

Decriminalization of IP Offenses: Navigating the Nexus of Innovation and Legal Reform

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ABSTRACT

The decriminalization of Intellectual Property (IP) offenses represents a pivotal shift in legal frameworks aimed at fostering innovation while simultaneously safeguarding the broader public interest. The debate on decriminalization has gained momentum as digital technology transforms the landscape of creativity and innovation. Proponents express that decriminalization can foster a more business-friendly atmosphere by alleviating the fear of criminal prosecution, thus encouraging entrepreneurs and innovators to engage with IP systems more freely. Replacing criminal sanctions with civil remedies, such as fines and administrative penalties, promises faster enforcement and reduced litigation costs. Nonetheless, this transition raises significant concerns regarding the sufficiency of civil penalties in deterring intentional violations of IP rights and upholding strong IP protections.

The paper explores whether civil remedies can sufficiently safeguard IP rights without diminishing the deterrent impact traditionally maintained by criminal prosecution. The paper contends that decriminalization may foster innovation by lowering legal obstacles but it must be carefully executed to avoid undermining the protective framework essential for sustaining fair competition. By analysing India's international position and the IP protection model adopted by other countries this paper analyses whether such a shift in the legal protection framework is advantageous or detrimental to a nation's innovation ecosystem and legal order.

KEYWORDS: IP, Decriminalization, Civil Remedies, Criminal Remedies

BACKGROUND OF THE STUDY

IP rights (IPR) are crucial for protecting the innovations and artistic creations of individuals, providing a legal structure that fosters both creativity and invention. The evolution of IPR has transitioned from ancient systems for compensating creators to a modern framework significantly influenced by the establishment of copyright laws in the 18th century. The Statute of Anne, enacted in 1710, marked one of the earliest formal copyright laws, granting authors exclusive rights over their works. International agreements like the Berne Convention (1886) and the TRIPS Agreement (1994) further enhanced the global legal landscape for IP.

The rise of the digital age has introduced significant challenges for enforcing IPR, particularly due to increased digital piracy and unauthorized distribution of creative works. Currently, the relationship between criminal liability and IPR is becoming more significant. Unauthorized reproduction or distribution of copyrighted materials can result in serious legal consequences, including criminal charges. In response to the economic impacts of IP theft, governments around the world are implementing stricter laws. The link between criminal liability and IPR enforcement is especially critical in cases of intentional

infringement, where individuals aim to profit from unauthorized use. Enforcement of IPR varies widely across different nations, influenced by cultural perceptions and legal practices. Some countries actively combat piracy, while others face challenges due to limited resources. Organizations like the World Trade Organization (WTO) and the World IP Organization (WIPO) play essential roles in promoting international cooperation, yet obstacles persist.

Looking to the future, the intersection of IPR and criminal liability will be shaped by rapid technological advancements, particularly in blockchain and artificial intelligence (AI). The emergence of AI-generated content raises complex questions about authorship and ownership, necessitating updates to current legal frameworks. Additionally, the rise of digital platforms complicates enforcement, as the swift spread of creative content makes it harder for rights holders to maintain control. Public attitudes toward IPR will also play a significant role in future developments. There may be growing calls for reforms that reconcile the interests of copyright holders with public access to information and culture. Ongoing discussions surrounding copyright exceptions and the concept of fair use will continue to be pivotal. International collaboration will be vital in tackling the challenges posed by global IP theft, particularly as e-commerce facilitates infringement across jurisdictions with weaker enforcement. Strengthening cooperation through information sharing and coordinated efforts is essential for creating a fairer global IPR framework. The development of IPR and its relationship to criminal liability reflects a complex interaction of innovation, legal systems, and societal values. Addressing the challenges of rapid technological change requires cooperation among stakeholders, a commitment to legislative adaptation, and a nuanced understanding of the need to balance rights protection with equitable access to cultural resources. Through a comprehensive approach, we can aspire to create a more just future for IP rights in our interconnected world.

LITERATURE REVIEW

In paper by Sofia Khatsernova (2016)¹ has concluded that the study emphasises how crucial it is to make it illegal to counterfeit well-known trademarks in order to protect consumer rights, IP, and public health, especially in high-risk industries like food, medicine, and children's products. In addition to hurting customers, counterfeit goods can help finance terrorists and organised crime. To better combat counterfeiting, future guidelines suggest harmonising trademark rights and bolstering international legal cooperation. By striking a balance between the necessity of strict enforcement and adherence to ideas like "no crime without law" to prevent unfair prosecutions, these measures must guarantee that defendants' rights are respected.

