



LIGHTS, CAMERA, ACTION... AGAINST PIRACY: CAN THE FILM INDUSTRY OUTSMART DIGITAL PIRATES?

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ABSTRACT

The world has now begun to travel with the spurred growth of digital technologies in the entertainment industry. The incessant growth from black & white films to the present HD films greatly attracted people. In this expanding world, Copyright law was drafted to protect Intellectual Property Rights. This exceptional growth in digital technologies has made piracy more accessible to people. Widening of piracy derails the production company's investments in the movie after its release. Moreover, streaming on illegal websites leads to the shutdown of many theatres as people lack interest in watching movies in theatres than in them at home. As a result, the author's economic and moral rights were affected. To control piracy, the AP Film Chamber of Commerce created the Anti-Video Piracy Cell. Copyright owners of the film were protected by the Copyright Act, 1957, if they faced any infringement. This paper discusses the wreaked havoc faced by the film industry and its repercussions. This study further analyses the challenges and illustrates how Intellectual Property Rights tend to protect the rights of the owner. This paper highlights that the rise of digital technology should not pave the way for Intellectual Property crimes.

Keywords: Copyright laws, Piracy, Intellectual Property, Film Industry.

INTRODUCTION

The film industry's progression from Kinetoscope to 3D production represents a remarkable achievement, showcasing its adaptability and innovative spirit. Despite the vast technological evolution from silent films to digital cinema, the essence of storytelling remains unchanged, still resonating deeply with people's thoughts and emotions. Indian cinema has become a

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cultural phenomenon in Russia, Egypt, Turkey, and other subcontinent nations, attracting millions of viewers worldwide. But the rise of the internet in film piracy has resulted in estimated annual losses of Rs. 20,000 crore every year, thereby causing unemployment, quality degradation, and threatening the very foundation of the entertainment industry in today's digital age.¹ The rapid growth of film piracy is wreaking havoc on the film industry, as the movies are being pirated and uploaded online within hours of their release, causing distress for film personalities. This study analyses the paramount aspects behind the growth of digital piracy in the film industry and provides substantive measures in effectively combating the growing menace of piracy. This study necessitates that the government establish strict laws for shielding the film industry from its nefarious condition and also to prevent further losses.

LITERATURE REVIEW

David Nimmer, “COPYRIGHT Sacred Text, Technology, and the DMCA” (2003): This book offers an in-depth examination of digital rights management, with a particular emphasis on the DMCA Act and WIPO Treaty. Although considered a seminal work on global online piracy, the book primarily focuses on international perspectives, with limited attention to national contexts, except for the United States.

Hsing Kenneth Cheng, Juan Feng, Gary J. Koehler, and Sean Marston (2010): These authors argue that governments' traditional anti-piracy measures (tariffs, quotas, subsidies) are ineffective due to internet access to foreign entertainment programs. The authors suggest re-examining these mechanisms, as their effectiveness relies on quality and content differences between traditional and internet channels. They also found that even without downloading pirated content, increased tariffs still occurred.

Igor Slabykh, “The New Approaches to Digital Anti-Piracy in the Entertainment Industry” (2019): This article analyses the reasons why people commit piracy and focuses on developing a comprehensive Anti-Piracy strategy to combat the overcoming societal hurdles with new approaches. These new approaches are brought by the rising technologies and governed by Copyright laws.

Gunjan Chawla and Nidhi Buch, “Impact of Online Digital Piracy on the Indian Film Industry: An Empirical Investigation into Consumer Behaviour” (2022): This research

¹ Film Piracy: A Menace for the Film Industry, <https://www.clearias.com/film-piracy/> (last visited on September 17, 2024, 5:00 PM)

investigates online digital piracy's effects on the Indian film industry, analysing its causes and consequences, and assessing the efficacy of India's Copyright technology laws. Through an empirical study on consumer behaviour, it evaluates the critical condition of the current regime and its capacity to encounter piracy's adverse impacts.

Dr Satish Kumar Mishra, Mr Vinay Kant Srivastav, Hemant, "Indian Film Industry and Copyright Piracy Issues in India: A Growing Concern" (2023): This article emphasises the need for modifications in Copyright laws to combat digital piracy, citing consumer behaviour as a key driver of its growth. It also suggests expanding legitimate content access to confront digital piracy and safeguarding the Indian film industry's creative assets.

Harivarshan M, Amrutha Valavi, "Copyright Laws and their impact in Indian film industry" (2024): This journal provides an in-depth examination of Copyright laws, highlighting key provisions with notable case studies. It explores how copyright protection fosters innovation, economic growth while also addressing challenges like piracy and digital distribution complexities. Additionally, the article showcases the crucial function in promoting legal compliance and facilitating the worldwide dissemination of Indian cinema.

Nakia Stokes, "Strategies to reduce the impact of Digital Piracy in the Media Industry" (2024): Consumer piracy has severely impacted the media industry, causing revenue losses and stifling content creation. This study reveals three key strategies used by media industry used by media industry managers to mitigate piracy: enforcement measures, consumer education, and detection methods, with fair pricing models key to discouraging piracy.

