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THE CONSTITUTIONAL VALIDITY OF MAKING COPYRIGHT REGISTRATION COMPULSORY FOR DIGITAL WORKS: A DOCTRINAL RESEARCH

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ABSTRACT

During this technological era, new forms of creative content emerge rapidly across various media such as computer programs, online journals, artificial intelligence-produced artwork, and non-fungible tokens. Despite advocating for formless protections under conventions like the Berne and TRIPS agreements, states now frequently implement compulsory registrations as measures against digital theft and managing information flows. This document examines whether requiring individuals to register their copyrights on computers is legally sound. This examination assesses if this directive breaches fundamental rights guaranteed by Article 19(1)(a), concerning freedom of speech and expression, as well as Article 300A pertaining to property rights within India's constitutional framework. Additionally, it scrutinizes how similar doctrines affecting free speech were addressed in American legal precedents. Research indicates that although compulsory registration as part of law enforcement might comply constitutionally in specific circumstances, requiring such registrations for maintaining copyrights exceeds constitutional authority and breaches international legal commitments.

INTRODUCTION

The transition towards digital expression significantly reshaped how we protect creative works. During the analogue period, making something new stood out clearly, had an obvious physical presence, and occurred less frequently. In today's world, digital labor encompasses various elements such as intricate software programs, transient online communications like tweets, cryptocurrencies based on blockchains, and live video streams—all of which are produced rapidly and continually. The copyright system, originally intended to safeguard creations of intellect, is currently grappling with challenges in its administration. At its core, there is an opposition between viewing copyrights as innate rights granted at birth for works created, versus expecting governments to oversee who owns what through official documentation. In this situation, tensions intensify online due to anonymous environments and easy duplication making it challenging for authorities to manage effectively. Therefore, discussions about

requiring mandatory copyright registrations for digital content reemerged as proposals aimed at promoting licenses, addressing unowned copyright issues and simplifying legal disputes. Nevertheless, incorporating an official procedure into what is fundamentally important provokes significant legal concerns.

Is it fair for there to be an additional cost attached to sharing thoughts through legal means due to compulsory documentation requirements?

Is it considered unjustified infringement when there's no registration for copyright protection denied?

The document aims to address those inquiries through an examination of whether compulsory copyright registration is constitutionally sound. Beyond interpreting copyright law under statute alone, it evaluates what constitutional standards an amended act must meet before being accepted.

OBJECTIVES OF THE STUDY

- a. The aim is to analyze the existing legal parameters that regulate the copyright registration process of digital works in India.
- b. The second objective is to determine whether the requirement of registration contravenes Article 19(1)(a) (Freedom of Speech) and Article 300A (Right to Property) of the Indian Constitution.
- c. The third objective is to assess the compatibility of mandatory registration with the international obligations under the Berne Convention.
- d. The final objective is to come up with a constitutionally sound model for digital copyright management that would not only protect the rights of the creators but also allow the proper enforcement of those rights.

RESEARCH METHODOLOGY

In order to achieve the objectives of the research, the researcher adopted the doctrinal research methodology.

For examining this black letter law, namely the Constitution of India and the Copyright Act of 1957, the doctrinal method is used. This study could be described as examining the legislative act and its interpretation by courts concerning 'formalities' under copyright law.

A comparative methodology in these matters is critical due to the global nature of digital works. The present study will elaborate on United States jurisprudence concerning the division in law that resulted from the Berne Convention Implementation Act and the decision in the case of *Fourth Estate Public Benefit Corp. v. Wall-Street.com*.

