

**DIGITAL PIRACY AND EMERGING INTELLECTUAL
PROPERTY RIGHTS : ISSUES IN INDIAN CREATIVE
INDUSTRY**

**A DISSERTATION TO BE SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF
DEGREE OF MASTER OF LAWS**

SUBMITTED BY

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**UNDER THE GUIDANCE
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BBD UNIVERSITY
SESSION 2020-21

CERTIFICATE

This is to certify that, the present dissertation titled “**DIGITAL PIRACY AND EMERGING INTELLECTUAL PROPERTY RIGHTS: ISSUES IN INDIAN CREATIVE INDUSTRY**” submitted by **Smriti Pandey** in partial fulfilment for the award of the degree of Masters of Laws from BBD University, Lucknow.

The matter presented in this dissertation incorporates the findings of independent research work carried out by the researcher herself. The matter contained in this dissertation has not been submitted elsewhere for the award of any other degree in this format.

I recommend that it should be placed before the Board of examination for valuation.

Place: Lucknow
Date: 05-07-2021

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DECLARATION

I **SMRITI PANDEY**, do hereby declare that this dissertation on “**DIGITAL PIRACY AND EMERGING INTELLECTUAL PROPERTY RIGHTS: ISSUES IN INDIAN CREATIVE INDUSTRY**” is the result of the research undertaken by me in the course of LL.M. Programme at BBD University, under the guidance and supervision of **MS. MUDITA TRIPATHI**.

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- (c) I have not permitted, and will not permit, anybody to copy my work with the purpose of passing it off as his or her own work.
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Date: 05-07-2021

SMRITI PANDEY
L.L.M. (Corporate and Commercial law)
Session 2020-21
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LIST OF ABBREVIATIONS

AVI	Audio- Visual Industry
CD	Compact Disc
DMCA	Digital Millennium Copyright Act
DRM	Digital Rights Management
DTH	Direct to Home
FY	Financial Year
IPR	Intellectual Property Right
ISP	Internet Service Provider
IT	Information Technology
LCO	Local Cable Operators
MPA	Motion Picture Association
OTT	Over The Top
P2P	Peer to Peer
TRIPS	Trade Related Aspects of Intellectual Property Rights
TV	Television
UCC	Universal Copyright Convention
UK	United Kingdom
US	United States

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CHAPTER 1

INTRODUCTION

*'If you steal my content, how will I plough back money to create more jobs and content?
It's the essence of my creativity.'*

- Steve Jobs

1.1 INTRODUCTION

In simple terms, piracy refers to rampant intellectual property theft. The word "Piracy" is derived from 'Pirates', the ruthless sea barbarians in the early 1700s. Piracy may be defined as illegal reproduction, importation or distribution of either whole or part of work protected under copyright law. It is therefore a form of theft as it leads to substantial loss to the rightful owner of the copyrighted property. Apart from economic injury, piracy also significantly injures the creative potential of creators and producers as it robs them of their legitimate returns.

Even though being a form of theft, copyright piracy is often not viewed from the lens of crime and more often than not zero culpability is attached to offenders of copyright piracy due to its nuanced and technical nature. This perhaps poses one of the biggest threats to the task of effective control of piracy in a country like India. Indian society condemns a robbery or even a small theft however when it comes to copyright protected works, for the development of which big investments are poured, when such work is illegally copied or reproduced, no serious accountability is attached to the perpetrators. A major reason behind such ignorance is that unlike theft, copyright piracy may not involve tangible products and largely remains intangible. What is stolen may not be a physical tangible product but the 'intellectual product' or property which goes largely ignored or unnoticed in several instances. Hence, from society's perspective, piracy is not always counted as a serious crime, even though it has serious far-reaching effects from social, economic and creative perspective.

Unlimited copies (of the same or even higher quality music videos- films or even books, in digital form and these copies can be distributed instantly through the internet.

India is among the top ten countries in the world with the highest number of online piracy cases which poses a big threat to the country's film and television industry, according to a research commissioned by the Motion Picture Distributors Association (MPDA)¹.

Copyist have constantly availed free rides on the efforts made by others, which is why policy makers have come up with solutions to control this by framing stricter regulations. Over the last decade,

copyright owners have actively fought the easy availability of pirated copies of their products. However, the advent of digital piracy is rapidly increasing in many markets, despite the availability of copyright protection and digital right management.

Online piracy is on a rise and has almost completely replaced physical piracy. Nowadays, one can download anything for free be it movies, music, software or books. Online piracy is a menace no doubt but one would have to admit that at some point of time one has given it a shot or at least thought about it.

Indian entertainment sector, members of the Hindi film industry barring a handful of people, haven't endeavoured to sincerely fight this menace, due to which new films are available in the market sometime even before the date of release. On the other hand, states like Tamil Nadu have taken the initiative of bringing video/DVD piracy under the ambit of the Goondas Act thereby reducing the rate of piracy of new Tamil films. Piracy can be combated if the film industry stands united and makes the common man aware of the disruption caused by piracy.

Besides economic loss, piracy also adversely affects the creative potential of society as it robs creative individuals such as artists, authors, social media content creators of their legitimately rightful returns. Additionally, such IP rights challenges have also proven to stifle creative expression on the internet- an issue deserving urgent attention and remedying in today's digital age.

In the present research, the researcher has *inter-alia* attempted to focus on the above-mentioned issues of online piracy that currently plague the Indian film industry. This research focusses on the background of piracy in other copyrighted works and social economical factor associated to it. It talks about the Indian film industry, its size growth and threat of piracy in the industry. The researcher has also focused on digital rights management and discusses different statutes protecting its interest, remedies, punishment and loopholes in the present legislature. It also talks about the enforcement issues that are faced by the industry while combating piracy. This research suggests some possible solutions on the issue with anti-piracy enforcement and non-legal strategies both. Researcher has also highlighted few case studies to describe both successful and unsuccessful legal battles on the issue.

Further, the researcher tries to describe the background of copyright piracy in different subject matters i.e. Piracy of literary, sound recording, cinematograph work and software. Effort is made to talk about piracy in digital age with rise of technologies like Peer to peer and BitTorrent software. Finally, it talks about the socio-economic factors that are affecting the rise of piracy like illiteracy,

poverty, high price, unemployment, poor enforcement and lack of infrastructure.

Moving on, the researcher gives a brief insight of the film industry, television industry and the expansion of international film industry in India. Their values, growth rate, revenue, factors that are affecting the industry are also enumerated. While the latter part of this chapter discusses about various national and international law reports depicting the status of IP rights violations in Indian digital space.

Protection and management of Digital rights of right owner as a sub-part has been given due deliberation in the present research. Researcher talks about the concept of DRM and its implication in Indian laws². The researcher talks about the current legal framework available to combat piracy. Liability of intermediaries is also discussed under IT Act. In addition to this, different type of remedies civil as well as criminal are also discussed with special reference to injunctions like John Doe order.

Finally, researcher focuses on enforcement issues like reasons for lack of enforcement such as lack of police and international cooperation and judicial ineffectiveness. Researcher further suggests substantial solutions for online piracy that are exercised by industry now a days. Both anti-piracy strategies through Enforcement Agencies like MPA and non-legal strategies to combat the threat of piracy through increased distribution of screen, reduction in time gap between new releases in theatre, quicker broadcast on cable TVs and accessibility to DVDs along with more awareness campaigns around the subject are also discussed in detail.

1.2 RESEARCH PROBLEM

Copyright piracy is a phenomenon prevalent worldwide. Copyright in cinematographic works is more complex in nature due to the existence of various copyrights in a single piece of work which are mostly also overlapping in nature. Digital technology facilitates making unlimited copies (of the same or even higher quality music videos or even books, in digital form and these copies can be distributed instantly through the internet.

The problem of piracy has increased with rapid advances in digital media technology. New technological solutions along with the worldwide reach of the Internet are making it easy for the pirates to carry on their illegal activities. Increase in the number of file-sharing networks and portals have also increased infringements by the consumers themselves.

Piracy of copyright is a phenomenon prevalent worldwide and can be in the form of illegal

distribution, exhibition, copying, downloading, or uploading. Piracy causes huge losses, not only to the owners of copyright but to the industry and the economy as a whole. Piracy of copyrighted material and the demand for stronger legal protection is the need of the hour.

Piracy and copyright violations have been a major threat in the creative industry. Even though various steps have been taken in past to mitigate this issue, with the advent and rampant evolution of technology, piracy has become difficult to trace and remedy. In light of this background, the present research seeks to unravel the various difficulties the Indian entertainment industry faces today in combating digital piracy and aims to provide effective solutions for the same.

1.3 AIMS AND OBJECTIVES OF RESEARCH

The **main objectives of this research** are: -

- To study the legal framework available to rights holder of cine works for protection of their creative deliverables in India.
- To study various legal provisions regarding piracy in central and state statutes.
- To discuss the liability of intermediaries.
- To find out innovative ideas for protection of Digital Rights Management (DRM).
- To highlight the challenges and discuss prospective solutions in combatting piracy and related IPR issues.

1.4 HYPOTHESIS OF THE STUDY

The current copyright protection and anti-piracy regimes in India are inept in dealing with the emerging and nuanced issues of IP violations in the digital sphere. There is an emergent need to march towards a modern copyright regime to incentivize creators and reinstate the free flow of creative expression both on the internet and in the Indian film industry.

1.5 REVIEW OF LITERATURE:

The researcher while doing research got help from the following books and literatures:

- **Prof. Narayanan P. Intellectual Property Law, Eastern Law House Publication, 4th Edition 2004**, this book helped the researcher understand the basics of copyright law viz a viz entertainment sector and provided useful insights on various methods of business, rights of publicity of celebrities, presentation of information etc.
- **Melville B. Nimmer, David Nimmer, Copyright, Lexis Nexis Publication, 1st Indian Reprint, 2010**, this book provided the researcher incisive discussions on the protection of the

expression of ideas while also giving a global perspective on copyright law.

➤ **Bhasin Lalit, Media and The Law, Universal Law Publication, 2010 Edition**, this book helped the researcher understand piracy in a broader way. It cleared concepts related to piracy in digital age, DRM and various anti-piracy steps.

➤ **Kamath Nandan, Law Relating to Computers Internet & E-commerce, Universal Law Publication, 5th Edition 2013**, this book helped the researcher understand various aspects of cyber law with respect to copyright and liability of intermediaries.

➤ **Stokes Simon, Digital Copyright, Hart Publication, 4th Edition**, this book helped put digital copyright law and policy into perspective and provided practical guidance for those creating or exploiting digital content or technology. The focus of *Digital Copyright* is on the specifics of the law in this area together with practical aspects which helped the researcher in probing the prospective solutions to combat piracy issues in a critical way.

➤ **Ahuja V.K., Law of Copyright and Neighbouring Rights: National and International perspectives, LexisNexis India (2007)**, this book critically examines various aspects of copyright law in the light of both Indian and international issues. This book helped the researcher understand various landmark judgments on copyright law in India as well as the various multilateral conventions on copyright

➤ **Chawla Alka, Law of Copyright: Comparative Perspectives, LexisNexis India, 1st Edition (2013)**, this book explores the subject of copyright law through the lens of both national and international legislation and draws considerable parallels between the law as it stands in India, UK and US. It helped the researcher understand concepts with the help of case laws and also map the rise of the Internet and how it has triggered a sea-change in copyright law, engendering several new challenges in the field.

1.6 RESEARCH DESIGN

The present research project is based on the **Doctrinal Research** which is **Descriptive Research** in nature. This Descriptive Research involves ascertainment of the state of affairs as it exists at present. The effort of the researcher is not to prescribe as to what should be the state of affairs and the nature of law for the time to come because the researcher has no control over the variables which effect the execution of law.

CHAPTER 2

COPYRIGHT PIRACY: THE BACKGROUND

The world today has entered into an era of instant communication. A person sitting in the remotest corner of India can enjoy live performance taking place in the faraway places like America or Africa, thanks to electronic (parallel) media. Telephone and fax have made it possible to communicate oral or written messages across the globe within seconds. The computer-aided communication technologies such as E-Mail and Internet have added altogether a new dimension to today's communication process by making it more speedy, informative and economical. ¹

The ways through which different types of information can be communicated have also undergone a sea change. These days a film song can be put in or accessed by a single device along with a textual message and even a painting. While all these have made communication among people more effective and efficient both in terms of time and cost, they pose the greatest threat to the copyright world. Modern communication channels, being intensively relying on a variety of copyrighted products, are liable to be pirated in large scale, if adequate precautions are not exercised.

Copyright is the right given by law to the creators of literary, dramatic, musical and a variety of other works of mind. It ordinarily means the creator alone has the right to make copies of his or her works or alternatively, prevents all others from making such copies. The basic idea behind such protection is the premise that innovations require incentives. Copyright recognises this need and gives it a legal sanction. Moreover, commercial exploitation of copyright yields income to the creators, thus making pecuniary rewards to individual's creativity.

2.1 COPYRIGHT AND INTERNATIONAL PERSPECTIVE

The scope of copyright is not limited merely to the area of creativity and its economic exploitation in the country of its origin. It has expanded its reach in international relations as well. Recently, the trade relations between the US and China deteriorated considerably over the issue of protection of Intellectual Property Rights (IPR). The US maintained its stand that China is the biggest violator of IPRs and the loss to the US economy is more than 2 billion dollars annually because of violation of its IPRs in China's territory.² The dispute took a serious turn when US trade groups wanted trade

¹ "India: Internet Piracy Landscape Audit" By Envisional & Motion Pictures Association Published In 2009.

² Patrick Frater, AP "Online piracy in India a global problem" Hollywood Reporter (12/15/2009) available at <http://www.hollywoodreporter.com/news/online-piracy-india-global-problem-92365> (Last Visited on 02/06/21)

relations with China to be stopped entirely. It was only after the intervention of the heads of both the countries that any further deterioration could be averted. The importance of IPRs in general and copyright in particular in the relationships among the countries can be inferred clearly from the above-stated example. The Sino-US piracy dispute, though a recent one, is not the solitary case. With the advancement in technologies copyrighted products started free flowing across the boundaries and piracy assumed an international dimension. Since the nineteenth century the countries felt the need of having copyright protection in foreign soil as well. As a result, negotiations were held between countries which in some cases resulted in the formation of multilateral treaties.

2.2 BERNE CONVENTION

The first multilateral agreement on copyright is the Berne Convention which was concluded in 1886 and was meant for providing protection to literary and artistic works³. A country joining the Convention has to provide copyright protection to literary and artistic works of member countries in its own territory and also entitled for enjoying reciprocal protection from others. Recently, the subject of IPRs figured prominently in the Uruguay Round of General Agreement on Tariffs and Trade (GATT). It is for the first time that the GATT went beyond its usual mandate and included the IPRs. The Trade Related Aspects of Intellectual Property Rights (TRIPS) are set out in Annex 1C of the Final Uruguay Round Text. This text comprises of 73 articles grouped in seven different parts⁴.

2.3 COPYRIGHT IN INDIA

The copyright in India has travelled a long way from the time it was introduced during the British era. The first law on the subject of copyright was enacted in the year 1847 by the then Governor General of India. After independence a new copyright act (the Act of 1957) came into effect in 1958. Thereafter the Act has undergone many significant amendments.

The Indian Copyright Act confers copyright on (i) original literary, dramatic, musical and artistic works, (ii) cinematographic films and (iii) sound recordings. The word 'original' means that it should not be copied from other works or alternatively it should be the outcome of independent efforts. The Act empowers copyright holder(s) to do or authorise doing a number of activities. The important among these are:

³ Alka Chawla, Law of Copyright: Comparative Perspectives, LexisNexis India, 1st Edition (2013).

⁴ Id.

- a. to reproduce the work in material form
- b. to publish the work
- c. to perform the work in public or communicate it to the public
- d. to produce, reproduce, perform or publish any translation of the work
- e. to make any cinematographic film or a record in respect of the work
- f. to make any adaptation of the work
- g. to do, in relation to a translation or an adaptation of the work, any of the acts specified to the work in sub clauses to (a) to (f).

The above-mentioned rights are 'exclusive' in the sense that the creator (or right holder) alone enjoys these to others' exclusion. The author thus by virtue of his creation and creativity becomes the 'owner' of the copyright in the work.

The grant of copyright is called limited monopoly as it is limited in the 'scope' of the rights granted and in terms of 'time' or duration. In India, copyright on a literary work is provided for the lifetime of the author and for sixty extra years post his demise.

In case of joint authorship, the sixty years period is ascertained from the beginning of the calendar year following the year in which the last (surviving) author passes away. Copyright with respect to photographs, cinematographic works and sound recordings spans for 60 years from the time of its first publication.⁵

The Copyright Act of India provides right holders dual legal machinery for enforcing their rights. The enforcement is possible through (1) the Copyright Board and (2) the courts. Legal remedies include imprisonment and/or monetary fines - depending upon the gravity of the crime. Sometimes remedies also include seizure, forfeiture and destruction of infringing copies and the plates used for making such copies. The 1984 amendment has made copyright infringement a cognizable non-bailable offence. Under the provisions of the Act any person who knowingly infringes or abets the infringement of copyright is considered as an offender and is punishable with a minimum of six months imprisonment which may extend to three years and a fine between fifty thousand and two lakhs' rupees. The 1994 Amendment has incorporated a special penal provision for knowingly using infringing computer software. The punishment provided for this act is imprisonment for a term of seven days to a maximum of three years and a fine between fifty thousand and two lakh rupees.

⁵ V K Ahuja, Law of Copyright and Neighboring Rights: National and International Perspectives, LexisNexis India (2007)

Besides amending the Copyright Act, the Indian Government has taken certain other steps in strengthening the enforcement of this law throughout the country. A Copyright Enforcement Advisory Council has been set up for advising the Government on measures for improving the copyright enforcement in India. Training programmes and seminars are arranged for police personnel to apprise and update them on the law. Necessary legislation was enacted for encompassing video shops, cable operators under regulation. State governments are encouraged to set up IPR cells for exclusively looking into copyright and other IPR violations. In spite of all these, enforcement of IPR violations, particularly copyright violations has not been sufficient in the country and piracy still prevails in all types of copyright works notably musical works, video films and related softwares.

2.4 COPYRIGHT PIRACY

Copyright piracy means illegal reproduction, importation or distribution of either whole or part of work protected under copyright law. It is therefore a form of theft as it leads to substantial loss to the rightful owner of the copyrighted property. Apart from economic injury, piracy also significantly injures the creative potential of creators and producers as it robs them of their legitimate returns. It is a phenomenon prevalent worldwide. The author being the owner of the copyright protected work, enjoys a host of exclusive rights including right to reproduce, publish, adopt, translate and perform in public. He/she also has the right to sell, assign, license or bequeath the copyright to another party if he/she wishes so. If an individual other than the copyright owner or his authorised party undertakes any of the above-mentioned activities with respect to a copyright protected product, such act shall amount to infringement of the copyright. Copyright piracy is therefore like any other theft which leads to loss to the owner of the said property. Apart from economic loss, piracy also adversely affects the creative potential of a society as it denies creative people such as authors, producers and artists their legitimate returns.

There are different ways through which piracy takes place. A computer software is pirated by simply copying it onto another machine not authorised for its use. Book piracy takes place when a book is reproduced by an individual other than the real publisher and sold in the market. A performer's right is violated when a live performance of an artist is recorded or telecasted live without his/her prior permission. In a cinematographic work piracy usually takes place through unauthorised reproduction of the film in video forms and/or displaying the video through cable networks without taking proper prior authorisation from the film producer (the right holder). In

fact, there are numerous other ways through which piracy of copyrighted works takes place⁶. The nature and extent of piracy also vary across the segments of the copyright industry. It is, thus, imperative to discuss the nature, scope and extent of piracy problems segment wise.⁷ Such an attempt is made in the following paragraphs:

2.4.1 LITERARY WORKS

Piracy of literary works means illegally reproducing books and other printed materials and distributing/selling them for profit. In India, the journals/magazines and other periodicals are not pirated that much. Here piracy of literary works generally takes place in three principal ways⁸ :

- 1) Wholesale reprinting of text and trade books
- 2) Unauthorised translations and
- 3) Commercial xeroxing of books/ journals. Many times, piracy takes the form of publishing fake books, where authors shown in books are not the real authors.

