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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ONLINE PIRACY OF MOVIE IN INDIA, WITH SPECIAL REFERENCE TO COPYRIGHT ACT: LEGAL FRAMEWORK AND CHALLENGES**

AUTHORED BY - SAMARTH PATHAK

## **Abstract**

India has consistently maintained its position as a major player in the copyright industry thanks to its rich cultural legacy. The acts that are covered by copyright are becoming more and more common throughout the nation. India is one of the world's top seven publishing countries, with a sizable proportion of its publications available in English. It is the biggest market for audio cassettes and more than 600 films are made there annually<sup>1</sup>. It is widely acknowledged that copyright piracy is a serious crime that not only undermines society's creative potential by depriving creators of their rightful compensation, but also results in financial losses for all those who have invested in producing copyrighted materials in a variety of formats for end users to use. Since many products protected by copyright are traded abroad, globalisation has pushed copyright issues to the forefront. This article gives an overview that how piracy occurs, what are the reasons which leads to Piracy, the problem faced due to piracy. In present time with the advancement of technologies the problem related to piracy is also increasing.

## **Introduction**

Following the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), which resulted in the World Trade Organization's (WTO) founding in 1995, the importance of intellectual property rights (IPR) protection is growing on a global scale. India is currently seeing a live discussion over the advantages and disadvantages of the Uruguay Round's results, particularly as they relate to IPRs.

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<sup>1</sup> Dr Satish Kumar Mishra, 'Indian Film Industry and Copyright Piracy Issues in India: A Growing Concern' (2023) 10(3) International Journal of Innovative Research in Technology International Journal of Innovative Research in Technology <[www.researchgate.net/publication/373719154\\_Indian\\_Film\\_Industry\\_and\\_Copyright\\_Piracy\\_issues\\_in\\_India\\_A\\_Growing\\_Concern#:~:text=Copyright%20law%20has%20been%20drafted,economic%20loss%20to%20the%20economy.](http://www.researchgate.net/publication/373719154_Indian_Film_Industry_and_Copyright_Piracy_issues_in_India_A_Growing_Concern#:~:text=Copyright%20law%20has%20been%20drafted,economic%20loss%20to%20the%20economy.)> accessed 7 March 2024.



Even if copyright has been a concept in the nation for a long time, there is currently a sense of urgency to resolve issues related to it. This could be the result of an awareness that, in the post-WTO world, copyright will probably play a role on the economic front in addition to its socio-cultural significance. In terms of legislation, India's copyright rules are similar to those of many developed nations. Since its inception in 1958, India's copyright laws have undergone several amendments, including those in 1983, 1984, and 1994, to keep up with the rapid advancements in technology. The penalties for breaking copyright have become increasingly severe over time. Additionally, the Uruguay Round Agreement on Trade Related Intellectual Property Rights (TRIPs) is nearly entirely complied with by the current legislation. Despite this, there is a low level of copyright knowledge in the nation, and piracy is widespread.

Many nations have a legal maxim that states that a right that is well-illustrated but lacks a remedy is effectively non-existent. This is aptly demonstrated in the realm of intellectual property, where writers and other holders of rights frequently find themselves unable to uphold the rights that the law grants them. This is the essence of the piracy issue. Individuals who aim to make money from other people's creations often disregard the rights of writers, performers, publishers, broadcasters, and numerous others whose livelihoods depend on the recognition of intellectual property rights, especially copyright.

Law enforcement officers and government policy makers have given the issue of piracy consistent and ongoing attention. The goal of national law implementing treaties and international accords has been to eradicate it. In particular, UNESCO has long acknowledged that efforts to stop piracy are essential in order to protect the rights of writers and artists, who are endangered by the increasing incidence of piracy. This is because, "Cultural industries - including books, audiovisuals and multimedia - generate jobs, income and revenue and are at the same time a central vehicle for promoting cultural diversity at local and international level<sup>2</sup>." Even though complete piracy elimination would not be conceivable, its worst impacts might be mitigated.

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<sup>2</sup> UNESCO, Approved Programme and Budget, 2004-2005, at 201, par. 04321 etseq.



# Meaning and causes of Piracy

## Meaning of Piracy

Piracy under the Intellectual Property Rights means an unlawful and unauthorized reproduction, distribution, or exploitation of someone else's creative work without the author's consent. Intellectual property rights are legal rights granted to intellectual property holder such as symbols, literary and artistic work, inventions, designs, names, cinematography etc.

In its most common definition, 'Piracy' refers to the action of creating unauthorised copies ('pirated copies') of the protected content and dealing with those copies by circulation and selling<sup>3</sup>.

Piracy under intellectual property rights can be caused by a variety of factors, including economic, technological, and social factors. Some of the main causes of piracy in the context of intellectual property rights are discussed below

## Causes of Piracy

**1. High Prices-** One of the Primary causes for increase in piracy is expense of legally obtaining copyrighted material. It is important to note that with the increase and diversification of digital streaming platforms, prices to watch the original content has increased a lot. In some countries, the cost of buying a legitimate DVD or accessing a legal streaming service is prohibitively expensive for many consumers. As a result, some consumers turn to piracy as a cheaper alternative. With the ties and release of films of various OTT platforms like Netflix, Hotstar, Zee5 etc, and the need for the consumer of purchase different OTT Subscription, consumers are shifting towards cheap ways of watching films and a place where they can get different contents at a single place. Which includes watching pirated movies on Telegram, torrent etc<sup>4</sup>. Apart from this, other reasons for the growth of apps like telegram and torrent are decision like increase in prices of the subscriptions<sup>5</sup> and stringent policies of the OTT platforms to stop sharing account with other people apart from the family

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<sup>3</sup> Art. 13.12. JLN Sterling, Sterling on World Copyright Law (6th edn, Sweet and Maxwell 2022) <[www.sweetandmaxwell.co.uk/Product/Intellectual-Property/Sterling-on-World-Copyright-Law/Hardback/42961740](http://www.sweetandmaxwell.co.uk/Product/Intellectual-Property/Sterling-on-World-Copyright-Law/Hardback/42961740)> accessed 29 December 2023.

