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**THE LAW ON THE FACILITATION OF ONLINE COPYRIGHT**  
**INFRINGEMENT**

***Abstract***

*The research paper aims at deeply analysing the meaning of copyrights and their importance. In this research paper the different reasons for the commission of copyright infringement have been mentioned. The increasing need and dependence on the technology has also been addressed in the write up. The various sections of the Copyright Act, 1957 that deal with copyright and copyright infringement have been explained in detail along with the benefits of getting copyright registered. Apart from India, the copyright infringement situation of US has also been described. Several case laws have also been mentioned along with their related sections to provide a better understanding and insight into the orders of the court. The project is concluded with the present scenario, steps taken by the government how the laws are implemented and view point of the writer.*

***Keywords***

*Copyright Act, 1957*

*Copyright*

*Infringement*

*Technology*

**Introduction**

In today's time almost each and every person from a five-year-old child to a fifty-year-old person uses internet for some or the other purpose. Internet has become a necessity in

everybody's life. And the pandemic has increased our dependence on the internet and technology even more and has made our lives easier by providing access to everything with just one click.

But with all these benefits, come the drawbacks of being dependent on technology. With the evolution of technology, the crimes have also evolved and the malpractices like copyright infringement, plagiarism, hacking etc also began. These malpractices gave rise to the need for some law to govern the information technology.

So, in this digital world copyright infringement is one of the major threats to cyber security and in this research paper, the law on the facilitation of copyright infringement has been discussed in detail.

In order to protect unique and original work of writers, it is mandatory to get the registration of copyright of the actual work done, and then only the real owner of the work can avail all the benefits of online Copyright Registration.

In the past, the Infringement of Copyright was a difficult task as most of the copyrighted work were done offline. But, the scenario is different in the present condition as humans have developed various methods to break the law. The use of content by any illegal persons other than the actual owner is an offence and against the purpose of IP (Intellectual Property), thereby affecting the online society.

### **What is a copyright and copyright infringement?**

Before diving straight into the technicalities of law, it is very important to have a clear understanding of what exactly is copyright and copyright infringement.

In simple words, copyright is an automatic right that exists without applying and here the owner has the exclusive right to reproduce, derive copies, change, adapt, display his or her work. <sup>1</sup>It protects the creator of original works of authorship.

Copyrights are managed and regulated under Copyright Act of 1957<sup>2</sup>. The Indian Copyright Act was drafted at time when the significance of the internet as it is today was obviously not anticipated. The section 13 of this Act states that copyright prevails in original literary,

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<sup>1</sup> <https://blog.ipleaders.in/looking-through-the-law-on-the-facilitation-of-online-copyright-infringement/> (last visited on- 31/10/21)

<sup>2</sup>Copy Right Act, 1957, No.14, 1957 (India)

dramatic, musical works, artistic works, cinematograph films, and sound recording.<sup>3</sup>Hence, it means that copyright basically protects the expression of ideas. Section 14 of this act states that the bundle of exclusive rights that are conferred on the owner of the copyright can be exercised only by the virtue of duly licensed and registered as per the Act. The rights available to the owner for the registration of his or her work to become the bona-fide owner of the copyright are below-mentioned:

Right to reproduce the work.

Right to issue copies of the work.

Right to perform the work in public.

Right to make the cinematographic film or sound recording.

Right to translate the word; and

Right to adapt or change other works from it.<sup>4</sup>

Copyright infringement is the use or production of copyright-protected material without the permission of the copyright holder. It implies that the rights afforded to a copyright holder, such as the exclusive use of a 'work' for a set period of time, are being breached by a third party. Although, other parties may be granted permission to use those works through licensing arrangements or buy the works from the copyright holder.

There are some of the factors which may lead other parties to engage in copyright infringement. The reasons include a high price for the authorized work or a lack of access to a supply of the authorized work, lack of awareness or bad intentions.

Following are some grounds for the actual owner to establish a Copyright Infringement by any individual:

- Proprietorship of an appropriate Copyright;
- Violation of their exclusive rights under the legal provisions.

Two of the most common examples which suffer maximum amount of copyright infringement are movies and songs. With the advances in digital imagery, it's become easier than ever to copy an image. If one has not obtained the permission to use a song as background music for

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<sup>3</sup> Copy Right Act, 1957, § 13, No.14, 1957 (India)

<sup>4</sup> Copy Right Act, 1957, § 14, No.14, 1957 (India)

your home movies, business presentations, or your own creative work, then you could be liable for copyright infringement.

