

PIRATES OF THE DIGITAL STREAM: BATTLE AGAINST PIRACY IN OTT

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Abstract

The COVID pandemic and consequential lockdown resulted in people being confined to their homes, they retreated to Over-The-Top (OTT) platforms for entertainment. These platforms work by charging a certain minimum fee from the user, to get around that fee, people resorted piracy to access to content. Growth of internet has had momentous effect on unlawful activities relating to intellectual property. Development of technologies like Virtual Private Network (VPN) have resulted in increased anonymity, thus making it difficult to find the true offender. Whereas emergence of peer-to-peer piracy has led to large scale dissemination of pirated content, thus adding to the problem of piracy. While piracy in areas such as Movies and films has been mostly tackled by the Cinematograph (Amendment) Act, 2023 no clear legislation in the context of OTT platforms largely exists which results in increased instances of piracy and loss of revenue for these platforms. This paper looks into the growth of OTT platforms in India and examines the problem of piracy, specifically in the context of these platforms. It focuses on various instances of copyright violation in OTT platforms, looking into instances of peer-to-peer piracy and threat posed by increased use of VPN. Further, it examines various legislations which control and regulate OTT platforms and concludes that there is a need for precise and exhaustive legislation to tackle piracy. It also highlights the role of judiciary in providing legal remedies to those aggrieved by the distribution of pirated content, and sheds light on various agencies for regulation of piracy in OTT.

Keywords: Piracy, Violation, Entertainment, Regulation, Copyright.

1. Introduction

The past few years have witnessed a dynamic shift, from satellite and cable being the main source of dissemination of motion pictures and of entertainment to digital content available on internet, filling in that role. The internet has replaced satellite and

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cable as distribution channels with OTT services, these platform streams music and video content directly over the internet. There is no definite definition of OTT platforms. The telecom regulatory of India gives the definition of OTT platforms as: “A service provider that offers Information and Communication Technology (ICT) services, but neither operates on a network nor leases network capacity from a network operator.”¹ Whereas the definition given by Internet Telecommunication Union which has been adopted by Telecom Regulatory Authority of India (TRAI) dictates OTT to be: “Internet application that may substitute or supplement traditional telecommunication services, from voice calls and text messaging to video and broadcast services.”²

The OTT platforms mostly seem to have a hybrid character to them, combining passive consumption of television with choices that a web offers to its users.³ With the COVID pandemic the wind has shifted in favour of OTT platforms, when because of lockdown everyone was confined to their homes. These sites like – Amazon Prime, Hulu, Netflix, Jio cinema, Disney+, Hotstar can be accessed through the web. These services ride ‘over-the-top’ of network and are accessible to the users through internet.⁴ These platforms operate by charging a basic subscription fee from their users. The range of content available on these sites is wide. Being convenient, easily accessible, cheap, and having a large variety of audio-visual content, these intermediaries have dominated, if not replaced other conventional sources of entertainment. One of the major factors that has contributed to the growth of OTT platforms is the easy availability of internet resulting from fall in data prices and improved connectivity accompanied with easy availability of smartphones.

With the growing prominence of OTT platforms, the need for legal regulations becomes eminent. Though attempts have been made to exercise control over these platforms through legislative regulations, these efforts have not been that effective at curbing various issues these platforms seem to have. A major issue in relation to these

¹ Telecom Regulatory of India, Consultation Paper on Regulatory Framework for Over-The-Top (OTT) Services, (Consultation paper No. 10/2023).

² InfoDev and International Telecommunications Union, “ICT Regulation Toolkit”, 2020, *available at*: https://digitalregulation.org/wp-content/uploads/ITU_Infodev_WB_ICT_Regulation_Toolkit.pdf (last visited on November 20, 2024).

³ Chuck Tryon, “TV Got Better: Netflix’s Original Programming Strategies and Binge Viewing” 2 *Media Industries Journal* (2015).

⁴ Anu Manoj, *Content regulation and censorship: OTT platforms* (2021) (LLM Thesis, NUALS).

platforms has been that of piracy. According to a Klynveld Peat Marwick Goerdeler (KPMG) projection, the digital and OTT content industry in India grew at 17% in FY21 to touch a revenue of Rs. 33,800 crore, however these platforms made a loss up to 25%-30% of their revenue due to illegal platforms, which indulged in piracy and made content available to users for free.⁵ With the growth of OTT platforms, they started to dip toes in producing original content such as web series, docu-series and films. PwC's Global Entertainment and media outlook 2022-2026, has predicted for the Indian OTT industry to grow to Rs. 21,031 industries by 2026.

As the world advanced technologically and internet became prominent, copyright piracy became a serious issue. As such the term 'piracy' has not been defined in Indian law. However, the Copyright Act, 1957⁶ deals with instances of piracy.

