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# **COPYRIGHT INFRINGEMENT: AN INTERPLAY BETWEEN ARTIFICIAL INTELLIGENCE JURISPRUDENCE AND THE HUMAN INTELLECTUAL DEVELOPMENT**

AUTHORED BY - LOKESH MITTAL & SANIGHDHA

## ***Abstract:***

It is a trite in today's world that the humanity is moving towards the highest stage of development in case of technology and innovations. Intellectual property laws and rights have built up such a strong foundation for themselves that they are valued for their intrinsic quality, all over the world. Intellectual property rights are the treasure of knowledge and are a sign of the growth in human intellect, in one way than another, to deal with the problems of the world. IPR include the patents, trademarks, copyrights, designs, and the geographical indications that help in identifying an innovation or an already existing property, that needs to be preserved. Intellectual property has certain rights associated to it, these rights are known as the intellectual property rights and henceforth, are given to the persons who are the owners of these properties. This helps them in securing their rights and as well as using it cautiously for the future generations. On the other hand, technology is shaping our world, like never before. The growth of artificial intelligence and further technological advancements have led to the issues of challenging obstacles, mounting in the form of data security breaches, privacy infringements and targeting of individuals amidst revengeful events and materialistic desires. However, the present research paper strives, to put in front the development in the field of intellectual property rights, especially copyrights law and rights associated with it, the growth in the instances of infringement and the possible remedial measures for the same- whether criminal or civil side remedies; and lastly how artificial intelligence has changed the whole paradigm for legal academicians, advocates and judges- because solving and settling these disputes is no longer easily attainable. It includes effective implementation of laws and a cross-sectional study of each and every provision involved. Thus, the present manuscript strives to delve into the complex arena of copyrights laws and the association of generative artificial intelligence, with the same and how all this effects the very basis of legal foundation in a country.

**Keywords:** Copyright Infringement; Artificial intelligence; Intellectual Development; Jurisprudence; Generative Artificial Intelligence.

## I. INTRODUCTION AND DEFINITION: COPYRIGHTS AND ARTIFICIAL INTELLIGENCE

According to the World Intellectual Property Organisation, “Intellectual **property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.** Intellectual property is protected in law by, for example, patents, copyright, and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.<sup>1</sup>” Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, etc. Patent is a recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR policies, management style, strategies, and so on depending on its area of specialty.<sup>2</sup>

According to the Georgetown Law, intellectual property law is defined as, “**the law that deals with rules and regulations to protect and enforce rights of the creators and owners of inventions, writing, music, designs, and other works, known as the intellectual property. There are several areas of intellectual property including copyright, trademarks, patents, and trade secrets.**”<sup>3</sup> The same source also explains trademark, patent, and copyright law as

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<sup>1</sup> ‘What is Intellectual Property’ (World Intellectual Property Organisation) <<https://www.wipo.int/about-ip/en/>> accessed 13 July 2024; V.K. Ahuja, *Law Relating to the Intellectual Property Rights* (2007); N.S. Sreenivasulu, *Law Relating to the Intellectual Property Rights* (2013); Ronald Rosen, *Music, and Copyright* (2008); Brad Sherman, *The Making of Modern Intellectual Property Law* (1999); Ronan Deazely, *Rethinking Copyright* (2006); K.C. Kailasam, *Law of Trademarks: Including International Registration Under Madrid Protocols*

<sup>2</sup> Chandra Nath Saha and Sanjib Bhattacharya, ‘Intellectual Property Rights: An Overview and implications in pharmaceutical industry’ (*National Library of Medicine*, April 2011) <[<sup>3</sup> Georgetown Law, ‘Intellectual Property Law’ \(Georgetown Law\) <<https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/intellectual->](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/#:~:text=Intellectual%20property%20rights%20(IPR)%20refers,a%20given%20period%20of%20time.></a> accessed 13 July 2024</p></div><div data-bbox=)

well in the following words. Copyright law is defined as the, “law that protects the rights of creators in their works in fine arts, publishing, entertainment, and computer software. The laws protect the owner of the work if others copy, present, or display the owners work without permission.<sup>4</sup>” On the other hand, trademark law is enunciated as the, “the law that protects a word, phrase, symbol, or design that is used by an entity to identify its product or service. Examples are Dunkin Donuts orange and pink sausage style lettering, Apple’s apple logo, and Adidas three stripes. Trademark owners can prevent others from using their marks, or marks which are confusingly similar so that consumers would not be able to identify the source. Federal and state laws govern trademarks but the Lanham Act is the primary source of trademark protection. These laws protect against infringement and dilution.<sup>5</sup>” However, if one has to look into the word Copyright, specifically, it is defined as, “Copyright is a type of intellectual property that protects original works of authorship as soon as an author fixes the work in a tangible form of expression. In copyright law, there are a lot of different types of works, including paintings, photographs, illustrations, musical compositions, sound recordings, computer programs, books, poems, blog posts, movies, architectural works, plays, and so much more.<sup>6</sup>” **However, one can give a more specific definition to Copyright Law as,** “Copyright refers to the legal right of the owner of intellectual property. In simpler terms, copyright is the right to copy. This means that the original creators of products and anyone they give authorization to are the only ones with the exclusive right to reproduce the work. Copyright law gives creators of original material the exclusive right to further use and duplicate that material for a given amount of time. Once a copyright expires, the copyrighted item becomes public domain.<sup>7</sup>” A similar definition is followed in the Indian law<sup>8</sup>. However, copyright infringement on the other hand, is understood as the infringing the rights of the person who holds the titlehood

