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ASSESSING COPYRIGHT INFRINGEMENT IN THE FILM INDUSTRY UNDER DIGITAL STREAMING PLATFORMS

1. ABSTRACT

Copyright infringement in the film industry, particularly under the proliferation of digital streaming platforms. With the advent of technology and the rise of digital streaming services, the film industry has witnessed a significant shift in the way movies are distributed and consumed. However, this transition has also brought about new challenges, including rampant piracy and unauthorized distribution of copyrighted content. This paper will explore the various forms of copyright infringement in the film industry, the legal and ethical implications, and the measures taken by stakeholders to combat piracy. Additionally, it will examine the impact of copyright infringement on the film industry and its stakeholders, including filmmakers, distributors, and consumers. Through a comprehensive analysis of the current landscape, this paper aims to shed light on the complexities of copyright infringement in the digital age and propose strategies to mitigate its adverse effects.

Keywords: Copyright infringement, film industry, digital streaming platforms, intellectual property rights, piracy, consumers, filmmakers.

2. INTRODUCTION

The internet has heralded an era of unparalleled access to information and entertainment, revolutionizing how we engage with media. However, this digital landscape has also opened the floodgates to a myriad of challenges, one of the most pervasive being the threat of copyright infringement. With a mere click, individuals can traverse through an expansive digital realm, browsing through countless websites and freely sharing content on social media platforms. Unfortunately, this newfound accessibility has bred an environment ripe for the unauthorized use and distribution of copyrighted material, including the alteration or replication of someone else's original work, often without proper attribution.

The onset of the COVID-19 pandemic ushered in an unprecedented era of global lockdowns, confining millions to their homes and shuttering traditional avenues of entertainment such as cinemas and theatres. In this vacuum, Over-The-Top (OTT) platforms emerged as a beacon of solace, providing an accessible and diverse array of content to satiate the entertainment needs of a captive audience. With the closure of physical venues and restrictions on outdoor filming, the OTT industry experienced an explosive surge in popularity, cementing its status as a mainstream source of entertainment¹.

OTT platforms offer unparalleled convenience, allowing consumers to access a vast library of content anytime and anywhere, provided they have an internet connection and a compatible device. This flexibility has empowered both creators and consumers, fostering a sense of freedom and democratization in the realm of entertainment. However, with great freedom comes great responsibility, and the copyright infringement looms large in this digital landscape.

While the democratization of content creation and distribution is laudable, it also underscores the need for robust mechanisms to safeguard intellectual property rights. The ease with which content can be shared and accessed on OTT platforms poses significant challenges for copyright enforcement and protection. As such, it is imperative to strike a balance between freedom of expression and the protection of intellectual property rights, ensuring that creators are duly recognized and compensated for their work.

In this paper, we delve into the multifaceted landscape of copyright infringement in the film industry under digital streaming platforms, examining the challenges and opportunities it presents for content creators, consumers, and platform providers alike. By dissecting the intricacies of digital streaming platforms and the implications of copyright infringement within this, we aim to shed light on this pressing issue and explore potential avenues for mitigating its impact. Through a comprehensive analysis, we seek to contribute to a deeper understanding of the complexities surrounding copyright enforcement in the digital age, paving the way for informed discourse and proactive solutions

¹ Copyright piracy and Cybercrime: Enforcement Challenges in India WIPO. *available at:* https://www.wipo.int/wipo_magazine/en/2022/04/article_0008.html (Last visited on: January 2, 2024).

3. EMERGENCE OF DIGITAL STREAMING PLATFORMS

The rise of digital streaming platforms, which transmit media content directly to users via the internet, has transformed the way people consume entertainment. This shift has been particularly pronounced in India, where access to online video services has become increasingly simple through laptops, desktop applications, and mobile phones and tablets. The country's population of net consumers is expected to grow by around forty percent to over 750 million individuals by 2023, with the total number of cell phone users doubling to 650 million. This surge in internet and mobile phone usage indicates a progressive increase in the percentage of people adapting to the change.