Book piracy, in India, primarily and majorly depends on two factors, viz. the price of the book and its popularity. These two factors positively contribute to piracy in India. Piracy is generally confined to foreign and indigenous books as these books are demanded in large quantities and are also priced high.

The pirates first identify books to be pirated and then get the same printed in large numbers through unscrupulous printers. The pirated books are normally sold with other (legitimate) books by usual retailers identified by the pirates.

Piracy of literary works leads to loss of revenues to publishers (in terms of less sales), authors (non-payment of royalty) and the public exchequer (non-payment of income tax and other levies payable by publishers/authors). While it is largely believed that book piracy is high in India, it is quite difficult to arrive at an estimate. Only information from secondary sources (e.g., publishers, police records etc.) can be gathered to form a vague idea on the subject. But that would reflect

⁶ Counterfeiting, Piracy and Smuggling in India – Effects and Potential Solutions, by ICC and FICCI, available at http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/International-engagement-and-Advocacy/Country-Initiatives/Counterfeiting_Piracy-and-Smuggling-in-India-Effects-and-Potential-Solutions/

⁷ Study on Copyright Piracy in India sponsored by Ministry of Human Resource Development, Government of India available at <http://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>

⁸ Patil Jaiprakashreddy, “Piracy of Copyright” available at <http://www.lawyersclubindia.com/articles/Piracy-of-Copyright-5301.asp#.VVEgGo6qqko> (last visited on 14/05/21)

only the tip of the iceberg as in terms of percentage, it is believed that about 20- 25 percent of books sold (in number) in the country are pirated¹³. Actual monetary loss attributable to piracy is anybody's guess.

Anti-piracy drive with respect to books is generally quite weak in India. The industry associations are inactive in this regard. Whatever action is taken is done by the respective publishers and authors. The enforcement machineries (such as police) are also inactive in controlling piracy for a variety of reasons. The public awareness is also deplorable.

Commercial photocopying of books/ journals. Many a time piracy takes the form of publishing fake books, where authors shown in books are not the real authors. Book piracy, in India, primarily depends on two factors, namely, the price of the book and its popularity. These two factors positively contribute to piracy. Piracy is generally confined to foreign and good indigenous books. Because these books are demanded in large quantities and are also priced high.

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Anti-piracy drive with respect to books is generally weak in India. The industry associations are not very active in this regard. Whatever action is taken is done by the respective publishers. The enforcement machineries (such as police) are also not very active in controlling piracy for a variety of reasons. The public awareness is also very poor.

2.4.2 SOUND RECORDINGS

⁹ Study on Copyright Piracy in India sponsored by Ministry of Human Resource Development, Government of India available at <http://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>

The sound recording industry faces three types of piracy. First, there is a simple way by which songs from different legitimate cassettes/CDs (and thus different right holders) are copied and put in a single cassette/CD. These are then packaged to look different from the original products and sold in the market. Second, there is counterfeiting, when songs are copied in to and packaged to look as close to the original as possible using the same label, logos etc. These products are misleading in the sense that ordinary end users think that they are buying original products. The third form of music piracy is bootlegging, where unauthorised recordings of performance by artists are made and subsequently reproduced and sold in the market.

All these happen without the knowledge of the performers, composer or the recording company. Earlier the music piracy was confined to cassette tapes only. With the advent of CDs in the eighties it was thought that piracy of sound recordings would become things of the past. But in reality, CD piracy is the greatest threat to today's music world. In fact, with CDs piracy has got an international vigour. Fortunately, or unfortunately, CD industry is still in its nascent stage in India¹⁰.

The popularity of Indian music has gone beyond internal boundaries. There is huge demand for Indian music in the neighbouring nations such as Pakistan, West Asia as well as far off countries like USA, Canada and the UK. There have been instances of Indian music getting pirated in some of these foreign countries, the notable among these being Pakistan and the West Asia. Similarly, foreign audio products are also subject to piracy in Indian soil more often than not.

2.4.3 COMPUTER SOFTWARE

The theft in program just methods replicating and appropriation of computer programs without the copyright holder's consent. The product business, by and large, comprises of creation and dispersion of computer programs. Production of computer program is like composing a novel or other abstract works and it requires scholarly expertise and preparing in programming. In spite of the fact that a product can be composed by singular developer, the greater part of the significant programming projects are the result of collective endeavours, where medium to huge estimated groups go through months or even a very long time to compose a total program.

Distribution of computer programs in the greater part of the created nations happens through a

¹⁰ V K Ahuja, Law of Copyright And Neighboring Rights: National And International Perspectives, LexisNexis India (2007)

two-layered arrangement of wholesalers and vendors, like that of numerous different ventures.

The item distributors make a huge proportion of their shipments to few wholesalers in some random country, who keep up with all around supplied stockrooms and can react rapidly to orders from hundreds or thousands of individual retail sellers or affiliates. The sellers showcase and give the product items straightforwardly to end-clients of computers. The end clients can be people, business undertakings, educational organizations and government foundations. Sometimes software publishers directly deal and manage some of the biggest sellers or resellers in an individual country. Licensing is a typical practice in programming enterprises. The distributor of a product by and large approves its end clients through the system of the shrink-wrap license contained in the bundle.

Like other copyright-based industries, the software industry also faces several forms of piracy. In fact, piracy in software is more than in others because it is relatively easy to copy a software in computers especially in PCs and for all practical purposes the pirated version looks and performs in an identical manner as the original. The five principal types of software piracy involve (1) counterfeiters (2) resellers (3) mail order houses (4) bulletin boards and (5) end-user piracy¹¹.

Identifying a pirated programming software is certifiably not a simple errand. This is essentially for two reasons. To begin with, as referenced prior there is not really any contrast between unique software and pirated software, whenever it is duplicated onto a hardware. Second, discovery of piracy needs access to software or hardware or both, which may not be doable much of the time. In any case, there are a few different ways through which an unapproved duplicate of a product can be recognized. Numerous multiple times distributors supply software projects in bundled structure which contain softwares on diskettes with printed names giving producer's name, full item name, variant number, exchange imprint and copyright takes note. Other than these, the bundles additionally normally, contain professionally printed documentation, a keyboard template, end user license and registration cards and other printed pieces of literature in accordance with a standard bill of materials that would apply to all bundles of that specific item.¹²

In such cases, the least complex pirated duplicates might be spotted effectively on "black-disks",

¹¹ V K Ahuja, Law of Copyright And Neighboring Rights: National And International Perspectives, LexisNexis India (2007).

¹² Study on Copyright Piracy in India sponsored by Ministry of Human Resource Development, Government of India available at <http://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>

which don't contain manufacturer's name but instead type composed, manually written or roughly printed marks demonstrating the programmes contained on the diskettes. In case of installed software, it is even more difficult to identify a pirated copy. Once a computer is searched, the programmes copied onto it can be found and identified. Then users can be asked to produce the evidence of original possession (e.g. original packages, documentation, purchase record, license cards etc.) of such programmes. If users fail to do so, there becomes a prima facie case of infringement. In some instances, even test purchases can be made to secure evidence of piracy.

2.4.4 CINEMATOGRAPHIC WORKS

Copyright in cinematographic works is more complex in nature as there exist a variety of copyrights in a single work and many a times these rights are also overlapping. The first right in a film is the 'theatrical right' i.e. the right to exhibit films in theatres. The producer is the copyright holder. The distributors buy theatrical rights from producers and then make some arrangements with the theatre owners for actual exhibition to the public. The theatrical rights are limited by territory and time. Films are also released in video cassettes. In fact, these days viewing film at home has become more popular than seeing the same at theatres. The producers sell the video rights to another party, who makes video cassettes for sale in the market. These cassettes are meant for 'home viewing' only. Such cassettes cannot be used for showing the film in cables or through satellite channels. Because showing films in cables or satellite channels require acquisition of separate sets of rights namely cable rights, and satellite rights.

A cable network is for the most part restricted to local areas as it requires receivers (watchers' televisions) which are to be actually connected through cable wire to the operators. In the event of satellite stations, in any case, there is no such actual limit as transmission happens through air and received at the viewer's end by dish antenna.

Piracy of cinematographic works takes two principal forms, namely 'video piracy' and 'cable piracy'. However, piracy in one form can spill over and affect the revenues of the other. Video piracy takes place when a film is produced in the form of video cassette without taking proper authorisation from the right holder i.e., producer. Many times, producers of films sell video rights to another party (generally after six weeks or more of release in theatres) who makes video cassettes for selling or lending¹³.

¹³ Copyright Law in India, at [legalserviceindia.com](http://www.legalserviceindia.com) available at <http://www.legalserviceindia.com/article/1195-Copyright-Law-in-India.html> (Last Visited on 21/05/21)

The video cassettes kept for sale are meant for home viewing only. Any commercial use of such cassettes like in video parlours or in cable networks amounts to copyright violation. Two types of video piracies are common in India. One, where video right for films has not been sold at all (by the producer) but video cassettes are available in the market for buying or borrowing. And two, when video right is (legally) sold to a party, but cassettes are made and sold by others (pirates) as well.

Cable piracy is unapproved transmission of movies through cable network. As referenced above, showing a film in a cable network requires securing of legitimate authorisation from the right holder. However, many times films, particularly the new releases, are displayed through cable TV without such authorisation, which amounts to piracy.

It is exceptionally hard to give even a good guess of video piracy in India since data in such manner is inadequate and not open. Be that as it may, video piracy in both the structures is very widespread here. Other than this, piracy through video parlours is to a great extent pervasive typically in the provincial India or more modest towns. Maybe more widespread and harming is the cable piracy. Nowadays practically all new releases are displayed in the cable simultaneously with the presentations in theatres. As per a resolution adopted by the Film Makers Combine, video arrival of a film can be made solely after about a month and a half of theatre release. However, cable operators show such movies much before the specified time-frame. This is a clear instance of cable piracy and its degree is significantly high in country.

All parties associated with the legitimate business of movies - from the makers to the theatre proprietors, lose intensely in light of widespread video or cable theft. The government additionally loses on the grounds that pirates' acts don't fetch any revenue¹⁴.

2.4.5 ISSUES WITH CINEMATOGRAPHIC WORKS

When we discuss copyright in cinema, there are four distinct groups. The original producers of a cinema, who are the sole right holders, can sell cinematographic rights, Video rights, Cable rights, commercial rights and satellite rights. In the eyes of the law copyright in cinema has five components and each of the five components is divided again into three distinct parts. These are:

¹⁴ Study on Copyright Piracy in India sponsored by Ministry of Human Resource Development, Government of India available at <http://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>

- **Cinematic Rights:** Theatrical, Non-theatrical, Public Video
- **Ancillary Rights** Airline, Ship, Hotel
- **Video Rights** Home rental, Home see through, Commercial
- **Pay TV Rights** Terrestrial, Cable, Satellite
- **Free TV Rights** Terrestrial, Cable, Satellite

It is generally mentioned in the agreement under which of the above the rights are sold. For example, if cinematic rights were sold, the agreement would state whether rights were sold for showing in theatres or other places or for showing to public through video. The agreement would also clearly mention the duration and territory over which one has the right. If one has the right to show only in theatres (mainly the distributors in the case of India) then the buyer does not necessarily have the right to show these movies through video or through any other media to the public. If he does, then it would be a clear violation of the copyright law¹⁵.

Similar is the situation in case of Pay Vs Non-Pay TV rights. A TV company may run Pay TV channel as well as Free TV channel for the public. The TV Company might buy right to show a film through its pay TV channels. But if the company showed this film in their free to air channels, then it would be a violation of the copyright law¹⁶. There have been cases where some satellite stations had abused copyright as such. Be that as it may, these examples are relatively few and record for a little piece of the complete infringement in cinematographic works including cable and home video infringement. It has been observed from discussions with various producers & distributors of films, video & cable right holders and satellite channels, that copyright violations of films occur mainly in video, cable and commercial rights, i.e., showing movies through video parlours (which at present are prevalent only in the rural India) and at hotels to a large extent.

It has been observed from discussions with various producers & distributors of films, video & cable right holders and satellite channels, that copyright violations of films occur mainly in video, cable and commercial rights, i.e. showing movies through video parlours (which at present are prevalent only in the rural India) and at hotels to a large extent. In fact, while interacting with some of the film producers; it was not clear whether commercial rights of films have even been

¹⁵ Indian Film Industry: Tackling Litigations, Nishith Desai Associates (NDA) (September 2013) available at http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Indian%20Film%20Industry.pdf

¹⁶ Alka Chawla, Law of Copyright: Comparative Perspectives, LexisNexis India, 1st Edition (2013)

sold at all. Most of the hotels are connected through cable operators while some of them (mainly in the 5 star and 4-star categories) have their own dish antenna and in some cases, they show movies through their VCRs. This research on the extent and nature of copyright violations will be primarily related to video Rights, Cable rights and commercial rights only.

Another form of copyright violation in the video is that even if the producers have not sold the right for a film, the same can be seen in cable network as well as cassettes containing such films can be borrowed/bought from video libraries/shops. This takes place mainly in two forms:

1. through laser disc brought from abroad
2. With the help of camera print taken from the movie halls when the movie is in progress.

According to the law, one can bring a laser disk containing film from abroad only for home viewing. At the point when the movies are released abroad these are duplicated in laser discs brought back to India from which mass duplicates in video tapes are made. Typically, when the motion pictures are displayed in theatre halls, the movies are shot surreptitiously from the screen with the assistance of a camcorder. Then, at that point it is made into mass duplicates. The prints of such films are for the most part of inferior quality and one can without much of a stretch recognize this while seeing on television.

2.5 PIRACY IN A DIGITAL AGE

Digital technology facilitates making unlimited copies (of the same or even higher quality music videos or even books, in digital form and these copies can be distributed instantly through the internet. Piracy of copyrighted material and the demand for stronger legal protection is the need of the hour, as technology has evolved with better products, starting from printing machines to VCRs and then progressing to Peer to Peer (P2P) and BitTorrent.

➤ **Peer to Peer (P2P):** as it is commonly known, is a distributed network architecture composed of participants that make a portion of their resources (such as processing power, disk storage and network bandwidth) available directly to their peers without intermediary network hosts or servers.

➤ **BitTorrent:** is a protocol (a set of rules and description of how to do things) allowing you to download files quickly by allowing people downloading the file to upload (distribute) parts of it at the same time. BitTorrent is often used for distribution of very large files, very popular files and files available for free, as it is a lot cheaper, faster and more efficient to distribute files using BitTorrent than a regular download. BitTorrent is often referred to as “true P2P sharing” because BitTorrent users themselves conduct the file serving vis-à-vis one of the publisher’s servers being used to distribute the files. The

torrent community of users voluntarily uploads their files into the collective pool and is motivated by the cooperative spirit – i.e, if they leave their software open after downloading, they are rewarded with faster download speed. BitTorrent also adds incentives to generous users.

A recent analysis of the latest P2P trends world-wide show that BitTorrent is still the most popular file sharing protocol. P2P traffic in general shows a slight decline, but BitTorrent traffic continues to rise. It is responsible for 45-78 % of all P2P traffic and approximately 27- 55 % of all internet traffic, depending on geographical location.

Copyist have constantly availed free rides on the efforts made by others, which is why policy makers have come up with solutions to control this by framing stricter regulations. Over the last decade, copyright owners have actively fought the easy availability of pirated copies of their products. However, the advent of digital piracy is rapid increasing in many markets, despite the availability of copy protection and digital right management.¹⁷

The sustained presence of piracy complicates the design of pricing schedule for sellers of copyrighted material. It also poses the challenge of choosing an appropriate level of technology-based protection and of responding strategically to the hacking of the existing DRM systems.

The combination of the internet and digital technology is a challenge not only to the copyright law in India but several other countries too. Kathy Garmezzy¹⁸ stated that while counterfeit DVDs, remain a concern for the internet.

Digitalization has affected copyrighted material in several ways, including simplification of reproducibility, reproduction in costs of reproduction, easier substitutability of the digitized copies and equally inexpensive dissemination of digitized products. Digital reproducibility has enhanced the compression and storage of the digital content from such storage media, and communication of such digital content over the internet. The obvious fallout has been that copyrighted material has come under an increased threat of unauthorized copying, which deprive the authors and copyright owners of economic return of their investment of labor and capital, which in turn is a disincentive for such production. This also affects the development theory of copyright, as unauthorized digital copying affects creative production and development based on such industries. Such industries, particularly the audio- visual industries (AVI) are the worst hit

¹⁷ “Online Piracy a Genuine Threat to the Indian Film & Television Industry”, Motion Pictures Association Asia Pacific-Pacific Press Release (2009) archived at <http://www.glamsham.com/movies/scoops/09/dec/15-online-piracy-a-genuine-threat-to-indian-film-n-television-industry-120914.asp> (Last Visit on 22/04/21).

¹⁸ Assistant Exicutive Director for Government and International Affairs- Director Guide of America.

by piracy as digital technologies have mostly been adopted by these industries over the years. AVI players sought to contain this threat by regulating technologies that aid such infringement¹⁹.

The WIPO copyright Treaty 1996 and WIPO Performers and Phonograms treaty 1996 has provided the copyright industry with the technology to protect their content, a move supported by the European Union (EU). This move required the contracting parties to adopt adequate and effective legal measures to regulate devices and services intended for technology defeating purpose. The treaty left it open for the contracting parties to define the technological measures in their domestic legislations and only covered those measures which are used to exercise the right²⁰

The U.S. Supreme Court in *Metro Goldwyn Mayer Studios Inc. v. Grokster Ltd.*²¹, ruled that file sharing networks²² can be held liable when their users illegally exchange copyrighted material. The court found that technology providers should be held liable for infringement if they actively promote their wares as infringement tools. At the same time, it let stand the Court's landmark "Betamax" ruling (*Sony Corp. of America v. Universal City Studios Inc.*²³), which preserved the technologists' ability to innovate without fear of legal action for copyright infringement, which the media industry had sought to overturn.

The law in India with regard to digital piracy is far below international standards. The Copyright Act, 1957 is in the process of being amended to address such issues. To date there has been no specific case dealing with the onset of new technologies. However, in *State of Andhra Pradesh v. Nagoti Venkataramana*²⁴, the Supreme Court held that:

“The object of amending the Copyright Act by amendment 65 of 1984, as noted above was to prevent piracy which became a global problem due to rapid advances in technology. The legislature intended to prevent piracy and punish the pirates, protecting copyrights. The law, therefore, came to be amended introducing section 52A. Thereafter, the piracy of cinematograph films and of sound recordings etc. could be satisfactorily prevented.

Moreover, the object of the pirate is to make quick money and avoid payment of legitimate taxes and royalties. The uncertified films are being exhibited in a large scale.... Therefore, apart from increasing the penalty of punishment under law, it also provides the declaration on the offence

¹⁹ Betamax case (Sony Corp. of America, inc v. universal city studios, inc).

²⁰ Jorg Reinbothe and Silke von Lewinski, “The WIPO treaties 1996”, Butterworths Lexis Nexis London 2002.

²¹ 545 US 913 (2005)

²² Also known as peer to peer or P2P networks.

²³ 464 US 417 (1984).

²⁴ (1996) 6 SCC 409.

of infringement and video films to display certain information on recorded video films and containers thereof.