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property-

law/#:~:text=Intellectual%20Property%20law%20deals%20with,%2C%20patents%2C%20and%20trade%20secrets  
> accessed 13 July 2024

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

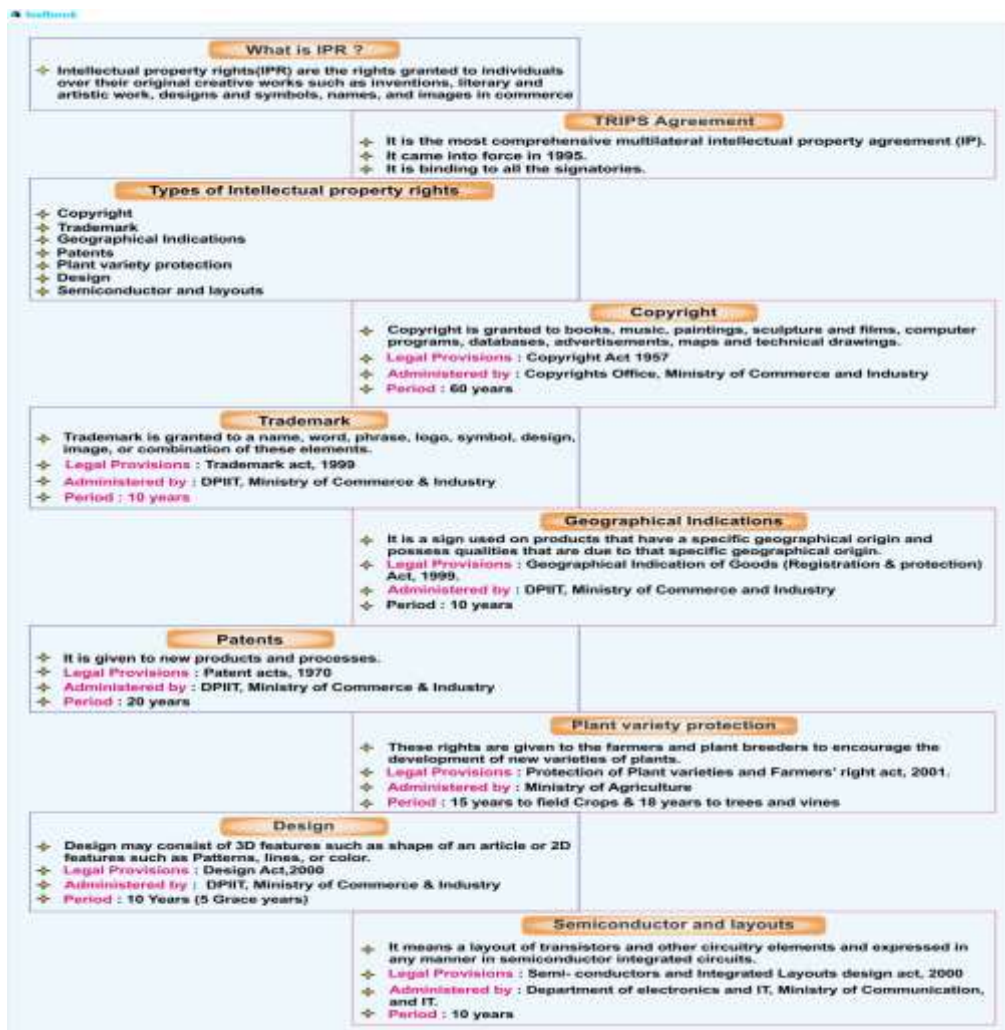
<sup>6</sup> ‘What is Copyright’ (*U.S Copyright Office*) < <https://www.copyright.gov/what-is-copyright/>>accessed 13 July, 2024; V.K. Ahuja, *Law of Copyrights and Neighboring Rights: National and International Perspectives* (2007); Abeerha Begum, *Indian Internet Copyright Law: With Special Reference to Author’s Right in the Digital World* (2014); N.S. Sreenivasulu, *Intellectual Property Rights* (2007); P. Narayanan, *Law of Copyrights and Industrial Designs* (1999)

<sup>7</sup> ‘What is Copyright and Copyright Law’ (*Investopedia*) < <https://www.investopedia.com/terms/c/copyright.asp>>accessed 13 July 2024

<sup>8</sup> ‘A Handbook of Copyright Law’ (*Government of India-Department for Promotion of Industry and Internal Trade-Ministry for Commerce and Industry*) < <https://copyright.gov.in/documents/handbook.html#:~:text=The%20Copyright%20Act%2C%201957%20protects,expressions%20and%20not%20the%20ideas>> accessed 13 July 2024; The Copyrights Act 1957; The Indian Copyright Rules, 1958; ‘The Copyrights’ (*World Intellectual Property Organisation*) < <https://www.wipo.int/copyright/en/>> accessed 13 July 2024; ‘What is Copyright?- Definitions, Examples and Types’ (*The Economic Times*) < <https://economictimes.indiatimes.com/defaultinterstitial.cms>> accessed 13 July 2024

to a particular copyright. It is a serious issue and a lot of laws are made on the same.