In paper by Sharma and Dube (2022)² concluded that the study emphasises how criminal law is increasingly being used to protect IP rights, especially in the fight against piracy and counterfeiting. It concludes that although the use of criminal penalties is expanding globally, there is still debate around this tendency. Critics contend that, particularly in underdeveloped countries, protecting IP through criminal legislation takes funds away from vital sectors like health. However, in many jurisdictions, the economic loss resulting from IP infringement warrants more stringent enforcement. According to the report, developed and developing nations handle IP enforcement quite differently, with the US and the UK having stricter laws. The study urges more research on the relationship between IP and criminal law and advocates

¹Khatsernova, Sofia. (2016). CRIMINAL LIABILITY FOR INFRINGEMENTS OF WELL-KNOWN TRADEMARKS RIGHTS: THE DEMAND AND POSSIBILITIES. SOCIAL TRANSFORMATIONS IN CONTEMPORARY SOCIETY ISSN 2345-0126 (online). 2016. 86-96.

² Sharma, A.K. and Dube, D. (2021) 'The relevance of criminal law in Intellectual Property Law Research', *Handbook of Intellectual Property Research*, pp. 198–220. doi:10.1093/oso/9780198826743.003.0014.

for balanced enforcement in the future, with a focus on proportionality in punishments particularly in the context of online piracy and the global nature of counterfeiting. This approach aims to protect innovation while considering broader societal impacts.

In paper by Lydia Pallas Loren (1999)³ has concluded that the study makes the case that criminal copyright infringement laws have broadened to include even non-commercial infractions, especially those influenced by the No Electronic Theft (NET) Act. According to findings, this wide scope may go too far and criminalise a large number of people who might not be aware of the restrictions set by the law. The Act's goal to combat digital piracy emphasises how digitisation makes copyright enforcement more difficult and results in harsher penalties for non-commercial violators.

Future guidelines that prioritise improving these rules to strike a balance between enforcement and public interests—such as safeguarding innocent users and promoting internet access—are recommended in the study. Additionally, it urges more investigation into the significance of intent in copyright cases and suggests that enforcement should take users' awareness of infringement into account rather than indiscriminately imposing severe criminal penalties.

In paper by Viswambharan Vijayakumar Sobhakumari (2011)⁴ has concluded that the civil enforcement of patent rights is still essential, but it is insufficiently strong to stop the growing number of intentional, widespread infringements like counterfeiting. According to the report, patent enforcement is complicated, and while civil remedies like damages and injunctions might be useful, they are frequently insufficient to stop deliberate, profit-driven infringement. Because of this, criminal penalties might be a crucial deterrent for organised or recurring infringers, particularly in high-value or high-risk businesses. Future studies ought to investigate a hybrid approach that combines selective criminal enforcement with civil remedies. Under this concept, criminal penalties would be saved for egregious, persistent, or commercially driven violations, while civil actions would be given priority for incidental or first-time violations. Furthermore, more research into global practices, such as those of Thailand and Japan, may provide information on how to best use enforcement tactics that strike a compromise between the preservation of innovation and the general welfare.

In paper by Dr. Suranjana Kalita and Dr. Chandamita Sarma (2024)⁵ has concluded that the significance of preserving original works to promote innovation and preserve authors' rights is emphasised in the article on Indian copyright law. It concludes that even while the Copyright Act of 1957 and its later amendments provide strong safeguards, enforcement issues still exist because of the growth in online piracy and the difficulty of pursuing infringement cases. Because copyright safeguards are compromised by procedural delays, the study reveals a gap in prompt legal action.

The study recommends strengthening technological measures, such as encryption, to counteract digital piracy in future regulations. It also suggests regulatory changes that stay up to date with technology developments, guaranteeing efficient enforcement while striking a balance between artists' rights and public access. To lower infringement rates, it is also recommended to increase public knowledge of copyright concerns and strengthen the legal system to expedite copyright cases.

