



EMERGING CHALLENGES IN COPYRIGHT PROTECTION FOR CINEMATOGRAPHY: AN ANALYSIS OF DIGITAL PIRACY AND STREAMING PLATFORMS

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ABSTRACT

The advent of digital technology has undeniably ushered in a paradigm shift in the realm of film production, distribution, and consumption. While these technological strides have opened up unprecedented opportunities for filmmakers, they have also engendered a plethora of challenges pertaining to the safeguarding of cinematographic copyrights.² In this scholarly discourse, we present a meticulous analysis of two pivotal challenges: digital piracy and the ascendance of streaming platforms. Our investigation endeavours to unravel the ramifications of these challenges on the film industry, copyright holders, and the broader landscape of intellectual property rights. This phenomenon has engendered substantial financial losses for filmmakers and copyright holders, while concurrently eroding the incentive for creative ingenuity and innovation within the industry. This scholarly exposition delves into the multifarious forms of digital piracy, encompassing torrenting, streaming piracy, and illicit downloading, to proffer a comprehensive comprehension of the obstacles confronting copyright holders. Moreover, the proliferation of streaming platforms has metamorphosed the landscape of film dissemination. These platforms proffer a convenient and cost-effective conduit to an expansive reservoir of cinematic treasures; however, they simultaneously engender complex copyright quandaries. Licensing agreements between streaming platforms and copyright holders oftentimes evolve into contentious disputes, as issues pertaining to revenue sharing, territorial rights, and the duration of licensing agreements come to the fore. Additionally, the advent of user-generated content on certain platforms has instigated concerns regarding the unauthorized employment of copyrighted materials and encroachment upon performers' rights. This scholarly abstract critically scrutinizes these challenges, accentuating the imperativeness of robust copyright enforcement mechanisms and equitable remuneration

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² Chandrachud, Chintan. "A dual system of copyright protection for films: should India go the Norowzian way?" *Journal of Intellectual Property Law & Practice* 5.3 (2010): 163-170.

for copyright holders and performers in the era of streaming. To effectively address these challenges, this research posits a multifaceted framework that amalgamates legal, technological, and industry-wide initiatives. Fortifying copyright laws and enforcement mechanisms assumes paramount importance in deterring digital piracy.³ Furthermore, user education regarding copyright infringement and the promotion of legitimate avenues for film consumption can foster a culture of reverence for intellectual property rights. In conclusion, the labyrinthine challenges entailed in safeguarding cinematographic copyrights in the digital age are multifaceted and intricate. The pervasive quandary of digital piracy and the rapidly evolving landscape of streaming platforms necessitate a holistic and collaborative approach. By addressing these challenges in a concerted manner, we can cultivate a creative ecosystem that espouses and safeguards the rights of filmmakers, copyright holders, and performers. This research serves as a promising steppingstone for further exploration of these challenges, proffering insights and recommendations to inform efficacious strategies for the protection of cinematographic copyrights.

Keywords: Copyright protection, Digital piracy, Unauthorized distribution

Introduction

The landscape of film distribution and consumption in India has undergone a significant transformation with the rapid growth of streaming platforms. Platforms like Netflix, Amazon Prime Video, and Disney+ Hotstar have revolutionized the industry⁴ by offering viewers convenient access to a vast library of films, providing them with flexibility and choice. While the rise of streaming platforms has brought numerous benefits, it has also introduced complexities in copyright licensing that demand careful attention.

This article delves into the growth of streaming platforms in India, analyzing their impact on the film distribution ecosystem. It examines the challenges that arise in licensing agreements and revenue-sharing models between streaming platforms and copyright owners. Additionally, it explores the complexities surrounding territorial rights and licensing disputes, as well as the implications of user-generated content for copyright infringement and performers' rights in the streaming era.⁵

The Growth of Streaming Platforms in India

The advent of streaming platforms has reshaped the film distribution landscape in India,

³ Blevins, John. "Uncertainty as enforcement mechanism: The new expansion of secondary copyright liability to Internet platforms." *Cardozo L. Rev.* 34 (2012): 1821.