The fees, which one is required to pay to access audio-visual content on OTT, gave rise to a number of sources, which offer the same content completely free of cost. Specific software and websites have been deployed for the very purpose of making this pirated content available to the public and are widely accessed. This had multiple adverse effects, for starters it took away jobs and revenue from the creator of the content and secondly the download of such pirated content led to leakage of personal information of the viewer. There are a number of ways in which this illegal business of piracy is carried out. This being a relatively new area, the remedies, for producers and the regulations, for these platforms are few.

2. Copyright and OTT Platforms: in the Context of Current Law

The main goal of IPRs is to grant exclusive ownership to its creators. In the age of internet, it is very easy to infringe copyright in digital space. Most of the OTT platforms have huge databases, which need protection from piracy. However, the OTT industry is not that well-regulated. When compared to its sister industries - films or television, OTT industry clearly lacks statutory regulations, this increases the risk of piracy and copyright infringement.

⁵ Anil Lale, "Online Piracy: Potential economic impact and setting parameters", *Bar and Bench*, January 23, 2022 available at: <https://www.barandbench.com/columns/online-piracy-potential-economic-impact-and-setting-parameters> (last visited on November 15, 2024).

⁶ The Copyright Act, 1957 (Act 14 of 1957).

At present there is no one statute which exclusively regulates the content on OTT platform. Although the Information Technology (Intermediary Guidelines), 2021 did focus on OTT platforms and related issues, it did not do much to deal with the issue of piracy. The OTT platforms are not regulated by the Cinematography Act, 1951.⁷ The Act essentially regulates movies which are displayed in cinemas and shows which are televised. The Cinematograph (Amendment) Act, 2023 which is an applaudable attempt to govern piracy in Indian Films, is not applicable to the OTT platforms.

This has resulted in these streaming platforms being, inter alia, governed by legislations of generic nature like the Copyright Act, 1957 and the Information Technology Act, 2000. The Information Technology Act contains some rules which put the onus on these platforms to ensure that users do not transmit any content, over which they do not have a right. The Copyright Act, 1957 also laws down rules for copyright infringement, which are applicable on OTT platforms.

2.1. Regulations of OTT Platforms under IT Act, 2000

OTT platforms are essentially “Intermediaries.” Mostly, the broadcasters and the producers enter in a contract and the channel becomes the owner of copyrights of the content, having the right to broadcast it in any way that they deem fit or even to trade it off. Intermediaries have been defined by the Information Technology Act of 2000.⁸ Section 2(1)(w) of the said Act (as updated by 2009 amendment) states: “*Intermediary, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.*”⁹

Intermediaries are crucial as they distribute, publish and transmit information. In *Myspace Inc. v. Super Cassettes Industries Ltd.*¹⁰ the Delhi High Court identified OTT

⁷ The Cinematography Act, 1952 (Act 37 of 1952).

⁸ The Information Technology Act, 2000 (Act 21 of 2000).

⁹ *Id.*, s. 2(1)(w).

¹⁰ (2017) 236 DLT 478 (DB) (2016) (India).

platforms to be intermediaries because they are aggregators of audio-visual content, like films and web series.¹¹

According to the Information Technology (Intermediary Guidelines) Rules, 2011 intermediaries have a duty to inform their users not to host, display, upload, modify, publish, transmit, update or share any information which is listed in the rules, including information which belongs to other person and in relation to which the user has no right.¹²

However, the main contention with these rules were that they only regulate that content on OTT platforms, in relation to which the platform acts as an intermediary. The provisions of the Act do not apply to that content which has been originally produced by the OTT itself. With the introduction of Information Technology (Intermediary) Guidelines, 2021¹³ this problem was largely solved. These rules covered both intermediaries and publishers of digital content. Therefore, OTT platforms should ensure that no illegal or unlawful activities are being organised through their platform, as mandated under Section 79¹⁴ of the Act.

2.2. Regulation of OTT Platforms under Copyright Act, 1957

Copyright is a right in intellectual property. Section 14¹⁵ of the Act defines copyright. Accordingly, copyright means an exclusive right to do or authorise another person to reproduce or duplicate the intellectual property and the right over its distribution.

Section 2(m)¹⁶ of the Act defines an “infringing copy”. The section guarantees exclusive copyrights to the author of the work. However, the act of copyright infringement is much wider than the act of piracy. Copyright piracy can be understood as unauthorised reproduction, importing or distribution, that can be done in context of the whole or of a substantial part of works and this is protected by Copyright Act. When someone indulges in large scale infringement of copyright, treating it as a business by operating websites or apps to distribute infringing content in such a way that provisions

¹¹ *Ibid.*

¹² The Information Technology (Intermediary Guidelines) Rules 2011, rule 3 (2).

¹³ *Ibid.*

¹⁴ *Supra* note 8, s. 79.