Despite the presence of local video-on-demand services like Hotstar and Jio, multinational corporations such as Amazon Video and Netflix Prime continue to expand their market share in India. The Digital India initiative, launched by the government, has played a pivotal role in promoting the use of OTT platforms to access a wide variety of global content. OTT services have advanced significantly since their inception, but their prominence has increased exponentially due to a shift in individual amusement consumption patterns through all kinds of media, especially during the global epidemic.

The COVID-19 pandemic has had a profound impact on the film and television industry worldwide. Movie theatres and multiplex cinemas had to close, leading production companies to shift their focus to online streaming services to distribute their work immediately across the internet. People began to favour OTT platforms over traditional viewing experiences due to the variety of offerings accessible via these networks, their availability of worldwide written material, and the virtually infinite variety of programming options².

Digital streaming platforms have become an integral part of the entertainment landscape in India, offering a wide range of content to subscribers. These platforms have revolutionized the way films and TV shows are distributed and consumed, providing a convenient and accessible platform for viewers to access content anytime and anywhere. With the rise of OTT services, the film industry has seen a significant shift in how content is produced, distributed, and

² Copyright and competition: A legal tightrope for streaming services, Competition Commission of India Journal on Competition Law, and Policy. *available at:* <https://ccijournal.in/index.php/ccijoclp/article/view/125> (Last visited on: January 5, 2024).

consumed. This has led to new challenges and opportunities for content creators, distributors, and consumers alike.

4.LEGAL FRAMEWORK

The legal framework governing copyright infringement in the context of digital streaming platforms services in India is primarily based on the Copyright Act of 1957. This Act defines an infringing copy as a reproduction of a work that is not authorized by the copyright owner. It also grants exclusive rights to the creator of the work, including the right to reproduce the work in any form, make adaptations or translations of the work, and issue copies of the work to the public³.

Under Sections 26, 27, and 29 of the Copyright Act, the term of copyright for most works is defined as 60 years. Section 51 of the Act specifies that any act that only the copyright holder is authorized to do is considered infringement if done without the authorization of the copyright holder⁴. This includes reproducing the work in any manner, bringing infringing copies of a work into the country, and permitting the use of a location for the transmission, sale, distribution, or exhibition of an infringing work⁵.

The Act provides for remedies in cases of copyright infringement, including injunctions, damages, and account of profits. It also provides for criminal penalties for copyright infringement, including imprisonment and fines.

In addition to the Copyright Act, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, regulate digital media platforms, including OTT services. These rules require digital media platforms to comply with certain content standards, including a prohibition on content that is defamatory, obscene, or incites violence. The rules also require digital media platforms to provide mechanisms for users to report and remove infringing content.

³ The Copyright Act, 1957 (Act 14 of 1957)

⁴ The Copyright Act, 1957 (Act 14 of 1957), s. Section No.51

⁵ Unveiling online digital piracy in the Indian film industry: An ... *available at:* <https://www.jetir.org/papers/JETIR2306758.pdf> (last visited on February 02, 2024).

The legal framework governing digital streaming platforms and copyright infringement in India is comprehensive and provides for both civil and criminal remedies for copyright infringement. When copyright holders seek to have their content removed from digital platforms, they must demonstrate that the platform is facilitating widespread copyright infringement. This can be challenging, as identifying online pirates can be difficult due to their anonymity. To address this, the Indian judiciary has utilized the John Doe order, also known as the Ashok Kumar order, in cases like *Taj Television & Anr v RajanMandal&Ors*.

A John Doe order enables an intellectual property rights owner to act against unknown infringers by issuing a notice and seeking an injunction from the court. This order is issued under Order 39 Rule 1 and 2 of the Civil Procedure Code, 1908, and Section 151 of the Code and Part III of the Specific Relief Act, 1963. To obtain a John Doe order, the plaintiff must demonstrate previous breaches, a prima facie case, and potential financial or irreparable harm⁶.

Once granted, a John Doe order can include measures such as banning access to the infringing content for a specified period. The plaintiff must then publish a public notice outlining the order's details for the benefit of the John Doe defendants. This mechanism has proven effective in combating online piracy, especially when the identities of the infringers are unknown.

