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“SAFE HARBOURS AND SPED-UP SONGS: RE-EVALUATING INTERMEDIARY LIABILITY FOR ALTERED AUDIO ON SHORT-FORM VIDEO PLATFORMS”

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I. INTRODUCTION

The protection of Intellectual Property (IP) rights has become a major concern as a result of the internet's explosive growth, particularly in light of the widespread immunity granted to social media intermediaries.¹ **Saraswat and Kumar** argue that as digital technology has grown, it has been more challenging to strike a balance between content accessibility and artists' rights, which has made it easier for unauthorised copying and distribution.² The judiciary in various jurisdictions displays how Social Media intermediaries (“SSMIs”)³ become blindsided to the illegal activities happening on their respective platforms.⁴ However, their position exposes them to much more accountability because of their enormous control over the information that circulates. The Spider-Man movie dialogue, “*With great power comes great responsibility*”⁵, proves true in the context where a platform's access to a lot of user-generated data encodes various IPs, which increases its accountability.

Given the significant contribution SSMIs have made to the spread of sound and audiovisual information, the music business ought to be a big player in this ecosystem. There is growing worry about the growing effects on the existing ecosystems on the defense of musicians' copyrights and other associated rights.

The increasing popularity of “*Sped-up*” versions of music serves as one of the best illustrations that lays a foundation for viral video choreographies and various other music-driven industries

¹ Anushka Saha, ‘SAFE HARBOUR OR RESPONSIBILITY? INTERMEDIARY LIABILITY AND IP PROTECTION ON THE INTERNET’.

² *ibid.*

³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, rule 2(1)(w). The rule defines a ‘social media intermediary’ as ‘an intermediary which primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services’.

⁴ *ibid.*

⁵ *Stan Lee & Steve Ditko, Amazing Fantasy No. 15 (Marvel Comics, 1962).*

at the cost of the rightsholder's revenues. The way that music and audio-visual content are shared online has been significantly altered by platforms like Instagram Reels, YouTube Shorts, and TikTok that support short video snippets.⁶ These platforms make it an easy task for the generation and distribution of scaled copies of musical expressions free of cost by merely changing the pitch, speed and remixing of the original songs, thereby infringing the musical artists' IP rights.⁷

The Information Technology Amendment Rules, 2026 ("IT Rules"),⁸ have tried to forcibly change the nature of such intermediaries from a passive host to an active facilitator⁹ by including the "altered audio" under the term "Synthetically Generated Information ("SGI")".¹⁰

II. STATUTORY CONTEXT

In the Indian Legal Framework, Intermediary liability can be defined as the legal framework under which SSIMs are given a safe harbour immunity from secondary copyright infringement (*herein referred to as liability arising from the third party or the user-generated content*). However, this immunity is conditional on the basis of the time taken for such intermediary to act expeditiously to remove or disable access to such infringing information. Failure to act upon it in a time-responsive manner upon the notification of such legal notice or complaint leads to exposing the intermediary to the liability under Section 79, IT Act 2000.¹¹

The Indian legal system upholds the "passive host" approach through a separate and distinct statutory system for safe harbours. With respect to safe harbours for neutral conduits under

⁶ Sakshar Law Associates-Sakshi Shairwal and Tanisha Sharma, 'Legality of Remix Music in Accordance with Copyright Laws in India' (*Lexology*, 31 January 2022) <<https://www.lexology.com/library/detail.aspx?g=f9a18338-7502-4bbd-ae32-5dca7761cd3c>> accessed 20 March 2026.

⁷ Riya Yadav, 'Copyright Violations in the Indian Music Industry: Challenges & Legal Perspectives' (2025) 12.

⁸ 'The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026' <<https://www.meity.gov.in/static/uploads/2025/10/065b6deb585441b5ccdf8be42502a49c.pdf>> accessed 20 March 2026.

⁹ 'Update: Overview of the IT Intermediary Amendment Rules, 2026' <<https://www.argus-p.com/updates/updates/update-overview-of-the-it-intermediary-amendment-rules-2026/>> accessed 20 March 2026.

¹⁰ 'Government Notifies Information Technology Amendment Rules 2026 | Article | Chambers and Partners' <<https://chambers.com/articles/government-notifies-information-technology-amendment-rules-2026>> accessed 20 March 2026; Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, rule 2(1) (wa). The rule defines 'synthetically generated information' as 'audio, visual or audio-visual information which is artificially or algorithmically created, generated, modified or altered using a computer resource, in a manner that such information appears to be real, authentic or true and depicts or portrays any individual or event in a manner that is, or is likely to be perceived as indistinguishable from a natural person or real-world event'.

