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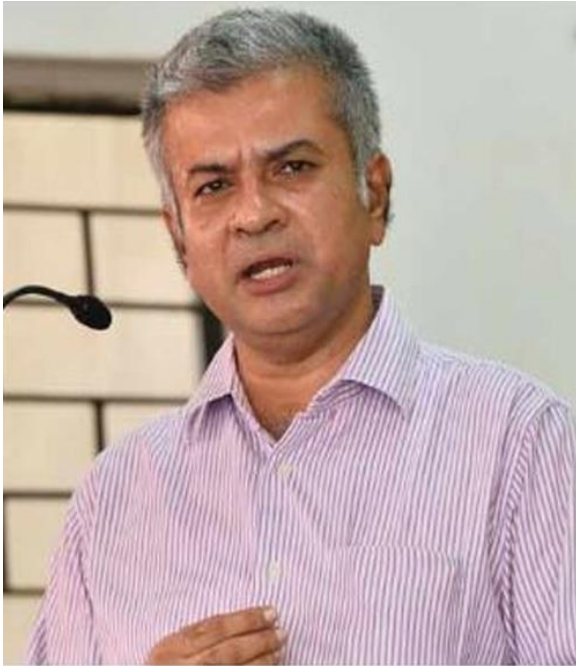
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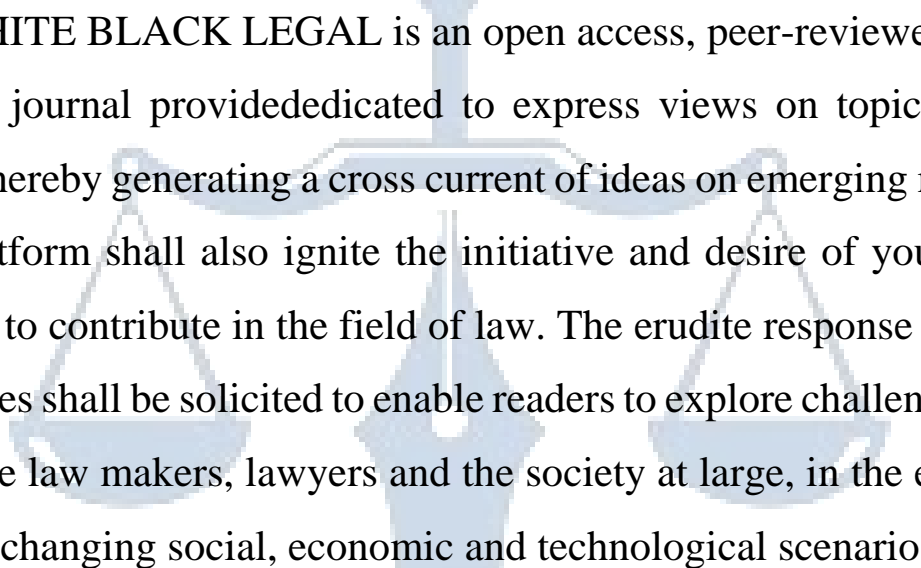


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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

W H I T E B L A C K
L E G A L

ROLE COPYRIGHT SOCIETIES PLAY FOR PROTECTION OF COPYRIGHT IN INDIA

AUTHORED BY - ASTITVA YADUVANSHI

ABSTRACT

The Indian Copyright Act of 1957, which was amended in 2012, is an admirable attempt by the Indian government to safeguard and maintain the rights of various artists and writers. The legislation was first implemented in 1957. The Act provides upon authors of original work an inherent right to receive royalty for their work. Until the implementation of the 2012 Amendment Act, artistic professionals such as authors, composers, and artists did not have the legal right to obtain royalties. The legislation enables the establishment of Copyright Societies to effectively recognise and protect the rights of creators on an individual basis. The adjustments were anticipated to result in significant modifications to both the regulatory framework overseeing Indian copyright organisations and the statutory safeguards.

India is home to several copyright associations, including the Indian Performing Rights Society (IPRS), the Indian Singers Right Association (ISRA), Phonographic Performance Ltd. (PPL), and Novex Communications Pvt. Ltd. Furthermore, despite the sophisticated nature of the Indian Copyright Act, its inadequate implementation approach has impeded its efficacy in attaining its objectives. The legislation that regulates the functioning of copyright societies is replete with numerous errors and loopholes. The Original Works Production Fair Contracts and Anti-Corruption Act of 2012 was enacted to eradicate any instances of corruption that may have existed within copyright societies and to ensure equitable agreements for composers, lyricists, and musicians involved in the production of original works. However, there are still concerns that pertain to the fundamental operations of copyright organisations.

