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# **“DIGITAL PIRACY VIS-A-VIS ENTERTAINMENT INDUSTRY: A COPYRIGHT PERSPECTIVE”**

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## **PREFACE**

This topic of research is undertaken by the researcher with the intention to do a small contribution to the society by developing an insightful analysis of the offense of piracy in the field of intellectual property rights especially focusing on copyright.

The concept of patents, designs, copyright, trade mark, and geographical indication, all are covered in the ambit of intellectual property amongst which the copyright plays a very significant role not only in the industry of development but also in the growth of creative effort in almost every field explored by the human. The fact that importance of intellectual property is a sine qua non in both the technological aspect as well as the economic development of the country and if anyone explores the scope of intellectual property, the opulence of financial rooms will flourish.

Copyright piracy has an adverse effect on the creators because it restricts them from the opportunity of making a profit out of their artistic works. Book publishing, arts, cinematographing, audio recordings, or program coding are the severely affected areas of copyright piracy is a concept of violating the rights of the creators.

Piracy is recognized as a serious threat that is both morally wrong as well as legally wrong. It affects the innovative potential of the creators by not providing them with their legitimate dues, also causing huge economic losses to all those who have invested affluence of money to bring the work of art to the

end user. Since a large number of copyrighted products are traded globally thus making it more open to the existing risks of piracy. It is high time and should be within the national agenda, especially for developing countries, to provide sufficient protection for copyright.

Countries like the United States of America, Germany, Sweden, United Kingdom, have observed that copyright-based industries have given comparatively more contribution towards the growth of Gross Domestic Product (GDP). On the other hand, for countries like India, no certain effort is being undertaken to give the exact number to indicate the copyright contribution to GDP although it is established that this sector has made an important place in the economic arena of the nation.

The research carried out by the researcher here is a doctrinal, secondary, and tertiary form of research. A certain deduction has been made by reviewing the literature, giving and taking views on the papers and journals of eminent scholars, which have been done in a composed way.

This research is unique and it is of its kind. The researcher has negotiated the limitations of digital piracy vis a vis copyright piracy in different areas like video and sound recordings, programs, cinematography, etc. The researcher has also intended to study the impact of copyright piracy on the personal level of the copyright holders but also at the national level by studying the impact on the national economy. The last chapter focuses on the recommendations drawn to tackle the piracy situation by improving the Copyright Act enforcement as well as spreading awareness regarding such offenses of piracy.

Mansi Verma

## AN OVERVIEW

*“Copyright law has a history of development that can partly be explained by reference to technological challenges. The Internet is undoubtedly the best source for transmitting and reproducing information in the present information era. The information available on the internet comprises copyrighted and infringed works. Today we are living in a world of paperless publication where the flow of information from the author to the reader takes place in machine-readable forms. Putting the same in other words it can be stated that cyberspace has changed the phase and concept of electronic publication. For the holder of the copyright, cyberspace appears to be the worst of both worlds – a place where the ability to copy could not be better, and where the protection of law could not be worse.”*

## 2.1 INTRODUCTION

Schumpeter's theory is based on the concept of creative destruction, which not only assumes that its cycle to break the economic activity but also states that innovation is the key that will ultimately transform the economy of the nation. This very fact holds relevant even in the today's world and seems likely to continue till eternity. There exists an inherent market potential which diverts the limited resources to the most efficient use, which gives a motion to the new innovation process. It is highly recommended that the legal system should thus, act as an enabler in order to facilitate and enhance the innovation process and if it does not, should act as a mere catalyst. The economy has the greatest efficiency when the positive change is brought in by the incentives and disincentives brought via the negative change.<sup>1</sup> Minimising of the amount of time and concerned efforts that are involved in bringing incentives as well as disincentives in execution is the biggest need which requires responsive and expeditious justice delivery system.

In a globalised world scenario where economies compete innovation has become one of the most important factors for sustainable growth and economic prosperity for businesses<sup>2</sup>. Today there is innovation that transcends the physical borders of the nation. Countries understand the need of particular innovation and the execution of this is reflected in alignment of appropriate policies that strengthen, encourage and protect intellectual property rights. It should be noted here that the continuous creative and innovation activities lead to the development of new products or services that provides a technological advantage to the business and contribute significantly to its competitiveness<sup>3</sup>. Most of the businesses and firms invest a lot of money in research and product development, as well as put money in its promotion and marketing. This investment will not be made unless they have a scope of recovering their full investment<sup>4</sup>. The apt and efficient protection of the intellectual properties helps to establish the trust of the investors in the copyright content, investors and creators.

