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## Regulations on Piracy and Pirated works in India: An Analysis

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*The development of an original process of sharing and transferring data, the growth of e-business, as well as the creation of a common platform for nations and their people, have all been facilitated by the Internet, which has created boundary-less territories. A significant negative aspect of this development is online piracy. Concerns have been raised about the widespread infringement of intellectual property (IP) through unauthorized copying and unauthorized downloads. It is necessary to consider the significant impacts of piracy on the creative and software industries, and laws enacted and enforced against copyright infringement to control digital piracy. Furthermore, while anti-piracy legislation in India addresses some aspects of piracy, it does not address the problem entirely. It is urgent for India to further improve existing laws and impose them in a way that will deal with the modern difficulty while also considering technological developments that seem to be expected to result in more complicated problems.*

**Keywords:** *internet, online piracy, copyright infringement, internet laws, industry.*

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### INTRODUCTION

Computer-assisted technologies for communication like the internet and online correspondence have improved the communication method's entire aspect by making it more resourceful and economical. How several kinds of information can converse has also been revamped radically. All of these have improved interpersonal communication due to their availability and lower cost, but they are the ones that most seriously endanger copyright. Contemporary

communication channels rely heavily on various products with copyright and are exposed to widespread piracy if adequate safeguards are not taken.<sup>1</sup> The unlawful duplication or distribution of copyrighted works, such as software, books, music, and movies, is known as piracy.<sup>2</sup> Online piracy is a major issue in India. According to the MUSO 2018 report, “India had 9.5 billion visits to pirated sites in 2018”. Businesses from across the creative industries are witnessing an increase in content being pirated and illegally accessed online as more people consume material online, whether it be through computers or smartphones. Hence, it becomes imperative to examine the laws that have been passed to prevent or control digital piracy and related activities. This article will discuss the effects of online piracy on various sectors of the creative industry, as well as the relationship between copyright and the internet. It also discusses the legal provisions available in other countries regarding piracy, followed by an examination of the existing laws and judgments in India. In the end, recommendations have been made that will aid in tackling the rampant issue of online piracy and the way forward for building a stronger IP system that addresses the requirements of the technological era.

## IMPACT OF PIRACY ON THE CREATIVE AND SOFTWARE INDUSTRY

Copyright piracy is a kind of stealing that results in monetary loss for the titleholders of the property. Piracy harms the general public's imaginative potential because it denies artistic people such as writers and artists their legitimate dues.<sup>3</sup> Piracy occurs in various ways across different segments of the copyright industry, and the essence and scope of piracy also differ.<sup>4</sup>

### A. *Literary Works*

If a person steals a book from a bookstore, he will almost certainly be apprehended by the police force and would be in prison. However, if a book is reprinted and sold by him without

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<sup>1</sup> NK Nair et al., ‘Study on Copyright Piracy in India’ (*Copyright*, December 1999) <<https://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>> accessed 05 November 2022

<sup>2</sup> William L Hosch, ‘Piracy copyright crime’ (*Britannica*, 28 September 2022) <<https://www.britannica.com/topic/piracy-copyright-crime>> accessed 05 November 2022

<sup>3</sup> NK Nair (n 1)

<sup>4</sup> *Ibid*

authorization he will most likely have made his money before anything bad happens to him. The law is not sufficiently robust. Book pirates have prior knowledge of what will be profitable. From their perspective, the best sellers in India appear to be textbooks for schools and colleges, well-known Hindi novels, and Western-published English fiction.<sup>5</sup> It is challenging to gauge the scope of piracy due to its covert nature and dispersed operations. “One publishing executive who had looked into the matter in 1970 estimated that it made up 7% of the entire publishing industry.”<sup>6</sup> At the moment, the law that regulates piracy is non-cognizable. Publishing houses must submit a petition to the district magistrate to safeguard their rights. The police are then tasked with investigating the case, and they are told to report back to the magistrate. The process involves a protracted legal battle that could drag on for years. Publishers are requesting stronger legislation and the criminalization of piracy as a result. The pirates might not be completely stopped, but they can be subdued.<sup>7</sup>