In the regard of copyright infringement section 51 of the copyright act, 1957 lays down that copyright when a person without a license or permission of the copyright holder or of the registrar makes use, sale or public exhibition of the copyrighted material, then copyright is said to be infringed.

To determine if an alleged infringement is fair use, courts consider

- (1) the purpose and character of use;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- and (4) the effect of the use upon the potential market for or value of the copyrighted work.<sup>5</sup>

#### Online Copyright Infringement by Intermediaries

The copyright act does not define the term “intermediaries” and it also does not differentiate between virtual space and actual physical space. But the Intermediaries are defined under the Information Technology Act, 2000 (hereinafter referred to as "IT Act"). The act states that any person who on behalf of another person receives, stores, or transfers that record or provides any services concerning that record. It consists of major websites such as Google, Youtube, Facebook, Twitter, etc.<sup>6</sup>

Section 52 of the Copyrights Act, 1957 provides for certain exceptions to infringement of copyright and the said provision allows limited use of copyrighted works without the permission of the copyright holder.<sup>7</sup>

The case of *Super Cassettes Industries Ltd. Vs MyspaceInc., 2015* is a leading case Online copyright infringement by intermediaries.

#### Facts of the case

SCIL is a well-known T-series in India, its business comprises recording audio and video cassette production which has led it to become one of India’s largest music companies. On the

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<sup>5</sup> <https://www.natlawreview.com/article/what-you-and-your-business-need-to-know-about-copyright-law-and-infringement> (last visited on- 1/11/21)

<sup>6</sup> Information Technology Act, 2000, No.21, (India)

<sup>7</sup> Copy Right Act, 1957, § 52, No.14, 1957 (India)

other hand, Myspace (may be referred to as ‘defendant’ or ‘appellant’) is an Internet Service Provider (ISP) and also claims to be an internet intermediary and operated in the field of social networking and entertainment websites.

### **Issues Raised**

1. Whether there is a copyright infringement by the intermediaries or not?
2. Whether the present court has rightfully analysed the order set by the Single Judge?
3. What is the present status of intermediaries in copyright law?

### **Observation**

While referring to the facts and the circumstance of this case in consonance with the section 51 of the Copyright Act, the court observed the following below-mentioned points:

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1. Myspace owns a website wherein third-party users have access to upload and view content. It is a provider of a place and with its virtual platform, it can communicate various kinds of works. It is evident that it is making a profit and generating revenue thereby satisfying the first part of the above provision.
  2. Considering the second part of the provision which needs to be satisfied to establish if there has been any copyright infringement or not, the court asserted that general awareness is sufficient instead of special knowledge to attribute knowledge. Knowledge in the pragmatic context means someone’s awareness that is a human agency, thus altering the technical side by the use of software would not come under the ambit of knowledge. In the case of copyright laws, Myspace must have specific knowledge of the infringing works provided on its website from the content owner.
  3. In the absence of any specific knowledge, Myspace cannot remove the content from its website as during this course it may remove the content of an authorised individual’s license. Thus, leading to the violation of the main doctrine of copyright law that is “fair use”.

### **Judgement**

The court held that there is no direct infringement by Myspace, and the finding of the Single Judge of secondary infringement is set aside. The following was concluded:

1. Section 51 (a)(ii)<sup>8</sup> of the Copyright Act, in the case of online intermediaries, tells actual knowledge and not general awareness. Moreover, to impose liability on a mediator condition described under Section 79 of the IT Act should be fulfilled;
2. Section 79<sup>9</sup> & 81<sup>10</sup> of the IT Act and Section 51 (a)(ii) of the Copyright Act should be read together;
3. In the case of online intermediaries, assistance should be specific and show actual content which is violated by the other.<sup>11</sup>

### **The situation of online copyright infringement in other jurisdiction**

With the growing internet use the concerns about the individual's right to privacy, reputation, and copyright have grown. The legal systems all over the world are facing the difficulty in coping up with the ever-increasing pace of advancement of technology. The advent of the internet has become a significant topic of discussion even in the conventions at international levels. The agreements framed under the Berne Convention provide guidelines for the protection of artistic and literary works and the Rome Convention provides for the protection of performers and producers of broadcasting organizations. These conventions and treaties are established with the motive of guiding the framing of the domestic legal systems leading to the protection of the copyright of owners thereby keeping balance with the digital economy and also the rights of internet intermediaries.

