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**COPYRIGHT INFRINGEMENT IN INDIA**

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**ABSTRACT:**

Copyright infringement is a significant concern in today's digital age, and India, with its growing economy and technological advancements, is no exception. Infringement of copyrighted material can occur through various means, such as unauthorized reproduction, distribution, public display, or adaptation of original works. This article aims to shed light on the copyright infringement issues prevalent in India, the legal framework in place, and the challenges faced by creators and copyright holders.

**Understanding Copyright Law in India:**

Copyright in India is governed by the Copyright Act, of 1957, which provides creators with exclusive rights over their original literary, artistic, musical, and dramatic works, as well as cinematographic films and sound recordings. These rights enable creators to control the reproduction, publication, adaptation, and translation of their works. Copyright protection is automatic upon the creation of a work and extends throughout the creator's lifetime plus an additional 60 years.<sup>1</sup>

**Types of Copyright Infringement:**

In India, copyright infringement can be classified into two main categories:

Primary infringement

Secondary infringement

These terms are used to differentiate between the direct violation of copyright and the indirect facilitation or involvement in copyright infringement.<sup>2</sup> Let's explore each category in more detail:

**Primary Copyright Infringement:**

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<sup>1</sup> Copyright Act, 1957,s.51- this section of the Indian Copyright Act outlines various acts that constitute copyright infringement, including reproduction, communication to the public, adoption, and distribution of copyrighted works without the authorization of the copyright owner.

<sup>2</sup> Mayashree Acharya, Copyright Infringement: Meaning, Examples, Cases in India, cleartax, (July. 01, 2023, 9:29 PM), <https://cleartax.in/s/copyright-infringement>.

Primary copyright infringement refers to the unauthorized and direct violation of the exclusive rights granted to the copyright owners. It involves acts that are directly carried out without the permission of the copyright owner, such as:

- **Reproduction:** making copies of the copyrighted article without authorization, such as photocopying, scanning, or digitally reproducing the entire or a substantial part of the article.
- **Distribution:** unauthorized distribution of the copyrighted article, whether in physical or digital form, without the necessary rights or permissions.
- **Public display:** publicly displaying the copyrighted article without the permission of the copyright owner, such as displaying it on a website or in a public presentation.
- **Performance or presentation:** performing or presenting the copyrighted article in public without obtaining the necessary permission from the copyright owner.

### Secondary Copyright Infringement:

Secondary copyright infringement, also known as contributory infringement, involves actions that facilitate or enable primary infringement. These acts may not directly infringe upon the copyright but play a significant role in aiding or encouraging infringement. In India, secondary infringement can be categorized into two forms:<sup>3</sup>

- **Authorizing Infringement:** this refers to situations where a person grants permission or authorizes others to engage in activities that directly infringe on copyright. For example, if someone allows another person to reproduce or distribute their copyrighted article without proper authorization, they can be held liable for authorizing infringement.<sup>4</sup>
- **Inducing Infringement:** this occurs when a person intentionally encourages or induces others to infringe on copyright. It involves actively promoting or facilitating acts of primary infringement. For instance, if someone provides instructions or tools to help others reproduce or distribute a copyrighted article without permission, they can be held responsible for inducing infringement.

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<sup>3</sup> copyrightalliance, <https://copyrightalliance.org/education/copyright-law-explained/copyright-infringement/secondary-copyright-infringement/>, (last visited July. 6, 2023).

<sup>4</sup> copyright.gov, <https://copyright.gov.in/Exceptions.aspx>, (last visited July. 6, 2023).

It's worth noting that both primary and secondary copyright infringement can lead to legal consequences in India, including injunctions, damages, and other remedies available under copyright law. Therefore, it is essential to respect copyright and obtain proper authorization before using or reproducing copyrighted articles to avoid potential infringement issues.

### Common Types of Copyright Infringement:

- Copyrighted works should not be reproduced without authorization.
- Unauthorized sales or distribution of works protected by copyright.
- Unauthorized creation of derivative works.
- Unauthorized public performance of items protected by copyright.
- Unauthorized broadcasting or distribution of items protected by intellectual property.
- Commercial use of copyrighted works without authorization.
- Plagiarism involves work that is protected.

