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COPYRIGHTS INFINGEMENT IN CYBERSPACE: **REMEDIES UNDER INDIAN LAW**

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Abstract

The rapid growth of digital technologies and internet communication has significantly transformed the creation, distribution, and consumption of copyrighted works. While cyberspace has enhanced access to knowledge, entertainment, and information, it has also created new avenues for copyright infringement through unauthorized reproduction, downloading, uploading, streaming, hyperlinking, caching, and digital piracy. Traditional copyright laws often face challenges in effectively addressing these modern forms of infringement due to the borderless nature of the internet and the anonymity of online offenders.

In India, the Copyright Act, 1957, along with the Information Technology Act, 2000, provides legal mechanisms to combat copyright violations in cyberspace. The law recognizes civil remedies such as injunctions, damages, account of profits, and delivery of infringing copies. Criminal remedies include imprisonment, fines, seizure of infringing materials, and penalties for repeat offenders. Administrative remedies also empower authorities to prevent the import and circulation of pirated works. Furthermore, issues concerning intermediary liability, hyperlinking, caching, and the requirement of *mens rea* in digital copyright offences have gained increasing importance in recent years.

This study examines the nature of copyright infringement in cyberspace, analyzes the remedies available under Indian law, and evaluates the effectiveness of legislative amendments such as the Copyright (Amendment) Act, 2012 in addressing digital copyright challenges. The study concludes that although India has established a legal framework for protecting copyrighted works online, stronger enforcement mechanisms and clearer regulations for internet intermediaries are necessary to effectively curb cyber copyright infringement.

Introduction

The internet has revolutionized the modern world by enabling instant communication, global connectivity, and unrestricted access to digital content. Literary works, music, films, software, photographs, artistic creations, and educational materials can now be created, shared,

and distributed within seconds across digital platforms. This technological advancement has greatly benefited society by promoting innovation, creativity, and economic growth. However, the same technology has also increased the risk of unauthorized use, duplication, and distribution of copyrighted works.

Copyright is a legal right granted to authors, creators, and owners of original literary, dramatic, musical, artistic, and cinematographic works. It provides exclusive rights to reproduce, distribute, adapt, communicate, and commercially exploit their creations. In the digital era, copyright infringement has become easier due to the availability of file-sharing platforms, peer-to-peer networks, illegal streaming websites, social media platforms, and anonymous internet users. Digital copies can be reproduced endlessly without affecting the original work, making enforcement more difficult than in the traditional environment.

In cyberspace, copyright infringement may occur through activities such as unauthorized downloading of movies, software piracy, illegal uploading of music, digital plagiarism, unauthorized linking, framing, caching, and sharing copyrighted content without permission. Internet Service Providers (ISPs), online platforms, and intermediaries have also become important stakeholders in determining liability for such infringements.

To address these challenges, India has enacted various legal provisions under the **Copyright Act, 1957**, the **Information Technology Act, 2000**, and the **Copyright (Amendment) Act, 2012**. These laws provide civil, criminal, and administrative remedies against infringers and seek to balance the rights of copyright owners with technological development and public access to information.

This chapter focuses on the nature of copyright infringement in cyberspace and critically examines the remedies available under Indian law for protecting intellectual property rights in the digital environment.

Copyright Infringement in Cyberspace: (The Copyright Act, 1957)

The advancement of Internet technologies has aided the cultural and economic growth of society. It has been used to infringe on a work's copyright with impunity due to its existence of operation. Internet connectivity necessitates a simple mode infrastructure as well as a suitable arrangement with the access provider. Copyright refers to a legal privilege granted to the author or licensee to prevent the duplication of certain forms of artistic, informational, and entertainment works¹. A copyright work is disseminated by different

¹W.R. Cornish, Intellectual Property, 3rd edn, (Delhi: Universal Law Publishing Co. Pvt.Ltd., 2001), p.7.

basic technological means, and the copyright is abused also through these methods. For example, it is simple to make digital or digitized versions of content such as text, images, audio, and video.

Liability of Linking, Caching, Hyper Linking under Copyright Act 1957

A website's hyperlink does not actually allow someone to copy any meaningful material, but rather serves as a pointer to another domain. In most cases, a surface connection to a home page would not demand authorization. This viewpoint is based on the idea that by going online, everyone with a device is granted an implicit license to view the website. Placing a surface connection isn't an intrusion any more than the library catalogue².