**FIGURE 1: INTELLECTUAL PROPERTY RIGHTS IN INDIA**



(Source: <https://www.google.com/search?q=IPRs+recognised+in+india+flow+chart>)

On the other hand. Artificial intelligence is defined as, “artificial intelligence (AI) technology allows computers and machines to simulate human intelligence and problem-solving tasks. The ideal characteristic of artificial intelligence is its ability to rationalize and take action to achieve a specific goal. AI research began in the 1950s and was used in the 1960s by the United States Department of Defense when it trained computers to mimic human reasoning.”<sup>9</sup> Artificial intelligence systems work by using algorithms and data. First, a massive amount of data is collected and applied to mathematical models, or algorithms, which use the information to

<sup>9</sup> ‘Artificial Intelligence’ (*Investopedia*) <<https://www.investopedia.com/terms/a/artificial-intelligence-ai.asp>> accessed 13 July 2024; ‘Artificial Intelligence’ (*Medium*) <<https://medium.com/@ulhaqhtisham419/what-is-artificial-intelligence-ai-9f8124ce5895>> accessed 13 July 2024; ‘What is Artificial Intelligence’ (*Business Transformation and Operational Excellence*) <<https://insights.btoes.com/what-is-artificial-intelligence>> accessed 13 July 2024; ‘Define Artificial Intelligence’ (*Tech Target*) <<https://www.techtarget.com/searchenterpriseai/definition/AI-Artificial-Intelligence>> accessed 13 July 2024

recognize patterns and make predictions in a process known as training. Once algorithms have been trained, they are deployed within various applications, where they continuously learn from and adapt to new data. This allows AI systems to perform complex tasks like image recognition, language processing and data analysis with greater accuracy and efficiency over time.<sup>10</sup> The primary approach to building AI systems is through machine learning (ML), where computers learn from large datasets by identifying patterns and relationships within the data. A machine learning algorithm uses statistical techniques to help it “learn” how to get progressively better at a task, without necessarily having been programmed for that certain task. It uses historical data as input to predict new output values. Machine learning consists of both supervised learning (where the expected output for the input is known thanks to labeled data sets) and unsupervised learning (where the expected outputs are unknown due to the use of unlabeled data sets).<sup>11</sup> On the other hand, Generative Artificial Intelligence is a step ahead from the basic functions of Artificial Intelligence and is described as, “it describes algorithms (such as ChatGPT) that can be used to create new content, including audio, code, images, text, simulations, and videos. Recent breakthroughs in the field have the potential to drastically change the way we approach content creation.”<sup>12</sup> Generative AI refers to deep-learning models that can take raw data and “learn” to generate statistically probable outputs when prompted. At a high level, generative models encode a simplified representation of their training data and draw from it to create a new work that is similar, but not identical, to the original data.<sup>13</sup> Generative models have been used for years in statistics to analyze numerical data. The rise of deep learning, however, made it possible to extend them to images, speech, and other complex data types. Among the first class of models to achieve this cross-over feat were variational autoencoders, or VAEs, introduced in 2013. VAEs were the first deep-learning models to be widely used for generating realistic images and speech. “VAEs opened the floodgates to deep generative modeling by making models easier to scale,” said Akash Srivastava, an expert on generative AI at the MIT-IBM Watson AI Lab. “Much of what we think of today as generative AI started here.”<sup>14</sup> The growth of Generative AI has been exponential but it has also given rise to negative uses as well, such as deepfake videos, deep fake audios, etc. According to Mike Walsh, “The potential applications for AI in the legal world are immense and

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<sup>10</sup> Max Tegmark, *Life 3.0* (2017); Yoshua Bengio, *Deep Learning* (2015); Nick Bostrom, *Superintelligence* (2014); Brian Christian, *The Alignment Problem* (2020); Stuart J. Russell, *Human Compatible* (2019); Peter Norvig, *Artificial Intelligence* (1995)

<sup>11</sup> *Ibid*

<sup>12</sup> ‘What is Generative Ai’ (*McKinsey and Company*), <<https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-generative-ai>> accessed 13 July 2024

<sup>13</sup> (*IBM*), <<https://research.ibm.com/blog/what-is-generative-AI>> accessed 13 July 2024.

<sup>14</sup> (*IBM*), <<https://research.ibm.com/blog/what-is-generative-AI>> accessed 13 July); Yoshua Bengio, *Deep Learning* (2015); Nick Bostrom, *Superintelligence* (2014); Brian Christian, *The Alignment Problem* (2020); Stuart J. Russell, *Human Compatible* (2019); Peter Norvig, *Artificial Intelligence* (1995)

include composing client briefs, producing complex analyses from troves of documents, and helping firms with limited resources compete with the largest groups. AI can help to conduct due diligence in corporate mergers and significantly aid legal education and knowledge acquisition in complex and fast-moving areas.”<sup>15</sup> Thus, IPRs, copyrights, copyright infringement, artificial intelligence, generative artificial intelligence, and the very redressal mechanisms for the are interconnected to each other in a spiral, that only law can entangle and present a true picture.

