

Digital Copyright Laws in the Field of Literary and Creative Works in India

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Abstract

Rapid advances in digital technology and the proliferation of the Internet have revolutionized the way creative work is produced, distributed and consumed. In this digital environment, the protection of intellectual property rights, especially copyrights, has become a priority for creators, users and policy makers alike. This article provides an overview and analysis of India's digital copyright law, focusing on its key provisions, challenges, and implications. India's Digital Copyright Act derives its legal framework primarily from the Copyright Act, 1957, which has been amended several times to better reflect the digital environment. The law recognizes a wide variety of copyrightable works, including literary, artistic, musical, and cinematographic works. It grants the author exclusive rights to copy, distribute, adapt, and perform, and provides remedies for unauthorized use. This article vividly demonstrates that one of the biggest challenges in enforcing digital rights law in India is the prevalence of online piracy. Due to the ease of copying, sharing, and distributing digital content, copyright holders often face unauthorized copying, distribution, and public performance of their works. The rise of online platforms, social media, and file-sharing networks has further complicated the task of identifying and prosecuting copyright infringers. However, the Indian legal system provides takedown notices and remedies for copyright owners to combat online infringement. This article focused on how India's digital rights law aims to strike a balance between protecting creators' rights and promoting innovation and access to knowledge. While challenges remain, legal frameworks, including international treaties, fair use provisions, and enforcement mechanisms, provide a foundation for protecting intellectual property in the digital age.

Keywords: Proliferation, enforcement mechanisms, intellectual property rights, digital environment, social media

INTRODUCTION

Digital copyright is an expansion of some type of copyright that safeguards a creative work in platforms of digital media. This is used to guarantee that work that exists in a digital structure is safeguarded like work that exists in a physical form. This has become increasingly significant with the multiplication of computers and digital media. Digital copyright is laid out on any unique, creative work that exists in a computerized medium.

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Just like different types of copyrights, digital copyright appears and allows security and protection for work as soon as that work is created. This implies that somebody who types a story or essay of unique and original work into a computer has a copyright on that work when it is composed. Such security and protection do not stretch out to thoughts an individual might have; however, must be utilized to safeguard works that are made regardless of whether just in a digital structure.

Digital copyright is also a significant part of copyright infringement including digital piracy. Arguments have been made by those engaged with such robbery that no type of burglary happens through such privacy, since piracy frequently includes just duplicating a type of media and not really transferring a physical copy of that media. Digital copyright on a specific thing, in any case, makes that thing, and all duplicates of it, the lawful property of the copyright holder. Copies can be transferred legally through sale or permission of the proprietor; however, unauthorized copies violate the copyright and thusly can be viewed as a theft of intellectual property.

In the landmark case of *R.G. Anand v. M/S. Delux Films and Others (1978)* [1], the Court established that regardless of whether both the play and the film might have been propelled by the idea of "Provincialism," they are totally different from each other. The film likewise portrays different parts of "Provincialism, for example, "Provincialism" in the renting of outhouses, which are not portrayed in the play with regards to marriage. The play does not show the evils of dowry; however, the film does. Since the idea in both the play and the film is indistinguishable, the court struck down the appellants' case since it is deeply grounded regulation that an idea cannot be safeguarded by copyright. The Court referred to *N.T. Raghunathan and Anr. v. All India Journalist Ltd., Bombay (1957)* [2], and held that there might be a few likenesses. As indicated by the Court, a standard individual would not believe the play and the film to be a copy of the play if they somehow managed to see both. The case made by the appellants that their copyright has been abused cannot remain because of the critical aberrations between the play and the film. The Delhi High Court's choice has been kept up with court. Subsequently, the Court ruled for the respondents on the two matters, and consequently there was no infringement.

Similarly in the case of *S.K. Dutt v. Law Book Co. & ors* [3], it was held, "In order to be an infringement of a man's copyright there must be a substantial infringement of the work. A mere fair dealing with any work will not amount to infringement of copyright work."