¹¹ The Information Technology Act, 2000.

Section 79,¹² intermediaries can only maintain immunity under Section 79(2)(b)¹³ if they “do not initiate the transmission or select a recipient or alter the information contained in the transmission”.¹⁴

The Delhi High Court in **Super Cassettes Industries Ltd v Myspace Inc.**¹⁵ has reconciled the IT Act and the Copyright Act 1957. It ruled that liability under Section 51(a)(ii)¹⁶ requires “actual knowledge”, not a general awareness, and has no obligation to perform due diligence or pre-screening obligations.¹⁷

Whereas, in the USA, the SSIMs, herein referred to as the Online Service Providers (“OSPs”) under Section 512 (c), Digital Millennium Copyright Act (DMCA), are immune under the safe harbour protection while hosting the user-generated content. The legal framework specifically applies to any “actual” or “red flag” knowledge of any such infringement, which the OSPs are required to know. Additionally, no intermediary will remain immune if they are receiving any kind of revenue from such infringement while having “THE RIGHT AND THE ABILITY” to control it.¹⁸

The interpretation of this liability has been, and continues to be, one that has been given a strict interpretation by the courts. The Second Circuit in **Viacom International v. YouTube**¹⁹ held that the “control” exception to the safe harbour under Section 512, DMCA²⁰ requires an intermediary to have “substantial influence” over the user-generated content on their service and has rendered the third-party relationship much more fragile than one would assume.²¹

The Eleventh Circuit, in **Athos Overseas, Ltd. v. YouTube**,²² held that the automated

¹² *ibid.*

¹³ *ibid.*

¹⁴ ‘My Space Inc. vs Super Cassettes Industries Ltd. | Wilmap’ <<https://wilmap.stanford.edu/entries/my-space-inc-vs-super-cassettes-industries-ltd>> accessed 20 March 2026.

¹⁵ 2016 SCC OnLine Del 6382

¹⁶ The Copyright Act, 1957

¹⁷ ‘20.-Amrutha-Adv.Pdf’ <<https://ijlrs.com/wp-content/uploads/2024/06/20.-Amrutha-Adv.pdf>> accessed 21 March 2026.

¹⁸ Hannah Hurley, ‘DMCA Safe Harbor Is Deep: Plaintiffs Need to Get Specific’ (*IP UPDATE*, 29 January 2026) <<https://www.ipupdate.com/2026/01/dmca-safe-harbor-is-deep-plaintiffs-need-to-get-specific/>> accessed 21 March 2026.

¹⁹ *Viacom International Inc v YouTube Inc* 676 F 3d 19 (2d Cir 2012)

²⁰ Digital Millennium Copyright Act 1998.

²¹ ‘Amicus_brief_of_eff_and_ccia.Pdf’

<https://www.eff.org/files/2025/01/23/amicus_brief_of_eff_and_ccia.pdf> accessed 21 March 2026.

²² *Athos Overseas Ltd Corp v YouTube Inc LLC* (11th Cir, 7 January 2026)

fingerprinting systems, like YouTube (*which can identify and remove user-generated content that has counterfeited or is otherwise infringing*), do not automatically give rise to “red flag” knowledge of specific infringing content.

The IT Rules 2026 address the doctrinal gap that exists with respect to SGI²³ through the introduction of technical verification procedures to be used by platforms for media that was altered through the use of SGI. Failure on the part of the platform to undertake proactive due diligence will result in the loss of protection under section 79 permanently.²⁴

III. CRITIQUE OF THE CURRENT REGULATORY REGIME

The tempo or pitch adjustment tools built into music platforms permit users to produce adapted versions of original sound recordings by changing the pitch/tempo of the original recordings; therefore, these tools may be classified as “*Derivative works*” performed without authorisation from the owner of the copyright for the original sound recording.²⁵

However, the music platforms continue to assert that Section 512(c), DMCA applies to them.²⁶ Historically, courts have held that these technologies have no effect on the platforms’ safe harbour protection under the DMCA. As illustrated in **Wolk v. Photobucket.com, Inc.**, providing access to technology to allow for modification of sound recordings has not negated the platforms’ safe harbour protection.²⁷

However, if the music platforms design specific features for the purpose of promoting viral audio trends (*a pitch/tempo slider, providing “#spedupsongs” - a trend generating billions of views/revenues*), then their argument for technological neutrality is weakened.²⁸

The concept of “*substantial influence*” is at the heart of this discussion. In **Viacom**

²³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2026

²⁴ ‘Update: Overview of the IT Intermediary Amendment Rules, 2026’ (n 8).

