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COPYRIGHT IN THE DIGITAL AGE: A CRITICAL ANALYSIS OF OTT PLATFORMS AND ONLINE PIRACY IN INDIA

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ABSTRACT

The expansion of digital technologies has fundamentally reshaped the production, dissemination, and consumption of creative content in India. The emergence of Over-the-Top (OTT) platforms such as Netflix, Amazon Prime Video, and Disney+ Hotstar has altered traditional models of content distribution by enabling on-demand, platform-based access to audiovisual works. While this shift has generated new opportunities for creators and expanded consumer choice, it has simultaneously intensified concerns relating to unauthorised access and digital copyright infringement.

The legal framework governing copyright in India is primarily rooted in the Copyright Act, 1957, as amended in 2012, alongside the Information Technology Act, 2000. These laws attempt to address issues arising in the digital environment, including intermediary responsibility and technological protection measures. Despite these provisions, enforcement remains inconsistent, particularly due to the borderless nature of the internet and the rapidly evolving methods used for piracy.

Judicial responses have introduced mechanisms such as website blocking orders and dynamic injunctions to curb infringement. However, these measures raise important concerns regarding proportionality and their potential impact on freedom of expression. This study evaluates the effectiveness of existing legal and judicial approaches in addressing piracy associated with OTT platforms.

The research further analyses enforcement challenges, the role of intermediaries, and the economic implications of piracy. By comparing Indian practices with international models drawn from the United States and the European Union, the study identifies structural gaps and proposes reforms aimed at strengthening enforcement while maintaining a balance between private rights and public access in the digital ecosystem.

Keywords: Copyright, OTT Platforms, Online Piracy, Digital Rights, Dynamic Injunctions, Intermediary Liability, India.



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CHAPTER I – INTRODUCTION

1.1 Background of the Study

The rapid advancement of digital technology has significantly altered the landscape of content creation, distribution, and consumption across the globe. In India, this transformation has been particularly visible with the rise of Over-the-Top (OTT) platforms such as Netflix, Amazon Prime Video, and Disney+ Hotstar. These platforms have revolutionised the entertainment industry by enabling users to access content on demand, without being restricted by traditional broadcasting schedules or geographical limitations.¹

Unlike conventional modes such as cinema halls and cable television, OTT platforms offer greater flexibility, personalised viewing experiences, and a wide range of content across languages and genres. This shift has contributed to the democratisation of content creation, allowing independent creators and regional filmmakers to reach wider audiences.²

The growth of OTT platforms in India has been supported by increasing internet penetration, affordable data plans, and widespread smartphone usage. Government initiatives promoting digital infrastructure have also played a role in facilitating this expansion. As a result, OTT platforms have become a dominant medium of entertainment consumption, particularly among urban and semi-urban populations.³

However, this digital transformation has also given rise to new challenges, particularly in the form of online piracy. The ease with which digital content can be copied, reproduced, and distributed has made it difficult to control unauthorized access. Piracy websites, torrent platforms, and messaging applications often circulate copyrighted content within hours of official release, causing significant financial losses to content creators and distributors.⁴

¹Uday Singh, 'Rise of OTT Platforms in India' (2020) 5 Indian Journal of Law and Technology 45.

²ibid.

³Telecom Regulatory Authority of India, Performance Indicators Report (TRAI 2022).

⁴Karan Bhatia, 'Digital Piracy' (2019) 4 NLIU Law Review 112.

1.2 Evolution of Copyright Law in India

Copyright law in India has evolved in response to technological developments and changing modes of content dissemination. The primary legislation governing copyright protection is the Copyright Act, 1957, which grants exclusive rights to authors and creators over their works, including the rights of reproduction, distribution, communication to the public, and adaptation.⁵

Historically, Indian copyright law was influenced by British copyright principles during the colonial period. Post-independence, the 1957 Act was enacted to provide a comprehensive framework suited to Indian conditions. Over time, the Act has undergone several amendments to address emerging challenges.⁶

The most significant reform came through the Copyright (Amendment) Act, 2012, which introduced provisions relating to digital rights management, statutory licensing, and protection of performers' rights. These amendments were aimed at aligning Indian law with international obligations under agreements such as the WIPO Copyright Treaty and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁷

In addition to copyright legislation, the Information Technology Act, 2000 plays a crucial role in regulating online activities. It provides for intermediary liability and safe harbour provisions, which are particularly relevant in cases involving online platforms and digital infringement.⁸

1.3 Emergence of OTT Platforms

The emergence of OTT platforms represents a paradigm shift in the distribution of audiovisual content. These platforms deliver content directly to consumers through internet-based streaming services, bypassing traditional intermediaries such as cable operators and broadcasters.⁹

⁵Copyright Act 1957 (India) s 14.

⁶P Narayanan, Copyright and Industrial Designs (4th edn, Eastern Law House 2017) ch 1.

⁷WIPO Copyright Treaty (adopted 20 December 1996, entered into force 6 March 2002); Copyright (Amendment) Act 2012 (India).

⁸Information Technology Act 2000 (India) s 79.

⁹Shubha Ghosh, Understanding Copyright Law (LexisNexis 2019) 15.

In India, OTT platforms have experienced rapid growth over the last decade. Major players such as Netflix, Amazon Prime Video, and Disney+ Hotstar have invested heavily in original productions and exclusive licensing agreements. This has led to the creation of diverse and high-quality content, catering to different segments of the population.¹⁰

OTT platforms operate on various business models, including subscription-based services, advertisement-supported streaming, and hybrid models. These platforms rely heavily on copyright protection to safeguard their investments in content creation and acquisition. However, the digital nature of their services makes them particularly vulnerable to piracy.¹¹

1.4 Statement of Problem

Despite the existence of a structured legal framework, online piracy continues to be a major issue in India, especially in relation to OTT content. The availability of pirated content through unauthorized platforms undermines the economic viability of the entertainment industry and discourages investment in original content.¹²

The key issue lies in the gap between legal provisions and their practical enforcement. While laws exist to protect copyright, the rapid evolution of technology, coupled with jurisdictional challenges and the anonymity of infringers, makes enforcement difficult. This raises questions about the adequacy of the current legal framework in addressing digital piracy effectively.

1.5 Research Questions

This study seeks to address the following research questions:

- Whether the current copyright framework in India adequately addresses digital content distributed through OTT platforms?
- What are the major legal and technological challenges in regulating online piracy?
- How effective are judicial remedies such as dynamic injunctions and website blocking orders?
- What reforms are necessary to strengthen copyright enforcement in the digital environment?

¹⁰Ernst & Young, Re-imagining India's M&E Sector (EY Media Report 2021) 34.

¹¹OECD, Piracy of Digital Content (OECD Publishing 2018) 22.

¹²UTV Software Communication Ltd v 1337X.to (2019) 78 PTC 375 (Del HC).

1.6 Objectives of the Study

The primary objectives of this study are:

- To examine the evolution and framework of copyright law in India.
- To analyse the functioning and legal position of OTT platforms.
- To study the nature and impact of online piracy.
- To evaluate judicial approaches to digital copyright enforcement.
- To suggest reforms for improving the effectiveness of copyright protection.