³ Loren, Lydia Pallas, (1999) Digitization, Commodification, Criminalization: the Evolution of Criminal Copyright Infringement and the Importance of the Willfulness Requirement. *Washington University Law Quarterly*, Vol. 77, No. 3, 1999

⁴Sobhakumari, Viswambharan Vijayakumar, (2011), "THE CRIMINALIZATION OF PATENT INFRINGEMENT IN CANADA AND INDIA". *Digitized Theses*. 3643.
<https://ir.lib.uwo.ca/digitizedtheses/3643>

⁵ Kalita, S., & Sarma, C. (2024). A Glimpse of Indian Copyright Laws with a Delineation of its Infringement . *DLC IMAGE: PRATIBIMBO*, 2(2), 15–23.

RESEARCH PROBLEM

The decriminalization of IP-related offenses raises concerns about the adequacy of civil remedies in safeguarding IP rights and India's adherence to international obligations such as the TRIPS Agreement. This shift could increase violations and potentially weaken India's international standing and trade relations. Therefore, it is critical to investigate whether civil remedies can effectively protect IP in the absence of criminal penalties and to assess the broader ramifications of this legal transition on India's international commitments and position.

RESEARCH OBJECTIVE

1. To find out whether civil remedies alone are sufficient in safeguarding IP rights following the decriminalization of infringement offenses.
2. To find out how decriminalization of IP offenses may affect India's compliance with the TRIPS Agreement.
3. To find out the potential impact of decriminalization on the enforcement of IP laws in India.
4. To find out the legal and regulatory challenges that may arise in ensuring the effectiveness of civil remedies after the removal of criminal penalties for IP infringement.

RESEARCH QUESTIONS

1. To what extent will civil remedies suffice in safeguarding IP rights following the decriminalization of infringement offenses?
2. To what extent will India remain compliant with the TRIPS Agreement in light of decriminalization, and how will this impact its international standing?

RESEARCH METHOD

This research draws upon secondary data, but it also draws on a number of primary and tertiary legal sources. The laws used for analysis and case law provided by different courts are the main sources of legal information. The pertinent empirical research conducted by other writers serves as secondary data, while commentary is a tertiary resource. The only sources gathered here are from reputable literature, and the deductive logical pattern is applied to use the data from these sources. Our methodology employs a qualitative doctrinal approach, examining legal texts, online articles, and research papers to analyze the impact and implications of decriminalizing IP offenses. This research synthesizes legal doctrines, case law, and international standards to explore how such reform could balance innovation with effective IP protection.

SCOPE AND LIMITATIONS

With an emphasis on how civil remedies may take the place of criminal penalties under IP legislation, this paper explores the possible ramifications of decriminalising intellectual property (IP) offences in India. It examines how well civil remedies protect intellectual property rights and how this change can affect India's international commitments, particularly those outlined in the TRIPS Agreement. The paper emphasises how these legal reforms may affect innovation, compliance, and the larger legal ecosystem in India.

There is little empirical evidence about the long-term effects of decriminalisation initiatives because they are relatively new. Without much involvement from stakeholders like industry experts or law enforcement, the study is doctrinal and mostly draws on case law, existing legal texts, and secondary literature.

Furthermore, socioeconomic differences that can affect how successful IP protection policies are in different geographical areas are not taken into consideration in this study. With little investigation of the possible impacts on global IP enforcement patterns and international trade dynamics, the emphasis is still on India's internal framework.

CHAPTERS OF THE PAPER

Introduction to the Jan Vishwas Act:

The Jan Vishwas Act is a recent legislative reform introduced by the Indian government to reduce unnecessary criminal provisions in various laws, aiming to foster a more business-friendly environment.⁶ The Act seeks to balance the severity of punishment with the severity of the crime, recognizing that excessive penalties for minor infractions can discourage entrepreneurship and increase judicial burden. By promoting administrative adjudication for minor violations, the Act hopes to streamline legal procedures, reduce court backlogs, and contribute to India's goal of becoming a global investment hub.

