

## COPYRIGHT VIOLATION IN SOCIAL MEDIA CULTURE – A LEGAL STUDY IN INDIAN SCENARIO

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### Abstract

*Copyright, which provides authors of original work of literature, musical, dramatic or artistic work, or audio recordings, cinematographic films a legal right over their works, is intertwined with technological development and the advent of social networking platforms has posed fresh challenges before the Government for the protection of copyrights of the owners. There are various ways in which the copyright of a person gets infringed on social networking sites on a daily basis. The issue with this infringement is that it is not dealt with in a proper manner in India. This research paper has kept its focus on the nature and concept of copyright, along with a brief introduction to social networking sites. The paper then shifts its focus upon how the social media culture is infringing the copyrights of the owners. It also highlights the international as well as national perspectives on this issue before discussing the opinion of the Indian judiciary on the matter of violation of copyright in the age of social media. The paper emphasises on a few common social networking applications, such as Facebook and YouTube. The paper winds up with suggestions on the steps which can be taken for ensuring a check on infringement of copyright.*

**Keywords:** Copyright, Social-Media, Infringement of Copyright, Facebook, YouTube.

### 1. Introduction

The recent years have seen tremendous growth of the social networking sites, which helps the users to share information in a click of a button. The organisations or even the individuals are able to share, communicate or market their products or themselves. It has increased the ambit of the audience. The users of the social media platforms are encouraged to share content, both third party content as well as original

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content of the user. For this purpose, there are various tools offered by the social media platforms which include re-post, share or retweet.

The platforms help in the conduct of digital businesses and make them seem more lucrative. The main source of their revenue generation is through advertisement. Hence, these networks encourage sharing because when the number of people using the platforms increases, it makes advertisements more valuable, thereby increasing their revenue.

The concept of sharing or re-sharing on social media networks are in total contrast to the impact of the law of copyright. Law of copyright is responsible for regulating the usage of literary, artistic or dramatic work etc. In the online medium, the acts of copying as well as communicating the works of a person having copyright over that without his permission to the public is regulated by the law of copyright. The evolution of the social media networks and the development of the sharing culture has indeed impacted the ability of the law of copyright in fulfilling its purpose. The relevance as well as effectiveness of the regulation pertaining to copyright is challenged in the era of social networking.

In the recent years, the need of copyright regulations with regard to social networking platforms has been recognised in the political sphere. The United Kingdom Intellectual Property Office has released a report emphasising the impact of social networking platforms on infringement of Intellectual Property Rights.<sup>1</sup> The research showed that as per industry groups, together with private and government enforcement agencies, numerous activities takes place resulting in online counterfeiting. These activities include fan pages, impersonation, pages transacting businesses, proliferation of websites that sells counterfeits, promotion, offer of false special offers, etc. It was argued in the report that a crucial role is played by the social media platforms in distribution and sale of pirated or counterfeited goods. Social media has been defined as the haven for counterfeits, disseminating through closed and open pages in the groups, along with using retweets, likes and fan pages. The report shows that social networking platforms provide opportunities for infringement of Intellectual Property Rights.<sup>2</sup>

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<sup>1</sup> Dennis Collopy and Tim Dyre, "Share and Share Alike: The Challenges from Social Media for Intellectual Property Rights" 7 (Intellectual Property Office, 2017).

<sup>2</sup> *Ibid.*

According to another study conducted on teenage groups by Common Sense Media, that survey 2,600 teens, concluded that nine hours in a day were spent by the young generation on social networking sites. It was also observed that for the young generation, the main value of media was listening to music and watching television. Social networking platforms, can therefore, be referred as the major platform for e WOM (Electronic Word of Mouth), which means an online version of the ancient form of marketing, i.e., Word of Mouth, and is a major player in online consumption as well as sharing of material that is copyright protected.<sup>3</sup>