1.7 Hypothesis

This study is based on the hypothesis that although India has developed a comprehensive legal framework and adopted progressive judicial measures such as dynamic injunctions, the existing system remains insufficient to effectively address the challenges posed by digital piracy in the OTT ecosystem.

1.8 Research Methodology

This research adopts a doctrinal method of study, focusing on the analysis of legal principles, statutory provisions, and judicial decisions. Primary sources include statutes such as the Copyright Act, 1957 and the Information Technology Act, 2000, along with relevant case law.

Secondary sources include books, journal articles, government reports, and international publications. A comparative approach is also used to examine copyright frameworks in other jurisdictions such as the United States and the European Union. The research is qualitative in nature and does not involve empirical data collection.

1.9 Scope and Limitations

The scope of this study is limited to the analysis of copyright law in relation to OTT platforms and online piracy in India. It focuses on legal, technological, and policy aspects of digital copyright enforcement. However, the study does not include empirical research such as surveys or interviews. Additionally, due to the rapidly evolving nature of technology, certain developments may not be fully captured within the scope of this research.

1.10 Structure of the Study

This dissertation is divided into seven chapters:

- Chapter I introduces the topic and outlines the research framework.
- Chapter II examines the theoretical and legal foundations of copyright law.
- Chapter III analyses the rise and regulation of OTT platforms.
- Chapter IV discusses online piracy and its impact.
- Chapter V evaluates judicial approaches and enforcement mechanisms.
- Chapter VI provides a comparative analysis of global frameworks.
- Chapter VII presents findings, conclusions, and recommendations.



CHAPTER II – THEORETICAL AND LEGAL FRAMEWORK OF COPYRIGHT IN INDIA

2.1 Theoretical Foundations of Copyright

Copyright protection is often explained through different theoretical perspectives that attempt to justify why creators should be granted exclusive rights over their work. The justification for copyright protection is generally explained through two dominant theories: the natural rights theory and the utilitarian theory.

The natural rights theory, derived from Locke's labour theory, suggests that individuals have a moral entitlement to the products of their intellectual labour.¹³ Accordingly, authors are considered to have inherent rights over their creations, and any unauthorised use amounts to a violation of these rights. However, this theory has been criticised for potentially leading to excessive monopolisation of knowledge if applied without limitation.

In contrast, the utilitarian theory justifies copyright as a means of promoting creativity and innovation for the benefit of society. By granting limited exclusive rights, the law incentivises authors to create and disseminate works, thereby contributing to cultural and intellectual development.¹⁴

In the Indian context, copyright law reflects a hybrid approach that incorporates both these theories while also emphasising public interest. The law recognises that knowledge and culture must remain accessible, and therefore imposes limitations such as fair dealing provisions and limited duration of protection.¹⁵

In the digital age, this balance becomes increasingly complex. Strong copyright protection is necessary to safeguard investments in OTT content, but overly restrictive enforcement may hinder access to information and freedom of expression. Therefore, the theoretical foundations of copyright must be re-evaluated in light of technological advancements.

¹³ William Fisher, 'Theories of Intellectual Property' in Stephen Munzer (ed), *New Essays in the Legal and Political Theory of Property* (Cambridge University Press 2001) 168.

¹⁴ *ibid* 170.

¹⁵ P Narayanan, *Copyright and Industrial Designs* (4th edn, Eastern Law House 2017) 12.

2.2 Historical Development of Copyright Law in India

The development of copyright law in India has been shaped by both colonial influence and post-independence legislative reforms. The earliest copyright law in India was the Copyright Act of 1914, which was largely based on the British Copyright Act of 1911.¹⁶ This legislation primarily addressed traditional forms of creative works and did not anticipate the challenges posed by digital technology.

After independence, India enacted the Copyright Act, 1957, which provided a comprehensive legal framework tailored to the country's socio-economic conditions.¹⁷ Over the years, the Act has been amended to address emerging challenges, including the rise of broadcasting, cable television, and digital media.

The evolution of copyright law reflects a gradual shift from print-based protection to digital regulation. However, legislative changes have often lagged behind technological developments, resulting in gaps in enforcement. This delay has been particularly evident in the context of online piracy and digital streaming.

2.3 Overview of the Copyright Act, 1957

The Copyright Act, 1957 grants exclusive rights to creators over their works, including the rights of reproduction, communication to the public, distribution, and adaptation.¹⁸ These rights enable authors to control the use of their works and derive economic benefits from them.

At the same time, the Act incorporates limitations and exceptions to prevent misuse of these rights. Section 52 of the Act provides for fair dealing exceptions, allowing use of copyrighted works for purposes such as research, criticism, review, and reporting of current events.¹⁹

¹⁶Copyright Act 1914 (India).

¹⁷Copyright Act 1957 (India).

¹⁸ *ibid* s 14.

¹⁹ *ibid* s 52.

Judicial Interpretation and Doctrinal Development

The judiciary has played a crucial role in shaping the interpretation of copyright law in India.

In *R.G. Anand v Deluxe Films*²⁰, the Supreme Court held that copyright protection extends only to the expression of ideas and not to the ideas themselves. The Court developed the "substantial similarity" test, which remains a key standard for determining infringement.

In *Eastern Book Company v D.B. Modak*²¹, the Supreme Court rejected the traditional "sweat of the brow" doctrine and adopted a "modicum of creativity" standard. This decision brought Indian law closer to international standards and emphasised originality as a key requirement for copyright protection.

Further, in *Super Cassettes Industries Ltd v MySpace Inc*²², the Delhi High Court examined the liability of online platforms hosting copyrighted content. The Court held that intermediaries cannot claim protection if they have knowledge of infringement and fail to act.

Critical Analysis

While the Act provides a comprehensive framework, its effectiveness in the digital environment is limited by enforcement challenges. The provisions were originally designed for physical media and have been adapted to digital contexts through judicial interpretation rather than legislative clarity. This reliance on judicial innovation creates uncertainty and inconsistency in application.

2.4 The Copyright (Amendment) Act, 2012 and Digital Rights

The 2012 amendment represents a significant step towards modernising Indian copyright law. It introduced provisions relating to digital rights management (DRM), protection against circumvention of technological protection measures, and enhanced rights for authors and performers.²³

²⁰*R.G. Anand v Deluxe Films* (1978) 4 SCC 118.

²¹*Eastern Book Company v D.B. Modak* (2008) 1 SCC 1.

²²*Super Cassettes Industries Ltd v MySpace Inc* 2016 SCC OnLine Del 6382.

²³Copyright (Amendment) Act 2012 (India).

One of the key objectives of the amendment was to align Indian law with international treaties such as the WIPO Copyright Treaty. It also aimed to address issues arising from digital distribution, including online streaming and electronic transmission of content.

However, despite these advancements, the amendment has been criticised for not adequately addressing enforcement challenges. While it provides legal recognition to technological protection measures, it does not ensure their effective implementation. Moreover, the rapid evolution of piracy techniques has outpaced legislative responses.

