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

*“Sell yourself, else another person will steal and sell you at a heavy cost.”*

- *Utibe Samuel Mbom.*

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**ABSTRACT**

*Copyright infringement is not a new concept. However, in today's digital era, online copyright protection has become the most important component of copyright protection. The internet is perhaps the most significant threat to copyright law since its inception. To keep up with the ever-changing digital world, governments are continually enacting new legislation. Digital piracy, which comprises the unlawful acquisition and distribution of copyrighted works such as music, movies, software, E-books, and other literary works, is getting more aggressive and is becoming a major global concern. The major reason for this is that it is tough to detect piracy members since it is online. But when copyright protection law is overly strict then competition, innovation, and creativity are hindered. A balance should be maintained between the interests of copyright owners in obtaining a fair compensation for their work and the interests of copyright users in having acceptable access to copyright content.*

Keywords: *Copyright infringement, Piracy, Internet, Digital world, Law.*

## INTRODUCTION

Many aspects of our daily lives have been altered by the emerging digital world. Computers and the Internet introduced us to new possibilities as well as previously unforeseen challenges and responsibilities. Since electronic communications have become widespread and accessible to the majority of people all over the globe, governments and regulatory bodies have been attempting to discover the most appropriate and effective approach to control the new cyberspace. The most difficult issue with electronic data processing is its regulation and management. Unfortunately, the tools for managing the data flow are inadequate, and it is simply impossible to regulate the entire on-line world. And with technology advancement, when one may exploit the original recognized and protected work for one's own profit. Previously, copyright infringement was challenging since most copyright-protected works were offline. However, in today's world, the circumstances are different since humans have devised methods to abuse the law. The use of content by anyone other than the original owner is an offence and goes against the purpose of intellectual property, adversely affecting the online world.

## COPYRIGHT

Copyright is a legal term that describes the rights that authors and artists have over their literary and artistic works. Books, music, paintings, sculpture, and films are all examples of works protected by copyright, as are computer software, databases, ads, maps, and technical drawings.<sup>1</sup>

Copyright is governed under the Copyright Act, 1957 in India. It is an inherent right which exists without any need for application, and the owner has the sole right to reproduce, generate duplicates, alter, adapt, and exhibit his or her creation. The act's primary objective is to safeguard the creator of the original works. According to Section 13 of the Copyright Act of 1957, *copyright applies to original literary, dramatic, musical, artistic works, cinematograph films, and sound recordings*. As a result, copyright protection only applies to expressions, not ideas, procedures, methods of operation, or mathematical concepts.<sup>2</sup> Copyright may or may not be accessible for a variety of things, including titles, slogans, and logos, depending on whether they include enough originality. Section 14 of the Copyright

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<sup>1</sup> Copyright, WIPO, <https://www.wipo.int/copyright/en/>.

<sup>2</sup> *The Copyright Act*, No. 14 of 1957, Indian Code (1957).

Act says that *the bundle of exclusive rights imposed on the owner of the copyright can only be exercised by virtue of being legally authorized and registered in accordance with the Act.* The following are the rights accessible to the owner for the registration of his or her work in order to become the legal owner of the copyright:

- *To issue copies of a literary, dramatic or musical work to the public not being copies already in circulation;*
- *(a) To issue copies of a computer programme to the public not being copies already in circulation and (b) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme where the programme itself is the essential object of the rental;*
- *To issue copies of an artistic work to the public not being copies already in circulation;*
- *To sell or give on hire, or offer for sale or hire, any copy of a film, regardless of whether such copy has been sold or given on hire on earlier occasions;*
- *To sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions.*

Thus, owners of literary, dramatic, musical, or artistic works, as well as computer programmes, have the same right: to make copies of the works they own accessible to the public, as long as such copies are not “already in existence”.

### **COPYRIGHT INFRINGEMENT**

Information is gradually being creating in digital format. Technological improvements provide new prospects for increasing information access, and technology has the ability to increase communication and access. Sometimes technological advancement is so deep that it shakes the very pillars of a body of legislation. In a true sense, we are in the middle of an intellectual, ethical, and legal battle for the future of copyright the battle over the rights to duplicate and modify information. Although dealing with intangible creations of mind, copyright law requires stability. Previously, fixed copies of the original object might be inspected, given away, traded, and so on. However, digital objects are not the same. They can, however, be given away or otherwise transferred without compromising accessibility to

the “original”. The digital copies are exactly the same. This is not the same as tangible objects.<sup>3</sup>

When a book, for instance, is given away, the sender loses access to it. A digital book, on the other hand, may be shared while the author maintains a replica. This concept has had a significant impact on debates concerning the original work and its connection to duplicates and the initial sale in the digital world. Digital media such as CDs or software applications on a drive are considered acceptable formats for evaluating if a creation is eligible for copyright protection. The identical copy and easiness of copying allows users to produce, edit, share, and show knowledge on a scale never previously imaginable. These skills, however, include the exploitation of copyrighted content. Any sort of data can be sent. It is unlawful to distribute copyrighted content without the consent of the copyright owners (in instances where exemptions like fair use do not apply).

The following are the conditions for the owner to demonstrate a copyright infringement by another person:

- Ownership of a valid copyright.
- Violation of his or her exclusive rights under the statutes.

According to Section 51 of the Copyright Act of 1957, copyright in a work is infringed when anyone, without the permission of the owner or registrar of copyright, copies, publishes, records films, or sells or lets for hire or displays or distributes or displays in public or imports infringing copies to India. In *R.G Anand v/s Deluxe Films*,<sup>4</sup> Justice S. Murtaza Fazal Ali ruled that infringement of a copyright is a trespass on a personal property owned and inhabited by the owner of the copyright and thus protected by law.