²⁵ ‘Copyright Compliance: Issues with Delivery of Unlicensed Sped/Slowed Track Remixes’ (*FUGA Knowledge Base*, 31 July 2025) <<https://support.fuga.com/hc/en-us/articles/36690013408916-Copyright-Compliance-Issues-with-Delivery-of-Unlicensed-Sped-Slowed-Track-Remixes>> accessed 21 March 2026.

²⁶ Digital Millennium Copyright Act 1998.

²⁷ *Wolk v Photobucket.com Inc* 569 Fed Appx 51 (2d Cir 2014).

²⁸ Morgan Wilsmann, ‘MUSIC MASHUPS: TESTING THE LIMITS OF COPYRIGHT LAW AS REMIX CULTURE TAKES SOCIETY BY STORMt’ (*Public Knowledge*, 25 June 2025) <<https://publicknowledge.org/lawsuit-seeking-social-media-accountability-for-buffalo-shooter-misses-the-mark-but-not-the-moment/>> accessed 21 March 2026.

International Inc. v. YouTube, Inc.,²⁹ courts found that a safe harbour would be lost on the substantial control of infringing conduct.³⁰ Similarly, in **Lemmon v. Snap, Inc.,**³¹ the design of the product “*Speed filter*”, a creative speeding tool by Snap, made it an infringement.³²

The legal uncertainty in India, whether or not adding advertising to user-generated content qualifies as a modification under Section 79(2)(b)(iii), the IT Act³³, is not just the tip of the iceberg, but the whole of it. Previous obiter dicta proved that mere addition of advertisements constitutes a modification of the original information that violates safe harbour protection.³⁴

The IT Rules 2026’ Amendments:

- a) **Rule 2(1B):** Active Moderation preserves safe harbour.³⁵
- b) **Rule 4(1A):** SSIMs must verify SGI Disclosures.³⁶

These statutory changes create a direct legal link between the provision of content-altering tools and the loss of immunity from intermediary liability.

IV. EVALUATING OPPOSING PERSPECTIVES

Under **Sony Corporation of America v. Universal City Studios, Inc.:**³⁷

Arguments by the Platforms:

- a) “*Staple article of commerce*” doctrine supports safe harbour under Sections 512 and 512(m) DMCA;³⁸
- b) Speed-altering tools possess substantial non-infringing uses, avoiding secondary liability;

²⁹ Viacom International Inc v YouTube Inc 676 F 3d 19 (2d Cir 2012).

³⁰ Mandy Dalugdug, ‘As Sped-up Remixes Take over TikTok, Universal Releases Compilation Album of Sped-up Hits’ (*Music Business Worldwide*, 12 June 2023) <<https://www.musicbusinessworldwide.com/as-sped-up-remixes-take-over-tiktok-universal-releases-compilation-album-of-sped-up-hits1/>> accessed 21 March 2026.

³¹ Lemmon v Snap Inc 995 F 3d 1085 (9th Cir 2021).

³² ‘23.11.14-Doc.-430-ORDER-Granting-in-Part-and-Denying-in-Part-Defts-Motions-to-Dismiss.Pdf’ <<https://epic.org/wp-content/uploads/2025/05/23.11.14-Doc.-430-ORDER-Granting-in-Part-and-Denying-in-Part-Defts-Motions-to-Dismiss.pdf>> accessed 21 March 2026.

³³ The Information Technology Act, 2000.

³⁴ Dr Karnika Seth, ‘LIABILITY OF INTERMEDIARIES IN INDIA’.

³⁵ Casebook Chapter Fourteen | Duke University School of Law’ <<https://web.law.duke.edu/cspd/casebook/ch14/>> accessed 21 March 2026.

³⁶ ‘Section 512 Study: Notice and Request for Public Comment’ (*Federal Register*, 31 December 2015) <<https://www.federalregister.gov/documents/2015/12/31/2015-32973/section-512-study-notice-and-request-for-public-comment>> accessed 21 March 2026.

³⁷ Sony Corp of America v Universal City Studios, Inc 464 US 417 (1984).

³⁸ Digital Millennium Copyright Act 1998.

- c) **No duty to monitor networks;**³⁹
- d) **No red-flag knowledge claim;**⁴⁰

Critics of this argument believe that the application in the Sony case has been misapplied, the vicarious copyright liability exists where a platform has both a right and an ability to control infringing conduct and a direct financial interest in that infringing conduct, same principle, held in **A&M Records, Inc. v. Napster, Inc.**⁴¹ Platforms integrate these tools into their algorithmically generated feeds, which generate advertising revenue based on the user interaction proving that platforms are not merely neutral technology providers.

Under **Campbell v. Acuff-Rose:** ⁴²

Defenses:

- a) A “Fair use 4-factor test” requires a transformative purpose;⁴³
- b) Speeding songs do not have a new expression, therefore failing the transformative fair use factor test.