OBJECTIVES OF THE STUDY

1. To educate consumers about the detrimental effects of digital piracy on the film industry through awareness programmes, addressing billions in annual losses.
2. Deploy anti-piracy software technologies to mitigate digital piracy, ensuring secure content distribution and detection of infringing materials.
3. To facilitate the enforcement of stringent penalties for illegal duplication of films and uphold the rights of copyright owners.
4. To enhance the utilisation of Digital Rights Management (DRM) technology in reducing Peer-to-Peer file sharing, torrent usage, and online piracy by controlling access to copyrighted content.

5. To curtail piracy and to encourage legitimate content acquisition, this study suggests implementing affordable pricing and accessible legal streaming options.
6. This study highlights the importance of perpetual security updates and technological adaptations in encountering evolving cyber threats.
7. To safeguard content globally, the Indian film industry is urged to embrace cutting-edge technologies.

SIGNIFICANCE OF THE STUDY

This research undertakes a critical examination of digital piracy's economic implications for the film industry, highlighting the consequences of theatre closures. The increasing incidence of Camcording in cinemas, facilitating rapid film piracy, has necessitated legislative action, culminating in amendments to the Cinematograph Act with enhanced penal provisions. This study assesses existing laws combating digital piracy and recommends updates to align with technological advancements. The Indian film industry is reluctant to adopt digital technologies for global content distribution, creating a vacuum that piracy exploits. This research advocates for the safeguarding of authors' innovative works through the effective implementation of existing policies and strategies. The emergence of advanced technologies has enabled pirates to readily access copyrighted materials, necessitating the development and implementation of novel strategies to safeguard content. This research evaluates existing international copyright treaties, examining their effectiveness in safeguarding authors' economic and moral rights. This study underscores the imperative for developing and implementing globally effective strategies to combat digital piracy. This study advocates for public awareness initiatives to highlight the economic and social implications of digital piracy on the film industry.

RESEARCH QUESTIONS/HYPOTHESIS

1. What are the underlying reasons for consumer engagement in digital film piracy?
2. How successful are existing laws and regulations in curbing digital piracy?
3. What counter-piracy strategies are being utilised by the film industry to mitigate intellectual property theft?

METHODOLOGY OF THE STUDY

The study is an attempt to study “Lights, Camera, Action... Against Piracy: Can the Film Industry Outsmart Digital Pirates”. For this, data are collected through primary sources like

books, research scholars, reports, and newspapers. This paper includes doctrinal (books and websites). The collected information has been organised, explained, and analysed using different statistical tools and techniques.

Study Area: This research is an empirical form of research that mainly focuses on books, the primary sources, and also relies on articles, newspapers, and real cases. This research collects data to examine copyright, cinematograph law principles, and Indian jurisprudence to critically evaluate the legal framework combating copyright violations and assess the efficacy of existing laws.

LIMITATIONS OF THE STUDY

- This study mainly focuses on digital piracy in the film industry.
- The research is mainly done by referring to books, journals, articles, and research scholars' papers.
- This study concentrates mainly on the infringement provisions and penalties under the Copyright Act, 1957, and the Cinematograph (Amendment) Act, 2023.

RESEARCH ANALYSIS

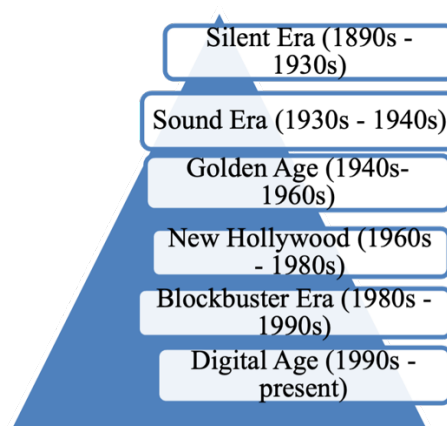
Definitions: "Copyright" has been so defined under S.14 of Copyright Act, 1957, S.14 – Meaning of Copyright – For this Act, "Copyright" means exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof namely-

- a) In the case of a literary, dramatic or musical work, not being a computer programme,
 - i) to reproduce the work in any material form, including the storing of it in any medium by electronic means;
 - ii) to issue copies of the work to the public, not being copies already in circulation;
 - iii) to perform the work in public, or communicate it to the public;
 - iv) to make any cinematograph film or sound recording in respect of the work;
 - v) to make any translation of the work;
 - vi) to make any adaptation of the work;
 - vii) to do, about a translation or an adaptation of the work, any of the acts specified about the work in sub-clauses (i) to (vi);
- b) In the case of a cinematograph film,

- i) to make a copy of the film, including –
 - (1) a photograph of any image forming part thereof; or
 - (2) storing it in any medium by electronic or other means;
- ii) to sell or give on commercial rental, or offer for sale or such rental, any copy of the film.
- iii) to communicate the film to the public;
- c) In the case of a sound recording -
 - i) to make any other sound recording embodying it, including storing it in any medium by electronic or other means;
 - ii) to sell or give on commercial rental or offer for sale or such rental, any copy of the sound recording;
 - iii) to communicate the sound recording to the public.²

“Cinematograph film” is defined under **S.2 (f) of Copyright Act, 1957** as “any work of visual recording under any medium produced through a process from which a moving image may be produced by any means and, includes a sound recording accompanying such visual recording and ‘cinematograph’ shall be construed as including any work produced by any process analogous to cinematography including video films”.³