## 2. Copyright – A Legal Right

Copyright is a form of intellectual property right which gives the authors of original work of literature, musical, dramatic or artistic work, or audio recordings, cinematographic films a legal right over their works. It can be sought for Books, pamphlets, lectures, address, choreographic works, musical composition, cinematographic work, drawing, painting, photography, applied art, sketches, 3d work, topography, architecture, translations, collection of literary works, computer programme etc. The Berne Convention 1886 first protected literary and artistic work created by the author in the form of book, music, painting, sculpture, films etc. Now technology based works like computer database etc. is also included within the term copyright. Copyright includes expression of ideas but not the idea themselves. Rather than protecting the ideas, the law of copyright protects the manifestations of such ideas. It gives the owner exclusive right to enjoy his or her creation and claim the right against the whole world who are copying it. This right includes economic rights which are given to the owner as financial form and moral rights to protect their work from violation and take action. The owner can prevent others from copying his original work. In case of social media and copyright violation the economic and moral rights of the copyright owner are violated by the users rampantly which cannot be considered free use for reproduction or fair dealing.<sup>4</sup>

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<sup>3</sup> Hayleigh Boshier and Sevil Yeşiloğlu, “An Analysis of the fundamental tensions between Copyright and Social Media: The Legal Implications of sharing images on Instagram”, 33(1) *International Review of Law, Computers & Technology* 2 (2018).

<sup>4</sup> Prachi Tyagi, “Social Media and Copyright: An Indian Perspective”, 28 *Journal of Intellectual Property Rights* 406 (2023).

The Copyright Act of 1957 is the Indian law governing copyrights in India. The Act has two-fold objectives,<sup>5</sup> firstly, it aims to guarantee the musicians, artists, painters, designers or any other creative individuals a right on their creative interpretation and secondly, it enables every other person to develop upon the knowledge and the concept available by a work.

The history of the Copyright evolution<sup>6</sup> in India can be traced back to the British Colonial era, when the Indian Copyright Act of 1847 was introduced, which got repealed and India got the Copyright Act of 1911. The 1911 Act was made applicable to all British colonies including India. The Act was again amended in 1914 which remained in force in the nation till the first Indian legislation on Copyright post-independence was introduced in 1957. Since then, it has undergone various amendments, the most recent one being in 2012.

The Indian Copyright Act of 1957 under Section 13 talks about the particular works on which copyright subsists. It is not talking about copyright subsisting in case of social media. Copyright can be defined as a collection of certain exclusive rights that are granted to the copyright owner under Section 14 of the Act. The Act ensures that the copyright owner or the person having permission of the owner can exercise the rights, which includes the right to reproduce, publish, adopt, translate, and communicate with others, etc.

Copyright has the main objective of advancing science and using art for compensating owners or authors for their creative works.<sup>7</sup> To ensure this, the authors are provided with the right to creative expression as well as allows others to enhance the knowledge and concepts presented in a particular work in future. It guarantees original expression of songwriters, writers, artists, designers, etc. and also sound recording or film producers, to present their works to the public. It also ensures that the knowledge or suggestion of a work can be used freely by others to expand their areas.

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<sup>5</sup> Manish Jindal, "Objectives of Copyright Act, 1957", available at: <https://bytescare.com/blog/objectives-of-copyright-act-1957> (last visited on August 08, 2023).

<sup>6</sup> G. R. Raghavender, "A Brief History of Evolution and Development of the Copyright Law of India (67<sup>th</sup> Anniversary of the Enactment of the Copyright Act, 1957 on 4<sup>th</sup> June, 2023)", available at: <https://www.linkedin.com/pulse/brief-history-evolution-development-copyright-law-india-gr> (last visited on August 08, 2023).

<sup>7</sup> *Supra* note 5.

There is certain unrestricted use of contents of copyrights ensured by the legislation for establishing harmony between the copyright owner's rights and the welfare of the public for the betterment of the society. The Madras High Court has observed that the law of copyrights aims to preserve the fruits of the efforts, talent, labour and test of a man from annexing by other persons.<sup>8</sup>

By nature, copyright is an incorporeal property.<sup>9</sup> The copyright is referred as a property because the work was created or developed by the owner, having rights on his work. The owner of the property has two ways to dispose of his property: first, outright sale or second, license. Copyright is a collection of legal rights and is a negative right as it allows the owner of the copyright to restrict others from using his work in an unfair manner or carry out any other action that by virtue of the law of Copyright, only he is entitled to exercise.