The rationale behind decriminalization:

The proponents of the Jan Vishwas Act claim that it is important to match the severity of the punishment to the severity of the crime. Giving harsh punishments for relatively minor infractions discourages entrepreneurship and increases the burden of the legal system⁷. They claim that the need of the hour is to create a business-friendly environment to bolster economic growth and help India become a global investment hub. Keeping in mind the nature of the pendency of cases in all tiers of the court and the long dispute resolution process the act also aims to simplify the bureaucratic process by streamlining the legal procedure through administrative adjudication mechanisms⁸. The Act recognizes that business-related non-compliance often involves technical or procedural errors rather than intentional misconduct. By shifting the focus from punitive actions to compliance-oriented measures, the government seeks to improve the ease of doing business in India, reduce the burden on the judiciary, and expedite dispute resolution through administrative means rather than prolonged court processes.

The need for criminalization of in IP Laws:

The decriminalization of IP laws raises significant concerns relating to the increase in infringement of IP rights due to the lack of criminal liability as a deterrent. The policy behind the protection of IP rights is to strike a balance between fostering creativity and safeguarding social welfare.

Civil vs. Criminal Remedies in IP Protection: A Comparative Analysis:

1. Availability of interim remedies

In civil proceedings, IP holders can obtain immediate remedies like injunctions to halt ongoing infringement and protect their commercial interests. In contrast, criminal proceedings lack such interim measures, offering only detention or fines, which may not stop ongoing infringing activities. Thus, criminal litigation provides no immediate protection for IP holders' interests.

⁶ The Jan Vishwas (Amendment of Provisions) Act, 2024, The Gazette of India

⁷ Decriminalizing IP Offenses, <https://brainiac.co.in/decriminalizing-intellectual-property-offenses/#:~:text=In%20the%20realm%20of%20intellectual,environment%20for%20growth%20and%20creativity.>

⁸ 12th June 2020, Ministry of Finance, https://dea.gov.in/sites/default/files/consultation%20paper%20decriminalisation_0.pdf

2. Compensation for infringement

In civil litigation, the IP holder may seek remedies such as compensation for unauthorized use through an award of damages. In contrast, criminal proceedings typically result in sanctions like imprisonment or fines for the accused. While these sanctions serve as a deterrent to future infringements, they do not address the harm suffered by the IP holder. To obtain restitution or compensation, the IP holder must pursue civil litigation to seek damages. Thus, criminal proceedings primarily serve the state's long-term interest in preventing infringement, rather than addressing the IP holder's immediate need for restoration.⁹

3. Burden of proof and other evidentiary challenges

Another reason to favor civil proceedings over criminal litigation is the fundamental difference in the burden of proof between the two systems. In civil cases, the plaintiff is required to present evidence to establish their claim on a balance of probabilities. However, in criminal cases, the infringement must be proven beyond a reasonable doubt, a much higher standard. This heightened evidentiary requirement can be challenging in IP cases, where proving infringement is often difficult. This difficulty arises, in part, from ambiguous legal provisions that lead to varying interpretations of what constitutes infringement.

Additionally, it can be argued that criminal proceedings are not well-suited for IP infringement cases because establishing mens rea (the mental element), a requirement in most criminal offenses, can be particularly complex. Proving motive or wilfulness on the part of the infringing party often presents challenges. For instance, in cases of copyright or trademark infringement, demonstrating an intention to infringe may involve onerous evidentiary requirements. Prosecutors might need to show, for example, that the infringing party had prior access to the original mark or work and intended to use it for commercial gain without the IP holder's consent. Consequently, this elevated threshold of proof may result in numerous valid infringement cases remaining unprosecuted or not convicted. As a result, the objective of enhanced deterrence may be undermined, as infringers may continue their activities if the likelihood of prosecution and conviction is minimal.¹⁰

4. Opportunity for settlement and other collaborations

Civil litigation permits parties to reach settlements out of court, which is particularly suitable for IP cases, especially when the infringement occurs inadvertently. This approach not only helps parties minimize litigation costs but also creates opportunities for collaboration, such as establishing licensing agreements.

The Distinct Role of Criminal Sanctions in Deterring Copyright Infringement:

The notion that civil remedies, such as damages, are sufficient to replace the need for criminal measures in IPR enforcement contradicts the fundamental principle that criminal sanctions serve a distinct and separate role from civil remedies. Criminal penalties are specifically designed to deter and punish, particularly in cases involving repeat offenders. The deterrent effect of imprisonment as a form of punishment should not be overlooked. Eliminating this deterrent could, in itself, lead to an increase in instances of copyright infringement and related offenses.