2.6 SOCIO ECONOMIC FACTORS AFFECTING PIRACY

Is it true that piracy happens because our society views it rather loosely? Or is it a phenomenon strictly dictated by economic motives? Many have argued that in the final analysis, the objective behind any piracy is the economic gains resulting from it. But it is also true that the occurrence of a crime like copyright piracy is largely influenced by the society's perspective towards the crime. This is perhaps to a great extent applicable on the copyright piracy phenomenon in India. In this chapter the researcher proposes to probe on this issue in the Indian context through the identification of social and economic factors which contribute to the event of copyright piracy in the country.

The socio-economic elements of a nation can be addressed by factors like its populace size, GDP, education level, per capita pay, occupational structure of workforce, personal satisfaction appreciated by individuals and so forth. It is hard to set up any direct causal connection between these factors and piracy. Notwithstanding, some of them are relied upon to apply their impact on piracy phenomenon - straightforwardly or in a roundabout way. Such factors incorporate education, per capita pay, poverty level and so on.

2.6.1 ILLITERACY & PIRACY

India houses the biggest number of illiterate people on the planet. The degree of illiteracy is alarmingly high at 48% level. A serious level of illiteracy often also negatively impacts copyright matters, all the more explicitly concerning their effective protection. Illiteracy may help the possibilities of piracy in an unexpected way. Illiterate people can't peruse or read, and are consequently, not in a situation to pass judgment on the creativity or originality of items like the manner in which an informed individual can do, for example, by seeing copyright notices and so forth.

The low level of awareness which, in turn, is the product of a high degree of illiteracy among a large number of end users, might be exploited by a few miscreants by selling pirated audio-video products.

The above discussion points to the fact that a country's literacy level has huge impact on the extent of piracy prevalent over there. In a highly literate society, the consumers are expected to

have a reasonably high degree of awareness and education on copyright and, therefore, there may be lesser tendencies among the end users to buy and/or use pirated works. But this does not always hold true as many of the countries having higher literacy rates than India. But some of them experience higher incidences of piracy when it comes to audio products and/or computer softwares. This shows that there are other causes besides illiteracy or lack of awareness that contribute to the spread of piracy.

2.6.2 POVERTY & PIRACY

The economic return is certainly one of the objectives and perhaps the most important among all. After all Copyright piracy is an economic phenomenon. The pirates have a solitary objective i.e. to make pecuniary gains from others' creative efforts. They can do this because pirated products find ready demand from a few sections of the society whose demand stands unfulfilled by usual sources of supplies.

If identical products are also available at lower prices, the consumers have a tendency to purchase the cheaper ones irrespective of other considerations. This perhaps demonstrates, to a large extent, the genesis of the piracy phenomenon. Illiteracy or the lack of awareness on copyright, though is a contributory, is of secondary importance as far as the cases of piracy is considered. As long as the pirates can sell their products at a price lower than that of the original producers, there would not be any shortage of buyers provided the products are of some 'acceptable' quality or standard.

The GDP per capita of India is one among the lowest in the world; lower than even most of the Asian countries. A sizeable section (36%) of the country's population lives below the poverty line (BPL). Most of the copyright products are treated here as luxury items. Naturally 'affordability' acts as the main constraint in the purchasing decision. The pirated products being cheaper than the originals, therefore, become the obvious preference for the majority consumers.

2.6.3 HIGH PRICE LEVEL & PIRACY

The inability to afford among Indian consumers is not due to low-income level alone. Prices of copyrighted items are spiked and thus remain unaffordable not only to the poorer sections but also to the majority of the prospective, well-off customers. In India, a computer software, on an average, is sold at US \$ 250, a decent quality audio CD is not available below Rs. 200. The text

books for professional courses such as engineering, medical and management remain beyond the purchasing capacity of many students. Under such circumstances, piracy provides the obvious escape route for all those who cannot afford to purchase the originals. The awareness of copyright is, thus, of less material consequence. Almost a common sentiment has been aired by the sellers of copyright products and even some of the right holders especially the publishers. The sellers' group was unanimous that high price of original copyright products was the primary culprit behind the emergence of piracy in India.

2.6.4 UNEMPLOYMENT & PIRACY

Besides illiteracy and poverty, unemployment can be another economic evil affecting piracy events in India, even though it is quite difficult to establish a direct nexus between piracy and unemployment. Copyright based industries are labour intensive in nature. But due to the high volume of unemployment in the nation, the legitimate segment of the industry can absorb only a fraction of the labour force. Resultantly, the unemployed persons venture into all sorts of activities including the illegal production and sale of copyright products. The immediate provocation to do so is influenced by the possibility of churning "quick" and "high" returns from less investment and efforts, a feature typical to piracy.

2.6.5 POOR ENFORCEMENT & PIRACY

Unemployed personnel to piracy field are the laxity in the country's copyright enforcement machinery. Copyright piracy stands as a cognizable offence as per the Copyright Act. But as in the case many similar laws, anti-piracy enforcement of law remains quite ineffective. In India, there is no serious threat of being caught and punished when found involved in the act of piracy. Moreover, low order crimes like copyright piracy do not receive the highest attention from the police.

The right holders are also to be blamed for their casual attitude towards the piracy phenomenon. In any incidence of piracy, it is the right holders, whose interests are at stake, hence they should more actively participate than others in combating it. But sadly, the Indian right holders lack this zeal. Only a handful of section among the right holders' volunteer to lodge a complaint with the law enforcement authority.

2.6.6 LACK OF INFRASTRUCTURE & PIRACY

The lack of infrastructural facilities in India is also expected to influence copyright piracy in some way or the other. It is a well-known fact that available infrastructures in India fall short of actual requirement in the country and are of lower qualities when compared to international standard. According to a report India the last rank in infrastructure among 46 countries whose performance were reviewed in the year book²⁵. The World Economic Forum (WEF) also depicts a similar dismal picture for India in the infrastructure front; with India ranking at 50 out of 53 countries²⁶. Besides shortages of basic infrastructures like roads, railways etc., India lacks in public's access to communication and information, India is lagging behind not only the developed countries like the USA, UK etc.

This may be the reason for India not coming forth as an integrated market place. The markets in India have remained largely fragmented; the pirates in India are found more to operate at the local levels. Many rural and semi urban markets in the country are characterized by demand supply gaps which, in turn, exist due to a host of reasons including shortages of infrastructure. Footpath and petty shops selling audio-video products is a common sight in India to go unnoticed.

²⁵ The World Competitiveness Year Book 1998, brought out by International Institute of Management Development (IMD) Lausanne (Switzerland)

²⁶ Global Competitiveness Report 1998

CHAPTER 3

INDIAN FILM INDUSTRY AND THREAT OF PIRACY IN DIGITAL AGE

The Indian media and entertainment sector, particularly the film industry— popularly known as Bollywood, has experienced robust growth over the last few years and has become one of the fastest growing sectors of the economy despite the economic downturn²⁷ In last few years, several Bollywood films have successively broken previous records on box office collections, which have perhaps also prompted both multinational entertainment companies and Indian conglomerates to invest in Bollywood films.

Traditionally, the Indian film industry has been social relationship centric, under which the arrangements/ agreements were either oral or scantily documented and the disputes were usually resolved without going into arbitration or litigation. This, however, meant absence of proper chain of title documentation leading to uncertainty in the flow of rights. Only in the past few years, the Indian film industry has woken up to the need for protection of intellectual property rights.

3.1 THE INDIAN FILM INDUSTRY

Some of the key trends in this industry include:

Growing industry size- The growth in India's per capita income coupled with an increasing tendency to spend on discretionary items has led to a larger audience and consumption market for the industry. As a result, many new players have entered this segment and the existing players are focusing on expanding their own portfolio. For example, Yash Raj Films, one of India's most well-known and respected film production houses, has recently started production of television serials for Sony Television.

- **Largest number of movie releases in the world** - India is one of the largest producers of films in the world, in terms of number of films produced. This coupled with the growing international movie market in India has led to the Indian consumer having access to a huge variety of content.

²⁷ Report by the Federation of Indian Chambers of Commerce and Industry (FICCI) and research firm KPMG available at <http://www.indiainbusiness.nic.in/industry-infrastructure/service-sectors/media-entertainment.htm> (last visited on 02/04/21)

- **Piracy impacting returns²⁸**- The Indian film industry is significantly impacted by online piracy. A study undertaken by Motion Picture Distributors Association (MPDAI) has put India among the top ten countries in the world, where online piracy is at its highest. Hollywood (English Films), Bollywood (Hindi Films), Tollywood (Telugu Films) and Kollywood (Tamil Films) are the prime victims of the crime. Research has shown that online piracy of film and television content in India is mainly through file sharing networks.
- **U.S. / International studios in India**- Hollywood and other international players have been making determined efforts to enter and consolidate their positions in India. Their endeavours have ranged from joint productions (for example Warner Bros. joint production with Ramesh Sippy for Chandni Chowk to China, Walt Disney's joint production with Yash Raj Films for Roadside Romeo and others) to international films being released in English and regional languages. Hollywood/ international efforts to dub their films in Indian regional languages has been an attempt to reach out to a wider audience and boost box-office numbers and this effort has been very successful in the recent past
- **Exhibition facilities** - The expansionary tendencies of the multiplexes and the growing demographic trend of increasing consumer spend on entertainment has led to multiplexes expanding into other properties. However, the recession in FY 2008-09 and the high cost of developing property has led to a slowdown in the rate of expansion with different operating models (like managing mall properties) being explored. The ability of better facilities to attract audiences has also caused many single screens to upgrade their premises.
- **Better realization for producers in FY 2009-10** - The agreement of higher revenue share from exhibitors posts the exhibitor-producer strike as well as more accurate reporting of ticket sales has led to improved realization for producers. With many exhibitors now opting for digitization of content and computerized ticketing, the reduction in under reporting of revenue and cost of prints has improved profitability.

²⁸ “Economic Contribution of Indian Film and Television Industry” (March 2010) prepared by PricewaterhouseCoopers for Motion Picture Distribution Association (India) available at http://www.jimca.co.jp/research_statistics/reports/EconomicContributionReportMarch2010.pdf

Additionally, the digitization of content has led to an ability to service a large geography in a timely manner which has helped in reducing piracy.

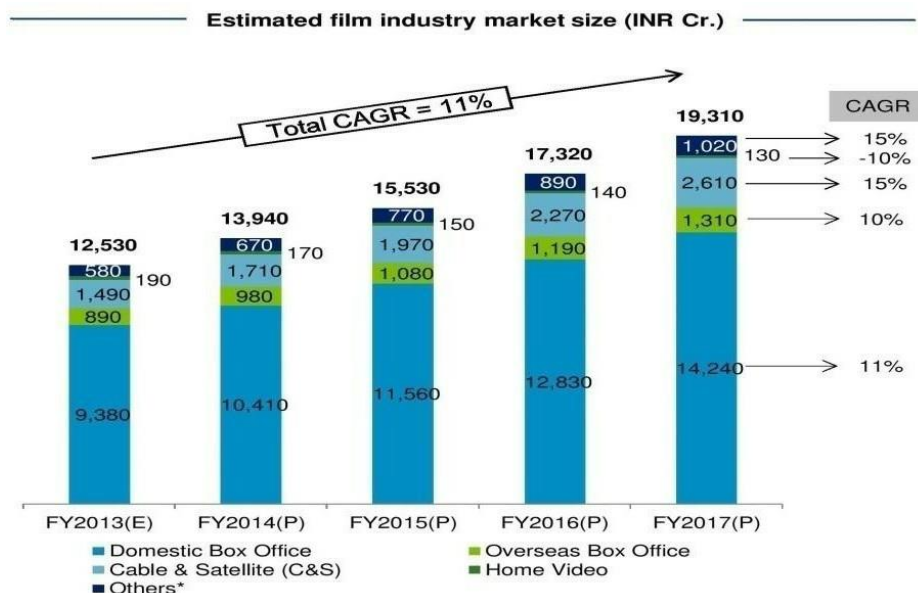
- **Entertainment Tax exemptions** - The Entertainment Tax exemption provided by the State Governments has served as an incentive for multiplex expansion and as a result, most multiplex properties have been functioning under subsidies on Entertainment Tax. With the expiry of these subsidies, we can expect a drop in realisations over the next 5 years creating changes in the profit and loss account structure of such exhibitors.
- **New distribution platforms** - With digital content gaining ground as the preferred media, it is natural that other digital delivery mechanisms would also be explored. Coupled with an audience willing to experience new delivery streams, this has led to a convergence of media enabling content on mobile phones, MP3 players and computers²⁹. This in turn has led to higher realizations for content producers and added new players in the distribution chain.
- **Regional Films in India:** Mainstream cinema in India is dominated by Hindi language films which typically make up a significant portion of total domestic box-office collections. However, over the last few years, regional language films have been growing in popularity with releases in a greater number of theatres both within and outside the Indian Territory. Within regional languages, the South-Indian segment is an important market in terms of number of film releases with the four southern states comprising Andhra Pradesh, Tamil Nadu, Karnataka and Kerala together accounting for a majority of the total number of film releases in India. Other regional language markets in India include films made in Bengali, Bhojpuri, Marathi, Punjabi etc. The total domestic box-office collections from regional language films in India are estimated to be about Rs. 1,508 crores³⁰.

²⁹ Film Industry in India: New Horizons, Ernst & Young, available at http://indiainbusiness.nic.in/newdesign/upload/news/New_Horizons_Final.pdf

³⁰ "Hitting the High Notes" FICCI-KPMG Indian Media & Entertainment Industry Report 2011 by KPMG 63- 64 (2011), available at <http://www.kpmg.com/IN/en/IssuesAndInsights/ThoughtLeadership/FICCI-KPMG-Report-2011.pdf> (Last visited on 15/05/21).

- The Indian film industry is estimated at INR 12,530 Cr. (US\$ 2,020 mn) in FY2013, and expected to grow at a CAGR of 11% over the period FY2013 – FY2017³¹

➤ Domestic box office collections accounted for a majority of film industry revenues, representing 75% of the total industry revenues in FY2013.



➤ C&S rights and online/digital aggregation revenues are the fastest growing segments, and expected to grow at a CAGR of about 15% over the period FY2013 – FY2017, driven by rising demand for movies on TV and increasing Smartphone penetration across the country respectively.

➤ The home video industry has been shrinking, and this is expected to continue, due to increasing piracy and more importantly, by the growing popularity of digital platforms. Home video has lost share to Video on Demand (VOD) through DTH operators and OTT Platforms.

- While the Hindi movie industry in India is the largest, the country also has a fairly large and active regional movie industry³²:

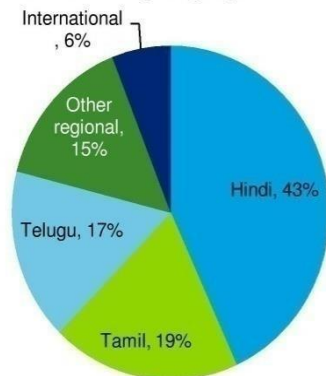
➤ Films in India are usually segmented into 3 key groups, based on language: A) Hindi; B) Regional (includes Tamil, Telugu, and Other Regional); C) International (includes English and

³¹ Statics Source: "Economic Contribution of the Indian Motion Picture and Television Industry" by Deloitte and MPA published on march 2014 available at <http://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/in-tmt-economic-contribution-of-motion-picture-and-television-industry-noexp.pdf>

³² Source: Industry discussions; "Real estate firm to co-produce Marathi film", January 20, 2014, Business Standard; "Prop no more", November 13, 2011, Business Today;

foreign language films).

— Box office net revenues by language in FY2013 in % —



Source: Box Office reports, Industry discussions and analysis

— Box office revenues by language in FY2013 —

Languages	INR Cr.	US\$ mn
A Hindi	3,500	565
B Regional		
i Tamil	1,550	250
ii Telugu	1,350	218
iii Other Regional	1,220	197
C International (English and Foreign language films)	480	77
Net Revenues	8,100	1,306
Add: Entertainment tax	1,270	205
Gross Revenues	9,380	1,513

Source: Box Office reports, Industry discussions and analysis

➤ The Hindi film industry is the largest in India, representing 43% of net box office revenue.

➤ Within the Regional film industry, Tamil and Telugu are the largest segments comprising ~36% of net box office revenues.

➤ The ‘Other Regional’ segment (comprising ~15% of net box office revenues) in FY2013 was estimated to be:

-Malayalam (FY2013): INR 250-275 Cr (US\$ 40-44 mn);

-Kannada (FY2013): INR 250-275 Cr (US\$ 40-44 mn);

-Bengali (CY2012): INR 100 Cr (US\$ 16 mn);

-Marathi (CY2011): INR 100 Cr (US\$ 16 mn);

-Punjabi (CY2011): INR 50 Cr (US\$ 8 mn);

industry participants suggest that the Bhojpuri industry is also a notable contributor to regional cinema.

➤ Large national producers such as Reliance Entertainment, Eros, Disney UTV, Viacom 18 Motion Pictures, Fox Star Studios as well as independent producers like Emmay Entertainment (Nikhil Advani), Akshay Kumar and Grazing Goat Productions plan to spend 20% of their annual budgets on regional cinema.

➤ International films is currently a small, but growing segment, driven by rising numbers of English (and other foreign language) speakers, as well as increasing numbers of international movies witnessing dubbed releases across the country.

● **The industry is witnessing various changes: digital adoption across the value chain; International films gaining share, and TV broadcasters looking for regional content³³**

➤ The traditional box office value chain consists of production, distribution and exhibition, and the direct economic impact of each element has been estimated.

➤ Elements such as online / digital aggregators and digital distributors of films are also part of the film industry value chain, and their direct impact has also been estimated.

➤ A film earns a significant share of revenue from non-theatrical avenues such as licensing (and/or sales) of C&S rights, internet rights, home video rights etc. Aggregators (e.g. Rajshri, Shemaroo etc.) are conduits between filmmakers / distributors and platforms (e.g. iTunes, You Tube etc.) where people go to watch or buy films.

3.2 US / INTERNATIONAL FILM INDUSTRY IN INDIA

The U.S. / International film industry in India had an estimated size of Rs 300 crores (USD 66 million) in FY 09 and is expected to increase steadily going forward. This industry revenue consists of the box office collections of U.S. / International films released in India in FY 09.

Some of the key trends in this industry are :

● U.S. / International cinema appealing to Indian masses -U.S. / International films are making a mark with the Indian masses and are no longer confined to audiences in metro and large cities. Dubbed versions of U.S. / International films are appealing to the Indian masses staying in small towns and villages.

● 2012 turned out to be a huge hit in India in 2009, with box office collections of over Rs 90 crores, surpassing the previous highest grossing Hollywood film in India, Spiderman-3. The film had the widest release ever for a Hollywood film with a total count of 766 prints in English, Hindi, Tamil and Telugu. The film proved successful in both urban multiplex cinemas and traditional single screen cinemas in small towns and villages.