### 3. Social Media – An Age of Revolution

Social media can be referred to as various technologies which facilitates sharing of information and ideas among users. From Instagram<sup>10</sup> and X Platform<sup>11</sup> to Facebook<sup>12</sup> and YouTube,<sup>13</sup> there are more than 5 billion people who use social media, which forms an estimate of around 60% of the population of the world.<sup>14</sup> Social media began as a means of interaction for people with their families and friends easily and in no time, but gradually it spread its ambit to fulfil different purposes. In recent years, the utilisation of social media has surged, particularly following the introduction of Twitter and Facebook to the market. Businesses also navigated towards social networking platforms for a wider

<sup>8</sup> *Sulamangalam R. Jayalakshmi v. Meta Musicals, Chennai*, (2000) 20 PTC 681.

<sup>9</sup> Incorporeal Property are the rights or legal claims over such things which cannot be touched or seen. The focus of incorporeal properties are intangible things.

<sup>10</sup> Instagram is an online, free photo-sharing social networking platform or application acquired by Facebook in 2012. It is owned by the USA Company Meta Platforms. Instagram is a free, online photo-sharing application and social network platform that was acquired by Facebook in 2012. <https://www.techtarget.com/searchcio/definition/Instagram>.

<sup>11</sup> X is a free social networking site which allows the users to broadcast small posts known as tweets, which includes texts, videos, links or photos. It was acquired by X Corp, owned by Elon Musk. The mark 'X' symbolises the ambition of the platform to become an all-encompassing 'everything-app'.

<sup>12</sup> Facebook (sometimes shortened to FB) is a social networking site started in February 2004. It helps in connecting with friends and family and sharing photos, videos, posts with wide range of people, message or call friends and families or even video chat. It was built by Mark Zuckerberg and is now owned by Meta, Inc.

<sup>13</sup> YouTube is a website that allows free video sharing and makes it easy for anyone to watch the videos online. Videos can be created or uploaded and then shared with others.

<sup>14</sup> "Digital 2023: Global Overview Report", available at: <https://datareportal.com/reports/digital-2023-global-overview-report> (last visited on August 10, 2023).

reach on a scale at the global level. As per the Global Web Report, approximately 45% of the internet users, especially youth generation gets update on their news through social media.<sup>15</sup>

It has been observed that social media has an enormous role to play in marketing strategies of the businesses, as it is evident that people spend many hours on social media platforms. With this, we must also keep in mind that social networking is a constantly changing and evolving field, with apps joining the ranks of established networks every now and then.

There are six categories of social media platforms:

- Social networking – It can be defined as the usage of certain websites and apps for interacting with different users, or search for people having common interests.
- Social bookmarking – It is a process whereby a web page is tagged with a tool that is browser-based which helps the users to visit again if they need it.
- Social media news – The news published, shared or reported by any user in a social networking platform can be referred to as social media news.
- Media sharing – It allows the user to upload videos, photos or audios to a website which may be retrieved from anywhere across the globe.
- Microblogging – It helps a person to find an audience for saying something. In other words, the practice and activity of making short and frequent posts to a microblog.
- Online forums – A space in internet that is structured around or is dedicated for conversation via questions or answers, as well as responses getting posted.

The abovementioned diverse platforms serve many purposes and interests of the users. People utilise these platforms for their personal needs, some people use it to find others having same political view as them, entertainers engage in social media to interact with fans, politicians use social media to connect with their voters, even the government use social media platforms for conveying important information in cases of emergencies.

Social networking platforms have proved to be a vital marketing tool for businesses. Companies engage in usage of the platform with customers, increase sale by

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<sup>15</sup> “Global Web Index: the Global Media Landscape”, available at: <https://www.gwi.com/reports/global-medialandscape> (last visited on August 10, 2023).

the help of promotion and advertisement, identify trends as well as needs of the consumers, etc. People are allowed to access information and connect with others in matters of minutes with the aid of social media platforms. This helps in making the world interconnected. However, like every coin has two sides, social media also has its own share of disadvantages. It spreads wrong or false information really fast, creates polarisation, and also leads to psychological issues.