### Common Forms of Copyright Infringement in India:

1. **Piracy:** India has long struggled with piracy, particularly in the film and music industries. Illegal distribution and sharing of copyright content through physical copies, digital platforms, and file-sharing networks continue to cause significant financial losses to content creators.<sup>5</sup>
2. **Online Copyright Infringement:** With the rapid growth of the internet and digital technologies, online copyright infringement has become a widespread issue in India. Websites and platforms offering unauthorized access to copyrighted material, including books, movies, music, software, and other digital content, pose a significant challenge.<sup>6</sup>
3. **Counterfeit Goods:** the production and sale of counterfeit goods, such as fake designer products, clothing, accessories, and software, infringe on the copyrights of the original creators and harm their business interests.

### Copyright Ownership:

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<sup>5</sup> copyright.gov, <https://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>, (last visited July. 6, 2023).

<sup>6</sup> Notice and Takedown procedure- Many online platforms in India follow a notice and takedown procedure to address copyright infringement. This procedure allows copyright holders to notify the platform of infringing content, following which the platform takes down the content or disables access to it.



It is essential to understand how copyright ownership works to protect and enforce these rights effectively. This article aims to provide a comprehensive guide to the ownership of copyright, including its definition, acquisition, transfer, and potential exceptions.<sup>7</sup>

### **What is Copyright Ownership?**

Copyright ownership refers to the legal right held by the creator or creators of an original work, providing them with exclusive control over the use, reproduction, distribution, and adaption of that work. Copyright ownership is established automatically upon the creation of a qualifying work, without the need for registration or any formalities.

### **Works Eligible for Copyright Protection:**

Copyright protection extends to various creative and intellectual works, including but not limited to:

- Literary works (e.g., books, articles, poems)
- Visual arts (e.g., paintings, photographs, sculptures)
- Musical compositions and sound recordings
- Dramatic works (e.g., plays, screenplays, choreography)
- Architectural designs
- Computer software
- Films and audio-visual works
- Choreographic works
- Other original works of authorship<sup>8</sup>

### **Copyright Ownership and Original Creators:**

In most cases, the original creator or creators of a work are the initial copyright owners. As creators, they possess the exclusive rights to reproduce, distribute, display, perform, and create

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<sup>7</sup> legalserviceindia, <https://www.legalserviceindia.com/article/1195-Copyright-Law-in-India.html>, (last visited July. 6, 2023).

<sup>8</sup> Indian Performing Rights Society Ltd. (IPRS)- IPRS is a copyright society in India that represents authors, composers and publishers of musical works. It licenses and collects royalties for the public performance of musical works and can be referenced to highlight the role of copyright societies in protecting copyright holders' interest.

derivative works based on their creations. The concept of “authorship” plays a crucial role in determining the initial copyright ownership.<sup>9</sup>

### **Joint Ownership:**

When a work is created by multiple individuals in collaboration, such as co-authors, joint ownership of copyright may arise. Joint owners have equal rights to exploit and license the work unless otherwise agreed upon. Decisions related to the work, such as licensing or distribution, generally require the consent of all joint owners.<sup>10</sup>

### **Copyright Ownership in Employment:**

In many cases, the copyright ownership of works created by employees during their employment is automatically transferred to their employers. This principle applies to works created within the scope of employment, and it is essential to clarify ownership through employment agreements or specific contracts.<sup>11</sup>

### **Transfer and Assignment of Copyright Ownership:**

Copyright ownership can be transferred or assigned to another party through a written agreement. The transfer of ownership must be explicit, and it should clearly outline the rights being transferred, the duration of the transfer, and any financial considerations involved. Such agreements are commonly known as “copyright assignments” or “copyright transfers”

### **Licensing and Copyright Ownership:**

Copyright owners can grant licenses to others, allowing them to use the work while retaining ownership. Licenses specify the extent of the rights being granted, the duration of the license, and any conditions or restrictions. Licensing agreements can be exclusive or non-exclusive, and they provide a legal framework for the authorized use of copyrighted works.

### **Duration of Copyright Ownership:**

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<sup>9</sup> wikipedia, <https://en.wikipedia.org/wiki/Copyright>, (last visited July. 6, 2023).

<sup>10</sup> corporate.findlaw, <https://corporate.findlaw.com/intellectual-property/copyright-ownership-the-joint-authorship-doctrine.html>, (last visited July. 6, 2023).