COPYRIGHT LAWS APPLIED IN INDIA

Indian copyright regulation is at parity with the global principles as contained in TRIPS [4]. The (Indian) Copyright Act, 1957, compliant with the changes in 1999, 2002, and 2012, completely mirrors the Berne Convention for Security of Literary and Artistic Works, 1886 [5] and the Universal Copyrights Convention, to which India is a party. India is likewise involved with the Geneva Convention for the Security of Freedoms of Makers of Phonograms [6] and is a functioning individual from the World Licensed Innovation Association (WIPO) [7] and Joined Countries Educational, Scientific and Cultural Association (UNESCO) [8].

"Work" protected in India

Under the Copyright Act, 1957 [9] the expression "work" incorporates an artistic work containing a composition, a figure, a drawing (counting an outline, a guide, a diagram, or plan), an etching, a photo, a work of design or artistic craftsmanship, sensational work, literary work (counting PC programs, tables, gatherings, and PC data sets), melodic work (counting music as well as graphical documentations), sound recording and cinematographic film.

To stay up with the worldwide necessity of harmonization, the Copyright Act, 1957 [10] has aligned the copyright regulation in India with the improvements in the data innovation industry, whether it is in the field of satellite telecom or PC programming or computerized innovation. The altered regulation has likewise decided to safeguard entertainer's privileges as conceived in the Rome Convention.

Registration of Copyright

In India, the enrolment of copyright is not required as the enlistment is treated as simple record of a reality. The registration makes or gives no new right and is not an essential for starting activity against infringement. The view has been maintained by the Indian courts in a catena of decisions.

The Bombay High Court's single judge bench recently rendered a decision in the case of *Soya Private Limited vs. Narayani Trading Company* [11], stating that the registration of copyright is not required.

The defendant fought back against the copyright infringement allegation with a number of grounds. Plaintiff's ownership of the copyright with regard to the label was contested on the grounds that Section 17 of the Copyright Act of 1957 allowed the artist, not a commercial entity like a firm, to own the copyright. The former employee created the label for the plaintiff, but the court rejected this claim since it was covered by Section 17(c) of the Copyright Act of 1957.

In the case of *Dhiraj Dharamdas Dewani v. Sonal Info Systems Pvt. Ltd.* [12], The Court discussed the theft of taxation software. The Copyright Act of 1957's Sections 63, 63B, and 64 were invoked in the plea in order to seek civil and criminal remedies. These provisions state that only intentional violations are subject to conviction. It was mentioned that penal provisions must be rigorously interpreted. It was also clarified that until and unless a work is registered and published in the Official Gazette, an infringement cannot be supposed to be aware that copyright exists over it. The court interpreted Section 45 of the Copyright Act of 1957's optional registration requirements as mandatory as a result.

The court further cited the pertinent provisions of the Trade-Related Aspects of Intellectual Property Rights, 1994 [13], and the Berne Convention, 1886 [14], both of which India is a signatory and none of which mandates mandatory copyright registration. A case for copyright and trademark infringement, as well as passing off, was found to be made out by the court after an excellently reasoned analysis of the situation.

Need for Registration of Copyright

The familiarity with Intellectual Property (IP) Laws is impressively low among the enforcement authorities in India, and most of the IP case is confined to metropolitan urban communities. Even though the enrolment of copyright is not compulsory in India and is protectable through the International Copyright Order, 1999 [15], it is fitting to enlist the copyright as the copyright enlistment endorsement is acknowledged as a "proof of ownership" in courts and by police specialists and followed up on flawlessly by them.

Enforcement of Copyright in India

The law of copyright in India not just accommodates civil remedies in that frame of mind of long-lasting injunction, harms or records of benefits, conveyance of the infringing material for destruction and cost of the judicial procedures. and so, on yet in addition makes occurrences of encroachment of copyright, a cognizable offence punishable with detainment for a term which will not be under a half year, however, which might reach out to three years with a fine which will not be as much as Rs. 50,000 (approx. US\$ 800) however may stretch out to Rs 2,00,000 (approx. US\$ 3,000). For the second and subsequent offenses, there are arrangements for upgraded fine and discipline under the Copyright Act [16]. The (Indian) Copyright Act, 1957 enables the police specialists to unroll the Complaint (First Data Report, i.e., FIR) and follow up on its own to capture the blamed, search the premises of the denounced and hold onto the infringing material with no intervention of the court.

