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**COPYRIGHT LAW ON THE INTERNET: CAN AUTHORS AND  
COPYRIGHT OWNERS EFFECTIVELY PROTECT THEIR RIGHTS  
ONLINE?**

**Introduction**

The Internet has evolved into the basic foundational infrastructure for the global movement of all types of data. The Internet has evolved from a quiet means of communication among academic and science research circles to ubiquity in both the commercial arena and private homes, thanks to its phenomenal development. The Internet has evolved into a massive global data pipeline for the transfer of vast volumes of intellectual property. As this pipeline becomes more widely used in the mainstream of commerce to sell and distribute innovative content and information across international boundaries, issues of intellectual property rights for content accessible on and via the Internet have become increasingly important.

Copyright law, like all other branches of Intellectual Property, is concerned with the creations of the human imagination, especially literary and artistic works. All literary and creative works, such as fiction, fine arts, music, computer programmes, and electronic databases, are covered by copyrights.<sup>1</sup> The Berne Convention<sup>2</sup> expands on the types of work covered by copyright to include any creation in the artistic, science, or literary domains in any special and original mode of expression.

Copyright law protects one-of-a-kind literary and artistic works, and since the aim of copyrights is to promote creative and imaginative thinking, it grants exclusive rights to print, transmit, replicate, translate, or adopt the work. It also gives the owner the right to be properly

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<sup>1</sup> Copyright, World Intellectual Property Organisation, <https://www.wipo.int/copyright/en/>. (Last visited on Dec. 2, 19:38).

<sup>2</sup> Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) Art. 2, Sept. 9, 1886, 828 U.N.T.S 221.

credited when it is mentioned or used equally. These rights are protected by statute, and anyone who infringes on them faces legal consequences. Copyright owners sometimes describe the Internet, or the world wide web, which began as a means of accessing a vast database of knowledge, information, and commerce, as a threat. Free access and little-known download times have made copyright infringement very straightforward, putting copyright-protected work in jeopardy. The internet's key USP, the ability to move and store information at a very low cost, makes it an ideal forum for exploiting and infringing copyrights without giving due credit to the owners. The copyright regime and its extension to the virtual world of the internet are discussed in this article.

### **International Treaties on Copyright law**

Since copyright is a territorial term, with protection only available throughout the state's national boundaries, there is no international copyright covering the owner's work around the world, such as the Patent Cooperation Treaty, which offers multi-jurisdictional protection.<sup>3</sup> However, there are international treaties that offer a minimum level of protection, as well as the World Intellectual Property Organisation (WIPO), which oversees a number of treaties on specific aspects of copyright law and the protection it provides.

#### **Berne Convention**

The 1886 Berne Convention is the oldest treaty regulating copyright. It establishes a minimum standard of copyright protection, as well as logistics such as the minimum length of protection, the types of work covered, and the scope of copyright protection.<sup>4</sup>

One of the fundamental principles defined by the Berne Convention is that it provides automatic rights without the need to register in order to obtain a copyright. The convention, which is updated every 20 years, also establishes national treatment, which allows countries to give equal copyright protection to domestic and international creators.

#### **TRIPS Agreement**

The TRIPS agreement of 1994, which provides for additional norms outside the Berne Convention for countries of the Berne Union, and the Marrakesh Treaty of 2013, which limits copyright rights for the benefit of visually impaired or print disabled persons to be able to access eligible work, are the other major international treaties.

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<sup>3</sup> International Copyright Basics, Rights direct, <https://www.rightsdirect.com/international-copyright-basics/>. (Last visited on Dec. 2, 19:38).

<sup>4</sup> Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), Sept. 9, 1886, 828 U.N.T.S 221.

The WIPO Copyright Treaty, signed in 1996, focuses on the protection of copyrights on the internet. The treaty extends copyright protection to databases and digital art, as well as acknowledging copyrights on the internet. Beyond the Berne Convention, the treaty gives copyright owners additional privileges, such as the right to allow commercial rental of eligible works, the right to distribute, and the right to communicate with the public.<sup>5</sup>

### **Indian Copyright Law on the Internet**

The Copyright Act 1957 and the Information Technology (IT) Act 2000, in general, regulate copyright rights on the internet. Although Section 14 of the copyright act explains the different rights that a copyright owner has in the case of literary works, creative works, computer programmes or databases, cinematographic video, or even a music recording, Section 51 of the copyright act deals with copyright infringement. Initial databases, which include a variety of original digital works and blogs, are included in the definition of databases. Furthermore, the meaning of public communication under Section 2(ff)<sup>6</sup> of the act may be expanded to include communication about the content of a website, including deep linking.