<sup>11</sup> Bhawna Kumari, Doctrine Of “Work For Hire” Under Copyright Law: A Critical Survey Of U.K., US, And Indian Cases, corpbiz, (July. 01, 2023, 9:29 PM), <https://corpbiz.io/learning/doctrine-of-work-for-hire-under-copyright-law-a-critical-survey-of-uk-us-and-indian-cases/#:~:text=Employee%2DEmployer%20Relationship%3A%20In%20an,and%20owner%20of%20the%20copyright>,

Copyright protection has a finite duration, which varies depending on several factors, such as the type of work and the applicable copyright law. In many countries, copyright protection generally lasts for the life of the creators plus a specified number of years after their death. After the copyright term expires, the work usually enters the public domain.

Understanding the ownership of copyright is crucial for creators, businesses, and individuals alike. By comprehending the rights and responsibilities associated with copyright ownership, creators can protect their creations and make informed decisions regarding the use and licensing of their works. Additionally, potential licensees and users of copyrighted materials can navigate the legal landscape more effectively, respecting the rights of copyright owners while utilizing creative works responsibly.

### **Registration Process of Copyright and its Importance:**

Registration offers several advantages in terms of evidence and legal remedies. Focusing on the benefits of copyright registration and the steps involved in the registration process.

### **Importance of Copyright Registration:**

While copyright protection arises automatically upon the creation of an original work, copyright registration offers several advantages, including:

- a. **Legal Evidence:** Registration provides prima facie evidence of copyright ownership, making it easier to prove ownership in case of infringement disputes.
- b. **Statutory Remedies:** Registered copyright holders have access to a broader range of remedies, including injunctions, damages, and statutory licensing provisions.
- c. **International Protection:** Registration enhances the credibility and enforceability of copyright in international jurisdictions that require formal registration for recognition and protection.<sup>12</sup>

### **Registration Process:**

To register copyright in India, follow these general steps:

- **Application:** Submit an application in the prescribed format (Form XIV) to the Copyright Office or apply online through the Copyright Office website.

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<sup>12</sup> Shreya Pandey, Importance of copyright registration in India, blog.ipleaders, (July. 01, 2023, 9:29 PM), <https://blog.ipleaders.in/importance-of-copyright-registration-in-india/>

- **Required Documents:** Include the application form, the work being registered, the power of attorney (if applicable), and the prescribed fee.
- **Examination:** The Copyright Office examines the application, verifying its completeness and compliance with formal requirements.
- **Publication:** If approved, the Copyright Office publishes a notice in the official Gazette, allowing for any objections to be raised within 30 days.
- **Registration Certificate:** Upon completion of the objection period, if there are no objections or if objections are resolved, the Copyright Office issues a registration certificate.<sup>13</sup>

### **Duration and Renewal of Copyright:**

In India, copyright protection generally lasts for the lifetime of the author plus 60 years from the year following the author's death. After the expiry of the initial copyright term, the work typically enters the public domain. Copyright renewal is not required in India, as the term of protection is determined by statute.

### **Legal Framework and Enforcement:**

To combat copyright infringement, India has established a legal framework that encompasses civil, criminal, and administrative remedies. Copyright holders can seek legal recourse through civil lawsuits, seeking injunctions, damages, and accounts of profits. The law also criminalizes copyright infringement, providing for imprisonment and fines.<sup>14</sup> Additionally, the Copyright Act empowers copyright owners to issue takedown notices to online platforms hosting infringing content. Section 13 of the Copyrights Act, 1957 is the most important as it provides for the classes of works for which copyrights subsist. Section 14 of the Copyrights Act, of 1957 states the exclusive rights which are issued once the copyrights have been granted.<sup>15</sup>

### **The Challenges Faced:**

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<sup>13</sup> Indian Copyright Office- The Indian Copyright Office is the government body responsible for copyright registration and administration. It provides information and guidance on copyright-related matters and can serve as a reference for copyright infringement cases and procedures.

<sup>14</sup> Rupsha Banerjee, Importance of copyright registration in India, blog.ipleaders, (July. 01, 2023, 9:29 PM), <https://blog.ipleaders.in/civil-remedies-copyright-infringement/>

<sup>15</sup> Bollywood v. The Internet- this phrase is often used to describe the on-going battle between the Indian Film industry (Bollywood) and online platforms over copyright infringement. It reflects the challenges faced by copyright owners in protecting their works in the digital age



- 1. Lack of Awareness:** Many people in India have limited knowledge about copyright laws, which leads to unintentional infringement. Educating the public about copyright and its implications is essential to curb infringement.
- 2. Enforcement Issues:** Despite the legal provisions, enforcement of copyright laws remains a challenge. Inadequate resources, delaying legal proceedings, and the sheer scale of online infringement make it difficult to combat copyright violations effectively.<sup>16</sup>
- 3. Cross-border Challenges:** The global nature of the internet makes it challenging to tackle copyright infringement that occurs across borders. Cooperation and international agreements are crucial to address these transnational issues effectively.