¹⁵ *Supra* note 6, s. 14.

¹⁶ *Id.*, s. 2(m).

of Copyright Act fall short in controlling such act, the act would be termed as piracy.¹⁷ In context of cinematographic work (that is mostly broadcasted by OTT) the wrongdoing of piracy generally occurs through unauthorised reproduction of the film without the permission of the copyright holder.¹⁸ Section 26¹⁹ of the Act, lays down that in case of cinematograph films the right subsist for 60 years, after which the copyright enters into the public domain, from the first year in which the copyright had expired. Section 37(3)²⁰ further lays down various acts which constitute infringement of broadcaster's reproduction rights. The section lays down that any person, who without the license of the producer, broadcasts or re-broadcasts, reproduces or sells or rents the copyrighted material shall be deemed to have infringed the broadcast reproduction rights.

Section 51²¹ of the Act lays down - "*When copyright is infringed*". Clause (a) of Section 51 provides that the copyright in a work shall be deemed to be infringed when any person without a license of copyright or in contravention of the said license does anything, which the owner is exclusively authorised to do or permits for profit communication of work, unless he was not aware and had no reasonable ground for believing that communication would be an infringement of copyright. Clause (b) of the Act further puts down that when any person:

- (i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
- (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
- (iii) by way of trade exhibits in public, or
- (iv) imports into India, any infringing copies of the work.

¹⁷ Anil Lale, "Online Piracy: Potential economic impact and setting parameters" *Bar and Bench*, January 23 2022, available at: <https://www.barandbench.com/columns/online-piracy-potential-economic-impact-and-setting-parameters> (last visited on November 15, 2024).

¹⁸ Government of India, "Study on copyright piracy in India" (Ministry of Human Resource Development, 1999), available at: <https://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf> (last visited on November 15, 2024).

¹⁹ *Supra* note 6, s. 26.

²⁰ *Id.*, s. 37(3).

²¹ *Id.*, s. 51.

The Explanation of the Section states that for the purposes of this provision, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy.”²²

Section 63²³ provides for punishment for the infringement of copyright. Section 63 lays down that punishment for such offence shall be for a term of not less than six years but not exceeding three years, and fine which may not be less than fifty thousand rupees but is extendable up to two lakh rupees. Section 63A²⁴ lists enhanced punishment for second or subsequent punishments. Criminal Piracy has been declared to be a serious offence. In the recent case of *Knit Pro International v. State of Delhi*²⁵ (2022), the Supreme Court of India had declared criminal copyright infringement as a “non-bailable” and “cognizable” offence (*i.e.* one is arrestable without warrant and only a court can grant bail).

3. Piracy in OTT and Subsequent Copyright Violation

It definitely goes without saying that it is a basic human tendency to want things at the cheapest possible price, and if so possible, for free. This is the main reason for piracy in OTT platforms, most of these platforms charge a basic fee from their users, to get around that fees, piracy is resorted to. Though the web is full of many illegal pirated websites distributing audio-visual content, most tend to take the route of VPN or indulge in peer-to-peer piracy, to access the web series, shows and movies, free of cost.

3.1. Virtual Private Network (VPN)

A major issue that needs to be circumnavigated in the context of piracy in general and OTT platforms in specific is the problem of anonymity. It becomes difficult to identify the offenders as it is, but with the evolution of modern technology, which allows its users to conceal their true identity, regulating piracy becomes even more difficult. With the advent of VPN, an internet user has the ability to surf the web, through a server provided by the VPN provider and hide or mask the IP address in use. VPN gives users a mask and lets them remain anonymous while accessing the web. India has seen a constant

²² *Ibid.*

²³ *Supra* note 6, s. 63.

²⁴ *Id.*, s. 63A.

²⁵ *M/S Knit Pro International v. State of NCT of Delhi & Anr.*, 2022 LiveLaw (SC) 505.

rise in the VPN usage over the years, with data from Forbes Advisor reporting that India had secured 67th position in VPN adoption Index, 2022.²⁶

Though VPN usage is legal in India but that does not mean one can use VPN in such a way so as to infringe the copyright.²⁷ The main reason is VPN has adversely affected the problem of tracing, because it helps conceal IP addresses making it difficult to track and helping in avoiding piracy lawsuits. These VPN and proxy servers have the ability to bypass any form of government control. Though VPN services also operate by charging a basic fee, the users prefer to pay that fee, rather than paying a minimum sum to different OTT platforms, since that accumulated fees would be much higher.

