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"DIGITAL PIRACY IN THE AGE OF ONLINE PLATFORMS: EXAMINING INTERMEDIARY LIABILITY AND COPYRIGHT ENFORCEMENT IN INDIA"

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I. INTRODUCTION

The digital landscape has changed significantly how we create, share and consume creative works. As high-speed internet, cloud services and platform business models have made it easier than ever for people to access music, video, software and literary works from anywhere in the world. While these technologies have created equal access to information, entertainment and services, they have also increased the incidence of digital piracy. Digital piracy refers to the unauthorized reproduction, distribution, communication or making available of creative works through digital means (e.g., through the Internet) without the permission of the copyright owner.1

The substantial growth of OTT services, social media, peer-to-peer file sharing, and encrypted messaging platforms has significantly increased the scope for larger numbers of copyright violations to occur.2 Platforms enable users to create content, as well as distribute content to audiences or other users in real-time, and therefore act as intermediaries between users, who may unknowingly or knowingly post (or host) content that violates copyright. Because it is now so easy to copy, and so inexpensive to distribute copies of copyright-protected materials digitally, while maintaining anonymity on the Internet, piracy is more widespread and difficult to control compared to the traditional analog environment.3

Digital piracy has become an increasing concern/eventually large-scale problem within India's culture. An international network for pirating through the use of torrent sites, cyber locker services, IPTV, and other messaging platforms such as Telegram allows instant/easy access to ALL types of copyrighted materials within seconds of their release, and easy access to millions of users to get copies of the same materials in violation of copyright laws.4 There are negative economic ramifications for piracy on the media and entertainment in the form of revenue losses and discouraging future investments to create new/continuing programs.5

One good/important explanation for these 2 sides is that there are significant issues regarding the level of liability of intermediaries. Per Section 2 (w) of the IT Act, 2000 an intermediary is defined to mean 'any person who receives, stores or transmits an electronic record on behalf of another person' and are essential participants in the digital ecosystem.6 To determine how much liability the intermediary has for a 3rd party's violation is/has been a contentious legal issue. If an intermediary had strict liability then the intermediary may have less incentive to invest in

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new/inprobably developing digital platforms, whereas if there were too much leniency, then the incentive for continued investment in creating new digital platforms would not exist.7

The Indian legal system is trying to reconcile two conflicting interests by means of the 'safe harbour' doctrine, contained in Section 79 of the Information Technology Act, 2000, which provides limited immunity to intermediaries from liability.8 Judicial decisions have clarified that intermediaries must take action when they receive 'actual knowledge' (via court order or notification from a governmental agency) that they are hosting unlawful content. This is an effort to protect individuals' right to freedom of expression while also making intermediaries accountable for the content they are hosting.9

Even though the law provides a number of protections to the parties involved, enforcing these protections is difficult because digital piracy is transient and global in nature. For example, a rogue website can pop up one day, then disappear the next under a different domain name. Moreover, users can easily circumvent restrictions against accessing such sites through the use of a Virtual Private Network (VPN).10 In response to this, Indian courts have developed new remedial measures (e.g., 'dynamic injunctions') to meet this evolving form of online infringement.

This paper will explore the existing legal structure that governs digital piracy in India, with particular emphasis on the concepts of intermediary liability and copyright enforcement law. It will consider statutory, judicial, and regulatory aspects of this legal structure, as well as provide a comparative analysis of other countries' laws on this subject. Finally, the paper will criticallyexamine the existing legal framework and propose changes to improve its ability to address issues surrounding digital piracy and the increasing platform-driven economy.11

II. CONCEPTUAL FRAMEWORK FOR UNDERSTANDING DIGITAL PIRACY IN THE CURRENT ONLINE ENVIRONMENT

Digital piracy in today's online world occurs over a multitude of technological platforms and channels such as Peer-to-Peer (P2P) file sharing networks, torrent sites, cyberlockers, illegal streaming services (including social media and encrypted messaging), and others. Many of these channels enable a significant amount of copyrighted material to be distributed rapidly across wide geographic areas without going through traditional methods of regulation and enforcement. Because most of these channels are decentralized and transnational, it is extremely difficult to detect and enforce against copyright infringement because someone could upload, duplicate, and distribute infringing material all within seconds in multiple jurisdictions.12