An example of this can be observed in the discrepancy between sections 30 and 33 of the Act, which govern the operations of copyright societies and the transfer of copyrights. In addition, the efforts of numerous organisations focused on protecting intellectual property have achieved limited success. Copyright protection ensures the preservation of the author's expertise and effort invested in creating the work. In cases where operates are not original in the strict sense of the term, but rather composed, compiled, or derived from freely available materials, the fact that one person has created such a work does not deprive others of the right to produce similar research and utilise all publicly accessible materials. This is because works that lack uniqueness in the proper sense are not deemed as original works.

People are prohibited from appropriating the fruits of another person's effort, which ultimately means depriving them of their property. This is the fundamental concept that serves as the foundation for all of these scenarios. The Act's seventh chapter deals with copyright societies. The concept was introduced by the Amendment Act of 1994. A society is considered a copyright society when it is formally registered with the government in accordance with paragraph 2 of section 33.

(3). The regulation of copyright organisations is governed by Sections 33 through 36A of the Copyright Act of 1957. Before the change in 1994, Sections 33–36 were focused on the regulation of performing rights organisations. These associations possessed the power to grant or confer licences for the execution of any copyrighted work in India. This organization's scope was limited to copyright problems related to publicly performable literary, dramatic, and musical works. In 1994, there was a substantial expansion of the legal provisions that covered several facets of labour rights. Technological advancements in recent decades have facilitated the development of novel approaches for disseminating creative works. As a consequence, the scope of copyright and related rights has expanded. Traditional written communication has been supplemented by many forms of audio and visual media, such as phonograms, music cassettes, films, video games, and the internet transmission of literary works and other creative endeavours. Technological improvements have created opportunities for the commercialization of intellectual works, but have also posed challenges in terms of effectively protecting these works. As the number of people using an author's work and infringing copyright has grown significantly, it has become increasingly challenging for individuals to retain control over their copyright rights. Due to the overwhelming number of infringements, it is not possible for authors to deal with each individual instance. Moreover, it is exceedingly difficult for an individual to oversee every instance of their work being used or adequately safeguard their rights against potential users within the globe. This makes it impractical for one individual to have sole ownership of the intellectual property they've developed. In order to tackle these problems, copyright holders sought to collectively administer their rights through several copyright organisations. The utilisation of collecting societies or collective management groups for collective administration and remuneration has become not only desirable but also essential. the Copyright Society was established with the aim of offering community management services for copyright issues. The term "collective administration of copyright" refers to the process in which a copyright organisation oversees the management and protection of copyright in creative work

Copyright societies in India and its Registration

COPYRIGHT SOCIETIES IN INDIA

- For musical works: The Indian Performing Right Society Limited (IPRS)
- For sound recording: Phonographic Performance Limited (PPL)
- For reprographic(photo copying) works: Indian Reprographic Rights Organization (IRRO)
- For performers(Singers) Rights: Indian Singers Rights Association (ISRA)
- Screenwriters Rights Association of India (SRAI)

Figure: Indian Position of Copyright Societies

Section 33 of the Copyright Act of 1957 defines a copyright society as a registered collective management organisation established by writers and copyright owners to protect their works. For successful operation and registration, a copyright society needs seven members. A copyright society can provide licences for copyrighted works and other Copyright Act entitlements. Only an act-registered copyright organisation can provide licences. Literary, dramatic, musical, and creative works are included into films and albums. This collective licence is essential for performance rights management. They must also apply to the Registrar of Copyrights using Form VIII. The application must include these: A verified copy of the application that verifies the applicant's identification. Declarations from all Application Governing Body members indicating they are willing to continue serving and that they have A declaration of the Applicant's goals, firms, and accounting and auditing methods. If you promise to create or integrate the instrument, you must ensure it follows the Act and these Rules. Not taking the necessary steps to guarantee this outcome will violate commitment. The form can be used to renew a registered copyright before its five-year expiration. Registered copyright lasts five years. The federal government will renew its registration once the Registrar of Copyrights evaluates the copyright society's performance and compliance with section 36 of the 1957 Copyright Act. To renew its registration, the copyright society must share collective management with authors who hold The copyright society would lose its royalty rights if it doesn't. Within one year of the Copyright (Amendment) Act, 2012, all copyright societies must be reregistered. When the Copyright (Amendment) Act, 2012 was passed, this mandatory provision took effect. The Act lets authors and rights owners authorise a copyright organisation for full or limited community management, depending on their engagement.

