

THE CRITICAL ROLE OF COPYRIGHT IN THE DIGITAL LANDSCAPE

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The digital landscape has revolutionized the way we create, consume, and information from social media platforms to streaming services, from e-books to online courses, the internet offers unprecedented access to a variety of content¹. However, this also poses significant challenges to the protection of intellectual property rights, especially in the realm of copyright.

WHAT IS COPYWRITE?

Copywrite is a legal concept that grants the creator of an original work exclusive rights to control its use and distribution. It aims to balance the interests of the authors, the public, and the intermediaries who facilitate the dissemination of content.

According to **Sec. 14 of the Copyright Act, 1957**, “copyright” means the exclusive right to do or authorize others to do certain acts in relation to:

- I. Literary, Dramatic or Musical Works
- II. Artistic works
- III. Cinematography film, and
- IV. Sound recording²

WHY IS IT IMPORTANT?

Copyright is important for fostering a culture of creativity and innovation. It provides incentives and rewards for the creators of original works, who invest their time, effort, and resources to produce and share their content. It also enables them to control how their work is used and shared and to prevent unauthorised or harmful uses that may damage their reputation or interests.

Furthermore, by protecting and promoting creativity, copyright also benefits society and public interests. It fosters a diverse and vibrant culture, where different ideas, expressions, and perspectives can be exchanged and appreciated. It also supports the development of knowledge,

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¹ Nikhil Bharadwaj “*Copyright Protection in the Digital Age: Challenges and Solutions*”(legal service) <[Copyright Protection in the Digital Age: Challenges and Solutions \(legalserviceindia.com\)](http://legalserviceindia.com)> accessed 18 January 2024

² Copyright Act, 1957, s. 14

education, and research, by allowing access to and use of works for certain purposes, such as criticism, comment, news reporting, teaching, scholarship, or research.

CHALLENGES OF COPYRIGHT IN THE DIGITAL ERA

The digital era has transformed the creation, distribution, and consumption of intellectual works, offering new possibilities and difficulties for the protection and promotion of intellectual property rights. Digital technologies such as the internet, social media, and mobile devices enable unprecedented levels of access, sharing, and modification of various types of content, such as music, movies, books, images, and software³. However, this also poses a threat content to the rights and interests of the creators and owners of these works, who may face unauthorised copying, reproduction, adaptation, and dissemination of their works without their consent or compensation. Therefore, it is essential to examine the challenges faced by copyright in the digital era.

One of the main challenges is the ease of reproduction and distribution of digital content. With the availability of digital tools and platforms, anyone can reproduce and distribute digital content with minimal cost and effort. This makes it difficult to prevent and deter piracy and infringement, as well as to track and identify the sources and users of unauthorised content⁴. Moreover, the global nature of the internet and the diversity of legal systems and jurisdictions create additional complexities and uncertainties for the enforcement of copyright laws.

Another challenge is the difficulty in establishing and proving ownership and originality of digital content. In the digital era, content creation is often collaborative, interactive, and dynamic, involving multiple authors, contributors, and users. Furthermore, digital content can be easily modified, transformed, and adapted, creating new forms and expressions of creativity⁵. This raises questions about the criteria and standards for determining ownership and originality, as well as the scope and extent of protection and exceptions.

³ Nikhil Bharadwaj “*Copyright Protection in the Digital Age: Challenges and Solutions*” (legal service) <[Copyright Protection in the Digital Age: Challenges and Solutions \(legalserviceindia.com\)](https://legalserviceindia.com/copyright-protection-in-the-digital-age-challenges-and-solutions)> accessed 18 January 2024

⁴ “*Copyright in the Digital Era: Addressing the Challenges and Embracing the Opportunities of the Future*” (Biat Legal, October 18 2023) <<https://biatlegal.medium.com/copyright-in-the-digital-era-addressing-the-challenges-and-embracing-the-opportunities-of-the-599d0e96bdaf>> accessed 19 January 2024

⁵ “*Copyright in the Digital Era: Addressing the Challenges and Embracing the Opportunities of the Future*” (Biat Legal, October 18 2023) <<https://biatlegal.medium.com/copyright-in-the-digital-era-addressing-the-challenges-and-embracing-the-opportunities-of-the-599d0e96bdaf>> accessed 19 January 2024

A third challenge is the balance between access and protection of digital content. On the one hand, the digital era enabled greater access and democratization of content creation and consumption, fostering innovation, education, and cultural diversity. On the other hand, the digital era has also increased the vulnerability and exploitation of content creators and owners, undermining their incentives and rewards. Therefore, finding a fair and reasonable balance between access and protection is a key issue for the digital era.