Under Indian law, online platforms facilitating copyright infringement can be characterized as intermediaries. Intermediaries are covered under the Information Technology Act, 2000 (the "IT Act"), which defines an intermediary as "any person or entity that on behalf of another person receives, stores, or transmits electronic records; or provides any service in relation to electronic records."13 In this instance, intermediaries can also include internet service providers (ISP's), social media platforms, video sharing sites (e.g., YouTube), search engines, and cloud storage service providers, among others. Because intermediaries host or transmit user-generated content, they are at the centre of this debate related to potential liability (i.e., for copyright infringement) associated with digital piracy.

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There is a key difference between determining whether an intermediary has liability based on their level of involvement as a passive or active intermediary. Passive intermediaries provide only a technical infrastructure or neutral services that enable the delivery of content to users without controlling that content at all.14 Passive intermediaries are generally entitled to safe harbor protection under Section 79 of the IT Act15 as long as they have exercised due diligence and have not been aware of any unlawful activity.

Active intermediaries, on the other hand, are involved in some way with the distribution of infringing content; therefore, they may be unable to rely on safe harbour protection.16 The way in which courts are analysing the level of involvement of platforms that use algorithms to recommend or prioritise content has led to greater scrutiny of those platforms, and what constitutes active involvement.17 The distinction between active and passive intermediaries is not a theoretical distinction; it will have a large impact on liability, particularly in the context of digital economies that are driven by platforms.

III. LEGAL FRAMEWORK WITHIN THE INDIAN DOMAIN

1. Copyright Act of 1957

The Copyright Act of 1957 is a key component to the protection of Copyrights in India and represents the main body of legislation used in resolving Digital Piracy. Copyright owners (Copyright Holders) are provided Exclusive Rights over their Copyrighted Works by way of the Act, specifically relating to Reproduction, Distribution, Communication and Modification (Adaptation).18

The Copyright Act of 1957 defines Copyright infringement as the exercise of any of these Exclusive Rights without the Permission of the Copyright Holder under Section 51.19 In a Digital Environment Copyright infringement can also be seen as simply uploading/downloading/streaming and sharing an Item of Copyrighted Material through a Digital Platform without the Permission of the Copyright Holder.20 Courts have defined Copyright infringement broadly so as to cover both Direct and Indirect uses of Copyrighted Material.

Section 63 of the Copyright Act 195721 provides for the criminalization of Copyright infringement, thereby highlighting how seriously Copyright infringements are viewed by Indian law.22 Criminalization of Copyright infringement in India acts as a deterrent against large-scale Commercial Copyright infringements.

The Act does not only include direct infringement, but it also does recognize secondary liability or contributory liability. A person who facilitates or contributes to an infringement can be liable23 for that infringement through the act of facilitation or contribution. In the case of online intermediaries, the risk of liability is due to their platforms being utilzied for the purpose of hosting or otherwise distributing infringing materials. In the case of R.G. Anand v. Delux Films24, the Supreme Court indicated that original expression is to be afforded protection at a broader level and provided a basis for future interpretation of what constitutes an infringement. Indian courts have been proactive in dealing with digital piracy by providing remedies such as John Doe orders and dynamic injunctions allowing rights holders to take action against infringing parties that may not be identifiable or whose infringing activity may be rapidly

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changing. Finally, these judicial measures have improved enforcement mechanisms available to rights holders under the Copyright Act and particularly, within the digital environment.25

2. IT Act, 2000

The primary law of India which governs the use of electronic communication and the liability of intermediaries is called "Information Technology Act, 2000" (IT Act). One key part of this law is Section 79, which gives intermediaries a "safe harbour" against liability for content created by a third party that is hosted or transmitted through their platform if certain conditions are met.26 The intent of Section 79 was to strike a balance between the need to regulate illegal activity on the internet and the need to foster innovation and growth in the digital economy.