<sup>4</sup> 'Move over torrents, Indians now use Telegram to pirate movies and TV shows' (India Today, 16 September 2020) <[www.indiatoday.in/technology/news/story/move-over-torrents-indians-now-use-telegram-to-pirate-movies-and-tv-shows-1722374-2020-09-16](http://www.indiatoday.in/technology/news/story/move-over-torrents-indians-now-use-telegram-to-pirate-movies-and-tv-shows-1722374-2020-09-16)> accessed 1 March 2024.

<sup>5</sup> Elizabeth Gravler, 'As Netflix raises prices again, here's how you can save on — and benefit from — your subscription' (CNBC, 15 November 2023) <[www.cNBC.com/select/netflix-price-hike-how-to-save-maximize-subscription/](http://www.cNBC.com/select/netflix-price-hike-how-to-save-maximize-subscription/)> accessed 10 February 2024.

members<sup>6</sup>.

**2. Availability-** Another factor that contributes to the piracy is the availability of the pirated materials. Pirated materials are often readily available in the market, both Online and offline, and can be easily obtained, making it more legitimate option than purchasing legitimate content. Earlier, piracy used to be done using the cable TV recording, DVD recording etc. with the changing times, decrease in the internet prices and specially because of COVID, engagement on the OTT platform has increased massively. Making it comparatively easy, for the piracy doers to commit piracy. According to the reports, the overall OTT subscription grew collectively from 32 million at the end of 2019 to 62 million at the end of 2020<sup>7</sup>. Additionally, the value of India's video over-the-top (OTT) market in the fiscal year 2021–2022 was INR 249.09 billion (US\$2.92 billion). From FY 2023 to FY 2027, the market is projected to grow at a compound annual growth rate (CAGR) of roughly 16.58 percent, reaching a value of INR 581.21 billion (more than US\$7 billion)<sup>8</sup>. This shows the extent of market penetration and scope for the increase in the Piracy.

**3. Lack of enforcement-** In India, for a very long period of time, there was no specific regulation to deal with the evil of film piracy. This area was generally governed indirectly by different acts like copyright act, cinematograph act etc. Even the provision in the copyright act were not stringent enough to deal with the increase in the piracy and deal with the increase in the types of piracy. This is one of the reasons film piracies is at all-time high in India<sup>9</sup>. With the introduction of numerous amendments in the copyright act and introduction of Cinematograph amendment bill, 2023, government has finally taken initiatives to act against the piracy<sup>10</sup>.

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<sup>6</sup>Divyanshi Sharma, 'After Netflix, Disney stops users from sharing their password outside household' (India Today, 28 September 2023) <[www.indiatoday.in/technology/news/story/after-netflix-disney-stops-users-from-sharing-their-password-outside-household-2441624-2023-09-28](http://www.indiatoday.in/technology/news/story/after-netflix-disney-stops-users-from-sharing-their-password-outside-household-2441624-2023-09-28)> accessed 28 February 2024.

<sup>7</sup>'How the pandemic emerged as a blessing for India's OTT industry' (Economic Times, 16 July 2021) <<https://brandequity.economictimes.indiatimes.com/news/digital/how-the-pandemic-emerged-as-a-blessing-for-indias-ott-industry/84056159>> accessed 1 March 2024.

<sup>8</sup>Mellesia Cyril, 'Exploring India's Thriving OTT Video Segment: Trends, Growth, and Investor Interest' (India Briefing, 11 April 2023) <[www.india-briefing.com/news/india-ott-video-segment-growth-trends-investments-27681.html/#:~:text=In%20the%20fiscal%20year%202021,\(over%20US\\$7%20billion\).>](http://www.india-briefing.com/news/india-ott-video-segment-growth-trends-investments-27681.html/#:~:text=In%20the%20fiscal%20year%202021,(over%20US$7%20billion).>)> accessed 2 March 2024.

<sup>9</sup>'Visits to piracy websites have increased 12% in the past 4 years' (Fast Company, 15 January 2024) <[www.fastcompany.com/91009644/visits-to-piracy-websites-have-increased-12-in-the-last-four-years#:~:text=Piracy%20is%20also%20becoming%20normalized,according%20to%20the%20company's%20analysis.>](http://www.fastcompany.com/91009644/visits-to-piracy-websites-have-increased-12-in-the-last-four-years#:~:text=Piracy%20is%20also%20becoming%20normalized,according%20to%20the%20company's%20analysis.>)> accessed 5 March 2024.

<sup>10</sup> Solomon & Co., 'Cinematograph (Amendment) Bill, 2023: An Invasion On Piracy' (Solomon & Co.) <<https://solomonco.in/cinematograph-amendment-bill-an-invasion-on-piracy/>> accessed 7 February 2024.

**4. Technological Factors-** Advances in the technology have made it easier for people to create and distribute pirated materials. For example, the rise of internet and file sharing technologies has made it possible for pirates to distribute large files quickly and easily. Movie piracy underwent a significant shift with the introduction of digital media and the internet. Globally, sharing digital copies of films became simpler with the advent of file-sharing platforms like Napster and, subsequently, BitTorrent. Internet piracy spread quickly during this time. The advent of streaming technology changed movie piracy much further. Websites that stream films illegally have become more common. Streaming has been a popular form of piracy due to its convenience of obtaining high-quality content without the need to download files. The availability and calibre of pirated content have grown significantly; HD and even 4K content is now being pirated. The prevalence of illegal streaming websites and torrent downloads means that piracy persists even in despite of the growth of legitimate streaming services like Netflix<sup>11</sup>. Technology is developing at a faster pace than in the past, which has increased the accessibility of unlawful digital content distribution and copying. Getting pirated content is made easier by peer-to-peer sharing, high-speed internet, and efficient file-sharing technology. With the help of anonymity technologies like VPNs and proxy servers, users can avoid identification, which presents a big problem for digital media companies and content producers.

