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PIRACY IN THE OTT ERA: IS COPYRIGHT LAW LOSING THE BATTLE?

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ABSTRACT

The rapid growth of Over-the-Top (OTT) platforms has revolutionized the entertainment industry by providing audiences with instant access to digital content. Netflix, Amazon Prime Video, Disney+ Hotstar, and Sony LIV have changed the way content is consumed and are now an important part of the global media economy. While the digital revolution has taken place, online piracy has become one of the biggest problems for content creators, producers, and streaming platforms. Unauthorized copying, distribution and streaming of copyrighted material has led to significant monetary damages and concerns about the efficacy of existing copyright laws. This article discusses the nature of piracy in the post OTT era, scrutinizes the legal regime of copyright, reviews the issues related to enforcement of copyright law in the digital era and ultimately examines whether copyright law can effectively combat digital piracy in the 21st Century.

Keywords: OTT platforms, copyright, digital piracy, intellectual property rights, streaming services, copyright act, digital rights management.

INTRODUCTION

The digital era has revolutionized the entertainment industry. The rise of OTT platforms has revolutionized the way people watch movies, TV shows, web series, documentaries, and live sporting events. Unlike conventional broadcast approaches, OTT services give on-demand content straight from the internet, which makes it more convenient, cheap and available for consumers regardless of geography.

OTT consumption in India has grown at an unprecedented pace especially since the advent of the COVID-19 pandemic¹, with lockdowns pushing the audience away from theatres and cable to digital platforms. Growing revenues at platforms including Netflix, Amazon Prime Video, Disney+ Hotstar, Zee5 and JioCinema have created tremendous business opportunities for content creators and production houses.

This digital revolution, however, has also laid a fertile path for piracy. An explosive combination of technological innovation has made it easier than ever to illegally copy, distribute, and stream copyrighted material. Movies and web series are often released online within hours of their official release are usually referred to as “pirated” versions. Easy duplication and anonymity of digital technologies has been a constant danger for the entertainment industry.

In this context, one big question arises: Is copyright law losing the war against piracy in OTT? The technology has constantly presented new problems to the traditional approaches of copyright protection, while the systems in the rest of the world have tightened the screws on copyright protection. One of the biggest legal battles of the digital era continues to be the battle between innovation and copyright protection.

Understanding OTT Piracy

OTT piracy is the illegal use, copying, sharing, downloading or streaming of copyrighted material via OTT streaming services. Unlike physical pirated products like DVDs or CDs, digital piracy enables unlimited copies to be made without losing quality.

There are several ways in which modern OTT piracy takes place. Unauthorized streaming sites give access to popular material without securing its licences from the copyright proprietor. Torrent platforms enable users to share copyright-protected files with their peers in a peer-to-peer method. Screen Recording Software allows users to grab the content directly from streaming platforms and share it on social media, messaging apps, and file sharing platforms. Moreover, illegal IPTV services offer access to premium content on internet-based TV networks.

Over the years, the sophistication of modern-day pirates has grown considerably. Pirate operators use proxy servers, virtual private networks (VPNs), mirror sites, and crypto currency

¹ KPMG India, *India's Digital Entertainment Industry Report* (2023).

-based payment systems to gain access to the website without being detected and monitored. Pirate operators use proxy servers, virtual private networks (VPNs), mirror websites, and crypto currency-based payment systems to avoid detection and enforcement action. This has made conventional copyright protection systems difficult to maintain in the face of these rapidly changing technologies.

The concept of copyright protection in India

The Copyright Act, 1957 is the main legislation covering copyright protection in India². The Act bestows the right of the creator and the right of the copyright owner on their original works, namely literary, dramatic, musical, artistic, cinematographic and sound recording works.

The definitions in Section 14³ explain what copyright is and what the rights that a copyright owner has are. These rights comprise the rights to reproduce the work, to give public access to copies of the work, to communicate the work to the public and to allow others to do so.

Section 51⁴ states copyright is infringed by any person who does any act that is reserved for the copyright owner without authorization from the copyright owner. This provision clearly covers unauthorized streaming, downloading, reproduction and distribution of OTT content.