2.5 Intermediary Liability under the Information Technology Act, 2000

The Information Technology Act, 2000 plays a crucial role in regulating digital platforms and determining intermediary liability.

Section 79 of the Act provides safe harbour protection to intermediaries, shielding them from liability for third-party content, provided they comply with due diligence requirements.²⁴ However, this protection is conditional and does not apply where the intermediary has actual knowledge of unlawful activity.

Judicial Developments

In *Shreya Singhal v Union of India*²⁵, the Supreme Court clarified that intermediaries are required to remove content only upon receiving a court order or government notification. This judgment limited arbitrary censorship and strengthened freedom of speech.

In *MySpace Inc v Super Cassettes Industries Ltd*²⁶, the Delhi High Court examined the scope of intermediary liability in copyright infringement cases. The Court held that platforms must take proactive steps to prevent infringement once they are aware of it.

²⁴Information Technology Act 2000 (India) s 79.

²⁵*Shreya Singhal v Union of India* (2015) 5 SCC 1.

²⁶*MySpace Inc v Super Cassettes Industries Ltd* 2016 SCC OnLine Del 6382.

Critical Analysis

The concept of intermediary liability is central to addressing online piracy. However, the current framework creates ambiguity regarding the extent of responsibility of platforms. While safe harbour provisions protect intermediaries, they may also enable platforms to avoid liability by claiming lack of knowledge. This creates a regulatory gap, particularly in the context of OTT platforms and user-generated content platforms, where large volumes of content make monitoring difficult.

2.6 International Obligations: TRIPS and WIPO Treaties

India's copyright framework is influenced by its international obligations under agreements such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the WIPO Copyright Treaty.²⁷ These agreements establish minimum standards of protection and require member states to address digital challenges, including online infringement and technological protection measures.

The TRIPS Agreement emphasises the need for effective enforcement mechanisms, while the WIPO treaties focus on digital rights management and protection against circumvention.²⁸

India has incorporated these obligations into its domestic law, particularly through the 2012 amendment. However, the implementation of these standards remains inconsistent.

Comparative Insight

In jurisdictions such as the United States, the Digital Millennium Copyright Act (DMCA) provides a detailed framework for notice-and-takedown procedures. Similarly, the European Union has adopted directives addressing online copyright enforcement. Compared to these systems, India's framework appears less structured in terms of enforcement mechanisms, relying heavily on judicial intervention rather than administrative processes.

²⁷Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 299.

²⁸WIPO Copyright Treaty (adopted 20 December 1996, entered into force 6 March 2002).

2.7 Critical Evaluation of the Legal Framework

While India has developed a comprehensive legal framework for copyright protection, several challenges remain:

- Enforcement gaps due to technological complexity.
- Ambiguity in intermediary liability.
- Over-reliance on judicial remedies such as dynamic injunctions.
- Lack of specialised regulatory mechanisms.

The legal framework, though robust in theory, struggles in practical implementation, particularly in the context of OTT platforms and digital piracy.



CHAPTER III – RISE AND REGULATION OF OTT PLATFORMS IN INDIA

3.1 Concept and Evolution of OTT Platforms

Over-the-Top (OTT) platforms are internet-based content delivery systems that allow users to stream media directly, without relying on conventional broadcast or cable networks and cinema distribution networks. Platforms such as Netflix, Amazon Prime Video, and Disney+ Hotstar have fundamentally altered the structure of the entertainment industry in India.

The rise of OTT platforms must be understood in the context of India's broader digital transformation. The expansion of affordable internet access, particularly following the entry of Reliance Jio, significantly reduced data costs and enabled mass adoption of streaming services.²⁹ This technological shift, combined with increased smartphone penetration, created a conducive environment for OTT growth.

Unlike traditional broadcasting, which is linear and schedule-based, OTT platforms operate on a non-linear, on-demand model. This has redefined consumer expectations, shifting control from broadcasters to viewers.³⁰

Critical Analysis

While OTT platforms are often celebrated as democratising access to content, this narrative requires closer scrutiny. In reality, the market is increasingly dominated by a few large players with substantial financial and technological resources. This concentration of power raises concerns about algorithmic control, content visibility, and market entry barriers for smaller creators. Further, the shift from physical to digital distribution has not eliminated gatekeeping but merely transformed it. OTT platforms now act as powerful intermediaries that control access to audiences, thereby influencing cultural production and consumption patterns.

²⁹Telecom Regulatory Authority of India, Telecom Subscription Data (TRAI 2022).

³⁰Ernst & Young, Re-imagining India's M&E Sector (EY OTT Media Report 2021) 18.

3.2 Business Models and Economic Structure of OTT Platforms

OTT platforms operate through multiple revenue models, including subscription-based (SVOD), advertisement-supported (AVOD), and hybrid models. Platforms such as Netflix rely heavily on subscription revenue, whereas platforms like Disney+ Hotstar adopt a hybrid approach combining advertisements and subscriptions.³¹

The economic success of OTT platforms is largely dependent on their ability to secure and retain exclusive content. Original productions and exclusive licensing agreements serve as key differentiators in a highly competitive market.³²

Economic Vulnerability to Piracy

The sustainability of OTT platforms is closely tied to effective copyright protection. Piracy directly undermines their revenue models by providing free access to paid content. This is particularly problematic in price-sensitive markets such as India, where consumers may be more inclined to access pirated content rather than pay for subscriptions.³³

Critical Analysis

The business model of OTT platforms is inherently fragile in the absence of strong enforcement mechanisms. High production costs combined with piracy-induced revenue losses create a situation where platforms may prioritise commercially safe content over experimental or regional productions. This has long-term implications for cultural diversity and creative risk-taking. Moreover, the subscription fatigue observed among users—caused by the proliferation of multiple platforms—may indirectly contribute to piracy, as users seek cost-effective alternatives to access content across platforms.

³¹ibid 22.

³²FICCI, Media and Entertainment Industry Report (FICCI 2022) 44.

³³OECD, Piracy of Digital Content (OECD Publishing 2018) 57.

3.3 Licensing Framework and Digital Distribution Complexities

Licensing forms the backbone of OTT operations. Platforms acquire rights to stream content through contractual agreements that define the scope, duration, and territorial limits of usage.³⁴

These agreements often involve complex negotiations between multiple stakeholders, including producers, distributors, and broadcasters. The territorial nature of copyright law means that rights are often segmented across different regions, leading to fragmented distribution models.³⁵

Legal Challenges

One of the most significant challenges in digital licensing is the mismatch between the global nature of the internet and the territorial limitations of copyright law. Content that is legally restricted in one jurisdiction may be illegally accessed through virtual private networks (VPNs) or pirated platforms operating from other jurisdictions.

Critical Analysis

The territorial framework of copyright law is increasingly outdated in the context of OTT platforms. This creates enforcement gaps that are exploited by piracy networks operating across borders. The inability to enforce rights globally weakens the effectiveness of licensing agreements and reduces incentives for investment in content.