Protection to Foreign Works in India

Copyright of "works" of unfamiliar nationals, whose nations are individual from Convention Nations to which India is a signatory, are safeguarded against any encroachment of their "works" in India through the International Copyright Order, 1999 [17]. The Indian courts have likewise been favorable to dynamic for the security of copyright of unfamiliar creators/proprietors, which incorporates programming, movies including screen play of films and information base.

The Public authority of India is additionally stepping up to the plate and battle robbery in the product business, movies, and the music business alongside players in the business through their affiliations and

associations like NASSCOM (Public Relationship of Programming and Administration Organizations), NIAPC (Public Drive Against Robbery and Duplicating), and so on.

Licensing and Assignment of Copyright

Copyright in any work, present or future, must be allocated or authorized recorded as a hard copy by the copyright proprietor or his properly approved specialist.

The interpretation of Section 31 of the Copyright Act has been considered in the case of *Super Cassette Industries Ltd v. Entertainment Network (India)* [18]. On November 19, 2002, the Copyright Board of Hyderabad awarded a Compulsory license to all Radio Stations under Section 31(1)(b) of the Copyright Act, 1957 and fixed the standard rate of remuneration for a period of two years in response to requests from various Radio Stations. Super Cassette was not a party to the ruling above. However, on 28.1.2003, the Appellant (Entertainment network) submitted a request to the copyright board to grant a compulsory license against Super Cassette Industries in accordance with Section 31(1)(b) [19].

The board rejected the respondent's oral testimony, resulting in the appellant being given a license by force. Then, in response to the rates of compensation, the appellant filed an appeal with the Bombay High Court, which concluded that the provisions of Section 31 of the Act, which awards compulsory licenses in exchange for reasonable remuneration, are legal. The Delhi High Court, on the other hand, rendered a decision in favor of the respondent by referring the case back to the Copyright Board for further review.

The dissemination of the respondent's sound recordings was also prohibited by an injunction issued by the Delhi High Court. The case was then brought before the Supreme Court of India because the two judgement folds from the Delhi High Court and the Mumbai High Court were at odds with one another. On May 16, 2008, the Supreme Court ruled that the copyright board had to strike a balance between granting mandatory copyright licenses for the public good and respecting private rights. The matter was sent back to the copyright board for further review since the honorable court did not agree with how the board had handled the situation.

In *Star India Pvt Ltd v. Piyush Aggarwal* [20], the Delhi High Court held that a sound recording included a later original sound recording made from the musical and literary work, also known as a version recording, or a sound recording made after a first sound recording was made using the musical and literary work.

In the year 2019, Spotify, an audio streaming service, was introduced in India. In the case of *Warner Chappell Music Limited v. Spotify* [21], prior to the app's release, the business began corresponding with Indian music organizations to secure a license from the various record labels, including Warner Chappell Music Limited. Despite not being able to reach an agreement with Warner Chappell Music Limited, Spotify still used Section 31D of the Act to try to secure online streaming. In order to launch its online audio broadcast and streaming services in India, which included contained WCM-owned works, Spotify had to file a public notice under Section 31D [22] with IPAB [23] and deposit 528,000 Euros as an advance royalty.

Duration/Term of Copyright

Because of unique literary, sensational, melodic, and artistic works, the length of copyright is the lifetime of the creator or craftsman, and 60 years counted from the year following the demise of the creator.

Because of cinematograph films, sound accounts, postmortem distributions, mysterious and pseudonymous distributions, works of government and works of international associations are safeguarded for a time of 60 years which is counted from the year following the date of distribution [24].

COPYRIGHT TREATIES IN INDIA

A few international treaties empower reasonably sound insurance of copyright from one country to another. They set minimum guidelines of security which every signatory country then, at that point, implements within the limits of its own copyright rules, laws, and regulations. Some of the International copyright treaties are as follows:

Berne Convention [25]

It is the oldest and the most important treaty. It was signed in 1886 (but has been revised many times since). It establishes minimum standards of protection for the following:

- a. Types of works protected
- b. Duration of protection
- c. Scope of exceptions

It established the principles such as “national treatment” (works originating in one signatory country are given the same protection in the other signatory countries as each grant to works of its own nationals) and principles such as “automatic protection” (copyright inheres automatically in a qualifying work upon its fixation in a tangible medium and without any required prior formality).