³³ Industry discussions ; “Hindi channels dub to dip in the southern flavour”, July 19, 2012, The Hindu Business Lin

- For Spider-Man 3, Sony had released 558 prints across the country. Of these, 261 prints were in Hindi, 162 in English, 156 in Tamil and Telugu, three special IMAX prints, and six, in Bhojpuri. It was a first for a Hollywood movie. A three-month long marketing campaign covered nine metros and nearly 70 small towns. The Bhojpuri version of the movie ran to packed houses at halls in Bihar's interiors.
- Hollywood blockbuster Avatar, has grossed over Rs 100 crores in India, making it the biggest ever film for Fox in India after breaking Titanic's record collections of Rs. 55 crores. As discussed below, Avatar heralds the trend for viewers to pay higher prices for a 3D movie experience.
- A recent trend has been the release of children films by U.S./ International studios in India in the summer season and their success at the box office. Bollywood produces lesser number of such children films where Hollywood has taken lead in India. Last year, the two stars of Hollywood for Indian summer were Harry Potter and Night at the Museum.
- Night at the Museum, a 20th Century Fox release, grossed Rs 2.3 crores in India over its opening weekend and about Rs 4 crores overall. Harry Potter, an all-time children's favourite, grossed about Rs. 20 crores. Warner Bros released Harry Potter & the Half Blood Prince with 350 prints and 450 screens in India

Global players' entry into the Indian Film business³⁴ –

- Walt Disney produced and released its first film in India in 2008 with Yash Raj Films, Roadside Romeo, a full-length animation feature film. Tamil superstar Kamal Haasan also starred in two Disney productions - Marmayogi and 19 Steps. Disney also bought the home video rights of Aamir Khan's directorial debut Taare Zameen Par for release in the US.
- Warner Bros released its film made in association with Ramesh and Rohan Sippy: Chandni Chowk to China in January 2009. It ventured in India as distributors with the film Saas, Bahu Aur Sensex. Warner Bros also signed a three-movie deal with People Tree Films and a one film tieup with Tandav Films. The production house has also brought in internationally acclaimed Indian filmmaker Shekhar Kapur to direct a USD 200 million Hollywood fantasy-epic Larklight.
- Fox STAR Studios tied up with Vipul Shah for a multiple-film exclusive deal.
- Mexican global multiplex operator Cinopolis announced plans to invest Rs 1,700 Cr

³⁴ “Economic Contribution of the Indian Motion Picture and Television Industry” by Deloitte and MPA published on march 2014 available at <http://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/in-tmt- economic-contribution-of-motion-picture-and-television-industry-noexp.pdf>

in India for its film exhibition business over the next seven years. It has already established an Indian subsidiary that is in talks with mall developers for opening 500 movie screens by 2016. In the first phase of expansion, the company plans to invest Rs 370 Cr for opening 110 screens across eight locations. In July 2009, the exhibition chain tied up with Advance India Projects Limited (AIPL), to set up its property in their mall project in Amritsar.

- **3Dmovies** -The success of Avatar has paved the way for 3D cinema in India. 3D presentations have accounted for 81 percent of Avatar's gross box office collection. That is by far the largest 3D gross ever, and "Avatar" is effectively most people's first sampling of the new 3D technology. With the release of Avatar, 3D screens in India have seen a rise in cities like Mumbai, Delhi, Pune, Bangalore, Chennai and Hyderabad as well as in smaller centres like Coimbatore, Amritsar, Kerala, Jaipur and Ahmedabad.

3.3 INFRINGEMENT OF COPYRIGHT AND ONLINE PIRACY OF INDIAN MOVIES

Online film piracy in India is a global-level problem, according to two reports published by The **Motion Picture Distributors Association (India)**. Like most other film industries across the world, the Indian film industry relies extensively on media and industry-sponsored studies for arguing that online piracy is substantial in India.

The problem of piracy has increased with rapid advances in digital media technology. New technological solutions along with the worldwide reach of the Internet are making it easy for the pirates to carry on their illegal activities. Increase in the number of file-sharing networks and portals have also increased infringements by the consumers themselves³⁵.

Piracy of copyright is a phenomenon prevalent worldwide and can be in the form of illegal distribution, exhibition, and copying, downloading or uploading. Piracy causes huge losses, not only to the owners of copyright but to the industry and the economy as a whole. Despite recent stringent measures taken by the government, India is, unfortunately, among the top five countries in the world, in terms of piracy⁴³.

According to a report published in March 2009 by United States-India Business Council (USIBC) and prepared by **Ernst and Young India**, claims that as much as Rs.16, 000 crores are lost due to piracy. Alongside, as many as 80,000 jobs are lost directly as a result of theft and

³⁵ "Economic Contribution of the Indian Motion Picture and Television Industry" by Deloitte and MPA published on march 2014 available at <http://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/in-tmt-economic-contribution-of-motion-picture-and-television-industry-noexp.pdf>

piracy³⁶, afflicting India's entertainment industry. This report was commissioned as a part of the **USIBC–FICCI** Bollywood–Hollywood initiative and covered film, music, television and video games. It was funded by the Global Intellectual Property Center of the U.S. Chamber of Commerce. The spectacular press launch meeting was organized in Mumbai and also attended by Yash Chopra, chairman of FICCI Frames and Ramesh Sippy, the famed director who commented on the occasion, *“I know firsthand the importance of fighting piracy to support the growth of Bollywood. I commend the USIBC–FICCI initiative for enlisting all elements of the entertainment industry against piracy³⁷. ”*

The President of USIBC, Ron Summers used the opportunity to suggest stronger legal means to tackle piracy. He said, *“We strongly support passage by India of optical disc legislation that will thwart piracy in this important industry. We are pleased to stand shoulder to shoulder with counterparts in India to help protect jobs and revenues that are now being needlessly lost to piracy.”*

Report by the US-India Business Council and the US Chamber of Commerce's Global Intellectual Property Centre reveals those losses to the industry from trade in illegal CDs, DVDs, music downloads and cable television account for 38% of potential sales or approximately US \$4 billion. Furthermore, the annual International Data Corporation (IDC) and Business Software Alliance global software piracy study puts the rate of pirated software at 64%, representing a gross annual loss to the software industry of US \$27 billion³⁸.

In a report by internet company **Envisional**, it was found that online piracy of film and television content in India is carried out primarily through file-sharing networks like BitTorrent and cyberlockers, or web-based file hosts such as RapidShare or HotFile; video streaming websites were less popular⁴⁷. Envisional, ranked India fourth after the U.S., U.K. and Canada. Relative to the number of broadband subscribers, India has the highest level of online film piracy of any English-speaking country.

³⁶ Piracy in India's Entertainment Industry Causes Huge Losses to Indian Economy” published on 27th March 2014 available at <http://www.prnewswire.com/news-releases/piracy-in-indias-entertainment-industry-causes-huge-losses-to-indian-economy-57149602.html>

³⁷ Piracy Studies in India: The Effects of Counterfeiting and Piracy on India's Entertainment Industry” by Center for Internet and Society, published on 22 Jan 2010 available at <http://cisindia.org/a2k/blogs/piracy-studies-india> (Last visited on 15/05/2021)

³⁸ Fighting the crime of the 21st century” by FICCI (2012), available at: http://www.ficci.com/sector/5/Add_docs/WTR_36%20India%20CC.pdf (Last visited on 15/05/21) ⁴⁷“India major “online film piracy hub” by Deccan Herald (2013)

Although the country's digital infrastructure falls a long way behind many other countries, a report by Internet Company **DtecNet** placed India in the top 10 countries for illegal peer-to-peer activities.

"There is a danger that as the Internet infrastructure in the country continues to grow at a fast rate, it will serve to power a community of Internet users who will view piracy as an activity without consequence and who will engage in such activity with ease," Hindi film producer Mahesh Bhatt said in a statement.

The most remarkable among such studies, which projects the views of the Indian film industry on online piracy, is *India: Internet Piracy Landscape Audit*, conducted by Envisional and the Motion Pictures Association (hereafter referred to as "MPA study")³⁹. The MPA study claims that online piracy of movie content is significant in India. According to the MPA study, Indians are the largest group of visitors to the Indian content-focused torrent sites, and they also constitute the largest or second largest group of people who visit the five major international bit-torrent sites⁴⁹.

The five major international bit-torrent sites mentioned in their report are Mininova, Torrentz, Thepiratebay, Isohunt, and Btjunkie. While Indians are found to be the largest group of visitors in torrentz, they are reported as second only to those from the **U.S.** in the remaining four. The MPA study also provides some interesting data regarding the downloading of pirated movies. They claim to have tracked the IP addresses of computers that downloaded six Hollywood movies⁴⁰. Their data show that Indians constitute the fourth largest group, with **6.5%** of the total downloaders⁴¹. Based on a comparative analysis, the MPA study claims that India has the highest levels of broadband piracy relative to number of broadband subscribers.

The MPA study also provides some data regarding the illegal downloading of Bollywood movies. It provides estimates regarding the illegal downloading of some movies during the four weeks from which a pirated copy was available, and argues that illegal downloads are substantial in India. According to their report, one of the movies in their analysis, *Kaminey*, was downloaded

³⁹ "India: Internet Piracy Landscape Audit" By Envisional & Motion Pictures Association Published In 2009. ⁴⁹ The report mentions that they conducted this analysis using Alexa, one of the web-services that provide web traffic data of different websites.

⁴⁰ It may be noted here that the rationale used for the selection of movies is not mentioned in the study.

⁴¹ "India: Internet Piracy Landscape Audit" By Envisional & Motion Pictures Association Published In 2009. The study mentions that 0.76% of the 7 million broadband customers in India were detected to have downloaded at least one of the six pirated movies during the four week monitoring period. The study mentions that the ratio of the same was 0.7% in Canada, 0.5% in Great Britain, 0.44% in Australia, and 0.18% in the US.

more than **350,000** times on BitTorrent and two thirds of the download could be traced to locations within India. The study claims that the illegal downloading of Bollywood movies is mostly from Delhi, Bangalore, and Mumbai⁴².

The MPA study also makes some interesting estimates regarding the use of cyberplaces for piracy in India. It mentions that there are around 2 million regular users of such sites worldwide" and Indians are one of the largest users of cyberplaces. According to their data, Indian users constitute **8.2%** of the visitors to the top ten cyberplaces in the world.

It is important to observe that the domestic theatrical revenues of the Indian film industry do not show any correlated decreases in revenues corresponding to the increases in Internet connections and Internet users in India. On the contrary, domestic theatrical revenues for the film industry are seen moving in an upward direction, in spite of the increase in the number of Internet users in India. For example, the total revenues of the film industry have increased from **INR 83.3** billion in the year 2010 to **INR 92.9** billion in the year 2011⁵⁸.

The industry is also projected to have a combined annual growth rate of **10.1%** during the period from 2011 to **2016**. Even the music industry, which is portrayed by many as the biggest victim of piracy, shows a similar picture of growth in revenues in India. The Indian music industry has witnessed an overall increase in revenues from **INR 8.6** billion in the year 2010 to **INR 9** billion in the year 2011. But the most interesting factor that one may notice while analysing the combined annual growth of the music industry during the years **2007** to 2011 is that there has been a substantial reduction in the sale of physical media (**-17%**) along with a drastic increase in the sale of digital media (**+39%**)⁴³. This clearly indicates a major change in consumer preferences and any decline in the sale of physical media in music may only be indicating changing consumer preferences.

It does not in any manner suggest that online piracy of Indian movies is negligible. In fact, any

⁴² "Online Piracy a Genuine Threat to the Indian Film & Television Industry", Motion Pictures Association Asia Pacific-Pacific Press Release (2009) archived at <http://www.glamsham.com/movies/scoops/09/dec/15-online-piracy-a-genuine-threat-to-indian-film-n-television-industry-120914.asp> (Last Visited on 16/05/21).

⁴³ Digital Dawn: The Metamorphosis Begins" FICCI-KPMG Indian Media & Entertainment Industry Report 2012, KPMG 61 (2012), available at <http://www.kpmg.com/IN/en/IssuesAndInsights/ThoughtLeadership/Report-2012.pdf> (Last visited on 16/05/21). "Economic Contribution of the Indian Motion Picture and Television Industry" by Deloitte and MPA published on march 2014 available at <http://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/in-tmt-economic-contribution-of-motion-picture-and-television-industry-noexp.pdf>

search engine can show thousands of pirated Indian movie files spread across the web. In many cases, the pirated versions of the movies are also released online on the same day or the very next day of release of the movie in cinemas.

As most economists would agree, the demand for a product has a substantial role in increasing the supply of that product in the long run, and the same should be true in the case of pirated movies. This leads to the puzzling question of who are the primary consumers of Indian pirated movies available online.

One should also note that other legitimate channels that provide access to Indian movies for consumers abroad are limited even today, in spite of the enormous potential of the market and the opportunities provided **by** the digital technologies. During earlier times, the neglect of the market could have been attributed to the enormous costs involved in producing and circulating film prints in overseas markets and the resulting financial risks the producers had to undertake. But such excuses do not exist today, in view of the possibilities of current digital technologies to reach consumers directly at reasonable costs. During the earlier times, the pirates had played a major role in making the Indian movies reach the neglected overseas markets through playback technologies like video cassettes and the "Indian" grocery shops abroad had a prominent role as the intermediary channel.

However, with the emergence of Internet and online sharing platforms, the only major change that has happened is the replacement of those intermediaries to a great extent, as pirates can reach most consumers directly now. This may continue as long as the film industry ignores the digital opportunities for reaching consumers abroad.

3.4 EXAMPLE OF PIRACY IN FILMS

Ra.One:

‘Ra.One’ was one of the most anticipated film of Bollywood and the world is aware of this fact, and the hackers are no different. They were successful in leaking ‘Chammak Challo’ sound track on net⁶⁴. The entire album of his sci-fi magnum opus was leaked online mere days prior to its official launch last evening.

Lead star and producer Shah Rukh Khan was unhappy from this untimely, destructive development that leaked the song before its time. Naturally, the only damage control vehicle left

for the actor and film producer was to take to micro blogging site Twitter and appeal to his millions of fans to obtain the album through legal means⁴⁴.

Khan tweeted: *“How sad it is that someone somewhere has no regard for our labour of love. Five years of work and they put it on the net so callously. Extremely sad...”*

Vishal Dadlani tweeted *“Show your support for “RA.One” and SRK. Don’t download illegally.”*

Anubhav Sinha added: *“Appeal. Everyone who has an illegal “RA.One” track, delete it.”*

Ok Bangaram:

Filmmaker Mani Ratnam’s appeal to the Madras High Court seeking a direction preventing the online streaming of his recent release ‘Ok Bangaram’ on the internet was heeded to by means of an interim stay.

Based on a civil suit filed by the filmmaker, 12 telecommunication companies including BSNL, MTNL, AirTel, Aircel, Vodafone, Reliance Communications – and Tata Teleservices and two websites – Google India and YouTube – received restraining orders against infringing the copyright of the film that released in Tamil and Telugu on April 17.

Maattrraan:

The Madras high court had issued a 'John Doe' order restraining unknown persons from violating the copyrights of Tamil film 'Maattrraan'. John Doe or Ashok Kumar order is a legal tool to prevent online piracy, as it is expected to restrain violators, whose identities are not known, from uploading copyrighted materials without permission. Justice K Chandru, granting the interim relief to Kalpathi S Agoram, producer of the Suriya-starrer, asked him or his representative to give information relating to specific infringement to internet service providers (ISPs), who would then block the link to the infringed material available online.

Tamil film '3':

Tamil film '3', directed by Rajnikanth's daughter Aishwarya became the first film to obtain the John Doe order from the Madras high court. The order, however, created an online mayhem as

⁴⁴ “SRK's 'RA.One' falls victim to piracy again Superstar’s sci-fi flick’s music leaked online” By Bindu Suresh Rai available at <http://www.emirates247.com/entertainment/films-music/srk-s-ra-one-falls-victim-to-piracy-again-2011-09-13-1.418085> (Last Visited 16/05/21)

several websites were blocked by service providers⁴⁵.

Gangs of Wasseypur:

Bombay High court passed its first ex-parte, unconditional “John Doe” order to preemptively ban the piracy of Viacom Motion Picture film *Gangs of Wasseypur*. Justice BR Gawai restraining local cable operator Sonali Cable Vision Pvt Ltd and internet service provider (ISP) Spectranet Limited, and Mr John Doe (Ashok Kumar) standing for unknown defendants, from pirating the movie that was scheduled to be released on 22 June 2012.

Movie producer Reliance BIG had won several John Doe orders in Delhi, and Bombay High Court had been passing various John Doe orders on virtually every release for Viacom –including for movies like *Speedy Singhs*, *Loot*, *Players*, *Kahaani*, *Blood Money*, *Bittoo Boss* and *Department*.

Singham:

Reliance Entertainment has availed of a John Doe Order to ensure legal action against illegal screening from the Delhi High Court on July 20, meaning thereby that any individual caught watching the film illegally would be slapped with a law suit. a pre-emptive measure for film *Singham*⁴⁶.

The John Doe Order received in favour of *Singham* was believed to be the first of its kind, as it had covered making *Singham* available without a valid license from the makers of the movie, illegal. This included through cable, internet, physical DVDs or any other mode."

Kaminey:

Hindi film 'Kaminey' is estimated to have been downloaded over 350,000 times on BitTorrent with around two-thirds of those download locations originating from India.

Jagguhhai:

⁴⁵ “Court issues order restraining online piracy of Suriya film” Times of India, (Oct 13, 2012) available at <http://timesofindia.indiatimes.com/city/chennai/Court-issues-order-restraining-online-piracy-of-Suriya-film/articleshow/16791913.cms> (Last Visit 16/05/21)

⁴⁶ *Singham on piracy alert*” by Kunal M Shah, Mumbai Mirror (Jul 24, 2011) available at <http://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/Singham-on-piracy-alert/articleshow/9333743.cms> (Last Visit 16/05/21)

Tamil film *jagguhai* was posted online before it was even released in theatres, a number of Bollywood actors who were not even in the film, including megastar Rajinikanth, got together to condemn the piracy and call on viewers to take action⁴⁷.

⁴⁷ Sara-Radhika in Tears: Stars Support”, (Jan. 5, 2010), available at <http://www.indiaglitz.com/channels/tamil/article/53274.html> (Last Visit 16/05/21)

CHAPTER 4

PROTECTION AND MANAGEMENT OF DIGITAL RIGHTS

4.1 DIGITAL RIGHTS MANAGEMENT ("DRM")

Digital Rights Management ("DRM") is a generic term that refers to access control technologies that can be used by hardware manufacturers, publishers, copyright holders and individuals in order to impose limitations on the usage of digital content and devices. DRM promises to offer a secure framework for distributing digital content, be it music video, works in writing or even raw data. DRM ensures that content providers in particular copyright owners receive adequate remuneration for the creation of the content that is distributed over the DRM system. Compared to traditional copyright law, DRM promises an unprecedented degree of control over the entire distribution chain and the usage of digital content.

The advent of new technologies including the digital media and analog/digital conversion technologies used on a mass scale have resulted in widespread piracy and thereby has vastly increased the concerns of copyright dependent organizations, especially within the music and movie industries. While analog media inevitably loses quality with each copy generated and, in some cases, even during normal use, digital media files may be duplicated an unlimited number of times with no degradation in the quality of subsequent copies. The advent of personal computers as household appliances combined with the internet and popular file sharing tools have made unauthorized distribution of copyrighted digital media easier thereby aggravating the problem of digital piracy. Thus, in order to protect the rights of the copyright owner it becomes necessary to come up with technology that ensures that the owner alone is allowed to reap benefits of his labour and creativity. This is where the role of DRM comes in.

While DRM is most commonly used by the entertainment industry (e.g. film and recording), it is useful in other situations as well. Many online music stores, such as Walmart Music-Downloads, Apple's iTunes Store, as well as certain e-book publishers, have imposed DRM on their customers. DRM has also been frequently used on content devices such as CDs and DVDs. In recent years, a number of television producers have imposed DRM mandates on consumer electronic devices, to control access to the free broadcast of their shows, in connection with the

popularity of time-shifting digital video recorder systems such as TiVo⁴⁸.

Copyright legislations across the globe have tried to strike a delicate balance between the rights of the content owners or the copyright holders and the rights and legitimate interests of consumers and society at large, by incorporating fair use or fair dealing provisions. Fair use serves a crucial role in limiting the reach of what would otherwise be an intolerably expansive grant of rights to copyright owners. The fair use doctrine thus operates to limit copyright in order to preserve competition. The fair use doctrine also plays an important role by providing a reservoir of incentives to spur innovation. For example, where the public is permitted to use copyrighted works freely, a powerful incentive arises to develop technologies and services that help the public get the most from media content⁴⁹.