Parliament has realized the importance of utilizing digital technologies to this extent, introduced the Copyright (Amendment) Act, 2012. The amendment also added specific items to address issues in the digital environment.⁵

These technological protection measures are covered by Section 65A⁶ criminalises circumvention of technological security measures used by copyright owners. In the OTT world, streaming platforms heavily rely on technologies such as encryption and Digital Rights Management (DRM) to ensure no unauthorized access occurs, and this provision is crucial for them. In the same way, Section 65B⁷ ensures rights management information is not accessed without permission and sanctions its removal or alteration. These measures are indicative of legislative measures to bolster copyright in the digital era.

² The Copyright Act, 1957

³ Copyright Act, 1957, § 14.

⁴ Copyright Act, 1957, § 51.

⁵ The Copyright (Amendment) Act, 2012.

⁶ Copyright Act, 1957, § 65A.

⁷ Copyright Act, 1957, § 65B.

Role of the Information Technology Act, 2000

The Information Technology Act complements to the copyright law and regulates online activities and offences in connection to it⁸. There are legal means available in the Act to block access to infringing websites and to remove unlawful content from digital platforms.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules give the intermediaries⁹, which includes social media platforms and internet service providers, a duty to eliminate content that infringes on others' rights if a valid complaint is received. The rules are an important element in the fight against pirated content because they mandate that middlemen adhere with copyright owners and law enforcement.

Although all these laws have been enacted, there is still a lack of effective enforcement as many websites involved in the piracy happen to be located in foreign country jurisdictions that are not under the control of Indian authorities. In addition, infringing websites often mask their URLs, or engage in domain name changing and mirror-siting to make enforcement even more difficult.

Judicial Approaches to Digital Piracy

Indian judiciary has more of an activist nature when it comes to stamping out digital infringement. Courts have sought to respond to the problems with traditional enforcement tools through innovative remedies to deal with copyright infringement on the Internet.

The big change is the use of Ashok Kumar Order otherwise known as John Doe Order¹⁰. The injunctions enable courts to block people whose identities remain hidden who are likely to infringe copyright. These kinds of orders are often given prior to the release of major movies and web series to avoid illegal distribution.

Another recent advancement made by judges is the introduction of “dynamic injunctions”.¹¹ The Delhi High Court in *UTV Software Communication Ltd v 1337X.to* saw that the issue with rogue websites which are largely involved in copyright infringement. The Court also gave copyright owners the option to pursue dynamic injunctions, which enabled the authorities to

⁸ Information Technology Act, 2000.

⁹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

¹⁰ *Taj Television Ltd. v. Rajan Mandal*, (2003) 27 PTC 88 (Del).

¹¹ *UTV Software Communication Ltd. v. 1337X.to*, 2019 SCC OnLine Del 8002

block identified infringing websites, and the next-generation mirror/redirect websites, without having to launch its own separate action.

The order has been a big boost to the anti-piracy campaign in India and provides a blueprint for the protection of digital content.

Despite all these efforts, there are still challenges when it comes to combating OTT piracy. With a strong legal framework in place and judicial enforcement, piracy has flourished in the OTT world. There are a number of reasons why this is still a problem.

TECHNOLOGICAL ADVANCEMENTS

The battle against piracy has fallen on the shoulders of technology, both as a means to an end and as a problem. However, OTT firms make use sophisticated DRM systems and encryption technologies, whilst pirates simply continue to devise more ways around them. The continual technological warfare waged by copyright holders and pirates gives the pirates a distinct advantage since they can develop new technologies quickly without the hindrances imposed by law.

JURISDICTIONAL LIMITATIONS

Piracy is made up of the transnational. A site dedicated to piracy can have one's base in one country, be operated from another country and be accessible to users from all over the world. These cross-border activities pose high challenges in the area of jurisdiction and in enforcement¹². International (national) copyright laws sometimes have difficulty covering activities outside the country.¹³

THE STUDY OF THE BEHAVIOUR OF THE CONSUMER AND ECONOMIC CONSIDERATIONS.

Another factor that plays a role in piracy is economic. Today, consumers are experiencing "subscription fatigue", with exclusive content spread out over numerous streaming services. Users are not happy or able to purchase multiple subs simultaneously which results in some users looking for alternative means for subs without authorization.

¹² Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886.

¹³ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994.

While there cannot be any legal justification to piracy, it is necessary to know the economic reasons of consumer behaviour in order to create anti-piracy strategies. Ensure that your data remains anonymous and secure with the help of Cyber security Tools.