WIPO Copyright Treaty [26]

It was signed in 1996. It makes it clear that computer programs and databases are protected by the concept and boundaries of digital copyright. It recognizes that the transmission of works over the Internet and similar networks. It is an exclusive right within the scope of copyright, which is originally held by the creator of the work.

It categorizes the copyright infringement as a circumvention of technological protection measures attached to works.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) [27]

It was an agreement signed in 1996. It was implemented by the World Trade Organization. It includes a multitude of provisions related to the intellectual property rights. According to this agreement, the national laws must be made effective to ensure the enforcement of the Intellectual Property Rights. It describes how enforcement of intellectual copyright shall be implemented.

COPYRIGHT INFRINGEMENT

Copyright infringement occurs when the following acts occur:

- a. Utilizing the exclusive rights vested in the copyright proprietor either corresponding to the entire copyright work or a significant piece of the copyrighted work without getting approval for the same from such copyright proprietor.
- b. Determining benefit by giving a spot to be utilized for the end goal of infringing. Exchanging or potentially bringing in infringing duplicates of a copyrighted work which incorporates showing as well as disseminating such work.
- c. For every one of the previously mentioned acts, there are criminal liabilities that are forced on the infringer by means of the Act [28]. Correspondingly, there are criminal remedies also in the Act [29] that are given to the actual owner of such copyright works. These lawbreaker remedies incorporate fines, detainment, seizing infringing copies, and conveying infringing copies to the actual owner.

Eminently, as far as possible for recording a suit for harms is a long time from the date of such copyright encroachment occurring. In addition, vicarious obligation and contributory responsibility likewise sum to copyright encroachment, even though they are not explicitly referenced in the Act [30], but rather there are various case laws that accommodate something similar. Besides, the obligation to prove any claims in such cases is generally on the arraignment. It signifies “the presence of information

with respect to the accused preceding infringement should be proved by the prosecution for practicing the criminal remedy.”

In the case of *YRF v. Sri Sai Ganesh Productions* [31], by producing “Jabardasht,” which shared significant and material similarities with “Band Baaja Baaraat” in terms of concept, theme, character, storyline, story, script, and expression among other things, Sri Sai Ganesh Productions violated YRF’s copyright. The court expanded the definition of “originality” to distinguish between the two films based on “basis, substance, and kernel” and to comprehend whether the average moviegoer would think one work was a duplicate of the other since the films are protected as original works. The court determined that copyright infringement had occurred because Sri Sai Ganesh Productions had flagrantly duplicated the essential, fundamental, and distinguishing elements of the YRF film.

In another case of *Hawkins Cooker Ltd. vs Magicook Appliances* [32], Magicook Appliances was sued by Hawkins Cooker Ltd for utilizing their well-known pressure cooker line’s label without permission. The label was registered under the Copyright Act of 1957. The use of the cookbooks by Hawkins Cooker Ltd was prohibited by the court for Magicook Appliances. It required Magicook Appliances to pay Hawkins Cooker Ltd business damages for all allegedly used books, products, and articles in producing the infringing goods.

PENALTIES FOR COPYRIGHT INFRINGEMENT UNDER COPYRIGHT ACT, 1957

Sections 63 to 70 under Chapter 13 of the Act accommodate the offenses connecting with copyright infringement. The principle penal provisions under the chapter are as per the following:

1. *Section 63* [33]: It expresses that when an individual purposely infringes or abets copyrighted work or any of the adjoining rights under the Act (e.g., entertainer rights, moral rights, and broadcast proliferation rights) he/she/they can be detained for at least a half year and a most extreme term of 3 years and can be fined between Rs. 50,000 to Rs. 3,00,000.
2. *Section 63 A* [34]: It accommodates an improved penalty for second or ensuing convictions with expanded detainment from one to 3 years and a fine going from Rs.1,00,000 to Rs. 2,00,000. Nonetheless, if such infringement is not made for the motivations behind gain in exchange and business, the courts can diminish the sentence to short of what 1 year and a fine of under Rs.1,00,000 by giving sufficient and exceptional motivations to the equivalent.
It is essential to take note of that criminal procedures in such occasions do not qualifies the copyright proprietor for get an injunction, that is to say, “if a convict infringer rehashes the infringement the proprietor should start a crisp procedure. In this way, in such cases, it is prudent to start criminal as well as civil procedures at the same time on the off chance that the stakes are exceptionally high.”
3. *Section 65 A* [35]: It states that avoid any of the successful defensive mechanical measures that can be applied to any of the rights presented under the Act. Relating to copyright, execution rights are punishable with detainment of a limit of two years and installment of a fine.
4. *Section 65 B* [36]: It states that modification of “rights of the broad data” without approval is punishable with detainment of a limit of 2 years and installment of a fine. Such expulsion or change incorporates intentionally appropriating, broadcasting, or importing to the public duplicates of work without power.

Sections 65A and 65B were embedded through the Copyright (Amendment) Act, 2012 [37] must be punishable by applying criminal remedies. “These provisions have deliberately been drafted in a preliminary design and a ton of extension has been left for judicial creativity with the goal that it tends to be adjusted to Indian circumstances.”

Different provisions under Section 13 [38] incorporate penalties for offenses like having or making plates to make infringing duplicates of works (Section 65), utilizing infringing duplicates of a PC program (Section 63B) and making misleading passages in the Register of Copyrights (Section 67).

Section 64(1) [39] states that any police officer not below the position of sub-examiner might practice the ability to seize infringing duplicates of work without a warrant. The offense under this segment is viewed as a cognizable and non-bailable offense. Section 64(2) [40] gives shields to the individual against whom such seizure has occurred to make an application to the Judge in something like 15 days of such seizure for reestablishing the held onto duplicates. This arrangement does not work with or license infringement of any way by the individual who has been charged to have committed infringement.

In the case of *Krishika Lulla & Ors. vs. Shyam Vithalrao Devkatta & Anr* [41], Broadly known as the “Desi Boys Case,” the plaintiff authored a story named “Desi Boys” and enlisted the summation with the Film Essayist’s Affiliation. He sent the rundown to his acquaintances accordingly.

Afterward, he went over the trailer and promotions of the film named “Desi Boys.” Since he comprehended that he was unable to charge infringement over his thought or story under copyright regulation, he recorded a FIR for the copyright infringement of the title “desi Boys.”

Under Section 482 of Criminal Procedure Code, Section 63 of the Act and Section 420 of Indian Penal Code. The issue which emerged under this case, was whether a literary work's title on an independent premise is a copyrighted work that is equipped for being encroached under the copyright regulation. The High Court dismissed the thought of the title of a film comprising a copyright “work” in the first place to meet all requirements for infringement. The title of the film does not fall inside the ambit of literary work.

In the case of *Cheria P Joseph vs. Prabhakaran* [42], it was held that “clear and cogent proof of knowledge is necessary to establish the commission of an offense.” Besides, a criminal court will not give a choice connecting with the issue of infringement assuming the equivalent is lying with the civil court for conclusion. Here, the complainant claimed that specific extracts of the accused’s book in Malayalam were interpretations for the book complainant book and “that they were deciphered and saved available to be purchased without his consent or information and the charged by so doing has encroached his copyright in those books consequently committing an offense punishable under Section 63 of the Act.”

CONCLUSION

India has one of the finest frameworks with regard to prosecution of copyright infringement but procedurally, like technological innovations, infringers also find innovative ways to steal and pass off the original work demoralizing the artisan guilds and industries despite the strict regulations, as we progress into this digital era, we need tangible measures in place to monitor infringements of any kinds.

For instance, the German framework is known to be notoriously rigid in matters of Internet piracy and copyright infringement in cyberspace with jail terms and hefty fines aside, special cells, and Internet sniffer networks in place to watch over ISP traffic for any illegal and unauthorized activities.

People over the period of time have been complacent in recognition and acclaim towards the commendation of fine arts not appreciating the depth of the work but craving instant gratification. Only legal measures to curb copyright are not enough to ensure the protection of the artistic work of author but way to promote the sense of patronage, respect, and admiration as an individual and society go a long way to develop a better space and environment to promote creative ideas and innovative visions with direct advantages for the enhancement of society as a unit.

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