

# Copyright Infringement: Bridging the Gap Between Legislation and Enforcement

**Dr. Swapnil Choudhary**

Assistant Professor of Law, VES Law College, Mumbai

## **ABSTRACT:**

Copyright is one of the important subject matters of Intellectual Property rights. In the current century of development of Information Technology there is common cases of the infringement of Copyright. Copyright infringement has become a pervasive issue in the digital age, transcending geographical boundaries and posing significant challenges to creators, industries, and economies worldwide. This research paper delves into the complexities of copyright infringement as a global concern, exploring its root causes, wide-ranging impacts, and the diverse array of remedies employed to address it. Through an analysis of legal frameworks, technological advancements, and international cooperation efforts, this paper aims to provide insights into effective strategies for combating copyright infringement and safeguarding intellectual property rights on a global scale.

**Keywords:** Copyright, Infringement of Copyright, Online Infringement, Legal Framework

## **1. INTRODUCTION:**

In the era of Information technology there is wide scope to the Intellectual Property Law and in the field of Intellectual Property Law there is wide scope to the subject matters of Copyright, its Infringement, and its law.<sup>1</sup> Copyright infringement is a pressing issue that affects creators, rights holders, and society as a whole. In today's interconnected world, the ease of sharing digital content has facilitated the widespread proliferation of copyrighted works without proper authorization, leading to significant economic losses and undermining the incentive for innovation and creativity. This research paper aims to examine copyright infringement as a global concern, analyzing its causes, impacts, and the diverse remedies available to combat it. The Copyright Act of 1957 controls the preservation of works protected by copyright in India. Owners of copyrights are given exclusive rights under the Act to reproduce, distribute, and exhibit their works. However, given how simple it is to duplicate and distribute anything online, protecting these rights has grown more difficult in the digital era. The absence of efficient legal tools and processes to address internet piracy is one of India's biggest obstacles to implementing copyright laws.<sup>2</sup> Although the Copyright Act has safeguards to prevent internet piracy, these regulations are sometimes insufficient and out-of-date. For instance, Section 52(1)(b) of the Copyright Act permits the copying of works protected by the copyright for personal use, although it doesn't specify what exactly falls under that category. Comprehensive legal and technical solutions that can successfully combat internet piracy are required to solve these issues. This might involve developing new legal tools to combat cross-border

<sup>1</sup> Supreme Court on Intellectual Property Rights, Surendra Malik, 1<sup>st</sup> Edn. 2022 'ebook'

<sup>2</sup> Law relating to Intellectual Property Rights, V.K. Ahuja 3<sup>rd</sup> Edn, 2017, Students Edition

piracy as well as updating the Copyright Act to offer clearer rules on online piracy. Additionally, the tracking of copyright ownership and distribution may be done more securely and transparently using technical solutions like blockchain technology. Unauthorized use or replication of copyrighted content, such as pictures, films, music, and software, is referred to as copyright infringement. Copyright rules safeguard the author's original creation and grant them the only right to use, reproduce, and distribute it. It is against the law to use copyrighted content without the owner's consent in an unauthorised manner.

## 2. UNDERSTANDING IMPACTS OF COPYRIGHT INFRINGEMENT

Copyright infringement encompasses various activities, including piracy, counterfeiting, and unauthorized distribution of copyrighted material. Digital technologies have made it easier than ever to reproduce and disseminate copyrighted works without permission, leading to widespread infringement across different mediums such as music, movies, software, literature, and visual arts. Understanding the different forms and manifestations of copyright infringement is crucial for developing effective strategies to address the problem. Copyright infringement is the use or production of copyright-protected material without the permission of the copyright holder. Individuals and companies who develop new works register for copyright protection to ensure that they can profit from their efforts. Other parties may be granted permission to use those works through licensing arrangements or buy the works from the copyright holder. The impacts of copyright infringement extend beyond financial losses to creators and rights holders. It undermines the integrity of intellectual property rights, stifles innovation and creativity, and threatens the sustainability of creative industries. Moreover, copyright infringement has broader societal implications, including cultural erosion, job losses, and reduced incentives for artistic expression. By devaluing intellectual property rights, copyright infringement undermines the fundamental principles of fairness, justice, and respect for creativity.<sup>3</sup>

## 3. WHAT IS COPYRIGHT LAW?

Copyright is an exclusive legal right given to the creator or a group of individuals to protect their work or creativity from reproduction, adaptation, translation. Distribution and public performance by others without prior permission from the creator/person responsible for the existence of the work.