## **II. COPYRIGHT INFRINGEMENT AND ARTIFICIAL INTELLIGENCE: A LEGAL CRITIQUE**

**According to Section 14 of The Copyrights Act 1957<sup>16</sup>, copyrights is defined as,** — “For the purposes of this Act, copyright means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely: —

- (a) in the case of a literary, dramatic, or musical work, not being a computer programme, —
  - (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
  - (ii) to issue copies of the work to the public not being copies already in circulation;
  - (iii) to perform the work in public, or communicate it to the public;
  - (iv) to make any cinematograph film or sound recording in respect of the work;
  - (v) to make any translation of the work;
  - (vi) to make any adaptation of the work;
  - (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);
  
- (b) in the case of a computer programme, —
  - (i) to do any of the acts specified in clause (a);
  - (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.]

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<sup>15</sup> (LEXISNEXIS), <<https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/>> accessed 13 July 2024; (SPOTDRAFT), <<https://www.spotdraft.com/blog/ai-due-diligence/>> accessed 13 July 2024

<sup>16</sup> The Copyrights Act 1957

(c) in the case of an artistic work, —

(i) to reproduce the work in any material form including—

(A) the storing of it in any medium by electronic or other means; or

(B) depiction in three-dimensions of a two-dimensional work; or

(C) depiction in two-dimensions of a three-dimensional work;]

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film, —

[(i) to make a copy of the film, including—

(A) a photograph of any image forming part thereof; or

(B) storing of it in any medium by electronic or other means;]

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;]

(iii) to communicate the film to the public;

(e) in the case of a sound recording, —

i. to make any other sound recording embodying it [including storing of it in any medium by electronic or other means];

ii. [o sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;]

**iii.** to communicate the sound recording to the public.<sup>17</sup>”

The aforementioned definition of the word copyright is entirely descriptive and covers almost all aspects of the law that are dealing with the copyright. However, infringement of the copyright is the actual intentional and non-permissive way of taking the rights of the copyright holder away from that specific person, which results in loss of dignity and economic independence. There are various rights of a copyright holder and these are defined below in a descriptive manner:

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<sup>17</sup> *Ibid*

**FIGURE 2: RIGHTS OF THE COPYRIGHT HOLDER/OWNER**

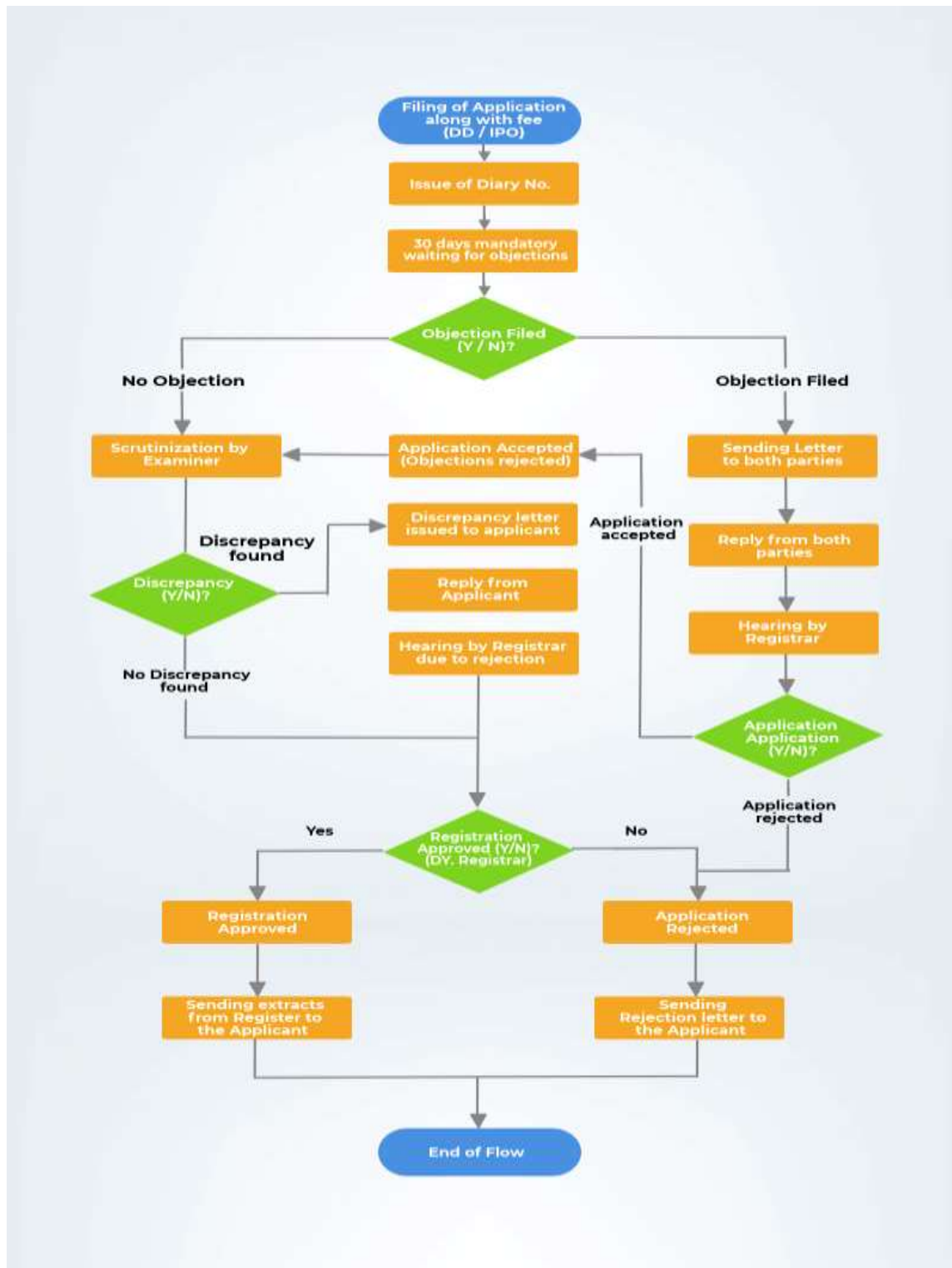
Literary, Dramatic and Musical works (excl. a computer programme) <i>Sec. 14(a)</i>	Computer Programme <i>Sec. 14(b)</i>	Artistic works <i>Sec. 14(c)</i>	Cinematographic Films <i>Sec. 14(d)</i>	Sound Recording <i>Sec. 14(e)</i>
To reproduce the work	To do any act mentioned in sec. 14(a).	To reproduce the work: -By storing in electronic form -By depiction in 2D or 3D of a 2D work or 3D work respectively.	To make copy of the film: -By storing it in any electronic form -Through a photograph of any image forming a part of the film.	To make any other sound recording embodying the present one: -storing it in electronic form
To issue copies of the work.	To sell, offer for sale or commercial rental.	To issue copies of the work.	To sell, offer for sale or commercial rental of the film.	To sell, offer for sale or commercial rental of the sound recording.
To perform/ communicate the work in public.		To communicate the work in public.	To communicate the work in public.	To communicate the work in public.
To make cinematographic films or sound recording of the work.		To include the work in any cinematographic film.		
To make translation/adaptation of the work and to perform any of the above rights in respect of such translation or adaptation.		To make any adaptation of the work and to perform any of the above rights in respect of such adaptation.		