The right of intellectual property is said to be an unproven and intangible addition to incorporeal rights. It

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<sup>1</sup> The theory of Economic Development; an inquiry into profits, capital and the business cycle. The Dynamic analysis of innovation and diffusion: A study in process control, Thomson Learning 1989.

<sup>2</sup> Lindley LJ in *hanfstaengl v. Empire palace* (1894) 3 Ch 109 at p. 128 quoted in *British leyland v. Armstrong* (1984) FSR 591 at p. 608 (C.A.)

<sup>3</sup> *Gramophone Co. V. Birender Bahadur Pandey*, AIR 1984 SC 667 at p. 676

<sup>4</sup> Stewart, *International Copyright and Neighbouring Rights*, Butterworths, 2<sup>nd</sup> edition p. 13. 1989

has over the period of time has become a non-compulsory right, which is more valuable than the property rights and plays a very important role in protecting the hard work of the creators and their creativity and giving them a proper and well deserved recognition.

Copyright is a form of intellectual property which was designed to protect the creative and original work of the creators in the field of music, literature, film, computer programmes, etc. The very notion in doing so is that it helps the creators to flourish commercially as well and enable them to earn profit from their own piece of art.<sup>5</sup> Speaking of India, the trend of copyright is governed by the Act of Copyright, 1957 but tends to be unsuccessful in accomplishing its main objective. Thus, a concrete and proper enforcement of copyright is strongly required due to following reasons:

Foremost, in the world of copyright, where motivation is the main determinant of the progress of the work. In addition to providing entertainment via the entertainment industry making profit and earning a payment is also an incentive attached thus, making a monetary advantage out of their art. So, if there is any loophole which is discovered in the enforcement of the copyright then there is highest probability that creators will not feel secure and would not be motivated to work more<sup>6</sup>.

Secondly, bread earners also suffer from the problem of the incentives of various kinds. The income or the earning they make out of these works are not backed by the joint venture, and will often go to unprofitable activities which does not withhold any social benefits of their own.

Third reason is that the threat that it poses to the creative works.

Fourth is that when copyright enforcement fails to give security to the creators copyrighted work then it disturbs the psychology of the artist thus demotivating them from carrying their work in future.

Fifth reason states that technological advancement makes it easier to make a copy of the original work and sell it in the market.

Taking all the reasons into consideration, it is right to say that our entertainment industry fits in all the criteria perfectly, it involves an input which is the beginning of the creative work like for instance in making of an actual song, the labor, the expenses incurred. Thus, the final product that reaches the

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<sup>5</sup> William Cornish, Davis Ilewelyn, Tanya Aplin, Intellectual Property: Patents, Copyrights, Trademarks and Allied Rights, 8<sup>th</sup> edition, Sweet and Maxwell, pp. 451-475, 2013.

<sup>6</sup> Mark T. Bender and Yongsheng Wang, "The Impact of Digital Piracy on Music Sales: A Cross-Country Analysis," Source, International Social Science Review, Vol. 84, p. 155-170, (2009)

public is the actual music record which is source to fetch profit for all involved in making it. It is for these aforesaid reasons that not only the efficient protection but also the proper enforcement to the copyright is required and should be understood from this perspective as well. The Copyright Act, 1957 of India expressly deals with copyright enforcement in the territory of India. Section 17<sup>7</sup> of the Act deals with the ownership of the copyright. Further, if the owner seeks to transfer the ownership then he can approach the sections 18<sup>8</sup>, 30<sup>9</sup>, 31 and 32A<sup>10</sup> of the Act respectively. The infringement of the copyright is dealt with section 14<sup>11</sup> of the Act.

With the advancement of the digital technology, the issue related to the concept of copyright has also come across a significant growth and is becoming more complex than ever. The reason behind is that the copyright protection has broadly wrapped itself around the international perspectives. As observed, copyright benefits the economy of the nation as it helps in increasing the employment and accounting which forms an important part in the government revenue in the form of excise duty, income tax and others as well. Per se the study conducted by FICCI<sup>12</sup>, the total contribution done by the entertainment industry to India's annual GDP is about 5%. Thus, the threat of digital piracy will not only ultimately affect the revenue potential but shall also lead to the creation of the black economy which is basically used to fund the illegal activities that are being carried in the nation. The conclusive definition of the "infringing copies" is given under section 2(m)<sup>13</sup> of the Act. Furthermore, Section 53<sup>14</sup> read with rule 79 of the Copyright Rules, 2013 also deals with infringing copies.

The presence of infringement includes cross section of artistic works including literary work, computer software's, sound recording and films etc<sup>15</sup>. In India, the extent of a piracy can be

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<sup>7</sup> "subject to the provision of this Act, the author of a work shall be the first owner of the copyright therein"

<sup>8</sup> "the owner of a copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitation and either for the whole of the copyright or any part thereof."