Criminal litigation alleviates the legal costs borne by the IP holder by transferring enforcement expenses to the State. In this context, the State is responsible for prosecuting infringements, while the IP holder's

⁹ A case for decriminalization of infringement in the IP Bill, 2020, Godana galma, <https://cipit.strathmore.edu/a-case-for-decriminalization-of-infringement-in-the-intellectual-property-bill-2020/#sdfootnote3sym>

¹⁰I.D. Manta, Explaining Criminal Sanctions in IP Law, https://www.law.nyu.edu/sites/default/files/upload_documents/Irina%20Manta.pdf

involvement is primarily that of a complainant or witness. In contrast, in civil claims, the IP holder must bear all associated costs, including court fees and legal counsel.

Criminal litigation helps prevent vexatious and frivolous IP infringement lawsuits from being filed against innocent third parties. As criminal cases are primarily initiated and prosecuted by the State, this reduces the likelihood of unfounded infringement claims in this domain. While private parties may still pursue private prosecutions, such applications require court approval, thereby imposing a level of scrutiny to prevent baseless claims.

Decriminalization may run counter to India's TRIPS Obligations

As a WTO member and signatory to the TRIPS Agreement, India is obligated to:

1. Establish criminal procedures and penalties for cases of wilful trademark counterfeiting and copyright piracy on a commercial scale (Article 61); and
2. Ensure enforcement procedures that provide effective remedies and serve as a deterrent to further infringement (Article 41(1)).

Therefore, decriminalizing copyright infringement under the Copyright Act of 1957 could potentially conflict with India's international treaty commitments.

Effect of Jan Vishwas Act on various IP Legislations In India

Copyright Act, 1957:

The Federation Of Indian Chambers Of Commerce & Industry (FICCI), the voice of India's business and industry, welcomed the initiatives by the Government of India to decriminalize offenses relating to non-compliance of minor, technical, or procedural nature under the Companies Act 2013 and other laws, aimed at facilitating and promoting 'ease of doing business' (EODB) in the country and unclogging the judicial system while boosting investor confidence and reviving the economy's growth prospects, the organization respectfully submitted to the government that criminal offenses under the Copyright Act 1957 would not fall within the above¹¹.

The FICCI argued that contrary to the Government's objective of decriminalizing various laws, decriminalizing copyright offenses would actually eliminate a crucial deterrent for infringers, weaken copyright protections, and ultimately discourage investments in creative industries. Global experience, particularly in the entertainment industry, shows that criminal enforcement serves as a strong deterrent against copyright infringement. Infringing websites often shut down once a pirate site is prosecuted and taken offline. Decriminalizing copyright infringement would not only encourage content theft, copying, and misappropriation but also harm the creative sector and negatively affect the broader IP industry. This should not be considered, especially given the growing prevalence of counterfeiting and piracy.

According to a report by Irdeto, a global leader in digital platform security, the Indian media and entertainment industry loses \$2.8 billion in annual revenue due to piracy, placing India among the top five countries for peer-to-peer downloading. Similarly, the Indian music industry, as per a 2019 IFPIIMI report, is estimated to lose around ₹1,000 crores annually to piracy, which accounts for 67% of the market—significantly higher than the global average of 27%. While no data is available for the largest M&E sector,

¹¹ FICCI Recommendations to Govt of India on de-criminalising Copyright law)), <https://ficci.in/public/storage/SEDocument/20518/DecriminalisationofCopyrightActProvisions.pdf>

broadcast TV signals, India's book publishing industry reportedly suffers an annual loss of ₹400 crores, with an estimated 20-25% of books sold being pirated¹².

Chapter XIII, Sections 63 to 69 of the Copyright Act outline criminal sanctions for copyright infringement. The Jan Vishwas Bill proposes the removal of Section 68, which penalizes individuals for making false statements to deceive or influence any authority or officer. However, this change may not have a significant impact. What is truly needed is a reform that distinguishes between various types of copyright infringement, limiting criminalization to cases of mass piracy rather than routine violations. Additionally, it should mandate prior judicial cognizance as a prerequisite for initiating criminal investigations.¹³

Patents Act, 1970:

The Jan Vishwas Act has decriminalized the offenses under Sections 120, 122, and 123 of the Patents Act by replacing the previous penalties of fines and imprisonment with monetary penalties. Additionally, the JV Act establishes mechanisms for adjudicating these penalties, including the appointment of an adjudicating officer, as well as provisions for appealing the orders issued by the adjudicating officer.