PROACTIVE APPROACH TO PROTECT COPYRIGHT IN THE DIGITAL AGE

Copyright education- Copyright education refers to the provision of information, awareness, and guidance on the principles, rules, and practices of copyright law and protection in the digital era. Copyright education can help to promote the understanding and respect of intellectual property rights, as well as foster the responsible and ethical use of digital content.

Digital rights management (DMR) – DMR refers to the use of technological measures to control and restrict the access and use of digital content, such as encryption, authentication, and licensing. DMR can help to protect the rights and interests of content owners and authorised users, as well as to prevent and detect unauthorised use and infringement⁶.

Watermarking- watermarking refers to the use of invisible or visible marks or codes embedded in digital content, such as image, audio, or video, to identify the source, owner, or authorised use of the content. Watermarking can help to establish and prove ownership and originality, as well as to track and monitor the use and distribution of digital content.

Legal action- legal action refers to the use of judicial or administrative procedures and remedies to enforce and defend intellectual property rights in the digital era. Legal action can help to deter and punish piracy and infringement, as well as to compensate and restore the rights and interests of content owners and authorised users.

International collaboration- international collaboration refers to the cooperation and coordination among different countries and regions, as well as among different stakeholders and sectors, to harmonize and improve the legal and institutional framework and mechanisms for the protection of intellectual property rights in the digital era. International collaboration can help to address the cross-border and global challenges and opportunities of the digital era,

⁶ “Copyright in the Digital Era: Addressing the Challenges and Embracing the Opportunities of the Future” (Biat Legal, October 18 2023) < <https://biatlegal.medium.com/copyright-in-the-digital-era-addressing-the-challenges-and-embracing-the-opportunities-of-the-599d0e96bdaf>> accessed 19 January 2024

as well as enhance the effectiveness and efficiency of the protection and enforcement of intellectual property rights.

EMBRACING THE FUTURE OF THE DIGITAL ERA FOR COPYRIGHT

The digital era has brought unprecedented changes to the way we create, consume, and distribute content. With the advent of digital technologies such as the internet, social media, and mobile devices, we have access to a vast amount of information and creative works from around the world⁷. Digital platforms such as YouTube, Spotify, and Kindle Direct Publishing enable independent creators to bypass traditional gatekeepers and connect and monetize their works directly with consumers.

In addition, the emergence of streaming platforms and subscription schemes has transformed the consumption patterns of content, creating new sources of income. By adopting these digital innovations, content owners can access previously unreachable markets and experiment with different business strategies⁸.

LIMITATIONS AND EXCEPTIONS

In the digital era, the use and dissemination of creative works have become easier and faster, but also more complex and challenging. The exclusive rights of creators need to be balanced with the public interest in accessing and using such works for various purposes, such as education, research, news reporting, criticism, and commentary. Limitations and exceptions are provisions that allow certain uses of creative works without the explicit permissions of the rights holders, under specific conditions. These provisions aim to foster cultural exchange, education, and free expression, while also respecting the rights of creators⁹.

Fair use of copyright: -

Fair use is a doctrine mainly applied in U.S. intellectual property law, while fair dealing is the corresponding doctrine in many other legal systems, such as the UK, Canada, Australia, and

⁷ “Copyright in the Digital Era: Addressing the Challenges and Embracing the Opportunities of the Future” (Biat Legal, October 18 2023) < <https://biatlegal.medium.com/copyright-in-the-digital-era-addressing-the-challenges-and-embracing-the-opportunities-of-the-599d0e96bdaf> > accessed 19 January 2024

⁸ “Copyright in the Digital Era: Addressing the Challenges and Embracing the Opportunities of the Future” (Biat Legal, October 18 2023) < <https://biatlegal.medium.com/copyright-in-the-digital-era-addressing-the-challenges-and-embracing-the-opportunities-of-the-599d0e96bdaf> > accessed 19 January 2024

⁹ Swekchha Chaturvedi and Ajeenkya Dy ‘Introduction to copyright law’ (legal vidhya) <<https://legalvidhiya.com/introduction-to-copyright/>> accessed 24 January 2024