Complete collective administration involves exclusive rights ownership, providing licences for usage, overseeing usage, enforcing rights, collecting money, and distributing revenue to rights holders. Another option is for a group to manage exclusive privileges. The rights owner can authorise the licensee directly, but a collective administrative organisation can only collect and distribute cash for the licensee's use. After acquiring authorization from the copyright society, it can give licences under section 30 of the Act for Act-granted rights with specified restrictions. These rights include the authority to: i) impose licence-based fees; ii) transfer these fees to rights owners after deducting its own expenses. The distribution of remuneration to writers is a topic that requires

thoughtful consideration by society. The level of exploitation of the author's work is the primary factor that determines the amount of compensation given to the author. Nevertheless, in certain countries, authors of copyrighted works are remunerated by society through predetermined royalties, regardless of whether or not the work is actually utilised. Carry out any further duties that conform to the regulations outlined in Section 35, which require the author and any other rights holders identified in Section 34 to have control over the organisation

Functions of Copyright Societies

Only works for which authors have explicitly provided written permission to a copyright organisation and maintain an active membership are eligible for the group to issue licences and collect payments based on specified tariff schemes.

(1) The primary role of intellectual property protection bodies, such as copyright societies, is to grant licences, collect fees, and subsequently distribute the collected funds to the corresponding authors. The organisation will collect contributions from its members in accordance with the tariff structure. Authors having a duty to grant society the authority to collect and preserve physical copies of their works for a designated duration. The writers will be reimbursed the balance of the money after removing an administrative fee, which cannot exceed 15% of the total amount received.

(2) Section 34 of the Copyright Act of 1957 specifies the specific responsibilities that the Copyright Society assumes in managing the rights of proprietors. This section also delineates the specific function performed by the Copyright Society.

Copyright Societies in India that are still functional at the Present time

The copyright organisation is responsible for supervising the copyrighted works of its members, keeping a record of these works, and safeguarding the author's rights in case of any violation. Tracking all individuals or entities who utilise a registered work is difficult due to the large number of potential users. The process is arduous and necessitates a substantial amount of time. A copyright society is an entity that protects the rights of creators, ensures the implementation of their rights, and ensures prompt payment of royalties to them. The principal recipients of financial gain from a copyright system are the original creators, who get royalties and other monetary advantages. Registration is mandatory for copyright societies in accordance with Section 33 of Indian legislation.

Presently, India has three operational copyright societies. The Indian Reprographic Rights organisation (IRRO) is a copyright organisation established in 2000, in accordance with Section 33 of the Copyright Act of 1957. In addition, it ensures the protection of the rights of authors and publishers of literary works, while also establishing connections with other international groups such as IFRRO. The Ministry of Human Resource Development of India has granted authorization to IRRO to exclusively develop and oversee a copyright company in India solely for the "reprographic rights in the domain of literary works." The authorization was granted by the Indian government. The group has sole authority to provide licences for the utilisation of copyrighted works created by its members. Moreover, it is accountable for the collection and allocation of royalties on behalf of the rights holders. The primary objectives of IRRO are to safeguard the intellectual property rights of publishers, authors, and visual artists, and to develop a robust network that champions the moral and financial entitlements of creators and publishers. The Indian Performing Rights Society (IPRS) was established on August 23, 1969. The single authority in India

