

DIGITAL PIRACY IN THE FILM INDUSTRY IN INDIA

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Abstract

Back in the old days when children used to download movies and songs from a file-sharing site instead of paying for them, they used to think “why should I pay for something that I can access freely?” or “Do the artists or filmmakers need our hard-earned cash despite being so rich?” There are some people who continue this practice, Unfortunately, a lot of kids and adults believe that sharing software, games, music, e-books, photographs, and other content is just a practical way to cut costs. The rapid development of technology has made piracy a global issue. Piracy is a widely used term that refers to the illegal theft of another person's work and passing it off as one's own on grounds of copyright and trademark infringement, It is a crime. The three main categories of piracy are those that involve printed books, sound recordings, and movies/films. With the development of technology, digital piracy now also qualifies as a category and is practiced widely. This paper examines whether digital piracy is a victimless crime or not.

Keywords: Copyright, Infringement, Counterfeiting, Enforcement, Remedies.

1. Introduction

1.1. Overview of Copyright

Copyright as an intellectual property right can be defined as the legal right which is given by the law to the creators over the works, the works such as literary, dramatic or musical work, artistic work, cinematograph film and sound recording. The terms “copy” and “right” are combined to form the word copyright. To be more specific, copyright refers to the “right to copy,” which states that only the creator or a person with his or her expressed permission may reproduce a work.

Copyright only protects the expression, not the idea itself. It is also called a negative right as it excludes others from using or selling the rights of others without having any legal permission. Copyright in some form seems to have been recognized in

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ancient times. The Roman Law adjudged that if one man wrote anything on the paper of another, the writing should belong to the owner of the blank material. (Wadehra, 2019) The creator may voluntarily register for copyright if he/she wishes to be protected and have an advantage in the legal system, by getting registered the creator can file a lawsuit against someone who republishes his/her work as their own. There are no pre-made criteria as to what makes a ‘substantially similar work. The basic criteria to evaluate if a work is "substantially similar" to another is to assess whether a person looking at the two works would perceive the two works to be the same.

In *Time Warner Entertainment Co., L.P. v. RPG Netcom*¹ the court held that the copyright law aims to prevent the copying of physical material and form in the field of literature and art. The Act prevents third parties from publishing the owner/creator’s work.

In *RG Anand v. Delux Films*,² the court held that the copyright is the legal right given for the works and protects only the expression of the idea but not the idea itself. Section 13 of the Copyright Act, 1957, the copyright can be divided into further divisions. The divisions are as follows:

- i. Literary, dramatic, musical works,
- ii. artistic works,
- iii. cinematographic films and
- iv. sound recordings

1.2. Copyright in Literary work

The word “literary works” refers to any expressions in writing, whether or not they have literary value. It is not limited to works of literature in the traditional sense. Additionally, it contains computer programs, tables, and compilations, including databases.

In *Gleeson v. Denne*³, it was decided that if a person puts in enough effort, walking down the street, writing down the names of people who reside at houses, and

¹ AIR 2007 Del 226.

² AIR 1978 SC 1613.

³ 1975 RPC 471.

creating a street directory as a result of that work, this was held to be an act sufficient to support claiming copyright in the final product.

In a landmark judgment in the case of *Krishika Lulla & ors. vs. Shyam Vithalrao Devkatta*⁴, the Supreme Court ruled that there is no copyright in the title of a literary work and that such relief is only available in cases of passing off or in connection to registered trademarks containing such titles. The key question on the court's agenda was whether the title of the literary work “Desi Boyz” was protected by copyright.

The respondent had written a story titled “Desi Boyz” and had registered the synopsis of the work with the Film Writers Association. However, he did not receive a response until the complainant saw advertisements for a movie titled “Desi Boyz,” which was then released in India on November 25, 2011. According to him, the use of the title “Desi Boyz” is a clear infringement of the copyright.

The court noted that Section 13 of the Copyright Act, 1957 protects original literary work. The court stated that a title by itself cannot be considered complete by itself without the work that follows.⁵

1.3. Copyright in Dramatic work

The Copyright Act of 1957 covers dramatic works under Section 2(h). Any piece of recitation, choreography, or entertainment in a dumb show whose scenic arrangement, or acting style is predetermined in writing or another way is considered a dramatic work, but a cinematograph film is excluded. Theatrical creators, composers, choreographers, dramatists, poets, authors, and others are protected by copyright laws from having their work duplicated.

