

LEGALITY OF PIRATED ACTION

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THE ISSUES

Technology growth and protecting ideas have a big impact on how businesses grow and compete. India is the second-largest online market globally, with 566 million internet users, and 251 million in rural areas. However, this success brings challenges like counterfeiting and piracy. In simpler terms, piracy used to mean sea thieves, but now it's about stealing someone's work, like software or art, without permission. India, as a developing country, is facing issues with software piracy and counterfeiting. This means people are using and selling fake or unauthorized versions of things. It's like someone making copies of a book and selling them without the author's approval. So, while India's online market is huge, these problems are affecting its growth and reputation.

LEGAL FRAMEWORKS

India has established a comprehensive legal framework to tackle digital piracy, incorporating key statutes like the Copyright Act¹, and the Information Technology Act, of 2000, along with diverse judicial interpretations. However, addressing piracy in the digital era necessitates inventive solutions, giving rise to the prominence of dynamic injunctions² as an effective legal instrument. Digital piracy encompasses the unauthorized replication, distribution, or sharing of copyrighted content, spanning various mediums such as music, movies, software, books, and more. This illicit activity manifests through forms like torrenting, file-sharing, streaming, and direct downloading, often resulting in substantial financial losses for copyright holders. In India, digital piracy remains a critical concern, primarily fueled by the widespread availability of high-speed internet and the growing accessibility of digital content.

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¹ The Copyright Act, 1957

² Rai, D. (2021) *Are dynamic injunctions effective to tackle digital piracy in India*, *iPleaders*. Available at: <https://blog.ipleaders.in/are-dynamic-injunctions-effective-to-tackle-digital-piracy-in-india/> (Accessed: 20 February 2024).

TYPES OF PIRACY

Counterfeiting: involves the unlawful acquisition, replication, and dissemination of copyrighted material, closely mimicking the original copyrighted product. This unauthorized duplication and distribution can occur through various means, including sales or other methods. Compact discs are frequently employed as a prevalent medium for circulating such illicit reproductions of copyrighted works.

Hard-disk loading: refers to the practice where businesses sell new computers that come with unauthorized copies of software pre-installed on the hard disks, aiming to enhance the appeal of the machines for potential buyers.

Internet piracy: involves acquiring a file from the internet or obtaining online software through a compact disc. The methodologies for engaging in internet piracy include websites that provide free software downloads, auctions selling unlawfully obtained software or P2P servers facilitating the transfer of programs.

End-user piracy: occurs when a user illicitly duplicates software without proper authorization. An instance of this includes a user using a single software license to install the program on multiple systems or upgrading software that has already been pirated.

THE USE OF THE DYNAMIC INJUNCTION IN INDIA

Typically, an injunction applies to actions carried out by the individual against whom enforcement is sought. However, when addressing digital piracy online, traditional civil injunctions may prove inadequate in providing effective relief. A significant challenge arises when parties, upon receiving injunctions against specific websites, easily evade restrictions by establishing "mirror" websites with different URLs. To tackle this issue, dynamic injunctions have emerged as a solution. Unlike static injunctions, dynamic injunctions are not fixed. Although an injunction is initially granted against specific websites, it remains applicable to mirror websites if they come to the attention of the relevant court. This approach aims to prevent the circumvention of injunctions and ensures their continued effectiveness in combating digital piracy.³ Dynamic injunctions can be promptly issued if a website reappears

³ Ganesan, B. (2023) *What is 'dynamic+ injunction'? Delhi HC's anti-piracy solution, MediaNama*. Available at: <https://www.medianama.com/2023/09/223-dynamic-injunction-delhi-hc-piracy-solution/> (Accessed: 20 February 2024).

immediately after the initial injunction with a different URL, maintaining the intended impact of the injunction.⁴

One of the first cases related to the dynamic injunction was the matter of *Tata Sky Ltd. v. YouTube LLC*⁵, Tata Sky initially complained to YouTube, urging the removal of specific URLs containing instructions on how to hack the Tata Sky HD Set Top Box for unauthorized access to high-definition content without charges. Subsequently, Tata Sky initiated legal proceedings seeking an injunction against YouTube. Despite the court granting an injunction, Tata Sky asserted that numerous individuals continued to hack HD channels and access them without payment. In this instance, the court's injunction resembled a dynamic one, reflecting the need for such measures. Similar cases have arisen, further underscoring the demand for dynamic injunctions in addressing issues of a similar nature.