Changing landscape of the film industry – From Celluloid to digital



Silent Era (1890s – 1930s): In 1891, Thomas Edison’s company invented the kinetoscope, a device allowing solo viewing of moving pictures, revolutionising cinematic technology, leveraging the photographic innovations of the 19th century. The kinetoscope’s public debut

² Copyright Act, 1957, S.14 as amended by Jan Vishwas (Amendment of Provisions) Act, No.18 of 2023

³ Copyright Act, 1957, S.2(f) as amended by Jan Vishwas (Amendment of Provisions) Act, No.18 of 2023

in 1893 and subsequent commercialisation paved the way for the development of modern film technology.⁴ On November 28, 1895, the Lumière brothers made history in Paris, France, by screening the world's first projected moving pictures to a paying audience. Utilising their innovative Cinematographe device, a versatile camera-projector-printer trio, they pioneered the art of cinematic exhibition. India's cinematic journey began on July 17, 1896, with the Lumiere brothers' screening at Mumbai's Watson Hotel. Marking a significant milestone in Indian cinema, N.G. Chitre and R.G. Torney's "Pundalik" (1912) was the first film to tell a story, drawing from Maharashtra's rich cultural heritage. Dadasaheb G. Phalke's iconic film "Raja Harishchandra" (1913) marked a pivotal moment in Indian cinema, establishing Phalke as the industry's founding father. In 1930, the Silent Era came to an end with the advent of sound and technology.

Sound Era (1930s – 1940s): The first Indian talkie was introduced on March 14, 1931. It was Ardeshir Irani's "Alam Ara" (The Light of the World) which drew inspiration from Universal Pictures' "Show Boat", a pioneering 40% talkie film. In 1932, the term "Tollywood" emerged, linking the Bengali film industry to Tollygunge, a nod to Hollywood's esteemed reputation. India's first on-screen song, "De De Khuda ke naam par", was performed by W.M. Khan, paving the way for cinematic music in a live recording with limited instrumentation. In 1933, the East India Company commissioned the production of its 1st Telugu film "Savitri", a cinematic adaptation of Mylavaram Bala Bharathi Samajam's stage play, directed by C. Pullaiah. Durga Cine-tone, the pioneering film studio in South India, was set up in 1936 by Nidamarthi Surraya in Rajahmundry, Andhra Pradesh. India's cinematic milestones were achieved with the release of "Kisan Kanhiya" (1937), the first colour film directed by Moti B, and "Vishwa Mohini" (1940), the first film to showcase the Indian movie world, directed by Y. V. Rao. The 1936 film "Sant Tukaram" made history as the first Indian film to be showcased at an international film festival, debuting at the 1937 Venice Film Festival. In 1937, the introduction of "Tent Cinema" by Swamikannu Vincent in Madras signified a pivotal moment in South Indian cinema's developmental trajectory, where films were screened in a tent on open land.

Golden Age (1940s – 1960s): In the aftermath of Indian independence, a revolutionary cinematic movement took shape. Parallel Cinema, spearheaded by Bengali visionaries, sought

⁴ Natasha Cooper, The Evolution of Filmmaking, <https://ibtcollege.com/virtualfilmschool/the-evolution-of-filmmaking/> (last visited on September 19, 2024, 10:00 AM)

to reflect the nation's social realities. Early exemplars – Dharti Ke Lal, Neecha Nagar, Nagarik, and Do Bigha Zamin – paved the way for India's neorealist and new wave movements. Satyajit Ray's Apu Trilogy (1955-1959) won top international film awards, establishing the Parallel Cinema movement's global reputation. The trilogy's debut film, Pather Panchali (1955), launched Ray's illustrious career, profoundly influencing world cinema, particularly coming-of-age dramas. One of the key reasons for the development of this era was the inclusion of colour. The 1940s-1950s transition marked the end of the studio era, subsequently replaced by a decentralised, freelance-oriented film production system that persists to this day. The 1950s witnessed the rise of commercial Hindi cinema, producing iconic films like Pyaasa (1957) and Kaagaz Ke Phool (1959) by Guru Dutt, and Awaara (1951) and Shree 420 (1955) by Raj Kapoor. These movies explored social themes, focusing on urban working-class struggles in India. In 1957, Mehboob Khan's epic drama Mother India, a reimagining of his earlier classic Aurat (1940), achieved a milestone in Indian cinema by earning an Academy Award nomination for Best Foreign Language Film, marking the country's debut in the prestigious category.

New Hollywood Era (1960s – 1980s): The 1960 Afro-Asian Film Festival marked a milestone in Indian cinema when Sivaji Ganesan became the country's first actor to receive international recognition, securing the Best Actor award. He was honoured with the prestigious Chevalier title in the Legion of Honour by the French Government in 1995. Kamal Haasan started acting at six in Kalathur Kannamma (1960), winning the President's Gold Medal for his outstanding performance. Indian cinema's landscape transformed in the 1970s and 1980s with the emergence of the "masala" film genre, characterised by a blend of action, romance, drama, and comedy, with Amitabh Bachchan's iconic "Angry Young Man" persona dominating the era. The term "Bollywood" gained prominence in the 1970s, as commercial Indian cinema solidified its distinct conventions. Notably, Salim-Javed's Yaadon Ki Baarat (1973) is regarded as the pioneering masala film and the quintessential Bollywood movie. Additionally, Tamil cinema has been shaped by Dravidian politics, with notable film personalities like CN Annadurai, MG Ramachandran, M Karunanidhi, and Jayalalithaa transitioning into prominent political roles as Chief Ministers of Tamil Nadu.