India. Fair use and fair dealing offer a set of guidelines that permit restricted use of protected works without the need for authorization, under specific circumstances. The assessment of fair use requires a case-by-case examination of factors that are the intention of use, the character of the work, the quantity used, and the impact on the market for the original work. Instances of fair use are:

1. Critique and Analysis: employing protected materials to evaluate, critique, or comment on the work or related issues.
2. Instructional Use: employing protected materials in educational contexts, such as in schools, for instruction, research, or academic work.
3. Humour and Irony: producing humorous or ironic works that comment on or mock the original work.
4. News Reporting: employing protected material in journalism and reporting activities.

The concept of fair use is a subtle and situational notion, and the assessment of whether a certain use meets the criteria of fair use can differ depending on the circumstances and the applicable law.

Other Statutory Exceptions: -

Besides the doctrine of fair use, there may be other legal exceptions in the copyright laws that enable certain kinds of usage of protected works without violating the exclusive rights of the owner. These exceptions may differ depending on the legal system but may consist of:

1. Academic and Scholarly Use- the use of protected works for educational, research, or scientific ends may be allowed by the copyright laws within some boundaries.
2. Conservation and Study Use- specific exceptions may be given to libraries and archives to enable preservation, research, and access to cultural and historical resources.
3. Availability for Impaired People- the adaption or reproduction of protected works to make them available to people with disabilities may be permitted by the copyright laws.
4. Official Works- works which is made by government staff as their official tasks may be exempt from copyright protection, making them openly available to the public.
5. Private Copying- some legal systems permit reproducing protected works for personal use, such as creating backups or modifying formats.

Boundaries and exclusions are vital for attaining balance in the copyright law between securing the author's rights and enabling the public's access to and use of creative works for purposes that enhance the social good.

CASW LAWS

The “Monkey Selfies” case (2011)

- A British wildlife photographer, David Slater, left his camera unattended in Indonesia, where a macaque monkey named Naruto took several selfies with it.
- Slater published a book containing the selfies, which were also uploaded to Wikimedia Commons, a free online media repository.
- Slater claimed that he owned the copyright of the selfies, as he had set up the camera and befriended the monkeys.
- Wikimedia Commons refused to remove the selfies, arguing that they were in the public domain, as the monkey was the creator and non-human animals cannot hold copyrights.
- People for the Ethical Treatment of Animals (PETA) sued Slater and his publisher on behalf of Naruto, seeking to establish that animals have legal rights and that Naruto should be the owner of the selfies.
- The US Court rejected PETA's lawsuit, ruling that animals cannot be authors or copyright holders under US law.
- PETA and Slater reached a settlement, in which Slater agreed to donate a portion of his future revenues from the selfies to wildlife charities.

Microsoft Corporation and Ors. V. Satveer Gaur & Ors¹⁰.

The plaintiffs, Microsoft Corporation, Adobe Systems, and Quest Software, filed a suit against the defendants, a company named Chetu and its system administrator, for using their unlicensed or pirated software programs on their computers. The plaintiff claimed that they owned the copyrights of their software programs and that the defendants infringed their rights by producing and distributing their software without their permission or authorization. The plaintiffs sought various reliefs, including permanent injunction, delivery up, rendition of accounts, and damages of Rs. 60 lakhs. The defendants denied the allegations and raised

¹⁰ Microsoft Corporation & Ors vs Satveer Gaur & Anr on 26 May, 2020

various objections, such as lack of territorial jurisdiction, cause of action, and locus standi of the plaintiffs.

The Delhi High Court rejected the defendant's objection and held that the plaintiffs had established a prima facie case of infringement against the defendants. The Court found that the defendants used unlicensed versions of the plaintiff's software on 208 computer systems, and awarded damages of Rs. 30 lakhs to be shared equally by all plaintiffs.

Sameer Wadekar & Anr. V. Netflix Entertainment Services Pvt. Ltd¹¹.

The plaintiff, Sameer Wadekar & Mahesh Gosavi, were screenwriters who claimed to have written a script titled "VETAAL" in 2013-2014 and registered it as a literary work in 2015. The plaintiffs alleged that the defendants, Netflix Entertainment Services Pvt. Ltd. And others, had infringed their copyright by producing and releasing a web series titled "BETAAL" on Netflix, which had 13 similarities with their script. The plaintiffs sought an ad-interim injunction to restrain the defendants from streaming the web series, which was scheduled to be released on May 24, 2020, as well as damages of Rs. 2 crores.