Remedies for Violation of Copyright in Cyberspace under the Copyright Act 1957

As copyright is violated, the holders of the copyright have the power to sue for restitution, injunctions, benefit of accounts, and delivery up of infringing products. Copyright holders whose interests have been infringed may seek redress from Indian courts in a number of ways. One of these steps is to require that all unauthorized copies, including master copies, be impounded and burned. Monetary restitution, which may provide monetary penalties, punitive damages, legal expenses, and attorney fees, is another way that courts provide protection to copyright holders. The copyright Act, 1957 provides three types of remedies in case of infringement of Copyright as follows:³

- (i) Civil Remedies (section 54-62)
- (ii) Criminal Remedies (section 63, 63B)
- (iii) Administrative Remedies.

Civil Remedies

There are two types of civil remedies provided under Section 55 of the Copyright Act, 1957 that could be extended when copyright infringement ensues:

Preventive Civil Remedies; And Compensatory Remedies

All the civil remedies are subject to defendant's knowledge regarding the

² Section 51 of the Copyright Act 1957.

³ Sections 54, 62, 63, 63b of the Copyright Act, 1957.

infringement on the date of infringement and lack of reasonable ground to believe that copyright vested in the work. In case the defendant satisfies the proviso, the plaintiff is only entitled to an injunction and entire or part of the profits made by the defendant following the sale of the impugned work.

Preventive civil remedies

Preventive are implemented on anticipation of infringement i.e. before the actual act of copyright infringement takes place. An interlocutory injunction is one of the remedies which can have a significant effect against copyright infringement. It is basically a legal process which restrains a delinquent threatening to intrude the equitable and legal rights of another by stopping the breach before it can commence or continue or by commanding to restore the right holder's position prior to the commission of the infringement.

Interlocutory Injunctions

One of the most important remedies for copyright infringement, in most cases, the relief is granted by injunction. An injunction may either be interlocutory, one which is granted prior to the trial and only until after the trial or further order, or it may be final and permanent. Applications for interlocutory injunctions are frequently made in actions for infringement of copyright since damages are rarely an adequate remedy for the injury suffered by the plaintiff. The objective of an interlocutory injunction is to provide the plaintiff immediate and temporary protection against any continuous violation of his rights for which he cannot be adequately be compensated in terms of damages. After the English case *American Cyanamid v. Ethicon Ltd*, three prerequisites to grant an interlocutory injunction were laid down –

Firstly, there needs to be a prima facie case.

Secondly, there needs to be a balance of convenience.

Thirdly, there needs to be an irreparable injury.

Gujarat Bottling Co Ltd. V. Coca Cola Company and Ors, 1995 (5) SCC 545

The Hon'ble Supreme Court, inter alia, observed that "The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated n damages recoverable in the action if the uncertainty were resolved in his favor at the trail. The need for such protection has, however, to be weighed

against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the “balance of convenience lies”⁴.

Mareva injunction

This is a form of interlocutory injunction known as Mareva injunction. Its purpose is to detain the defendant from disposing of the assets which may be required for satisfying the plaintiffs removing those assets from the jurisdiction of the court. In India, Copyright Act, 1957 provides the remedy of interlocutory injunction against the infringement of copyright⁵. Interlocutory injunction is granted under order XXXIX. Rules 1 and 2 of the Code of Civil Procedure, 1908. The principles laid down in English precedents are frequently relied upon and followed in India.

Macmillan and Company Ltd. v. K and J Cooper⁶

It was held that the plaintiffs have made out a prima facie case for the issue of a temporary injunction under Order XXXIX. Rule 2 of Civil Produce Code against defendant who brought out a book containing selection from plaintiff’s book. It was held in this case that there was a prime facie case for the issue of a temporary injunction. The injunction, of course holds good only during the pendency of the proceeding before the trial court⁷. It is settled law that in granting interlocutory injunction, three factors are taken into consideration. First, the establishment of a prima facie case, second, the balance of convenience in the favor of plaintiff and finally irreparable injury would be caused to plaintiff if interlocutory injunction was not granted. The relief of injunction is founded on equity and it can’t be sought as a matter of right. It is also liable to be refused where the court found that plaintiff had approached it with unclean hands by suppressing material facts and had acted in an unfair and inequitable manner⁸.

⁴<https://blog.iplayers.in/civil-remedies-copyright-infringement>.

⁵Section 55, Copyright Act 1957.

⁶A.I.R. 1924 P.C. 75.