### ***B. Music Industry and Cinematographic Work***

According to the 2019 IMI Report, “Piracy costs the music industry approximately 1,000 crores annually, or 67% of the market; the average rate of piracy worldwide is 27%.”<sup>8</sup> Piracy stifles economic growth in the music industry, leaving creators, music producers, and songwriters, underpaid for their expenditures on allocation, advertising, and the creation of content. Since illegal downloading of music promotes the belief that it is an unrestricted good, it has a bigger effect on perception and has a serious effect on music sales.<sup>9</sup> Legitimate methods of accessing music, on the other hand, are gradually gaining traction because of the rise of new

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<sup>5</sup> IRRO, ‘The Book Piracy Game Out’ (*irro.org.in*, 26 October 2019) <<https://www.irro.org.in/the-book-piracy-game-out/>> accessed 05 November 2022

<sup>6</sup> *Ibid*

<sup>7</sup> IRRO, ‘The Book Piracy Game Out’ (*irro.org.in*, 26 October 2019) <<https://www.irro.org.in/the-book-piracy-game-out/>> accessed 05 November 2022

<sup>8</sup> Blaise Fernandes, ‘Why Combating Music Piracy in India is a losing battle’ (*Economic Times*, 4 June 2020) <<https://economictimes.indiatimes.com/industry/media/entertainment/view-why-combating-music-piracy-in-india-is-a-losing-battle/articleshow/76182858.cms?from=mdr>> accessed 05 November 2022

<sup>9</sup> Lata Jha, ‘Streaming Platforms on way to curb music piracy in India: Report’ (*Live Mint*, 3 September 2019) <<https://www.livemint.com/companies/news/streaming-platforms-on-way-to-curbing-music-piracy-in-india-report-1567505376624.html>> accessed 05 November 2022

streaming services such as Spotify, Amazon Prime Music, and others. Compared to illegal MP3s or CDs, streaming websites are significantly less expensive, if not completely free.<sup>10</sup>

The largest global entertainment business is the Indian film industry, releasing 1000 films annually across the globe. The Bollywood industry earns more than \$2 billion a year in revenue from Album sales, TV distribution deals, and new movies. In contrast, the movie industry is a sensitive suspect of piracy. India ranks fourth in the world for online movie piracy as per a survey conducted<sup>11</sup>. As all new movies are made freely accessible on pirated websites like Tamilrockers and Telegram within hours of their official launch, piracy has grown to be a dangerous concern to the movie business.<sup>12</sup>

### C. Computer Software

The act of copying and using software without the designer's consent is known as software piracy. Likewise, loading single-user license software on various websites or using it concurrently by multiple users is considered software piracy. Installing pirated software, finishing one's work, and then removing the software from the computer with adequate proof to prove the activity are also punishable as piracy.<sup>13</sup> The future of the computer software industry is jeopardized by software piracy. When legitimate companies sell pirated software, they lose money, and this decline in sales frequently results in job cuts in the software and associated sectors. Additionally, there is a possibility that these earnings will be utilized to support additional, illicit enterprises. Around the world, software piracy expenses the software sector over \$33 billion annually. The impact of pirated software on the Indian economy will indeed be substantial because the software sector is expanding more quickly than traditional industries.<sup>14</sup> As technologies and markets evolve at such a rapid pace, it is crucial to

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<sup>10</sup> *Ibid*

<sup>11</sup> Swati Shalini, 'The Legal Battle Against Online Piracy in India' (*Myadvo*, 24 July 2018) <<https://www.myadvo.in/blog/the-legal-battle-against-online-piracy-in-india/>> accessed 05 November 2022

<sup>12</sup> 'Piracy: The Threat & Ways Film Industry Attempts to Tackle the Issue' (*ABP News Bureau*, 8 June 2022) <<https://news.abplive.com/entertainment/piracy-the-threat-ways-film-industry-attempts-to-tackle-the-issue-1536026>> accessed 05 November 2022

<sup>13</sup> Prashant Mali, 'Software Piracy Laws in India' (*Academia*, January 2012) <<https://www.academia.edu/resource/work/7049191>> accessed 05 November 2022

<sup>14</sup> *Ibid*

equip the system of justice with the necessary tools to react quickly and appropriately to new advancements in technology.<sup>15</sup>

## CONVENTIONS ON A GLOBAL SCALE

Before delving into the prevailing laws, and initiatives, in India, as well as the types of offences, it is essential to examine the regulations proposed and adopted at the national level by other countries.