Form 27, which must be submitted annually by all patent holders, requires information on whether the patent is working in the local market, including the quantity and value of products sold, the manufacturing base, and a statement regarding whether public demand has been met partially, adequately, or fully at a reasonable price.¹⁴

The penalty for "Refusal or failure to supply information" to the Central Government or the Controller under Section 122(1) has been reduced to 1 lakh rupees, with an additional penalty of 1,000 rupees for each day the refusal or failure continues. Previously, the fine could reach up to 10 lakh rupees. Additionally, the offense of providing false information, as outlined in Section 122(2), has been decriminalized; offenders are now subject to a penalty of either 0.5% of the total sales or turnover of the business or gross receipts as reflected in audited accounts, or a maximum of 5 crore rupees, whichever amount is lower. Previously, this offense could result in imprisonment for up to six months.¹⁵

Foreign companies that neither manufacture nor import their inventions in India may violate patent working requirements. These requirements support broader developmental goals by allowing competitors and society to identify deadwood patents that hinder market entry for domestic firms. Moreover, the existing Form 27 requirements are already diluted and without them, obtaining compulsory licenses—an essential aspect of the Indian patent system—would be difficult. Thus, reducing criminal penalties for non-compliance with patent working requirements could fundamentally alter patent laws in India and have long-term negative impacts on business.¹⁶

Under Sec 124A a new provision for the adjudication of penalties and appeals for aggrieved persons under 124A has been given under Sec 124B. Two new clauses have been added in Section 159 conferring upon the government the power to make rules for the manner of holding an inquiry and imposing penalty under

¹² FICCI Recommendations to Govt of India on de-criminalising Copyright law)), <https://ficci.in/public/storage/SEDocument/20518/DecriminalisationofCopyrightActProvisions.pdf>

¹³ Bill to decriminalise IP offences misses the mark and dilutes significant provisions, aparajitha lath, <https://spicyip.com/tag/trademark>

¹⁴ The 'Non Working' Of Patent Working Norms, shamnad Basheer, <https://spicyip.com/2011/04/non-working-of-patent-working-norms.html>

¹⁵ <https://www.sconline.com/blog/post/2024/08/03/ip-laws-decriminalized-and-amended-vide-jan-vishwas-amendment-of-provisions-act-2023/>

¹⁶ Decriminalised Offences Under the Indian Patents Act, Sneha Gandhi, <https://www.mondaq.com/india/patent/1500854/decriminalised-offences-under-the-indian-patents-act>

Section 124(A), as well as the form and manner of preferring an appeal under sub-section (2) of Section 124(B).

Reasons For Exclusion of Certain Acts From Decriminalization

The Semiconductor Layout-Design Act of 2000 emphasizes criminal sanctions for layout design infringement, particularly through Section 56, which prescribes penalties for intentional or willful violations. These penalties include potential imprisonment of up to three years, along with fines ranging from ₹50,000 to ₹10 lakh. Unlike many other Indian intellectual property laws, this Act does not explicitly outline civil remedies, such as injunctions, damages, or accounting for profits. However, Section 16 limits civil actions specifically for unregistered designs, indicating that “no individual shall initiate proceedings to prevent or seek damages for the infringement of an unregistered layout design.” This provision implies that registered designs could access civil remedies—such as injunctions or compensation—by drawing on India’s broader intellectual property principles, even though these are not directly stated within the Act. The law’s emphasis on criminal consequences underscores a policy aim to deter violations effectively within the rapidly advancing semiconductor field. Under the designs act 2000 there are only civil remedies given under section 22 for reliefs such as damages and injunctions.

Global Trends in Strengthening Criminal Sanctions for IP Infringement:

Research shows that major global economies, including the USA, Australia, the UK, Singapore, Brazil, Canada, Germany, France, and the EU, have implemented criminal sanctions for copyright offenses. Notably, countries like the USA, Australia, and Singapore go beyond the TRIPS Agreement with "TRIPS plus" compliance. In these jurisdictions, copyright infringement can fall under criminal liability even if it is not for commercial or financial gain.