Dramatic scripts often include spoken words, a plot, an action sequence, etc. that are intended to be performed. However, it must be noted that not all dramatic works are eligible for copyright protection. The exceptions are as follows:

- i. Title or series of a program.

⁴ (2016) 2 SCC 521.

⁵ D. Rao “No Copyright Protection for Title of Literary Work”, *available at*: <https://singhania.in/blog/no-copyright-protection-for-title-of-literary-work> (last visited on September 6, 2022).

- ii. Copyright protects the expressions of a creator but not the general idea of work.
- iii. Only the present work/ script can be given copyright and not the future scripts/ works.

To get the copyright of a dramatic work, a copy of manuscript, printed copy, film recording, video recording, phono record *etc.* are treated as a physical script. The registration of the work gets effect on the day when all the above-mentioned material is submitted to the Copyright Office in the prescribed format.

1.4. Copyright in Musical work

In original musical work, copyright is recognized under the provisions of Section 13(1)(a). A musical work is one that only consists of music, as defined by Section 2(p), and does not include any words or actions that are intended to be sung, spoken, or performed in connection with music. Adaptation of a musical work is also entitled to copyright protection. Adaptation in relation to a musical work means any arrangement or transcription of the work. (Wadehra, 2019) Remix songs, which are increasingly popular among the younger generation nowadays, fall under the definition of a musical work and are not considered a violation of the original musical composition's copyright.

1.5. Copyright in Cinematograph films

Copyright of a cinematograph film is mentioned under Section 13(1)(b) of the Act. A cinematograph film means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means that also includes a sound recording accompanying such visual recording and cinematograph shall be construed as including any work produced by any process analogous to cinematograph including video films. The producer is regarded as the author of a cinematograph film for purposes of copyright.

In the case law, *Balwinder Singh v. Delhi Administration, Delhi*⁶ It was ruled that the film's soundtrack is an integral part of the cinematograph film that is protected by copyright.

⁶ AIR 1984 Delhi 379.

Films that depict live events like sports contests, political gatherings, horse races, protests, etc. cannot be protected by copyright. Since these films are not protected by copyright, the issue of infringement is not relevant.

1.6. Cases where a cinematograph film is based on other works

Cinematograph films are usually based on literary works; however, if a cinematograph film is based on a literary or musical work that is protected by copyright without permission from the owner of the copyright, it is an infringement of the original work. A cinematographic production violates the owner's copyright if it uses a musical composition that is protected by copyright.⁷

Without obtaining Arundhati Roy's permission, a film based on her book "*The God of Small Things*" was made; as the film itself infringes the author's copyright, the literary work cannot claim its copyright. Copyright would be granted to the cinematographic film if the film's producer had previously asked the author for permission.

1.7. Copyright in Sound recordings

The work of sound recording can be copyrighted. A sound recording is defined in Section 2(xx) as a recording of sounds from which those sounds may be generated, independently of the medium on which the recording was made or the technology used to reproduce the sounds. The composer is the exclusive owner of the music's copyright, whereas the sound recording's producer is the sole owner of the music's recorded copyright.⁸

Illustration

The recording company, which has the only right to distribute the cassettes, owns the copyright to the sound recording of Javed Akhtar's book of poems, "*Tarkash*." If someone creates a recording of it using a home taping system and then sells it, that person has violated the law. Home taping system is the most common form of infringement of

⁷ "Copyright of Cinematograph Films and Sound Recording", *Legal Service*, available at: <https://www.legalserviceindia.com/copyright/Cinematograph-Films.htm> (last visited on October 25, 2022).

⁸ *Ibid.*

copyright in sound recording. Home taping is done within the house of people it is difficult to catch hold of a person who does the same.

2. What Is Piracy?

Piracy refers to the unauthorized use, copying, distribution, or reproduction of the original work of authors. Piracy in the digital world can be compared to physical theft and piracy because when a person distributes a digital file on the internet or locally for free that is illegal, he prevents the profit from the purchase of that item from going to the owner/author, as a result, an economic impact is made which leads to huge loss of the owner.

We can say that digital piracy is not a victimless crime, as everyone who works hard, and comes up with an independent idea suffers. While our laws and enforcement methods are constrained by national and international borders, these pirates have no faces and no territorial restrictions. Due to the enormous work involved in finding and prosecuting a pirate who is located outside of India and the exorbitant fees involved, copyright owners are sometimes discouraged from taking action.