WHAT ARE THE GLOBAL JURISDICTIONS' LEGAL STANCES ON DYNAMIC INJUNCTIONS?

In the case of *Disney Enterprises, Inc. v. M1 Ltd*⁶, the Singapore High Court extensively elucidated the legal framework surrounding dynamic injunctions, officially acknowledging their validity. The defendants, Internet Service Providers (ISPs), were instructed by the court to implement measures blocking the identified Frequently Infringing Online Locations (FIOLs), encompassing domain names, IP addresses, and URLs facilitating access to infringing content. The court, recognizing the compatibility of dynamic injunctions with Section 193DDA of the Copyright Act in Singapore, emphasized the absence of jurisdictional obstacles hindering the court from granting such injunctions. To address concerns about potential misuse, the court incorporated a proviso in the order. This proviso stipulated that defendants were not obligated to block additional Fully Qualified Domain Names (FQDNs) at the plaintiffs' request if they deemed the grounds for disabling access insufficient. The court ensured a fair balance by permitting defendants and online location owners to challenge attempts to block additional FQDNs under the order's explicit terms and following Section 193DDC of the Copyright Act.

The court also outlined a comprehensive procedure for the effective implementation of dynamic injunctions in the order. This procedure mandates the plaintiff to submit an affidavit, accompanied by evidence, to the defendant, providing information about the website to be

⁴ *Ibid*

⁵ *Tata Sky Ltd. v. YouTube LLC* 2016 SCC OnLine Del 4476

⁶ *Disney Enterprises, Inc. v. M1 Ltd* [2018] SGHC 206

blocked. Within 15 days, the defendants are then required to take appropriate measures to disable access to the additional infringing websites.

MAJOR OUTCOMES

The Delhi High Court ordered a dynamic injunction against multiple torrent websites, including 1337x.to, in the matter of *UTV Software Communications Ltd. v. 1337x.to and Others*, to stop the unauthorized distribution of Bollywood films that are protected by copyright. To effectively combat digital piracy and stop infringing websites from just moving to other domain names or IP addresses, the court acknowledged the necessity for dynamic injunctions. In India, the granting of dynamic injunctions was made possible by this case.⁷ The Delhi High Court issued a dynamic injunction against Bharat Sanchar Nigam Ltd (BSNL), a significant Indian telecommunications firm, in the matter of ***Eros International Media Ltd. v. Bharat Sanchar Nigam Ltd.*** Real-time access blocking to infringing websites was mandated for BSNL. This ruling highlighted⁸ how crucial it is to use dynamic injunctions to include internet service providers (ISPs) in the battle against digital piracy.⁹

In the Madras High Court case ***Warner Bros. Entertainment Inc. v. Wunderbar Films Pvt. Ltd & Ors.***, the injunction was given against a variety of websites and ISPs that were involved in the movie "Kaala" piracy.¹⁰ The court underlined that combating digital piracy requires a dynamic and adaptable strategy, given the ever-changing nature of the issue.

Disney Enterprises, Inc. v. UOI & Others concerned Disney's request for a dynamic injunction against several websites that were using its content for unauthorized streaming. The Bombay High Court issued the order after realizing how important it was to stay up to date with the ever-evolving strategies used by websites that violated copyright. This case strengthened India's legal foundation for dynamic injunctions.