Blockbuster Era (1980s – 1990s): The 1980s witnessed significant growth in commercial Hindi cinema, marked by notable releases such as Ek Duuje Ke Liye (1981), Himmatwala (1983), Tohfa (1984), Naam (1986), Mr. India (1987), and Tezaab (1988), which contributed

to the industry's expansion. During the late 80s and early 90s, Bollywood underwent a genre shift, moving away from gangster films and towards romantic, family-centric movies that resonated with audiences and yielded box-office success. Sankarabharanam (1980) promoted Indian classical music, winning the Besancon Film Festival's Prize of the Public. Swati Mutyam (1986) represented India at the Oscars and won Best Film and Best Actor awards at the Asia Pacific Film Festival. The convergence of multi-channel television, commercial cinema's dominance, NFDC's commercial shift, exhibition outlet scarcity, and the decline of Film Societies led to the demise of Parallel Cinema.

Digital Era (1990s- present): The 21st century marked a digital revolution in Indian cinema, with superstar actors like Shah Rukh Khan, Salman Khan, and Aamir Khan dominating the silver screen. The dawn of the internet and digital filmmaking technologies has commenced a new era of cinematic excellence, paralleling India's economic growth. This synergy has significantly enhanced the quality of Indian cinema. Digital filmmaking's widespread adoption empowered independent filmmakers to produce high-quality, content-driven stories. Streaming platforms like Netflix and Amazon Prime Video transformed the cinematic landscape, offering filmmakers novel avenues for storytelling and global reach. Content-driven narratives with diverse themes gained attention to explore fresh perspectives and unique voices. The integration of Virtual Reality (VR) and Augmented Reality (AR) technologies can redefine filmmaking, providing unparalleled immersive experiences and dynamic narrative interactions. VR can transport viewers into the story, while AR can bring the story into viewers' environments.⁵

Tech-Savvy Thieves: The Rise of Digital Piracy in Cinema: India ranks among the leading countries globally in terms of mobile phone usage time. According to CISCO's Annual Report (2018-2023), approximately 66% of the global population is projected to have access to affordable internet.⁶ With its prolific Bollywood and regional film industries, India reigns as the globe's top movie producer. Despite being one of the nation's fastest-growing sectors, the film industry is grappling with the scourge of piracy. According to Adrian Johns, the term "piracy" about copyright infringement has a historical origin, with its first recorded usage

⁵ Dr. Jayvir Pandya, Media and Entertainment Law, page no. 208-215, (Rawat Prakashan, 2019)

⁶ CISCO Annual Internet Report (2018-23) White

Paper, <https://www.cisco.com/c/en/us/solutions/collateral/executive-perspectives/annual-internet-report/white-paper-c11-741490.html> (last visited on September 19, 2024, 6:00 PM)

occurring between 1660 and 1680.⁷ Since its inception, this term has undergone significant expansion and adaptation, encompassing various forms of illegal copying and ultimately extending to digital piracy in the online realm. The early 2000s saw pirated films largely distributed via CDs and DVDs; however, the growth of internet accessibility has since shifted piracy to online platforms. The onset of COVID-19 precipitated an unparalleled increase in online piracy, driven by the closure of cinemas, concert halls, and other creative spaces, and the resultant stay-at-home measures, with a staggering 62% increase reported in the last week of March 2020.⁸ The virtual world has a paradoxical effect on the film industry, driving business expansion and audience engagement while simultaneously facilitating digital piracy and copyright infringement, potentially stifling creative expression.

Research undertaken by the US-India Business Council (USIBC) indicates a substantial correlation between media piracy and revenue loss in India's film industry, with an estimated 11% decline.⁹ Piracy in the context of intellectual property involves the illicit exploitation of a person's creative work, including unauthorised reproduction, distribution, and commercialisation, without obtaining consent or paying royalties. The rise of OTT platforms, facilitated by technological advancements, has led to an increase in digital piracy, as consumers seek to access premium content without incurring subscription costs. There are two common forms of piracy:

- a) Obtaining copyrighted material through illicit means; and
- b) Obtaining material illegally but using it without permission.¹⁰

Certain state governments have utilised preventive detention laws, commonly known as Goonda Acts, to apprehend suspected pirates, reflecting the film industry's significant political influence. In February 2013, Madras police made a notable arrest under preventive

⁷ Adrian Johns, *Piracy the Intellectual Property Wars from Gutenberg to Gates*, (1st edition, The University of Chicago Press), Chicago, (2009)

⁸ Latha Jha, India sees big spike in Film piracy Post covid-19, Mint (September 19,2024,10:00 PM),<https://www.livemint.com/news/india/india-sees-big-spike-in-film-piracy-post-covid-19-11589183182123.html>