### A. USA

The Digital Millennium Copyright Act (DMCA), enacted in 1998, amended the Copyright Act to add Section 512 in particular, that limited service providers' liability in internet infringement of IP rights. It is built on the notion of a safe harbour, which, among other things, defends ISPs' rights in instances of third-party contravention.<sup>16</sup> According to critics, the DMCA is ineffective against foreign websites. To tackle the problem of foreign websites, the Stop Online Piracy Act (SOPA) had been initiated in 2012. If one cannot force overseas sites to remove copyrighted content, one can at least restrict US businesses from offering their services to those web pages. Additionally, there is a chance to make it more challenging for US Web users to locate and access the sites.<sup>17</sup> Opponents of said legislation pointed out flaws such as the fact that SOPA only targets websites and not online users. A court order may be used to revoke the legitimacy of a website, with no opportunity for appeal. They also claimed that SOPA would circumvent the "safe harbour" liability protections currently provided to websites by the Digital Millennium Copyright Act. Finally, it could be contended that when spotting unusual activity, deep packet inspection may occur, which may violate users' right to privacy.<sup>18</sup> SOPA was eventually

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<sup>15</sup> Nikita Hemmige, 'Piracy in the Internet Age' (2013) 18 *Journal of Intellectual Property Rights*

<sup>16</sup> *Ibid*

<sup>17</sup> Julianne Pepitone, 'SOPA Explained: What it is and Why it Matters' (*CNN Business*, 20 January 2012) <[https://money.cnn.com/2012/01/17/technology/sopa\\_explained/index.htm](https://money.cnn.com/2012/01/17/technology/sopa_explained/index.htm)> accessed 05 November 2022

<sup>18</sup> Nikita Hemmige (n 15)

defeated; its spirits live on. It is preserved in legislation such as the “European Union Copyright Directive as well as the CASE Act.”<sup>19</sup>

## B. UK

In June 2012, the “Digital Economy Act of 2011” was enacted. The Act addressed issues concerning digital encroachment on intellectual property, such as copyright infringement, television and wireless systems, the laws governing the same, and so on. Internet providers and copyright owners are the two main parties involved in the copyright Act. The holders are typically businesses that manage or own copyrights for the works of other people. They work together to develop a system that will allow law enforcement to investigate those who download content illegally. Additionally, it increases the authority to take action on the occasion of an infraction. It is important to note that the legislation addresses both the affected neighbouring rights as well as the primary issue of piracy.<sup>20</sup>

## C. Spain

“Statistics show that 77% of film installs and 97.8% of downloading music in the initial half of 2010 were illegal.” Such illicit activity is to be eradicated by the “Sinde Law”. The public authority will have the power to deactivate any website that permits such transactions, just like in the UK, and grant the right owners the right to take legal action to recoup any losses they suffer. The procedure must be completed in ten days to guarantee a reduction in the amount of online piracy. It has stood the test of time although there was a considerable amount of opposition from copyright holders and other businesses. Being at the top of the list of countries around the world for digital piracy makes it noteworthy that they have among the strictest laws in place.<sup>21</sup> India must keep track of such regulations since these safeguards may indeed be needed if these issues become inevitable.

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<sup>19</sup> Katharine Trendacosta, “Ten Years Later, How Has SOPA/PIPA Shaped Online Copyright Enforcement?” (Electronic Frontier Foundation, 17 January 2022) <<https://www.eff.org/deeplinks/2022/01/its-copyright-week-2022-ten-years-later-how-has-sopapipa-shaped-online-copyright>> access 05 November 2022

<sup>20</sup> Nikita Hemmige (n 15)

<sup>21</sup> *Ibid*

## ANTI-PIRACY LEGAL PROVISIONS IN INDIA AND GOVERNMENT INITIATIVES

India has transformed its law as a TRIPs Agreement signatory to provide maximum intellectual property protection at an international level<sup>22</sup>. In India, all forms of creative, lyrical, and theatrical work—including that of filmmakers and cinematographers—are protected by the “Copyright Act of 1957”. The Indian government has been compelled to take significant measures to safeguard the rights of filmmakers and distributors as a consequence of the increase in online piracy. The government's amendment to the Copyright Act is one such measure to combat India's rampant online piracy.<sup>23</sup>