To further strengthen copyright protection, it is essential to align national laws with international treaties, such as the World Intellectual Property Organization Internet Treaties. Additionally, there is a need for explicit sections in copyright laws that address jurisdiction and liability in cases of online copyright infringement.

while OTT platforms have revolutionized media consumption, they also present challenges in enforcing copyright. The use of John Doe orders and international cooperation are crucial in protecting copyright holders' rights and ensuring that their works are not illegally distributed. However, there is still a need for better regulations that are in line with international treaties and provide clear guidelines for the jurisdiction and liability in cases of copyright infringement on the internet.

⁶ Stavroula Karapapa, *Defences to Copyright Infringement: Creativity, Innovation and Freedom on the Internet* (OUP Oxford publisher, 26th march 2020)

4.1 CHALLENGES IN ENFORCING COPYRIGHT ON DIGITAL STREAMING PLATFORMS

1. Piracy and Unauthorized Distribution: The ease of sharing content on digital platforms has led to rampant piracy and unauthorized distribution of copyrighted material. This poses a significant challenge for copyright holders in protecting their intellectual property.

2. Complex Licensing Agreements: Negotiating licensing agreements with streaming platforms can be challenging for copyright holders, especially independent creators. The terms of these agreements, including revenue-sharing models, can be complex and may not always ensure fair compensation for creators.

3. User-Generated Content: Platforms like YouTube allow users to upload their content, raising questions about fair use and copyright infringement. Copyright holders must navigate these issues and ensure that their content is not misused or misrepresented.

4. Global Copyright Concerns: Streaming platforms operate internationally, which can lead to complex copyright issues. Navigating copyright laws and international treaties is essential for both platforms and creators.

4.2 OPPORTUNITIES IN ENFORCING COPYRIGHT ON DIGITAL STREAMING PLATFORMS

1. Content Accessibility: Streaming platforms have democratized access to a vast array of content, fostering a global audience for creators. This increased accessibility can lead to greater exposure and revenue streams for copyright holders.

2. Content Creation: Streaming platforms have empowered content creators, providing them with unprecedented exposure and revenue streams. Independent musicians, filmmakers, and YouTubers can reach a global audience without the need for traditional intermediaries.

3. Emergence of Licensing Models: Streaming platforms rely on licensing agreements with copyright holders. These agreements involve intricate negotiations and revenue-sharing models. Copyright holders must navigate these arrangements to ensure fair compensation for their work.

4. User-Generated Content: User-generated content platforms like YouTube have blurred the lines between creators and consumers. Users can upload their content, raising questions about fair use, copyright infringement, and content moderation.

5. Global Copyright Concerns: Streaming platforms operate internationally, leading to global copyright issues. Navigating copyright laws and international treaties is essential for both platforms and creators⁷.

4.4 COPYRIGHT INFRINGEMENT AND ITS IMPACT ON FILM INDUSTRY

Copyright infringement has had a profound impact on the film industry, affecting various aspects such as financial losses, creative control, and the viability of independent filmmakers. Financially, piracy leads to significant revenue losses for the industry, as pirated copies of films are distributed illegally, depriving creators of income from legitimate sales and screenings. This loss of revenue can impact the overall profitability of a film, affecting the ability of producers to recoup their investment and fund future projects. Additionally, the widespread availability of pirated content can discourage consumers from purchasing legitimate copies, further exacerbating financial losses.

Creatively, copyright infringement undermines the creative control of filmmakers. When a film is pirated, it can be distributed without the consent of the creators, leading to unauthorized modifications or alterations. This can distort the original vision of the filmmakers and compromise the integrity of their work. Additionally, pirated copies may be of inferior quality, further detracting from the filmmakers' intended viewing experience.

In terms of the viability of independent filmmakers, copyright infringement can be particularly detrimental. Independent filmmakers often operate on limited budgets and rely on the success of their films to secure funding for future projects. Piracy can significantly impact their ability to generate revenue from their films, making it difficult for them to sustain their careers. Furthermore, copyright infringement can hinder their ability to attract investors and distributors, as the potential for financial return is compromised⁸.

⁷ Unveiling online digital piracy in the Indian film industry: An ... available at: <https://www.jetir.org/papers/JETIR2306758.pdf> (last visited on February 02, 2024).

⁸ T C James, "Indian Copyright Law and Digital Technologies" 7 Manupatra 6 (2002).