The purpose of the copyright is to secure and reward general benefits i.e., label of authors on the produced work. It encourages the authors to produce and proceed with more works on continual basis.

In order to seek protection under the copyright law, the work should possess the following,

- a) The work must be an original one (Original means, the work has been created from inspiration and not copies from any other existing sources. The work must have been created for the first time)
- b) It must be fixed in any tangible form.

The presentation of the work must be in the expressible and physical form and should be capable of being identified a fixed form/identified in its existence or tangible form such as paper, recordings on optical media, paintings, documents, web servers etc.

- c) Must be the First Publication

An original work, should not be published before

- d) Work published after the death of author, at the time of death of author must own the citizenship in India.

- e) In case, work published out of India, at that time author must be citizen of India.

<sup>3</sup> Law of Intellectual Property, S.R.Myneni, 11<sup>th</sup> Edn. 2022, Asia Law House.

As per the Indian Copyright Act, Section 13 of Chapter III, the protection is granted to the following works.

- Literacy works,
- Musical works,
- Dramatic works
- Artistic works
- Cinematograph films.
- Architectural works
- Sound recordings.
- Computer program/software

It is pertinent to note that the Copyright protection is not provided for.

- a) Works not fixed in tangible form.
- b) Titles, names, short phrases, slogans, methods, factual information, symbols, or designs-however, trademark law may provide some protections to these works.
- c) Ideas or concepts, procedures, process, plans, principles, discoveries, and guidelines-however, in such cases patent or trade secret law may provide protections to these works.
- d) Works that are already in public domain and original authorship is not traceable are not covered under copyright law.
- e) Copyright works that are already expired.

#### **4. REMEDIES AVAILABLE AGAINST A COPYRIGHT INFRINGER?**

The remedies provided by the Copyright Act 1957 against infringement of copyright are:

- Civil Remedies– these provide for injunctions, damages, rendition of accounts, delivery and destruction of infringing copies and damages for conversion;
- Criminal Remedies– these provide for imprisonment, fines, seizure of infringing copies and delivery of infringing copies to the owner; and
- Border Enforcement– the act also provides for the prohibition of import and destruction of imported goods that infringe the copyright of a person with the assistance of the customs authorities of India.

#### **5. LIMITATION PERIOD: TIME LIMIT FOR SEEKING REMEDIES:**

The period of limitation for filing a suit for damages for infringement of copyright is three years from the date of such infringement. However, in the case of M/s Bengal Waterproof Ltd. Vs M/s Bombay Waterproof Manufacturing Company and Anr.<sup>4</sup> it was held that each

time there is an infringement, it constitutes as a recurring cause of action, which shall provide a fresh limitation for filing an action.

##### **1. Monetary Damages:**

Apart from damages, the copyright owner can also claim for rendition of account of profits i.e., Monetary damages as a remedy available under the copyright act.

##### **2. Attorney fees and costs:**

Litigation costs are a standard request in an infringement suit, however, the decision to award such costs

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<sup>4</sup> AIR 1997 SUPREME COURT 1398

is at the discretion of the court. Costs awarded seldom cover actual legal expenses. However, the Commercial Courts, Commercial Division and the Commercial Division Appellate Division of the High Courts Act 2015 brought forth amendments to the Code of Civil Procedure and specifically provides for payments of costs and lays down scenarios in which costs are paid and the method used to calculate such costs.