**5. Content Diversity-** One of the primary reasons OTT platforms are being used in India is the vast array of material that is available. These platforms cater to the diverse tastes of Indian people by offering a wide range of material that is specifically designed for specific watching categories. One such potential that digital players have effectively capitalised on is the enormous popularity of regional language content. According to a FICCI EY analysis, regional language content on OTT platforms is predicted to more than double from 27% in 2020 to 54% in 2024<sup>12</sup>. This change reflects both the rising emphasis on producing original programming in languages other than Hindi and the growing demand for vernacular material. OTT platforms are fuelling their rapid rise by effectively bridging the gap between producers and audiences, with over 40 providers producing content in many languages. With increase in vernacular content availability on OTT platforms, instances of piracy through OTT have increased.

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<sup>11</sup>Manish Jindal, 'History of Movie Piracy – Nuanced Explanation' (Bytes Care, 15 January 2022) <<https://bytescare.com/blog/history-of-movie-piracy>> accessed 11 January 2024.

<sup>12</sup> Ernst and Young, Reinvent: India's media & entertainment sector is innovating for the future (FICCI 2024) <[https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_in/topics/media-and-entertainment/2024/ey-in-india-s-media-entertainment-sector-is-innovating-for-the-future-03-2024-v1.pdf](https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2024/ey-in-india-s-media-entertainment-sector-is-innovating-for-the-future-03-2024-v1.pdf)> accessed 4 January 2024.



**6. Lack of Awareness-** A large percentage of the behaviour associated with digital piracy can be ascribed to lack of knowledge. It's possible that many people who participate in piracy are unaware of the moral and legal ramifications of their behaviour. They could be unaware that piracy costs the creative industry money and infringes on the rights of content creators. Furthermore, people frequently ignore the dangers of malware and other online problems connected to content piracy. Despite various efforts of the government and awareness drives, there is a lack of awareness related to IPR and film Piracy. In a survey of 203 Indian educational institutions, Einfolge<sup>13</sup>, a global provider of patent analytics and market research, found that 35% of respondents were unaware of intellectual property rights<sup>14</sup>. Further, the survey of National Centre for Biotechnology also states the same, that there is a lack of IPR Knowledge in India<sup>15</sup>. Joint secretary of higher education, Ms. Neeta Prasad also agrees on the same point. According to one of the statements delivered by her, India lags behind in the Intellectual Property Rights, as students lacks awareness<sup>16</sup>. Further, according to the report, lack of awareness of what constitute film piracy is another reason for the growth of piracy in the film industry<sup>17</sup>. Which has made India ranked 43<sup>rd</sup> out of 55 countries in term of piracy<sup>18</sup>.

It is important to note that these factors are interrelated and can vary depending on the specific context. Addressing Piracy requires a multifaceted approach that takes into account both the economic and social factors that contributes to it.

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<sup>13</sup> Joanna L Mathias, 'IPR AWARENESS AND THE NATIONAL IPR POLICY' (2021) 3(5) Intellectualis Stock Taking: IPR law and Policy Reforms 8, <[https://christuniversity.in/uploads/departmentactivities/Intellectualis-February%202021\\_20210408045122.pdf](https://christuniversity.in/uploads/departmentactivities/Intellectualis-February%202021_20210408045122.pdf)> accessed 6 March 2024.

<sup>14</sup> Neetu Chandra Sharma, 'Study shows low IPR awareness in India' (Live Mint, 8 September 2018) <[www.livemint.com/Politics/Rap1LeEuftJTfFehNt00gTJ/Study-shows-low-IPR-awareness-in-India.html](http://www.livemint.com/Politics/Rap1LeEuftJTfFehNt00gTJ/Study-shows-low-IPR-awareness-in-India.html)> accessed 7 February 2024.

<sup>15</sup> Apurva Prashant Deshpande and others, 'Assessment of knowledge and awareness regarding intellectual property rights among the health-care professionals in Belagavi city: A cross-sectional study' (2022) 11(1) Journal of Education and Health Promotion 211, <[http://dx.doi.org/10.4103/jehp.jehp\\_967\\_21](http://dx.doi.org/10.4103/jehp.jehp_967_21)> accessed 1 March 2024.

<sup>16</sup> Telegraph India, 'India lags behind in IPR as students lack awareness, says higher education joint secretary' (Telegraph India, 19 January 2022) <[www.telegraphindia.com/edugraph/news/india-lags-behind-in-ipr-as-students-lack-awareness-says-higher-education-joint-secretary/cid/1848252](http://www.telegraphindia.com/edugraph/news/india-lags-behind-in-ipr-as-students-lack-awareness-says-higher-education-joint-secretary/cid/1848252)> accessed 2 March 2024.

<sup>17</sup> Iblina Begum and H Sharma, 'Piracy: A threat to Academicians and Publishers' (2018) 23 Journal of Intellectual Property Right 261, <<https://docs.manupatra.in/newslines/articles/Upload/e87748d9-8d1b-4be3-a7c9-bcf059c0c526.pdf>> accessed 7 December 2023.

<sup>18</sup> 'India slips to 43rd rank in US intellectual property rights index' (Business Standard, 24 February 2023) <[www.business-standard.com/article/current-affairs/india-slips-to-43rd-rank-in-us-intellectual-property-rights-index-123022401216\\_1.html](http://www.business-standard.com/article/current-affairs/india-slips-to-43rd-rank-in-us-intellectual-property-rights-index-123022401216_1.html)> accessed 1 March 2024.