<sup>9</sup> "The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by license in writing by him or by his duly authorized agent."

<sup>10</sup> "Provides for compulsory license in work withheld from the public."

<sup>11</sup> "For the purpose of this Act copyright means exclusive right subject to the provision of this Act to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof."

<sup>12</sup> FICCI-KPMG Report 2015.

<sup>13</sup> Infringing copy if such reproduction, copy or sound recording is made or imported in contravention of the provision of This Act."

<sup>14</sup> "The owner of any right conferred by this Act in respect of any work or any performance embodied in such work or his duly authorized agent may give notice in writing to the commissioner of customs, or to any other officer authorized in this behalf by central board of excise and customs."

<sup>15</sup> "K. R. Venugopala Sarma v. Sangu Ganesan, 1972 Cri LJ 1098 (Mad) was a case of infringement of copyright in picture and it was held that an infringement of the copyright was complete even though the reproduction was not exact, but the

understood from the fact that Indian online users downloaded 6.5 percent of bit torrents, as reported by the Motion Pictures Distributors Association<sup>16</sup> (MPDA). A proviso to section 52(c) of the Copyright Act<sup>17</sup> provides the intermediaries including ISP are required not to facilitate infringing content. The Section 52<sup>18</sup> highlights the exceptions to the copyright infringement for the acts which shall not be constituted as an infringement in the eyes of law.

Section 64, 66<sup>19</sup> and 70<sup>20</sup> of the Copyright Act also concern the procedure and are non-obstante or other prevailing provisions. On the procedural front the Copyright Act is not very explicit so the procedure is governed mainly by the Code of Criminal Procedure, 1973 (herein after referred as Cr.P.C).

Anyhow, though these provisions still exist to regulate the copyright protection but we have to admit that the actual implementation and enforcement of copyrights faces various challenges like:

1. It is presumed that the infringement of copyright protection is not that big of an offence.
2. The enforcement machineries does not have enough sources to gather the information or past records of the violators.
3. The existing copyright act is quite complicated. And sometimes is not able to be interpreted by the enforcement agencies which are not much acquainted with the details and hence making the enforcement more difficult.

Researcher holds the opinion to share the procedure which are to be abided regarding enforcement of copyright as it necessary so that there exist is no scope of confusion regarding its enforcement. With respect to the substantive law of copyright enforcement three sections of the Indian Penal Code (I.P.C)

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effect on the mind by study of the two pictures was that the respondent's picture was nothing but a copy of the plaintiff's picture. The Court while applying the various tests observed as follows (at p. 1100)."

<sup>16</sup> MPDA published in FICCI- KPMG Report 2015.

<sup>17</sup> "Provides for the certain acts not to be infringement of copyright clause (c) provides that transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration has not been expressly prohibited by the right holders, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy.

<sup>18</sup> "Provides for acts not constitute as an infringement of copyright."

<sup>19</sup> "Provides for disposal of infringing copies or plates for purpose of making infringing copies."

<sup>20</sup> "No court inferior to that of a metropolitan magistrate or a judicial magistrate of the first class shall try any offense under this act."

needs to be studied properly, namely section 28<sup>21</sup> of the I.P.C which lays down the definition of counterfeit. Secondly, section 415<sup>22</sup> of the Code<sup>23</sup> which defines cheating and lastly section 417<sup>24</sup> which gives the punishment for the offence of cheating.

Talking about the procedural aspect of the copyright enforcement, section 155<sup>25</sup> of the criminal procedure code shall be preferred which describes the procedure which the officer in charge of the police station has to abide by when there is a commission of non-cognisable offence. Furthermore, section 100<sup>26</sup> in addition empowers to search and seize a place of scene of commission of offence with a warrant. Section 102 also gives the power to the police officer to seize the property as well. In case of Smt.

Basava Dyamangouda V. State Of Mysore<sup>27</sup>, the apex court observed that the very notion and scheme of the statutes of the Criminal procedure code appeared to be that where the property which has been subject matter of an offence is seized by the police, it ought not to be retained in the custody of the court or of the police for anytime longer than what is absolutely necessary.

### 2.1.1 Copyright: Meaning

Copyright is such a legal concept which gives a protection to the creator of the original work and also empowers them with an exclusive incorporeal right for a limited time. In general, being a copyright gives the owner the right to distribute their work, transfer his rights to the another

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<sup>21</sup> This provision provides for the counterfeit it means who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced”

<sup>22</sup> This provision provides for the counterfeit it means who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced”

<sup>23</sup> This provision defines cheating it provides that whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat. A dishonest concealment of fact is a deception within the meaning of this section.”