Copyright infringement has had a significant impact on the film industry, affecting financial sustainability, creative integrity, and the livelihoods of independent filmmakers. The industry must take proactive measures to combat piracy and protect the rights of creators.

5. MEASURES TAKEN BY DIGITAL STREAMING PLATFORMS TO COMBAT COPYRIGHT INFRINGEMENT

digital streaming platforms have implemented various measures to combat copyright infringement and protect the intellectual property of content creators. These measures include:

- 1. Content Identification Systems:** Many digital streaming platforms, such as YouTube and Facebook, use content identification systems to automatically detect and remove copyrighted material. These systems use algorithms to compare uploaded content against a database of copyrighted material and identify potential matches. If a match is found, the platform can automatically block or remove the content, or take other actions such as demonetizing the video or limiting its visibility⁹.
- 2. Digital Rights Management (DRM) Systems:** DRM technologies are used to prevent unauthorized copying and distribution of digital content. These systems encrypt content and control access to it, ensuring that only authorized users can view or download it. By implementing DRM, streaming platforms can protect copyrighted material from being pirated or shared illegally.
- 3. Content Fingerprinting:** Content fingerprinting, also known as content recognition technology, is used to identify copyrighted material uploaded to digital platforms. This technology creates a unique fingerprint or signature for each piece of content, allowing platforms to detect unauthorized copies or uploads. Content fingerprinting enables streaming platforms to quickly identify and remove infringing content, thereby reducing copyright infringement.
- 4. Takedown Notices:** Streaming platforms provide mechanisms for copyright holders to report instances of infringement through takedown notices. When copyright infringement is identified, rights holders can submit a formal request to the platform to remove the infringing content. The platform then reviews the notice and takes

⁹ Nick Scharf, "The Evolution and Consequences of Digital Rights Management in Relation to Online Music Streaming" 42 Cambridge University Press Journal 10-15 (2021).

appropriate action, such as removing the content or disabling access to it. Takedown notices are an important tool for copyright enforcement and help ensure that infringing content is promptly removed from digital platforms.

5. **Licensing Agreements:** Streaming platforms enter into licensing agreements with content creators and copyright holders to obtain the necessary rights to distribute their content. These agreements specify the terms and conditions under which the platform can use the copyrighted material, including payment arrangements and usage restrictions. By obtaining proper licenses, streaming platforms ensure that they have the legal right to distribute content and avoid copyright infringement.
6. **User Education and Awareness:** Streaming platforms often educate users about copyright laws and the consequences of copyright infringement. Through terms of service agreements, user guidelines, and educational resources, platforms inform users about their rights and responsibilities regarding copyrighted material. By raising awareness about copyright issues, streaming platforms encourage users to respect intellectual property rights and comply with legal requirements.

Overall, digital streaming platforms take copyright infringement seriously and have implemented a range of measures to protect the rights of content creators and prevent unauthorized use of copyrighted material. However, copyright infringement remains a complex and ongoing challenge, and platforms continue to evolve their strategies to address it.

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7. CONCLUSION

Digital streaming platforms have revolutionized the way content is consumed, offering a vast array of content to a global audience. However, this democratization of content has also presented challenges in enforcing copyright. Digital piracy, user-generated content, and the global nature of these platforms have made it difficult for copyright holders to protect their intellectual property. Despite these challenges, digital streaming platforms also present opportunities for copyright enforcement, such as content identification systems, copyright takedown procedures, and collaboration with copyright holders. Moving forward, platforms, copyright holders, and policymakers need to work together to address these challenges and ensure the continued protection of intellectual property in the digital age.

7.1 RECOMMENDATIONS

- 1. Strengthen Copyright Enforcement Mechanisms:** Digital streaming platforms should continue to invest in robust copyright enforcement mechanisms, such as content identification systems and takedown procedures, to prevent unauthorized use of copyrighted material.
- 2. Enhance Collaboration with Copyright Holders:** Platforms should work closely with copyright holders to develop effective strategies for protecting intellectual property. This could include implementing licensing agreements, revenue-sharing models, and content moderation policies.
- 3. Promote User Education:** Platforms should educate users about copyright laws and the importance of respecting intellectual property. This could involve providing clear guidelines on copyright infringement and offering resources for creators to protect their work.

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