According to a survey conducted in 2019, usage of social networking platforms is inter-related along with having more diverse networks personally and having more friends, especially in emerging economies.<sup>16</sup> Another survey of 2023 talks about the impact of social media networking on life of citizens.<sup>17</sup> Around 80% of the teens are of the view that social media platforms helps them feel more connected with their peers. 59% stated that the social media platforms has neither positive nor negative impacts upon them, while one in every three participants confirmed that social media platforms has more positive effects when compared to negative effects.<sup>18</sup>

However, it has been noted by the Mayo Clinic<sup>19</sup> that overuse of social media platforms by the teens affects their mental as well as physical health, distracts them, disrupts their sleep, exposes them to face bully, develops unrealistic assumptions about lives of others, spreads rumours and also creates peer pressure. On the other hand, businesses have found social media platforms to be of great help, it is more effective and less expensive medium for reaching consumers along with building an image of the brands. As per Facebook, approximately 200 million small businesses utilise the services provided by the sites for many purposes.<sup>20</sup> Further, an approx. of 90% of the businesses

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<sup>16</sup> Laura Silver and Christine Huang, "Social Media Users More Likely to Interact with People who are Different from Them", *available at*: <https://www.pewresearch.org/internet/2019/08/22/social-media-users-more-likely-to-interact-with-people-who-are-different-from-them/> (last visited on August 11, 2023).

<sup>17</sup> "Social Media in India – 2023 Stats & Platform Trends", *available at*: <https://oosga.com/social-media/ind/> (last visited on August 11, 2023).

<sup>18</sup> Monica Anderson, Emily A. Vogels, *et.al.*, "Connection, Creativity and Drama: Teen Life on Social Media in 2022", *available at*: <https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022/> (last visited on August 11, 2023).

<sup>19</sup> Mayo Clinic, "Teens and Social Media Use: What's the Impact?", *available at*: <https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437> (last visited on August 12, 2023).

<sup>20</sup> Sheryl Sandberg, "The Small Business Recovery is Underway, but Inequalities and Challenges Persist", *available at*: <https://about.fb.com/news/2021/09/state-of-small-business-recovery/> (last visited on August 12, 2023).



state that they use Facebook for promoting their brands.<sup>21</sup> There are various social media platforms, but the most common ones are Facebook, YouTube, WhatsApp, Instagram, WeChat, TikTok, Facebook Messenger, Telegram, Snapchat, X, Pinterest, etc. having users in millions and billions.<sup>22</sup>

#### 4. Inter-Relation Between Copyright Violation and Social Media Culture

In the law of Copyrights, fair use can be defined as the limitation on the owner's rights to restrict others from using or reproducing their work. The Copyright Act of 1957 under Section 52 lists some acts that do not lead to copyright infringement, in other words, fair dealing in dramatic, musical, literary or artistic work for:<sup>23</sup>

- Private works, such as research;
- Review or criticism;
- Reporting a current event in any print or broadcasting media or in cinematographic films or photographs;
- Reproduction of reports of judicial proceedings;
- Reproduction or publication of any work prepared by the Legislature secretariat, or of either houses of the legislatures, for the legislative members' use;
- Reproduction of a work that has been made in accordance with the law in a certified copy;
- Recitation or general reading of an extract of a work in public;
- Publication intended for use in educational institutions.

The Act does not find any definition of the doctrine of fair dealing. It can be referred to as a legal doctrine that gives a person the right to use a work that is copyrighted, without taking the consent of the owner.<sup>24</sup> There is a thin line between fair usage of a work and copyright infringement. There are four factors on which the nature of the fair dealing depends:

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<sup>21</sup> Valentina Dencheva, "Leading Social Media Platforms Used by Marketers Worldwide as of January 2023", *available at*: <https://www.statista.com/statistics/259379/social-media-platforms-used-by-marketers-worldwide/> (last visited on August 12, 2023).

<sup>22</sup> Maya Dollarhide, "Social Media: Definition, Importance, Top Websites and Apps", *available at*: <https://www.investopedia.com/terms/s/social-media.asp> (last visited on August 13, 2023).

<sup>23</sup> The Copyright Act, 1957 (Act 14 of 1957), s.52.

<sup>24</sup> Rajshree Mukherjee, "Fair Use Law in India under Copyright Act", *available at*: <https://blog.ipleaders.in/fair-use-law-india-copyright-act/> (last visited on August 13, 2023).



- Purpose of the use;
- Nature of the work;
- The amount of work used; and
- The effect of such usage on the original work.

It has been easier to protect the interests of the copyright owners in terms of book, plays, theatres or movies. However, with the advent of the internet, protection of copyrighted works is becoming increasingly difficult. When a person posts any creative work on a social networking site, such as a tweet on X, he/she owns the copyright. The platform does not take ownership and no one is allowed to share his work without his permission. However, social networking sites have the terms of use according to which, they have the license to use the work and even other users can use the work or re-share it.