THE DIGITAL WORK AND STATUTORY LANDSCAPE

It is imperative to first have a clarity of the statutory regime before evaluating the constitutionality of the matter. The Indian Copyright Act, 1957; Section 13 Copyright therefore exists in the case of original literary, dramatic, musical, and artistic works as well as in the case of distinct categories like computer programs (treated as literary works). Crucially, established Indian jurisprudence, culminating in the landmark Bombay High Court judgment in *Sanjay Soya Pvt. Ltd. v. Narayani Trading Co.* (2021)¹, clarifies that copyright registration under Section 44 and 45 is merely voluntary. Justice G.S. Patel emphatically noted that copyright is not a statutory grant that requires registration to exist; it is an inherent right that arises from the act of creation. The registration certificate is merely *prima facie* evidence of ownership, not the source of the right itself.

Despite this, the unique nature of digital works has led to calls for mandatory registration. The justification for this move is based on three main points:

1. Intermediary Liability: Digital platforms such as YouTube or Instagram have a tough time figuring out who the actual owner is among all the uploads made by different people which could be millions. A mandatory registration would ideally serve as a "source of truth."
2. Orphan Works: The digital world is full of works where the creator is hard to trace. Registration that is mandatory would help in the reduction of the orphan works case.
3. AI Training Data: The advent of Generative AI has necessitated the establishment of an authoritative database of works whose data the AI models have been trained on, hence making the sharing of royalties easier.

Nonetheless, enacting this through legislation would necessitate revising the Copyright Act. The critical issue has been raised: would such a modifying clause pass the test of constitutionality?

¹<https://bombayhighcourt.nic.in/generatepdf.php?bhcpair=cGF0aD0uL3dyaXRlcmVhZGRhdGEvZGF0YS9qdWRnZW11bnRzLzIwMjEvJmZuYW11PUYyOTA3MDAwNTAxMTIwMjBfNi5wZGYmc21mbGFnPU4mcmp1ZGRhdGU9JnVwbG9hZGR0PTE1LzAzLzIwMjEmc3Bhc3NwaHJhc2U9MTYwMzIxMTEyMDE5>

CONSTITUTIONAL VALIDITY: THE FREEDOM OF SPEECH CHALLENGE

The primary constitutional obstacle to obligatory copyright registration is the Indian Constitution's Article 19(1)(a), which secures the right to free speech and expression.

Copyright law and free speech are inseparably linked. Copyright, on the one hand, limits the use of the work by restricting others from utilizing it without permission, while, on the other hand, it attracts more speech by guaranteeing the authors' claim to the fruits of their consumption.. The US Supreme Court, in *Harper & Row v. Nation Enterprises*², famously described copyright as the "engine of free expression."

If copyright is the economic mechanism that enables an author to speak, then imposing a bureaucratic hurdle (registration) and a financial cost (registration fees) on that mechanism is a direct restriction on speech.

In the context of digital works, the volume of creation is immense. A blogger may write three posts a day; a coder may commit fifty lines of code hourly. If the state mandates that copyright protection—and the ability to defend that speech against theft—is contingent upon filing a form and paying a fee for every single update, it creates a "chilling effect."

The "chilling effect" doctrine, recognized by Indian courts in cases like *Shreya Singhal v. Union of India 2015*, suggests that excessive regulation can deter citizens from exercising their rights. For an independent digital creator or a whistleblower publishing a digital manifesto, the burden of registration (time, money, and disclosure of identity) might lead them to forego protection or, worse, forego creation entirely.

Therefore, making registration compulsory for the subsistence of the right effectively says: "You have no right to your expression unless you register it with the State." This presents an early constraint to be placed on the enjoyment of the product of one's speech, which is probably against the law under Article 19(2), since "administrative convenience" is not a reasonable ground for the suppression of free expression.

² <https://www.copyright.gov/fair-use/summaries/harperrow-nationmagazine-1985.pdf>

CONSTITUTIONAL VALIDITY: RIGHT TO PROPERTY (ARTICLE 300A)

The Indian Constitution in Article 300A says, "No person shall be deprived of his property save by authority of law." The right to property has ceased to be a fundamental right but still is a constitutional right and, along with it, a human right.