Rather than decriminalizing copyright infringements or reducing penalties, many countries are increasing the severity of sanctions in response to technological advancements that enable mass-scale infringements with minimal detection. The evolving copyright laws in the US, where criminal sanctions have grown stronger over time, serve as a prime example.

The Sony BMG Music Entertainment v. Joel Tenenbaum¹⁷ case is a prominent example of high penalties for relatively minor IP infringement. In 2009, Joel Tenenbaum, a Boston University student, was sued by Sony BMG and other major record labels for downloading and sharing 30 songs on file-sharing networks. The court ordered him to pay \$675,000 in damages—a penalty that amounted to \$22,500 per song, which was seen by many as disproportionately severe given the small scale of his actions.

This case, along with Capitol Records v. Thomas-Rasset¹⁸, where Jammie Thomas-Rasset faced a \$1.92 million fine for sharing 24 songs, highlighted the punitive potential of statutory damages in U.S. copyright law. Both cases underscored how non-commercial, small-scale infringements could lead to devastating financial penalties for individuals. Critics argued that these penalties were excessive and raised questions about the fairness of copyright enforcement, particularly for personal-use infringements.

Globally, copyright laws are being revisited and made more robust to act as stronger deterrents. For instance, in Singapore, following amendments to its Copyright Act, wilful copyright infringement now carries a criminal penalty of up to five years' imprisonment.

These cases have since been widely discussed in legal and policy circles, sparking debates on the need for reform to make penalties more proportional to the infringement's scale and intent.

¹⁷ https://cyber.harvard.edu/people/tfisher/IP/2011_Tenenbaum_Abridged.pdf

¹⁸ <https://fairuse.stanford.edu/case/capitol-records-inc-et-al-v-thomas-rasset/>

RECOMMENDATIONS

- To guarantee proportionate enforcement, use civil penalties for small, non-commercial infractions and criminal penalties solely for major IP crimes, such as mass counterfeiting.
- By allowing for quicker injunctions, raising statutory damages, and creating specialised IP courts for effective dispute settlement, civil enforcement can be strengthened.
- Provide a precise definition of "wilful" infringement so that criminal sanctions are only applied to deliberate, damaging infractions and not to unintentional ones.
- To adhere to international norms and preserve TRIPS compliance, strengthen IP enforcement in high-risk sectors like digital media.
- Put in place IP education initiatives to promote voluntary compliance and lessen unintentional infringements.
- In IP matters, demand a preliminary review before bringing criminal charges in order to shield respectable companies and stop pointless lawsuits.
- Maintain criminal penalties for serious, deliberate violations in order to meet international commitments, paying particular attention to situations where there is obvious economic purpose.

CONCLUSION

The Jan Vishwas Bill, which aims to strike a balance between the protection of IP and the necessity for a business-friendly environment, marks a dramatic change in India's attitude to IP rights (IPR). The law seeks to create an environment that promotes innovation and entrepreneurship by decriminalising minor IP rights violations. This would provide businesses, particularly startups and smaller organisations, the confidence to expand without worrying about harsh penalties for minor violations. This strategy is particularly pertinent in the modern, globalised economy, where India's competitiveness abroad may be improved by effective and streamlined compliance procedures.

Notwithstanding these benefits, there may be hazards associated with the decriminalisation of IPR offences. Reducing fines for non-compliance, according to critics, would lessen the deterrent power of IPR rules and lead some people to view monetary penalties as a reasonable expense rather than a rigid legal requirement. The measure addresses these issues by providing for recurring fee increases, which will assist to sustain the sanctions' long-term efficacy as a financial deterrent. This adaptability shows a careful approach to striking a balance between laws that support innovation and the integrity of IP rights.

The Jan Vishwas Bill's execution will ultimately determine its success. To guarantee that the objectives of the law are fulfilled without jeopardising the protection of IP rights, it will be essential to implement efficient compliance procedures and conduct regular evaluations of penalties. By adopting this well-rounded strategy, India can align with worldwide IPR norms and foster an atmosphere that is more favourable for innovation and growth. If handled properly, this law might be crucial to India's goal of long-term economic expansion by fostering the development of a vibrant innovation ecosystem that protects the fundamentals of artistic and intellectual pursuits.

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