Section 79(1) provides that where intermediary does not initiate transmission; select recipient(s); or alter information being transmitted to recipients; it has no liability for content created by third

parties, subject to certain conditions. Therefore, intermediaries must act as neutral conduits, and not as active parties, in the dissemination of third-party content.27

Section 79(2) provides that an intermediary has no liability for content created by third parties, provided that the intermediary meets certain conditions.28 Therefore, both intermediaries and third parties should be aware of how to use this safe harbour rule because both are less likely to be subject to liability if they understand how to comply.

Moreover, Section 79(3) denies the availability of safe harbor defense in cases where the intermediary is aware of any unlawful activity, or fails to take action promptly upon receipt of the government notification or a judicial order for removal or disabling of access to that content.29 The term “actual knowledge” has been interpreted in the landmark case of *Shreya Singhal v. Union of India*30 by the Supreme Court of India. It has been held therein that the intermediary will be obliged to remove or disable the content only on receipt of either a court order or a notice from the government.

Various judgments further elucidate on intermediary liability. According to a decision in *Super Cassettes Industries Ltd. v. MySpace Inc*31., the intermediary will not be able to claim immunity under the safe harbor provision if he is directly involved in the infringement or has knowledge about the content. Likewise, in *Avnish Bajaj v. State (NCT of Delhi),*32 it has been clarified that liability will be imposed upon intermediaries in case of failure to exercise due diligence in preventing any unlawful activity.

In light of the above, Section 79 can be regarded as the linchpin of intermediary liability in India, providing for a conditional immunity regime aimed at balancing accountability and innovation in the digital era.

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

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021)33 enacted pursuant to the IT Act set forth a host of other duties for intermediaries in terms of due diligence required by Section 79.

Amongst others, IT Rules, 2021 obligate intermediaries to disable access to the unlawful information or remove such information within a specified period, which is no later than 36

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hours following receipt of an order from a court of competent jurisdiction or government agency.34

It is also obligatory under the Rules that significant social media intermediaries appoint designated personnel, such as the Chief Compliance Officer, Nodal Contact Person, and Resident Grievance Officer.35 The duties of the officers include monitoring compliance with legal requirements, cooperating with law enforcement agencies, and resolving user complaints.

Another critical component of the Rules is the creation of a procedure for redressing grievances, which requires intermediaries to respond to complaints within 24 hours and resolve them within 15 days.36 The provision ensures better user protection by providing an effective means to report unlawful and infringing content.

Finally, the Rules have also introduced obligations related to transparency and accountability, which involve the submission of compliance reports from time to time and determining the originator of the information in some instances.37

IV. JUDICIAL DEVELOPMENT

However, the legal landscape concerning digital piracy and intermediary liability has evolved over the past few years, especially with the advent of dynamic injunction measures.

In the matter of *Star India Pvt. Ltd. v. Magicwin.Games & Ors. (2024)*38, the Delhi High Court provided a dynamic injunction to prevent infringement of broadcasting rights relating to the ICC Men's T20 World Cup. Here, the Court observed that piracy websites function by making use of dynamic websites, and thus, traditional injunctions would be inadequate.

Further, in *Warner Bros. Entertainment Inc. v. Moviesmod.Bet & Ors. (2024),*39 the Court provided for a broad injunction against several rogue websites hosting copyrighted material along with providing protection for all other future content.

One of the major developments was that in the case of *Star India Pvt. Ltd. v. IPTV Smarters Pro & Ors. (2025),*40 the Delhi High Court passed a superlative injunction in which live broadcasts could be blocked in real time.

In *DAZN Ltd. v. Buffsports.Me & Ors. (2025)*41, the Court further endorsed this principle by granting rights owners permission to inform the authorities about new infringing websites without filing a separate lawsuit.

The most significant ruling of 2025 in *Jiostar India Pvt. Ltd. v. Criclk.com & Ors.*42 involved the establishment of Dynamic+ orders, which provide automatic and ongoing website-blocking capabilities. Recognizing piracy as a "hydra-headed monster," wherein previously blocked sites resurface using new identities, the Court stressed the importance of having flexible solutions.

Additionally, in *Dabur India Ltd. v. Ashok Kumar & Ors. (2025),*43 the Delhi High Court deliberated on intermediary responsibility within the digital realm, ruling that platforms engaged in facilitating deception or infringement cannot rely on passive intermediary status. With regard to intermediary liability and freedom of expression, *Kunal Kamra v. Union of India (2024)*44 explored the constitutional legitimacy of IT Rule amendments.