⁹ Ernst& Young, *The Effects of Counterfeiting and Piracy on India's Entertainment Industry*, (March 2008), http://producersguildindia.com/Pdf/Ernst&Young_USIBC%20Piracy%20Study_March%2027.pdf(September 19,2024, 11:30 PM)

¹⁰ Haber S., Home B., Pato J., Sander T., Tarjan R.E., *If Piracy is the Problem, Is DRM the Answer?* In *Digital Rights Management Lecture Notes in Computer Science 225* (Becker E., Buhse W., Gfinnewing D., Rump N 2003)

detention laws, apprehending a prominent pirate and confiscating pirated discs valued at Rs 140 million.¹¹

Reasons for People's Choice -

Cost-effectiveness and convenience: The proliferation of illegal movie streaming can be attributed to the financial burden imposed by legitimate digital platforms, compelling users to seek more affordable alternatives.

Rapid online access: The swift progress of technology, characterised by high-speed internet and peer-to-peer file sharing, has facilitated effortless illegal copying.

Virtual Private Networks: Anonymity tools like VPNs and proxy servers empower users to bypass detection, presenting substantial obstacles for content creators and the digital media industry.

Knowledge gap: Widespread piracy has become a pressing concern, with many consumers unwittingly undermining the film industry's financial stability by downloading movies from illegal websites, thereby violating content creators' rights.

Consequences: Movie piracy has a profound financial impact on the film industry, resulting in substantial revenue losses for filmmakers, producers, and distributors due to reduced box office earnings and diminished sales of legitimate physical and digital copies. A notable example is the 2021 film *Radhe*, starring Salman Khan, where pirates attempted to sell pirated copies on Facebook, resulting in three arrests under the Information Technology Act, 2000, and Copyright Act, 1957.¹² The economic consequences of piracy extend far beyond major studios, affecting the entire film industry ecosystem, including production crews, marketing professionals, cinema staff, and other ancillary sectors, leading to potential job losses. Piracy's economic implications extend globally, impacting countries with substantial film industries, leading to diminished tax revenues, disrupted trade balances, and compromised economic growth. The pervasive issue of piracy discourages investment in the film industry, resulting in a decrease in the development of original and groundbreaking content. The proliferation of

¹¹ Arpan Banerjee, *The Indian Film Industry's Battle Against Piracy: Some Reflections*, WIPO-WTO COLLOQUIUM PAPERS, 39, (2013), https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2013/chapter_5_2013_e.pdf (September 20, 2024, 10:00 AM)

¹² FB user booked for downloading Salman Khan's *Radhe*, selling its paid version, HINDUSTAN TIMES, (September 20, 2024, 11:55 AM)

poor-quality pirated films on websites damages the audience's engagement and undermines the film's artistic merit and reputation. The financial burden of piracy prompts theatres to raise ticket prices, consequently affecting the affordability for average moviegoers.

LEGISLATIONS	INTERNATIONAL TREATIES	REFORMS & STRATEGIES
<ul style="list-style-type: none"> • Copyright Act, 1957 • Cinematograph Act, 1952 • IT Act, 2000 	<ul style="list-style-type: none"> • WCT, 1996 • WPPT, 1996 	<ul style="list-style-type: none"> • National IPR Policy • John Doe Order • MIPCU • Telugu Film Chamber of Commerce • DMCA - US • Sword Net Action - China

ANTI-DIGITAL PIRACY LAWS

Copyright Act, 1957: The British introduced copyright legislation in India in 1847, marking the beginning of intellectual property protection in the country. As a result, the Copyright Act came into force in 1957. The Act confers exclusive rights upon copyright owners, safeguarding their creative works from unauthorised use and exploitation. Indian copyright law provides tenure of protection for literary works, which are entitled for the duration of the author's lifetime, followed by a posthumous period of sixty years. The Copyright (Amendment) Act, 2012, introduced significant reforms to India's copyright regulations, specifically strengthening anti-piracy laws. This amendment made an insertion of S.65-A and S.65-B for the promotion of digital rights management.

S.65-A of Copyright (Amendment) Act, 2012 – Protection of Technological measures: The utilisation of Technological Protection Measures (TPMs) constitutes a crucial mechanism for copyright owners to enforce their intellectual property rights. This provision stipulates that individuals who circumvent TPMs to infringe on copyrighted works shall be liable to imprisonment for a term not exceeding 2 years, and/or a monetary fine.¹³

S.65-B of Copyright (Amendment) Act, 2012 – Protection of Right Management Information: The provision stipulates that any individual who tampers with or disseminates

¹³ Copyright Act, 1957, S.65-A as amended by Jan Vishwas (Amendment of Provisions) Act, No.18 of 2023, Intellectual Property Laws Bare Act

rights management information without permission shall face imprisonment for a term not exceeding 2 years and shall also be liable to a fine.¹⁴

Legislative measures - Indian Courts have granted the following three remedies in case of Copyright infringement:

- Civil remedies– Chapter XII of the Copyright Act, 1957 (S.55)
- Criminal remedies – Chapter XIII of the Copyright Act, 1957 (S.63-S.70)
- Administrative remedies – Accessed by the authorities established under the Copyright Act, 1957 only.