<sup>24</sup> “This provision deals with punishment for cheating, it provides that whoever cheat shall be punished with imprisonment of either description for a term which may extend to 1 year or with fine or with both.”

<sup>25</sup> “It provides for information as to non-cognizable cases and investigation of such cases.”

<sup>26</sup> “Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, search should be made and if such person is woman, the search shall be made by another woman with strict regard to decency.”

<sup>27</sup> AIR 1977 SC 1749

individual, publish the work, perform the work along with certain pecuniary interests and many more rights related to their own work. The concept of copyright was originally a notion which was conceived by the government to put a restriction on the duplication of the work. The purpose of the existing copyright is to facilitate the creation of the new content by allowing authors to manage and leverage from their projects. It is to be mentioned that the law of copyright is said to be territorial which in common parlance means that it can extend beyond a certain limit of the borderline subjected to the exception of the country being a member of the international agreement<sup>28</sup>. However, this statement does not stand of much relevance in today's era as many such countries are taking a step towards signing at least one agreement with other countries. The copyright law of today seeks to strike a balance between the interests of the creator and the very owner of the copyrighted material and the final material as well as the end users of the product. Lord Mansfield who is considered to be one of the reputed arbiters of the concept of copyright who says, "it should always be the author who should make gains out of his own work."

### 2.1.2 Nature

Copyright is the right recognised by law as a natural right imposed on the creative minded individuals<sup>29</sup>. International agreements have set a minimum requirements for legislation, but countries are allowed so that they can issue the time span of the copyright registration longer than them<sup>30</sup>. The duration of a copyright is the entire life of the creator plus fifty to hundred years after the death of the creator or is the time limit for anonymity or co-creation of the companies. Few of the jurisdictions require procedures in order to establish the guaranteed legal right but most of the granted rights to the work made are given without registration. Generally, laws are enforced as civil action, but some jurisdictions use criminal sanctions as well.

The protection of copyright is an automatic generated right which means that there are no rules and regulations which makes it mandates the process of registration. Anyway there are models for copyright registration which are in practice in India and copyright registration has proved to be a great tool withholding numerous advantages. Obstruction and exclusion to the said rights are provided

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<sup>28</sup> International Copyright Law Survey". Mincov Law Corporation.

<sup>29</sup> V.J. Taraporevala (2013), Law of intellectual property, 2nd edition, P 1205 para

<sup>30</sup> Nimmer, David (2003). Copyright: Sacred Text, Technology, and the DMCA. Kluwer Law International's. 63.

for the the benefit of the private consumers and as well for the general public. The duration of the right is long but very limited. For the most number of works, copyright is valid for only fifty years from the end of the calendar year in which the work was created or fifty years after the end of the calendar years in which the work is created or caused death of the authors.

### 2.1.3 Rights

It is basically a set of rights which was designed by the legislators to protect the interest of the creators and producers in form of securing their creative work which shall include literary, music and cinematography, computer programmes etc. In general terms, a some of the other form of rights that are incorporated in the right of copyright is rights given to authorships, reproduction of the copyrighted content, transmission and communication to the end users thus, broadcasting it to a larger number of public including adaptation and translation of the material.

### 2.1.4 Remedies

Remedies for copyright infringement, can be divided into civil remedies and criminal remedies. The former are listed in chapter XII of the Copyright Act and includes remedies like damages and injunctions. The latter are given in chapter XIII<sup>31</sup> and includes remedies like imprisonment and fines. Under section 64<sup>32</sup> of The Copyright Act police officers not below the rank of a sub inspector have been empowered to take action against copyright infringement. The offences of copyright infringement have been dealt in section 63 of Copyright Act<sup>33</sup> as well as various provisions under the Indian Penal Code, 1861.

## 2.2 Piracy: Meaning

Reproduction, Imitation, Distribution or Importation of copyrighted work without license or through

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<sup>31</sup> The Copyright Act 1957.

<sup>32</sup> “Power of the police to seize infringing copies it provides that any police officers not below the rank of a sub-inspector, may if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being or is likely to be committed, seize without warrant all copies of the work and be produced before a magistrate”

<sup>33</sup> “Any person who knowingly infringes or abets the infringement of the copyright in a work or any other right conferred by this act shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 3 years and with fine which shall not be less than 50 thousand rupees but which may extend to two lakhs rupees.”

unauthorized means is termed as Piracy<sup>34</sup>. It will not be wrong to point out that piracy can be said to be the root of all loss of profit for the content creators and no doubt is growing to become a threat for the owners which they have to take seriously into consideration. It is becoming to be the need of the hour to combat piracy and help the industry of copyright production to flourish.