### **A Comprehensive Analysis of Case Laws:**

Copyright infringement is a serious offense that occurs when someone uses copyrighted material without obtaining the necessary permission from the copyright owner. In India, copyright protection is governed by the Copyright Act, of 1957, which provides creators with exclusive rights to their literary, artistic, musical, and dramatic works. Over the years, Indian courts have dealt with numerous copyright infringement cases, establishing important precedents and principles.<sup>17</sup> This article aims to provide a comprehensive analysis of prominent case laws related to copyright infringement in India.

#### **1. Tips Industries Ltd. v. Wynk Music Ltd.(2018):**

In this case, the Bombay High Court examined the issue of whether internet streaming platforms, such as Wynk Music, required a separate license to stream copyrighted music. The court held that platforms like Wynk Music, which provide on-demand streaming services, must obtain licenses from copyright owners to avoid infringing their rights. The judgment emphasized the importance of obtaining appropriate licenses and paying royalties to copyright holders.

#### **1. Super Cassettes Industries Ltd. v. Myspace Inc. & Anr. (2016):<sup>18</sup>**

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<sup>16</sup> Fair dealing/fair use- While the Indian Copyright Act does not explicitly mention fair use, it provides for certain exceptions, such as for educational and research purposes. Relevant provisions can be cited to explain the scope and limitations of fair dealing/fair use in India.

<sup>17</sup> copyright.gov, <https://copyright.gov.in/documents/handbook.html>, (last visited July. 6, 2023), (last visited July. 6, 2023).

<sup>18</sup> This notable case addressed the liability of online platforms for copyright infringement by their users. The court held that intermediaries could be liable if they had actual knowledge of infringement and failed to take appropriate actions.

This case revolved around the liability of social media platforms for hosting copyrighted content uploaded by users. The Delhi High Court ruled that platforms like Myspace could not claim immunity from copyright infringement simply because the content was uploaded by users. The court stated that once the platform had knowledge of infringing content, it must expeditiously remove or disable access to such content to avoid liability.

**2. R.G. Anand. v. Deluxe Films(1978):<sup>19</sup>**

This landmark case addressed the concept of fair dealing under Indian copyright law. The Supreme Court of India held that the reproduction of a copyrighted work in a cinematographic film amounted to fair dealing when the purpose was to criticize or review the original work. This decision clarified the scope of fair dealing provisions and recognized the importance of freedom of speech and expression.

**3. Microsoft Corporation v. Yogesh Popat & Anr.(2017):<sup>20</sup>**

This case involved software piracy and copyright infringement. The Delhi High Court awarded substantial damages to Microsoft for the unauthorized distribution and sale of its software. The court highlighted the need for strong enforcement measures to combat piracy and protect the rights of software creators. This judgment underscored the significance of copyright protection in the digital age.

**4. Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.(2008):<sup>21</sup>**

In this case, the Bombay High Court dealt with the issue of broadcasting copyrighted songs without a license. The court held that radio stations were required to obtain licenses from copyright societies to broadcast copyrighted music. The judgment reinforced the importance of licensing and the obligation of broadcasters to respect copyright holders' rights.

The case laws mentioned above represent a sample of significant copyright infringement cases adjudicated in Indian courts. These cases have played a crucial role in shaping copyright law and establishing precedents to protect the rights of creators and copyright owners. It is essential for individuals and businesses to be aware of these judgments to ensure compliance with copyright laws in India. By respecting copyrights and obtaining appropriate licenses,

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<sup>19</sup> R.G. Anand v. M/s Delux Films and others (1978)

<sup>20</sup> Microsoft Corporation v. Yogesh Popat & Anr.(2017)

<sup>21</sup> Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd. (2008)

stakeholders can contribute to a thriving and creative ecosystem while safeguarding the rights of creators.

### **CONCLUSION:**

Copyright infringement is a pressing issue in India, with piracy, online infringement, and counterfeit goods posing significant challenges to creators and copyright holders. While India has a robust legal framework to protect copyright, effective enforcement, and increased awareness are necessary to combat infringement effectively. Collaborative efforts between stakeholders, including the government, content creators, and the public, are vital to promote respect for intellectual property rights and foster a culture of innovation and creativity in the country.