3.4 Copyright Ownership and Control in OTT Content

Copyright ownership in OTT content is often complex and multi-layered. Under the Copyright Act, 1957, the producer is generally considered the first owner of copyright in cinematograph films.³⁶ However, OTT platforms may acquire exclusive rights through contractual arrangements, particularly in the case of original productions.

³⁴P Narayanan, *Copyright and Industrial Designs* (4th edn, Eastern Law House 2017) 310.

³⁵Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 299, art 28.

³⁶Copyright Act 1957 (India) s 17.

Judicial Position

In *Indian Performing Right Society Ltd v Eastern Indian Motion Pictures Association*³⁷, the Supreme Court clarified that producers hold primary rights in cinematograph films, although underlying rights may still vest with authors and composers.

Critical Analysis

The fragmentation of copyright ownership creates challenges in enforcement. Multiple stakeholders with overlapping rights may lead to delays and inconsistencies in taking legal action against infringement. This weakens the overall effectiveness of copyright protection in the OTT ecosystem. Further, the concentration of ownership in large platforms raises concerns about bargaining power and fair compensation for creators, particularly independent artists.

3.5 Regulatory Framework Governing OTT Platforms

OTT platforms in India were initially subject to minimal regulation. However, increasing concerns regarding content and accountability led to the introduction of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.³⁸ These rules establish a framework for content classification, grievance redressal, and self-regulation by digital platforms.

Limitations of Current Regulation

While the 2021 Rules address issues of content moderation and accountability, they do not adequately address copyright enforcement or piracy. The focus remains largely on regulating content rather than protecting intellectual property rights.

Critical Analysis

The absence of a comprehensive regulatory framework specifically addressing OTT platforms creates significant gaps in governance. Copyright enforcement is treated as a secondary concern, despite being central to the functioning of these platforms.

³⁷*Indian Performing Right Society Ltd v Eastern Indian Motion Pictures Association* (1977) 2 SCC 820.

³⁸Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (India).

This fragmented approach reflects a broader issue in Indian digital regulation, where different aspects of online activity are governed by separate laws without sufficient coordination.

3.6 OTT Platforms and the Ecosystem of Online Piracy

The relationship between OTT platforms and online piracy is both direct and complex. The digital nature of OTT content makes it highly susceptible to unauthorized copying and distribution. Piracy affecting OTT platforms occurs through various mechanisms, including:

- Screen recording and redistribution.
- Torrent uploads.
- IPTV networks.
- Unauthorized sharing through messaging applications such as Telegram.³⁹

Judicial Intervention

In *UTV Software Communication Ltd v 1337X.to*⁴⁰, the Delhi High Court recognised the concept of "rogue websites" and introduced dynamic injunctions to block such platforms.

Critical Analysis

While judicial innovations such as dynamic injunctions represent a significant step forward, they are largely reactive in nature. Pirate websites frequently circumvent blocking orders by creating mirror domains or shifting to new servers. This highlights the limitations of legal remedies in addressing technologically sophisticated piracy networks. Effective enforcement requires not only legal measures but also technological solutions and international cooperation.

3.7 Intermediary Liability and the OTT Ecosystem

OTT platforms operate within a broader digital ecosystem that includes intermediaries such as internet service providers, hosting platforms, and content delivery networks. The liability of these intermediaries is governed by the Information Technology Act, 2000.

³⁹OECD, Piracy of Digital Content (OECD Publishing 2018) 63.

⁴⁰*UTV Software Communication Ltd v 1337X.to* (2019) 78 PTC 375 (Del HC).

Intermediaries often rely on safe harbour provisions to avoid liability, provided they comply with due diligence requirements.⁴¹

Critical Analysis

The current framework creates ambiguity regarding the extent of responsibility of intermediaries. While safe harbour provisions are necessary to promote innovation, they may also enable platforms to evade accountability. A more balanced approach is required, where intermediaries are incentivised to actively prevent infringement without being subjected to excessive liability.

3.8 Critical Evaluation and Conclusion

The rise of OTT platforms represents a significant transformation in India's entertainment industry. However, this transformation has exposed several structural weaknesses in the legal framework governing digital content. Key issues include:

- Inadequate alignment between copyright law and digital realities.
- Weak enforcement mechanisms against piracy.
- Fragmented regulatory framework.
- Ambiguity in intermediary liability.
- Over-reliance on judicial remedies.

While OTT platforms have expanded access to content and created new economic opportunities, their long-term sustainability depends on effective copyright protection. A more integrated approach is required, combining legal reforms, technological measures, and international cooperation to address the challenges posed by online piracy.

⁴¹Information Technology Act 2000 (India) s 79.

CHAPTER IV – ONLINE PIRACY IN INDIA: MECHANISMS, IMPACT AND LEGAL RESPONSES

4.1 Introduction to Online Piracy

Online piracy involves the unauthorised circulation or access of copyrighted material through digital channels, often without the permission of the rights holder. The shift from physical to digital content has fundamentally altered the nature of copyright infringement. Unlike traditional piracy, which involved physical duplication, digital piracy allows for instantaneous and large-scale dissemination of content across borders.⁴²

Critical Perspective

Online piracy is not merely a legal issue but a technological and socio-economic phenomenon. It reflects gaps in enforcement, consumer behaviour, pricing strategies, and access inequalities. Therefore, any meaningful analysis must go beyond legal provisions and examine the broader ecosystem.

4.2 Forms and Mechanisms of Online Piracy

Online piracy operates through multiple sophisticated mechanisms, many of which directly target OTT content.

4.2.1 Torrent-Based Piracy

Torrent websites enable peer-to-peer (P2P) sharing of files without centralised control. Users download and upload fragments of files simultaneously, making enforcement difficult.⁴³

4.2.2 Illegal Streaming Websites

These platforms host or embed pirated content, allowing users to stream without downloading. Many of these websites generate revenue through advertisements.

4.2.3 Stream-Ripping and Screen Recording

Stream-ripping involves extracting content from legitimate OTT platforms and redistributing it illegally. Screen recording is commonly used to capture content during streaming and upload it to piracy platforms.

⁴²OECD, Piracy of Digital Content (OECD Publishing 2018) 11.

⁴³ibid 25.

4.2.4 IPTV Piracy Networks

Illegal IPTV services provide access to premium content at significantly lower prices. These services often operate through subscription models, directly competing with legitimate OTT platforms.

4.2.5 Messaging Applications and Social Media

Platforms such as Telegram have become major hubs for piracy, where users share copyrighted content through private channels.⁴⁴

Critical Analysis

The diversity of piracy mechanisms demonstrates that piracy is not a single problem but a networked ecosystem. Each mechanism requires different enforcement strategies, making a uniform legal approach ineffective.

4.3 Economic Impact of Online Piracy

Online piracy has significant economic implications for the entertainment industry, particularly OTT platforms.