3. Types of Piracy in Cinematograph Films

3.1. Counterfeiting

It is the illegal possession, replication, and distribution of any work that directly imitates a work protected under the Copyright Act, 1957. The manner in which the aforementioned work is distributed could involve a sale or not. Compact discs and pen drives are the most popular medium for disseminating these illegal works.

3.2. Piracy through the internet or digital piracy

The act of downloading a file from the internet or obtaining it via a compact disc is referred to as internet piracy. Websites that offer free movie downloads and provide a platform wherein one can stream movies online are all examples of internet piracy methods.

3.2.1. Cyberlockers⁹

⁹ R. Dube, "What is internet piracy? Lifewire", *available at*: <https://www.lifewire.com/what-is-internet-piracy-4588155> (last visited on October 23, 2022).

It is a location of private file-storage facilities where pirates store and distribute illegally acquired content. These websites frequently permit users to keep and upload private files lawfully. Nevertheless, a lot of people opt to upload and distribute unlawfully copied audio, video, and software to other users. Users share illegally copied files on the servers of websites that legitimately provide file-sharing services, such as Google Drive. These firms make every effort to delete those accounts, yet new pirate accounts pop up as quickly as old ones do.

3.2.2. Recording a movie

This is a form of piracy that entails recording a movie or a video, particularly without the creator's consent or a valid license. The most prominent form of film piracy is called camcorder piracy, in which a camcorder or other small recording device is frequently sneaked into a theatre, and the entire film, recorded onto the camcorder, is distributed online via the internet, either for free on pirated sites or sold on. As a result of camming, new films were available online before their official release.

Due to this, the filmmakers suffer huge losses along with the theatre. In order to obstruct the camcorder and introduce glares to the recorded frames, infrared emitters are put in some movie theatres. Moreover, the person who filmed the movie can be traced using a person identification method even if the video of bad quality is published on the internet for audio purposes. Since it is illegal to pirate content, those who attempt to do so become aware of this fact.

3.2.3. Streaming movies through websites

Nowadays, streaming movie websites are the target of the most prevalent internet piracy. You will likely find one of these websites if you Google “Watch for free online.” Sometimes websites like Telegram and Signal are also used to distribute pirated movies and TV shows.

Such movie streaming websites frequently include the following characteristics:

- i. Pop-up advertisements block your view and launch in a new window.
- ii. Poor quality of video

Examples: Torrent, The Pirate Bay¹⁰, 123Movies¹¹, Soap2Day, Europix, Mega Cloud Storage, *etc.*

4. Consequences of Digital Piracy

4.1. Cybersecurity

Hackers can use pirated content to spread malware, trojans, and viruses. Companies or organizations who use pirated software expose themselves to copyright violation and infringement. Furthermore, they put their networks at risk of being infected by malware or virus.

Hackers often use the infected systems to launch a cyber-attack and try to steal important information from the admin. IP addresses are public and therefore quite simple to trace.¹² Because pirated software cannot be updated, it exposes the system to attack using security flaws.

4.2. Causes harm to the creators/authors

The film's directors and writers work day and night to create a compelling plot for a cinematograph film but frequently before it is ready for distribution in theatres, it has already been posted on websites. This causes harm to the owner of the idea, the money spent on creating a movie would not provide a significant return if it were to be pirated or distributed online.

4.3. Economic Impact

Pirates instantly upload each TV show or movie that is shown on a prominent television channel or that is about to be released in theatres to illicit streaming websites. A recent KPMG forecast predicts that India's digital and over-the-top (OTT) content industry is estimated to grow at 17% over FY21 to touch a revenue of ₹33,800 crores by

¹⁰ N. Bilton, "The Pirate Bay Goes Mobile with New Site," *The New York Times*, July 2014, available at: archive.nytimes.com/bits.blogs.nytimes.com/2014/07/24/the-pirate-bay-goes-mobile-with-new-site/. (last visited on August 16, 2022).

¹¹ Lifewire, "Cyberlockers", available at: www.lifewire.com/what-is-internet-piracy-4588155 (last visited on August 15, 2022).

¹² P. Putman, "The Consequences of Digital Piracy", United States Cybersecurity Magazine, available at: <https://www.uscybersecurity.net/digital-piracy/> (last visited on September 12, 2022).

FY22.¹³ This comprises OTT platforms that offer a range of material, including movies, television series, and even original OTT content.