authorised to provide permits for the exploitation of musical works. The group functions as a representative entity for persons who have the rights in the music industry, particularly songwriters, composers, and music publishers. The association aims to enable the lawful use of copyrighted musical compositions by granting licences to users and collecting revenue from them on behalf of IPRS members, which include artists, music authors, and music composers. After deducting its administrative expenses from the royalties, it produces, IPRS distributes the leftover earnings among its members. Phonographic Performance Limited India (PPL India) is a performance rights organisation that grants licences for public performance and broadcasting of audio recordings belonging to its members. PPL India was established in 1975. The establishment of it occurred in 1941. PPL has control over approximately 400 music labels and manages a collection of over 4.5 million recordings from various countries worldwide, including the United States. PPL India holds a significant share in the entire sound recordings, including both local and international music. PPL India is the preeminent organisation in India that handles the licencing of copyrighted works for public performance. It holds the distinction of being the largest in terms of both membership and revenue. The Indian Performing Rights Society (IPRS) was founded in 1969. The term IPRS stands for the "Indian Performing Rights Society." Within the music industry, this organisation is responsible for ensuring that its members' copyrights are accurately registered and licenced. The majority of the members consist mostly of writers, with a substantial proportion being lyricists, composers, and publishers. It is the duty of society to safeguard the copyright of its members and gather royalties on their behalf. Once a certain amount of the royalties is deducted to account for administrative expenditures, the remaining monies are distributed among the individual members of the society PPL India is the leading copyright society in India tasked with overseeing performance rights for individuals of all age groups. PPL has the highest number of members and generates the largest amount of revenue in the country. It includes renowned record labels from several nations, including India. The aforementioned labels include of Aditya Music, Lahari Music, Sony Music Entertainment, Speed Records, T-Series, Universal Music, and Warner Music. Copyright organisations are responsible for the procurement and distribution of monetary value, achieved through commissions and royalties.

This complies with the obligation outlined in rule 14(j) of the Copyright Rules, 1958, which mandates the communication of information pertaining to the tariff schemes. Under this legislation, the copyright organisation must create a tariff framework that explicitly defines the fees or royalties it will gather for managing copyright or other rights. This task must be swiftly done once the society is authorised to engage in copyright business and becomes eligible to do so. Furthermore, it is necessary for the copyright society to disclose this information in order to obtain authorization for starting operations as a copyright organisation. Thus, the procedure for obtaining the financial worth (Royalties) is specified in rule 14(j) of the competition. Rule 14(k) of the Copyright Rules, 1958, requires the inclusion of information about the method of dissemination. This product conforms to those rules. As to this regulation, a copyright organisation must create a "Distribution Scheme" within the initial three months following its establishment. This plan details the procedure for distributing royalties, as stipulated in the Tariff plan, to members listed in the Register of Authors and Owners, in accordance with clause I of rule 59. The Distribution Scheme must be submitted to the General Body of the association for their endorsement. This regulation will come into effect three months after the establishment of a copyright society. This method is contingent upon obtaining approval. The allocation should be commensurate with the copyright society's royalty earnings, which are obtained through the licencing of rights or collections of rights in specific categories of works. The copyright society oversees the rights of individual authors and other owners of these works. The allocation of royalties by the copyright organisation guarantees that no registered copyright holder is granted any form of preferential treatment over another copyright holder. The copyright society is obligated to inform all of its members about the specific criteria

employed to distribute royalties at a certain point in the distribution process. This responsibility arises at a specific juncture in the process of paying royalties. The objective of the Distribution Scheme is to ensure that all royalty payments are precise, fair, and effective, without any hidden or secret cross-subsidies. The organisation must ensure that its members are provided with a comprehensive elucidation of the specific factors that will be employed to ascertain their portion of the allocation. Moreover, it is crucial for society to establish precise standards for carrying out these calculations. The allocation of royalties should be determined by either the tangible utilisation of the licenced rights in the physical realm or by accurate statistical data that accurately reflects the commercial exploitation of the licenced rights. The Distribution Scheme will ensure that every member receives a minimum allocation of their profits on a quarterly basis. The copyright society is under no obligation to provide its members with any minimum guarantee regarding the proportion of royalties they receive. Individuals who have created literary or musical works, as well as those who regulate the rights to films or recordings, are entitled to earn a fair share of the royalties received pursuant to section 18(1) of the Tariff Scheme this pertains to the granting of licences for the rights to utilise literary or musical works in a film or recording. the allocation of these royalties will be carried out in accordance with the Tariff Scheme copyright organisations can be established by authors and other individuals who possess the rights to the original work. These associations possess sole jurisdiction to bestow copyright licences upon individuals who apply and meet the required criteria. An author or owner cannot independently supervise all users who violate their copyright.