⁴ Mahendher, Sheetal, et al. "Impact of COVID-19 on digital entertainment industry." *UGC Care J* 44 (2021): 148-161

⁵ Gervais, Daniel. "The tangled web of UGC: Making copyright sense of user-generated content." *Vand. J. Ent. & Tech. L.* 11 (2008): 841.

gaining significant popularity among viewers. These platforms provide a wide range of films and television shows at viewers' fingertips, offering the convenience of online streaming and accessibility across various devices. This shift in consumer behaviour has had a profound impact on traditional distribution channels such as cinemas and physical media.

Challenges in Licensing Agreements and Revenue-Sharing Models

Negotiating licensing agreements between streaming platforms and copyright owners presents a primary challenge in the industry. These agreements determine the availability of films on the platforms and establish revenue-sharing arrangements. However, reaching mutually beneficial terms can be complex. Factors such as content valuation, duration of licensing agreements, and revenue allocation to copyright owners require careful consideration.⁶

Territorial Rights and Licensing Disputes

Territorial rights play a crucial role in licensing agreements for film distribution. Copyright owners typically grant licenses for specific territories, allowing streaming platforms to offer content within those regions. However, territorial restrictions often lead to licensing disputes, particularly when viewers demand access to content that may not be available in their country or region. To enhance viewer accessibility, there have been calls for more globalized licensing models and the removal of regional barriers.

Complexities Arising from User-Generated Content

The rise of streaming platforms has also resulted in the proliferation of user-generated content. Users can create and share their own videos, remixes, and other forms of content on these platforms. While user-generated content enhances viewer engagement, it introduces complexities in terms of copyright infringement.⁷ Unauthorized use of copyrighted materials, such as film clips, soundtracks, or performances, raises concerns about copyright infringement and the rights of copyright owners to control the use of their works.

Implications for Copyright Infringement and Performers' Rights

The presence of user-generated content on streaming platforms raises important questions regarding copyright infringement and performers' rights. Streaming platforms have a responsibility to ensure that user-generated content does not infringe upon the rights of copyright owners. The liability of streaming platforms for copyright infringement depends on

⁶ Savelyev, Alexander. "Copyright in the blockchain era: Promises and challenges." *Computer law & security review* 34.3 (2018): 550-561.

⁷ Christou, Sophia, and Alana Maurushat. "'Waltzing Matilda' or 'Advance Australia Fair'? User-generated content and fair dealing in Australian copyright law." *Media and Arts Law Review* 14.1 (2009): 46

factors such as their knowledge of infringing content and their response to takedown requests. Additionally, performers' rights, including the right to authorize or prohibit the recording, reproduction, and public performance of their works, need to be protected in the streaming era.

Digital Piracy: A Threat to Copyright Protection

In the digital age, online piracy networks pose a significant threat to copyright protection in the film industry. This section explores the rise of online piracy networks, the various forms of digital piracy, and their detrimental effects on the film industry. It also examines the legal framework for copyright protection in India, focusing on the Copyright Act of 1957, the challenges in enforcement and prosecution of digital piracy, and the role of the Indian Copyright Office and enforcement agencies in combating this growing menace.⁸

The Rise of Online Piracy Networks

Digital piracy refers to the unauthorized reproduction, distribution, or sharing of copyrighted materials, including films, through online platforms. The internet and advancements in digital technology have facilitated the rise of online piracy networks, making it easier to access and distribute copyrighted content without authorization.⁹ This has severe implications for the film industry.

Forms of Digital Piracy

Several prevalent forms of digital piracy pose a threat to copyright protection in cinematography:

1. **Torrenting:** Peer-to-peer (P2P) file-sharing networks allow users to download and share files, including copyrighted films, through torrent files.¹⁰ These decentralized networks make it challenging to trace and control unauthorized sharing.
2. **Streaming Piracy:** Unauthorized streaming of copyrighted content, including films, occurs through various websites and platforms. These platforms offer users access to a vast library of films without obtaining proper licenses or permissions.
3. **Illicit Downloading:** This form of piracy involves the unauthorized downloading of copyrighted films from websites, file-sharing platforms, or other sources. Users obtain copies of films without paying or adhering to copyright laws.