Film piracy creates a financial loss to our business and the exchequer”, Mr. Uday Singh, Managing Director at Motion Picture Association said.¹⁴

4.4. Snatches away employment opportunities

It decreases income and employment opportunities for the creator community, which includes those who work in the creative sector and the platforms that invest in the production and distribution of such material. Such downloads and website streams also set up cookies and spyware that steal the user's data and occasionally even access their computers for nefarious purposes. The money made from such unlawful activity may also be used to finance other criminal activities, such as organized crime and illicit trafficking. The best possible solution to combat piracy is to reduce demand and it is crucial that viewers are informed about these impending hazards.

5. Prevalence of Digital Piracy in India

A joint report published by Akamai and MUSO shows that global demand for pirated content skyrocketed between January 2021 to September 2021. India recorded 6.5 billion visits to piracy websites, the third-highest after the US (13.5 billion) and Russia (7.2 billion).¹⁵

According to the report, a total of 132 billion visits to piracy websites were logged in 2021. While 61.5 percent of consumers who visited piracy sites accessed them directly, and 28.6 percent actively searched for them. The "State of the Internet" survey also showed that the most popular pirated websites during the first nine months of 2021 were those with content linked to copyright infringement in publishing, music, movies, TV shows, and software.

¹³ A. Lale, “*Online Piracy: Potential economic impact and setting parameters*”, Bar and Bench - Indian Legal news, available at: <<https://www.barandbench.com/columns/online-piracy-potential-economic-impact-and-setting-parameters>> (last visited on September 14, 2022).

¹⁴ S. Pyne, “*India loses \$2.5 Bn to Online Movie Piracy every year*”, Business Insider, available at: <<https://www.businessinsider.in/india-loses-2-5-bn-to-online-movie-piracy/articleshow/53613620.cms>> (last visited on September 16, 2022).

¹⁵ “*India ranks third globally for consuming pirated content in 2021: Akamai Report*”, *The Indian Express*. (2022, February 2), available at: <https://indianexpress.com/article/technology/tech-news-technology/india-ranks-third-globally-for-consuming-pirated-content-akamai-report-7753275/> (last visited on October 1, 2022).

Steve Ragan, a security researcher at Akamai and author of the report says- “As content developers get better at guarding against piracy, criminals are adapting their methods to access protected content,” and “The impact of piracy goes far beyond stolen movies and other content. The real cost is behind the scenes, leading to the loss of livelihood for those who work to create the movies, films, books, and software we all consume and enjoy.”

The report added that there were over 67 billion TV piracy visits, which is roughly 50 percent of all pirate site traffic. The publishing category is in second place with 30 billion visits (23 percent), followed by films with 14.5 billion (11 percent) and music with 10.8 billion (8 percent). Software piracy closes the ranks with 9 billion visits (7 percent).

Because of the Covid-19 situation, online film piracy rose as high as 62% in March 2020. Even if it seems harmless, the consumption of pirated movies, not only creates a cut in revenue collection but also causes employment loss. Indian media loses about US\$2.8 billion to piracy. As per the research conducted by US-India Business Council (USIBC), the film industry of India experiences an 11% loss in employment because of media piracy.

6. Copyright Piracy Laws in India

6.1. Copyright Act, 1957

To deal with copyright and copyright piracy-related issues, the Copyright Act of 1957 has been introduced.¹⁶ This act is the main statute for all copyright-related laws in India.¹⁷ Under Section 13 of the Act, copyright protection is conferred on literary works, dramatic works, musical works, artistic works, cinematograph films, and sound recordings.¹⁸ Under sec 13 of the Act, there is protection provided to ‘works’ i.e.

- i. original literary, dramatic, musical, and artistic works;

¹⁶ P. Kalyani, “Online piracy and copyright infringement: Issues and challenges”, *Latest Laws*, (2019, September 15), available at: <https://www.latestlaws.com/articles/online-piracy-and-copyright-infringement-issues-and-challenges-by-princess-kalyani> (last visited on October 1, 2022).

¹⁷ M. K. Sunkar, “Copyright Law in India - Copyright Office”, available at: <https://www.legalserviceindia.com/article/1195-Copyright-Law-in-India.html> (last visited on October 1, 2022).

¹⁸ The Copyright Act, 1957 (Act 14 of 1957), s. 13.

- ii. cinematograph films; and
- iii. sound recordings

6.2. Types of rights available under Copyright Act, 1957

6.2.1. Economic Rights

Copyright applies to original literary, dramatic, musical, and artistic works; cinematographic films, and sound recordings. Authors or creators of copyrights to the above-mentioned works enjoy property rights according to section 14 of the Act. The rights are, in particular, concerning a literary, dramatic, and musical work, other than a computer program, to reproduce the work in any material form including its storage on any medium by electronic means, to issue copies of the work to the public, to perform the work in public or to communicate it to the public, to make any cinematographic film or audio recording relating to the work and to make any translation or adaptation of the work.