It requires a considerable lot of effort and takes up a substantial amount of time. Writers or proprietors of a work who are associated with a national group like the Copyright Society will have a more convenient means of overseeing and controlling all users who have acquired a copyright licence. Thanks to their effective administration of authorised users, the companies may generate a revenue stream that is both precise and thorough. Remuneration obtained by an individual or business in exchange for the utilisation or commercialization of their intellectual property or artistic creation. Organisations in India that protect intellectual property have the opportunity to officially enrol themselves under Section 33 of the Copyright Act of 1957. These societies are widely acknowledged worldwide and engage in partnerships with other international organisations to amplify the advantages they offer to copyright owners. Official registration of a copyright society's membership necessitates a minimum of seven individuals. The society's registration is valid for a period of five years and must be renewed afterwards. To ensure the continuity of the society's operations, it is important to renew the registration every five years. If the society neglects to extend its term after it has expired, it will cease to exist and will be unable to continue granting licences.

Copyright enforcement

Copyright is an exclusive right that is granted only to the creator of an original piece of work. When someone who is not authorised uses a work that is protected by intellectual property rights, the responsibility of deciding what action to take to defend such rights mostly rests with the individual involved. These rights are solely granted to the copyright holder of the work. The owner has the legal authority to take legal action in both civil and criminal cases. A copyright owner who encounters infringement of their rights has the right to commence a legal action against the offender. Furthermore, if deemed appropriate, the court has the authority to levy financial sanctions and issue directives (such as injunctions and restraining orders) to prevent any further infringement of the copyright owner's rights in the event of a successful outcome. The 1994 revisions to the Copyright Act of India become operative on May 10, 1995. The change enhanced the severity of penalties for violations and implemented stricter consequences for repeated offences. Consequently, more rigorous copyright regulations were implemented in India. In addition, it applied the statute of limitations stated in the Criminal Procedure Code to copyright crimes, categorising them as

economic offences the Act has made infringement of copyright a criminal, carrying a punishment of life imprisonment. According to Section 64 of the Indian Copyright Act of 1957, any police officer of at least the rank of sub-inspector has the authority to seize a copy of the work and any copies or plates used to make infringing copies, without needing a warrant. Although this clause is clearly stated in the legislation, its execution may provide challenges. Engaging in an inquiry focused on a particular topic, such as piracy in the film business, offers greater benefits in terms of acquiring a thorough comprehension of the process of enforcing copyright. Various forms of piracy, such as cable, video, CDs, and VCDs, present a significant danger to the Indian film business. Unauthorised piracy of films via cable networks can occur quickly after their theatrical release, and in certain cases, even before their official distribution.

The sale of global distribution rights for Indian films takes place simultaneously with their local distribution. After duplicating and "punching" films using Beta recording technology in other nations, they undergo an additional round of copying before being transferred to VCDs. A resolution has been reached to manufacture several duplicates for the purpose of sending them back to India. This situation is not exclusive to India; instead, it impacts countries globally. The proliferation of various technology systems has brought forth a level of intricacy to this matter. The Indian government has recently implemented numerous notable and bold initiatives to enforce stricter copyright restrictions. The government has implemented the following measures to strengthen the enforcement of copyright legislation Government of India's Department of Education, under the Ministry of Human Resource Development, has established a Copyright Enforcement Advisory Council (CEAC). The CEAC meets regularly to evaluate the extent of adherence to the Copyright Act and to offer suggestions to the government on how to enhance compliance the Copyright Enforcement Advisory Council (CEAC) was established on November 6, 1991, with the active involvement of authorities from several state administrations. Officials from multiple ministries of the Central Government, including top members of the IG and DIG ranks in the police force, are collectively engaged in the official implementation of copyright laws to different extents. The Copyright Enforcement Advisory Council (CEC) consists of copyright organisations and industry stakeholders, including members from the Indian Music Industry (IMI). The primary goal of the advisory council is to encourage its members to work together and utilise their combined knowledge and skills to identify and address any weaknesses in the current copyright legislation. This will ultimately lead to improved implementation of stricter restrictions. The council suggested many resolutions, including as the creation of dedicated copyright enforcement police forces, tribunals expressly designated for pursuing copyright infringements, and segregated units inside the state police headquarters. Currently, the following union territories and states have formed their own dedicated copyright enforcement cells: A copyright enforcement nodal person has been recommended for the states of Andhra Pradesh, Assam, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Due, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Orissa, Pondicherry, Punjab, and Sikkim. In order to provide a consistent and uniform approach to copyright management, separate groups of creative works could establish their own copyright organisations

