

An Overview of Copyright Infringement in India And OTT Platform

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Abstract

The OTT industry witnessed a steep rise in the COVID -19 pandemic times when the world went under a historical lockdown. Every other person was locked up in their houses. As theaters were also closed, there was no scope for films to get released, and even shooting outdoors was strictly restricted. Since then we can clearly see that OTT platforms have now become a widely popular source of entertainment for the masses.

OTT can be accessed anytime and anywhere, provided you have an internet connection and a compatible device. It also provides its Creators and the Consumers with a sense of freedom and openness. It is believed that *where there is freedom, there ought to be reasonable curbs*. It is here that a concern of Copyright Infringement comes into the picture.

Being a very new and fresh platform for publishing and viewing content, like every other environment, it must be studied and further necessary rules and regulations must be applied for the common good. Hence, there is a dire need for a comprehensive study and research on Intellectual Property Rights and their interrelation and application on OTT platforms which is sincerely attempted in the following research.

Keywords: Copyright, Infringement, OTT,

1. Introduction:

The internet has posed a threat to humans in a variety of ways. Copyright infringement is one of them. People can browse millions of websites with a single click, post anything on social media networks by altering someone else's original work; a common example of such change is the submission of research papers, in which scholars frequently use multiple sources to produce their work.

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2. Intellectual Property Rights & Over the top services:

The Copyright Act defines a direct infringement of OTT content as a copyright infringement. Under Section 2 (m), the Act specifies an infringing copy, clarifies the meaning of the right, and grants exclusive rights to the work's creator. For practically all applicable content on OTT platforms, Sections 26, 27, and 29 of the Copyright Act of 1957 define the term for which such copyright

continues to be 60 years. When content is given on a platform that could result in civil and criminal liability under Section 51 of the Act, which considers illegal reproduction or deliberate storing of the work as infringements, it is considered a direct infringement by an OTT service provider.

The internet began as a scientific and social experiment, but it has since evolved into a commercial network where new business models are always being developed in order to provide new ways of delivering services to consumers. As a result, even while the nature of the rights stays consistent in restricting the exploitation of a person's creativity and innovation, this trip is nothing short of revolutionary. The manner in which these rights are communicated and exchanged is continually changing in response to technological advancements. Telephones, phonograms, televisions, broadcasting and cable networks, satellite communications, recorders, compact discs, and the internet are all examples of communication technology that have had a significant impact on intellectual property law. (Sunil Ambalavelil, 2021)¹

3. Copyright Infringement:

Firstly everyone should be aware about the term “Copyright”

Section 14 of the Copyright Act of 1957 defines copyright as the exclusive right to conduct or authorise the doing of any of the following acts in relation to a work or any significant portion thereof:

1. Perform the work in Public
 2. Reproduce the work in any form including storing the work in any form
 3. Make any cinematographic film in respect of the work
 4. Translate the work
 5. Make an adaptation of the work
 6. Issue copies of the work to the public
- Importance of Copyright:
Copyright is important for many reasons, namely,
 - Copyright legally protects the creator's work
 - Copyright helps the author to exercise control over his work
 - It provides ownership to the creator of the work.
 - For example: The makers of the film have a copyright over the film.

So, “Copyright Infringement” means Unauthorized use of a copyrighted work is known as copyright infringement. Thus, it is the unauthorised use of another's copyrighted work, thereby infringing on the copyright holder's rights to reproduce, distribute, display, or perform the protected work.

When a copyright is infringed, it is defined under Section 51 of the Copyright Act. Copyright is considered infringed under Section 51 of the Act if:

Any act that only the copyright holder is authorised to do is done without the authorization of the copyright holder.

A person permits the use of a location for the transmission, sale, distribution, or exhibition of an infringing work unless he knows or has cause to suspect that such permission will result in a copyright violation.

Infringing copies of a work are brought into the country.

Without the permission of the copyright holder, a person reproduces his work in any manner.

(Nidhi Chhillar, 2019)²

¹<https://thelawreporters.com/intellectual-property-rights-in-ott-platforms#:~:text=A%20direct%20infringement%20of%20OTT,the%20creator%20of%20the%20work>

²<https://blog.ipleaders.in/copyright-infringement/>

4. Various OTT platforms:

The movie theatres were closed due to the lockdown that began in March 2020, and as a result, most entertainment shows and movies turned to these platforms to entertain the public. Also, when confined to their own homes, people did not have much in the way of entertainment.

In India, there are more than 40 OTT services that offer original media content via the internet.

Platforms such as Netflix, Amazon Prime, Zee5, Sony Liv, Disney+ Hotstar, and others offer good content that keeps viewers engaged.