When it comes to artistic work, the author's rights include the right to reproduce the work in any material form, including displaying in the three-dimensional form of a two-dimensional work or in the two-dimensional form of a three-dimensional work, to communicate or release copies of the work to the public, to include the work in any cinematic work, and to make any modifications to the work.

In the case of a cinematographic film, the author has the right to obtain a reproduction of the film, including a photograph of any image contained therein, to sell or hire or offer for sale or hire any copy of the film, and to communicate the film to the public. Similarly, the author of the audio recording has these rights. In addition to the rights mentioned above, the creator of a painting, sculpture, drawing, or manuscript of a literary, dramatic, or musical work is entitled to a portion of the proceeds from the sale of an original of that work if he was the first owner of the copyright and the proceeds from the sale exceed ten thousand rupees.

6.2.2. Moral Rights

Section 57 of the Act classifies the two basic moral rights of an author. They are:

- i. Right of paternity, and
- ii. Right of integrity.

The right of paternity refers to a right of an author to claim authorship of work and a right to prevent all others from claiming authorship of his work. It gives the author an exclusive right over his creation. The author has the right of integrity to prevent the distortion, mutilation, or other alterations of his work, as well as any other action in relation to said work that would be detrimental to his honour or reputation.

The author also has the right to enjoin or seek damages for any distortion, mutilation, modification, or other act in relation to the said work, if the distortion, mutilation, modification, or other act is detrimental to his honour or reputation. Thus, it is the author's right that his work not be distorted.

However, failure to display a work or to display it to the author's satisfaction shall not be considered an infringement of the rights conferred by this section. Other than the right to claim authorship of the work, the legal representatives of the author may exercise the rights conferred on an author of a work by Section 57(1).

Under Chapter XI of the copyright act, the standards of what qualifies as infringement are specified, and later in Chapter XII the remedies for when such infringement occurs are specified and in Chapter XII the punishment for infringement of copyright and copyright piracy are mentioned. So, the Copyright act not only explains what acts can be considered infringement but also mentions the remedies and punishment of such acts.

The Act is applicable throughout India, and also protects movies made abroad. Foreign laws such as America's Digital Millennium Copyright Act, 1998 do not bind people living in India, and no criminal action can be taken against you in India under these laws if you are downloading copyrighted movies in India.

6.3. Cinematograph Act, 1952 and The Cinematograph (Amendment) Bill 2021

The Union of India recently issued an amendment to the Cinematograph Act, 1952 which clearly defined the penalties to be meted out to a person who uses any device to record or transmit a copy of a film without any authorization from the copyright owner. The film does not need to be uploaded in its entirety or even distributed over the Internet. If the offender tries to make a film in a cinema, he is guilty of an offense. The punishment for this is usually imprisonment, a fine, or both. This punishment can also be extended to those who download pirated content.

The Ministry of Information and Broadcasting recently announced the Draft Cinematography (Amendment) Bill, 2021. The bill aimed to "solve the menacing problem of film piracy" and comes as an amended iteration of the Cinematography (Amendment) Bill, 2019, which was very strict and had to bear resistance from experts in the field.

One of the prime motives behind the amendment of the Act has been to curb film piracy in the country. Keeping this intent in mind, a section has been proposed to be added as Section 6AA. This section criminalizes the recording of any sound or video without the author's permission.

“6AA. Notwithstanding any law for the time being in force, no person shall, without the written authorization of the author, be permitted to use any audio/visual recording device in a place to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof.

Explanation - For the purposes of this subsection, the expression “author” shall have the same meaning as assigned to it in clause (d) of Section 2 of the Copyright Act, 1957.”

The above section was initially introduced in the 2019 Bill as well with a slight variation. The 2019 Bill had an undefined term “exhibition facility” in the above language. Although the term was vague and undefined, the 2021 Bill did not do much justice in replacing it with another ambiguous terminology “*in a place*”. Moreover, the amended language fails to define “author”, which, considering it has been defined under the Copyright Act, 1957 such definition may be applicable.

7. Civil and Criminal Remedies for Digital Piracy

Civil remedies that are available in case of copyright infringement¹⁹-

7.1. Statutory Injunction

Injunctions mean that the person is restricted from further using copyrighted material. Moreover, the suit for injunction (interlocutory) is filed by the owner of the work requesting the court to restrict the person from using the copyrighted work.