## Loss due to Piracy

The legitimate owner of copyrights loses some of their earnings due to piracy. In the form of royalties, the commercial exploitation of copyrights provides additional revenue for creators. Excise taxes, sales taxes, income taxes, and other levies that pirates avoid paying are ways that the state makes money. Consequently, everyone engaged in the lawful creation and distribution of copyrighted goods loses money as a result of piracy. The commercial loss and loss to the state exchequer are the most significant of them. The percentage of sales lost to pirates could be used to calculate the trade loss. Finding a unique proportion is not an easy feat, though. The degree of piracy varies according to different assessments. Piracy has a huge impact on the film industry negatively. Illegal distribution of films through unauthorized channels often leads to a loss in revenue for producers. It is reported that the film industry loses approximately Rs. 20,000 crores, every year<sup>19</sup>. The entertainment sector boosts the economy of the countries that make films by generating income and creating jobs. Anywhere that films are exchanged, viewed, or broadcast, piracy has an impact on the economy. Some nations have already completely shut down their film industries as a result of piracy. Video store owners and their employees may lose their legitimate jobs as a result of cassette piracy. The money obtained from this illegal activity frequently ends up in the pockets of people connected to criminal networks, gangs, and other criminal organisations. Therefore, it can be said that, piracy has negative impact on various industries and causes a loss of revenue and profits for legitimate businesses. It is, therefore, important to enforce strict anti-piracy legislations for the purpose of intellectual property right's protection<sup>20</sup>.

"A report released by the Motion Picture Association of America (MPAA) estimates that \$31.8 billion was lost globally in 2019 as a result of film and television industry piracy. This amount accounts for losses resulting from the sale of fake DVDs and Blu-ray discs as well as illicit movie and TV show

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<sup>19</sup> Ministry of Information and Broadcasting, Major action to curb film piracy as industry faces losses of Rs. 20,000 crore annually due to piracy (1974394, Press Information Bureau 2023) <[www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1974394#:~:text=CBFC%20and%20I&B%20officers%20authorised,link%20carrying%20pirated%20filmic%20content&text=With%20the%20film%20industry%20facing,film%20piracy%20in%20the%20country.](http://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1974394#:~:text=CBFC%20and%20I&B%20officers%20authorised,link%20carrying%20pirated%20filmic%20content&text=With%20the%20film%20industry%20facing,film%20piracy%20in%20the%20country.)> accessed 12 January 2024.

<sup>20</sup> Recording Industry Association of America, RIAA 2018 YEAR-END MUSIC INDUSTRY REVENUE REPORT (RIAA 2019) <[www.riaa.com/wp-content/uploads/2019/02/RIAA-2018-Year-End-Music-Industry-Revenue-Report.pdf](http://www.riaa.com/wp-content/uploads/2019/02/RIAA-2018-Year-End-Music-Industry-Revenue-Report.pdf)> accessed 1 March 2024.

downloads and streaming<sup>21</sup>. The growing number of online streaming and file-sharing platforms in recent years has also contributed to an increase in the prevalence of piracy by making it simpler for users to get and distribute pirated content. Because these platforms frequently operate illegally, it is challenging for law enforcement to find and prosecute pirates.

The film industry has implemented a number of strategies to combat piracy, including partnering with law authorities to shut down unlawful streaming and file-sharing websites and using DRM technology to prevent unauthorised duplication and transmission. However, the film industry is still affected by piracy, which is a chronic issue. In conclusion, there is no question that the film business faces a serious problem with piracy, which damages creative professionals' careers and results in financial losses. Although the industry has taken action to stop piracy, it is still a problem that needs to be addressed on a continuous basis<sup>22</sup>.

The Indian film industry has taken many steps to combat piracy, including using watermarks technology, taking legal action against pirates, and working with government agencies to raise awareness about the negative impact of the piracy. However, much more needs to be done to address this issue and protect the intellectual property rights of the Indian film industry.

To counter the expanding Indian habit of content piracy on the internet. Courts in India have created a novel type of order known as a "John Doe Order." With a John Doe order, the accused's name is kept secret until the petition is presented, and all that is needed to identify the guilty is a brief description. Indian film makers use John Doe's orders to stop new films from being pirated online and appearing on hundreds of fake websites before they are released. It is forbidden to download free movies or data from websites that seem to be giving illegal access to previously unreleased movies in advance<sup>23</sup>. The entertainment industry is facing a significant issue with pirated content on the internet. Surveys conducted recently and enhanced industry monitoring have brought attention to

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<sup>21</sup> Motion Picture Association, A Comprehensive Analysis and Survey of the Theatrical and home/ mobile entertainment market environment for 2021 (MPA 2021) <[www.motionpictures.org/wp-content/uploads/2022/03/MPA-2021-THEME-Report-FINAL.pdf](http://www.motionpictures.org/wp-content/uploads/2022/03/MPA-2021-THEME-Report-FINAL.pdf)> accessed 17 January 2024.

<sup>22</sup> Agency Office of United States Trade Representative, 2023 Special 301 Report on Intellectual Property Protection and Enforcement (USTR-2022-0016, USTR 2023) <<https://ustr.gov/sites/default/files/2023-04/2023%20Special%20301%20Report.pdf>> accessed 13 January 2024.

<sup>23</sup> Payel Chatterjee, "What's in a name?... John Doe arrives in India" (Nishith Desai Associates: Nishith Desai, 2014) <[www.nishithdesai.com/fileadmin/user\\_upload/pdfs/-What-s\\_in\\_a\\_name\\_-\\_John\\_Doe\\_arrives\\_in\\_India.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/-What-s_in_a_name_-_John_Doe_arrives_in_India.pdf)> accessed 4 March 2024.