As we know, copyright and social media are both evolving concepts, it becomes imperative for the users to be aware of what they are giving consent to before posting things on social networking platforms. The popular platforms in use such as Facebook, Twitter, Instagram, Quora, LinkedIn, etc. are some of the platforms where copyright violations takes place on a huge scale and it is necessary for the government to come up with steps to regulate violations of copyrighted works in these places.<sup>25</sup>

It is a general misconception that everything available on the internet is free to be used by everyone as it is easily available and accessible. However, this is not true. When any content gets posted on a social networking site, it gets published, but it does not mean that others are allowed to bring into use the content the way they deem fit. The social networking sites pose a restriction on the Intellectual Property Rights in their use of content posted on social media, which the users agree upon registration. This results in frequent infringements of copyrights by the third parties, even when the owners of the copyright have not authorised such usage.<sup>26</sup>

The 1957 Act having no idea about social media copyright violation but we are living in an era of social media where in everyday life social media is taking toll on our personal time and we are used to posting various matters on social media, some of which

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<sup>25</sup> “Maaz Akhtar Hashmi, Ipleaders, ‘Social Media and Copyright’, (April 13, 2020), *available at*: <https://blog.ipleaders.in/social-media-copyright/> (last visited on August 13, 2023).

<sup>26</sup> *Ibid.*

we are the authors and violation of it is a violation of copyright for which an infringement suit can be filed.

Social media is a popular platform due to excessive mobile use because through electronic communication we are addicted to interaction with the known, half-known, unknown individuals virtually. In 1990 social media service geocities was launched for violation of the social media rights.<sup>27</sup> The telecom regulatory authority estimated the rising graph of social media and internet users in recent past which shows seven out of eight people are accessing internet. Our India is the 3<sup>rd</sup> largest internet user having majority young generation.<sup>28</sup> The Information Technology Act and Rule 2001 the rule to regulate violation of copyright through internet use. In case of cybercrime activities social media violation are generally tackled. Section 52(1)(c) of the Copyright 1957 states that transient or incidental storage of a work or performance for the purpose of providing electronic link are not prohibited by the copyright holder. Social media platforms are now the new target of copyright violation due to its user friendly mode. Users share their personal images, videos, music, written documents which can be violated by the infringers. Though fair use doctrine may save the infringers if they are using it for education purpose but the copyright issues in India in social media platforms are growing day by day. The Government of India amended the Copyright Rules on 30<sup>th</sup> March 2021 where few new legal provisions of copyright violation in social media can be found. Copyright violation in social media is a growing concern in recent times which impacts on the right to life of the creators also.

Copyright law is well established in various countries since the time of Berne Convention till date and protects the authors from its violation. Authors of the works having exclusive right to enjoy the copyright. The European Nations have particular legislation to protect the copyright violation where there are number of directives for the copyright protection. we can discuss about directive. The directive 2001/29/EC (Infosoc Directive 2001) provides for certain rights and responsibilities on the authors and their works can be available to the public and they can authorise or prohibit reproduction of the work.

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<sup>27</sup> CA Brijesh and Anukriti Pareek, "Social Media and IP Infringement in India: Preparing for Action", *World Trademark Review* 38 (2014).

<sup>28</sup> *Ibid.*

The US Copyright Act 1976 was amended in 1998 and termed as Digital Millennium Copyright Act which protects the author who has published his work in any communicated form. In 1967 Fifty Parties were the signatory to protect IP Rights which gave birth to the World Intellectual Property Organisation (WIPO). The TRIPS Agreement also offers all kinds of copyright and Intellectual Property protection which is not mentioned under Berne Convention. The WIPO Copyright treaty protects the rights of the authors and confers them the right to transfer ownership as well as right to communicate to the public about their work. The idea of Creative Commons is now prevailing in international arena where the author does not hold all the rights but gives license to the other public to use his work without reserving any rights. In social media, Instagram, FaceBook, twitter, also provides for the option of photo upload and communication to the world, etc. Instagram, however, reserves the right to remove any content from its site without giving a notice to the author. In this regard, not much has been provided about copyright violation, although the users can approach Instagram help center for infringement. It can be said that the popular social media and its significant users can be protected by the rules and regulations of the municipal arena and in case of violation takedown notice can be sent to the social media for protection of the authors' right.<sup>29</sup>