There are three basic requirements for the grant of the injunction:

¹⁹ T. Khushbu, “Remedies for Copyright infringement in India”, *Vakilsearch*, available at: <https://vakilsearch.com/blog/copyright-infringement/> (last visited on October 1, 2022).

- i. Prima facie case
- ii. Moreover, the balance of convenience
- iii. Injury or damage caused to the plaintiff. Once the court is satisfied that the case establishes the above three requirements, it will grant the interlocutory injunction to the plaintiff.

7.2. Pecuniary Damages

The plaintiff can also seek monetary or pecuniary benefits from the defendant. There are three options available:

- i. Claim the amount the defendant earned by unauthorized use of the work;
- ii. Compensatory damages
- iii. Conversion damages- based on the value of the work.

7.3. Anton Pillar Order

This order was added to the system as a result of the well-known case of *Anton Pillar AG v. Manufacturing Processes*. The court gave three elements to this order:

- i. Injunction restricting the defendant from destroying or using the work
- ii. Further, a search of the premises by the plaintiff's lawyer
- iii. Disclosure of the name of the supplier of the work.

7.4. Mareva Injunction

If the court is of the opinion that the defendant might flee or escape from the country or state or will try to delay or obstruct the proceeding of the court then, the court will issue a Mareva injunction order against the defendant.

The court has the power to direct him to place whole or part of the property within the custody of the court as may be required to sufficient the decree passed by the court.

7.5. Norwich Pharmacal Order

- i. This order is usually given when certain kinds of information are to be disclosed and the defendant forbids himself from disclosing it. The criminal remedies that are available are:

- ii. If a person uses a pirated computer program or a program that has been manufactured or acquired through copyright infringement, on any computer device, he/she shall be liable for imprisonment of 7 days which may extended to 3 years, and a fine of Rs. 50 thousand which may extend to Rs. 3 lakhs (Section 63B of Copyright Act, 1957).
- iii. If a person gains access to a computer, a network of computers, or computer systems, and then proceeds to view, copy, or extract the data present on the computer, either through digital means or through a removable storage medium (pen drive or hard disk), without prior authorization from the original owner of the computer, he is liable to pay damages as compensation which can go up to a sum of Rs. 1 Crore. Any person who downloads stolen data will also be liable for the same amount.
- iv. Fine- not less than ₹50,000 but not exceeding ₹2,00,000.
- v. Confiscation of the goods including the equipment used to create those infringed copies of the work.

8. Case Laws

8.1. Fox Star Studios India Ltd. & Anr. vs. Macpuler Willam & Ors.

Facts of the case

In this case, Plaintiff no.1 is a leading production and distribution company in India and the exclusive licensee of media rights to various films. Plaintiff no.2 is a production company responsible for various celebrated films. The cinematograph film titled “Bombay Velvet” is the subject matter of the instant suit which has been produced by plaintiff no. 2 It was to be scheduled for release on 15.5.2015. Plaintiff no.2 is the author/producer of the film and is thus the owner of the copyright in the film in terms of Section 17 of the Copyright Act, 1957.²⁰

Plaintiffs have expended substantial monetary investment and have also undertaken a great deal of work in the marketing, distribution, and communication of the said film. The apprehension of the plaintiffs is that before the release of the film may be

²⁰ Fox Star Studios India Ltd. & Anr. v. Macpuler Willam & Ors., CS(OS) No. 1299 of 2015.

downloaded and seen on websites and will be available for viewing illegally without authorization. This suit has been filed against various websites (named and unnamed) that primarily indulged in hosting, streaming, or providing access to infringing and illegal content.

Defendant nos.1 to 24 are the websites engaged in the aforementioned business of hosting, streaming, retransmitting, downloading such illegal content. Defendants nos.25 to 41 are the Internet Service Providers (ISPs) and Telecom Service Providers. These defendants are collectively engaged in the business of providing internet services and telecom services respectively to the public and are the gateways that enable access to such “rogue” websites through the internet in India.

The Court held that a prima facie case is made out in favor of the plaintiffs and against the defendants. Irreparable loss and injury will be suffered by the plaintiffs in the case ex parte ad interim injunction is not granted. The plaintiffs have the advantage of convenience. Accordingly, till the next date of hearing, by way of ex parte ad interim injunction, defendants nos.1 to 24 and 44 to 60, their partners, proprietors, officers, servants, agents, employees, etc. are restrained from infringing the exclusive rights of the plaintiffs in any manner hosting, streaming, broadcasting, rebroadcasting, retransmitting, exhibiting, making available for viewing and downloading, providing access to and/or communicating to the public, displaying, uploading, modifying, publishing, updating, and/or sharing on their websites through the internet in any manner, the plaintiffs “exclusive rights in relation to the film “Bombay Velvet” and the content of the said film.