⁷G.G. Harrap and Co. Ltd. v. Hatbanshah Kalra, A.I.R. 1988 Delhi 68 at 70; see also Mirabai Films Pvt. Ltd. v, Siti Cable Network and Others, 2003 (26) P.T.C. 473 (Del.) (D.B.) at 476.77.

⁸Media Transasia Ltd. & Another v. Indian Airlines Ltd. & Others, 2003 (26) P.T.C. 294 (D.B.) (Del.).

Anton Pillar Orders

Anton Pillar order has derived its name from a case. It can be made by the court in a civil action of the copyright infringement to allow the applicant to enter the property of the defendant to inspect and search and cease to preserve the evidence and his work. In order to obtain such an order applicant must prove that first it has a cause of action or has suffered damages. The plaintiff party has to specify some documents as evidence before the court for filing against the defendant. Anton Pillar orders is not a search warrant, it only authorizes entry and inspection and the respondent's information of the defendant. Without such approval from the court and the defendant, then it would lead to trespass. It is often used for injunction which is used to restrain the defendants from removing assets beyond the jurisdiction of the court.

John Doe Orders

John Doe orders are actions for seizing and assisting orders passed by the court of law against anonymous infringement. The person who acts as a threat is not known as they are made due to unknown identity. These orders in recent times have been issued in matters of protecting copyright protection of books and prevention of movie buyers are used here. It is a term used as a reference to provide a pattern that is unknown autonomous entity. Such person may be a group or an individual or legal organization or company or register society provider website newspaper. It is referred to as a person whose identity is unknown or as defined by the Merriam-Webster, it is a person who is a path to a legal proceeding whose real name is unknown.

Permanent injunction

Permanent injunction helps the plaintiff to succeed at the trial of the infringement of copyright. He will normally be entitled to a permanent injunction to restrain his infringement of work. This injunction will obviously operate during the unexpired term of the copyright for the grant of final damages. In permanent injunction, the plaintiffs need not go through actual damage. The plaintiff is a proof that is copyright has been infringed. The court will grant an injunction without any proof of actual damage but at the same time the plaintiff must show that there is the probability of damage due to the infringement.

Compensatory civil remedies

Compensatory civil remedies against the infringement of copyright can be divided into three parts:

1. Damages for concession;
2. Delivery up of infringing copies; and
3. Account of profits.

Damages as a compensatory remedy

The purpose of an award of damages is to restore the plaintiff to his position before the infringement. Such damages are therefore compensatory. Copyright infringement is a tort and the overriding principle in tort law is that damages should be compensatory. Damages in tort aim to put the victim back to his position before the tort. If infringement is established, damages are presumed. Nominal damages are always awarded where a legal right has been infringed irrespective of the actual damage. Generally, the damages are for an amount that the defendant would have paid had he got the license from the copyright owner. Some more factors will also take into consideration to assess the damages, e.g., diminution of the sales of copyright owner's work, or the loss of profit which he might otherwise have made. The fact that the pirated work may have injured the reputation of the copyright owner is also a fact that may be taken into consideration in assessing the damages.

Additional Damages

In United Kingdom, the court has power, having regard to all circumstances and in particular to the flagrancy of the infringement and any benefit accruing to the defendant by reason of the infringement, to award such additional damages as the justice may require. Additional damages may also be awarded where the conduct of the defendant has been deceitful and treacherous. In addition, the injury to the plaintiff's feelings and the indignities and distress the plaintiff has suffered is also to be taken into consideration while granting additional damages. In India, there is no provision in the Copyright Act, 1957 for the award of additional damages in special circumstances such as flagrancy of the infringement or the fortune reaped by the defendant by his misdeed. However, there is no bar for courts in India to award exemplary or punitive damages in appropriate cases.

Delivery up

Damages for conversion: Damages for conversion as defined by Lord Atkins in *Lancashire and Yorkshire Railway v. Mac Nicolle*, are damages for dealing with goods in a manner inconsistent with the rights of the true owner, provided that it is also established that there is an intention on the part of the defendant, in so doing, to deny the owner's right, or to assert a right which is inconsistent with owner's right. In India, the Copyright Act, 1957 provides that all infringing copies of any work in which copyright subsists and all plates used or intended to be used for production of such copies shall be deemed to be the property of the owner of the copyright. It then entitles him to take proceedings for the recovery of possession of the infringing copies and plates or in respect of the conversion thereof.