#### **4.1. Indian Perspective**

Copyright violation in social media are new addendum of the era. We are now living in an era of social media where every information shared is vulnerable and can become prey of copyright violation. It is norm of the copyright law that the copyrighted work of any other person in any sphere of writing, singing, dancing should be acknowledged with the proper authorisation by the owner or under the fair use doctrine. For the research purpose copyrighted work of some other person can be taken with proper citation. In social media we share various important pictures, writings, videos, etc. having financial and proprietary significance, which are being used by people without our permission. In the age of social media various bloggers create contents everyday to get monetary support from the social media platforms. Youtubers also share valuable contents which having copyright value. Sometime the violators use, reproduces, or distributes the

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<sup>29</sup> Sytse Strijbos, "Introduction: Social Change in our Technology-Based World" in Mark Rathbone, Fabian von Schéele, *et.al.* (eds.), *Social Change in Our Technology-Based World: Proceedings of the 19<sup>th</sup> Annual Working Conference of the IIDE* 8-9 (Rozenberg Publishers, Amsterdam, 2014).

matters having copyright with the whole world without the permission of the copyright holder. Infringers indiscriminately uses or shares images, videos, music, write-ups which are uploaded in social media by the original creators. Although they sometime acknowledge the author or the original creator, yet they are still responsible for the copyright violation under the Copyright Act 1957 in India. The individual or any organisation can face legal action in the form of fine, damages or criminal charges in case of copyright infringement. Social platforms are also sometimes under liability for the infringement if their negligent to protect the rights of the authors/creators.

#### 4.2. Judicial Notion and Legal Mechanism

In India, the highest judiciary is mature enough to accord protection and take legal measures in case of copyright violation by the social media. The Delhi High Court had issued summons and notice to a social media company known as People of India Social Media (P) Ltd. (POI) for imitative content.<sup>30</sup> In this case, Humans of Bombay Stories (P) Ltd., the plaintiff, initiated a Copyright Infringement lawsuit against POI, the defendants, seeking an injunction to prevent the infringement of its copyrighted contents. HOB, whose Instagram account has over 2.7 million followers, sought an injunction to prevent the infringement of their copyrighted contents, which consisted of interviews, write-ups, posts, etc. featured on POI's website, Instagram handle and You Tube channel. Justice Prathiba M. Singh noted prima facie evidence of substantial imitation, with some photographs/images being either identical or imitative. Consequently, the Court issued notice to the defendants. The Court also acknowledged instances where the defendants had replicated the plaintiff's business model and stories entirely, even approaching the same subjects featured on the plaintiff's platforms to create an imitative platform.<sup>31</sup> Significantly, this case involved claims of both 'copyright infringement' and 'passing off'. A claim of passing off requires proof of some sort of deceit, misrepresentation, or injury to the reputation and goodwill of the mark owner. In its 2001 decision in the case of *Cadila Healthcare Limited v. Cadila Pharmaceuticals Limited*,<sup>32</sup> the Court also stated that passing-off is a form of unfair trade competition or actionable unfair trading in which

<sup>30</sup> *Humans of Bombay Stories Pvt. Ltd. v. POI Social Media Pvt. Ltd. & Anr.* [CS(COMM) 646/2023].

<sup>31</sup> Simranjeet, "Photographs are identical/imitative": Delhi High Court issues notice to 'People of India' portal in a copyright infringement suit by 'Humans of Bombay', available at: <https://www.sconline.com/blog/post/2023/09/23/delhihc-issues-notice-to-peopleofindia-portal-in-copyright-infringement-suit-by-humansofbombay-legal-news/> (last visited on September 04, 2023).

<sup>32</sup> 2001 (2) PTC 541 SC.

one person attempts to obtain an economic benefit from the reputation that another has established for himself in a particular trade or business.<sup>33</sup>

Lately, the Cyber Police of West Bengal has registered several cases concerning social media matters and cybercrimes. One such case is Cyber PS C/No. 68/15 dated 17.01.2015 under sections 66C/67/67A read with 43 of the IT Act 2000, along with sections 354A (1) (iii) (iv)/354D (1) (i)/506/509 of the IPC. This case involves the violation of a social media Facebook profile, where the violator utilised a photograph without authorisation.