By amending piracy laws, “The 2012 Copyright (Amendment) Act” revolutionized Indian copyright laws. The application of Technological Protection Measures by rights holders is shielded from evasion or violation by “Section 65A”. Copyright holders use TPM to safeguard their ownership of copyrighted works. If someone violates the owner's IPR by evading TPM, individuals may face up to a two-year sentence in jail and a fine. The pirated dissemination of copyrighted content is also addressed by the “Information Technology Act of 2000.” Under Section 66 of the Information Technology Act, a person may receive a sentence of as much as 3 years in jail and a fine of up to Rs. two lakh.<sup>24</sup>

“The Copyright Act (Amendment), 2012” contains clauses on Obligations Concerning Technological Measures which are stated in Articles 11 of the WCT and 18 of the WPPT as well as the Rights Management Information which is mentioned in Articles 12 of the WCT and 19 of the WPPT in support of the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty. The legislature wants to stop the widespread piracy in the nation while also giving copyright owners technological tools that will help them enforce their rights in the digital era.<sup>25</sup> A vision document for the nation's forthcoming project IPR development, the “National Intellectual Property Rights Policy 2016” was sanctioned in May 2016. It creates a formal framework for implementation, management, and assessment. Having strong and

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<sup>22</sup> K A Dhanya, ‘Software Piracy: An Indian Perspective’ (April 2019) 6(4) JETIR

<sup>23</sup> Swati Shalini (n 11)

<sup>24</sup> *Ibid*

<sup>25</sup> Nikita Hemmige (n 15)

efficient Copyright regulations that strike an equilibrium between the needs of copyright owners and the general public interest is one of the objectives of the policy. It seeks to include and modify best practices from around the world for the Indian context. India's position in the "Global Innovation Index (GII) of WIPO" has improved under the new IPR policy, moving up from 81st in 2015 to 52nd in 2019. Additionally, institutional mechanisms for promoting and protecting IP have been strengthened.

The state government's creation of the Kerala Anti-Piracy Compartment is a laudable effort. To coordinate intelligence gathering, inquiry cooperation, and immediate examination of pivotal offences to detect their source and also online distribution, the Cell works as a central entity under the "Crime Branch Crime Investigation Department". The intention was to prevent online copyright infringement in the Malayalam movie industry, which was losing a lot of money because of tax and royalties evasion.<sup>26</sup>

However, the importance of having a strong enforcement system has been emphasized. To guarantee that content-based enterprises can effectively counteract physical as well as digital piracy and develop fresh methods for content delivery, it has also urged that India implement anti-camcording legislative action and enhance protection measures against online illegal file sharing, signal robbery, and the obfuscation of technological protection measures. India is still listed as a priority watch list country by the "United States Trade Representative" due to alleged infringement of intellectual property rights.<sup>27</sup> It described India as "one of the world's most challenging major economies" in terms of intellectual property protection and enforcement in its most recent Special 301 report.

## JUDGMENTS AND 'ASHOK KUMAR ORDER'

Indian courts have implemented a new type of court order known as the "John Doe Order" or "Ashok Kumar Order" to battle online piracy in India. People who are anonymous to the world at large are frequently referred to as John Doe. Simple ex parte court orders used by rights

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<sup>26</sup> *Ibid*

<sup>27</sup> *Ibid*



holders to stop unidentified infringers are known as John Doe orders. It is employed when a producer or filmmaker foresees the possibility of film piracy but does not know the identity of the potential pirate or infringer. In Bollywood production companies, a "John Doe" copyright case is facilitated under "Order 39 Rule 1 and 2 perused with Section 161 Civil procedure code."<sup>28</sup>

In *Taj Television v Rajan Mandal*<sup>29</sup>, a court in 2003 halted unlicensed cable operators' transmission of the FIFA World Cup and issued the plaintiff consent to probe and detain devices belonging to unidentified defendants, which established the precedent for the John Doe order in Indian law.

The outdated practice of banning an entire webpage due to encroaching content causes the piracy rate to increase rather than decrease as offenders discover new ways to violate. The "*Dishoom (2016)*"<sup>30</sup> case's High Court order has also been modified. According to Hon'ble Justice Patel's decision, in this case, blocking an internet site is not allowed if it can be proven that the website is entirely made up of pirated or illegal content. In the Dishoom case, the court thus struck an equilibrium between the protection of constitutional rights and ISP freedom. ISPs could be safeguarded and the validity of the complainant's claims could be verified in this way.