4.3.1 Revenue Losses

Piracy reduces subscription revenue by providing free access to paid content. This is particularly impactful in price-sensitive markets such as India.⁴⁵

4.3.2 Impact on Content Production

Reduced revenues may lead to lower investment in original content. This affects the quality and diversity of content available to consumers.

4.3.3 Employment and Industry Growth

The entertainment industry is a major source of employment. Piracy undermines its growth and sustainability.

⁴⁴ibid 30.

⁴⁵FICCI, Media and Entertainment Industry Report (FICCI 2022) 78.

Critical Analysis

While piracy undoubtedly causes economic losses, some scholars argue that its impact may be overstated. In certain cases, piracy may increase content visibility and indirectly promote legal consumption. However, this argument is less applicable to OTT platforms, where revenue is directly tied to subscriptions.

4.4 Legal Framework Addressing Online Piracy in India

India addresses online piracy through a combination of statutory provisions and judicial interventions.

4.4.1 Copyright Law

The Copyright Act, 1957 provides the primary legal framework for addressing copyright infringement. It grants exclusive rights to creators and provides remedies such as injunctions and damages.⁴⁶

4.4.2 Information Technology Law

The Information Technology Act, 2000 addresses intermediary liability and provides mechanisms for blocking access to unlawful content.⁴⁷

Critical Analysis

While these laws provide a foundation for enforcement, they are not specifically designed to address the complexities of digital piracy. The lack of OTT-specific provisions creates regulatory gaps.

4.5 Judicial Responses to Online Piracy

Indian courts have played a proactive role in addressing online piracy through innovative remedies.

4.5.1 Website Blocking Orders

Courts have frequently issued orders directing internet service providers to block access to infringing websites.

⁴⁶Copyright Act 1957 (India).

⁴⁷Information Technology Act 2000 (India).

4.5.2 Dynamic Injunctions

In *UTV Software Communication Ltd v 1337X.to*⁴⁸, the Delhi High Court introduced the concept of dynamic injunctions, allowing rights holders to block mirror websites without filing fresh suits.

4.5.3 The Rogue Website Doctrine

The Court in the same case recognised "rogue websites" as platforms primarily engaged in copyright infringement.

4.5.4 Additional Case Laws

In *Super Cassettes Industries Ltd v MySpace Inc*⁴⁹, the Delhi High Court confirmed that intermediaries with knowledge of infringement cannot claim safe harbour protection.

In *Star India Pvt Ltd v Haneeth Ujwal*⁵⁰, the Delhi High Court further reinforced the judicial approach towards protecting OTT content from live piracy during broadcasts.

Critical Analysis

While judicial remedies have been effective to some extent, they are largely reactive and dependent on litigation. This creates delays and increases enforcement costs.

4.6 Enforcement Challenges in Combating Online Piracy

4.6.1 Jurisdictional Issues

Piracy websites often operate from foreign jurisdictions, making enforcement difficult.

4.6.2 Anonymity of Offenders

The use of encryption and anonymous networks makes it difficult to identify infringers.

4.6.3 Technological Advancements

Piracy techniques evolve rapidly, outpacing legal responses.

4.6.4 Resource Constraints

Enforcement agencies may lack the resources and expertise required to tackle digital piracy.

⁴⁸*UTV Software Communication Ltd v 1337X.to* (2019) 78 PTC 375 (Del HC).

⁴⁹*Super Cassettes Industries Ltd v MySpace Inc* 2016 SCC OnLine Del 6382.

⁵⁰*Star India Pvt Ltd v Haneeth Ujwal* 2021 SCC OnLine Del 3831.

Critical Analysis

The persistence of piracy despite legal measures indicates that the problem is not merely legal but structural. Effective enforcement requires coordination between legal, technological, and international mechanisms.

4.7 Role of Intermediaries in Online Piracy

Intermediaries such as ISPs, hosting providers, and social media platforms play a crucial role in the piracy ecosystem. Under the Information Technology Act, 2000, intermediaries are granted safe harbour protection, subject to compliance with due diligence requirements.⁵¹

Critical Analysis

The safe harbour framework creates a tension between protecting intermediaries and ensuring accountability. While it promotes innovation, it may also enable platforms to avoid responsibility for infringing content.

4.8 Need for a Multi-Dimensional Approach

Addressing online piracy requires a comprehensive strategy that includes:

- Legal reforms tailored to the digital environment.
- Technological measures such as DRM and watermarking.
- Public awareness campaigns regarding the harms of piracy.
- Enhanced international cooperation and mutual legal assistance.

Critical Analysis

A purely legal approach is insufficient. Effective anti-piracy strategies must integrate law, technology, and policy to address the root causes of piracy.

⁵¹Information Technology Act 2000 (India) s 79.

4.9 Conclusion

Online piracy remains one of the most significant challenges facing OTT platforms in India. Despite the existence of legal provisions and judicial innovations, enforcement remains inadequate due to technological and structural limitations. The chapter demonstrates that piracy is a complex and evolving phenomenon that cannot be addressed through traditional legal mechanisms alone. A more holistic and adaptive approach is required to ensure effective copyright protection in the digital age.



CHAPTER V – JUDICIAL APPROACH AND ENFORCEMENT MECHANISMS

5.1 Introduction

The rapid expansion of digital technology and the emergence of OTT platforms have fundamentally altered the nature of copyright infringement. Traditional legal remedies, which were primarily designed for physical forms of piracy, have proven inadequate in addressing the complexities of digital infringement. In this context, the Indian judiciary has assumed a central role in shaping copyright enforcement mechanisms. Courts, particularly the Delhi High Court, have developed innovative doctrines such as dynamic injunctions and the concept of rogue websites to address the challenges posed by online piracy.

However, this increased reliance on judicial intervention raises important questions regarding the limits of judicial power, procedural fairness, and the balance between copyright protection and fundamental rights. This chapter undertakes a detailed examination of judicial approaches to copyright enforcement in the digital age.

5.2 Website Blocking Orders: Legal Foundations and Evolution

Website blocking has emerged as one of the most frequently used judicial tools to combat online piracy. Courts derive their authority to issue such orders from a combination of statutory provisions and inherent judicial powers.

5.2.1 Statutory Basis

Indian courts have anchored website blocking orders in the civil remedy provisions of the Copyright Act, 1957, construing injunctive relief broadly enough to encompass directions to internet service providers.⁵² Section 69A of the Information Technology Act, 2000 provides a parallel administrative route, empowering the government to direct the blocking of online content where it is necessary in the interest of sovereignty, public order, or security — though this provision was not specifically enacted with copyright in mind.

⁵² Super Cassettes Industries Ltd v MySpace Inc 2016 SCC OnLine Del 6382.

The resulting picture is one of doctrinal improvisation: copyright enforcement through website blocking rests not on a dedicated legislative framework but on expansive judicial readings of general injunction powers combined with an IT Act provision that serves a different primary purpose. This structural deficit has important consequences for procedural fairness and predictability.

