



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

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E.MBA, LL.M, PH.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University. More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated 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

NAVIGATING IPRS IN THE DIGITAL AGE: CHALLENGES AND OPPORTUNITIES FOR CONTENT CREATORS IN INDIA

AUTHORED BY - DR. PRIYADARSHNI

Associate Professor

Faculty of Legal Studies, HRIT University, Ghaziabad

ABSTRACT

The digital revolution has significantly accelerated the creation and dissemination of content, enabling individuals to become content creators. However, the role of IPRs in safeguarding the rights of content creators is crucial. IPRs, such as copyright and trademarks, provide exclusive privileges to innovators, ensuring long-term viability and reinvestment. They protect creators' distinctive voices and artistic expressions from unauthorised use, fostering a dynamic content environment. IPRs also encourage collaborations and licensing deals, promoting the development of new material through innovative concepts and mutually beneficial business ventures. However, the digital era presents challenges like copyright violation, content consolidation, and artificial intelligence creation. An efficient IPR system is essential for creating a flourishing creative environment that benefits both creators and society. This study examines the intricate relationship between IPR and content creation, particularly under the legal framework of India.

Keywords: IPR, Copyright, Piracy, Fair Use, AI

INTRODUCTION

The digital era has significantly impacted the concept of IPRs, leading to a new era of artistic expression. This has enabled individuals and organizations to rapidly create and disseminate various creations, including written articles, music, movies, and artwork. However, this has also presented challenges in protecting and executing IPRs. IPRs are crucial for safeguarding creative activities, granting creators legal and economic rights to their creations. These rights promote originality, motivate financial support for artistic projects, and ensure creators receive appropriate compensation for their intellectual property. Therefore, it is essential to

acknowledge and protect the rights of creators in this rapidly evolving digital era.ⁱ The digital environment has led to increased copyright violations, piracy, and expression violations. Content creators face challenges in managing a constantly changing digital environment, defining fair use, and balancing artistic creativity, self-expression, and IPR protection. Ethical considerations like plagiarism, credit, and user data use are critical. As the digital ecosystem expands, it's essential to embrace ethical standards.ⁱⁱ This paper explores the changing landscape of intellectual property rights (IPRs) in the digital age, focusing on the significance of IPRs, challenges faced by creators, and legal and ethical considerations. It aims to provide insight into the complexities of IPRs in the digital era and propose solutions to promote innovation while protecting content creators' interests. The paper aims to provide a comprehensive analysis of these fundamental elements.

KEY STATUTES IN INDIA GOVERNING IPRS SUBSISTING IN CREATIVE WORKS

Copyright Act, 1957

In 1957, The Government of India enacted the Copyright Act to prevent the unlicensed reproduction and distribution of literary, dramatic, musical, artistic, cinematographic, and sound recording works. The Act further provides economic rights to such content creators, including the ability to reproduce, distribute, perform, or otherwise transmit their works to the public, as well as the right to make translations or adaptations of their works.ⁱⁱⁱ Copyright protection in India usually extends for the duration of the author's life, plus an additional 60 years starting from the year after the author's death. While it is true that the Indian Copyright Act of 1957 does offer a framework for the protection of artistic creations, it is of the utmost importance to acknowledge the limitations of this legislation in terms of appropriately covering digital content. As a result of the fact that the legislation was drafted prior to the arrival of the digital era, it has not been subjected to a comprehensive modification in order to adequately address all of the modern challenges. However, it does offer some protection:

Scope of Protection:

- i. The Copyright Act provides protection for a wide range of content, encompassing literary, dramatic, musical, creative works, cinematograph films, and sound recordings. This safeguard applies to both tangible and electronic versions of these creations. In “*YRF vs Sri Sai Ganesh Productions*”^{iv}, a lawsuit for copyright infringement was