Piracy in a way restricts the owner from enjoying their own due profits and said to be illegitimate use of the copyrighted materials. The offence of piracy aims at replication of the computer programmes, entertainment industry ranging from music to film. On the other hand, replication of the books publishing and other scripts are said to be quite common as they are done majorly for academic reasons.

## 2.2.(a) Pirating Movies

Considering the viewership of cinema in India with three major entertainment industry, the traffic sites that host pirated content is also significantly higher in the country. While the above torrent sites, which are the most used worldwide, are quite popular in India, people often visit pirated sites that exclusively feature Bollywood or Tollywood content. Some of the majorly visited sites are as follows:

- a. Filmywap
- b. Todaypk
- c. Bolly4u
- d. Tamilrockers

As movie piracy has become a more regulated art in recent times, from volatile recordings on camcorders to dedicated sites, apps and add-ons to physical hardware, piracy has become more subtle but more dangerous as a practice. In the United Kingdom, a third of people over the age of 16 pirated movies.

The method of pirating movies and uploading them online has also become more complex and

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<sup>34</sup> Bryan A. Garner (ed), "Black's Law Dictionary" 8th ed. 2004, Thomson West, U.S.A.P. 1186

difficult to track. Pirates often use Bit Torrent to upload their files and store them online. The data reaches the user who requests the file provided by the contribution of a large group of seeders, also known as pirates who upload the files in bits and pieces. However, with the recent crackdown on online piracy and the closure of links to pirated files, pirates save the files offline and these same games and movies are then sold via optical discs in the grey market.

## 2.2(b) History Of Piracy

The term piracy can be easily understood from the term pirates. The roots of the concept of pirate goes back to 13<sup>th</sup> century when the sailors of the seas used to stop the merchant ships and naval vessels and then used to stole all their goods were known to be pirates. At the raising of the new century, the term took an entire new meaning, and came to be applied on the illegal use or unauthorised utilisation of the intellectual property. On entering the era of 1900's, the term has completely detached from its etymological meaning and had become to use for the primitive depositors of the copyrighted works, patents, trademarks, designs. By the early years of the 21<sup>st</sup> century, the term piracy, pirates and pirated goods were being used for the unauthorised distribution of the intellectual properties, to be specific, copyrighted materials via digital technology like compact disks, DVD's, other computer softwares in the black market of the copyright industry. The thing to be noted is that there exist numerous statutory laws across the nation which does not expressly defines the word "piracy". Apart from these legislation. One of the legislation who took notice of the issue and provided a definition of the term "piracy" is called TRIPS Agreement (Trade Related Intellectual Property Rights Agreement)<sup>35</sup>:

"Pirated copyrighted goods shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation".

Furthermore, most number of time the terms copyright infringement and digital piracy are used in place of one another while talking about the concept of copyright violations. Although, there is a

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<sup>35</sup> Article 15, Note 14, Section 2: Civil and Administrative Remedies, Part III – Enforcement of Intellectual Property Rights, TRIPS.

slight difference between the term which can be understood by the way that piracy takes into consideration about different varieties of music, literature, art, films, videogames, cinematography, computer programmes.

## **2.2.(c) Characteristics and Nature Of Digital Piracy**

The term digital piracy refers to hacks that occur on the Internet and that can occur through the use of any social media or any sort of electronic technology. The term digital hacking or digital piracy is easily distinguishable from that of online hacking. The very best way is to describe an online crime is to say that it is a type of digital offence that takes place in the world of digital cyberspace.

It is an illegal copying of the copyrighted material, computer programmes, software, digital data, digital audio (which might include the music and speech), and digital video, for any reason other than a proper backup, without receiving the consent of the true owner of the paid copyright owner. These very acts make it certainly illegal to replicate and distribute the content on digital media via the internet.

## **2.2.(d) Rights available against digital piracy**

### **a. Illegal downloading of movies**

The Union of India recently amended the Cinematography Act, 1952 to clearly define the punishment that can be faced by pirates who make or distribute copies of the video of the film using recording equipment without the written consent of the video owner. The video need not be recorded at all, or even shared on the Internet. If an individual tries to record a movie in the theatre, then he has said to commit an offence. The penalty for this is usually imprisonment, a fine or both. This penalty can also be extended to those who download pirated videos.