5.2.2 Judicial Development of Blocking Orders

Early judicial practice treated website blocking narrowly, targeting specific infringing URLs identified by the plaintiff. This approach was quickly exposed as inadequate. Infringing content, particularly on platforms designed to evade detection, can be migrated to new URLs within minutes, rendering URL-specific orders functionally obsolete before they are implemented. Courts responded by expanding the scope of orders to cover entire domains where the primary purpose of the website was found to be facilitation of infringement.

5.2.3 Case Analysis: Super Cassettes Industries Ltd v MySpace Inc

*Super Cassettes Industries Ltd v MySpace Inc*⁵³ raised the question of how copyright law should treat a platform that hosts user-uploaded content, some of which infringes third-party rights. The Delhi High Court's holding that safe harbour cannot be claimed by an intermediary with actual knowledge of infringement who nonetheless fails to act, established a workable standard of conditional immunity. What is particularly significant, however, is what the decision left unresolved: The Court did not articulate a clear definition of "actual knowledge" or specify what level of awareness triggers a duty to act. Intermediaries uncertain of the threshold have either over-removed content to minimise risk, or deliberately maintained ignorance to preserve safe harbour protection.

Critical Evaluation

The expansion of blocking orders represents a pragmatic response to the realities of digital piracy. However, it raises concerns regarding over-blocking, particularly in cases where legitimate content may be affected. The absence of clear guidelines for determining when a website should be blocked further exacerbates these concerns.

⁵³ *ibid.*

5.3 Dynamic Injunctions: Evolution, Scope and Impact

5.3.1 Case Analysis: UTV Software Communication Ltd v 1337X.to

In *UTV Software Communication Ltd v 1337X.to*,⁵⁴ the Delhi High Court confronted a problem that had undermined earlier blocking orders: pirate websites, once enjoined, routinely resurface under new domain names or migrate to mirror servers with minimal delay.

The Court's solution was to exercise its inherent powers under Section 151 of the Code of Civil Procedure to fashion a "dynamic injunction" - an order allowing rights holders to extend blocking relief to newly identified mirror or redirect websites by applying to the Joint Registrar rather than re-litigating the matter before a judge.

The Court drew on the Singapore High Court's earlier development of this mechanism in *Disney Enterprise v MI Ltd*⁵⁵ and adapted it to the Indian procedural context. Critically, the Court grounded this innovation in a principled refusal to treat online infringement as categorically different from infringement in the physical world.

5.3.2 Legal Significance

- Reduced litigation burden on rights holders.
- Increased efficiency and speed in enforcement.
- Judicial recognition of the technological realities of digital piracy.

Critical Analysis

While dynamic injunctions enhance enforcement efficiency, they raise procedural concerns. The ability to block websites without full judicial scrutiny in each instance may lead to arbitrary restrictions. Additionally, the reliance on plaintiffs to identify infringing websites may result in over-inclusive blocking.

⁵⁴ *UTV Software Communication Ltd v 1337X.to* (2019) 78 PTC 375 (Del HC).

⁵⁵ *Disney Enterprises Inc v M1 Ltd* [2018] SGHC 206 (Singapore High Court); the first judicial grant of a dynamic injunction, requiring applicants to show that a new URL merely provides access to the same infringing website already enjoined.

5.4 Doctrine of Rogue Websites

The recognition of "rogue websites" in *UTV Software Communication Ltd v 1337X.to*⁵⁶ represents a significant doctrinal development. Rogue websites are those primarily engaged in facilitating copyright infringement with little or no legitimate purpose.

This doctrine justifies blanket blocking of infringing platforms, reduces the evidentiary burden on rights holders, and streamlines enforcement proceedings. However, while effective in targeting large-scale piracy networks, it risks oversimplification - not all websites hosting infringing content are entirely unlawful, and blanket classification may lead to disproportionate restrictions.

5.5 Intermediary Liability: Judicial Interpretation and Challenges

5.5.1 Case Analysis: Shreya Singhal v Union of India

The Supreme Court's judgment in *Shreya Singhal v Union of India*⁵⁷ held that the "actual knowledge" standard under Section 79 of the IT Act is satisfied and safe harbour protection lost only when an intermediary receives a court order or government notification directing it to remove specific content. Mere awareness of a complaint from a private party is insufficient.

This holding has an important constitutional rationale: allowing private parties to trigger compulsory takedowns would effectively privatise censorship, bypassing the procedural safeguards associated with judicial or governmental action.

5.5.2 Case Analysis: MySpace Inc v Super Cassettes Industries Ltd

In this case⁵⁸, the Delhi High Court held that intermediaries must act proactively on receiving actual knowledge of infringement, and that the safe harbour cannot be maintained by an intermediary that is aware of specific infringing content but takes no steps to address it.

⁵⁶ibid.

⁵⁷ *Shreya Singhal v Union of India* (2015) 5 SCC 1.

⁵⁸*MySpace Inc v Super Cassettes Industries Ltd* 2016 SCC OnLine Del 6382.

Critical Analysis

The doctrinal tension between Shreya Singhal and MySpace has not been fully resolved, and this is a significant structural weakness in the Indian intermediary liability framework. The question of what constitutes “actual knowledge” sufficient to displace safe harbour protection determines the practical scope of intermediary responsibility.

Platforms currently navigate this uncertainty by formulating their own internal policies, resulting in inconsistent enforcement across the ecosystem. Legislative intervention to establish a clear, tiered knowledge standard calibrated to the nature and scale of the platform would provide much-needed clarity.

5.6 Balancing Copyright Protection and Fundamental Rights

The enforcement of copyright law often intersects with fundamental rights, particularly the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. Courts have increasingly applied the principle of proportionality to ensure that enforcement measures do not unduly restrict fundamental rights. Over-enforcement may lead to censorship, while under-enforcement may undermine intellectual property rights. Courts must therefore adopt a nuanced approach that considers the broader implications of their decisions.

5.7 Government Policies and Judicial Oversight

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 have complemented judicial efforts by establishing grievance redressal mechanisms and due diligence obligations. However, the Rules do not create a structured notice-and-takedown mechanism specifically designed for copyright enforcement. The interaction between executive regulation and judicial enforcement also raises separation of powers concerns: Section 69A of the IT Act allows the government to direct content blocking without the transparency and procedural safeguards that attend judicial orders, creating a dual-track system with different standards and levels of oversight.

5.8 Limitations of Judicial Enforcement

The most fundamental limitation of India's current enforcement approach is its reactive and fragmented character. In the digital environment, where pirated content can reach millions of users within hours of release, the time required to obtain a blocking order represents a meaningful window of damage. Cross-border enforcement presents an additional structural problem that cannot be resolved through domestic judicial innovation: Indian court orders cannot compel foreign domain registrars or hosting providers to act. Finally, the absence of specialised IP tribunals with technical expertise means that even well-intentioned judicial responses can be technically uninformed.

5.9 Conclusion

India's judiciary has responded to the challenge of digital copyright enforcement with genuine creativity and institutional commitment. The doctrines of dynamic injunctions and rogue website classification represent meaningful advances. However, judicial innovation is not a substitute for legislative reform. The current framework's dependence on expansive judicial interpretation of general provisions, combined with the absence of a structured notice-and-takedown mechanism and the unresolved tensions in intermediary liability law, creates a system that is simultaneously over-inclusive in some respects and under-inclusive in others. A comprehensive legislative response informed by the judicial experience of the last decade is overdue.