The use of VPN significantly helped websites like Tamilrockers in concealing their identity. Tamilrockers is an infamous piracy website pirated copyrighted audio-visual content, including movies and TV shows. The website though started by a small group was able to expand all over the world. In 2019, the cyber-crime unit of Kerala Police was able to arrest one of its members, the unit in its report highlighted that the accused used VPN to mask his identity while operating the website.²⁸

Moreover, usually the OTT platforms have a limited selection of audio-visual content, depending upon the licence to obtain from each geo-political location. However, VPN users can access content that is not available in a particular geo-political territory by the virtue of VPN. This means that even if the person responsible for piracy is identified, it could be so that the authorities might not have any jurisdiction over that person, because these cases mostly involve several different political states.

This issue was highlighted in the case of *Neetu Singh & Anr. v. Telegram FZ LLC*,²⁹ where telegram was being used to supply pirated material in India. On the issue of furnishing information relating to channels which indulged in dissemination of

²⁶ Dipen Pradhan and Aashika Jain, "VPN Statistics and Trends", *Forbes*, August 24, 2023, available at: <https://www.forbes.com/advisor/in/business/vpn-statistics/> (last visited on November 15, 2024).

²⁷ Sophie Isabella Baudach Fernandez, *Streaming Platforms vs. Digital Piracy: A qualitative study on when young adults search for alternatives to stream movies or series online* (2023) (BSc Thesis, University of Twente).

²⁸ Leela Prasad, "Explained: Who were Tamilrockers, the piracy group that became a headache for the Tamil film industry?" *Indian Express*, August 19, 2022, available at: <https://indianexpress.com/article/explained/tamilrockers-web-series-piracy-group-fim-industry-explained-8097977/1000/> (last visited on November 15, 2024).

²⁹ CS(Comm) 282/2020.

infringing content, representatives of telegram argued that it being a Singaporean company could not do so since it would not be governed by the local Indian law.

3.2. Peer to Peer Piracy

Usually, the anonymity that comes with piracy is maintained in all spheres - including the viewers of the pirated content and its suppliers. However, over the years, this interaction has become significantly personal. This phenomenon has been termed as peer-to-peer piracy. While accessing pirated content, users seek the most convenient, easily accessible, and cheap mediums of doing so. This encourages peer-to-peer piracy, whereby content is shared without any cost being attached to it. The instances of peer-to-peer piracy can be observed in two circumstances:

3.2.1. Peer-to-Peer Piracy through Credential Sharing

Firstly, more often than not, while using OTT services the users purchase a single account to stream content, which is then shared amongst the family and friends. The number of devices per account is limited by these intermediary platforms. Sharing of login information is a common way of getting around this limit. This practice often leads to the creation of peer-to-peer networks. As a result, producers face significant loss, the OTT giant Netflix is rumoured to have lost about \$1.8 billion³⁰ because of password sharing. The platform therefore announced a crackdown on password sharing in July 2023, after which it reported an increase of 8% in its revenues.³¹

However, the problem of credential sharing has much serious consequences. A more serious version of password sharing can be “content theft”, where legitimate login information of real users is stolen and sold at a lower price on dark web. Token theft is one of the common methods of content theft, most websites use tokens as a way to identify users. These tokens are illegally copied and sold by the pirates.

³⁰ Martin Scott, “Password sharing may have lost Netflix billions of dollars in retail revenue, but operators can help”, *Analysys Mason*, 2022, available at: https://www.analysismason.com/contentassets/baf50681735041b9abc2e47bd242dc45/analysys_mason_video_password_sharing_mar2022_rdvs0.pdf (last visited on November 15, 2024).

³¹ Angela Watercutter, “Will Bwdingfield, Netflix’s password-sharing crackdown is working – for now”, *Wired*, available at: <https://www.wired.com/story/netflix-password-sharing-crackdown-working-for-now/> (last visited on November 15, 2024).

3.2.2. Peer-to-Peer Piracy through Link Sharing

Distribution of pirated content often occurs among peers, who share films and web series, available on various OTT platforms, through instant messaging services, like telegram. On various applications similar to telegram audio-visual files, which are downloaded illegally are shared among peers. In the case of *Neetu Singh & Anr. v. Telegram FZ LLC*,³² telegram was used as the main platform for the dissemination of pirated material. This leads to a loss of revenue for these platforms and content providers. Furthermore, the offenders cannot be easily located, because of the jurisdictional conflict. Therefore, it can be safely concluded that there is a “not too anonymous yet not too personal”³³ connection which is used to encourage the menace of piracy.

3.2.3. Peer-to-Peer Piracy through Simulcasting

Simulcasting involves recording a film or a web series while it is being played, and then distributing it. It is a direct infringement of copyright. There are various methods of simulcasting, the most common ones being capturing the screen during playback and messing with the android operating system.³⁴ Though simulcasting is not necessarily between peers, most often than not the persons involved do know each other.