India's online piracy issue. In order to protect copyright owners' rights, further government actions and the legal closure of those involved in online piracy are necessary.

## **The Loss to the Film Industry**

Piracy is a significant problem that has been causing losses to the film industry for many years. Pirates are making illegal copies of films and distributing those copies on a massive scale without authorization. This trend, known as film piracy, is responsible for the high financial cost paid by the film industry each year.

The first major loss resulting from film piracy is a reduction in revenue. Piracy is causing the film industry to lose millions of dollars each year<sup>24</sup>. Studies show that pirated copies of films are separated across the internet, and many people prefer to watch those copies instead of paying for films in cinemas or through authorized digital platforms<sup>25</sup>. This significantly hinders the revenue-generating potential of new releases. Reports show that, on an average, prerelease piracy causes a 19.1 percent decrease in box office revenue compared to piracy that occurs post release<sup>26</sup>. Loss of revenue because film piracy has been many times recognised by the courts as well. In the case of UTV Software communication limited vs. home cable Network ltd. & ors. (famously known as “Thank You” movie case)<sup>27</sup>, After multiple well-known and unknown cable operators broadcast pirated versions of the plaintiff's films on cable networks, the producer experienced copyright violations in its previous films and was concerned that these violations would harm its reputation and financial standing. Consequently, before Thank You was released, the plaintiff filed a lawsuit in the Delhi High Court, requesting an injunction against both known and unknown cable operators to prevent them from broadcasting, distributing, or telecasting unauthorised copies of the movie. The plaintiff was granted a restraining order by the Delhi High Court.

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<sup>24</sup> Lata Jha, 'Piracy continues to hit OTT revenues, subscriber growth' (Live Mint, 31 January 2023) <[www.livemint.com/industry/media/piracy-continues-to-hit-ott-revenues-subscriber-growth-11675103078493.html](http://www.livemint.com/industry/media/piracy-continues-to-hit-ott-revenues-subscriber-growth-11675103078493.html)> accessed 5 January 2024.

<sup>25</sup> Gunjan Chawla, 'Impact of Online Digital Piracy on the Indian Film Industry: An Empirical Investigation into Consumer Behaviour' (2023) 28(1) Journal of Intellectual Property Rights <<http://dx.doi.org/10.56042/jipr.v28i1.537>> accessed 1 March 2024.

<sup>26</sup> Liye Ma and others, 'An Empirical Analysis of the Impact of Pre-Release Movie Piracy on Box Office Revenue' (2014) 25(3) Information Systems Research 590, <<http://dx.doi.org/10.1287/isre.2014.0530>> accessed 1 March 2024.

<sup>27</sup> UTV Software communication limited vs. home cable Network ltd. & ors. I.A. No. 5383/2011 in CS (OS) No.821 of 2011.

Similarly, in the case of Reliance big entertainment private ltd vs. Jyoti cable network & ors (Famously known as “Singham” Movie case)<sup>28</sup>, The movie's producer expressed concern over the fact that duplicates would be created, distributed, and sold on the market as CDs or DVDs, and/or broadcast on television by cable companies. The plaintiff can suffer enormous financial losses as a result of this. As a result, the plaintiff filed a lawsuit in the Delhi High Court, arguing that the public would stop going to theatres to see the movie if it were shown or broadcast on cable, the internet, DTH, or illegally distributed through CD, DVD, Blue-ray, VCD, MMS, tapes, etc. by unauthorised personnel. This will negatively impact the plaintiff's interest and lead to decreased revenue at the box office. In this instance, the Court used the quia timit principles to issue a restraining order prohibiting all defendants and other unidentified, undisclosed parties from downloading, uploading, or showing the film in any way or violating the plaintiff's copyright through various media without first obtaining the plaintiff's permission.

The second loss to the film industry due to piracy is a decrease in investment. Film piracy also has a profound effect on investment in the film Industry. The entertainment sector needs financial backing for creating high quality films, which are only possible when there is a willingness among financiers to invest in such project. As a result of piracy, investors may become unwilling to invest in the industry, leading to a detrimental impact on future projects or opportunities for new filmmakers<sup>29</sup>. Although government has allowed 100% FDI in the film Industry<sup>30</sup>, still there is a decline in the investment from foreign investors<sup>31</sup>. One of the reasons for the same is constant losses incurred because of film piracy<sup>32</sup>. This directly impacts on the creativity and the quality of the work, as the investment in the risker projects also gets reduced, forcing producers to invest in safer, low budget films.

The third loss caused by the piracy is a reduction in job opportunities within the film industry. Piracy

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<sup>28</sup> Jyoti cable network & ors. LA. No 11242/2011 in CS(OS) No.1724/2011.

<sup>29</sup> Ramnath K Chellappa and Shivendu Shivendu, ‘Economic Implications of Variable Technology Standards for Movie Piracy in a Global Context’ (2003) 20(2) Journal of Management Information Systems 137, <<http://dx.doi.org/10.1080/07421222.2003.11045767>> accessed 29 February 2024.

<sup>30</sup> Ministry of Information and Broadcasting, ‘Foreign Investment Policy’ (Ministry of Information and Broadcasting) <[https://mib.gov.in/sites/default/files/Are\\_You\\_surprised\\_\\_0.pdf](https://mib.gov.in/sites/default/files/Are_You_surprised__0.pdf)> accessed 25 January 2024.

<sup>31</sup> Sofia Karadima, ‘FDI in film-making: The state of play’ (Investment Monitor, 27 June 2022) <[www.investmentmonitor.ai/fdi-data/fdi-film-making-state-of-play-investment/](http://www.investmentmonitor.ai/fdi-data/fdi-film-making-state-of-play-investment/)> accessed 31 January 2024.