Indian Performing Rights Society v. Radio Today Broadcasting Limited:

In this particular case, the Central Government of India approved Radio Today Broadcasting's application for a licence to air programming inside the country. Radio Today did not pay IPRS any royalties, citing the fact that the music's producers were the ones responsible for writing and promoting the songs, and that permission to play the songs had to come from the creators, not IPRS. The judge concluded that IPRS is entitled to royalties, and the court ordered Radio Today to make payments to IPRS.

Conclusion

Concerning the implementation of intellectual property rights, the TRIPS agreement's third section is situated. Eight paragraphs of the agreement contain exhaustive details regarding civil and administrative procedures and remedies. Treaties overseen by the WIPO do not contain provisions that are comparable in character. As per the provisions outlined in articles 44 to 66, it is the responsibility of member states to grant their judicial authorities the jurisdiction to issue injunctions, demand payment of suitable damages to compensate the right holder in cases in which the infringer engages in infringing activities intentionally or with reasonable grounds, and demand that the infringer bear the expenses associated with the right holder's representation. The authority to render decisions must be delegated to the member states' judicial authorities. A member is obligated to grant its legal authorities the authority to mandate the destruction or disposal of infringing products, along with the materials and instruments utilised in their production, without compensation, in accordance with Article 46. The purpose of this is to deter infringement. The authorities are required to strike a balance between the severity of the infraction and the corresponding sanctions imposed, taking into account the concerns of third parties in addition. The proper disposal or destruction of objects, materials, and implements that violate intellectual property rights is imperative. A person who is in possession of an intellectual property right is able to seek legal recourse through both criminal and civil means. You are free to employ any of these alternatives in combination with one another. In addition to imposing a monetary fine or imprisonment on the defendant, any unauthorised reproductions must be seized and returned to the copyright holder. Illegitimate utilisation of the intellectual property of another is a grave criminal offence punished by legal consequences. Crucial to establishing criminal responsibility in this instance is the existence of mens rea, which pertains to the defendant's pre-existing awareness of the offence. The case of *Cherian P. Joseph v. K. Prabhakaran Nair* serves as evidence that knowledge is insufficient with respect to copyright. The *Cherian P. Joseph v. K. Prabhakaran Nair* case in the absence of any possibility of dispute, there must be irrefutable evidence that demonstrates the perpetrator possessed the requisite knowledge to carry out the act. Because of the intrinsic character of the dispute, a criminal complaint is irrevocable and cannot be retracted or dismissed after it has been lodged. It is inappropriate to suspend criminal proceedings in light of an ongoing civil case concerning the same subject matter. The statute makes explicit mention of this In the case where the sound recording of a literary, dramatic, or musical work is produced in violation of the copyright of the original work, copyright protection does not apply to the sound recording. This could occur without authorization if the original work was recorded. According to these authorities, the objective of copyright regulation should not be to impede future compilers from utilising the information contained in this

compilation. Rather, it should mandate that they resort back to the original facts, an endeavour that would be futile of time and effort. This research paper provides an in-depth review of the approaches taken to protect the rights of writers and seek justice through the examination of several case studies that illustrate the notion of infringement. In addition, this chapter addresses the various legal recourses accessible to copyright owners in cases of infringement upon their rights. According to research, civil remedies, such as injunctions, are frequently pursued by the party with the legal entitlement, despite the prevalence of criminal proceedings. Notwithstanding the obstacles encountered by enforcement agencies in their efforts to prosecute violations of the Act, infringers frequently manage to elude legal repercussions, particularly in cases involving infringement. The challenge for law enforcement to keep up with technological advancements continues to grow in parallel with the rise in the number of individuals involved in unlawful activities. To ensure that the legitimate owner's intellectual property is properly protected, It is crucial that enforcement authorities and the legal system impose severe penalties on infringers for their actions. Noncompliance with these criteria will result in the legislation losing its efficacy in protecting intellectual property.

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