8.2. Multi-Screen Media Private Limited vs. www.Vimeo.Com & Ors.

This case was filed by the plaintiff against the defendants seeking a permanent injunction restraining the defendant from communicating or making available or distributing or duplicating, displaying, releasing, or showing, or uploading, or downloading or exhibiting, or playing or defraying the movie “Piku - Motion Se Hi Emotion” which was scheduled to be released on 08.5.2015.²¹

Defendants no.1 to 13 are websites engaged in the business of uploading pirated and unlicensed content. There is apprehension that they may communicate an unlicensed

²¹ *Multi-Screen Media Private Limited v. Wwww.Vimeo.Com & Ors.* CS(OS) 1230/2015.

copy of the said film which will result in losses to the plaintiff as also to the Government of revenue collected through taxes. Defendants nos.14 to 17 are internet service providers engaged in the business of basic telephony, mobile service, and broadband network all over the world. The plaintiff submitted that in the past also there has been a violation of the copyright of movies and similar orders commonly known as "John Doe" orders have been obtained.

The Court held that the defendants, their partners, proprietors, directors, shareholders, nominees, servants, representatives, franchisees, agents, and other known and unknown parties are restrained from communicating or making available or distributing or duplicating, displaying, releasing, showing, or uploading, or downloading or exhibiting or playing, and/or defraying the movie "Piku-Motion Se Hi Emotion" in any manner without a proper license from the plaintiff or in any other manner which would violate/infringe the plaintiff's copyright in the said cinematograph film "Piku-Motion Se Hi Emotion" through different mediums like CD, DVD, Blu-ray, VCD, cable TV, DTH, Internet, MMS, Tapes, Conditional Access System or in any other manner. Defendant nos. 14 to 27 are further directed to block access to the unlicensed content of the infringing websites upon the plaintiff giving notice of the infringing activity to the said IPSs and the IPS will react within the next 24 hours.

9. Sustainable Solutions to Prevent and Stop the Practice of Digital Piracy

9.1. Fair Pricing on OTT Platforms

One of the most effective ways to deal with piracy is to remove the incentive for consumers to seek out pirated content. It can effectively be characterized by offering a good product and a good user experience at a fair price.²² In India, Netflix has four different plans: Mobile (Rs 149/-), Basic (Rs 199/-), Standard (Rs 499/-), and Premium (Rs 649/-). The most expensive package allows you to share four screens at once and includes UltraHD. The mobile-only offer has the lowest price. Amazon Prime Video has two subscription offers Rs. 179 (monthly) and Rs. 1,499 (yearly).²³ Hotstar has a monthly subscription of Rs 499/year for mobile (supports 1 device), Rs 899/year for the super plan (supports 2 devices), and Rs 1499/year for the premium plan (supports 4 devices). Jio and

²² A. Stout, "6 ways to stop digital piracy. TV Platforms & Content Protection" *available at*: <https://www.viaccess-orca.com/blog/six-ways-to-stop-digital-piracy> (last visited on October 1, 2022).

²³ *Ibid.*

Airtel users can watch the matches (football and cricket) for free on their phones. However, for the English content, they need to purchase the premium pack. Indeed, mobile-only offers are becoming increasingly important in emerging economies and price competition is fierce.

However, price is not the only difference. The importance of user experience cannot be understated. Viewers wish for interfaces that contain the usual Features such as personal recommendations, and they want excellent picture quality with no buffering and/or latency. The more the industry can provide at a realistic cost, the fewer people will be driven to pirate weapons. You won't stop everyone from watching pirated content, but it can certainly weed out some of the more casual illegal consumers using digital piracy services.

9.2. Awareness amongst the public

There are several ways, but the goal is really to make consumers aware that piracy is a crime and is illegal. This is obvious to those in the industry but to those outside of it, it's anything but a crime.

Piracy has become a normative crime, a crime that "everyone" does, so the activity no longer appears illegal or unethical because the behavior is normalized. A common example is speeding, but video piracy is so widespread that perhaps it should replace speeding in textbooks. Efforts to remind viewers that piracy is both morally wrong and a crime may prove successful in reducing numbers, as can campaigns that emphasize the role of organized crime in piracy activities, exposure to malware and inappropriate material, and the danger to advertisers of negative brand association with pirated sites.