<sup>32</sup> Nilesh Zacharias, ‘TRANSFORMING BOLLYWOOD – A LEGAL PERSPECTIVE’ (Nishith Desai, 2020) <[www.nishithdesai.com/Content/document/pdf/Transforming\\_Bollywood\\_-\\_A\\_Legal\\_Perspective.pdf](http://www.nishithdesai.com/Content/document/pdf/Transforming_Bollywood_-_A_Legal_Perspective.pdf)> accessed 14 January 2024.

has a ripple effect, which leads to a reduction in job opportunities within the industry. As an industries revenue declines, film studios may be unable to finance new projects or pay salaries in line with industry standards, leading to job losses and negatively impacting the lives of those individuals. Many people work in the film industry, including crew members, editors, performers, directors, and marketing teams. Infringement-related revenue loss may result in budget cuts, fewer productions, and eventually employment losses in the sector. Biggest example of this is, in the state of Gujarat, more than 1500 outlets, selling original content DVDs were closed because of piracy<sup>33</sup>.

Another loss caused by piracy is quality and security risk for the consumers. Risks associated with pirated content include poorer quality, improper localization or subtitles, and the possibility of spyware or viruses that could damage users' devices and data. For producers and artists, as well as for innocent consumers who become targets of cybercriminals who use piracy as a means of spreading malware, online piracy is an ongoing concern. Even though many nations have made online piracy illegal, it is nevertheless a daily crime committed by people all over the world. Indeed, a recent MUSO survey discovered that visits to websites that engage in online piracy have surged by almost 20% when compared to the previous year. The information reveals hundreds of cases of malware, Trojan viruses, infostealers, spyware, keyloggers, and other hazards inside files that have been nominated for the recent Oscar Awards. Top threats found were, spyware personal data stealer, it sends your personal information to the attackers, Password Stealer Extension, it sends your password and personal information through the java scripts etc<sup>34</sup>. Apart from this, according to the research conducted in the Washington, piracy operators enable malvertisers to exploit their consumers, generating an estimated revenue of at least \$121 million. Investigators discovered hazardous advertisements that contained malware in addition to ransomware. These advertisements may download spyware to track a user's movements, attempt to access a device to steal financial information, or mark the device for potential future attacks. Malvertising on pirate websites is common. Users were shown advertisements infected with malware on nearly 80% of pirate websites. Additionally, a sizable amount of malware targets users of pirate websites. There were an estimated

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<sup>33</sup> Keyur Dhandeo, 'Piracy forces closure of 1,500 outlets selling DVDs in Gujarat' (Economic Times, 8 February 2012) <<https://economictimes.indiatimes.com/industry/media/entertainment/piracy-forces-closure-of-1500-outlets-selling-dvds-in-gujarat/articleshow/11805490.cms?from=mdr>> accessed 1 March 2024.

<sup>34</sup> Dana Yosifovich, 'Film Piracy Report | Reason Labs' (Reason Labs | Endpoint Protection & Antivirus Security Solutions, 8 March 2023) <<https://reasonlabs.com/research/film-piracy-report>> accessed 27 January 2024.



321 million malicious advertisements displayed to users of pirate websites<sup>35</sup>. In conclusion, movie piracy has grown to be a serious issue for the film business, causing large financial losses, deterring investment, and affecting job prospects. In response to customer demands for greater accessibility to high-quality films, studios and distributors need to combat piracy by implementing systems that provide digital services or by implementing more accommodating copyright regulations. Maybe if the business adopts a diversified strategy, it can create a future where there is minimal piracy and everyone wins—filmmakers, studios, investors, and cinema goers.

## **Impact of Piracy on OTT Platforms**

Since piracy has been a problem for many years, it is not shocking that OTT (over-the-top) services are now seeing an increase in the phenomenon. The entertainment business has seen a paradigm shift as a result of online streaming, with OTT platforms emerging as the preferred choice for fans who wish to catch up on their preferred films and TV series whenever it's convenient for them. Nevertheless, this change has also led to an increase in piracy, which is seriously hurting the OTT sector.

The demand for streaming video has increased because to the Covid-19 pandemic, which has caused the OTT Video-on-Demand (VoD) business to grow at an exponential rate in recent years. For instance, Netflix more than doubled its projected 7 million subscribers in just the first quarter of 2020, bringing in a staggering 16 million users<sup>36</sup>. In addition to consumers, filmmakers and producers also flocked to over-the-top (OTT) services during the shutdown, as a number of films were released and aired on platforms such as Netflix, Amazon Prime, and Zee5, among others. New content releases on OTT have thus taken on a life of its own. For the production firms, viewers, and OTT platforms, it was a win-win situation.

Large-scale piracy attacks have been launched against OTT platforms, which include lesser-known providers as well as providers like Netflix and Amazon Prime Video. The problem of piracy presents

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<sup>35</sup> Digital Citizen Alliance, 'Piracy to Ads to Ransomware: Investigation Finds \$121 Million in Dangerous Malicious Ads on Piracy Sites Designed to Trick Users into Infecting Their Devices' (PR Newswire, 15 September 2022) <[www.prnewswire.com/news-releases/piracy-to-ads-to-ransomware-investigation-finds-121-million-in-dangerous-malicious-ads-on-piracy-sites-designed-to-trick-users-into-infecting-their-devices-301625117.html](http://www.prnewswire.com/news-releases/piracy-to-ads-to-ransomware-investigation-finds-121-million-in-dangerous-malicious-ads-on-piracy-sites-designed-to-trick-users-into-infecting-their-devices-301625117.html)> accessed 7 January 2024.

<sup>36</sup> 'Netflix gets 16 million new sign-ups thanks to lockdown' (BBC News, 22 April 2020) <[www.bbc.com/news/business-52376022](http://www.bbc.com/news/business-52376022)> accessed 23 November 2023.

itself in several ways, such as illicit streaming, content that has been pirated, and torrent downloads. Although OTT platforms have anti-piracy measures, piracy continues to be a thorn in the flesh of the OTT industry.