### **b. Charges that can be imposed against piracy**

Since the offence of piracy is not just limited to published books and audio industry but the entertainment industry as well, the above punishments are not the only punishment that is being awarded to the violators or the pirates. It takes different forms depending upon the industry. The most

prominent law under which the charges are framed are as followed:

- Copyright Law: If a person uses a pirated computer or creates or buys illegal program on a computer device or a program manufactured or purchased to infringe copyright, he can be jailed for at least 7 days and can be extended up to 3 years and fined of Rs. 50 thousand that can be extended up to 3 million.
- IT Law: If a person has access to a computer, computer system or computer system, then he will continues to digitally view, copy and delete information contained in the computer by digital means or removable storage media (pen or hard disk), will suffer a liability of compensation, which can be up to Rs. 1 Crores, without the prior consent of the content owner. Anyone who transfers the stolen data will be liable for the same amount of compensation.

### 2.3 Entertainment Industry: Meaning

Human beings have something special that sets us apart from other living species. Self-organisation in relationships is one of the characteristics of the human beings. Humans are good entrepreneurs, created to serve's specific goals and are left to seek out of new ones<sup>36</sup>. The source of fun is indisputably the new concept of humanity, has existed on earth since we existed<sup>37</sup>.

Whether it's the cave paintings of the first humans in or the power duels of ancient Roman gladiators, our fascination with the fun of has in many ways always had an ancient origin. Jawahar Lal Nehru, "Films have had more impact in India than newspapers and magazines combined, movies are a form of communication that shows people in existence as well as their lifestyle in the past<sup>38</sup>."

An activity is considered fun by one person and not by all the others. Even for one, a perception's of

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<sup>36</sup> Shah, Vikas, "The role of Film in Society" an exclusive interview with Tom Sherak," The Academy of Motion Picture Arts and sciences, thought June 2001.

<sup>37</sup> Gould, D.M and WC Gruben, "The Role of Intellectual Property Rights in Economic Growth" Journal of Development Economics, vol.48, p.323-350, 1996

<sup>38</sup> Cinema has become a powerful vehicle for culture, leisure, education and propaganda. in a 1963 report for the united nation educational scientific and cultural organization looking at Indian cinema and culture, the author (Baldoon Dhingra) quated a speech by Prime Minister Nehru who stated, "...the influence in India of films is greater than newspapers and books combined." Even at this early stage in cinema, the Indian film-market catered for over 25 million people a week- considered to be just a 'fringe' of the population.

entertainment can change over time, but when researching entertainment, one need to identify a number of resources that provide sources of which count mass entertainment such as movies, television and music as well. Also acknowledge that an individual needs to exclude other forms of entertainment, such as sports. There are currently numerous of studies. In this paper, the researchaer has tried to analysedigitalentertainment business, which shall include music and video businesses.

Altghough, sports are broadcsast digitally but are not constituted in thecontent of the current research.

## 2.4 Copyright Piracy In India

Since, the paper revolves around the digital piracy in entertainment industry. So the latest movies called “udta punjab” already bacem a taget of digital piracy as it started to circulate amongst the end user before its release date. Thus, the legisaltion in India, the copyright act states that the copyright exists in numerous types of works. Although it is not a specific law, but is seek to beincluded in the series of laws which are nubered. Taking the rights of the authrors, it ois already established that India is currently a part of number of international treaties which in a manner imposes obligations on the member state of the treaty. The impetus for the amendments to Indian Law was per se the Trade Related Intellectual Property Rights Agreement (TRIPS agreement) as a member to world trade organisation thsy must abide by certain rules and regulations in a given time span which is mentioned in the agreement. The indian copyright act is made with a legislative intent to grant the protection to the artistic work and not wanted to restrict the creativity of the of the artist.

The running rights that are guaranteed to the original creators on their own piece of work are not depende on the economic rights. However thy exist withcertain moral rights whiach are: empowered with the right to claim their ownership or authorship over their work (also called right to attribiution), in addition they are empowered to claim damages as well in case there is any sortof infringement or any other act like, modification, distortion, replication or any act similar to these which in any manner shall compromise the legitimate dues of the creators to malign the reputation of the author (also known as rightof integrity). These rights which are considered to be the moral stands are guaranteed to the creators to not only protect their creation but also their personal interests whatsoever. The fact to be noted that these copule of rights are not particularly assigned to the creators but can be

voluntarily waived off by the creators if they desire so.

The copyright law of India clearly highlights that a piracy in case of copyrighted work takes place only when a person commits either of the following acts with an intention of doing so:

- a. A person who is making a sale or hires someone else to sell or sells or lets for hire, or with the help of display and performance shows an offer for sale or hire, or
- b. Distribution of the material either for the purpose of trade or to such an extent as to compromise the profit of the owner of the copyright in any manner, or
- c. importing or displays by way of trade exhibits in public without the consent or knowledge of the true owner of the copyrighted materials.