Many experts argue that DRM technology unsettles this delicate balance and alters the copyright law landscape as DRM technology gives the copyright owners the right to frame their own copyright laws through technological means. DRM technology cannot distinguish between authorized use and unauthorized use of a copyrighted work. Many experts believe that it would be extremely difficult to make DRM such that legitimate fair use or fair dealing concerns of the consumers are addressed, or given effect to. Therefore, there is an increased need to frame anti-circumvention legislations in such a way that 'fair dealing' concerns of consumers are safeguarded.

Many content owners believe that DRM is the only way to preserve copyrights and to check rampant digital Piracy Content owners further argue that DRM licensing mechanism takes into account consumer use and need, therefore it is consumer friendly. However, DRM and anti-circumvention legislations have been criticized by many fair use advocates for not only interfering with the legitimate consumer's 'fair use' rights but also impeding the progress of science and being anti-competitive⁸⁰. Based on the accepted premise that all intellectual property laws try to strike a delicate balance between monopoly rights and societal rights, including promoting progress of research and advancement of science, any anti- circumvention legislation should be framed in a manner to enable achieving this objective.

⁴⁸ ⁷⁶Malak Bhatt, "Digital Rights Management In Light of the Proposed Indian Amendment-A Boon or A Bane?"

⁴⁹ Fair Use and Digital Rights Management: Preliminary Thoughts on the (Irreconcilable?) Tension between Them" Fred von Lohmann, Senior Intellectual Property Attorney, Electronic Frontier Foundation

4.2 INTERNATIONAL LAW AND DRM

1. DRM systems use various technological protection measures to prevent digital content from being distributed without the right holder's consent. However, DRM protection is not synonymous with technological protection. DRM systems also employ usage contracts and technology license agreements to protect digital Content In addition, anti-circumvention regulations, which have been adopted over the last several years both in the U.S. and Europe, defend technological protection measures against hacking and circumvention⁵⁰.

2. Digital Rights Management systems have received some international legal backing by implementation of the 1996 World Intellectual Property Organization Copyright Treaty ("WCT") which went into force March 6, 2002. Article 11⁵¹ of the WCT requires contracting parties to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures. Furthermore, Article 12⁸³ of the WCT requires contracting parties to provide adequate and effective legal remedies against any person knowingly performing certain acts such as removing or altering rights management information or distributing, importing to distribute, broadcasting or communicating to the public copies of works whose rights management information has been altered or removed. The WCT is implemented in most member states of the World Intellectual Property Organization, though India is not a signatory to this treaty and, therefore, there is no obligation on India to introduce any anti-circumvention legislation.

3. A provision similar to Article 11 of the WCT, protecting performers and producers of phonograms is found in Article 18 of the WIPO Performances and Phonograms Treaty ("WPPT"), which came into force on May 20, 2002. Furthermore, Articles 2, 3 and 6 of the Convention on Cybercrime of 2001⁸⁴, were negotiated by the Council of Europe, Several European countries as well as U.S., Canada and Japan is signatory countries⁸⁵ 2. These countries have also banned the circumvention of DRM security measures, and related preparatory activities.

4. The United States implemented the WCT by enacting the Digital Millennium Copyright

⁵⁰ Stefan Behctold "Digital Rights Management in the United States and Europe" *The American Journal of Comparative Law*, Vol. 53, No. 2 (Spring, 2004), pg. 323-382.

⁵¹ Pamela Samuelson, "DRM [And, Or, Vs.] The Law"; *Communications of the ACM*, April 2003 / Vol.46, No.4

Act of 1998 (DMCA). Section 1201⁵² of the DMCA divides technological measures into two categories: measures that prevent unauthorized access to a copyrighted work and measures that prevent unauthorized copying of copyrighted work. Making or selling devices or services that are used to circumvent either category of technological measures is prohibited under DMCA under certain instances but with respect to the act of circumvention itself, DMCA prohibits circumventing technological measures which prevent access to a copyrighted work but not those which prevent copying. Critics of DMCA and free speech advocates have cited several instances where the provisions of the DMCA have had a chilling effect on free speech and scientific research and have been used to impede innovation and competition.

5. The most important European anti-circumvention regulation is the EU Copyright Directive of 2001 ("EU Directive"). Article 6(1) of the EU Directive prohibits the actual circumvention of any "effective technological measure" that is used by the rights holders of any copyright to protect their works. Article 6(2) prohibits a wide range of preparatory activities, including the manufacture, import, sale, distribution, advertisement for sale or possession for commercial purposes of devices that "have only a limited commercially significant purpose or use other than to circumvent" or are at least primarily designed to facilitate the circumvention of any effective technological measures.

4.3 INDIAN LAW AND DRM

As mentioned earlier, the film industry has always been a powerful lobbying group in the legislative process in India, both at the national and the state levels. While the Constitution of India has vested the legislative competence on copyright related matters with the Parliament of India, different regional film industries in India have been successful in forcing many state legislatures to legislate on the subject of copyright through indirect paths. Several anti-piracy legislations at the state level, including those allowing for preventive detention of suspected infringers, illustrate the lobbying power of different regional film industries at the state level in this regard. But the new DRM provisions show the power of the film industry at the national level.

The Copyright (Amendment) Act 2012 added two DRM Provisions. The first provision deals with protection against circumvention of technological measures. According to this provision, if

⁵² Unintended Consequences: Seven years under the DMCA" Electronic Frontier Foundation, Vol. 4 (April 2006).

any person circumvents an effective technological measure used for the purpose of protecting any of the rights conferred under the Copyright Act, with the intention of infringing such rights, he or she shall be punished with imprisonment which may extend up to two years and will also be subjected to a monetary fine. The second provision deals with protection of rights management information and according to this provision, if any person knowingly removes or alters any rights management information without authority, he or she shall be fined and imprisoned for up to two years.

Similar punishments are also prescribed for persons who distribute, import for distribution, broadcast or communicate to the public, copies of any work or performance without authority, knowing that the rights management information has been removed or altered without authority. The new provisions also specifically mention that the criminal remedies provided are in addition to the civil remedies already provided under copyright law for the copyright owners in such works⁵³.

As evident from the debates on these provisions in the Parliament as well as the statement of objects and reasons in the Bill introduced in the Parliament, the primary objective of the new provisions were combating digital piracy and facilitating India's membership in the WIPO Copyright Treaty (WCT) and the WIPO Performers and Phonograms Treaty (WPPT). As the debates show, the primary argument of the drafters of the new provisions was that harmonization of the Indian copyright law with the two WIPO Internet treaties was necessary and desirable for India to extend adequate protection for copyrighted material in inter-connected digital world.

4.4 LEGAL FRAMEWORK FOR COUNTERING COUNTERFEITING AND PIRACY IN INDIA UNDER DIFFERENT ACTS

As India is not a signatory to the WIPO Internet Treaties viz., WCT and WPPT, it has no obligation to implement laws which impose liability in case of circumvention of technological measures used for copyright protection. However, India has issued a Press Note for its intention to incorporate the provisions of the WIPO Internet Treaties by its proposal to amend the Copyright Act, 1957. In the opinion of scholars, practitioners, and those involved in the industry, India provides not only ample copyright protection, but also a vast array of remedies to deter, ameliorate, and prevent piracy.

⁵³ The Copyright Act, Proviso to Sec. 65B.

i. The Copyright Act, 1957:

“The Indian laws governing IPRs are compliant with the world standards set out in the TRIPS (Trade Related Aspects of Intellectual Property Rights). The current governing statute in India is the Copyright Act, 1957, which has been amended on six instances over the last five decades, most recently in 2012.” As amended and interpreted, the Copyright Act provides protection to films, in terms of both coverage and rights, that is largely comparable to that afforded by many highly developed countries. With respect to coverage, Section 13 of the Act, provides explicitly that "copyright shall subsist throughout India...in cinematograph films."

Though other provisions of the Act restrict such protection to films produced in Berne member countries or by entities from such countries. The Copyright Act does, however, diverge from other statutes in its definitional provision. Section 2(f) of the Act provides that "cinematograph film" means "any work of visual recording [including] a sound recording accompanying such visual recording" and that cinematograph shall be construed as including any work produced by any process analogous to cinematography including video films.

The Indian judiciary, moreover, has been willing to define "cinematograph" in other contexts in accordance with common understandings of what constitutes a film, and neither academics nor those involved in the industry have indicated that Section 2(f) has had any significant impact on the rights of filmmakers.

The Copyright Act provides for both civil and criminal remedies in case of copyright infringement. The police have the power of search and seizure to the benefit of the IP owners in cases of copyright infringement. Even the judiciary has proactively taken steps to curb piracy, by imposing punitive damages on offenders in civil matters and granting injunction anticipatory actions. To ensure speedy delivery of justice in IP infringement matters, the Supreme Court of India has directed all subordinate courts in India to decide IP disputes within four months.

Although Indian laws on IPRs are strong, often the actual court cases in India take twelve to sixteen years to reach their final conclusion. Therefore, it becomes imperative for the aggrieved IP holder to obtain some temporary relief pending final decision of the court. A variety of ad interim and interim reliefs can be availed by the aggrieved IP holder before Indian courts,

including injunctions, Mareva Injunctions, appointment of the commissioner or the court receiver, Anton Piller orders, John Doe (Ashok Kumar) orders, and other orders such as discovery and inspection, or orders for interrogatories. The grant of such reliefs usually takes a couple of days from the day of making the application before the Court.

ii. The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007

The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (IPR Border Rules) empowers the Central Government to prohibit the import of goods that infringe IPRs. There has been a notification in force since January 18, 1964, prohibiting import of goods infringing trademarks and design. The new IPR Border Rules expand upon the subject of the 1964 notification and prohibit the import of goods infringing patents, copyrights and geographical indications as well. For the smooth implementation of the evolving IPR regime, the IPR Border Rules also stipulate the establishment of an IPR Cell at each Customs House which is vested with the responsibility of verifying the applications, providing web-enabled registration formalities and corresponding with the risk management division and other Customs bodies.

iii. Maharashtra Prevention of Dangerous Activities (MPDA) Act, 1981:

The Maharashtra government had notified an ordinance to curb audio-video piracy, prescribing preventive detention and equating IPR pirates with drug offenders under the Maharashtra Prevention of Dangerous Activities (MPDA) Act, 1981. The MPDA allows the police to place offenders or potential offenders in detention for as long as 3 months without bail, and up to a maximum of 12 months. The power of preventive detention has been found to be constitutional, but is subject to strict procedural safeguards.

iv. The Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (Goonda Act)

¹⁰⁸The social service branch of Mumbai police deals with copyright violation and particularly with piracy of physical storage media

¹⁰⁹Haradhan Saha and Anr v. State of West Bengal and Ors, (1974) 1 SCR 1

¹¹⁰Rekha v. State of Tamil Nadu and Ors, 2011 STPL(Web)273 SC

In addition, the States of Tamil Nadu, Karnataka and Andhra Pradesh also equate pirates and counterfeiters, inter-alia, with bootleggers and drug offenders and punish them with imprisonment up to a maximum of 12 months under the respective applicable State laws, which are colloquially referred to as the 'Goonda Acts'. It is notable to mention the efforts made by the Tamil Nadu police in combating piracy and identifying and investigating piracy related cases. In 2008, Chennai Police Commissioner Mr. R. Sekar stated on record that about 180 cases relating to piracy have been registered in the State with many persons being under the Goonda Act and a total of Rs. 130 million worth of piracy has been pre-empted and prevented in the State. In 2009, a total of 2,204 cases were registered by the Tamil Nadu Police under different heads of offences like seizure of DVD / VCD / ACD cases, cable TV operators etc.

In 2010, 2690 cases of piracy were detected by the Tamil Nadu Police, 1,122 people were arrested in connection to piracy and pirated CDs / VCDs worth Rs. 44.8 million were seized. The Goonda Act has helped the Tamil Nadu police to curb piracy and a similar initiative by the legislature at the central level may be able to achieve the same results on a national basis.

5. Customs Act, 1962:

Section 11 of the Customs Act, 1962 provides that the Central Government may restrict or prohibit import and export of goods infringing trademarks, patents and copyrights under section 11(2)(n) of the Customs Act, 1962. Similarly, the Central Government may restrict import and export of goods being in contravention, of any law for the time being in force under section 11(2)(u) of the said Act. In exercise of that power, the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 prohibits import of goods infringing intellectual property rights of the right holders. The said Rules lay down a detailed procedure to be followed by the right holders or their authorized representatives⁵⁴.

India's first cyber legislation, the Information Technology Act, 2000, was introduced to provide legal recognition for e-commerce and e-transactions to facilitate e-governance, to prevent computer-based crimes and ensure security practices and procedures in the context of widest possible use of information technology worldwide¹¹⁴. To implement the said Act, amendments

⁵⁴ ¹¹¹Piracy accounts for 50% of Music Industry's losses, published in DNA India, available at <http://www.dnaindia.com/report.asp?newsid=1194524> (Last visited on 04/06/21)

¹¹²Tamil Nadu Police, 2010- 11 Policy Note on Demand No. 22 available at http://www.tn.gov.in/policynotes/archives/policy2010_11/pdf/home_police.pdf (Last visited on 30/05/21)

were also carried out under the Indian Evidence Act and Banking Laws, to recognize digital signatures and electronic records as evidence in a Court of Law. The Information Technology Act, 2000, was amended in 2009 ¹¹⁵ to include cyber-crimes, confidential data, liability of ISPs and breach of information security. Provisions were introduced to tackle the new forms of crimes like sending offensive emails and multimedia messages, child pornography, cyber terrorism, publishing sexually explicit materials in electronic form, video voyeurism, breach of confidentiality and leakage of data by intermediaries, e-commerce frauds such as cheating by personating, often known as phishing, identity theft frauds and prohibiting on line auctions sites.

4.5 LIABILITY OF INTERMEDIARIES UNDER THE INFORMATION TECHNOLOGY (AMENDMENT) ACT 2008

Under the Information Technology Act 2008 an intermediary was defined as any person who on behalf of another person stores or transmits that message or provides any service with respect to that message.

The Information Technology Amendment Act 2008 has clarified the definition of intermediary by specifically including the Telecom service providers, internet service providers, web-hosting service providers in the definition of intermediaries. Further search engines, online-payment sites, online auction sites, online market places and cyber cafes are also included in the definition of intermediary.

Before the Information Technology Amendment Act 2008 came into force, the scenario in India was worse for intermediaries. Intermediaries were liable for their user's content. This led to the arrest of Baze.com chief Avinash Bajaj in connection with the sale of the infamous DPS Noida MMS clip CD on the website. Post the Baze.com fiasco, The Information Technology Laws has been amended. According to section 79 of the IT Amendment Act 2008 an Internet service provider shall not be liable under any law for the time being in force for any third party information, data or communication link made available by him except when the intermediary has conspired or abetted in the commission of the unlawful act or upon receiving actual knowledge or on being notified by the appropriate government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Hence under amended section 79 of the IT Act, the requirement of knowledge has now been expressly changed to receipt of actual knowledge. This has been combined with a notice and takedown duty. There is a time limit of 36 hours to respond to such a request. If an intermediary refuses to do so, it can be dragged to the court as a co-accused. Under the Amendment Act the safe harbour provisions are available only to an Internet service provider where the function of the intermediary is limited to giving access to a communication network over which information made available by the third party is transmitted or temporarily stored or where the intermediary does not initiate the transmission, does not select the receiver of the transmission and does not select or modify the information contained in the transmission.

Section 79 of the IT (Amendment) Act 2008 thus deals with immunity of intermediaries. It is purported to be a safe harbour provision modeled on EU Directive 2000/31. The Safe Harbour provisions found in the IT Act are similar to that found in the US Laws which essentially say that the intermediaries who merely provide a forum weren't liable for what users did. The only condition being that they respond promptly to a notice telling them about a violation. If the website took that file off then they were in the clear.

The Delhi High Court in a case against Myspace.com held that safe harbour provisions did not apply in the case of Myspace because it added advertisements to clips of songs thus modifying them – something intermediaries are not supposed to do if they want to be covered by the safe harbour rules. Further the Copyright Act in its current form did not really allow for the provision of sending a notice for taking down the clip. The only way for Myspace to avoid being liable was to do its due diligence before the copyright violation. The Indian Copyright law does not allow for the kind of process that protects internet intermediaries. The Indian law is however moving towards importing the safe harbour provisions in the IT (Amendment) Act into the Indian Copyright Law. Amendments to the Copyright Act are pending in the Parliament.

Intermediaries are though given immunity under section 79, they could still be held liable under section 72A for disclosure of personal information of any person where such disclosures are without consent and with intent to cause wrongful loss or wrongful gain or in breach of a lawful contract. Proviso to section 81 of the IT (Amendment) Act states that nothing contained in the Act shall restrain any person from exercising any right conferred under the Copyright Act 1957 and the Patents Act 1970. This provision has created a lot of confusion as to the extent of liability provided under section 79.

The Information Technology (Amendment) Act 2008 makes a genuine effort to provide immunity to the intermediaries but needs to plug in some gaps so as to enable the intermediaries to operate without fear and inhibitions.

4.6 REMEDIES AVAILABLE:

Copyright Act provides filmmakers with a vast array of civil, criminal, and administrative remedies in order to deter, remedy, and prevent infringement. Civilly, Section 55(1) of the Act provides that, in the event of infringement, "the owner of the copyright shall be entitled to all such remedies by way of injunction, damages, and accounts and otherwise as are or may be conferred by law for the infringement of a right." Though the Act does not provide greater specificity than this, background principles of Indian law provide copyright holders with the ability to pursue compensatory damages, punitive damages, an account of profits, and four distinct kinds of equitable orders in the event of infringement.

- **Monetary Remedies:**

With respect to damages, University of Delhi Professor V K Ahuja has noted that, because "copyright infringement is a tort" under Indian law, "the overriding principle... is that damages should be compensatory." As such, courts generally look to "the fair fee or royalty which the defendant would have paid had he got the licence from the copyright owner" and sometimes also consider the "diminution of the sales of the copyright owner's work, or the loss of profit which he might otherwise have made" as well as the reputational cost of the infringement."

In some instances, there may not be enough evidence to make such calculations. And even when there is sufficient documentation, the resulting figure may be too low to do justice in the case of a repeat offender. Indian law, therefore, provides plaintiffs with other measures. First, as an alternative to damages, "a plaintiff is entitled to opt for an account of profits." In such an instance, the court will require the defendant to pay the plaintiff "the profits made by him by infringing the plaintiffs copyright." Second, although "there is no provision in the Copyright Act for the award of additional damages in special circumstances, such as flagrancy of the infringement," the tortious character of copyright infringement means that courts may award punitive and exemplary damages in order to send a message to pirates that violation of the law "may spell

financial disaster⁵⁵."

- **Jurisdictional Advantage:**

In addition to this bevy of civil remedies, the Copyright Act also provides rights holders with a jurisdictional advantage. As in other common law countries, "choice of jurisdiction" under India's normal rules of civil procedure is "primarily governed by the convenience of the defendant¹." Section 62 of the Act, however, provides that rights holders may bring civil copyright suits in any court having jurisdiction over the territory in which one plaintiff "resides or carries on business." As scholars and courts have observed, this provision is designed to "expose the transgressor / pirate with inconvenience rather than compelling the sufferer to chase after the former."