A MUSO (piracy monitoring organisation) research states that over 190 billion illicit downloads of the top fifteen pirated TV episodes occurred in 2019 alone. With almost 55 million pirated copies, Game of Thrones was the biggest casualty<sup>37</sup>. These numbers provide a clear picture of how serious the OTT industry's piracy issue is.

The OTT sector is severely impacted by piracy. First of all, piracy prevents over-the-top (OTT) platforms from growing their income, which eventually costs content creators and distributors money. Second, because consumers who can get the content for free might not perceive the benefit of paying to the platform, piracy results in a decline in subscriber growth.

The amount of illegal web streaming that violates content licencing agreements is responsible for 81% of the increase in online video and television piracy. For communications service providers (CSPs), content piracy has far-reaching consequences. The total profitability of CSP services as well as service revenue are significantly impacted by unauthorised streaming. Notably, firms like MX Player that provide advertising video-on-demand (AVoD) are also affected. Even if the material on the platform is free, the company still runs the danger of missing out on viewing-based advertising revenue. At least 15–20 million users regularly view MX content illegally, which costs money in the form of missed advertising revenue<sup>38</sup>.

OTT platforms are using a variety of anti-piracy strategies to tackle piracy. For example, Amazon uses watermarking to help identify a compromised track in any release, whereas Netflix adopts a closed-in-the-platform method to safeguard its content. However, as over-the-top (OTT) companies work to put more robust anti-piracy mechanisms in place, pirates respond by developing new ways to obtain and distribute content unlawfully.

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<sup>37</sup> Don Reisinger, ‘‘Game of Thrones’ Season 7 Has Been Pirated More Than 1 Billion Times’ (Fortune, 17 September 2017) <<https://fortune.com/2017/09/07/game-of-thrones-season-7-piracy/>> accessed 2 March 2024.

<sup>38</sup> Lata Jha, ‘India’s OTT Industry Loses Up to 30% Revenue to Piracy’ (Live Mint, 16 February 2022) <[www.livemint.com/news/india/indias-ott-industry-loses-up-to-30-revenue-to-piracy-11613462460632.html](http://www.livemint.com/news/india/indias-ott-industry-loses-up-to-30-revenue-to-piracy-11613462460632.html)> accessed 5 January 2024.

In conclusion, piracy remains a significant problem for OTT platforms, and combating it is a never-ending fight. To counter piracy, OTT platform must continue exploring new ways to protect their content and collaborate with industry stakeholders to find a lasting solution. This is essential for the continued growth and sustainability of the OTT industry in the long run.

## **Cinematograph Amendment Act, 2023 review**

A case that supports the court's stance on online piracy is UTV Software Communication Ltd. v. 1337X<sup>39</sup>. The Delhi High Court's decision to support online piracy has had a concrete and genuine effect on the film business as well as the owners' rights. The Delhi High Court also reiterated in Star India (P) Ltd. v. 7Movierulz.TC<sup>40</sup>, that rogue websites produce unlawful copies and distribute them for public consumption with the intention of making illicit benefits. Notwithstanding the recognised obstacles presented by internet piracy, The Cinematograph Amendment Act 2023 fails to implement sufficient measures to mitigate the risks. The following fundamental concerns validate this perspective.

**Lack of comprehensive mechanism-** There are currently no particular, all-inclusive methods in place to stop movie content piracy online. The amendment is a piece of law designed to prevent piracy through cam cording. The newly added clauses impose strict limitations on the deliberate transmission of an infringing copy through the use of audiovisual recording equipment instead of authorised exhibition. The copyright holder has the authority to file a court case against infringement thanks to the pre-existing copyright and cinematographic legislation. A universal safeguard against copyright infringement is made possible by the Copyright Act's Sections 55 and 63, which provide civil remedies and sentences for imprisonment.

However, from the perspective of the copyright holder, requesting temporary relief is not very effective. The following two factors reduce the effectiveness of temporary relief: First off, the plaintiff's subsequent revenue loss is directly and causally related to the procedural delays in legal processes. Unauthorised content expands on the internet as a result of the delay between the original filing of the lawsuit and the court hearing against infringing websites, reducing the plaintiff's financial

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<sup>39</sup> UTV Software Communication Ltd. v. 1337X AIRONLINE 2019 DEL 773.

<sup>40</sup> Star India (P) Ltd. v. 7Movierulz.TC CS(COMM) 604/2022.

profits. Second, smaller stakeholders frequently decide against filing a lawsuit due to the high costs involved, and as a result, they eventually suffer the consequences of piracy. In addition, some websites on the internet are blocked by the relief of injunction against violators. But thanks to technology advancements, the content that is being copied is mirrored on proxy servers. It is relevant to take into consideration the Delhi High Court's approach that was withheld in *UTV Software Communication Ltd. and Ors vs. 1337X* in order to address the issue of procedural delays and proxy websites. By using its authority under Section 151 CPC, the Delhi High Court allowed the plaintiffs to implement the mirror, redirect, and alphanumeric websites in accordance with Order I Rule 10 CPC. The court then gave the joint registrar the authority to order ISPs to stop allowing access to mirror, redirect, and alphanumeric websites. Through this procedure, the plaintiff can file a remedy request with the joint registrar of courts against websites that have been recognised as mirroring content and providing access to unapproved content. Therefore, there is a necessity of enacting comprehensive mechanisms to provide accessible and effective interim relief against online piracy across jurisdictions.