Limitation period for Copyright infringement suits: **3 years**

Court's Jurisdiction: Jurisdiction for copyright infringement suits lies with the **District Court or High Court** where the plaintiff resides, conducts business, or where the infringement occurred, irrespective of the defendant's residence or business location.¹⁵

Cinematograph Act,1952: The Cinematograph (Amendment) Act, 2023, substantively enhances the principal legislation by inserting Sections 6AA and 6AB, which forbid unauthorised film recording and exhibition, complemented by penal provisions in Sections 7(1A) and 7(1B). This study emphasises the need for film certification, which is a medium providing aesthetic value for the film. Furthermore, previewing a film before providing certifications is compulsory to ensure that the content has no harmful effect on the public, especially children.

Section 6AA of the Cinematograph (Amendment) Act, 2023: Prohibits the unauthorised use of audiovisual recording devices in cinemas or other licensed exhibition venues.

Section 6AB of the Cinematograph (Amendment) Act, 2023: Forbids the public display of pirated films for financial gain.

¹⁴ Copyright Act,1957, S.65-A as amended by Jan Vishwas (Amendment of Provisions) Act, No.18 of 2023, Intellectual Property Laws Bare Act

¹⁵ Remedies against Infringement, Copyright, <https://www.advocatekhaj.com/library/lawareas/copyright/remedies.php?Title=Copyright&STitle=Remedies%20Against%20Infringement> (September 20, 2024, 6:00 PM)

Additional Film Certifications: The Amendment Act introduces three distinct age-based classifications for films rated UA (Unrestricted Public Exhibition with parental guidance), providing clearer guidelines for content suitability. The additional categories are:

- UA 7+
- UA 13+
- UA 16+¹⁶

Section 7 (1A) of the Cinematograph (Amendment) Act, 2023: Imposes stringent penalties for contravening Sections 6AA and 6AB (minimum imprisonment of 3 months to 3 years, minimum of 3 lakh rupees to 5% of the audited gross product), with exceptions for fair dealing as per Section 52 of Copyright Act, 1957.

Section 7 (1B) of the Cinematograph (Amendment) Act, 2023: Grants individuals affected by violations of Sections 6AA or 6AB the right to file suits for copyright infringement under Section 51 of the Copyright Act, 1957, or computer-related offences under Section 66 of the IT Act, 2000.¹⁷

In *P. Thulasidas v. K. Vasanthakumari* case, it was held that the definition of ‘cinematograph film’ in Section 2 (f) includes soundtrack, if any work produced by any process analogous to cinematography. Video and Television are appliances capable of use for the reception of signs, signals, writing, images, and sounds, and hence, would fall within the definition of telegraph. Both articles would be cinematograph jointly and severally.¹⁸

In *Balwinder Singh v. Delhi Administration* judgment, the court held that video and television are considered cinematographs, collectively and individually, to represent moving images or sequences, thereby coming under the scope of Section 2(e) of the Cinematograph Act, 1952.¹⁹

¹⁶ The Cinematograph (Amendment) Act, 2023: A Brief Overview, <https://www.lexology.com/library/detail.aspx?g=f07b9135-19ee-4eb7-9bd3-6e689904d2ad> (September 20, 2024, 8:00 PM)

¹⁷ Ready...Set...Action? : Copyright Piracy And The Cinematograph (Amendment) Act, 2023, <https://www.theipmatters.com/post/ready-set-action-copyright-piracy-and-the-cinematograph-amendment-act-2023> (September 20, 2024, 9:00 PM)

¹⁸ *P. Thulasidas v. K. Vasanthakumari*, [1991] 1 LW 220 (Mad)

¹⁹ *Balwinder Singh v. Delhi Administration*, AIR 1984 Del 379 (DB)

IT Act, 2000: S.66 of the Information Technology Act, 2000: Laid down punishment for illegal online distribution of copyrighted content, which extends up to 3 years imprisonment and fines up to Rs. 2 lakhs.²⁰

International Treaties against Digital Piracy: World Intellectual Property Organisation (WIPO) plays a pivotal role in shaping global copyright standards for the digital era against unauthorised access and usage of creative works, specifically through its administration of the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), collectively known as “Internet Treaties”. The Berne Convention was adopted in 1886, which deals with the protection of works and authors’ rights.

WIPO Copyright Treaty (WCT), 1996: Safeguards the rights of authors and creators of original literary, artistic, and intellectual works, encompassing writings, computer programs, databases, music, audiovisual works, fine art, and photography.

WIPO Performances and Phonograms Treaty (WPPT), 1996: Safeguards the intellectual property rights of musicians, actors, and music producers globally.²¹

STRATEGIES AND INITIATIVES TO MITIGATE DIGITAL PIRACY

National IPR Policy: The Department for Promotion of Industry and Internal Trade (DPIIT) has been designated as the nodal department for fostering Intellectual Property Rights (IPR) development, and adopted the National Intellectual Property Rights (IPR) Policy in 2016.

Main Goal: “Creative India; Innovative India”.