4. Judicial Remedies

For the purpose of upholding justice and addressing the copyright infringements, judicial remedies are essential. Among these, John Doe orders and Dynamic Injunctions have grown to be indispensable instruments in contemporary cases. A John Doe order gives plaintiffs the ability to file a lawsuit against defendants who are not yet recognised. This allows the court to impose orders on unidentified parties, who will eventually be identified through legal procedures. Whereas, dynamic injunctions offer a versatile and adaptable remedy that allows courts to make orders that evolve to modify itself as the circumstances keeps on changing, especially when it comes to matters involving digital content and technology. By improving the efficacy of legal remedies, these judicial

³² *Supra* note 29.

³³ Sophie Isabella Baudach Fernandez, *Streaming Platforms vs. Digital Piracy: A qualitative study on when young adults search for alternatives to stream movies or series online* (2023) (BSc Thesis, University of Twente).

³⁴ Priyanshu Yadav and Yuvraj Singh, “A brief Study of Intellectual Property Law in the context of OTT platform and virtual piracy in India” 5 *Indian Journal of Law and Legal Research* 147 (2023).

innovations guarantee that justice is still attainable even in intricate and quickly evolving contexts.

4.1. John Doe Order or Ashok Kumar Order

John Doe Order is a concept of common law which originated in the reign of King Edward III. The term “John Doe” was used for a party whose identity was not known. When it was intended to refer to a male defendant, the term used was “John Doe” whereas to implicate females, “Jane Doe” was used. Being *ex parte* in nature, it helps to grant relief against untraceable and unidentifiable persons. In the present context, it is especially granted in the cases of digital piracy. The Delhi High Court adopted this doctrine and passed the first ever Indian John Doe Order in 2002 in the landmark case of *Taj Television Limited v. Rajan Mandal*.³⁵ The case dealt with the matter of cable piracy and it was practically not feasible to differentiate licensed cable operator from those who were involved in the unauthorized broadcasting of the channel “Ten Sports” and consequently the matches of FIFA world cup. The Court, in the matter at hand, came up with the relief of John Doe Injunction to ascertain the accountability of unidentified cable operators. With the passage of time, this injunction has been renamed in the Indian parlance as Ashok Kumar Order.

The interests of the intellectual property right holders are taken care of by providing them an opportunity to hold unknown people accountable for infringement of their rights. The court can order for such a relief under the Order 39 Rule 1 and 2 of the Code of Civil Procedure along with Section 151 of the said Code and Part III of the Specific Relief Act, 1963, which grants the power to the courts to grant temporary injunctions in the place of permanent injunctions.

In order to obtain such a relief, certain criteria have to be met. The holder must take legal action against those unidentified persons by serving a legal notice. The Court must be convinced that rights of the plaintiff have been violated on the basis of evidence of the infringement by known or unknown parties and a *prima facie* case exists. Therefore, the basic ingredients that should be present so as to seek a John Doe Order are, *vis-a-vis*, full disclosure of all the relevant information by the plaintiff, presence of a *prima facie* case and imminent danger of loss or actual and irreparable loss. After all the

³⁵ [2003] F.S.R 24.

considerations, the Court may grant such a relief and it may also include definite time period bar on accessing the content. The plaintiff can also publish a notice to summarise the order of the Court. The defendant or any party that feels aggrieved by such order of the Court may apply for the modification of such order.

The relief is not restricted to the IPR violations in media only but it extends to the infringement of trademark and copyright of the goods by unknown parties. In the case of *Ardath Tobacco Company Limited v. Mr. Munna Bhai & Ors.*,³⁶ it was held that in order to stop unidentifiable parties from infringing the intellectual property rights by copying the labels, artistic work and packaging material of the cigarettes manufactured by the plaintiff, the court granted John Doe order in favour of the plaintiff. Thereafter all the untraceable and unknown parties were stopped and restrained from infringing any further right of the plaintiff.

In the event of such relief being extended to the realm of the OTT streaming platforms where the source of infringing content is mostly unknown, it would provide an impetus to the IPR regulation and protection in this field of media.

4.2. Dynamic Injunction

With the technological progress, there has been an endeavour by the judiciary to improve the efficacy of the remedies provided by it. Earlier, when the court ordered the blocking of a specific Uniform Resource Locator (URL) or website owing to the presence of some pirated content or any other copyright infringing content, the entire content from the mentioned URL was shifted to a new URL within a few moments. Thus, these mirror websites defeated the purpose of blocking those URLs and made available the content that should have been blocked. The process of shifting the content from one website to other by changing the URL is as simple and easy as that of changing the password of one's e-mail.³⁷ This posed a problem before the courts as a fresh order of injunction was sought to block each and every new URL on which the content was shifted. Thus, the need for a more efficacious remedy arose.

³⁶ [2009] (39) PTC 208(Del).

³⁷ *Department of Electronics and Information Technology v. Star India Pvt. Ltd.*, CS(COMM) 353/2021.