⁸ Banerjee, Arpan. "Contemporary challenges of online copyright enforcement in India." (2019): 173- 191.

⁹ Mittal, Raman. "P2P Networks: Online piracy of music, films and Computer software." (2004).

¹⁰ Aked, Symon. "An investigation into darknets and the content available via anonymous peer-to-peer file sharing." (2011).

Financial Losses and Impact on Creativity and Innovation

Digital piracy has severe financial implications for the film industry, resulting in substantial losses for copyright owners and filmmakers. The revenue that should have been generated through legitimate channels such as ticket sales, home video sales, and digital distribution is significantly affected by piracy. Moreover, piracy undermines the incentive for creativity and innovation in the film industry.¹¹ The substantial investment required for filmmaking, combined with the uncertainty of returns due to piracy, discourages risk-taking and limits artistic expression, hampering the growth and diversity of the film landscape.

Legal Framework for Copyright Protection in India

The Copyright Act of 1957 forms the primary legal framework for copyright protection in India, including provisions that apply to cinematographic works. Enforcing copyright protection in the digital age poses unique challenges.¹²

Copyright Act of 1957: Provisions related to Cinematography

The Copyright Act grants copyright protection to cinematographic works, including films and audiovisual works. It provides exclusive rights to copyright owners, including reproduction, distribution, public communication, and adaptation rights. These provisions safeguard the rights of filmmakers and copyright owners in India.

Challenges in Enforcement and Prosecution of Digital Piracy

Enforcing copyright protection and prosecuting digital piracy present several challenges. Identifying individuals or entities responsible for online piracy can be difficult due to the anonymity and global nature of the internet. Pirated content often originates from multiple sources, making it challenging to track and hold accountable those responsible for its distribution. Additionally, the dynamic nature of online piracy networks requires a proactive approach from enforcement agencies to stay ahead of infringers.¹³ Limited resources and technical expertise pose obstacles to effective enforcement efforts.

Role of the Indian Copyright Office and Enforcement Agencies

The Indian Copyright Office, under the Ministry of Education, administers copyright-related matters in India. It is responsible for maintaining a comprehensive database of copyrighted materials, facilitating the registration process, and providing assistance to copyright owners and users.¹⁴

¹¹ Raustiala, Kal, and Christopher Sprigman. "The piracy paradox revisited." *Stan. L. Rev.* 61 (2008): 1201.

¹² Aggarwal, Gunish. "Intellectual Property Rights and the Internet World." *Int'l JL Mgmt. & Human.* 1 (2018): 206.

¹³ Branscomb, Anne Wells. "Anonymity, autonomy, and accountability: Challenges to the first amendment in cyberspaces." *The Yale Law Journal* 104.7 (1995): 1639-1679.

¹⁴ Pandey, Neeraj, and Khushdeep Dharni. *Intellectual property rights*. PHI Learning Pvt. Ltd., 2014.

Enforcement agencies such as the Central Bureau of Investigation (CBI) and the Economic Offenses Wing (EOW) investigate and prosecute copyright infringement cases. Collaboration between these agencies, copyright owners, and other stakeholders is essential to identify and take action against infringers.

Court Precedents and Judicial Response

Landmark cases related to digital piracy in the film industry have shaped the legal landscape and provided guidance on copyright protection in the digital age. Obtaining timely injunctions against websites engaged in digital piracy remains a challenge. The legal process can be timeconsuming, and infringing websites often change domain names or employ other tactics to evade detection and continue their illegal activities. Swift and efficient judicial responses are necessary to prevent further infringement and mitigate financial losses.¹⁵

Scope of Intermediary Liability and Safe Harbour Provisions

The liability of intermediaries such as internet service providers (ISPs) and online platforms in copyright infringement cases is subject to debate. While they play a crucial role in enabling online communication and content sharing, they can inadvertently facilitate piracy. The interpretation and application of safe harbour provisions under the Information Technology Act are vital in determining the extent of their liability and the responsibilities they bear in combating digital piracy.¹⁶

Streaming Platforms: Complexities in Copyright Licensing

The growth of streaming platforms has revolutionized the film distribution landscape in India, providing viewers with unprecedented access to a vast library of films. However, along with the benefits, the rise of streaming platforms has brought about complexities in copyright licensing. This section explores the growth of streaming platforms in India, their impact on film distribution, challenges in licensing agreements and revenue-sharing models, as well as territorial rights and licensing disputes. Additionally, it examines the complexities arising from user-generated content and its implications for copyright infringement and performers' rights in the streaming era.