There are seven main objectives under this policy for promoting Intellectual Property for India’s economic growth with a view to protecting public interest. They are:

- IPR Awareness: Outreach and Promotion
- Generation of IPRs
- Legal and Legislative Framework
- Administration and management
- Commercialisation of IPR

²⁰ Digital Piracy and Copyright Infringement, <https://www.iiprd.com/digital-piracy-copyright-infringement/>, (September 20, 2024, 10:00 PM)

²¹ WIPO Internet Treaties, https://www.wipo.int/copyright/en/activities/internet_treaties.html, (September 20, 2024, 11:00 PM)

- Enforcement and Adjudication
- Human Capital Development

DPIIT established the Cell for IPR Promotion and Management (CIPAM) to promote, create and commercialise IP assets.²²

John Doe Order: John Doe order is a judicial directive empowering individuals or entities to pursue legal action against unidentified parties or persons unknown. John Doe's order is also known as the Ashok Kumar or Anton Pillar order. In cases of extensive and anonymous infringement, courts may grant a John Doe order, enabling rights owners to take action against unidentified infringers. The concept of John Doe orders was pioneered in India through the landmark case of *Taj Television v. Rajan Mandal*²³, wherein the Delhi High Court, in 2002, granted an injunction against unidentified unlicensed cable operators illegally broadcasting the FIFA World Cup, thereby protecting the plaintiff's broadcast rights. In copyright infringement cases involving movie or music downloads, rights holders can secure a John Doe order to enjoin unidentified parties and block access to infringing websites. The decision in *Reliance Big Entertainment Pvt. Ltd. v. Jyoti Cable Network & Ors* (2011)²⁴ concerning the film "Singham" established that plaintiffs seeking John Doe orders against unknown parties must satisfy a more rigorous burden of proof. To secure a John Doe order, plaintiffs must demonstrate:

- Full transparency: Disclose all relevant information.
- Widespread infringement: Provide evidence of extensive unauthorised use.
- Prima facie case: Establish a strong initial argument.
- Irreparable harm: Show that unchecked infringement will cause significant damage.²⁵

Maharashtra IP Crime Unit (MIPCU): The MIPCU was established in August 2017 by the Media & Entertainment (M&E) industry to address the growing concern of digital piracy and protect the intellectual property rights of the Media and Entertainment industry. It was previously called as Maharashtra Cyber Digital Crime Unit (MCDU). The Indian Media and Entertainment industry faces significant job losses due to piracy, with estimates suggesting

²² National Intellectual Property (IPR) Policy, https://www.meity.gov.in/writereaddata/files/National_IPR_Policy.pdf, (September 21, 2024, 06:00 AM)

²³ *Taj Television v. Rajan Mandal*, (2003) FSR 22

²⁴ *Reliance Big Entertainment Pvt. Ltd. v. Jyoti Cable Network & Ors.*, 2011 SCC OnLine Del 5709

²⁵ History and Development of John Doe Orders in India, <https://www.livelaw.in/law-firms/law-firm-articles-/john-doe-order-fifa-world-cup-quia-timet-civil-procedure-code-delhi-high-court-non-fungible-token-220689>, (September 21, 2024, 08:00 AM)

60,000 jobs are lost annually. To combat this, MIPCU has been established to support the government in reducing unemployment and generating job opportunities for young Indians. Maharashtra Cyber has proposed two types of package solutions to the Government.

- With Enterprise solutions – Includes Anti-Piracy Monitoring solutions, IBM Watson, and Torrent tracking solutions.
- Without Enterprise solutions – Does not include Anti-Piracy Monitoring solutions, IBM Watson, or Torrent tracking solutions.²⁶

Telugu Film Chamber of Commerce: It was established in 1979 in Hyderabad, Andhra Pradesh, to provide comprehensive services to the entire film industry ecosystem, encompassing studios, outdoor units, film producers, distributors, and exhibitors across the state. The objective is to promote unity and cooperation among the members of the film industry, while also serving as a liaison to address pressing issues of movie piracy with state and central authorities.²⁷

INITIATIVES BY OTHER COUNTRIES

China's Sword Net Action: It is a joint campaign, introduced by China's National Copyright Administration in 2005, that exemplifies the country's commitment to combating online copyright infringement. The campaign is conducted annually, with its primary duration spanning from April to October. In China, websites must undergo ICP (Internet Content Provider) registration, providing details on ownership and geographic origin, under the supervision of the MIIT (Ministry of Industry and Information Technology of China). The initiative demonstrated notable advantages, including cost efficiency, elevated takedown rates, and a marked reduction in websites perpetrating intellectual property violations.²⁸

Digital Millennium Copyright Act (DMCA): This Act was enacted in October 1998 in the United States, which provides robust protections for copyrighted materials, particularly sharing of copyrighted materials such as movies, games and music and providing legal recourse for rights holders. This Act adheres to the WIPO Copyright Treaty (WCT) and the WIPO

²⁶ MCDU: Protecting Vital Information for Stakeholders, <https://www.theprotector.in/mcdcu-protecting-vital-information-of-its-stakeholders/>, (September 21, 2024, 10:00 AM)

²⁷ Telugu Film Chamber, <http://www.telugufilmchamber.in/>, (September 21, 2024, 10:00 AM)