### **Infringement of Copyright Online**

As previously stated, the digital platform's features have an effect on copyright and its security, owing to the ease of access and reproduction. While physical copies were once the only means of reproduction, online reproduction and quick download times now allow several copies to be made, allowing for easy distribution of the protected work without the permission of the copyright holder. The ease with which it can be transmitted without sacrificing efficiency has made it a regular occurrence. Infringements involving websites have been the most frequent. Designing and creating a high-quality website is a time-consuming and boring process, but replicating it takes half the time, putting them at risk of copyright infringement. On the internet, common nefarious practises include connecting, in-lining, and framing.

Simply put, linking is the creation of a link between two files on the internet that are either different or are parts of the same file. In essence, linking is not a bad thing; in reality, it is the *sine qua non* of the internet, as it is what makes it a global "web". Deep linking, on the other hand, where a subordinate link is attached to bypass the need to access the linked website's

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<sup>5</sup> Summary of the WIPO Copyright Treaty (WCT) (1996), World Intellectual Property Organisation, [https://www.wipo.int/treaties/en/ip/wct/summary\\_wct.html](https://www.wipo.int/treaties/en/ip/wct/summary_wct.html). (Last visited on Dec. 2, 19:38).

<sup>6</sup> The Indian Copyright Act 1957, Section 2 (ffc).

main page, has an impact on the page's revenue.<sup>7</sup> It is, in a sense, stealing traffic from the linked website in order to defeat the website's intended navigation.

It is not copyrightable and does not constitute an infringement since it is just a URL. However, the content in the connection, particularly the creative content, is essentially copied by this practise. And it's made even more difficult when permission to deep link hasn't been granted. Graphic files are copied to form a composite page with various graphic files connecting to different websites with in-line linking. When put to the test of Sections 14 and 51, both of these actions could be considered infringement and fall under the defence.

### **Liability with regards to copyright infringement**

Though writers may sue for infringement online under the terms of the Copyright Act, one of the most difficult aspects of internet enforcement is determining liability. There are three parties involved in an internet transaction where data or copyrighted content is transmitted without prior permission. The first is the originator, or the person who creates, stores, or transmits content online. The person who receives such an electronic message or content is known as the end user, and it is the person who the originator expected to receive the record.<sup>8</sup> Finally, there are intermediaries, whose stores obtain or transmit information on behalf of others or at the request of others, and intermediaries may be categorised as Auction intermediaries, Payment intermediaries, or Internet Service Providers, depending on their role (ISP).<sup>9</sup> An internet service provider (ISP) is a company that provides people with access to the internet and its facilities.

To determine who is liable, it is necessary to understand what constitutes an infringement. The owner's exclusive rights under the Copyright Act include the reproduction of the work, the issuance of copies, and public correspondence.<sup>10</sup> As a result, any infringement of these rights, as well as the dissemination of copyrighted work that causes the copyright owner damage, is considered infringement. The liability of each of the parties involved in the transaction is discussed below: -

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<sup>7</sup> Abhirami A B, Intellectual Property Issues in Cyberspace, Legal service India, [http://www.legalserviceindia.com/legal/article-3233-intellectual-property-issues-in-cyberspace.html#:~:text=The%20advancement%20in%20e%2Dcommerce,their%20intellectual%20property%20rights%20online.&text=Intellectual%20Property%20Rights%20\(IPR\)%20and,online%20content%20must%20be%20protected.](http://www.legalserviceindia.com/legal/article-3233-intellectual-property-issues-in-cyberspace.html#:~:text=The%20advancement%20in%20e%2Dcommerce,their%20intellectual%20property%20rights%20online.&text=Intellectual%20Property%20Rights%20(IPR)%20and,online%20content%20must%20be%20protected.) (Last visited on Dec. 2, 2020, 22:59).

<sup>8</sup> The Information Technology Act, 2000, Section 2 (1)(b).

<sup>9</sup> Sumreen Siddiqui & Sonali Mathur, Liability for Copyright Infringement on the Internet, 5 Law Rev. GOV't L.C. 147, 149-151 (2006).

