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All talk and no bite: Copyright infringement and piracy trends in India[☆]

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ABSTRACT

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The Copyright Act 1957 presents the face of modern copyright protection afforded to different intellectual works and is a key statement of intellectual property rights (IPR) in the Indian legislation governing this domain, as well as being compliant to the TRIPS Agreement on Trade Related Aspects of Intellectual Property Rights. This Act has been acceptably referred to on many occasions on global platforms, on account of its being one of the most elaborate and well-structured pieces of legislation in the field of intellectual property law. However, this well encompassing, highly creditable and widely acknowledged legislation seems to fall down in its practical implementation rendering its theoretical purpose partly futile. The situation so stands, that India continues to project major piracy rates with little regression in the trend despite the fact that this law is still very much in force. The reasons which deny effective copyright protection in India, for works of miscellaneous categories, have much to do with the lack of an equally strong enforcement mechanism. This paper provides an insight into the inadequacies of the Indian legal and administrative systems which have ultimately diminished the effectiveness of the copyright regime contrary to that envisioned by the law.

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1. Introduction

Steve Jobs, the Apple CEO believes that online music stores do not threaten the music industry; it is the high piracy rates which accomplish that task. This apprehension in the contemporary, ever expanding technology driven world seems completely tenable and supported with sound reasoning. Rapid enhancements of technology, especially in the field of communication, such as the proliferation of the internet or the growing popularity of global radio stations et al., have indeed made rendered works of literature, music, cinematography and other works much more accessible.

However, the flipside of such development is the vulnerability of copyright holders and their various rights under existing IP regulation. Copyright is an exclusive legal right conferred on the creator of a musical, dramatic, cinematographic, literary, or any other category of work to copy or reproduce the same. The idea behind the copyright law of any country, similar to other related IP law, is to incentivize the creation of new works. The incentive is not only the grant of an exclusive right to reproduce one's work but the pecuniary benefits that one may accrue as a result of this type of 'monopoly'.

Copyright, as a concept, was first developed in England in the early eighteenth century. In order to safeguard the rights

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of authors, the legislators enacted a statute which allowed only the author to publish or reprint his work.² This statute, the Statute of Anne 1709 (8 Anne c.21), was succeeded by other legislation which ultimately culminated in the passage of the Copyright Act of 1911 (c. 46) in England, the first major copyright legislation to follow after the initial revision of the Berne Convention for the Protection of Literary and Artistic Works in 1908. This legislation was also applicable to disputes over copyrights in India as the same was a British colony. It was only in 1957 that the Indian Government enacted a new copyright act thereby eschewing the provisions of its predecessor. The Indian Copyright Act, 1957 provides protection for original literary, dramatic, musical and artistic works, cinematographic films and sound recordings.³

Copyright infringement, and its most common form – that of piracy, is a global menace, with national, transnational and international violations taking place all the time. As the creator of a particular work, the individual reserves the right to publish, distribute or reproduce the same. Piracy and copyright infringements are the antithesis to this bundle of rights available to the creators of works. Piracy, therefore, affects not only the economic interests of the nation by reducing the revenues it may earn through these works, but also impairs the incentive for an individual investing his energy and resources in creating a work by not allowing him to receive his deserving returns from society.

As is amply clear from all the aforementioned points, piracy and copyright infringement is endemic, a picture which projects the weakness and inefficiency of intellectual property law in the digital age, both generally and in terms of national law, in securing the rights of creators of works. It is also no secret that piracy rates in India are some of the highest in the world. Copyright infringements are often carried out in such diurnal patterns that, in time, they become readily accepted as a licit act; something that it is not!

This paper will reflect on the possible causes of this paradoxical scenario and highlight reasons which can be listed as the causes behind spiking rates of piracy and copyright infringement. It will also look into possible solutions to these innate fallacies in the law and suggest ways to ameliorate the same. The current paper's objective is to provide a thorough insight into the Indian 'copy right' and the mechanisms it provides for curbing piracy. The first part of the paper presents a primer to the Indian Copyright Act and the mechanisms available under it to curb copyright infringement. This part will highlight the high prevalence of these trends by providing illustrations of copyright infringement in the Indian film industry and piracy afflicting the software manufacturing sector. The second section will stipulate the arguments as to why the legislation, as the title suggests, is all 'talk and no bite'. The Copyright Act 1957, despite its passage into force in the pre-digital or offline world is, in terms of enduring principle, one of the most thorough laws pertaining globally; yet the enforcement of the rights available under it has, to put the

point succinctly, been disappointing. The final part of the paper will talk about viable solutions to these problems, bringing to the fore model solutions which have been adopted in numerous developing countries.

2. Copyright Act 1957: rights and remedies

The problem of piracy in India is not supported by empirical evidence or statistics of any sort; however the same is undeniably epidemic. India today exhibits some of the highest rates of piracy and copyright infringement, second only to a few South East Asian countries.⁴ Two primary reasons for prevalence of such high piracy rates are poor enforcement mechanisms and a severely deficient rate of information in the area. The copyright law regime in India offers most protections and rights at parity with its western counterparts. The differences which exist can be found in the enforcement mechanisms which, in India, are critically devoid of effective implementation. Police personnel, who should enforce these provisions, are often not entirely conversant with them; not only that, the main focus of law enforcement agencies is on conventional law and order issues and piracy abuse figures low on the priority list. The general lack of awareness of the public in copyright matters or possibly their apathy toward the issue is another major cause of the problem in India. The following overview of the Indian Copyright Act will introduce the different facets of the legislation such as the definition of copyright, the actions which constitute infringement of this right, and the mechanisms and authorities provided to redress such infringements et al.

The Indian Copyright Act provides for a spectrum of rights available to the author/creator of a creative work. As already posited, the idea behind affording an exclusive right in the work, thereby facilitating a type of 'monopoly' in the expression of its creator over his work, has been to incentivize the effort one invests in such an exercise, on behalf of "the progress of science and the useful arts". However, it is submitted that any monopoly created can never serve the public welfare. If one is to understand the justification behind copyright there exist several theories which address the issue. These theories can broadly be divided into the utilitarian and non-utilitarian theories with the latter further branching into several different discourses.⁵ Though there are conflicting arguments to all theories the one point to which they all conform is that the monopoly crafted under a copyright regime cannot be accorded unconditionally and must be limited.⁶ There is also

² The Queen Anne's statute provided exclusive copyrights to authors. However, works of art, music etc., were not brought within the purview of this legislation which only safeguarded the rights of authors with respect to their works.

³ Section 13(1) of the Act lists out the works protected under the legislation.

⁴ See Abdul Ghani Azmi, *Development of law in Asia: Copyright Piracy and Prosecution of Copyright Offences and Adjudication of IP Cases*, pp. 402–425.

⁵ For a holistic insight into these theories see, Lior Zemer, "On the Value of Copyright Theory", I.P.Q. 2006, 1, 55–71.

⁶ The 'fruits for labour' theory which finds its origin in Lockean understanding of property, and which is considered strongly to promote pro-proprietary rights, also seeks to limit such a monopoly on grounds of 'non spoilage' and 'equal use'. The Utilitarian theory seeks to balance the incentive for the creator with the social welfare that emerges by granting access to the work, thereby, facilitating the greater good for a greater number of people.

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