²⁸ IMI-FICCI-IFPI, Digital Piracy Seminar, New Delhi (November 21, 2019) <https://indianmi.org/wp-content/uploads/2020/08/IMI-Digital-Piracy-Report-F1-for-distribution.pdf> (lastly viewed on September 21, 2024, 10:50AM)

Performances and Phonograms Treaty (WPPT). It grants copyright owners the right to initiate the takedown procedure by issuing notices themselves. These notices can be given to two types of people:

- ISPs (Internet Service Providers) – Domain providers, Search engine providers
- Individuals²⁹

LANDMARK JUDGMENT RELATING TO DIGITAL PIRACY

R. G. Anand v. M/S. Deluxe Films & Ors (1978):

Facts: R.G. Anand, who was a playwright and dramatist, wrote a play named “Hum Hindustani” in 1953. It gained popularity after its enactment in 1954. Film director and producer Mr. Mohan Sehgal received a copy of the author’s play on request and later announced the production of “New Delhi” without further discussion. The author claimed copyright infringement, stating the film was entirely based on their play. However, the trial court ruled in favour of Sehgal, finding no copyright violation, and the Delhi High Court upheld this decision.

Held: The Supreme Court held that there is no copyright infringement because an idea, principle, theme or subject matter or historical or legendary facts, being common property, can’t be a subject matter of copyright of a particular person, and it does not amount to piracy. Also, the Court laid down the following propositions:

- No copyright in case of idea, theme or subject matter or historical or legendary facts.
- To warrant action, the copied material must be substantial and material, demonstrating the defendant’s culpability in copyright infringement.
- After the assessment of both works, a similarity test was done by a reader, spectator.
- No copyright violation in case of the same theme unless it is presented differently.
- Despite minor similarities, significant differences exist between the works, indicating no copyright infringement.
- Clear and cogent evidence is necessary to prove that the copyrighted work amounts to piracy.

²⁹ DMCA Notice/Copyright Infringement, <https://cleartax.in/s/dmca-notice-copyright-infringement>, (September 21, 2024, 11:30 AM)

- If the viewer confirms that the film substantially replicates the original play, it constitutes a breach of copyright.³⁰

FINDINGS AND DISCUSSIONS

Digital technology accelerates piracy's growth: The advent of technological advancements has facilitated the widespread proliferation of digital piracy, which has led to the transformation of piracy from offline mediums like CDs and DVDs to online platforms, exploiting vulnerabilities that allow pirates to upload copyrighted material to torrent sites and other illicit websites.

Economic impact due to digital piracy: Digital piracy causes financial losses, unemployment, and stifles innovation in the film industry, discouraging youth from pursuing careers in this sector. The prevalence of digital piracy infringes upon authors' economic and moral rights and leading to theatre closures as audiences opt for free, pirated content.

Effectiveness of Legal Framework: The implementation of laws like the Copyright Act, 1957 and Cinematograph (Amendment) Act, 2023, provides robust protection for original works by imposing severe penalties and punishments against digital piracy. International treaties and conventions augment the efficacy of the Copyright Act, 1957, in safeguarding original works of the author.

Recommendations for enhancing Anti-Digital Piracy methods: This study highlights the effectiveness of National IPR policy, John Doe Orders, and DRM techniques, while encouraging the development and implementation of innovative strategies to combat emerging digital technologies.

Creating effective awareness among the public: Public ignorance about digital piracy's consequences in the film industry often drives them to illegal websites for free content. Raising public awareness about digital piracy's impact on the film industry can mitigate its effects, as informed citizens are less likely to patronise illegal websites, ultimately supporting government initiatives to curb piracy.

Removing Online Piracy hubs: This study analyses China's "Sword Net Action", which demonstrates the effectiveness of requiring websites to register through the Internet Content

³⁰ R. G. Anand v. M/S. Deluxe Films & Ors, 1978 AIR 1613

Provider (ICP) system, enabling authorities to block sites engaging in copyright infringement or illicit activities. These kinds of initiatives are to be developed effectively to block websites using unauthorised content.

SUGGESTIONS

- The efficacy of current laws in addressing digital piracy is insufficient, necessitating thoughtful revisions to enhance their impact.
- Innovative technological solutions must be developed and implemented by the Government to safeguard copyrighted content from illegal access.
- The Indian film industry is recommended to leverage innovative technologies to secure its content in the global market.
- The State Government can direct Internet Service Providers (ISPs) to restrict consumer access to websites hosting pirated content.
- By offering digital content at competitive prices, the industry can reduce the inducement for piracy and increase legitimate consumption.
- Lack of awareness about piracy's effects obstructs anti-piracy efforts.

CONCLUSION

In the present global world, the rapid evolution of technology outpaces the development of corresponding legislation. Digital piracy evolves as a thunderstorm in the film industry, impacting losses in billions. Statutory damages or penalties provide minimal relief, applicable only in a fraction of reported cases. Strengthening the provisions of Copyright, Cinematograph, and other technology laws is necessary to mitigate piracy at its very beginning stage. Establishing stringent deterrents, including targeted enforcement against black market sales and illicit download links, is crucial to mitigate piracy. Combating piracy requires educating the public about its harmful effects. The fight against piracy is a shared responsibility, where active participation is essential from both individuals and the community at large.

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