- **Injunctions**

Although Indian law thus provides a wide range of damages, such measures are frequently not the most efficient means of resolving infringement. Rather, since "a copyright owner normally wants speedy and effective relief to prevent further infringements of his copyright and damage to his business," injunctions are "the most important remedy against copyright infringement. The most important of these is the interim or interlocutory injunction. Such orders enjoin the defendant from engaging in the infringing activity "during the period before a full trial of an infringement action takes place, thus preventing an irreparable damage from occurring to the plaintiff's rights." Under Indian law, litigants can typically obtain interim injunctions within 24 or 48 hours "if a *prima facie* case, urgency, balance of convenience and comparative hardship can be established in favor of the plaintiff¹³⁰." Though not as useful, Indian law also provides for permanent injunctions for the term of the copyright "if the plaintiff succeeds at the trial" and can show "that there is a probability of damage, that the defendant is likely to continue his infringement, and that this is not simply trivial."

A number of legal innovations in the realm of injunctions have been developed to tackle the problem of anonymity in this domain. The three specific tools that have been used include

- **Ex-parte injunctions** (injunctions that are granted even without hearing the other party)
- **John Doe Orders** (Issued against anonymous offenders; E.g., Mirabhai Films got a John

⁵⁵ Alka Chawla, Law of Copyright: Comparative Perspectives, LexisNexis India, 1st Edition (2013).

Doe Order against all cable operators before the release of Monsoon Wedding)

- **Anton Piller Orders** (search and seizure orders) including breaking down doors of shops which are closed.
- **Mareva injunction** (restrains the defendant from disposing of assets which may be required to satisfy the plaintiffs claim or removing them from the jurisdiction of the court.)

Indian law allows plaintiffs to seek two other orders that aim to increase the ability of the plaintiff both to preserve evidence and recover damages. The *Mareva injunction* serves predominantly the latter goal. Often issued *ex parte*, a Mareva injunction "restrains the defendant from disposing of assets which may be required to satisfy the plaintiffs claim or removing them from the jurisdiction of the court"¹³². In doing so, the order seeks to ensure that a rights holder will not win at trial only to find the defendant completely judgment proof. The *Anton Piller Order*, meanwhile, allows a plaintiff and his attorney to engage in an "inspection of premises on which it is believed that some activity which infringes the copyright of the plaintiff is being carried on. While the subject of the order may refuse to allow the rights holder and his attorney to enter, she will face contempt of court as a result⁵⁶. The goal of this order is to allow the copyright holder to discover and preserve not only evidence of infringement that will be useful at trial, but also information about "the source of supply of pirated works," so that the plaintiff can track down who is ultimately responsible. Because such an order constitutes a rather extreme invasion of a defendant's privacy and is furnished *ex parte*, a court will only issue it if the plaintiff can demonstrate "that he has an extremely strong prima facie case," that he has or will suffer "very serious and irreparable damage if an order is not made," that the defendant has incriminating documents, and that "there is a real possibility of such documents being destroyed."

Ashok Kumar the John Doe of India⁵⁷

John Doe orders, they are ex-parte injunctions ordered against unknown persons. Just to put this in context, ex-parte injunctions are not the easiest things to obtain since they are based on the denial of another person's right to be heard. So even for cases of violence against women getting an ex-parte restraining order is not easy. In contrast the last ten years we have seen the ease with which one can obtain these orders for copyright infringement cases. Incarnation of an unknown Indian person Ashok Kumar as well as the spectral fear of the copy.

⁵⁶ V K Ahuja, Law of Copyright and Neighboring Rights: National And International Perspectives, LexisNexis India (2007) (noting that the purpose of the Mareva injunction is to preserve assets to "satisfy the plaintiffs claim").

⁵⁷ "Meet Ashok Kumar the John Doe of India; or The Pirate Autobiography of an Unknown Indian" by Lawrence Liang (may 18, 2012) <http://kafila.org/2012/05/18/meet-ashok-kumar-the-john-doe-of-india-or-the-pirate-autobiography-of-an-unknown-indian/> (Last visited on 30/05/21)

The example of such order gained by Dhanush starter Movie “3”, The order names twenty respondents. Of these the first fifteen include all the major ISPs (BSNL, MTNL, Airtel, Tata, Reliance etc) and respondents No. 16 to 20 are Ashok Kumar, unknown person. The order basically says that Ms. Fifteen Majors ISPs and Mr Ashok Kumar, Ashok Kumar, Ashok Kumar, Ashok Kumar and Ashok Kumar should not infringe the copyright of the film. It is ordered that: *“the respondents/ defendants herein, and other unknown persons by themselves, their partners/ proprietor, heirs, representatives, successors in business, assigns, distributors, agents or anyone claiming through them be and are hereby restrained by order of interim injunction until further orders of this court from, in any manner infringing the applicants copyright in the cinematographic films/ motion picture “3” by copying, recording, reproducing or allowing camcording or communication or allowing others to communicate to making available or distributing or duplicating or releasing or showing or uploading or downloading or exhibiting or playing in or in any manner communication in any manner without a proper license form the applicant or in any manner that would violate/ infringe the applicants copyright in the said cinematograph film “3” through different mediums including CD, DVD, Blu-Ray disc, VCD, Cable TV, Direct to home services, internet services, multimedia messaging services, pen drives, hard drives, tapes, conditional access systems or in any other like manner whatsoever.”*

The principles which are applicable for grant of interim relief are applicable for obtaining ‘John Doe’ orders as well, i.e. the plaintiff is required to prove the existence of a prima facie case, balance of convenience in its favor and irreparable loss caused due to the illegal activities of the defendant.

When an order is passed, the plaintiff can serve a copy of the same on the party which is violating the order and seek adherence to the order. Failure to comply with the order may result in initiation of contempt proceedings. It is, however, open to the defendant to argue their case and prove their innocence, like in any other IP infringement matter.

- **Criminal Remedy:**

Complementing this robust array of civil measures is a criminal regime that not only punishes infringers, but also makes it convenient for rights holders and enforcement officials to locate, prosecute, and imprison pirates. Section 63 is the primary criminal provision of the Copyright Act and provides that anyone "who knowingly infringes or abets the infringement of" copyright "shall be punishable with imprisonment for a term" of between six months and three years and a fine of up to 200,000 INR. Section 63A further provides that, in the case of a repeat offender, the

minimum term of imprisonment must be one year, and the fine no less than 100,000 INR. Though these sentences are potentially lower than some provided for under U.S. law, the Copyright Act contains other provisions that arguably make it substantially easier to locate and prosecute offenders.

Section 64, for instance, provides that "any police officer, not below the rank of a sub-inspector, may if he is satisfied that an offence under section 63 has been, is being, or is likely to be, committed, seize without warrant" all infringing copies as well as all materials used to make such copies. Section 65, meanwhile, provides that anyone who knowingly possesses materials for the purpose of making infringing copies" may be punished with "imprisonment which may extend to two years," even if the person is not found with any infringing works⁵⁸.

In addition to these provisions, various states within India have enacted statutes that permit "preventive detentions" of copyright infringers. For instance, Maharashtra, the state of which Mumbai is a part, has a statute that "allows the police to place offenders or potential offenders in detention for as long as 3 months without bail, and up to a maximum of 12 months.

Other states have similarly provided that pirates may be charged under their "Goonda Acts," harsh laws designed to deter and punish drug dealers and members of organized crime. Such laws generally provide for preventive detentions of up to a year, and in some cases, permit police to shoot those covered on site.

In India "the owner of a copyright can take criminal proceedings against an infringer. Though such rights holders do not have the capacity to "charge" defendants, they are entitled to file a First Information Report. Once such a report is filed, the police are required "to report the case to a magistrate, investigate the crime, and proceed with other police work, such as making arrests and preparing the case for prosecution"

Though the police are not absolutely required to file charges, if they decide "to close a case, they must give their reasons to the court and inform the complainant, who can challenge the closure before the court."

⁵⁸ Indian Film Industry: Tackling Litigations, Nishith Desai Associates (NDA) (September 2013) available at http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Indian%20Film%20Industry.pdf

- Punishment for Piracy in different countries⁵⁹:

Country	Fines/Penalty	Imprisonment Terms
U.S.A	Upto \$ 250,000 for a first offence of infringement by an individual done in “ Willfully and for purposes of commercial advantage or private financial gain”.	Upto 5 years
	Upto \$ 250,000 for a second offence by an individual.	Upto 10 years
	Upto \$ 50,000 for first offence by an organisation.	Upto 5 years
	Upto \$ 500,000 for a second offence by an organisation.	Upto 10 years
France	6,000 to 120,000 Francs (about US \$ 1070 to US \$ 21,428) for a first offence of infringement. Double the above penalties for second offence.	3 months to 2 years
Poland	Unspecified fines for unauthorised dissemination for purposes of economic gain.	Upto 2 years in jail
	Unspecified fine if the infringer turn the above offence into a regular source of income for a criminal commercial activity and organises or direct such acitivity.	Not less than 6 months and not more than 5 years.
	Unspecified fine for unauthorised fixation or reproduction activity.	Upto 2 years in jail.
	(Reported the maximum criminal fine under the penal code is 250 million zloty (about \$ 11,075)	Upto 3 years in jail.
Hungary	Unspecified fine for infringements causing considerable damage.	Upto 3 years.
	Unspecified fine for infringements causing particularly high pecuniary damage.	Upto 5 years.
Greece	1 to 5 million Drachmas (about \$ 4,050 to \$ 20,485) for infringing acts	Atleast 1 year.
	2 to 10 million Drachmas (about \$ 8,100 to \$ 40,485) applies if the intended profit or damage threatened by infringing acts are particularly large.	Atleast 2 years.
Portugal	The equivalent of between 150 and 250 days for infringements of enumerated acts. The above penalty doubles for repeated offence, provided that the offence in question does not constitute an offence punishable by a more severe penalty.	Upto 3 years.
Singapore	Upto \$ 10,000 for the article or \$ 100,000 whichever is lower.	Upto 5 years
	Upto \$ 6,666 or \$ 66,000 for violation of the reproduction and the display rights and to the sale or importation of infringing copies.	Upto 3 years.
	Upto \$ 50,000 (US \$ 33,335) for violation of the distribution right.	Upto 3 years.
	Upto \$ 20,000 (US \$ 13,333) for making or possession of a “plate or similar contrivance for the purpose of making infringing copies of sound recordings or audio - visual works and for violation of the public performance right.	Upto 2 years.

⁵⁹ Study on Copyright Piracy in India sponsored by Ministry of Human Resource Development, Government of India available at <http://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>

4.7 LOOP HOLES IN PRESENT REGIME

As there are many remedies, many in the film industry believe that India's copyright regime is quite robust. "Ameet Datta, lawyer specialized IP(Intellectual Property) of law firm Saikrishna & Associates, "says the copyright protection law is very strong in India, similarly is the punishment for those breaking the law. However, some have complained that, while the law provides strong overall protection, there are some loopholes. Unlike the US and other developing countries, India lacks particular anti-camcording legislation. Such type of law would completely make it unlawful to use any audio-visual recording devices to make or attempt to make a copy, in whole or in part, of a motion picture while inside a theatre, and also prohibit the unlawful onward distribution or transmission (e.g., even a wireless upload to the Internet for sharing) of the camcorder copy or the recording.

Others, in the meanwhile, have signified that, while the IT Act alot a notice and takedown procedure, India lacks laws prohibiting the circumvention of DRM(digital rights management) technologies. India does not have a legislation managing the situaions in which courts may block access to websites containing infringing or pirated content.

With respect to the anti-camcording law, it seems hard to think why the absence of such a legislation presents any significant hurdles to the prevention of piracy. The proposed legislation merely prevent what the Copyright Act already provides, like the copying and distribution of a copyrighted film. It does not make movie theatres responsible or liable for recordings that happen on their premises and or make it easier to demonstrate and explain that someone has engaged in infringement or piracy.

Though the proposed legislation also prevents "attempted" recordings, there do not happen to be any cases in which suspected camcorders or person have avoided punishment by saying that they were only attempting to copy a movie. However, the private enforcement agencies, those have sought to stop and prosecute the copying of films, have not said that the absence of any anti-camcording legislation poses a hurdle to their efforts.

As for the absence of anti- digital rights management (DRM)-circumvention legislation, it does not seem all that necessary while highly considering that the vast majority of pirated movies are the product of camcording rather than the circumvention of DRM. Moreover, India has recently

amended the Copyright Act 2012 in order to solve this problem. The Copyright Act (Amendment), 2012 makes it an offense to "circumvent an effective technological measure applied for the purpose of protecting any of the rights conferred **by** this Act, with the intention of infringing such rights."

The effectiveness of India's legislation could thus present an explanation for the resiliency of India's film industry. In addition to leading out protection that is comparable to that of developed nations, the Copyright Act 2012, as amended, provides a abundance of solutions, including compensatory and punitive damages, a four types of directions, the ability to start criminal proceedings, preventive detention, a notice and takedown course of action, and administrative means of barring the importation of pirated goods.

Although providing coverage and rights similar to those afforded **by** many advanced nations, the Copyright Act 2012 does contain one exception that could, in theory, make it problematic for many Indian filmmakers to have protection that "copyright does not subsist in any cinematograph film, if a substantial part of the film is an infringement of the copyright in any other work." This exception could present a problem for many in the Indian film industry since many Indian producers have been known to "borrow" concepts from Hollywood, "ranging" from melodies for background scores to entire plot summaries and even translated dialogues⁶⁰." Until the last decade, as the Indian film industry remained small and isolated, few outside India took cognizance of this "borrowing." But as Bollywood and the regional cinemas have become more global and profitable in recent years, Hollywood producers have not only gained awareness of the infringing activity, but also "started going after the copycats." There were even allegations that Shah Rukh Khan and Anubhav Sinha engaged in plagiarism when they produced *Ra. One*⁶¹. Considering that the Indian judiciary has been receptive to these suits, it seems that claims of this sort could threaten the protection the Copyright Act 2012 avail to Indian filmmakers by providing pirates with a positive defence, in either civil or criminal litigation.

Also, those in the film industry neither specify this had ever happened nor indicated any concern

⁶⁰ Suman Tatpudy, *Bollywood & Hollywood: Opportunity for Collaboration Through Reform of Policies Governing Copyright and Plagiarism*, MICH. TELECOMM. & TECH. L. REV. BLOG (Mar. 20, 2012) available at <http://www.mttrblog.org/2012/03/20/bollywood-hollywood-opportunity-for-collaboration-through-reform-of-policies-governing-copyright-and-plagiarism/>, (Last Visited 30/05/2021)

SRK's *Ra.One* Faces Plagiarism Lawsuit, *Hindustan Times* (Oct. 21, 2011), available at <http://www.hindustantimes.com/Entertainment/Bollywood/SRK-s-RA-One-faces-plagiarism-lawsuit/Articlele-759724.aspx>, (Last Visited 30/05/2021).

about such a possibility. And journalists and scholars who discuss piracy have largely disregarded the problem. As such, it does not emerge that the Section 13(3)(a) exception diminishes in any significant way the coverage and rights that the rest of the Copyright Act 2012 affords.

Whereas some have advocated the addition of other provisions and clauses to protect rights holders further, the absence of these measures and law does not seem to facilitate a serious loophole for pirates to exploit.

CHAPTER 5

ENFORCEMENT ISSUES TO COMBAT PIRACY

It is hard to substantiate the monetary loss caused by online piracy of Indian media content abroad, as the industry is presently serving this market only in a very limited manner. With more affordable and better broadband Internet connections, online piracy within India may increase exponentially and more consumers may migrate to online piracy channels. It is because the percentages of consumers who used to watch movies on Internet are found to be very low, the net percentages that have streamed or downloaded pirated movies online are found to be substantially low. With affordable and better Internet connections and post JIO revolution, online piracy within India may also go up considerably. It would be in the long-term interests of the industry to address the issue of online piracy and cut down the supply of pirated products before more consumers get accustomed to online pirated products.

5.1 LACK OF ENFORCEMENT

The immense difficulty film makers face in enforcing their rights squarely rebuts the contention that the law is responsible for the continued growth of the Indian film industry. Indeed, the inefficiency and inactiveness of India's judiciary, the police's lack of sensitization to the problem of piracy, and the unwillingness of foreign states to lend assistance present such massive impediments to enforcement that many of the Copyright Act's provisions have become little more valuable to filmmakers than words on paper.

- **The Ineffectiveness of Judicial Proceedings**

Indian law provides not only for compensatory damages, but also punitive damages and accounts of profits in cases of infringement. Nonetheless, to obtain such remedies, litigation must reach a final hearing. Because of the inefficiencies plaguing India's judicial system, it can "take twelve to sixteen years to reach" this point¹⁵⁶. For most people in the industry, such delays are not only extremely time consuming, but also considerably expensive. The possibility of pursuing civil damages; it was as though the legislation did not even provide such a remedy.

Nor do individuals within the industry seriously consider getting injunctions from court. Usually, the attitude around injunctions is that "You go to court, you fight the guy, and then what happens?"

Eventually in three- or four-days' time, he's back out there¹⁵⁷. The Mareva and Anton Piller orders that are designed to help plaintiffs ensure the availability of assets and discover evidence, are no more useful.

The "syndicates" responsible for recording and distributing pirated materials tend to be the same groups involved in narcotics or other more notorious activities¹⁵⁸. These groups generally recruit poor, middle school dropouts to carry out the camcording activities. To reward these agents, the syndicates utilize Hawala, as a result very little can be achieved by freezing assets or raiding the premises of an operative. Thus, for those in the industry, the Anton Piller and Mareva orders simply are ineffective.

In light of these difficulties, filmmakers who have taken on piracy have relied predominantly on the criminal justice system which too, though, has proved largely ineffective. First, although the criminal justice system is somewhat more expedient than its civil counterpart, pursuing criminal sanctions is still both expensive and painfully lengthy. These cases drag on for 8, 10 years, during which time the plaintiff needs to pay an enforcement agency to be present at all the court hearings.

Many courts, especially those in rural areas, are frequently very unfamiliar with copyright law and concepts¹⁵⁹. "As such, they are often unreceptive to rights-holder claims when the copyright is not registered, even though the Copyright Act, does not mandate registration. Those courts that are familiar with the copyright regime, moreover, generally "do not view criminal prosecution for infringement of copyright with due seriousness". University of Delhi Professor Alka Chawla, for instance, recounts how two of the most highly regarded courts in India completely misconstrued the law in order to dismiss cases against copyright criminal defendants. In the first such case, the defendants moved the Delhi High Court for dismissal of the charges against them on the ground that a related civil suit had settled¹⁶⁰." It is black-letter Indian law that "*a criminal complaint cannot be dismissed on the ground that the dispute is civil in character*" and "*the pendency of a civil suit does not justify the stay of criminal proceedings.*" Nonetheless, the court agreed to quash the criminal complaint, stating that "*no useful purpose would be served by permitting the above complaint and proceedings to continue.*"

Likewise, in a proceeding before the Bombay High Court, the defendant "filed petition for quashing of the process on the ground that the copyright was not registered and a civil suit was

pending." Although, the Copyright Act categorically provides that registration is not a condition precedent for protection, the court dismissed the complaint *"since the copyright was not registered and the civil suit was pending and there was delay in filing the criminal case."*

- ***Lack of Police Cooperation***

Some police cells are not well equipped nor properly trained to handle counterfeiting cases as they are not adequately educated on the laws governing IP. As such, they have been known to require rights holders to produce proof of registration before taking action, even though the law unequivocally makes such registration optional. In addition to not understanding the law, the police are sometimes unfamiliar with the technical know-how used to make infringing copies. To demonstrate the depth of this lack of sensitization, Kulmeet Makkar of the Producers Guild tells the story of a police raid on a facility that used computers to store or make infringing copies. During the course of the raid, he says, the police seized the computer monitors, but not the towers because they believed that the key information was stored inside the screens.

Compounding the lack of proper training, police frequently suffer from a severe shortage of manpower. Shri D. Sivanandhan, a former police commissioner who now heads an enforcement agency, notes that the police are often short-staffed and tasked with a host of very pressing problems ranging from terrorism to organized crime. As such, police generally view intellectual property matters as "luxury litigation" and are frequently unwilling to take action even when presented with a duly filed First Information Report.