V. CHALLENGES IN CURBING DIGITAL PIRACY

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1. Technical Challenges

The ever-evolving nature of digital technology has made it increasingly difficult to curtail instances of online piracy. Modern pirates use various methods like VPNs, proxies, and encrypted messaging services to obfuscate their identities from the authorities and hide the sources of infringement. Such technologies shield the user's IP address and provide them with an opportunity to access the pirated material anonymously.45

Furthermore, the use of mirror sites and dynamic DNS ensures that infringing websites can always come back online using new addresses despite blocking attempts by the regulatory authorities. Such activities have often been compared to the "whack-a-mole" phenomenon, meaning that regulation and technology adaptation cannot keep up with each other's developments. The adoption of peer-to-peer and distributed data storage networks makes tracing and taking down infringing materials more challenging because the content is no longer stored in one server but shared across multiple nodes.46

2. Legal Challenges

There is an inherent ambiguity and overlapping in the existing legal framework regulating digital piracy in India which causes confusion when it comes to enforcement. There are two main challenges with regard to enforcement; first is the problem with interpreting the provisions for intermediary liability and distinguishing between passive and active intermediaries.47 There are several different standards followed by courts when they decide whether or not the intermediary can claim immunity under Section 79 of the IT Act.48

The second challenge arises from the overlapping of two key Acts regulating this field; Copyright Act, 1957 and Information Technology Act, 2000.49 While Copyright Act lays down the substantive rights of the copyright owner as well as rules regarding infringement and its civil remedies, IT Act covers intermediary liability and provides guidelines on how to deal with infringing activities on the Internet.50

3. Problems Related to Enforcement

The enforcement of anti-piracy laws in the digital domain faces several problems related to jurisdictional concerns and procedural inefficiencies. Given that several websites engaged in infringement are hosted beyond the borders of India, it becomes challenging for the enforcing agencies to enforce legal action due to lack of jurisdiction and cooperation of foreign agencies.51 Delays in taking down procedures coupled with inefficiency of the procedure results in infringement being present online for a long period of time thus causing prejudice to the rights of the copyright holder.52 Despite having provisions for dynamic injunctions and blocking orders in place, their execution remains inconsistent.53

Further, there are serious issues associated with the technological and resource inadequacy faced by the enforcing agencies which leads to delay in the identification and elimination of piracy networks.54

VI. SUGGESTIONS AND REFORMS

- Clarification of Scope of Intermediary Liability
- Introduction of Technologies for Detection

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- International Cooperation
- Awareness of Users
- Proportionate Regulation

VII. CONCLUSION

Digital piracy is a complex and constantly developing problem that poses a test for the effectiveness of the current intellectual property laws in the contemporary digital environment. The rapid proliferation of online services, together with technological innovations, makes it possible to easily and instantly distribute copyrighted material outside the framework of enforcement methods and institutions that exist in the offline space.

The progress of India on this front includes legislative reforms, judiciary involvement, and regulatory actions. There is a synergy between the provisions of the Copyright Act, 1957, Information Technology Act, 2000, and IT Rules, 2021, reflecting an ambitious effort towards regulating digital environments and imposing liability on intermediaries. In addition to that, new judicial techniques and approaches towards liability of intermediaries show their effectiveness. However, there remain a number of issues that impede anti-piracy policies. For instance, encryption, distributed networks, and anonymous technologies are developing more quickly than any form of legislation. Moreover, the complexity and inefficiency of enforcing copyright legislation due to such factors as jurisdictional problems and procedures slow down the process even further.

Going forward, India needs to take a holistic approach by not only ensuring that more effective enforcement mechanisms are put into place but that the basic rights of individuals including freedom of expression and access to information are also protected. Some of the measures which could be undertaken include improving intermediary liability rules, developing technology for better enforcement, and promoting cooperation with industry and international agencies.

In conclusion, it is imperative to have a nuanced framework which incorporates global good practices in addition to meeting domestic requirements to prevent digital piracy.

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