The Growth of Streaming Platforms in India

The streaming industry in India has experienced tremendous growth in recent years, with

¹⁵ Rao, Justin M., and David H. Reiley. "The economics of spam." *Journal of Economic Perspectives* 26.3 (2012): 87-110.

¹⁶ Barker, Diane M. "Defining the contours of the Digital Millennium Copyright Act: The growing body of case law surrounding the DMCA." *Berkeley Technology Law Journal* 20.1 (2005): 47-63.

platforms like Netflix, Amazon Prime Video, and Disney+ Hotstar gaining significant popularity among viewers.¹⁷ These platforms provide a wide range of films and television shows, offering convenience and accessibility across various devices. This shift in consumer behaviour has had a profound impact on traditional distribution channels such as cinemas and physical media.

Challenges in Licensing Agreements and Revenue-Sharing Models

Negotiating licensing agreements between streaming platforms and copyright owners presents a primary challenge. These agreements determine the availability of films on the platforms and establish revenue-sharing arrangements.¹⁸ However, reaching mutually beneficial terms can be complex due to factors such as content valuation, duration of licensing agreements, and revenue allocation to copyright owners.

Territorial Rights and Licensing Disputes

Territorial rights play a crucial role in licensing agreements for film distribution. Copyright owners typically grant licenses for specific territories, allowing streaming platforms to offer content within those regions. However, territorial restrictions often lead to licensing disputes, particularly when viewers demand access to content that may not be available in their country or region. To enhance viewer accessibility, there have been calls for more globalized licensing models and the removal of regional barriers.¹⁹

User-Generated Content and Performers' Rights

The rise of streaming platforms has also resulted in the proliferation of user-generated content. Users can create and share their own videos, remixes, and other forms of content on these platforms. While user-generated content enhances viewer engagement, it introduces complexities in terms of copyright infringement. Unauthorized use of copyrighted materials, such as film clips, soundtracks, or performances, raises concerns about copyright infringement and the rights of copyright owners to control the use of their works.

¹⁷ Patnaik, Ria, Reema Shah, and Upendra More. "Rise of OTT platforms: effect of the C-19 pandemic." *PalArch's Journal of Archaeology of Egypt/Egyptology* 18.7 (2021): 2277-2287.

¹⁸ De León, Ignacio L., and Ravi Gupta. "The impact of digital innovation and blockchain on the music industry." *Inter-American Development Bank*. (Nov 2017). Available online: <https://publications.iadb.org/en/impact-digital-innovation-and-blockchain-music-industry> (accessed on 23 June 2020) (2017).

¹⁹ Chao, G. Chin. "Conflict of Laws and the International Licensing of Industrial Property in the United States, the European Union, and Japan." *NCJ Int'l L. & Com. Reg.* 22 (1996): 147.

Implications for Copyright Infringement and Performers' Rights

The presence of user-generated content on streaming platforms raises important questions regarding copyright infringement and performers' rights. Streaming platforms have a responsibility to ensure that user-generated content does not infringe upon the rights of copyright owners. The liability of streaming platforms for copyright infringement depends on factors such as their knowledge of infringing content and their response to takedown requests. Additionally, performers' rights, including the right to authorize or prohibit the recording, reproduction, and public performance of their works, need to be protected in the streaming era.