The government adopted National Intellectual Property Rights Policy in the year 2016 with the aim of encouraging unique ideas, innovation and creativity. Objective one of the Policy tells that the awareness of the social-cultural and economic benefits of Intellectual Property Rights by introducing studies in student curriculum to know the importance of Intellectual Property Rights and how the violation of the IPRs wouldn't only impact the owner but also the country's economy. The policy tells "Pirated Copyright Goods" in consonance with Article 51 of the TRIPS Agreement, which states that "Goods which are copied without the approval of the owner duly certified by the right holder in the nation of production and which are made

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<sup>8</sup> Copy Right Act, 1957, § 51 (a)(ii), No.14, 1957 (India)

<sup>9</sup> Information Technology Act, 2000, § 79 (a)(ii), No.21, 2000 (India)

<sup>10</sup> Information Technology Act, 2000, § 81 (a)(ii), No.21, 2000 (India)

<sup>11</sup> Super Cassettes Industries Ltd. vs Myspace Inc. & Anr., 2011 SCC OnLine Del 3131 (Delhi High Court)

indirectly or directly from an article where the making of that copy would have constituted a Copyright Infringement or a related right under the country's law of importation".<sup>12</sup>

## **Online Copyright Infringement Scenario in the US**

The US Digital Millennium Copyright Act (DMCA) provides for intermediary laws, wherein the US-based companies have to comply with it. It provides a format for the notice and takedown procedure. As per this Act, the copyright owner needs to send notice to the infringer and mention the infringing content on its website, and accordingly, the unauthorized party will take the corrective step to take it down. Under this Act, there is a "red flag" test which states both the subjective and objective elements which need to satisfy if there has been an infringement or not. The facts and circumstances of a reasonable observer would be used based on objective standards to determine an infringement.<sup>13</sup>

In the US Judgment- *Viacom v Youtube, 2007* Viacom claimed copyright infringement against You-tube for its works. The issue was whether the district court err in its decision to grant summary judgment in favour of YouTube? The Court observed the principle of fair use and volume of data that the intermediaries hold and stated that even if the infringing work in the suit is in a small fraction of works posted by others on the internet service platform, it is not possible to "determine whether the user has been licensed by the owner, or whether its posting is a "fair use" of the material" or if it is the content of the copyright owner license. Hence, the burden is on the owner to identify the infringement. Additionally, it also stated that general knowledge is common and it does not impose a duty on the internet service provider to inspect or search its service platform for infringement.<sup>14</sup>

Further, the US Supreme Court has also observed the case of copyright infringement in the content of software or internet service providers that had a high possibility of infringing use. In *MGM Studios Inc v. Grokster, 2005* laid down the test to determine the infringement by the

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<sup>12</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994

<sup>13</sup> Digital Millennium Copyright Act, 1998

<sup>14</sup> Viacom Int'l, Inc. v. YouTube, Inc. - 676 F.3d 19 (2d Cir. 2012)

software if it shows a clear expression or other positive steps taken to encourage infringement is to be held liable for the acts of infringement by third parties.<sup>15</sup>

## Conclusion

The object of copyright law is to encourage authors, composers, artists and designers to create original works by rewarding them with the exclusive right for a limited period to exploit the work for monetary gain and to grant them the liberty to publish anything. In a democratic country like India, the expression of the owner needs to be appreciated, upheld, protected, and given value otherwise the very essence of democracy would lose its value in the eyes of the public. Hence, with the advent of technology, India needs to strive to adapt its existing laws and implement policy diligently to protect the owner from online copyright infringement. The law needs to develop at the same pace as the technology has been developing day by day. Along with this the people should also understand the importance of copyright registration and the advantages like legal protection, creation of asset, branding etc that come after the registration.<sup>16</sup>To entrust free flow of speech, opinion, and expression among people in the digital era, it is time for proper implementation of some strong policies and online copyright protection law.

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<sup>15</sup> MGM Studios Inc. v. Grokster, Ltd. - 545 U.S. 913, 125 S. Ct. 2764 (2005)

<sup>16</sup> <https://blog.iplayers.in/looking-through-the-law-on-the-facilitation-of-online-copyright-infringement/>  
last visited on- 30/10/21