In a claim for damages for conversion it is a defense if the defendant proves that at the time of conversion of infringing copies, he was not aware and had no reasonable grounds for believing that copyright subsisted in the work or that he had reasonable grounds for believing that such copies do not infringe the copyright in the work. The remedies of claiming recovery of possession of infringing copies or damages for conversion thereof are not available in respect of the construction of a building or structure which infringes or which, if completed, would infringe the copyright in some other work. The remedies of damages for infringement of copyright and for conversion are cumulative and not alternative. The court may provide both the remedies in the appropriate cases.

Account of Profits

As a corollary to the injunction, equity may, in appropriate cases, require a defendant to account to a plaintiff for profits made from wrong doing such as the infringement of copyright. Thus, the plaintiff is entitled to require the defendant to account for the profits made by him by his infringement of former's copyright. This is not a notional computation as with damages, but an investigation of actual accounts. The account is of net profits, i.e., the sale price of infringing article as deducted by the manufacturing and delivery cost. In *Mohan All Gupta v. The Board of School Education*, Haryana, the defendant was ordered to pay 20% of the profits to the plaintiff as the matter copied was less than one – tenth of the book. A plaintiff is entitled to opt for damages or for an account of profits. He cannot obtain both an account of profits and damages. The basis on which an account is ordered is that there should not be any unjust enrichment of the defendant and that the defendant should be deprived of any profit which he earned by wrongful acts committed in breach of the

plaintiff's right. The plaintiff would be refused an account of profits if there are no profits. In such a case the plaintiff may elect to claim damages and he would be bound by an election once made. The distinction between an account of profits and damages is that by the former the infringer is required to give up his ill-gotten gains to the party whose rights he has infringed whereas by the latter he is required to compensate the party wronged for the loss he has suffered⁹.

Criminal Remedies

Criminal proceedings can be initiated against the person involved in the infringement. The criminal remedies provided under the Copyright Act are separate and independent of the other remedies and can be resorted to concurrently to curtail further infringement and punish the delinquent. Chapter XIII, extending from Section 63 to 70 are related to offences with respect to copyright. Any person who with all the knowledge about the infringement commits the act of: Infringement of a copyrighted work Or breached any other right which the Act confers Or abets such infringement Such person is guilty of the offence of infringement of copyright and is punishable with imprisonment for which must not be less than 6 months and which may extend till 3 years along with a fine of a range Rs. 50,000 to 2 lacks. Further, any police officer as provided under Section 64, above the rank of sub-inspector if has reasonable cause to believe regarding the offence under Section 63 has been, is being or is likely to be committed, seize without a warrant all the copies of such work and any plates used to make such infringing copies of work.

In fact, with regard to any person possessing or making any plate with knowledge of committing copyright infringement is guilty of an offence under Section 65 and is thereby punishable of imprisonment for a term of 2 years and fine. Section 66 says that such infringing copies or plates may be ordered to be disposed of by the court or delivered to the owner of the copyright even when the alleged offender has not been convicted. The constitutional validity of Section 64 was challenged in the case of *Girish Gandhi v. Union of India*, on the grounds that since the section is not substantiated with any procedure, hence the section is arbitrary and in violation of the constitutional rights. The court dismissed the issue observing that the term 'satisfaction' occurring in Section 63 entails the due process of collection of relevant information before the police officer can proceed with the seizure of material. Such satisfaction ought to be objective.

⁹https://www.lexisnexis.co.uk/legal/guidance/copyright-infringement-remedies_

Section 63A mandates that for repeat offenders the minimum term of imprisonment is maximized to 1 year along with a fine of 1 Lakh which may be reduced according to the discretion of the judge after considering adequate and special reasons showing that the infringement was not committed for gain in course of business or trade. Also, Section 63 provides for a non-bailable offence.

Section 63B lays down that any person making use of a computer program with knowledge of it being an infringing copy shall be sentenced to imprisonment for a minimum term of 7 days and which can extend till 3 years along with a fine of 50,000 to 2 lacs. However, the sentence can be reduced depending on the discretion of the judge after considering adequate and special reasons that the program was not used for the gain in business and trade.

Section 68A mandates the compliance of Section 52A to ensure that certain information imperative to be supplied on a sound recording or video film with respect to the name and address of the person who has made the work is not withheld. Anyone deviating from such provisions can be found guilty and imprisoned for a term that may extend till 3 years along with fine.

In the case of *State of Andhra Pradesh v Nagoti Venkararamane*, the Apex court was posed with the issue of whether the identification of the owner of the copyright is required to convict an offender under the Copyright Act, 1957. The court observed that the objective of Section 52A was to prohibit piracy of cinematographic films and sound recording. Therefore, if the prosecutors are mandated to track the identity of the owner of the copyrighted work in order to adduce evidence, then this objective would be defeated.