For a long time, intellectual property has been acknowledged as a kind of property. The moment a digital work is produced, the author automatically receives the property right. Reproducing, selling, and licensing the work are all rights that belong to this property.

A law that made registration compulsory for the existence of copyright would mean that an unregistered work has no property rights attached to it. This leads to a situation where a digital artist makes a painting, and someone else takes it for selling and making a profit. If the artist cannot take legal action just because of not registering the work, the government has practically helped the removal of their property.

Article 300A mentions deprivation as "authority of law," but such a law needs to be just, fair, and reasonable (the Maneka Gandhi test). It is not uncommon that a law that deprives a creator of rights just because the creator did not fill up a government form would be quashed as arbitrary and unreasonable (violative of Article 14), especially in an era where instant creation is the norm.

In addition, the Doctrine of Proportionality comes into play in this instance. Does the measure (deprivation of copyright for non-registration) fit the aim (maintaining a public database) in terms of scale? Most probably the answer is no. The sanction (loss of property) is excessive when compared to the administrative. Furthermore, with AI-generated works (assuming future protection), the speed of generation far outpaces any human bureaucratic capacity. Mandating registration here is not just a burden; it is a structural impossibility.

Alternative Mechanisms: Technology over Legislation

Rather than an unconstitutional mandate, the objectives of registration (public record and enforcement) can be achieved through technological means which are less intrusive on rights.

Blockchain Timestamping

The government could recognize blockchain timestamping as valid evidence of ownership. This creates an immutable public record without the "formality" of state approval. This supports the Article 19(1)(g) (Right to trade/profession) of tech developers and imposes no bureaucratic chill on creators.

Voluntary Incentivization

Instead of "stick" (mandatory registration), the State can use "carrots." For example, statutory damages (punitive damages) could be reserved only for registered works (as done in the US), while actual damages remain available for unregistered works. This withstands constitutional scrutiny because it does not deny the right or the remedy, but merely enhances the remedy for those who assist the state by registering.

CONCLUSION

The digital era demands a robust copyright framework, but efficiency cannot come at the cost of constitutionality. This paper has examined the proposal of making copyright registration compulsory for digital works through the lens of the Indian Constitution and international jurisprudence.

Linking back to the objectives:

- 1. Current Framework:** The study confirms that currently, under the Copyright Act and the Sanjay Soya ruling, registration is voluntary.
- 2. Constitutional Violation:** The analysis demonstrates that mandatory registration for the subsistence of copyright violates Article 19(1)(a) by creating a prior restraint on expression and "chilling" digital speech. It further violates Article 300A by arbitrarily depriving authors of intellectual property without substantive due process.
- 3. International Compatibility:** Such a mandate would place India in direct conflict with Article 5(2) of the Berne Convention.
- 4. Proposed Model:** The paper concludes that a mandatory-for-subsistence model is unconstitutional. However, a mandatory-for-litigation model (similar to the US) is theoretically possible but risks violating Article 14 (Equality) if it discriminates against Indian authors versus foreign ones.

Final Outcome:

The Constitutional validity of making copyright registration compulsory for digital works is tenuous at best. To remain intra vires the Constitution, any registration requirement must be:

1. **Voluntary for subsistence:** The right must vest upon creation.
2. **Incentivized instead of Coerced:** Providing evidential advantages rather than denying legal remedies.
3. **Technologically Integrated:** employing blockchain and monitoring data instead of using paper-based bureaucratic procedures.

Any move towards re-establishing a rigidly formalistic treatment of digital creations would almost certainly be declared by the courts as an unreasonable infringement on basic rights and thus would not pass the proportionality test in a democracy that cherishes both property and free speech.

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⁴ [Web resultsbputevaluation.comhttps://www.bputevaluation.com](https://www.bputevaluation.com)PDFINTELLECTUAL PROPERTY RIGHTS

⁵ https://ijirt.org/publishedpaper/IJIRT189642_PAPER.pdf