The John Doe order jurisprudence in India is currently in its early stages. The number of John Doe orders issued has increased in tandem with the rise in piracy. The courts are making every effort, as has already been mentioned, to stop the problem of piracy. To ascertain and put into action the required actions in instances of web blocking, the courts must adopt more stringent procedures.<sup>31</sup>

The Delhi High Court expressed grave concerns about software piracy through *Microsoft Corporation v Yogesh Popat and others* and granted the aggrieved party Rs 1,975 million in

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<sup>28</sup> Devika Sharma, 'John Doe Jurisprudence - The Much-Awaited Hero of Bollywood' (SCC Online, 20 January 2021) <[https://www.sconline.com/blog/post/tag/piracy/#\\_ftn20](https://www.sconline.com/blog/post/tag/piracy/#_ftn20)> accessed 50 November 2022

<sup>29</sup> *Taj Television v Rajan Mandal* (2003) FSR 22

<sup>30</sup> *Eros International Media Ltd v Bharat Sanchar Nigam Ltd* Suit (L) No 751 of 2016

<sup>31</sup> Devika Sharma (n 28)

compensatory damages for the alleged software piracy by the defendants. Using this case as precedent, the Delhi High Court awarded the plaintiffs Rs. 2.3 million in damages in *Microsoft Corporation v Kamal Wahi*<sup>32</sup>.

In its landmark ruling in the case of *Kent Ro Systems Ltd. v Amit Kotak*,<sup>33</sup> the Supreme Court clarified that intermediaries are not required to screen content before publishing or broadcasting. The same holds regardless of whether it violates any intellectual property rights. This case clarified the liabilities of intermediaries in cases of online piracy. The judgments rendered by the judiciary thus far may serve as a legal precept that other courts may use in cases they hear in the future. The judiciary should take an active part in this process to improve the protection of IP rights in India.

## ANALYSIS

Piracy of intellectual property is an issue as old as the IP rights itself. It has just recently received attention, and available statistics indicate the scale of illegal downloading and affiliated financial damage in India, implying that copyright infringement is a real concern. The contributing factors of copyright piracy are inadequate enforcement and an absence of knowledge of copyright issues. India's intellectual property laws are comparable with those in several developed nations in Europe and the United States, where copyright is a major concern. Regulations, on the other hand, only have so much power if they are implemented properly. The country's enforcement system is inadequate.

Also, law enforcement officers, who have a big part to play in stopping piracy, don't fully understand all the laws. Additionally, it is difficult to find police staff who can focus solely on copyright violations. The police are less concerned with copyright-related crimes than with general peace and order issues. Additionally, very few end users are aware of the issue. When buying a copyrighted product, the majority of buyers don't pay attention to copyright notifications. Users don't mind knowingly purchasing pirated goods as long as they are

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<sup>32</sup> *Microsoft Corporation v Kamal Wahi* CS (OS) 817 2004

<sup>33</sup> *Kent RO Systems Ltd & Ors v Amit Kotak & Ors* 2017 (69) PTC 551 (Del)

inexpensive, which is typically the situation with pirated goods. Besides, the judiciary has begun to prioritize piracy cases when they come before them. The judiciary must take even more care in addressing piracy issues by issuing appropriate decisions promptly. Otherwise, the rate of piracy will not decrease. However, we also lack a diverse set of precedents because most parties avoid litigation and settle piracy-related disputes out of court.

The government must strike a delicate balance between ensuring the effective implementation of existing laws and introducing newer incentives and laws that deter infringement while not causing revenue loss. Furthermore, public awareness of the importance of IPR must be raised. While content consumption in India has reached an all-time high, stakeholders must pay close attention to educating internet users about the dangers of piracy. Specialized courts are required for the effective implementation of intellectual property laws. Promoting a good intellectual property (IP) protection system will not only boost the spirit of creativity and innovation but will also help the country shine on the global stage.

## CONCLUSION

Piracy is a widespread issue that requires diplomatic resolution. To develop effective anti-piracy strategies, stakeholders must work together as content consumption and digital access continue to rise. India must address any gaps in its IP laws, regulations, and enforcement before it can fully benefit from the transformational advantages of a strong IP system. To encourage the Indian industry to innovate as well as to protect and enforce their innovations, more knowledge about the creation, protection, and enforcement of IPRs is required. With the aid of an efficient and fair intellectual property system, all nations can realize the potential of intellectual property as a catalyst for development as well as social and cultural well-being.