WHITE BLACK
LEGAL

CHAPTER VI – COMPARATIVE ANALYSIS AND GLOBAL PERSPECTIVE

6.1 Introduction

Comparative analysis is an indispensable tool for evaluating the adequacy of any domestic legal framework. Copyright law has developed through sustained international dialogue, the Berne Convention, TRIPS, and the WIPO Internet Treaties represent successive attempts to establish minimum standards that national systems must meet. Yet the manner in which those standards are implemented varies considerably, and those variations reveal important structural choices about how law should allocate the costs of copyright enforcement between rights holders, intermediaries, users, and the state.

This chapter examines the enforcement frameworks of the United States and the European Union. The two most influential models in global copyright discourse and evaluates India's position in relation to each. The goal is not to identify which system is "best" in the abstract, but to identify which features of each system are most transferable to the Indian context, and what constraints institutional, political, and economic shape the feasibility of reform.

6.2 The United States Approach: Procedural Efficiency and Private Enforcement

The United States has been at the forefront of developing legal mechanisms to address digital copyright infringement. The enactment of the Digital Millennium Copyright Act (DMCA) in 1998 marked a significant turning point, designed to balance the interests of copyright holders and digital intermediaries.

At the core of the DMCA is the notice-and-takedown mechanism, which enables copyright owners to directly notify online platforms of infringing content. Upon receiving such notice, platforms are required to expeditiously remove or disable access to the content in order to retain safe harbour protection.⁵⁹ This mechanism reflects a shift from state-driven enforcement to a system of private regulation.

⁵⁹Digital Millennium Copyright Act 1998 (US), 17 USC § 512.

However, the reliance on private enforcement raises significant concerns. Platforms, in their effort to avoid liability, may adopt an overly cautious approach and remove content without verifying the legitimacy of the claim. This has led to criticisms that the DMCA facilitates a form of "private censorship."

In *A&M Records Inc v Napster Inc*⁶⁰, the court held that Napster was liable for contributory and vicarious infringement, establishing that digital platforms could not evade liability merely by acting as intermediaries.

Similarly, in *MGM Studios Inc v Grokster Ltd*⁶¹, the United States Supreme Court introduced the inducement doctrine, holding that platforms that actively encourage infringement can be held liable.

Despite its effectiveness, the US model is not without limitations. The absence of proactive monitoring obligations allows infringing content to remain accessible until a takedown notice is issued, placing a significant burden on copyright owners.

Critical Analysis

The US model's most transferable feature is the procedural architecture of notice-and-takedown: a clear statutory pathway for content removal that does not require judicial intervention in the ordinary case. India's current framework, which routes almost all enforcement through the courts, is both slower and more expensive. Adopting a comparable mechanism with robust counter-notice provisions and liability for false claims would address this efficiency deficit. However, the DMCA's over-removal problem is a serious cautionary lesson: any Indian notice-and-takedown system must be designed with adequate safeguards against abuse, including meaningful penalties for bad-faith notices and a genuinely accessible counter-notice process.

⁶⁰*A&M Records Inc v Napster Inc* 239 F 3d 1004 (9th Cir 2001).

⁶¹*MGM Studios Inc v Grokster Ltd* 545 US 913 (2005).

6.3 The European Union Approach: Proactive Regulation and Platform Accountability

In contrast to the United States, the European Union has adopted a more interventionist approach. The Directive on Copyright in the Digital Single Market represents a fundamental shift in the regulatory paradigm, moving from reactive enforcement towards proactive prevention.

One of the most significant provisions is Article 17, which imposes direct liability on online content-sharing platforms for copyrighted material made available on their services.⁶² Platforms are required to obtain licences from rights holders and implement measures to prevent the availability of unauthorized content, effectively transforming platforms from passive intermediaries into active participants in copyright enforcement.

However, critics argue that the requirement to implement content filtering technologies may lead to over-blocking, raising concerns regarding the impact on freedom of expression. The case of *Google LLC v CNIL*⁶³ further highlights the complexities of enforcing digital rights in a global context. The Court of Justice of the European Union held that enforcement of certain rights must be limited to the territorial scope of the EU, underscoring the inherent limitations of regional legal frameworks in addressing global digital phenomena.

Critical Analysis

Article 17's fundamental insight that platforms which derive substantial commercial value from hosting copyrighted content must bear a corresponding share of the enforcement burden is sound. India's current framework, which allows major platforms to shelter behind safe harbour provisions with minimal proactive responsibility, does not adequately reflect this principle. However, the upload-filter model is ill-suited to India's market, where the platform ecosystem includes numerous smaller players that lack the technical and financial capacity to deploy sophisticated content recognition systems.

⁶²Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market [2019] OJ L130/92, art 17.

⁶³*Google LLC v Commission Nationale de l'Informatique et des Libertés (CNIL)* (C-507/17) [2019] ECLI:EU:C:2019:772.

6.4 India in Comparative Perspective: Judicial Innovation in the Absence of Structure

India's position in this comparative landscape is distinctive. Unlike the United States, India has no dedicated notice-and-takedown mechanism; unlike the European Union, it has not imposed proactive obligations on platforms. What it has instead is a judiciary that has constructed an ad hoc enforcement framework drawing on general civil procedure powers, expansive statutory interpretation, and cross-jurisdictional borrowing of doctrines developed elsewhere.

The dynamic injunction and the rogue website doctrine are genuine contributions to copyright jurisprudence. But judicial creativity cannot compensate indefinitely for legislative inaction. The comparison with the US and EU frameworks also highlights a structural problem specific to India: the enforcement burden falls almost entirely on rights holders willing and able to litigate.

Independent creators and smaller rights holders often the most economically damaged by piracy cannot access these mechanisms. A framework that is functionally accessible only to a small subset of rights holders fails to fulfil its stated purpose.⁶⁴

6.5 OTT Platforms and the Problem of Jurisdiction

One of the most significant challenges in the regulation of OTT platforms is the issue of jurisdiction. OTT services operate globally, while copyright laws remain territorially bound. Content that is licensed for distribution in one country may be accessed in another through VPNs. Piracy websites often operate from jurisdictions with weak enforcement mechanisms, making legal action difficult.

This problem is not unique to India. The decision in *Google LLC v CNIL*⁶⁵ demonstrates the limitations of extending national laws beyond territorial boundaries. The inability to effectively address cross-border piracy undermines the effectiveness of domestic legal frameworks and highlights the need for greater international cooperation.

⁶⁴ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637; the Supreme Court confirmed that restrictions on internet access must satisfy proportionality requirements and are subject to judicial review.

⁶⁵ *Google LLC v CNIL* (2019) C-507/17.