Pirates use technology to help them stay anonymous, including using VPNs, encrypting communications within their network, using crypto currency, and/or using anonymous domain registration. The tools make it challenging to identify the individual(s) involved in your piracy operations and to prosecute them.

FINANCIAL AND NON - FINANCIAL CONSEQUENCES OF PIRACY.

The impact of OTT piracy is not just financial; it also impacts the streaming platforms' brand and reputation. Piracy has a negative impact on the whole creative industry.

Content creators, writers, directors, actors, and technicians rely on legal ways of revenue generation from lawful distribution channels. The decrease in profitability may lead companies that produce content to be less inclined to invest in innovative projects, impacting creative diversity and the industry's growth.

Piracy can cost a lot of money. According to industry estimates, digital piracy costing billions of dollars a year worldwide¹⁴. Leading to India's entertainment industry still being subjected to massive financial losses from illegal distribution of copyrighted material.

In addition to being illegal, piracy websites are also a significant threat to users' cyber security. The majority of illegal streaming sites are susceptible to various security risks, such as malware, phishing, identity theft, and fraud. As a result, the consumers are also losing out due to piracy.

IS COPYRIGHT LAW LOSING THE WAR?

There's not a simple answer to the question of whether copyright law is losing the battle to pirate.

However, on the other hand, despite all the tougher legislation piracy is still quite prevalent. New technologies are able to quickly distribute infringing content, and piracy networks are quite resilient when it comes to adapting to enforcement measures. With the development of decentralized digital ecosystems, copyright has become more complicated to handle.

¹⁴ Motion Picture Association, *Global Piracy Landscape Report* (2023).

Conversely, it has been a long time since copyright legislation evolved to take up to technological challenges. The level of copyright protection has been reinforced, with the enactment of laws, the development of judicial innovations, the use of dynamic injunctions, the adoption of intermediary regulations and international cooperation mechanisms. The emerging technologies in anti-piracy are an increasing focus of streaming platforms, especially the use of artificial intelligence for monitoring and forensic watermarking.¹⁵

It would be an incorrect to say that copyright law has been completely a failure. Instead, copyright is constantly being waged in the battle against a constantly evolving technological landscape. The problem is not that they are not protected by law, it's that they are hard to enforce in a borderless Internet.

THE WAY FORWARD

An effective response to OTT piracy must be taken from a broad-based perspective, including using legal, technical, economic and educational solutions.

The enforcement of piracy-related laws and actions should be strengthened and made more convenient through an increase in international cooperation between the relevant governments. Blocking and removal of web content should be expedient and easily accessible for fast response actions to violations of the law.

The development and implementation of advanced security technologies, such as AI-powered detection systems and forensic watermarking methods, are essential for OTT platforms to keep investing in security¹⁶. These steps can help to detect where leaks are and to help ensure that products aren't distributed without permission.

Meanwhile, consumer affordability needs to be taken into account by the streaming companies. Differentiated pricing schemes, combined subscriptions and increased availability might diminish the motivations towards illegal access and use.

It is important to create public awareness campaigns, too. Helping consumers understand the economic and ethical consequences of copyright infringement can help promote an 'Intellectual Property Rights Culture'.

¹⁵ World Intellectual Property Organization, *World Intellectual Property Report* (2024).

¹⁶ World Intellectual Property Organization, *World Intellectual Property Report* (2024)

CONCLUSION

The “OTT” revolution has changed the world of entertainment forever; offering new and unparalleled opportunities for content production and distribution. But the technology advances that helped streaming to thrive have also driven up the fight against digital piracy. With internet connections and technology making it easier than ever to copy and share content, copyright violators are still doing so, hurting creators and rights owners' economic interests.

The Indian copyright regime, along with the Copyright Act, 1957, the Information Technology Act, 2000 and recent judicial rulings offers India with a strong legal arsenal to deal with piracy. However, technological advances, legal issues, and the continuously changing nature of piracy still pose difficulties to efforts of enforcement.

While not in the process of losing the battle to piracy, copyright law is certainly fighting a moving target. The future of success will rely on the cooperation, partnership, and collaboration of lawmakers, courts, technology companies, streaming platforms and consumers, all aiming to safeguard IP rights in the digital world. The balance can only be restored when effective laws, new technology, international collaboration, and public awareness can be employed.