started by YRF against Sri Sai Ganesh Productions. Yash Raj Films (YRF) alleged that the movie Jabardasht, produced by Sri Sai Ganesh Productions, unlawfully reproduced significant and distinctive elements from its film Band Baaja Baaraat. The court alleged that Sri Sai Ganesh Productions had committed copyright infringement by reproducing the distinctive features of YRF's film, which included the concept, plotline, characterisation, storyline structure, scriptwriting style, thematic essence, and overall creative expression. The court expanded the criteria for assessing originality to include cinematographic works, recognizing films as protectable intellectual creations under the law. The court assessed the core idea, underlying narrative substance, and essential content of both productions. In "*Ratna Sagar (P) Ltd. V. Trisea Publications & Ors*"^v a dispute concerning IPRs, the complainant, a leading publisher of educational material for children under the title Living Science, accused the opposing party, Unique Science, of unlawfully replicating its original work. It was asserted that the respondent's publication was an artful imitation of the complainant's creation. Upon a comparative examination of both works, the court concluded that the respondent had indeed violated copyright protections. Consequently, a permanent injunction was issued in accordance with Sections 14 and 19 of the Copyright Act.

- ii. In order to obtain copyright protection, it is essential to have both originality and fixation.^{vi} The work must be both innovative and manifested in a physical form, encompassing digital formats as well. In "*University of London Press Ltd. V. University Tutorial Press Ltd*"^{vii} the court determined that "original" refers to the quality of being innovative in one's statement. The court further determined that while fresh ideas are not obligatory, the manner in which the notion is articulated must be unique.

Rights Granted:

Copyright owners have exclusive rights to control various aspects of their work, such as:

- i. **Reproduction:** Making copies of the work, including digital copies of the completed work.
- ii. **Public performance:** Disseminating the work to the general audience, which may involve internet streaming or broadcast.
- iii. **Adaptation:** Adapting the content into another medium, such as transforming a novel into an audiobook, or an e-novel.
- iv. **Distribution:** Distributing the work to the public, for example, by selling it online.

Challenges and Limitations:

- i. The Copyright Act ^{viiiix} defines publication as “*making a work available to the public by issue of copies or by communicating the work to the public*”. However, this definition, may be construed as vague, and incomplete, and its application to the digital domain, lacks clarity, leading to challenges in interpretation.
- ii. The fair use concept in the Indian Copyright Act may not adequately accommodate digital content and online sharing. The principle only defines the purpose of protected works like criticism, comment, news reporting, teaching, research, personal use, legal proceedings, and reporting on current events, not the medium or platform for dissemination of such material.^x
- iii. The enforcement of copyright on the internet can be complicated due to a number of issues, including the ability to remain anonymous and the jurisdiction being considered.

Although there are certain restrictions, the Copyright Act of 1957 provides fundamental safeguarding for both digital and physical content. Nevertheless, it is crucial to recognise that the law may not comprehensively tackle all the current difficulties encountered in the digital realm.

The Trade Marks Act, 1999

The Trade Marks Act, 1999, was enacted to consolidate all the previous trade mark laws, with the purpose of providing a system for the registration and enhanced safeguarding of trademarks for both goods and services, as well as to prevent the use of counterfeit marks. A Trademark is a graphical representation of a business entity, the main purpose of it being to ascertain, categorise, and denote the origin of one's goods and services in order to distinguish them from others in the course of trade.^{xi} The Trade Marks Act, 1999 does not directly protect creative works and digital content. However, it allows the content creator to be aware of the rights of trade mark owners, and using any trademark into their content in a judicious manner. Creators are required to seek the explicit permission of the owner of a trademark before showcasing it on their social media accounts, or any other forms of creative works. Facebook and Instagram, two of the most well-known social media platforms in the world, specifically prohibit the use of their trademarks, including their entire names and logos, in any content without first obtaining permission. In the event that an individual desires to use the logo into their content or website, it is necessary to complete a permission request form. Additionally, you have the ability to submit an application for special usage of any and all brand logos, such as placement in films or on commercial products, using this form. Trademark protection helps content

creators save money by setting up a brand for their business. Class 41 of the Nice Classification of Trademarks covers publication services, digital content, and shop services. The Trademarks Act, 1999 also protects domain names, allowing creators to protect their original digital content. Breaching a registered domain name as a trademark can result in infringement liability.^{xii}