A recent case of *Universal City Studios LLC & Ors. vs. Fzmovies.net & Ors.* [CS (COMM) 202/2023]¹¹, the court has disposed of the plaintiff's application under Order 1 Rule 10 CPC for the impeachment of fresh defendants in the context of digital piracy. The court notes that

⁷ *Utv Software Communication Ltd. And Ors vs 1337X.To And Ors 2019 SCC OnLine Del 8002: (2019) 78 PTC 375*

⁸ *Ibid*

⁹ *Eros International Media Limited vs Bharat Sanchar Nigam Limited 2016*

¹⁰ *Warner Bros. Entertainment Inc. & Ors. v. Wunderbar Films Pvt. Ltd. & Ors. 2009 SCC OnLine Del 835*

¹¹ *Ibid*

an ex-parte ad-interim injunction was previously granted against the defendants on 11.04.2023 for copyright infringement. The plaintiff, in compliance with the court's earlier directions, filed the present application for impleadment, asserting that newly identified websites, serving as mirror/redirect/alphanumeric variations, have continued to violate the plaintiff's copyrights.¹²

The court, after considering submissions, materials, and the previous order, has impleaded the proposed defendants (nos. 58 to 70) and extended the ex-parte ad-interim injunction against them. The plaintiff provided supporting evidence, including an affidavit from an investigator, demonstrating the mirrored nature of the newly added defendants' websites. The court has directed the summoning of these defendants through various modes, including email, for the next hearing on 17.11.2023. The amended memo of parties is taken on record, and the court has ordered the registry to do the necessary. The conclusion emphasizes the ongoing violation of the plaintiff's copyrights by the newly added defendants and affirms the extension of the injunction against them.

CONCLUSION

In conclusion, the legal landscape surrounding digital piracy in India has undergone a transformative shift, with dynamic injunctions emerging as a powerful tool in the battle against copyright infringement. The comprehensive legal framework, incorporating statutes such as the Copyright Act, of 1957, provides a solid foundation for addressing the complexities of digital piracy in the country. The recognition of dynamic injunctions, as evidenced by landmark cases like **Tata Sky Ltd. v. YouTube LLC and UTV Software Communications Ltd. v. 1337x**¹³, reflects the need for innovative solutions to combat the ever-evolving tactics employed by infringing parties. Global jurisdictions, such as Singapore in the case of *Disney Enterprises, Inc. v. M1 Ltd*, have also acknowledged the validity of dynamic injunctions, demonstrating a growing international consensus on the efficacy of such measures. The court in Singapore outlined a meticulous procedure to ensure a fair and balanced approach, addressing concerns about potential misuse while empowering defendants to challenge attempts to block additional Fully Qualified Domain Names.

In India, cases like *Eros International Media Ltd. v. Bharat Sanchar Nigam Ltd. and Warner Bros. Entertainment Inc. & Ors. v. Wunderbar Films Pvt. Ltd.* underscore the importance of

¹² *Ibid*

¹³ Information Technology Act, 2000

involving internet service providers (ISPs) in the fight against digital piracy. The dynamic nature of digital infringement necessitates a proactive and adaptable strategy, as exemplified by the recent case of Universal City Studios LLC & Ors. vs. Fzmovies.net & Ors., where the court extended the injunction against newly identified mirror websites violating copyrights. These cases collectively reinforce the commitment of the Indian judiciary to stay ahead of emerging challenges posed by digital piracy. The ongoing efforts to implead new defendants and extend injunctions in the face of evolving tactics highlight the judiciary's dedication to protecting intellectual property rights in the digital era.¹⁴ As technology continues to advance, the legal system must remain dynamic and responsive, leveraging innovative tools like dynamic injunctions to uphold the principles of copyright protection and ensure a fair and just digital environment.



¹⁴ Harel, M. (2023) *6 ways to stop digital piracy, TV Platforms & Content Protection*. Available at: <https://www.viaccess-orca.com/blog/six-ways-to-stop-digital-piracy> (Accessed: 21 February 2024).