(Source: <https://vocal.media/lifehack/rights-of-a-copyright-owner-in-india>)

However, a person becomes the owner of the copyright or a copyright holder, only when the entire registration process is complete and an illustrative diagram of the copyright registration is given below in a figurative manner:

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**FIGURE 3: THE PROCESS OF COPYRIGHT REGISTRATION**



(Source: <https://aktassociates.com/blog/copyright-registration/>)

As per the Copyright Act, 1957, the use of a copyrighted work without the permission of the owner results in copyright infringement. Infringement occurs when a third person unintentionally or intentionally uses/copies the work of another without giving credit. It is usually classified into two categories, i.e. primary and secondary infringement. Primary infringement occurs when there is

an actual act of copying, while secondary infringement occurs when unauthorised dealings take place, such as selling or importing pirated books, etc. In the case of secondary infringement, the infringer will know about infringement, while in the case of primary infringement, the infringer may or may not know about infringement.<sup>18</sup>

“The following elements should be present for copyright infringement:

- The copyrighted work is the original creation of the author
- The copyright infringement work is actually copied from the work of the author.<sup>19”</sup>

Also, as per the Indian Copyrights Act, 1957, instances of copyright infringement occur in the following cases:

- Copies of copyrighted work are made for hire/sale without authority or permission, such as online piracy
- Infringing copies are distributed for personal and trade gains
- Copyrighted work is performed in a public place
- Infringing copies are imported into India
- Public exhibition of infringing copies prejudicial to the owner
- Reproduction of a dramatic, literary, artistic or musical work other than in the form of a cinematograph film
- Creating a recording embodying the copyrighted sound recording
- Copy of the cinematographic film<sup>20</sup>

Copyright Infringement can occur, when: someone downloads movies from an unauthorised source, it will be copyright infringement, when a person uses a television serial clip in a YouTube video without giving credit and publishes the serial clip on YouTube, it amounts to copyright infringement, when someone uses a song’s music as background music in his/her song, it results in copyright infringement.<sup>21</sup> There are various landmark cases on the issue of copyright infringement and these are:

**1. Yashraj Films Private Limited v Sri Sai Ganesh Production (AIR 2019 DEL 1017):**

This was a civil suit that was instituted by Yashraj Films Pvt. Ltd for the copyright

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<sup>18</sup> ‘Copyright Infringement’ (*Clear Tax*) < <https://cleartax.in/s/copyright-infringement>> accessed 13 July 2024; What is Copyright’ (*U.S Copyright Office*) < <https://www.copyright.gov/what-is-copyright/>> accessed 13 July, 2024; V.K. Ahuja, *Law of Copyrights and Neighboring Rights: National and International Perspectives* (2007); Abeedha Begum, *Indian Internet Copyright Law: With Special Reference to Author’s Right in the Digital World* (2014); N.S. Sreenivasulu, *Intellectual Property Rights* (2007); P. Narayanan, *Law of Copyrights and Industrial Designs* (1999)