Administrative Remedy

Section 53 (1) of the Indian Copyright Act, 1957 authorizes the Registrar of copyright to make an order obstructing the importation of copies of work in which copyright subsists into India if brought without the permission of the copyright holder. Furthermore, clause (2) mandates that the Registrar of copyrights himself or any person authorized by him may enter any dock or ship or premise where any infringing copies are suspected to present and examine them. The provision is important to ensure that copies of infringed work of the applicant are stopped from being circulated. Section 11 of the Customs Act, 1963 lays down that the Central Government if satisfied that it is imperative for the protection of copyrights, patents and trademarks, it may obstruct subject to certain conditions or absolutely the export

and import of goods satisfying the aforementioned description. All the infringing copies seized under Customs Act shall not remain with the government but shall be delivered to the copyright holder of the work¹⁰

Mens Rea in Case of Infringement Copyright on the Internet

Section 63 of the Copyright Act, 1957 prescribes the remedies of criminal nature for knowing use of infringing copy of computer program. Section 63B of the Copyright Act, 1957 provides that the person who knowingly makes use of an infringing copy of a computer program on a computer shall be: (i) Punishable with imprisonment for the term which shall not be less than seven days but which may extend to three years; and (ii) With fine which shall not be less than Rs.50, 000 but which may extend to Rs.2 lakh. The theory "Actus nonfacit reum nisi mensit rea" underpins the common definition of crime. This means that an act is not a felony because it is performed with the intent to commit a crime. In the case of typical copyright infringement, our statute expressly states that the defendant must commit the offence "knowingly." The adverb 'knowingly' is an indirect way of indicating that 'mensrea' is expected¹¹.

The Information Technology Act of 2000 does a good job of introducing both the need for "mens rea" and "strict liability." Since there is no suggestion of mens rea as a required component of the offence, the responsibility under Sec.43 is a kind of strict liability.

The Copyright (Amendment) Act 2012

The infringer or the Internet Service Provider will be held liable for copyright violations on the Internet (ISP). Many people are interested in the act of copyright theft on the internet¹².

(i) Internet service providers (ii) and the individual ISPs (internet service providers) are companies who offer internet connectivity to their clients or subscribers. While it seems that the individual who uploads the paper should be held accountable for violations, there is a trend to keep the service provider responsible. This is due to mostly two factors¹³

¹⁰ <https://legal60.com/remedies-of-copyright-infringement>.

¹¹ Shailaja Menon, Protection of Intellectual Property in Cyber Space, 1st edn, (Delhi: Authors Press Global Network, 2003), p.90.

¹² <https://www.ijsr.net/archive/v5i5/NOV163712.pdf>.

¹³ Kahandawaarchchi Thilini, "Liability of Internet Service Providers for Third Party Online Copyright Infringement: A study of the US and the Indian Laws", Vol.12, Nov.2007, Journal of Intellectual Property Rights, pp.553-561.

Conclusion

The expansion of cyberspace has brought both opportunities and challenges in the field of copyright protection. While digital technology has enabled creators to reach global audiences and expand their markets, it has also facilitated large-scale copyright violations through piracy, unauthorized reproduction, illegal downloads, and online distribution of copyrighted works. The ease of copying and sharing digital content has made traditional enforcement mechanisms less effective in the online environment.

The **Copyright Act, 1957** provides significant remedies in the form of civil actions such as injunctions, damages, delivery up of infringing materials, and account of profits. Criminal remedies under Sections 63, 63A, 63B, and related provisions impose penalties including imprisonment and fines to deter offenders. Administrative remedies under Section 53 further help in preventing the import and circulation of pirated content. Judicial innovations such as **Anton Piller Orders**, **Mareva Injunctions**, and **John Doe Orders** have strengthened enforcement against anonymous online infringers.

However, issues relating to intermediary liability, hyperlinking, caching, and jurisdiction remain complex in cyberspace. The role of Internet Service Providers and digital platforms requires clearer legal regulation to balance innovation with accountability. The **Copyright (Amendment) Act, 2012** marked an important step in modernizing Indian copyright law, but enforcement challenges continue due to technological advancements.

Therefore, India must strengthen cyber copyright enforcement through better international cooperation, stronger digital monitoring mechanisms, awareness among internet users, and updated legislation to address emerging technologies. A balanced legal framework is essential to protect creators' rights while ensuring fair access to digital information in the evolving cyber world.

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