The body that is responsible for the enforcement of copyright law in India is The Ministry Of Human Resources Development (commonly known as MHRD). The ministry has drafted a detailed report<sup>39</sup> after analysing the very impact of copyright on different arenas of the sectors. The study has given a detailed analysis of the copyright piracy in India by analyzing its impact on various sectors. The committee that submitted the report to the ministry was headed by Dr.N.K.Nair and the report clearly highlighted the fact that contribution of the copyright –impacted industry is approximately one percent of the GDP in 1996 - 1997. Apart from this national report the other glaring international report is the various Special 301 Reports<sup>40</sup> which highlights the facts that India has to deliberate more on copyright protection in order to develop the economy of the country.<sup>41</sup> According to various Special 301 Reports India is one among the top 10 countries of USTR's 'Priority Watch List'.<sup>42</sup> There are numerous ways in which the offence of copyright piracy can be committed and the list of new tactics is still growing. Per se the report submitted by ASCAAP<sup>43</sup> talks about the connectivity of the era of advancing internet technology and expanding copyright industry. Not only limiting itself to these walls only, it goes beyond researching of the availability of simple yet efficient tools (like blogging, photo sharing, video sharing, social networking sites) which can prove to be a weapon for hackers to publish any kind of materials on the web.

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<sup>39</sup> Chittor P.Krishnan, "Growing Markets – Grey or White", Hindu Business Line dated on 24th April, 2000.

<sup>40</sup> 2009 Special Report 301 Report

<sup>41</sup> American Society of Composers, Authors and Publishers

<sup>42</sup> Special 301 Report is published by USTR

<sup>43</sup> American Society of Composers Authors And Publishers

Thus, under the ambit of copyright, several other rights are guaranteed as well, some of which are as follows:

- a. Reproduction or replication of the copyrighted work- under this head, it covers published books, recordings of songs, art works, etc.
- b. Derivation of the material- adaptation of the copyrighted work is covered under this ambit.
- c. Distribution of the materials- the very skill to make a sale or distribute the copies of the work.
- d. Performance and display- to put the work on display a work in front of the end users.<sup>44</sup>

The Indian Copyright Law has taken a stand to define what exactly has to be understood when an individual piracy of the copyright content special reference to the term infringing copy:<sup>45</sup>

- a. When the violator tries to make for the sale or hire or sells or lets for hire or by way of the trade puts it on display to put out an offer for sale or hire, or
- b. Distributing the content either with an intention of trade or done to such an extent that the owner of the copyright gets affected, or
- c. Puts it on display by means of trading to be presented to the public at large.<sup>46</sup>

The Ministry of HRD, government of India, which is considered to be the apex regulating body of our country with respect to copyrighted content, thus, a comprehensive study was formulated to reach and understand the root causes of the incidence of the criminal offence of piracy<sup>47</sup>. This study is very much different from any other studies and which is one of its own kind and was assigned to the National Productivity Council focussing on few of the goals to be achieved:

- a. Studying the limits to which the offence of piracy is incorporated in various fields of the copyrighted industry like audio, videos, entertainment, arts, etc.
- b. Assessing the very impact of the digital piracy on not only the copyright holders but also the economy of the nation.
- c. Trying to come up with a planned programme to provide assistance in carrying out the enforcement of the copyright more efficiently.

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<sup>44</sup> Priti H. Doshi, Copyright Problems in India Affecting Hollywood and “Bollywood,” (2003).

<sup>45</sup> Term ‘ Infringing copy is defined under Section 2 (m) of the Copyright Act, 1957

<sup>46</sup> Section 51 (b) of the Copyright Act, 1957

<sup>47</sup> Report of Human Resource Development

## 2.5 Digital Piracy

### 2.5.(a) Digital Technology: Meaning

The digital era of technology has created a huge market for the copyright industry with the internet. Majority of the products are being sold on online platform only. The public display with the help of auctions and exhibiting the products intends to lend a hand increasing the sale of the content by putting it on a public display. Online commerce also leads to higher sales as compared to the general way of trade and commerce. A very high quality of audio and video productions can be produced and managed very well. A number of newsletters and magazines are now available to be downloaded digitally in the databases library and schools for academic uses. This form of technology thus, allows to organise a large amount of data and information in the databases, access of which is now being provided to various users through online mode<sup>48</sup>. Converting the soft copy of the content into the hard copy is quite cheap and easy and this goes to both the sides that is converting it back into the soft copy from hard copy is also easy. This works a way of an incentive for the developers of the copyright, in order to avoid any sort of custom duty, specifically while exporting their piece of work. Considering the use of internet, it is very evident to know that while exporting, internet does not have any borders for any tax to be imposed for the regulation of the activities of the export. As the internet bandwidth and the speed of the modem increases, copies of the movies and music can be viewed online. The book publishers, directors and movie distributors explore various ways to deliver electronic content in their products, and the very possibility of linking ubiquitous products with the same internet services.