There are also other cases where social media serves as a highly vulnerable platform, often exploited by individuals involved in criminal activities. This includes the creation of fake accounts, solicitation of money, and various other illicit activities. Therefore, the Information Technology Act provides a robust legal framework to address copyright violations on social media platforms. However, it is important to note that individuals violating copyright must have reasonable grounds to believe that the infringing copy is being stored. The case of *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy and Anr.*<sup>34</sup> revolved around a passing-off claim brought by the Plaintiff, who had been using the word mark 'Banyan Tree' since 1994. This claim was against the use of the term 'Banyan Tree Retreat' and its advertisement on the website [www.makprojects.com/banyantree](http://www.makprojects.com/banyantree) by the defendants. Despite neither party being situated within the territorial jurisdiction of the court, the Delhi High Court was approached as the website was accessible to the public residing in Delhi. Notably, the case was distinctive due to conflicting views in past jurisprudence, thereby prompting the matter to be referred to a division bench for resolution. The court concluded that mere access to a website in Delhi did not suffice to establish jurisdiction for the Delhi court. Rather, it needed to be demonstrated that the defendant had "purposefully availed" themselves of such jurisdiction, indicating that the website's use was intended to conclude a commercial transaction with the site user, resulting in causing harm to the plaintiff. Thus, to establish jurisdiction over such matters, the applicant must prove that the

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<sup>33</sup> Khadija Khan, "Humans of Bombay v. People of India: What is Copyright Infringement and When Does It Apply?", *The Indian Express*, (Sept. 26, 2023), available at: <https://indianexpress.com/article/explained/explained-law/humans-of-bombay-vs-people-of-india-case-explained-8957397/> (last visited on September 30, 2023).

<sup>34</sup> 2010 (42) PTC 361 (DEL).

defendant anticipated a commercial transaction on the website, leading to harm to the plaintiff.<sup>35</sup>

In the case of *Super Cassettes Industries Ltd. v. Myspace Inc. & Anr.*,<sup>36</sup> the Delhi High Court dismissed Super Cassettes' request for an interim injunction against Myspace for hosting copyrighted content without authorisation. Despite T-Series' claims of copyright infringement, the court considered Myspace's status as an intermediary under Sections 79 and 81 of the Information Technology Act. It determined that Myspace qualified for safe harbour protection, shielding it from liability for user-generated content. This decision underscores the need to balance the rights of copyright holders with the legal protections afforded to online service providers, highlighting the complexities of intellectual property enforcement in the digital realm.

## 5. Conclusion

Using social media content without permission can have legal consequences. Copyright violations are widespread on social media, often through practices like reposting. Contents circulated on platforms like WhatsApp or Facebook without proper attribution constitutes copyright infringement. The original creators may be unaware of their content's viral spread and fail to protect their rights. The Indian Copyright Act prohibits the unauthorised use of copyrighted material, though fair use exceptions exist for research and learning. However, using content without permission violates Intellectual Property Rights. While educational use may be permissible, it should not infringe on others' rights. Content creators can file copyright infringement claims and social media platforms can protect copyrighted material through takedown notices. Given the pervasive use of social media, there is a pressing need for effective monitoring and infrastructure to prevent abuse and safeguard copyrights.

To effectively combat copyright infringement on social media platforms, a proactive approach is essential. Platforms must prioritise anticipation, prevention, and swift action against infringements. This includes implementing robust content filtering mechanisms, issuing timely takedown notices and fostering public awareness about

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<sup>35</sup> Vanshika Kundra, "Jurisdiction in IP Matters in Light of the Banyan Tree Judgment", available at: <https://www.legaine.com/post/jurisdiction-in-ip-matters-in-light-of-the-banyan-tree-judgment> (last visited on September 25, 2023).

<sup>36</sup> *Super Cassettes Industries Ltd. (SCIL) v. My Space* (2011)(48) PTC 49 (Del).

respecting Intellectual Property Rights. Obtaining explicit permission from content owners should be a priority, facilitated by the establishment of specific identity verification systems. Moreover, stringent monitoring of social media activities and the enforcement of legal measures against violators are crucial. Given the integral role of social media in modern life, protecting against copyright infringement is paramount. Leveraging India's legal framework for copyright protection can provide a solid foundation for addressing violations in the digital sphere. Additionally, individuals should exercise discretion in their social media posts, considering factors like content relevance and audience access controls. Through collaborative efforts between platforms, content creators and users, the integrity of Intellectual Property Rights on social media can be upheld effectively.