### 3. Criminal provisions under the Copyright Act 1957

The Copyright Act 1957 has provided for the enforcement of copyright through a series of penal provisions under Chapter 13 of the act. The following are the principal penal provisions under the act:

- f) Under section 63, where any person knowingly infringes or abets infringement of the copyright in a work and any other right as covered by the Copyright Act, 1957 (broadcast reproduction rights, performers' rights, moral rights, etc), such person maybe punished with imprisonment of a minimum term of six months and a maximum term of three years, and a fine of between 50,000 and 200,000 rupees<sup>4</sup>.
- g) Section 65A penalizes circumvention of effective technological measures that may be applied to copies of a work with the purpose of protecting any of the rights conferred under the act (i.e., copyright and performance rights). The punishment under this provision is imprisonment, which may extend to two years and payment of a fine. Section 65A was inserted by the Copyright (Amendment) Act 2012.
- h) Section 65B makes unauthorised removal or alteration of 'rights management information' punishable with imprisonment of up to two years and payment of a fine.  
The provision makes the unauthorised distribution, broadcast or communication to the public of copies of the work punishable in the same manner if the person is aware that electronic rights management information in the copy has been removed or altered. Section 65B was inserted by the Copyright (Amendment) Act 2012.
- i) Section 63A provides for an enhanced penalty on second or subsequent convictions under section 63 (see point (1)).
- j) Other provisions in Chapter 13 provide penalties for offences such as using infringing copies of a computer program, making or possessing plates for the purpose of making infringing copies of works and making false entries in the Register of Copyrights.

### 6. REMEDIES AGAINST ONLINE INFRINGEMENT

The 2012 amendments to the Copyright Act, introduced certain provisions that are specifically relevant to copyright infringement and the internet. Under the fair use provisions of the Act, Section 52(1)(b) provides that transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public does not constitute infringement of copyright. This provision provides a safe harbor to internet service providers that may have accidentally stored infringing copies of a work for the purpose of transmission of data.

Section 52(1)(c) further provides that transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration that is not expressly prohibited by the rightsholder would not be infringement of copyright, unless the person responsible is aware of infringement or has reasonable grounds for believing that such storage is that of an infringing copy.

Under section 52(1)(c), if the owner of a copyrighted work, in a written complaint to the person responsible for digitally storing an infringing copy of the work, complains that such transient or incidental storage is an infringement, then the person responsible would have to refrain from facilitating access to the infringing

copy of the work for a period of 21 days. If, within 21 days, the person responsible does not receive an order from a competent court that directs them to refrain from providing access, then access may be resumed at the end of that period. Therefore, if A, the owner of a short story, finds that their short story has been published on the website of B, they may write a complaint to B declaring that B must refrain from providing the public with access to A's short story. B would then have to remove A's short story from visibility or accessibility on their website for 21 days, within which time A must persuade a competent court that it should order the complete removal of the infringing version or copy of the work. If the court does not issue such an order within that period of time, then B may resume making the short story available to the public on their website. This provision was inserted in the Act by the Copyright (Amendment) Act 2012, which came into force on 21 June 2012. It is yet to be seen in practice. Apart from the above-mentioned provisions, the Copyright Act makes it amply clear that all the provisions of the act must be applied to electronic and digital media in the same manner they are applied to conventional media. The Copyright (Amendment) Act 2012 has also clarified this in many places. Remedies against copyright infringement on the internet are not dealt with separately under that Act as the provisions sufficiently cover all forms of exploitation of works, including exploitation over the internet, and the remedies for copyright infringement would apply to the internet as they would to any other medium or platform.

As regards online copyright infringement involving intermediaries, section 79(3)(b) of the Information Technology Act 2000 fastens liability on an intermediary if it had actual knowledge of the infringement. 'Actual knowledge' was interpreted by the Supreme Court in the case of *Shreya Singhal v Union of India*, (2013) 12 SCC 73, as meaning knowledge through a court order. However, this requirement was read down for cases involving copyright infringement by the Division Bench of the Delhi High Court in *MySpace Inc v Super Cassettes Industries Ltd*<sup>5</sup>, and now for copyright infringement matters specific knowledge by the intermediary is sufficient, without the need for a court order.