Dynamic injunction was granted for the first time by the Court of Justice for the European Union (CJEU) in the case of *L'Oreal & Others v. eBay International*.³⁸ It was opined that the courts of the member nations should be able to take measures to restrain current as well as future infringements and to order the online marketplaces to take such restraining measure as well. After the verdict in this case was pronounced, the courts of many nations started issuing dynamic injunctions.

Dynamic injunction framework has been famously provided by the Singapore High Court in the case of *Disney Enterprises Inc. v. MI Limited*.³⁹ On an application by the plaintiff in the pending suit, the already granted injunction could be extended to all other mirror websites and the related URLs. The dynamic injunction has helped in blocking all the URLs made simultaneously after the initial one had been blocked, this could be done without the need of a fresh injunction order.

The Indian Courts did not explicitly recognise this injunction until 2019, but there were a number of cases in which such an order was passed without the direct use of the term. The Delhi High Court in the landmark case of *UTV Software Communications Ltd. v. 1337X.to*⁴⁰ adopted and recognized this concept for the first time. The Court followed the precedent laid down by the Singapore High Court. The use of dynamic injunctions by the Indian Courts have proved to curb the digital piracy in a more effective in terms of time and resources. The Court, in the pertinent matter, also pressed upon the need to exercise the principle of proportionality in granting relief to the aggrieved parties. In addition, a qualitative test was laid down to identify a rogue website. It includes presence of infringing content, burdensome identification of URLs by the plaintiff, volume of traffic on the websites, among other aspects.

Though in this case, the Delhi High Court provided the dynamic injunction for unauthorized communication of the cinematograph film by the rogue websites, such a remedy should be made available to the copyright owners of the OTT streaming platforms as well. The importance of this injunction was realised more after the pandemic as a huge upsurge was seen in the online traffic for the consumption of online media. It not only

³⁸ (C-324/09) [2009] EWHC 1094 (Ch).

³⁹ [2018] SGHC 206.

⁴⁰ [2019] 78 PTC 375 (Del).

aimed to streamline the regulatory process to deal with the copyright infringement but also provided a swift pace to the adjudication of such matters.

5. Authorities and Agencies

Various authorities and agencies play a crucial role in addressing copyright infringement and protecting creative works in the context of IPR enforcement. The IT Rules 2021 require the designation of a grievance officer, who will handle user grievances and ensure adherence to legal requirements. Global collaboration and IPR protection are facilitated internationally by the World Intellectual Property Organization (WIPO). Domestically, the Indian Government's Cell for IPR Promotion and Management (CIPAM) encourages IPR awareness and efficient enforcement. In order to protect intellectual property laws and stop infringements, the state-level authorities and other groups cooperate with each other. These organisations work together to provide a thorough framework that safeguards intellectual property and promotes innovation and creativity in a range of industries.

5.1. Grievance Officer

Section 2(k) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 states "*Grievance Officer means an officer appointed by the intermediary or the publisher, as the case may be, for the purposes of these rules.*" These rules have included the provisions in relation to OTT streaming platforms and have been effected from May 26, 2021. The Grievance officer acts as a contact point⁴¹ for receiving any grievance and a nodal point⁴² for interaction with the users and law enforcement agencies.

The main function of the officers involves handling of the complaints and grievances relating to the content that infringes any right of the person or adversely affects the security and integrity of the nation. He coordinates with the complainant and the law enforcing agencies. The appointment of a Grievance Officer is needed to emphasize accountability and responsible conduct in the publication of the digital content.

⁴¹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, rule 11(3)(a)

⁴² *Id.*, rule 11(3)(b).

The rules make it obligatory for the intermediaries which includes publishers of online curated content to display the name and contact number of the Grievance officer on their web pages. They should also mention the mechanism whereby the aggrieved parties may file a complaint in event of violation of any of the provisions of these Rules.

The important tasks that are assigned to the Grievance Officers include:

- i. He must receive and address the complaint within twenty-four hours of receiving it as he is the primary point of contact. The time period for the resolution of the stated grievance is fixed to be fifteen days from the date of receipt.⁴³ The complaints may be regarding any objectionable or infringing content.
- ii. He must decide the nature of the complaint and investigate it accordingly. After the investigation, appropriate action may be taken which includes restricting such content.
- iii. It is the duty of the Grievance Officer that the platform, which has appointed him, must comply with the laws of the land and should not be involved in the distribution and exchange of infringing content.
- iv. He must keep a record of all the complaints received and must report them to the authorities as and when required or periodically, as per what is required by the IT Rules, 2021.

If any party feels dissatisfied by the decision of the Grievance Officer, he may move to the Grievance Appellate Board with an appeal against the decision, provided such an appeal is made within thirty days from the date of communication of the decision of the Officer.