## **INTERMEDIARY LIABILITY FOR COPYRIGHT INFRINGEMENT**

Internet intermediaries are entities that provide services that make it easier for individuals to use the internet. Network operators, network infrastructure providers, internet access providers, internet service providers, social networking sites, browsers and aggregators, internet cafes, and so on are among them.<sup>5</sup> Now that we've defined intermediaries, let's look at the concept of intermediary liability. When intermediary service providers are held liable

<sup>3</sup> Irina Atanasova, *Copyright Infringement in Digital Environment*, 1 J LAW ECON 13, 13-22 (2019).

<sup>4</sup> *RG Anand v. Delux Films*, AIR 1978 SC 1613

<sup>5</sup> Anjana Viswanath, *Intermediary Liability for Intellectual Property Infringement*, MONDAQ (Mar. 03, 2020), <https://www.mondaq.com/india/trademark/899230/intermediary-liability-for-intellectual-property-infringement>.

for any content breaching copyright breaches posted by its users, this is known as intermediary liability. However, several guidelines have been established addressing the liability of intermediaries. In 2012, there was an amendment to the Copyright Act, 1957. Section 52 of the amended act specifies a variety of situations in which violation of copyright is excused. Section 52(1) (c) addresses intermediary liability, stating that such intermediaries are not liable “*unless they are aware of, or have reasonable grounds to believe, that such storage is of an infringing copy*”.

Section 79 of the Information Technology Act excludes network service providers or intermediaries from responsibility if it can be proven that the violation or infringement was done without their knowledge or that they used all reasonable attempts to prevent such offense or infringement from occurring. According to the interpretation for this Section, the network service provider is an intermediary. When all of these clauses are considered together, it is apparent that the legislation protects the intermediary against copyright infringement. However, there is a significant exception to this protection: the intermediary is only protected if it was unaware that the content it published was copyrighted content.<sup>6</sup>

In the case of *Super Cassettes Industries Ltd. v. Myspace Inc. & Anr.*,<sup>7</sup> A division bench of the Delhi High Court held that intermediaries could be held liable only when:

- They have actual or particular knowledge of the existence of infringing content on their website, rather than constructive knowledge.
- They take no action to get such content deleted.

Another landmark decision is *Kent RO Systems Ltd. & Anr. v. Amit Kotak & Ors.*,<sup>8</sup> in which the court ruled that the intermediary is only required to delete material posted on its site upon receipt of an order from the competent government organization or subject to a court order.

Looking at the preceding instances and interpreting them in conjunction with the legislative provisions, we may conclude that in India, intermediaries cannot be held liable unless they have adequate knowledge and a proper order was issued by the competent authorities.

## **COPYRIGHT AND TRIPS AGREEMENT**

<sup>6</sup> Mridula Dalvi, *Intermediary Liability and Copyright*, MONDAQ (Jul. 26, 2019), <https://www.mondaq.com/india/copyright/829986/intermediary-liability-and-copyright>.

<sup>7</sup> *Super Cassettes Industries Ltd. v. Myspace Inc. & Anr.*, 2011 (48) PTC 49 (Del).

<sup>8</sup> *Kent RO Systems Ltd. & Anr. v. Amit Kotak & Ors.*, CS (COMM) 1655/2016.

The issue with copyright protection was that creations were replicated across borders with different copyright laws since protection was provided on a territorial basis. So it was essential to establish an international framework to manage international intellectual property law.<sup>9</sup>

The World Trade Organization is in charge of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). It establishes minimal criteria for the regulation of various types of intellectual property among World Trade Organization member countries. The policy behind the minimal requirements has two components. First, the increasing ability of manufacturers in diverse nations to enter international market pushed developed countries to depend more on comparative advantages in intellectual goods manufacturing than previously. Second, the rise of knowledge-based sectors has changed the character of production in international marketplaces, overturning the advantage that some industries traditionally enjoyed. Commercial access in underdeveloped nations was a powerful negotiating tool for improved intellectual property protection in a global market. As a result, developed countries needed to maintain a monopoly on existing markets.<sup>10</sup>

The Government of India established the National Intellectual Property Rights Policy in 2016 to foster innovation and creativity while also recognizing the significance of intellectual property rights (IPR) in developing nations. The policy's first goal is to raise awareness of the financial, social, and cultural advantages of IPR by incorporating studies into student courses to help students comprehend the importance of IP rights and how violation of IP rights affects not just the owner but also the country's economy at large. This policy describes “pirated copyright goods” in accordance with Article 51 of the TRIPS Agreement, which states that “goods made without the consent of the right holder or a person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation”.

## CONCLUSION

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<sup>9</sup> Daniel J Gervais, *The Internationalization of Intellectual Property: New Challenges from the Very Old and the Very New*, SSRN (Jun. 03, 2005), <https://ssrn.com/abstract=733723>.

<sup>10</sup> Tuhairwe Herman, *Copyright Protection before and after the Trips Agreement; Impact of the New Regime on Developing Countries*, SSRN (May 03, 2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2774051](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2774051).

Copyright protection in the digital age should be as comprehensive as it was in the traditional age. However, it should enhance prosecution in response to the difficulties of digital copyright. The availability and efficiency of enforcement methods determine the extent of copyright protection. Copyright law protects information quality while preventing piracy and bringing order to the electronic publication sector. Copyright offers a financial incentive for people to generate copyrightable works. No one has come up with a better approach to reward or motivate creative people in the previous 200 years. In the current digital context, copyright is more important than ever. And the copyright will not disappear in the age of digitalization. At the same time, copyright law should be updated on a regular basis in order to keep up with the new digital era.



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