**Emerging Avenue of online piracy-** As technology advances, new channels for internet piracy open up. The 2023 Act is ill-prepared to deal with these issues. The Delhi High Court has emphasised these options in its examination of the cyber locker concept in the matter of *Universal City Studios v. Mixdrop Co*<sup>41</sup>. The Court noted that cyber lockers are internet-based data storage systems designed specifically to hold and distribute content that violates copyright. This is where the pirated content is uploaded and shared with the public through link exchanges. In a similar vein, in *UTV Software Communication Ltd. v. 1337X*, the Court identified rogue websites.to, as those online platforms that disseminate stuff that is illegal. They either permit streaming of content or offer a searchable database that connects viewers to other websites where they can view illegal releases and motion pictures.

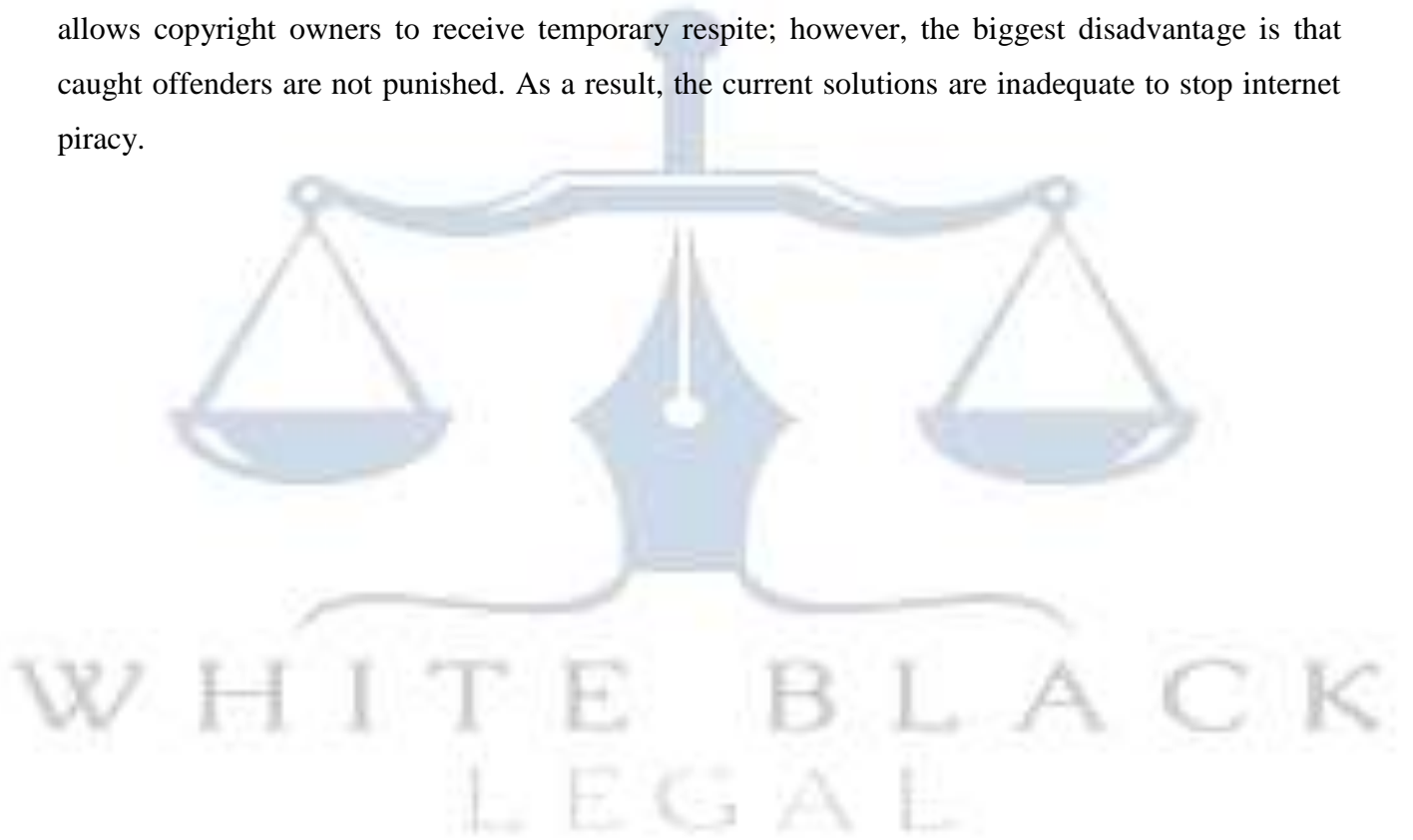
**Inadequate preventive measure-** Penalties and imprisonment are imposed for violating Sections 6AA and 6AB of the 2023 Act. Furthermore, it does not supersede earlier remedies provided by the IT Act of 2000 and the Copyright Act. By issuing blocking orders against rogue websites, URLs, and IP addresses that host content that violates copyright, this statute allows judges to intervene and prevent the transmission of copyrighted content. However, the question of extraterritorial jurisdiction remains unanswered in cases when the origin of a rogue website or cyber locker lies outside of India's

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<sup>41</sup> *Universal City Studios v. Mixdrop Co CS(COMM) 663/2022.*



territorial jurisdiction. For example, the Dynamic Injunction relief stems from the 2018 ruling in *Disney Enterprises v. M1*<sup>42</sup> Ltd. by the Singapore High Court, which upheld the blocking of mirror, redirect, and alphanumeric websites that only offer alternative ways to access the same primary infringing website without bringing a new lawsuit. Because there is no IP protection law in the country where these websites originated, even after banning orders are issued against them, the internet is still susceptible to their revival. In the end least, issuing John Doe or Ashok Orders, which imply that unnamed parties regarding websites that violate copyright may file a civil lawsuit to get a temporary injunction against the transmission of copyrighted content. By blocking websites, the court's authority allows copyright owners to receive temporary respite; however, the biggest disadvantage is that caught offenders are not punished. As a result, the current solutions are inadequate to stop internet piracy.



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<sup>42</sup> *Disney Enterprises v. M1* [2018] SGHC 206.