Additionally, the claim of technical limitations is not supported by the music industry’s use of licensing agreements with online platforms like Universal Music and Warner Music ⁴⁴ because these companies have agreed to grant the online platforms the ability to identify, monitor, and monetize altered audio, showing that the platforms are capable of identifying and exploiting derivative works when it is in their financial interest to do so.⁴⁵

³⁹ Wilsmann (n 27).

⁴⁰ Kerri Eble, ‘THIS IS A REMIX: REMIXING MUSIC COPYRIGHT TO BETTER PROTECT MASHUP ARTISTS’.

⁴¹ A&M Records, Inc v Napster, Inc 239 F3d 1004 (9th Cir 2001)

⁴² Campbell v Acuff-Rose Music, Inc 510 US 569 (1994)

⁴³ ‘Measuring Fair Use: The Four Factors’ (*Stanford Copyright and Fair Use Center*, 4 April 2013) <<https://fairuse.stanford.edu/overview/fair-use/four-factors/>> accessed 21 March 2026.

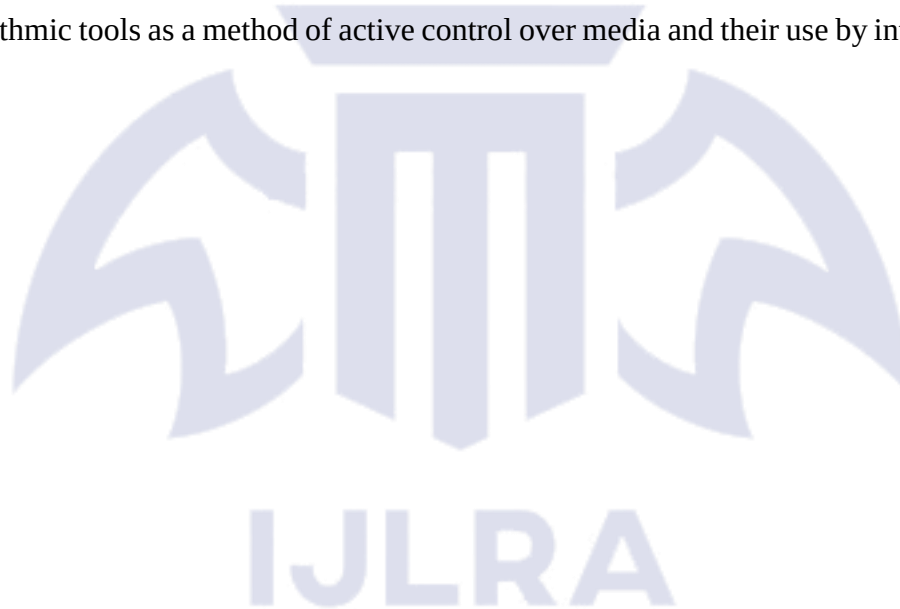
⁴⁴ ‘Warner Music Inc. - WARNER MUSIC GROUP & TIKTOK ANNOUNCE FIRST-OF-ITS-KIND EXPANDED AGREEMENT’ <<https://investors.wmg.com/news-events/news-releases/news-details/2023/WARNER-MUSIC-GROUP-TIKTOK-ANNOUNCE-FIRST-OF-ITS-KIND-EXPANDED-AGREEMENT-07-18-2023/default.aspx>> accessed 21 March 2026.

⁴⁵ Murray Stassen, ‘TikTok and Universal Music Group Sign Global Licensing Deal’ (*Music Business Worldwide*, 8 February 2021) <<https://www.musicbusinessworldwide.com/tiktok-and-universal-music-group-sign-global-licensing-deal/>> accessed 21 March 2026.

V. CONCLUSION

Applying passive safe harbour rules to active architectures creates a gap through the use of short-form video platforms with features for altering time (*via tools*) and using algorithms to promote work (*derivative audio*) that are not just “*neutral hosts*”, but also have significant power over infringing actions, and also derive financial gain through virality from these actions. The courts must acknowledge that these tools for media manipulation (or media alteration) and their related design choices by the relevant platforms undermine the protections offered by Section 512(c), DMCA.⁴⁶

This same approach is in both the IT Rules, 2021,⁴⁷ with their amendments, which connect safe harbour with increased diligence for altered media. To achieve a proper balance between the innovation provided by intermediaries while effectively enforcing copyright laws, we must treat algorithmic tools as a method of active control over media and their use by intermediaries.



⁴⁶ Digital Millennium Copyright Act 1998.

⁴⁷ The Information Technology Act, 2000.