6.6 Comparative Evaluation: Strengths and Weaknesses

A comparative analysis of the three jurisdictions reveals that each approach has its own strengths and limitations. The United States model offers procedural efficiency and scalability but relies heavily on private enforcement, which may lead to abuse. The European Union model provides a more structured and proactive framework but raises concerns regarding over-regulation and its impact on fundamental rights. India's approach, while flexible and adaptive, lacks the structural mechanisms necessary for effective enforcement. The reliance on judicial remedies, though innovative, is not sufficient to address the scale of digital piracy.

6.7 Lessons and the Way Forward for India

The comparative analysis suggests that India can benefit from adopting a hybrid approach that incorporates elements from both the US and EU models. The introduction of a structured notice-and-takedown mechanism would enhance procedural efficiency and reduce reliance on litigation. At the same time, imposing reasonable obligations on platforms to prevent infringement would strengthen enforcement. However, any reform must be carefully calibrated to ensure that it does not compromise fundamental rights or stifle innovation.

6.8 Conclusion

The comparative analysis confirms that India's copyright enforcement framework, while bolstered by significant judicial innovation, lags behind international best practice in structural terms. The absence of a statutory notice-and-takedown mechanism, the unresolved ambiguities in intermediary liability law, the limited engagement with international enforcement cooperation, and the inaccessibility of formal enforcement to smaller rights holders collectively constitute a framework that is more sophisticated on paper than it is in practice. Reform that draws on international experience, while remaining attentive to India's specific institutional and market context, is both possible and urgent.

CHAPTER VII – FINDINGS, ANALYSIS AND RECOMMENDATIONS

7.1 Introduction

The preceding chapters of this study have examined the evolution of copyright law in India, the rise of OTT platforms, the growing menace of online piracy, and the role of judicial and comparative frameworks in addressing these challenges. The analysis reveals that while India possesses a reasonably robust statutory foundation, the rapid transformation of the digital ecosystem has exposed significant gaps in enforcement, regulation, and policy coherence. This chapter synthesises the key findings of the study, critically analyses the existing framework, and proposes reforms aimed at strengthening copyright protection while preserving digital innovation and access.

7.2 Key Findings of the Study

First, the Indian copyright framework, primarily governed by the Copyright Act, 1957, remains fundamentally sound in its structure. However, these provisions were originally designed for a pre-digital environment and have been adapted to the digital context largely through judicial interpretation rather than legislative reform.

Secondly, the emergence of OTT platforms has significantly altered the economics of content creation and distribution. These platforms rely heavily on exclusive content and subscription-based revenue models, making them particularly vulnerable to piracy.

Thirdly, online piracy in India operates through a complex and evolving ecosystem that includes torrent websites, illegal streaming platforms, IPTV services, and encrypted messaging applications. The decentralised and transnational nature of these networks makes enforcement extremely challenging.

Fourthly, the role of the judiciary has been both innovative and indispensable. Courts have developed mechanisms such as dynamic injunctions and the doctrine of rogue websites to address digital piracy. However, the reliance on judicial remedies highlights the absence of a structured and proactive enforcement framework.

Finally, the comparative analysis demonstrates that India lags behind the United States and the European Union in terms of procedural efficiency and regulatory clarity. While the US employs a structured notice-and-takedown system and the EU imposes proactive obligations on platforms, India continues to rely on a reactive and litigation-driven approach.

7.3 Gaps in the Existing Legal Framework

One of the most significant shortcomings is the absence of a formalised notice-and-takedown mechanism. Unlike the Digital Millennium Copyright Act in the United States, which provides a clear procedural pathway for removing infringing content, Indian law does not offer a comparable system. This results in delays and increased costs for rights holders.

Another major gap lies in the ambiguity surrounding intermediary liability under the Information Technology Act, 2000. While safe harbour provisions are essential for promoting innovation, the lack of clarity regarding the extent of intermediary responsibility creates uncertainty and inconsistency in enforcement.

Further, the current framework does not adequately address cross-border piracy. Many piracy websites operate from jurisdictions outside India, making it difficult to enforce domestic laws. Additionally, the regulatory framework governing OTT platforms is fragmented and primarily focused on content regulation rather than copyright protection.

7.4 Critical Analysis of Enforcement Mechanisms

Litigation-based enforcement is inherently reactive, addressing infringement only after it has occurred. In the digital environment, where content can be disseminated globally within minutes, such delays significantly reduce the effectiveness of legal remedies. Moreover, pirate websites frequently circumvent judicial blocking measures by creating mirror domains or shifting to new servers, creating a continuous cycle of enforcement and evasion. The lack of technological integration further limits enforcement effectiveness.

7.5 Policy Recommendations

In light of the findings and analysis, several policy recommendations are proposed.

7.5.1 Introduction of a Notice-and-Takedown Mechanism

India should adopt a structured notice-and-takedown system similar to that under the DMCA. Such a mechanism would enable faster removal of infringing content and reduce reliance on judicial processes. Safeguards must be incorporated to prevent misuse, including provisions for counter-notices and penalties for false claims.

7.5.2 Clarification of Intermediary Liability

The scope of intermediary liability under the Information Technology Act, 2000 should be clarified through legislative amendments. Clear guidelines regarding “actual knowledge” and due diligence requirements would enhance consistency and accountability across the ecosystem.

7.5.3 Strengthening Technological Measures

The adoption of technological solutions such as digital rights management (DRM), watermarking, and automated content recognition systems should be encouraged. These tools can significantly enhance the ability of rights holders to detect and prevent infringement.

7.5.4 Establishment of Specialised Enforcement Bodies

The creation of specialised agencies or tribunals for digital copyright enforcement would improve efficiency and reduce the burden on courts. Such bodies could handle disputes related to online piracy more effectively and with greater technical expertise.

7.5.5 Enhancing International Cooperation

Given the transnational nature of piracy, India must actively engage in international cooperation efforts. This includes participation in global treaties and bilateral collaboration with foreign enforcement agencies to address cross-border piracy networks.

7.5.6 Balanced Regulation of OTT Platforms

Regulatory measures should ensure that OTT platforms are held accountable for copyright protection without imposing excessive burdens that may hinder innovation. A balanced approach is necessary to protect both creators and consumers.

7.6 Legislative Reform Suggestions

The Copyright Act, 1957 should be amended to include provisions specifically addressing digital piracy and OTT platforms. Similarly, the Information Technology Act, 2000 should be updated to reflect the evolving role of intermediaries in the digital ecosystem. These reforms should aim to create a cohesive and comprehensive legal framework that addresses both the legal and technological dimensions of copyright enforcement.

7.7 Conclusion

The digital transformation of the entertainment industry has created unprecedented opportunities as well as significant challenges. OTT platforms have revolutionised content consumption in India, but their growth has been accompanied by a parallel rise in online piracy. This study demonstrates that while India has made considerable progress in adapting its copyright framework, significant gaps remain in enforcement and regulation. A comprehensive and forward-looking approach is required, integrating legislative reform, technological innovation, and international cooperation. By adopting a balanced and adaptive framework, India can effectively protect intellectual property rights while fostering creativity, innovation, and access in the digital era.

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