The technology also gives permission to the work that has to be produced in fully digital form. The fact that the word “digital” is not used in any law statutes that cannot amount to that such works are not protected by law. All work now can be digitalised even if they contain plain text. Images, documents, audio or even video and if once digitized, and circulated all over the world in a matter of seconds.<sup>49</sup> The era of internet has made the global distribution of the content much more easier than ever can be imagined, ultimately promising to reduce the cost and reduce the time along with the liability of the middlemen who create, transfer, replicate and even sell the copies in its physical form.

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<sup>48</sup> Business Software Alliance study and report, 2003

<sup>49</sup> S.K.Verma and Raman Mittal (2013), Legal dimensions of cyberspace, 2nd edition p. 115 para 4

Unfortunately the digital age has some very strong winds for manufacturers and other copyright owners as it was making it much easier than ever for consumers to access the content message without permission.

Digital technology has given the copyright holder with new technologies and opportunities which were tend to be beyond imagination when the existing law came into operation. The doubt arises in the mind of the copyright holders that this introduction might lead to disturbance in the security they enjoy. Thus, the drawback is that making a copy of the copyrighted content available for the potential end users, it also gets exposed to the potential pirates as well. Apart from the right guaranteed to the authors which are both economical and moral rights, directors might get vulnerable to the growing technology and exposure of the content. The reason being that while the conversion or translation of the work is being carried there is a slight chance that an uncertain manipulation can take place and that very manipulation can cause hindrance in the with rights and integrity of the ownership. This will ultimately cause difficulty for the copyright holder to exercise their moral right against and sort of defamatory treatment of their work that can cause harm not only to their personal reputation but can cause loss to their earnings as well.

The general issues that arise when the copyright industry interacts with the digital technology and its every impact:

- **Easy to replicate**- as said, once the content is converted into a digitalised form from its physical form, it can further be replicated with very ease and with very less cost without damaging the quality of the content available. Every single replicated copy, can easily be further reproduced without any complication and again without compromising the quality of the content. In this way, a single copy of the original work can be reproduced over and over without any damage.
- **Easy to circulate**- the introduction of digital technology has made it significantly easier to just publish and promote the content on a large scale with much more ease with the concept like broadcasting which allows an individual to just circulate the material online starting from one single point.
- **Storing capacity**- the ocean of digital technology is no doubt deep but it gets on deepening with every passing advancement and development. Every single minute detail can be stored on digital technology without the fear of getting lost.

No doubt, there exist hundreds of ways in which the offence of copyright infringement can take place

through the digital technology amongst which linking<sup>50</sup> is the most prominent and remarkable form of violation of copyright in web environment. However, as the new ways are evolving to commit copyright infringement so does the intensity of commission of such offence.

## **2.5.(b) Digital Technology Vs. Copyright Laws**

The enforcement of copyright law was put to test across the world after the advent of the digital age. Technological restrictions in restricting access and stopping unauthorised copying added more on the problems to the current scenario. There exist numerous of technologies that empowers the copyright owners to restrict the access to any other unauthorised individual. These technologies however, will stop the unauthorised access to only some extent and not completely. It is important to understand that someone created the technology and therefore digital technology is still available to all the copyright holders and the investors at all time accompanied with the threats and challenges.

## **2.5.(c) Doctrine Of Fair Use**

Digital rights management (DRM) technology is designed to provide value and control over rights holders intellectual property. The limitation of DRM are supported by the law behind the digital millenium act (dmca), which now prohibits the use. DRM prescribes technology to control the copyrighted work.

Essentially, business owners can now write their intellectual property in computer code and are confident that the DMCA will support this process with the force of law. In light of these developments, many have suggested that copyright holders will use DRM technology to circumvent copyright Laws under the ambit of “fair use” (or relatives, such as first sale in limited time) doctrine. Drm what is the strictness of fair use? Is the tension irreconcilable? If so which should be allowed?

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<sup>50</sup> Ticketmaster Corp v. Microsoft Corp No 97 -3055 CD DA, Complaint filed on April 1997.

## 2.4.(ca) Fair use: a boon or a bane?

While the four factor test specified in section 107 of the copyright act is the widely known (at least in law), the fair obligation in law no. Is not clear.

Note the three aspects of fair use of in the real world ,but worth going into detail here :

- (1) many activities depend on the legality of fair use ;
- (2) mystery, natural phenomenon is the basis for meditation of new technologies and laws;
- (3) fair use has become a force for innovation and a source of competition.