- ***Lack of International Cooperation***

Finally, the administrative scheme to prevent the importation of pirated goods does not appear to be particularly effective. After most films are illegally recorded, "prints are sent to centres in Sri Lanka, Bangladesh and Pakistan, where they are copied on to cheap DVDs," after which they are shipped back to India for distribution. Though Section 53 provides a means by which rights holders can block the importation of such goods into India, doing so requires knowledge of a shipment's place and time. Rights holders are normally unlikely to have such information, but they sometimes do know information about specific distribution networks. Nonetheless, they have found that the officials of the countries in which the foreign syndicates reside are frequently unwilling to take action. John notes, for instance, that one of the biggest producers and

distributors of infringing copies in the 1990s and early 2000s was "Pakistan-based Sadaf Trading Company," the front used by organized crime syndicate D- Company⁶². While "Indian authorities had been aware of D-Company's film operations in Pakistan since the 1990s, they were practically powerless to intervene" because Pakistan was unwilling to cooperate.

According to a Rand Report, it was "only after 2005, when U.S. Customs seized a huge shipment of SADAF-branded counterfeit discs in Virginia, that Pakistani officials, under threat of trade sanctions began raiding D-Company's duplicating facilities in Karachi."

Thus, "while Indian laws certainly provide for adequate protection, the challenge really lies with its enforcement." In face of the inefficiency of the just delivery system, the difficulty of achieving police assistance, and international non-cooperation, many of the seemingly robust measures provided by the Copyright Act are mostly inept in the fight against piracy. As a result, it is unlikely that India's copyright regime can explain the film industry's continued success.

5.2 SUSTAINABLE SOLUTIONS FOR ONLINE PIRACY

In order to resolve the problems with the enforcement regime, filmmakers within India have employed two major solutions. First, they have hired private enforcement agencies to fill the gaps left by police inaction and to liaise with officials in order to encourage them to take piracy more grievously. Second, they have pursued novel legal orders that are free from the pitfalls of the four traditional injunctions. Even though some of the enforcement agencies' efforts, like police liaising, may produce benefits in the long-term, in the near-term these entities' actions do not appear to have significantly reduced the instances of piracy.

5.3 ANTI PIRACY ENFORCEMENT STRATEGIES TO COMBAT PIRACY IN FILM INDUSTRY

A. Enforcement Agencies:

In order to cover the loop holes left by police inaction, filmmakers have hired private enforcement agencies. These agencies usually conduct the investigations that the police are either unwilling or inept to do and, after presenting sufficient evidence to officials, monitor

⁶² Counterfeiting, Piracy and Smuggling in India – Effects and Potential Solutions, by ICC and FICCI, available at http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/International-engagement-and-Advocacy/Country-Initiatives/Counterfeiting_-Piracy-and-Smuggling-in-India-Effects-and-Potential-Solutions/

prosecutions to their conclusions.

Enforcers of Intellectual Property Rights (India), Ltd, is the largest such agency in the country, with seven offices throughout India and one in Bangladesh. According to Zaheer Khan, the agency's Chairman, individual producers generally approach the firm shortly before the release of their movies. The agency then uses the intelligence it has previously gathered on the locations of piracy distribution centres, conducts surveillance of those locations, and, upon determining a given syndicate or person is distributing illegal copies of the client's film, informs the police to make arrests or conduct a raid.

Securus First, another enforcement agency, adopts to some degree a diverse strategy. Recruited by the MPA, Securus doesn't seek after people, who pirate a couple of explicit movies, rather utilizes a group of previous cops who accumulate knowledge on bigger piracy syndicates, and afterward contacts the police to lead attacks and hold onto the encroaching materials. Furthermore, Securus tries to go straightforwardly after camcording. To do this, the firm sends previous officials during the initial not many days of a film's delivery at cinemas the MPA knows to have the most noteworthy rates of camcording. While their officials screen the theaters and, in the occasion, if they find somebody camcording, start criminal procedures.

Though private enforcement agencies can take on some of the functions of police, conducting raids and turning a First Information Report into a prosecution still they require a legitimate police action and cooperation. As such, filmmakers, through their enforcement agencies, have sought to liaise with the police in order to encourage them to take piracy more grievously⁶³. One method of doing this comprises of hiring prominent former police officials who can leverage their strong reputations. For instance, Shri D. Sivanandhan, the chairman of Securus First, is the former police commissioner of Mumbai with a reputation as "one of the most successful police officers in Maharashtra when it comes to dealing with the underworld in Mumbai." Likewise, a number of filmmakers have hired *A.A. Khan & Associates*⁶⁴, "an enforcement agency that is run by a former Deputy Inspector of Police who was "once Mumbai's most feared cop." According to those in the industry, the police are generally much more responsive to filmmakers when they speak through individuals with such reputations. As Sivanandhan, noted candidly, "When people

⁶³ Vineeta Pandey, National Security System in for a Major Makeover, DNA (July 12, 2011), http://www.dnaindia.com/india/report-national-securitysystem-in-for-a-major-makeover_1564825

⁶⁴ Mumbai Film Festival Fights Piracy with AA Khan, INDIAGLITZ.CoM (Oct. 17, 2012), available at <http://www.indiaglitz.com/channels/hindi/article/87315.html> (Last Visited 02/06/2021)

like me are involved, obviously the police are very cooperative."

The Motion Picture Association of America (MPAA) is an association of six of the leading Hollywood Studios. It has come to their understanding that problems such as piracy go beyond realm of competition, as the pirate will make a profit regardless of whether the film is made by Columbia Pictures or Warner Bros, or any other member company. Every year since 1922, the Studio Heads sit on a common platform to allocate a common budget to fund activities and resolve issues. The budget is allocated for each region of the world including India. The budget fluctuates annually keeping in mind long-term prospects of expansion of business. In India, the anti-piracy operation of MPA has been handled by the law firm of *Lall & Sethi Advocates* for the last eight years.

5.4 CII-MPA INITIATIVE

In a step forward a strategic alliance is being planned between CII and MPA for joint activities to be conducted to protect Indian films from DVD/VCD pirates during their first run at the cinema (at least for four weeks). Initially the service will be available in Delhi, Mumbai and the four southern states it will eventually extend if the project works to the satisfaction of the film producers. Some of the key highlights of the programme are as under:

I. Investigations

A general survey of the area is undertaken with the help of professional investigators and the targets are short-listed after thorough verification. Teams of highly experienced investigators are responsible for conducting secret investigations and help the police at the time of the raid. The team conducts both pre investigations. The investigation agency is instructed to attempt raids at wholesalers and retailers and CD-R Burner Units.

A constant watch is maintained at the video libraries in the cities where the operation is conducted. Once the pirate targets are short listed, civil and criminal proceedings are initiated against the pirate.

II. Enforcement Strategy

Warning Letters: The identified small operators are sent a warning letter/notice. This notice calls upon the pirate to stop all pirate activities and provide an undertaking to the effect that he has stopped piracy and will never initiate or be part of any activity that may result in harming

the interests of the film industry.

Criminal Action: once the targets are identified a criminal action i.e., raid and seizure operation are launched against the pirates.

Civil Action: A civil suit for permanent injunction, is filed by the member companies of MPA in Delhi High Court. The pirate has to incur the expenditure and come to defend the case in Delhi High Court. Orders obtained from the Delhi High Court usually restraining the major cable networks including all their cable operators, franchisees and distributors from exhibiting the film and against major rental and retail outlets are passed.

Contempt of the Court Proceedings: In the event that the pirate does not stop, contempt of the court proceedings is initiated.

Administrative Actions: proceedings are initiated to cancel the license of the cable operators and the shopkeepers (retail and rental outlets).

III. Educating the Police

Regular training seminars and conferences is organised for the Police to educate them on the enforcement of Copyrights with regard to films. Talks are initiated with the Commissioner of Police and IG Range to conduct raids and seizure operations. In the training seminar it is emphasized that the Police should conduct the suo-motu raid and seizure operations in the state.

IV. Public Relations Lawyers from Lall and Sethi anti-piracy team hold meetings with the:

- Minister of Information and Broadcasting
- Minister of Home Affairs
- Commissioner of Police
- IG Range

Special pre-release screening is arranged for a few VIPs who are instrumental in the success of the anti-piracy operations. Each raid is given wide publicity.

V. Generating Public Awareness and Invite Public Participation

- Reward schemes
- Distribution of Business Reply Envelopes
- Competitions with cash and other rewards (essay writing, slogan writing, etc...)

- Posters at public places and outlets
- Advertisements
- Website

VI. Setting up of Coordination Committee

A Co-ordination Committee shall be set up to invite better coordination between Alliance partners and Lall & Sethi Advocates.

VII. Toll Free Anti-Piracy Reporting Room

A toll-free anti-piracy reporting room has been set up to receive reports on film production. The toll-free number is 1600 11 22 77 and can be accessed from the cities of Delhi, Mumbai, Calcutta, Chennai, Bangalore between 9:30 AM and 12 PM.

VIII. Website

A website has been set up under the domain name www.filmpiracy.com. A special e-mail account has been set up to receive reports on piracy. The e-mail id being info@filmpiracy.com.

The e-mail ID is also publicized to invite information from the public. The information received is immediately transmitted to the investigation units for immediate action.

IX. Generating Public Awareness and Invite Public Participation

- Reward schemes
- Distribution of Business Reply Envelopes
- Competitions with cash and other rewards (essay writing, slogan writing, etc...)
- Posters at public places and outlets
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- Websites

X. Generating Public Awareness and Invite Public Participation

- Reward schemes
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XIV. Publicity

Technology is both a blessing and a curse. Piracy in all its forms whether digital or otherwise, is a threat to those working in the media. Technology will evolve and software will be created to discourage pirates, however there is no guarantee that it will be effective. Piracy can be combated only if the masses became aware that their actions are illegal and ethically wrong.

5.5 NON-LEGAL STRATEGIES TO COMBAT PIRACY IN FILM INDUSTRY

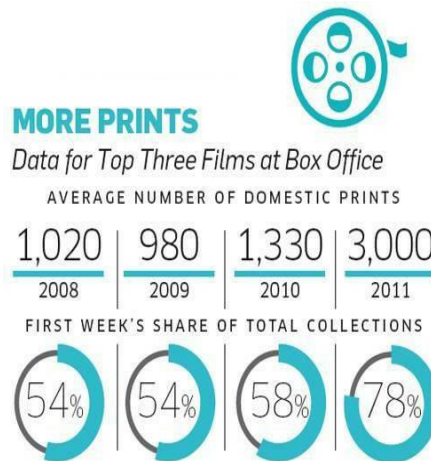
Along with attempting to redress the issues with the enforcement system, Indian producers have started to utilize measures that try to decrease the effect of piracy without depending upon state help. These "non-legal" measures incorporate expanding the accessibility of legitimate copies, attacking the piracy supply network, and utilizing India's star framework to urge purchasers to avoid watching pirated movies. Through these endeavors, movie producers have figured out how to both lessen purchasers' interest for pirated films and increment the allure of legitimate copies. Thus, these actions might be primarily responsible for the continued resilience of the Indian

entertainment industry.

Increased Distribution

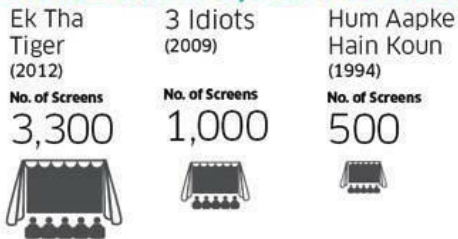
One of the most prominent strategies that Indian filmmakers have pursued in recent years is to increase the distribution of their films, in terms of location, time, and media. The idea behind this effort is to cut off one of the main reasons why people seek out infringing copies⁶⁵.

Increase the releasing Screens: Although legitimate copies would finally reach these smaller centres in three to six months, this was too late to satisfy demand because by this point pirates had already gleefully filled the vacuum by bombarding consumers with cheap optical discs.

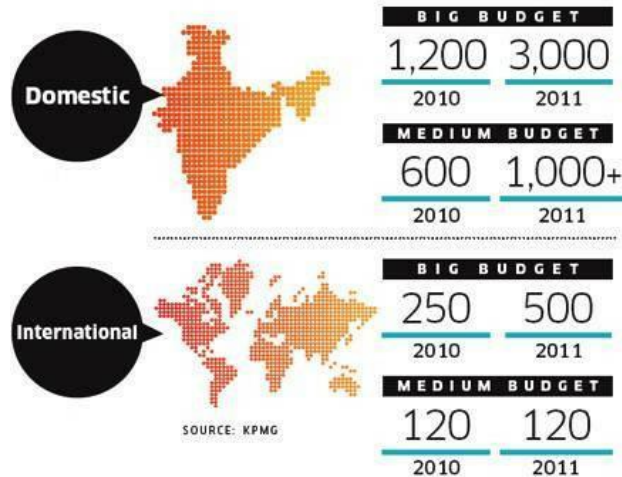


⁶⁵ Mike Masnick, Bollywood No Longer Worrying About Piracy as Studios Keep Setting New Records at the Box Office, TECHDIRT (Feb. 18, 2013), available at <http://www.techdirt.com/articles/20130218/03033922013/bollywood-no-longer-worrying-about-piracy-as-studios-keep-setting-new-records-box-office.html> (Last Visited 02/06/2021)

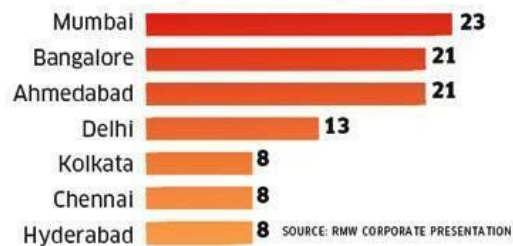
MORE SCREENS/MULTIPLEXES



Average number of screens for theatrical release



Screen Density Per Million Population



Picture Source: Economic Times⁶⁶

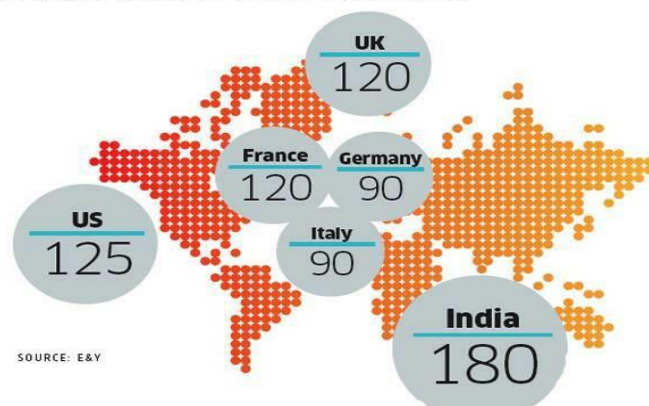
The advent of digitization has allowed Indian filmmakers to close this distribution gap. As the PwC/CII report notes, digitization enables film producers to simultaneously release their films across India⁶⁷. The 2012 blockbuster *Ek Tha Tiger*, for example, "released in nearly 3,300 screens," a feat that was "unheard of four or five years ago, when a big budget film would release in around 1000 screens. *Dabangg 2* recently topped this figure, releasing on 3,700 screens just before Christmas 2012.

⁶⁶ "Bollywood no longer talks of piracy; but ignoring dangers of online can be costly" by Binoy Prabhakar, ET Bureau (Feb 3, 2013) available at http://articles.economictimes.indiatimes.com/2013-02-03/news/36704530_1_piracy-box-office-alliance-against-copyright-theft (Last Visited 02/06/2021).

⁶⁷ Film Industry in India: New Horizons, Ernst & Young, available at http://indianbusiness.nic.in/newdesign/upload/news/New_Horizons_Final.pdf

In addition to expanding the number of locations that their movies reach, Indian producers and studios have increased the amount of time during which their films are available. To do this, filmmakers have drastically reduced their theatre-to-television release windows. These windows were designed to create a time lag between a film's theatrical release and its television premiere, in the hope that such stratification would "prevent different media from cannibalising each other." In India this problem was especially acute because release windows averaged sixth months; thereby giving pirates what amounted to a half-year monopoly. In recent years, numerous Indian producers have filled this gap by reducing their release windows.

No. of Days Between Cinema Exhibition & DVD Release



Picture Source: Economic Times⁶⁸

As Rajesh Mishra, the CEO of UFO Films explains, many Indian consumers have previously purchased pirated products simply because legitimate copies were unavailable. He says, "Films are promoted heavily in India through every possible medium, reaching every possible person, down to the smallest village. But filmmakers in years past ended up releasing in only a few centres. So, you created hunger but didn't provide the food to everyone.

A. Alternative media:

Lastly, Indian filmmakers have sought to increase the number of media they reach. As the CII report notes, "There is an increasing trend of films being viewed on personal devices (mobile phones and tablets), internet platforms such as YouTube and the DTH (direct-to-home) PPV (pay-per view) model." Filmmakers have recently sought to meet this demand by pre-selling (i.e. selling before a film's release) rights to these alternative media. Some companies have even started offering apps and websites that allow viewers to rent or stream films, notable in this regard

⁶⁸ Bollywood no longer talks of piracy; but ignoring dangers of online can be costly Binoy Prabhakar, ET Bureau Feb 3, 2013, 11.03AM IST <http://articles.economictimes.indiatimes.com/2013-02>

are the OTT platforms such as Netflix, Amazon Prime etc.

Shortening release windows, expanding the number of screens a film reaches, and increasing the number of media on which viewers can watch a product do not take pirated prints off the market. Nonetheless, by increasing the availability of legitimate copies, producers reduce the desire of customers to purchase pirated versions by offering them an alternative that many viewers consider to be both of better quality and safer. Moreover, by increasing distribution to different places and media, producers can diversify their revenue streams.

B. Misguide the Piracy Supply Chain:

In addition to increasing the availability of legitimate products, Indian filmmakers have sought to make pirated copies less attractive by interfering with the piracy supply chain. Part of this effort has focused on the consumer.

Fake Files Specifically, filmmakers and private enforcement agencies have sought to reduce the ease of obtaining pirated prints. Private enforcement agency ***Republique Media***, for instance, has purchased "software that scans for and helps take down illegal content" so as to make it more time-consuming and arduous for potential consumers to find illegal copies online. Republique has also engaged in spoofing. To coincide with a movie launch, it floods file-sharing sites with fake files of roughly the size of a full-length movie with authentic sounding file names. The idea is to frustrate users; few have the patience, to say nothing of bandwidth, to download multiple torrents to check if even one is the actual movie⁶⁹.

Invisible forensic watermarks- The other part of this effort focuses on the supplier. Specifically, Indian filmmakers have employed watermarking in order to trace and cut off the source of pirated goods. In addition to facilitating greater distribution, digitization has enabled filmmakers to embed their movies with "invisible forensic watermarks, when pirated DVDs of films that have been so embedded are analysed in the studio, these watermarks become visible, providing all sorts of data including the name of the theatre it was shown in and the time of the show." Though

⁶⁹ Nirmal Bang, The Dynamics of Indian Film Production Have Changed a Great Deal, STOCK MARKETS REVIEW (Oct. 1, 2011) available at http://www.stockmarketsreview.com/extras/the-dynamics-of-indian-film-production-have-changed-a-great-deal_20111001170678/ ("There are many aspects of filmmaking today that ensure that the money that is invested is recovered even before a film is released. Syndicate deals such as music rights, television and satellite rights, overseas rights and, quite recently, two new concepts: part production and post-production sharing of money are being signed.").

producers can use this information as the basis for legal action, more frequently they simply threaten to withhold future releases from theatres where the cam-cording occurred.