***In the case of Samridhi Enterprises v Flipkart Internet Private Limited & Ors (CS(COMM) 63 of 2023)***, it was held by the Delhi High Court that intermediaries are not required to act against alleged infringers on a user's complaint under rule 3 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules,

2021. Rule 3 is concerned with the infringement of a copyright, patent, trademark or any other proprietary right. The Delhi High Court, while repudiating the submissions of the counsel for that plaintiff, affirmed that rule 3(2) specifies the requirement for intermediaries to publish the details of the grievance officer and the mechanism by which the users could complain against the violation of the provisions of rule 3 of the Information Technology Rules. On receipt of a grievance, rule 3(2)(a) simply requires the grievance officer to acknowledge the complaint and dispose of it. The clause does not go on to say that the intermediary must take any specific action in response to a notice of infringement, much less take any specific action against the intermediary.

In sharp contrast to the above, the ***Delhi High Court in the case of Aaradhya Bachchan v Bollywood Time (CS(COMM) 230/2023***<sup>6</sup>) is examining whether intermediaries such as YouTube are required to take proactive measures to prevent the dissemination of misinformation. The suit was instituted on behalf of the plaintiff by her father – the famous Indian actor, Abhishek Bachchan. Mr Bachchan was aggrieved with objectionable videos of his daughter (i.e., fake news about his daughter's health), Aaradhya Bachchan,

<sup>5</sup> FAO(OS) 540/2011

<sup>6</sup> CS(COMM) 230/2023



being circulated on various platforms such as YouTube. The Court ordered several websites to immediately stop disseminating or publishing such objectionable videos and also directed Google (which owns YouTube) to set out its policy in detail to ensure that it is in compliance with the Information Technology Rules 2021. The Court has indicated that on the next hearing date, it will examine the plea of the plaintiff on how the process of taking down objectionable content from YouTube without any lapse of time should be streamlined.

## **7. INTERNATIONAL CO-OPERATION**

Given the global nature of copyright infringement, international cooperation is essential for addressing cross-border infringement effectively. Bilateral agreements, multilateral treaties, and collaborative enforcement efforts facilitate information sharing, capacity building, and joint action against copyright infringement. However, achieving consensus on copyright issues can be challenging due to divergent legal systems, cultural differences, and economic interests. Nevertheless, concerted efforts at the international level are necessary to combat copyright infringement comprehensively.

## **8. CONCLUSION:**

As per the existing laws relating to Copyright it can be said that there is a requirement of more stringent provisions for the stoppage of infringement of copyright. Any kind of wealth is very important in the life of a person and if the copyright subject matter is intangible in nature, there should be relevant legal provisions for its protection as a matter of urgency. In western countries like the USA and European countries, the people are more aware about copyright and its law, but in India, it is the duty of the Government to conduct awareness programs on the applicability and remedies about Intellectual Property and Copyright. Copyright infringement poses a complex and multifaceted challenge that requires a coordinated and multi-pronged approach to address effectively. By understanding the causes, impacts, and remedies of copyright infringement, stakeholders can work together to safeguard intellectual property rights and promote a culture of respect for creativity and innovation on a global scale. Legal, technological, educational, and international cooperation efforts are essential components of a comprehensive strategy to combat copyright infringement and uphold the principles of intellectual property protection.

## **REFERENCES:**

1. Dr. Anuj Keswani, Ritika Jain, 2014 Copyright Infringement – An Empirical Study, International Journal of Trademarks and Copyright, pg.no-15, February, 2009
2. Intellectual Property Rights, Issues and Remedies, WIPO
3. Bijlani, M.D., Protection to Copyrights, October, 3, 2009
4. Bare Act on the Copyrights Act, 1957, Professionals
5. Crash Course on Intellectual Property Law, University of Pennsylvania