<sup>19</sup> *Ibid*

<sup>20</sup> *Ibid*

<sup>21</sup> Copyright Infringement’ (*Clear Tax*) < <https://cleartax.in/s/copyright-infringement>> accessed 13 July 2024

infringement of the Indian Bollywood movie “Band Baja Baarat” which was released by the Yashraj Films Pvt. Ltd. in the year 2010. Sri Sai Ganesh Production (referred to here as the Defendant) was a Telegu Production House that has produced a movie named “Jabardasth” which was the replica of the Indian Bollywood movie “Band Baja Baarat”. The Telugu movie was made without any permission from the original film producer. Yashraj Films Pvt. Ltd had to file a copyright infringement suit against the Director and the Distributor of the Telugu movie for infringing the rights of the original makers of the movie. The Delhi High Court passed a judgment in the year 2019 in favor of the Plaintiff i.e. Yashraj Films Pvt. Ltd.<sup>22</sup> The reasoning of the Honourable Court was – “that to make a copy of the film does not mean just to make a physical copy of the film by a process of duplication, but it also refers to another film which substantially, fundamentally, essentially, and materially resembles/reproduces the original film. Accordingly, the blatant copying of fundamental /essential/distinctive features of the plaintiff’s advertisement on purpose would amount to copyright infringement. Consequently, the Court will have to compare “the substance, the foundation, the kernel” of the two advertisements to consider whether one was “by and large a copy” of the other and whether an average viewer would get an unmistakable impression that one work was a copy of the other<sup>23</sup>.” Thus, this case solved the issue of what will amount to cinematographic infringement of copyright works and to what extent can the infringer be held liable.

2. **Hawkins Cokker Limited v Magicooks Appliances 2002 (100) DLT (698):** Hawkins Cookers Ltd., a well-established company in the manufacture and marketing of pressure cookers, filed a suit against Magicook Appliances Co. alleging infringement of its copyright under the Copyright Act, 1957. The plaintiff claimed that Magicook Appliances Co. was using a label on its pressure cookers that was deceptively similar to Hawkins Cookers’ distinctive label. Additionally, the plaintiff alleged that Magicook Appliances Co. had reproduced substantial portions of its cookery and instructions book in their own publication without authorization. Despite cease-and-desist notices, Magicook Appliances Co. continued their actions, prompting Hawkins Cookers Ltd. to seek permanent injunction, damages, and rendition of accounts.<sup>24</sup> The court proceeded ex parte against the

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<sup>22</sup> Yashraj Films Private Limited v Sri Sai Ganesh Productions (AIR 2019 DEL 1017); ‘Yashraj Films Private Limited V Sri Sai Ganesh Productions’ (*Legal Quorum*) < <https://thelegalquorum.com/yashraj-films-pvt-ltd-v-sri-sai-ganesh-productions-and-ors-2019/>> accessed 13 July 2024

<sup>23</sup> Yashraj Films Private Limited v Sri Sai Ganesh Productions (AIR 2019 DEL 1017) < <https://indiankanoon.org/doc/175297328/>> accessed 13 July 2024

<sup>24</sup> Hawkins Cokker Limited v Magicooks Appliances 2002 (100) DLT (698); ‘Delhi High Court Decision’ (*J.P. Associates*) < <https://jpassociates.co.in/delhi-high-court-decision-hawkins-cookers-ltd-vs-magicook-appliances-co/>> accessed 13 July 2024

defendants due to their failure to appear in court. The judge found in favor of the plaintiff on all issues raised. The defendants were permanently enjoined from using the deceptive label, reproducing the plaintiff's book, or dealing with any materials infringing on the plaintiff's copyright. Additionally, the defendants were ordered to deliver up all offending materials for destruction and to render accounts of profits earned illegally. The court upheld the plaintiff's rights under the Copyright Act, 1957, and recognized the importance of protecting intellectual property from infringement. The decision emphasizes the need to prevent dishonest manufacturers from misleading consumers and profiting from the goodwill and reputation earned by others. The ruling highlights the significance of registration under the Copyright Act as prima facie evidence of copyright ownership and provides remedies for infringement, including injunctions, damages, and rendition of accounts.<sup>25</sup> Thus, the present case is a landmark in copyright issues in the industrial sector and holds ground in all such present and future cases that come before the court.

There are many landmark cases that deal with copyright infringement and are descriptive and properly reasoned as to their own peculiar facts and circumstances.