C. Campaigns by Stars:

Indian filmmakers have decided to appeal directly to consumers. Shortly after learning that the *Ra. One* musical album had been posted to the internet, Shah Rukh Khan and others who had worked on the film "took to micro blogging site Twitter and appealed to his millions of fans to obtain the album through legal means." Aamir Khan, another Bollywood megastar, recently took to the airwaves as well, asking his fans "not to succumb to piracy" and explaining that profits from illegal sales end up funding other "nefarious activities." Stars from the regional cinemas have engaged in similar campaigns. After the Tamil film *jagguhhai* was posted online before it was even released in theatres, a number of Bollywood actors who were not even in the film, including megastar Rajinikanth, got together to condemn the piracy and call on viewers to take action.

It's almost impossible that a Rajinikanth movie will be copied illegally in the first **10** days of its release in the state. Dilli Rajini president of the Rajinikanth Fan Club in Chennai, says that on the day of the release, the fan club asks the city commissioner of police for extra security inside movie halls. If that does not deter pirates, the fans themselves step in and stop anyone from using recording devices.

5.6 CASE STUDIES

I. Highest Conviction ever in a Copyright case

In **State v. Devender Singh**, (FIR 169/98), the Chief Metropolitan Magistrate of the Karkardooma Courts in Delhi has handed down an unprecedented maximum jail sentence and fine to Devinder Singh, the proprietor of pirate video rental shop, Rosy Videos. Under 1994 amendments to the Copyright Act, the punishment for copyright infringement is a term "which shall not be less than six months but which may extend to three years, with a fine of not less than Rs. 50,000 and up to Rs. 200,000". The court imposed the maximum possible sentence on Singh, sentencing him to (i) serve two concurrent three-year terms, and (ii) pay Rs. 200,000 for each offence, a total fine of Rs. 400,000.

II. Implementation by MPA in the State of Kerala

Implementation strategy:

- Joint Anti-Piracy Operations - Cost Sharing
- Joint Training Seminars
- Launch of Anti-Piracy Trailer
- PR and Public Awareness Campaign
- Memorandum to the State Government

MPA represented by M/s Lall & Sethi in India for its anti-piracy activities entered into a strategic alliance with the Kerala Film Producers Association, engaged in the production of local language (Malayalam) films. The joint operations resulted in over 69 raids with seizure of over 1,30,000 optical discs. To aid police officers in identifying pirated optical discs, MPA provided bilingual training booklets to the raiding teams in English and Malayalam. The alliance's success can be measured with the video rental library owners' associations, having resolved to engage themselves in the anti-piracy operations and completely end rental of any pirate product.

The main libraries started purchasing complete catalogues from the local home video distributors. It is believed that piracy has dropped from over 80 percent rates to less than 40 percent in the State of Kerala.

III. 'Monsoon Wedding'

The anti-piracy operations for the film 'Monsoon Wedding' of the renowned director Mira Nair was also handled by MPA. It was found that the leakage of the print and the first pirated copy was created during the transportation of the print to the exhibitors. A security agency was deployed to supervise the transportation of the print and to provide twenty-four hours security to each print. Security guards maintained twenty-four hours vigil over the print even at theatres. Not a single pirated copy of 'Monsoon Wedding' could be found in the market for almost seven weeks from the date of release of the film in theatres. It was only after the film was released in the international markets, where such security was not provided for, did the first pirated print appear.

IV. 'Viswaroopam'

An interesting example to be noted in this regard is the huge resistance shown by cinema owners against the attempt of one of the most famous movie actor/ producer, Kamal Hassan, to release his latest movie "Viswaroopam" in DTH platforms . The cinema owners threatened to boycott the screening of the movie in cinemas and the producer had to finally postpone the Direct-to-Home (DTH) release of the movie. He has approached the Competition Commission of India against the action taken by the cinema owners. But the most surprising part was the lack of open support from other producers within the industry for the novel attempt taken by this producer to experiment new mediums in view of the changing consumer preferences.

V. Limited Success

Though individuals at the enforcement agencies readily tout their successes, the available evidence indicates that overall, they have done little to stop piracy; a number of sources have noted that illegal versions of the most coveted films are readily accessible throughout India. One can easily get the CD/DVD of the newly released movie on same day in open market. Under such circumstances, it seems difficult to argue that the enforcement agencies have had any meaningful success.

The situation seems to be somewhat different for the John Doe orders. According to a number of individuals in the industry, the orders have successfully reduced the rate illegal downloading. **Madhu Gadodia**, whose law firm has been one of the leaders in obtaining such orders, has said, for instance, that her "clients have realised that the rate of piracy has gone down after John Doe orders." Likewise, **Pavan Duggal**, a lawyer specializing in Internet technology, noted that *Singham*, *Bodyguard*, and *3*, three of the biggest films to be covered by John Doe orders, each experienced lower piracy as a result. These opinions are somewhat controverted, however.

Moreover, to the extent these orders have limited piracy, such success is unlikely to be sustainable, as courts have begun responding to numerous outcries that the injunctions unduly limit free speech. Last summer, for instance, the Madras High Court responded to a petition from ISPs to amend a broad John Doe order it had issued. The amended order noted that "the interim injunction is granted only in respect of a particular URL where the infringing movie is kept and not in respect of the entire website. Further, the applicant is directed to inform about the

particulars of URL where the interim movie is kept within 48 hours" (emphasis removed).

Demonstrating that such limited orders are likely to be the way of the future, the same court issued an order containing similar limitations later the same year. Though the other high courts do not appear to have followed suit just yet, such seems inevitable considering the immense burden that broad John Doe orders place on expression and the willingness of the ISPs to challenge such measures.

CONCLUSION AND SUGGESTIONS

1.1 POSSIBLE SUGGESTIONS TO COMBAT PIRACY:

It is hard to substantiate the monetary loss caused by online piracy of Indian media content abroad, as the industry is currently serving this market only in a very limited way. With more affordable and better broadband Internet connections and internet revolution caused by Jio, online piracy within India may increase substantially and more people may migrate to online piracy channels. It is because the percentage of people who use to watch movies on Internet are found to be very low, the net percentages that have streamed or downloaded pirated movies online is found to be substantially low. With affordable and better Internet connections, online piracy within India may also go up considerably. It would be in the long-term interests of the industry to address the issue of online piracy and reduce the supply of pirated products before more consumers get acquainted with online pirated products and open network softwares.

Increase the screens and reduce the gap between the theatre release and TV/ DVD release:

The most important measure to be taken in this regard is decreasing the waiting period for providing legitimate access of movies to consumers. Interconnected world has drastically reduced the information gaps about new movies. Today most consumers would prefer to watch a movie as soon as it is released. Producers should release their movies in maximum screens as they can that can cover the maximum regime. They must reduce the waiting gap of Television premiers and release of DVDs.

Create legitimate database of movies: Another equally important measure to be taken is the collaboration within the industry for building affordable, easily searchable, and accessible databases of movies. This requires cooperation among movie producers with regard to licensing of their contents. Such databases should not only have movies from different regional languages, but also movies from different time periods. This is completely missing today. There are only very few legitimate streaming or downloading websites for Indian movies and most of them also perform poorly due to lack of proper indexing, high access prices, and lack of variety of movies.

Revenue-sharing business model with the infringers: One can see highly appreciable efficiency in the organising of contents in pirated movie platforms. First, producers from different regional film industries within India could join hands and they could also try to negotiate with infringers for building revenue-sharing business models and convert the infringing platforms to legitimate access platforms. While such efforts would have many positive externalities for the society in general, including provision of alternate legitimate income for infringers, it could also save considerable money for the producers. This includes avoiding the costs involved in hosting movies online and avoiding the re-conversion of analogue prints to digital formats. In other words, instead of adopting the sole strategy of taking down the infringing online platforms legally or technologically, the industry may benefit more by adopting a strategy for collaboration.

Release movies on alternate platforms: The Indian film industry should also show willingness to follow the changing consumer preferences and try to adapt their business models to those changes. Producers should release their movies on other alternative platforms like online streaming/Over the top (OTT) platforms like Netflix, Amazon Prime, Hotstar, DTH service that will be more convenient to the consumers. For example, many consumers today wish to watch new movies in the privacy and convenience of their portable digital devices or home yet most of the producers or filmmakers are reluctant in partnering with these platforms to avoid profit-sharing. By not providing them the means to access movies in their preferred forms of consumption and by forcing them to watch movies only through conventional channels like cinemas and DVDs. If the industry fails to see the wider issue of changing consumption patterns, it may never be able to increase its revenues beyond theatrical revenues. The need of the time is innovative business practices that can meet the changing consumer expectations.

Training of police personnel: Police personnel associated with fighting piracy must be prepared in Copyright Act, sorts of infringement under various sections of copyright industry. They have additionally to be prepared to separate the original from the pirated works/products. The concerned associations should take a lead around this issue since at last the losses because of piracy influence their individuals the most. There can likewise be a type of revenue sharing between the police staff and right holder at whatever point raids are conducted by them.

Awareness campaigns: A huge publicity campaign regarding the ill effects of copyright violation mentioning its being criminal offence, consequences etc. could be initiated. This is however, a ginormous task. Everybody involved in this, like the Government, local authorities, right holders, associations, copyright societies, law enforcing authorities, etc have to come together for this purpose. To begin with, the campaign could be launched and publicized through mass media like newspapers, journals, electronic media such as TV, Cinema halls etc. The campaign should also enumerate how to identify the pirated products as opposed to genuine products.

Education campaign can also be launched at the school and college levels since students are the major end users of the goods produced by copyright industry. However, piracy is not a phenomenon that can be tackled through overnight trick. This should be a long- term effort to instruct and educate students of schools and colleges. Piracy/copyright related matters could ideally be part of school or college curriculum of the students. Simultaneously, lectures, demonstrations may be organised in various parts of the country with the head of colleges/schools who in turn may educate their students. However, for this is to be successful, everybody involved in the copyright related works has to join hands together as it is revolutionary task.

Train the right holders/ dealers/ distributors: The right holders and the dealers/distributors must compulsorily be educated on the Indian copyright laws. Many right holders, though are aware of copyright, are not fully acquainted with the different provisions of the Indian Copyright Act. The right holders in many cases are reluctant to do anything even when they are apprised of the violation of their works. This is more rampant in the case of cinematographic works, and music industry. Therefore, the right holders need to be exclusively trained in every aspect of copyright and they should be educated so as to be convinced that occurrence of any violation adversely affects their interests directly.

1.2 CONCLUSION

The research focused on the issues relating to the problem of copyright piracy in India. It attempted to arrive at a first-hand assessment of the piracy phenomenon and covered mainly the online piracy threatening the Indian film industry. Besides examining why and how piracy occurs, it tried to assess its socio-economic impact in the country. The main objective was to suggest measures to effectively tackle this persistent problem.

The research is based upon the data of various reports of governments organizations, industry sponsored and independent researches. Precise data on copyright industries in India were almost non-existent since so far only a few researches have been conducted on this issue. Quite often the claims on piracy and associated losses by various stakeholders of the industry are found to be too vague, general, exaggerated and at times conflicting with each other. The apex copyright industry associations also lack data on crucial aspects e.g., investment, production, sales turnover, exports etc. relating to their respective industry. This posed a serious roadblock to the study at the beginning.

The Indian film industry has continuously played a significant role in influencing the evolution of copyright law in India. The new DRM provisions under the Indian copyright law are no exception to this. After careful analysis of studies sponsored by the film and media industry, the Indian parliament has taken the view that online piracy is causing substantial loss to the Indian copyright holders and they have considered DRM provisions as the adequate solution to tackle the problem. The Indian judiciary has also inadvertently supported this view by passing many strongly worded orders that can affect the legitimate uses and users of Internet in India.

The research focused on how piracy is threatening the film industry in India. It discussed the various provisions of copyright Act and IT Act so as to fix the liability of intermediaries. It also talked about how piracy has been successfully reduced in some states with their local initiative by introducing state Acts like MDPA Act and Goonda Act. Such efforts may be followed by every state government. Law-makers must introduce Anti- Cam-recording Laws and effective DMR Legislations to solve this persistent problem. The Indian experience demonstrates that stringent intellectual property laws do not automatically reduce piracy. The law is often only as effective as the enforcement regime backing it. Rather, the most effective way of dealing with piracy may be by increasing distribution, appealing to consumers, attacking the piracy supply chain, or engaging in other efforts that make legitimate products more appealing to the masses.

It's time that the industry evolves innovative business practices to reach those potential consumers, rather than solely relying on threats against those consumers through technological and legal measures. If the industry attempts to continue with their age-old business models through legal and technological protection measures it may only deviate their (potential) consumers/end users to other avenues of entertainment in the digital realm.

The research successfully discussed the effective remedies to combat piracy. The right holder should be aware of his rights, they should approach the court and seek necessary injunctions. Judiciary has always played a significant role in combating piracy by passing effective John doe orders. The registration of copyright works may be encouraged since it is found that a majority of creative work go unregistered. While copyright exists on creation and protection of copyright is not subject to any formality like the registration, registering a work helps to establish ownership in a work which, in turn, may be useful for the right holders to prove ownership when the issue goes to litigation.

Right holder must engage in different non-conventional strategies to overcome the piracy with help of private enforcement agencies. Since the direct loss bearer due to copyright piracy are the right holders, the prime responsibility of protecting their copyrights lie with the right holders themselves. Firstly, the right holders must take considerable precautions to protect copyright works. In case violations come to their notice/knowledge, they should immediately file complaints with the police or engage the private enforcement agencies and should be cooperative with them.

As discussed in the preceding chapters, the primary reasons behind copyright piracy are poor enforcement and lack of awareness on copyright matters. The law enforcement authority like judiciary, police needs to be imparted proper training in copyright related fields.

Apart from teaching them how to differentiate an original product from its pirated counterpart, a dedicated institute may be established as a nodal agency to deal with matters of copyright and other constituents of IPR, particularly relating to education and training. Besides, the institution should work in close liaison with the government and copyright industry associations and provide guidance in policy matters as when it may be required.

The copyright industry associations/copyright societies should launch an extensive campaign through print and electronic media highlighting the prospective casualties and adversities associated with piracy. Lectures, seminars, workshops etc. could be organised in schools, colleges, universities and other places to create collective consciousness among people against the evils of piracy. The message should be conveyed in clear terms that in the long run piracy is against the interest of all in the society.

BIBLIOGRAPHY

BOOKS:

- Ahuja V.K., Law of Copyright and Neighboring Rights: National and International Perspectives, LexisNexis India (2007)
- Bhasin Lalit, Media and The Law, Universal Law Publication, 2010 Edition.
- Chawla Alka, Law of Copyright: Comparative Perspectives, LexisNexis India, 1st Edition (2013).
- Kamath Nandan, Law Relating to Computers Internet & E-commerce, Universal Law Publication, 5th Edition 2013.
- Melville B. Nimmer, David Nimmer, Copyright, Lexis Nexis Publication, 1st Indian Reprint, 2010.
- Prof. Narayanan P. Intellectual Property Law, Eastern Law House Publication, 4th Edition 2004.
- Stokes Simon, Digital Copyright, Hart Publication, 4th Edition.

ARTICLES:

- “Piracy Studies in India: The Effects of Counterfeiting and Piracy on India’s Entertainment Industry” by Center for Internet and Society, published on 22 jan 2010, available at <http://cisindia.org/a2k/blogs/piracy-studies-india>
- Adrian Mabbott Athique, “*The Global Dynamics of Indian Media Piracy: Export Markets, Playback Media and the Informal Economy*”, Media Culture & Society 699, 703 (2008);
- Arul George Scaria, Online Piracy of Indian Movies: Is the Film Industry Firing at The Wrong Target? 21 Mich. St. U. Coll. L. Int'l L. Rev. 647 2013 HeinOnline available at http://heinonline.org/HOL/Page?handle=hein.journals/mistjintl21&div=29&collection=journals&set_as_cursor=0&men_tab=srchresults
- Brandon Hammer, Smooth Sailing: Why the Indian Film Industry Remains Extremely Successful in the Face of Massive Piracy, 5 Harv. J. Sports & Ent. L. 147 2014 HeinOnline available at http://heinonline.org/HOL/Page?handle=hein.journals/harvsel5&div=6&collection=journals&set_as_cursor=0&men_tab=srchresults

- Frank Hartung & Friedhelm Ramme, “Digital Rights Management and Watermarking of Multimedia Content for M-Commerce Applications”, 38(11) IEEE Communications Magazine 78, 79 (Nov. 2000).
- Mike Masnick, *Bollywood No Longer Worrying About Piracy as Studios Keep Setting New Records at the Box Office*, TECHDIRT (Feb. 18, 2013), available at <http://www.techdirt.com/articles/20130218/03033922013/bollywood-no-longer-worrying-about-piracy-as-studios-keep-setting-new-records-box-office.html>
- Patrick Frater, AP “Online piracy in India a global problem” Hollywood Reporter (12/15/2009) available at <http://www.hollywoodreporter.com/news/online-piracy-india-global-problem-92365>
- Suman Tatpudy, *Bollywood & Hollywood: Opportunity for Collaboration Through Reform of Policies Governing Copyright and Plagiarism*, MICH. TELECOMM. & TECH. L. REV. BLOG (Mar. 20, 2012) available at <http://www.mttlrblog.org/2012/03/20/bollywood-hollywood-opportunity-for-collaboration-through-reform-of-policies-governing-copyright-and-plagiarism/> ,
- T. Prashant Reddy & N. Sai Vinod, *The constitutionality of preventing "video piracy" through preventive detention in Indian states*, 7 J. INTELL. PROP. L. & PRAC. 194, 194-204 (2012).
- Tarun Krishnakumar & Kaustav Saha, *India's new copyright law: the good, the bad and the DRM*, 8 J. INTELL. PROP. L. & PRAC. 15, 15-17 (2013).

REPORTS/ STUDY:

- “Counterfeiting, Piracy and Smuggling in India – Effects and Potential Solutions”, by ICC and FICCI, available at <http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/International-engagement-and-Advocacy/Country-Initiatives/Counterfeiting-Piracy-and-Smuggling-in-India-Effects-and-Potential-Solutions/>
- “*Digital Dawn: The Metamorphosis Begins*” FICCI-KPMG Indian Media & Entertainment Industry Report 2012, KPMG 61 (2012), available at <http://www.kpmg.com/IN/en/IssuesAndInsights/ThoughtLeadership/Report-2012.pdf>
- “Economic Contribution of Indian Film and Television Industry” (March 2010) prepared by PricewaterhouseCoopers for Motion Picture Distribution Association (India) available at http://www.jimca.co.jp/research_statistics/reports/EconomicContributionReportMarch2010.pdf

- “Economic Contribution of the Indian Motion Picture and Television Industry” by Deloitte and MPA published on march 2014 available at <http://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/in-tmt-economic-contribution-of-motion-picture-and-television-industry-noexp.pdf>
- “Fighting the crime of the 21st century” by FICCI (2012), available at: http://www.ficci.com/sector/5/Add_docs/WTR_36%20India%20CC.pdf
- *“Hitting the High Notes” FICCI-KPMG Indian Media & Entertainment Industry Report 2011* by KPMG 63-64 (2011), available at <http://www.kpmg.com/IN/en/IssuesAndInsights/ThoughtLeadership/FICCI-KPMG-Report-2011.pdf>
- “India: Internet Piracy Landscape Audit” By Envisional & Motion Pictures Association Published In 2009.
- “Indian Film Industry: Tackling Litigations”, by Nishith Desai Associates (NDA) (September 2013) available at http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Indian%20Film%20Industry.pdf
- “Safety and Justice Program and The Global Risk and Security Center”, by RAND Coperation available at www.rand.org
- “Study on Copyright Piracy in India” sponsored by Ministry of Human Resource Development, Government of India available at <http://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>