THE INDIAN LANDSCAPE

India faces challenges in managing IPRs in content production due to its diverse artistic community. The growing number of individuals and businesses creating diverse works across various platforms contributes to the growth of the content creation industry. However, the IPR environment presents both opportunities and challenges. The importance of protecting work through IPR strategies like copyright, trademarks, and geographical indications is becoming increasingly apparent. To improve the framework, the Government of India has implemented steps such as simplifying the registration process, establishing IP administrative bodies, and intensifying public awareness programs. The Copyright Act and Patent Act have been amended to increase IPR protection and improve enforcement and international conformity. The Indian government launched “*IP Facilitation Cell (IPFC)* and *National Intellectual Property Development Centre*” (*NIPDC*) to support creators in navigating the IPR system.^{xiii} Further, the sale of material is being made possible by platforms such as YouTube and Spotify, which also provide tools for the management of copyrights based on “*Digital Millennium Copyright Act of 1998*” (*DMCA*). Copyright societies like “*Indian Performing Right Society*” (*IPRS*) and “*Indian Singers' Rights Association*” (*ISRA*) provide collective licensing options for music content creators.^{xiv} Online piracy harms creators financially and hinders the creative economy. Enforcing IPRs is complex and time-consuming, especially in digital technology. Finding a balance between content providers' rights and public access is challenging. Despite increasing awareness, some artists, particularly those in rural areas, may not be aware of their rights and necessary precautions.

EMERGING CHALLENGES AND OPPORTUNITIES

Technological advancements and the ever-evolving patterns of consumer behaviour are the driving forces behind the constant evolution that occurs in the field of content development. The nature of this environment, which is always shifting, presents the field of IPRs with a number of challenges as well as opportunities. The purpose of this study is to investigate the most significant difficulties and possible solutions that are associated with IPR in the content

development process.

Challenges:

- i. **The Rise of AI-Generated Content:** Differentiation between authorship and ownership is becoming harder as the sophistication of the AI is continuing to raise. This is as a result of the fact that AI enables machines to create content which is progressively sophisticated and original. Legal systems are not able to match the increasing advancement of artificial intelligence and this has raised concerns on the privacy of work produced by AI and how this can be best acted upon.
- ii. **Phantomization and Content Sharing:** Although such digital platforms allow one to share the content easier, they can also significantly escalate the issue of copyright infringement. Makers may find it difficult to counter the unlawful usage of their work, thus, leading to a possibility of financial loss and loss of value of creations.^{xv}
- iii. **Data Ownership and Privacy Concerns:** The privacy has been a new concern following the gathering and use of personal information in creation of content. A considerable degree of consultation is needed to arrive at a harmonious balance between user prerogatives to guard their own privacy and producer prerogatives to use the data as customisation and monetary gain.^{xvi}
- iv. **Borderless Infringement and Enforcement:** Enforcement of IPRs is a hard task because various jurisdictions possess diverse laws and different levels of enforcement. The reason behind this fact is that the internet is global. This opens the door to infringements and makes it difficult to enable producers to safeguard their output at a global level. It also forms the possibility of violations.^{xvii}
- v. **Balancing Innovation and Protection:** In light of securing the already present content by still promoting innovation, it becomes of paramount importance to find a golden middle ground. Inadequate appropriate protection may discourage the innovators in investing on his own idea and exorbitant IPR may halt the innovation.^{xviii}

Opportunities:

- i. **Collaborative Ownership Models:** The investigation of alternative ownership arrangements for content generated by AI should be carried out. These structures might potentially include authors, developers, and even the AI system itself. It is possible that this will encourage cooperation and ensure that rights and advantages are distributed in an equitable manner.^{xix}

- ii. **Leveraging Technology for Rights Management:** The utilisation of blockchain technology, in conjunction with other cutting-edge tools, can be utilised to automate the process of awarding licences, streamline the collection of royalties, and monitor the utilisation of material. The management of rights is simplified, and artists are given more control as a result.^{xx}
- iii. **Data Governance Frameworks:** Through the implementation of data governance frameworks that are both explicit and easily understandable, it is possible to effectively handle privacy issues, which in turn enables producers to utilise data in a responsible manner while also protecting user rights.^{xxi}
- iv. **Harmonization of International IPR Laws:** The effort to standardise IPR legislation on a global scale may result in the establishment of a more equitable competitive environment, the simplification of the enforcement of IPR across international borders, and the protection of creators all over the world.^{xxii}
- v. **Open Access and Fair Use Flexibilities:** By examining alternate licencing models such as open access and flexible fair use regulations, it is possible to achieve a balance between compensating creators and providing broader public access to knowledge and cultural expression.^{xxiii}