The IT Rules, 2021 provides for a sound grievance redressal system consisting of three levels:

- i. Level I: A publisher is required to designate a Grievance Officer and create a grievance redressal system. Any complaints regarding the Code of Ethics must be directed to this officer. The communication between the Ministry, the self-regulatory body, and the complainant shall be done through this person. A complaint shall be resolved by this officer within 15 days of its receipt. The

⁴³ *Supra* note 41, rule 3(2)(i).

categories specified in the Schedule to the Rule must be applied to the online-curated content.

- ii. Level II: An independent body composed of one or more self-regulatory bodies of publishers and presided over by a former Supreme Court or High Court judge or by any individual working in the media. Within thirty days of its formation, this body must register with the Ministry. The self-regulating body oversees and makes sure the publishers follow the Code of Ethics. It also provides guidance or advice to the publishers on various matters. It handles complaints and hears appeals that are not resolved within fifteen days. The body has the authority to issue warnings, censure, admonish, or reprimand the publisher.
- iii. Level III: An oversight mechanism shall be created by the Information & Broadcasting Ministry. The Authorized Officer who chairs the Committee will be appointed by the Ministry. Any complaints or appeals pertaining to any infringement or transgression of the Code of Ethics shall be heard by the Committee.

The intermediaries mitigate their risks pertaining to the moderation of the content being distributed and the related grievances, by appointment of a Grievance Officer. It shows compliance with the provisions of the IT Rules, 2021 and other such rules and codes.

5.2. Cell for Intellectual Property Promotion and Management (CIPAM)

The Cell for Intellectual Property Rights Promotion and Management (CIPAM) was established under the aegis of Department of Industrial Policy and Promotion (DIPP). It aims to support the National IPR policy's implementation as well as the development, promotion, and commercialization of intellectual property assets throughout the nation. It was launched by the Government of India in 2016 as a training and awareness cell. It was initially set up for a period of 3 years but has remained functional since then. CIPAM operates throughout the country including the cities (Tier 1, Tier 2 and Tier 3) as well as the rural areas. The Cell aims to work as a nodal agency that strives to streamline the IP process.

The lack of knowledge of the people pertaining to their rights in the field of IP has been a major obstacle in the growth of the Intellectual Property in India. It envisages

to a sense of consciousness among the IP holders that their rights are protected and in the event of encroachment in such right, appropriate remedy can be sought by following a proper procedure. It manages online portals to provide a platform for licensing of the IPRs and other exchanges. Some of them includes “IPR Exchange” and “GREAT Platform”. To strengthen the IPR ecosystem, the Cell has taken diverse functions like:

- i. It has played a vital role to facilitate the implementation of the National IPR Policy by undertaking strategic collaborations.
- ii. It organises workshops and sessions to train various stakeholders and coordinates the IPR activities amongst them.
- iii. It has been conducting IPR awareness camps since its very inception. These programs are, *inter alia*, undertaken in schools, colleges, industries and MSMEs. Various aspects of the intellectual property like copyrights, geographical indication and plant varieties are extensively covered and discussed. Workshops on the impact of piracy are also being conducted.
- iv. It has also started SIPP (Scheme for Intellectual Property Protection), an initiative to protect the intellectual property rights of the Startups.
- v. It endeavours to build an international community with bilateral and multilateral cooperation on the matters relating to the intellectual property rights and to strength India’s standing at global footing by participating in international forums.

In the present scenario, the extension of CIPAM to the protection of the rights of the IPR holders in OTT is vitally called for. In past, the Cell has been involved in anti-piracy campaign with the Bollywood actors. Such campaigns targeted piracy only in the context of cinematograph. Working of CIPAM towards the copyright infringements and piracy in the streaming platforms could bring substantial results. Though it undertakes only the promotion and coordination of the IPR activities and has no power of enforcement, nevertheless, its contribution cannot be undermined in the protection of the interest of the stakeholders whether in the field of movies or in OTT.

5.3. World Intellectual Property Organisation (WIPO)

WIPO is an agency of United Nations Organisation that strives to protect and promote the IP and the rights accruing thereof. It owes its origin to a number of

conventions and agreements including the Paris Convention and Berne Convention. It was formally established in 1967.⁴⁴ It is a self-funded agency with 192 member nations. The main role of the organisation is involved in the protection of the Intellectual Properties across the borders and to resolve the disputes arising thereof. It also frames policies, promote cooperation and capacity building among the member nations and to provide for technical infrastructures that helps to connect different IP ecosystems across the globe.

The role of WIPO can be a game changer in curbing the cross-border piracy of the digital content in the online streaming platforms. Internet has transformed the world in a close-knit circle of countries. This also paves the way for piracy and copyright infringement of the intellectual property from all over the globe, especially in OTT platforms. In this case, WIPO can use its worldwide influence of being a UN agency to regulate the international as well as national laws regarding this. The Member Nations may agree amongst themselves and formulate a plan of action against the distribution and exchange of the infringing content on the web.