9.3. Barriers to Entry

Just as you want to make it easier for consumers to choose legal alternatives, you want to make it harder for pirates. The era of unprotected content is long gone. Content owners seek to protect their investments and intellectual property and only enter into licensing agreements with operators who can demonstrate that they take such threats to their revenue stream seriously.

What this means in practice is constantly changing. While previously card-based conditional access systems were as sophisticated as operators could get, the move to IP and OTT delivery has necessitated a move to software-based digital rights management.

However, there is no single technology that can guarantee security. Best practice now includes a multidisciplinary approach that includes both prophylactic anti-piracy measures and the following two criteria to guide detection and enforcement.

9.4. Technology & Operations

It is not possible to fight the problem without identifying the source. That means being able to identify content, a live pirate stream as having come from your video ecosystem. That requires technical intervention at the pre-transmission stage. The key here is monitoring, whether automated and as there are interesting advances in AI video stream monitoring, both released and in development or human-driven. In an ideal world, at least for now, a hybrid solution is usually deployed.

Once a breach is detected, it is necessary to act quickly. This has become increasingly important in recent years as piracy has focused on real-time streaming and, in particular, the lucrative illegal revenue streams associated with live sports (premium prices paid for access to sports content make it a particular target).

The key to fast, real-time action is high-level agreements with the search engines and social networks that consumers use to find pirated content.

9.4.1. Putting a check on recording films in theatres

The National Institute of Informatics in Japan, along with Sharp, has developed some sort of IR-based anti-piracy measure that makes it impossible to record a movie theatre screen. Quick pulses of light are blasted onto the screen from behind that, while not noticeable to the human eye, render a video camera's recording unwatchable. Filters on the camera could try to filter out the light, but the picture would be quite blurry.²⁴

9.4.2. Better Enforcement

There are several countermeasures that TV service providers can use to disrupt and remove pirated content, from traditional takedown notices to increasingly sophisticated real-time messages. With the right anti-piracy services, operators can identify consumers who are watching illegal streams and incentivize them to switch to

²⁴ N. Deleon, "IR technology would prevent in-theater video recording", *TechCrunch*, available at: <https://techcrunch.com/2009/09/22/ir-technology-would-prevent-in-theater-video-recording/> (last visited on October 10, 2022)

legitimate services. These actions range from soft to hard, with tougher countermeasures involving the deployment of law enforcement agencies.

Speed is the key. While prosecution will always be a much slower process that occurs after the event, removing content from the Internet as quickly as possible is the best way to deter pirates and encourage consumers to seek legal alternatives.

9.4.3. Cooperation

While companies at all levels of the broadcast chain are used to competition, the losses caused by content piracy are too great to make a concerted effort to cooperate. These must take place at all levels of the industry and all steps of the process, from content production and security to transmission. The more companies and organizations involved, the more effective the overall solution. Unfortunately, the opposite can also be true and if there is a weak point at any point in the chain, even a point remote from what was thought to be the primary path to the consumer's TV or device, that is a weak point exploited.

10. Conclusion

Thus it can be concluded that piracy occurs on a large scale and our research has shown that it can take several forms. With the advancement of technology, digital piracy is on the rise and has become a major issue. It is a type of crime that has no borders. Digital piracy has a socio-cultural as well as an economic impact. It has a detrimental influence on creators, consumers, and the government. It can be a big barrier for artists, particularly newcomers. It has an adverse effect on the revenue streams of artists, publishers, and producers which could discourage future creation.

Digital piracy also raises significant security problems, as malware and vulnerabilities can be introduced into systems via illegal websites and thus put the users of these websites at a financial risk too.

Piracy is a worldwide issue that requires sustainable and strategic resolution. As content consumption and digital access rise, parties must work together to develop successful anti-piracy methods. An effective IPR framework can stimulate creativity while minimizing economic loss.

The authors in this paper have ascertained that digital piracy is definitely not a victimless crime and with the solutions that are suggested in the paper along with

increased IPR protection and enforcement in India, the problem of digital piracy can surely be controlled and mitigated. If the remedies listed above are properly implemented by the government, private players, and individuals, we can all work together to prevent this malpractice from occurring and ensure that quality content is being made. This will also ensure that creators or directors are more enthusiastic to bring in more stories for the viewers and make content consumption practices in India much more ethical and safer.