SUGGESTION

The implementation of a diverse approach is required in order to establish an environment that is capable of achieving a harmonious balance between the interests of content creators and the interests of innovation. Here are some potential suggestions to consider:

Strengthening IP protection:

- i. **Swift and efficient enforcement:** Improvements should be made to the legal framework, and processes should be optimised, in order to make it easier for authors to pursue legal action against copyright infringement.
- ii. **Clear and adaptable laws:** Legislation pertaining to IPR should be evaluated and revised on a regular basis in order to effectively control continually developing technologies and content formats, such as inventions that are produced by AI.^{xxiv}
- iii. **Public awareness campaigns:** Artists and customers alike should be made aware of the significance of protecting IPRs through the promotion of awareness campaigns.^{xxv}

Promoting fair use and responsible sharing:

- i. **Develop clear guidelines:** Outline the parameters of what constitutes fair use in the digital age, taking into consideration aspects such as the motive behind the use, the transformative qualities of the work, and the influence it had on the original piece.
- ii. **Educational initiatives:** It is important to provide people with information that explains how to behave responsibly on the internet and how to properly conform to copyright rules.^{xxvi}
- iii. **Collaborative platforms:** The implementation of revenue-sharing schemes is one example of a system that may be used to facilitate the ethical sharing of material while also guaranteeing fair compensation for the creators of the content.

Fostering a culture of innovation:

- i. **Support for innovation hubs:** It is important to support the formation of conditions that are suitable to the collaboration of innovators, the discovery of fresh thoughts, and the exchange of knowledge from one person to another.^{xxvii}
- ii. **Access to resources:** In order to facilitate the innovation process, it is important to provide creators with inexpensive access to resources, tools, and opportunities for training.
- iii. **Open innovation models:** It would be beneficial to accelerate the process of invention by facilitating collaborations between existing producers and startups. This would encourage the exchange of ideas and speed up the process.^{xxviii}

Building a collaborative ecosystem:

- i. **Multi-stakeholder dialogues:** Encourage artists, platforms, governments, and consumers to maintain open lines of communication and work together in order to address emerging challenges and opportunities.
- ii. **Industry standards and best practices:** For the purpose of protecting the rights of artists and fostering the development of novel concepts, it is necessary to establish and strictly enforce universal norms for the production, distribution, and commercialization of content.
- iii. **Collective licensing initiatives:** Communal licencing options that simplify the management of copyright and ensure that authors are compensated fairly should be looked into.^{xxix}

Additionally, set aside resources for the purpose of protecting the confidentiality and safety of

data. It is essential to ensure the protection of materials and personal information belonging to artists in order to cultivate trust and encourage creative expression. Diversity and inclusiveness should be promoted; it is imperative to make certain that persons of all different identities and backgrounds are provided with equal opportunities to participate in the ecosystem of content creation. Further, foster the evolution and usage of AI technologies that preserve creators' rights and have a positive impact on the creative process; advocate for the advancement of ethical AI.^{xxx} It is crucial to bear in mind that there is no universally applicable answer, and the optimal method will probably entail a blend of these and additional strategies. Through collaborative efforts, all parties involved can establish a conducive atmosphere that fosters both concord and ingenuity, while guaranteeing equitable compensation for content producers.

CONCLUSION

In conclusion, the Indian legal system is making progress in order to address the complexities of the digital era in terms of IPRs in the content creation industry. In spite of the fact that landmark rulings and subsequent changes have been of great aid, there are still challenges that need to be addressed with regard to fair use, internet piracy, and the advent of new material formats. Creators are required to maintain a level of awareness regarding the latest developments in the legal system and to apply IPR mechanisms in a strategic manner in order to protect their work and make the most of their efforts. In the meantime, government initiatives are working to make it easier for creators to access the IPR system. Open access models offer alternative options. Considering the ongoing shifts that are occurring in the content creation business, it is absolutely necessary to develop a robust and adaptable IPR framework in India. To effectively manage the ever-evolving digital environment and to develop a robust ecosystem that encourages creativity and propels innovation, it is essential for policymakers, industry pioneers, and creators to continue working together. This will allow for the promotion of innovation and the protection of the rights of creators in the country.

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