5.4. Other Authorities

Other authorities included within this regime are:

5.4.1. Copyright Board

Section 11 of the Copyright Act, 1957 provides for the establishment of a Copyright Board which is a quasi-judicial body. Now, it is known as the Appellate Board. It consists of a Chairman and two other members.⁴⁵ The Chairman should have been a Judge of a High Court or he should be qualified to have been a Judge of High Court. The Board discharges a number of functions including the compulsory license being granted in certain cases, hearing of copyright disputes, cases of copyright infringement, among other functions.

⁴⁴ World Intellectual Property Organization, *available at*: <https://www.wipo.int/about-wipo/en/#:~:text=What%20is%20WIPO%3F,market%20and%20improve%20lives%20everywhere> (last visited on November 19, 2024).

⁴⁵ *Supra* note 6, s. 11(1).

5.4.2. State level bodies

The States may establish their own cybercrime unit that deals with the cases of piracy in the OTT platforms. Such units will function at the grassroots level and will prove to be economical as well. It is possible that the spread of pirated content will have started by the time a court order is issued and eventually carried out. This flaw, which is not unique to India, is particularly noticeable when it comes to illegal streaming of live events, such as sporting events. This problem can be effectively tackled by these state level bodies as they work in a swift fashion. Such a body has been established by the Maharashtra Government in 2017. Maharashtra Intellectual Property Crime Unit (MIPCU) has been established with a view to provide speedy and effective enforcement of the rights of the IP right holders. This Unit has gained importance particularly because the capital of Maharashtra, Mumbai, is a home for the film and entertainment industry. Both cinema and OTT content is made here. Therefore, the existence of such a regulatory body has become imperative.

6. Digital Rights Management (DRM)

A variety of methods and technologies referred to as digital rights management (DRM) are used to regulate the usage of digital devices and content after the initial sale takes place. It uses technology to check the access to the copyrighted material. It is extensively used in software, music, movies, e-books, and games, among other media, to safeguard IP and prevent unlawful use, duplication, piracy or distribution. Amongst the platforms that use DRM technologies leading names like Netflix, Kindle, Spotify, Apple Music and PlayStation Store are included. Physical DRMs initially emerged in the form of region coding on DVDs and dongles for software. Software DRM, which uses activation codes and serial numbers, began to proliferate in the 1990s. In order to handle the extensive sharing of digital content, DRM technologies advanced with the introduction of the internet and digital media in the early 2000s.

DRM serves various purposes. DRM safeguards authors' and publishers' rights by limiting unauthorised copies and distribution of digital content. DRM helps to make sure that content can only be accessed and used by those that have been authorised. A user may need present identification before being allowed to access some digital resources. DRM can impose restrictions on the use of content, like limiting the number

of times it can be accessed or restricting playback to specific devices. DRM assists content producers and distributors in keeping their revenue streams intact and preventing losses from piracy by regulating usage and distribution.

Although DRM plays a vital role in safeguarding digital information, it also presents crucial questions and concerns that will only grow more complex as technology develops and customer expectations shift. In order to balance the demands of content producers and distributors with the rights and expectations of consumers, DRM continues to evolve and develop its new methodology for protection of the digital content.

7. Conclusion

At the present time technology moves at a pace, much faster than law. Availability of a wide range of content and accessibility, are the primary reasons for the expansions of OTT. As OTT platforms grow, because of the humanoid tendency piracy is also bound to grow, simultaneously. Introduction of technology like VPN have led to increased instances of piracy since they help conceal the identity of the offender, making it difficult to punish the wrongdoer. Emergence of peer-to-peer piracy has further resulted in an increase in access to pirated content.

Though, the newly introduced digital media ethics code, under the Information Technology (Intermediary Guidelines and Digital Media Ethics code) Rules, 2021 sought to regulate OTT platforms, these rules did not have much to address the issue of piracy in OTT platforms. Various authorities and agencies have also been formed to regulate instances of piracy at both national and international levels but what is needed from lawmakers is a complete code to regulate online piracy.

In the judicial sphere, concepts like dynamic injunction and John Doe order have significantly helped by providing a remedy for infringement. With John Doe order, solving to a massive extent the problem of anonymity and dynamic injunction providing a remedy to the problem of mirror websites.

One way of ensuring content security is self-regulation by OTT. This could be done with the help of Digital Rights Management which uses technology, to check access to the copyrighted material and prevent unlawful use, duplication, and distribution. However, DRM restricts the rights of its users and increases the risk of data tempering. Nevertheless, piracy can be termed as an advantage of law, that is silent and insufficient.

Therefore, the need of the hour is to tackle the issue, by the way of legislations that are clear, precise and exhaustive in themselves. While being effective, these legislations also need to ensure that they do not hamper or transverse rights of the producers or their creative freedom and the rights of the users.