The Bombay High Court dismissed the plaintiffs' application, holding that they had failed to establish a prima facie case, the balance of convenience, or irreparable injury in their favour. The Court observed that the plaintiffs had not shown any evidence of access or copying by the defendants and that the alleged similarities were based on common historical facts and characters that were not original to the plaintiffs. The court also noted that the plaintiffs had approached the Court at the eleventh hour, after the trailer of the web series had been released on May 7, 2020, and granting an injunction would cause immense loss and prejudice to the defendants.

Zee Entertainment Enterprises v. Ameya Vinod Khopkar & Ors¹².

The plaintiff, Zee Entertainment Enterprises, claimed to be the exclusive owner of the intellectual property rights in the original film titled "De Dhakka", and sought to restrain the defendants, who were the original creators of the film, from producing and releasing a sequel titled "De Dhakka-2". The plaintiff alleged that the sequel violated its rights in the original film and created confusion among the public about the source and affiliation of the sequel.

¹¹ Sameer Wadekar & Anr. V. Netflix Entertainment Services Pvt. Ltd 2020 SCC Online Bom 659

¹² Zee Entertainment Enterprises v. Ameya Vinod Khopkar & Ors, I.A. 1/2019 in Comm. IP Suit (L) 1287/2019

The Bombay High Court, in its order dated 4th March 2021, denied the interim injunction sought by the plaintiff. The Court held that the plaintiff had failed to establish a prima facie case of infringement or passing off, as the plaintiff had only acquired the negative rights of the original film, which did not include the right to make sequels or future works based on the film. The Court also observed that the sequel was not a substantial or material reproduction of the original film, but a distinct and independent work with a different storyline, characters, and cast. The Court further noted that there was no evidence of any actual confusion or deception among the public, as the defendants had clearly indicated their names and logos on the promotional materials of the sequel.

The Court, therefore, refused to grant any interim relief to the plaintiff, and directed the parties to proceed with the trial of the suit. The Court also clarified that its order was based on the limited material available on record and that it would not affect the final decision on the merits of the case.

Super Cassettes Industries Private Limited and Ors. V. Nandi Chinni Kumar and Ors¹³.

The plaintiff, Super Cassettes Industries Private Ltd., also known as T-Series, claimed to have acquired the exclusive rights to make a film based on the life of Vijay Barse, a retired sports teacher who founded and NGO called Slum Soccer. The plaintiff alleged that the defendant, Nandi Chinni Kumar, who was a former gangster turned football coach, had approached the plaintiff with a similar script and entered into a contract with the plaintiff, but later breached the contract and sold his script to another producer. The plaintiff sought to restrain the defendant and the other respondents, who were the director and the actor of the film, from releasing the film.

The Telangana High Court, in its order dated 19th October 2021, granted an ad-interim injunction in favour of the plaintiff and directed the respondents to maintain the status quo with respect to the film. The Court held that the plaintiff had made out a prima facie case of plagiarism and breach of contract, as the defendant's script had substantial similarities with the plaintiff's script and the defendant had violated the terms of the contract by disclosing the script to a third party. The Court also observed that the plaintiff would suffer irreparable loss and

¹³ Super Cassettes Industries Pvt. Ltd. v. Nandi Chinni Kumar & Ors., (2020) 6 ALT 162 (DB): (2021) 1 ALD 108 (DB): (2021) 85 PTC 435

injury if the film was released, as it would affect the plaintiff's reputation and goodwill. The Court, therefore, issued notice to the respondents and listed the matter for further hearing.

CONCLUSION

The critical role of copyright in the digital landscape cannot be overstated. It is the foundation that supports the creativity, innovation, and diversity of content that enriches the digital world. However, it also faces unprecedented challenges in the face of rapid technological changes, global dissemination, and complex legal frameworks. To address these challenges, a balanced and holistic approach is needed, one that considers the interests and values, a balanced and holistic approach is needed, one that considers the interests and values of all stakeholders, the potential and limitations of various forces, and the evolving nature of the digital environment. Only then can we ensure that copyright remains a resilient and effective tool for protecting and promoting intellectual property in the digital age.