It is noteworthy that the Google AI system has become advanced to the extent that it has created a child of its own. The child AI is being trained by the parent AI to "such a high level that it outperforms every other human-built AI system." The performance of child AI is evaluated by the parent AI which acts as a controller. The information so received is used to improve the child AI's performance. This process is repeated thousands of times to make the child AI more effective and advanced. The increasing role of AI in the area of creativity and innovation has been recognized worldwide. Recently, the OpenAI, an artificial intelligence lab in the United States unveiled a new AI system called GPT-3 which spent several months "learning the ins and outs of natural language by analyzing thousands of digital books, the length and breadth of Wikipedia, and nearly a trillion words posted to blogs, social media and the rest of the internet". The GPT-3 inter alia writes poetry, generates tweets, responds to trivia questions, summarizes emails, "translates languages and even writes its own computer programs". It can understand the "vagaries of human language" and is capable of tackling other "human skills". In addition to the above, AI can write local news articles, generate artwork, write short novels, and generate music by listening to various recordings. AI is also very useful in gaming. AI has created serious issues and posed challenges

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<sup>25</sup> *Ibid*

in the area of copyright law.<sup>26</sup> There has been an extensive use of computer programs in the generation of copyrighted works since the 1970s. The computer-generated works did not create much problems with respect to copyright ownership. The reason was that computer programs were considered mere tools to support the activities which were creative in nature and the human intervention was required for the production of the work. These programs were just like stationery items which required human beings to use them to create works. The things have completely changed now. With AI in place, the computer programs are no more tools alone and have the potential of generating the works independently by taking their own decisions. The AI has the potential to create an enormous amount of work with less investment in a very short span of time. The works created by AI may qualify for copyright protection in all the jurisdictions for being original. The requirement of use of “skill and judgement” in originality may be deemed to have been satisfied by virtue of the “programming and parameter on which such AI actually compiles and creates the work”. However, there will be no author in the case of AI-generated work. In case of AI-assisted works, there is human intervention. In case of AI-assisted works, there is human intervention. Therefore, in case of latter, the person who caused the work to be created by using artificial intelligence may claim himself to be the author, but the same is not true where the work has been created by AI itself without any human intervention. The issue of authorship in such cases has puzzled all countries of the world.<sup>27</sup> Therefore, the question as to the authorship of AI-generated works and whether or not they are actual works is still hanging as a Damocles’ Sword and must be answered at the earliest. Whether or not a work generated by AI should be given the same rights as the authors of tangible and intangible human induced copyrights work is still a question and a serious one at that. The aspects of digital constitutionalism also come into the picture amidst all this.

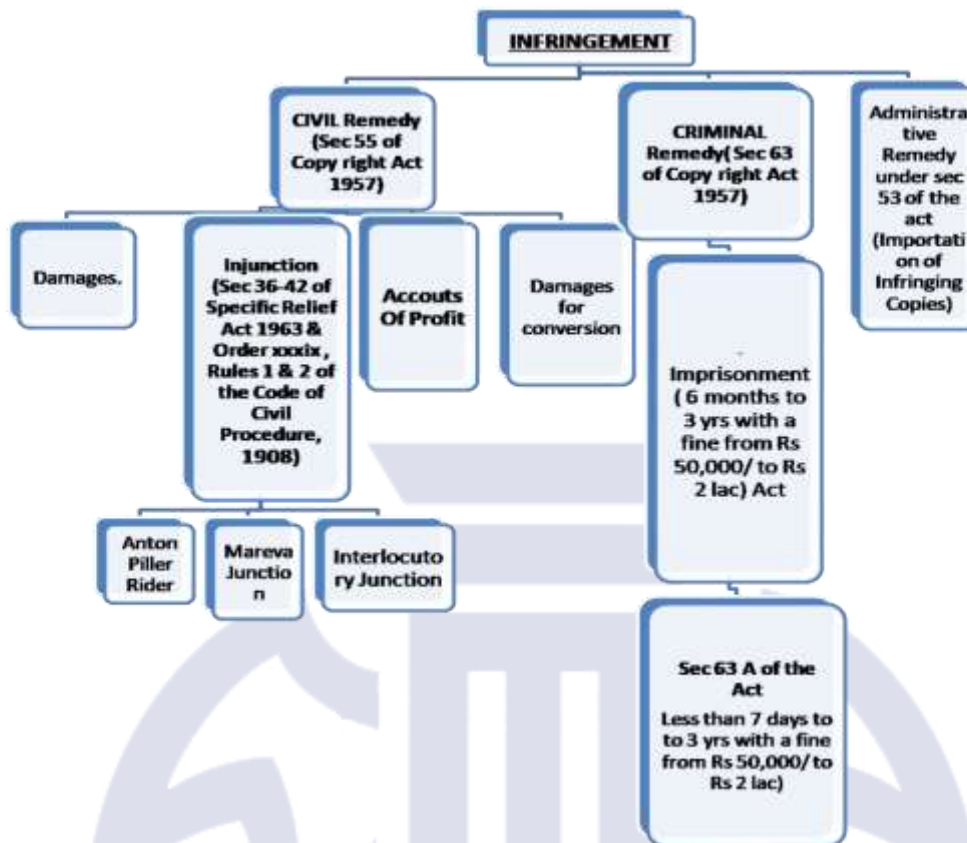
However, till the time these questions are answered, one needs to look into already existing remedies for copyright infringement and apply those. These remedies are given a figurative space in the present research for better and clear understanding.