5. Copyright Infringement and OTT

In today's age of online media, the word "copyright infringement" is frequently used. A media platform that distributes video, movies, series, audios, and other content is known as a "over-the-top" (OTT). The popularity of over-the-top (OTT) media has skyrocketed. It's critical to understand the concerns with copyright infringement on such platforms, as well as the laws that protect them from infringement.

When copyright holders want their copyrighted content blocked or removed from various digital platforms, they must show that the website or other platform is principally enabling widespread copyright infringement to the satisfaction of the court. In the case of digital platforms and applications that function as intermediaries for the distribution of pirated content, the aggrieved party can go to court and ask for the required directives to remove the infringing content from the site.

It is difficult to identify those who engage in online video piracy because their identity and other personal information may be unknown. The Indian judiciary uses the John Doe order, also known as the Ashok Kumar order, to bring such people accountable. In the case of Taj Television & Anr v RajanMandal&Ors, this was the first time it was used.

A John Doe order allows an intellectual property rights owner to defend his work by issuing a notice and taking action against anyone who infringes on the owner's rights but whose identity is unknown to him. Such orders are made pursuant to Order 39 Rule 1 and 2 of the Civil Procedure Code, 1908, as well as Section 151 of the Code and Part III of the Specific Relief Act, 1963, which deal with the Court's ability to issue a temporary injunction that becomes permanent.

A person must meet specific requirements in order to obtain a John Doe order, which are listed below:

The individual seeking the injunction must show the Court that his rights have been violated by demonstrating previous breaches as well as sporadic infringement by known and unknown parties.

Before any relief may be given, the person must convince the court that there is a prima facie case.

The individual must show that if the John Doe order is not given to him, he will suffer financial or irreparable harm.

When a court is satisfied that the plaintiff meets all of the requirements, it issues a John Doe order, which may include banning access to the information for a set period of time, depending on the remedies sought by the plaintiff. The plaintiff then has the option of publishing a public notice outlining the order's main points for the benefit of the John Doe defendants. The defendant(s) or any other aggrieved individual may also petition the court for a variation or modification of the order. The use of John Doe orders is especially effective in cases of online piracy, when the culprits' identities are frequently unknown.

The granting of such orders has increased in recent years, as it aids in the protection of copyright owners' rights and ensures that their works are not illegally distributed.

The regulations that are enacted should be in accordance with international treaties in order to ensure that national laws are consistent and to promote international cooperation in combating video piracy

in cyberspace. The World Intellectual Property Organization Internet Treaties, which lays out some actions that countries might take to protect copyright and other associated rights, is a solid step in the right direction. While India's Copyright (Amendment) Act of 2012 makes substantial changes to the current law, there is still a need for better regulations that are in line with such treaties.

Current laws should be amended to include explicit sections dealing with the issue of jurisdiction in cases of copyright infringement on the internet, as well as clear legislation regulating liability in such cases. (Tripathi, 2021)

6. Conclusion:

The increase in the number of streaming services available on the internet, as well as the associated increase in content, will only lead to increased piracy from these services. Even while present laws provide for certain measures to address this issue, additional precise rules that are in line with international standards, as well as stringent implementation, are required.

When read in conjunction with the Intermediary Rules of 2011, the Information Technology Act of 2000 deems the illegal distribution of copyrighted content to be an infraction and places duty on intermediaries to ensure that no infringing content is put on their platforms. According to the draught Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018, these platforms must develop technology-based solutions to detect and prevent infringements.

Dynamic orders have provided major relief to the media and broadcasting businesses, as well as rights holders, in combating infringements. Dynamic, legitimate online platforms that fit under the concept of intermediaries and enjoy legal immunity must prevent the criteria specified by courts to detect pirate websites. The US Supreme Court once utilised a 'Doctrine of Inducement' against a platform, holding the platform accountable for allowing the peer-to-peer distribution of copyrighted data. However, India's IP laws must be modernized to adapt to these new kinds of infringement, as there is currently no clear regulation on online copyright infringements, which has an impact on OTT platforms' incentives and money generated from their work, as their labour continues to be stolen.

Online content creators must be able to freely explore and convey their artistic viewpoints on various platforms. One of the main reasons for OTT platforms' popularity is the wide range of content available from across the world, as well as the audience's ability to watch it from anywhere in the world. The clarity of the legislation will prevent media trials and social media boycotts from stifling the distribution of excellent right content, and will function as a check on curtailing artistic freedom. The law must allow enough freedom for creators/artists to generate content, as well as freedom for the audience to pick, and finally, protection for the public interest. As a result, establishing a clear structure is critical.³⁴⁵

³<https://www.iralr.in/post/copyright-infringement-vis-%C3%A0-vis-ott-video-piracy>

⁴<https://www.njlrii.com/2021/03/intellectual-property-rights-in-ott.html>

⁵<https://www.altacit.com/ip-management/requirement-for-protecting-lawful-streaming-in-india/>