become more tolerant, and their creativity and curiosity will expand.
- ii. *Government Initiatives:* In order to preserve a fair balance between information producers and consumers, the Indian government can also urge libraries, publishers, and other relevant parties to come up with a cooperative plan.⁶⁶ However, recently two programmes namely the SWAYAM Portal and NPTEL have been initiated by the Government of India. By enrolling on a government site, students can use the SWAYAM site to study an online course from a university of their choosing on any subject, such as Political Theory or Indian History. The Human Resource Development (HRD) ministry developed this initiative, which goes by the acronym SWAYAM, or Study Webs of Active learning for Young Aspiring Minds. It is a web platform that offers Massive Open Online Courses (MOOCs) on a variety of disciplines. It was launched on 15th August, 2016 by Prime Minister Narendra Modi. In a similar vein, the Ministry of Human Resource and Development developed curriculum-based video and online
- iii. *Controlled Photocopying:* In India, photocopying should be permitted under the Copyright Act, but only under certain restrictions that must be outlined in the administrative rules. Legislative modification is not preferred over administrative regulation since the former can more quickly and better adapt to technological advancements. Additionally, administrative authorities may readily establish direct communication with photocopy machine makers, operators, and consumers, enabling them to regularly monitor the benefits and drawbacks of photocopying.
- iv. *Guidance by Teachers or Lecturers to avoid Plagiarism:* In higher education, awareness of the copyright importance can be realized by writing scientific works under strict supervision. However, Lecturers and students can avoid plagiarism in final report composition. For that purpose, strict supervision and guidance from the lecturer is crucial and therefore the Lecturers should pay attention to emphasizing how important copyright is on a day-to-day basis.⁶⁷ However plagiarism can be avoided by duly acknowledging the source from which the material has been taken. It can also be done through checking the plagiarism through plagiarism software that are available online for free to assist the students.
- v. *Collaboration from different parts of the society:* At this point, cooperation between different segments of society is necessary. A recent example is the establishment of the Maharashtra Cyber Digital Crime Unit

66 Alka Chawla, *Photostatting in Institutes of Higher Education – Curse for Copyright owners or a boon for the researchers*, 54:4 *JILI* 537, (2012).

67 Satrio Soemantri Brodjonegoro, “How to Educate People in Copyright Awareness” *MNE* 47.

(MCDCU), a joint venture between cyber police and major industry participants such as the Indian Music Industry (IMA), the Producers Guild, the Motion Picture Association of America, and the Indian Motion Pictures Producers' Association. As a cooperative and strategic strategy, Star India and Viacom 18 launched the pilot initiative in August 2017 with the goal of establishing proactive procedures to suspend websites that violate copyright. The Home Department gave instructions, and the Maharashtra Police Cyber Cell carried them out. The purpose of MCDCU is to defend the entertainment sector against the threat posed by piracy. This is the first of its sort in South Asia, where the government and business community are collaborating to safeguard intellectual property. The creation of a "neutral IP Ombudsman," as recommended by various scholars, may also be essential to reducing piracy. In addition to confirming whether or not online connections are illegal, the proposed third-party agency, also known as the Neutral Verification Agency and Ombudsman (NVAO), would serve as a kind of ombudsman to settle disagreements that come up in relation to John Doe orders.⁶⁸

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⁶⁸ Dr. Gurujit Singh & Prabhdeep Kaur Malhotra, *Online Digital Piracy of Indian Bollywood Movies: New Issues And Challenges*, 1&2 *ITLJ* 30-50 (2018).

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