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<sup>26</sup> V.K. Ahuja, ‘Artificial Intelligence and Copyrights: Issues and Challenges’ (*Indian Law Institute Law Review, Winter Edition 2020*) <<https://ili.ac.in/pdf/vka.pdf>> accessed 13 July 2024

<sup>27</sup>*Ibid*

**FIGURE 4: REMEDIES FOR COPYRIGHT INFRINGEMENT**



(Source: <https://www.google.com/searchremedies+for+copyright+infringement&udm=->)

The remedies provided by the Copyright Act 1957 against infringement of copyright are:

- civil remedies – these provide for injunctions, damages, rendition of accounts, delivery and destruction of infringing copies and damages for conversion;
- criminal remedies – these provide for imprisonment, fines, seizure of infringing copies and delivery of infringing copies to the owner; and
- border enforcement – the act also provides for the prohibition of import and destruction of imported goods that infringe the copyright of a person with the assistance of the customs authorities of India.<sup>28</sup>
- The period of limitation for filing a suit for damages for infringement of copyright is three years from the date of such infringement. However, each time there is an infringement, it constitutes a recurring cause of action, which will provide a fresh limitation for filing an action (*M/S Bengal Waterproof Ltd v M/S Bombay Waterproof Manufacturing Company & Another*).<sup>29</sup>

<sup>28</sup> ‘Copyright Infringement and Remedies’ (*Lexology*) < <https://www.lexology.com/library/detail.aspx?g=6526199f-85cd-4291-989d-155a7dc50272> > accessed 13 July 2024

<sup>29</sup> *Ibid*

The Copyright Act 1957 has provided for the enforcement of copyright through a series of penal provisions under Chapter 13 of the act. The following are the principal penal provisions under the act:<sup>30</sup>

- Under section 63, where any person knowingly infringes or abets infringement of the copyright in a work and any other right as covered by the Copyright Act, 1957 (broadcast reproduction rights, performers' rights, moral rights, etc), such person may be punished with imprisonment of a minimum term of six months and a maximum term of three years, and a fine of between 50,000 and 200,000 rupees.
- Section 65A penalizes circumvention of effective technological measures that may be applied to copies of a work with the purpose of protecting any of the rights conferred under the act (i.e, copyright, and performance rights). The punishment under this provision is imprisonment, which may extend to two years and payment of a fine. Section 65A was inserted by the Copyright (Amendment) Act 2012.
- Section 65B makes unauthorised removal or alteration of 'rights management information' punishable with imprisonment of up to two years and payment of a fine. The provision makes the unauthorised distribution, broadcast, or communication to the public of copies of the work punishable in the same manner if the person is aware that electronic rights management information in the copy has been removed or altered. Section 65B was inserted by the Copyright (Amendment) Act 2012.
- Section 63A provides for an enhanced penalty on second or subsequent convictions under section 63 (see point (1)).
- Other provisions in Chapter 13 provide penalties for offences such as using infringing copies of a computer program, making, or possessing plates for the purpose of making infringing copies of works and making false entries in the Register of Copyrights.<sup>31</sup>

The 2012 amendments to the Copyright Act introduced certain provisions that are specifically relevant to copyright infringement and the internet. Under the fair use provisions of the Act, section 52(1)(b) provides that transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public does not constitute infringement of copyright. This provision provides a safe harbor to internet service providers that may have accidentally stored infringing copies of a work for the purpose of transmission of data.

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<sup>30</sup> *Ibid*

<sup>31</sup> *Ibid*

Section 52(1)(c) further provides that transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration that is not expressly prohibited by the rightsholder would not be infringement of copyright, unless the person responsible is aware of infringement or has reasonable grounds for believing that such storage is that of an infringing copy. Under section 52(1)(c), if the owner of a copyrighted work, in a written complaint to the person responsible for digitally storing an infringing copy of the work, complains that such transient or incidental storage is an infringement, then the person responsible would have to refrain from facilitating access to the infringing copy of the work for a period of 21 days. If, within 21 days, the person responsible does not receive an order from a competent court that directs them to refrain from providing access, then access may be resumed at the end of that period. Therefore, if A, the owner of a short story, finds that their short story has been published on the website of B, they may write a complaint to B declaring that B must refrain from providing the public with access to A's short story. B would then have to remove A's short story from visibility or accessibility on their website for 21 days, within which time A must persuade a competent court that it should order the complete removal of the infringing version or copy of the work. If the court does not issue such an order within that period of time, then B may resume making the short story available to the public on their website. This provision was inserted in the Act by the Copyright (Amendment) Act 2012, which came into force on 21 June 2012. It is yet to be seen in practice.<sup>32</sup>

### III. CONCLUSION

Thus, Copyright Infringement being a serious issue must be addressed with full vigor. The laws that have been made up till now must also incorporate the challenges that are put forward by the issue and development of artificial intelligence and thus should be ready for future challenges. The effective implementation of the existing laws is the key to progress and development. Much awareness has to be spread for the intellectual property rights and artificial intelligence so that there is no case that goes unaddressed. This will ensure proper implementation and effective redressal mechanisms in the given field, which will also prepare India for the future challenges.

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<sup>32</sup> Copyright Infringement and Remedies' (*Lexology*) < <https://www.lexology.com/library/detail.aspx?g=6526199f-85cd-4291-989d-155a7dc50272>> accessed 13 July 2024