<sup>10</sup> Indian Copyright Act, 1957, Section 14.

**Originator's Liability:** This is subject to the originator's knowledge. If the author was aware that the work was copyrighted, he is the main perpetrator because he knew about the copyright and violated it. Ignorance of the existence of copyright is a valid defence in this case. Due to the vast number of internet users, establishing guilt or prior information, as well as identifying the perpetrators, can be extremely difficult.

**End-user's Liability:** The end-responsibility users vary depending on whether he simply replicated the work or further released it. However, in the case of replication, the end-user may escape responsibility by claiming private use, which is an exception to copyrighted work.<sup>11</sup> Even when dealing with an end-user, expertise is required to assign responsibility. The user will not be held responsible for infringement if the end-user believes that the copyright owner's implied permission was granted due. An intermediary's liability is determined by the part they play in the transmission. ISPs are known as content providers because they play a significant role in the replication, transfer, and communication of information, making them extremely liable.

Copyright owners often find it tempting to accuse ISPs because of the inherent difficulties in finding individual guilty users; however, these ISPs are just passive carriers, and keeping them responsible for the unlawful actions of their users is not a fair or legal practise. Drawing a similar interpretation of section 51, ISPs can be held liable only when they knew about the copyright or its breach. Further, under Section 63, any person abetting the infringement is criminally liable, another factor that determines the liability of an ISP. In support of this, the IT Act specifies that a network service provider (ISP) would not be held responsible for the conduct of third parties if the crime was committed without its knowledge.<sup>12</sup> As a result, if an ISP can demonstrate a lack of expertise and due diligence, it can avoid responsibility for copyright infringement.

### **Relevant Case Laws**

- i) *Playboy Enterprises Inc. v. Frena*<sup>13</sup>: The court ruled that digitised images from the adult publication that appeared on Frena's bulletin board infringed on the magazine's public dissemination and display rights. The court argued that because the participant had a copy of the work at the end of the exercise, everyone had infringed on the replication privilege, either the user or Frena. The question of

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<sup>11</sup> Indian Copyright Act 1957, Section 52. Also see *Helliwell v. Piggott Sims*, [1980] FSR 582.

<sup>12</sup> Information Technology Act, 2000, Section 79.

<sup>13</sup> *Playboy Enterprises Inc. v. Frena*, 39 F. Supp. 1552 (M.D. Fla. 1993).

whether Frena could be held responsible for contributory infringement if the consumer was the infringer is intriguing. Since it was unclear if the operator of the bulletin board system had replicated the works when they were posted and downloaded by users, the court did not deal with the violation of the reproduction right.

- ii) *Sega Enterprises Ltd. v. Maphia*<sup>14</sup>: A preliminary injunction was issued by the court to prohibit bulletin board services and their operators from posting programmes derived from Sega video game cartridges. The defendants were found to be responsible for contributory infringement because the games were "copied" each time they were posted to the bulletin board or downloaded from it, according to the court. Furthermore, the court determined that the defendant's conduct did not constitute "fair use" under the United States Copyright Act because the use of unauthorised copies would be extremely detrimental to Sega's commercial interests.
- iii) *Religious Technology Center v. Lerma*<sup>15</sup>: In this case, a person was held responsible by a federal court for publishing part of the Church's teachings on the Internet. Because of which a lawsuit against a Colorado anti-Church organisation that maintains a bulletin board with Church-related materials has yet to be resolved.

### Conclusion

As previously mentioned, the most difficult aspect of online copyright infringement is determining who is responsible. Although ISPs may be financially secure as a result of their corporate structure, they cannot be held responsible for third-party acts over which they had no control. In the absence of this information, the difficulty of finding a single guilty user makes enforcing the law much more difficult, and this is something that the law must address. Although the actions are classified as copyright infringement, there is no procedure in place to prohibit or efficiently determine liability. Despite the fact that international standards have been updated to cover issues that arise on digital channels, India's counterpart has failed to meet the norm or provide for a robust compliance mechanism capable of dealing with this widespread violation and its implications.

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<sup>14</sup> *Sega Enterprises Ltd. v. Maphia*, 30 U.S.P.Q. 2d 1921 (1994).

<sup>15</sup> *Religious Technology Center v. F.A.C.T.NET Inc.*, 901 F. Supp. 1519 (D. Colo. 1995).