Legal Solutions for Copyright Protection

Addressing the emerging challenges in copyright protection for cinematography requires a comprehensive approach that includes legal solutions. This section explores various legal strategies to strengthen copyright protection in the digital age. It emphasizes the need for stricter penalties and deterrent measures, collaboration with internet service providers to block pirate websites, and international cooperation in combating cross-border piracy. Additionally, it delves into technological solutions such as digital watermarking and content identification algorithms, the role of blockchain technology in verifying ownership and licensing rights, and the importance of collaboration between copyright owners and streaming platforms in ensuring fair licensing agreements, revenue-sharing models, and efficient content moderation systems. Strengthening Copyright Laws and Enforcement Mechanisms to combat digital piracy effectively, it is imperative to strengthen copyright laws by implementing stricter penalties and deterrent measures. Existing laws should be revised to ensure they reflect the realities of the digital landscape and adequately address the severity of copyright infringement. Higher fines, criminal sanctions, and the possibility of imprisonment can serve as deterrents, dissuading potential infringers and reinforcing the importance of respecting copyright.²⁰

Collaboration with Internet Service Providers to Block Pirate Websites

Collaboration with internet service providers (ISPs) is crucial in the fight against digital piracy. ISPs can play an active role in preventing access to pirate websites by implementing technical measures to block them.²¹ Cooperation between copyright owners, enforcement agencies, and ISPs can lead to effective blocking mechanisms, making it harder for users to access pirated

²⁰ Faure, Michael. "Effective, Proportional and Dissuasive Penalties in the Implementation of the Environmental Crime and Ship-source Pollution Directives: Questions and Challenges." *European Energy and Environmental Law Review* 19.6 (2010).

²¹ Elkin-Koren, Niva. "Making technology visible: liability of internet service providers for peer-to-peer traffic." *NYUJ Legis. & Pub. Pol'y* 9 (2005): 15.

content and reducing the reach and impact of digital piracy.

International Cooperation in Combating Cross-border Piracy

Digital piracy knows no boundaries, and effective copyright protection requires international cooperation. Collaboration between countries can facilitate the exchange of information, resources, and best practices to combat cross-border piracy effectively. Agreements and treaties that address copyright infringement and establish mechanisms for cooperation and enforcement should be encouraged to create a global framework for copyright protection.

Technological Solutions for Copyright Protection

Technological solutions play a significant role in copyright protection. Digital watermarking involves embedding unique identifiers within digital content, allowing copyright owners to track and identify their works. Content identification algorithms utilize advanced algorithms and artificial intelligence to identify and flag potentially infringing content across various online platforms. These technological tools can aid in detecting and preventing unauthorized distribution of copyrighted films, providing valuable evidence in copyright infringement cases.

Role of Blockchain Technology in Verifying Ownership and Licensing Rights²²

Blockchain technology offers a promising solution for verifying ownership and licensing rights in the digital era. By utilizing decentralized and immutable ledgers, blockchain can establish a transparent and tamper-proof record of ownership and licensing agreements. Smart contracts can automate royalty payments, ensuring that copyright owners and performers receive fair compensation. Implementing blockchain technology in the film industry can enhance trust, streamline licensing processes, and reduce disputes related to ownership and licensing rights.

Collaboration between Copyright Owners and Streaming Platforms

Collaboration between copyright owners and streaming platforms is essential to establish fair and transparent licensing agreements. Copyright owners should negotiate licensing terms that adequately compensate them for the use of their works on streaming platforms. Revenue-sharing models should be designed to ensure equitable compensation for filmmakers and performers, considering the value of copyrighted content and the revenue generated by streaming platforms.

²² Zhang, Zehao, and Li Zhao. "A design of digital rights management mechanism based on blockchain technology." *Blockchain-ICBC 2018: First International Conference, Held as Part of the Services Conference Federation, SCF 2018, Seattle, WA, USA, June 25-30, 2018, Proceedings 1*. Springer International Publishing, 2018.

Revenue-sharing models and equitable compensation for filmmakers and performers:

Streaming platforms should adopt revenue-sharing models that provide fair compensation to filmmakers and performers. Transparent accounting practices and regular reporting can enhance trust between streaming platforms and copyright owners. Additionally, mechanisms should be in place to ensure that revenue generated from streaming services is distributed equitably among all stakeholders, including actors, musicians, directors, and producers.²³

Content moderation systems and prompt response to takedown requests:

Streaming platforms must implement robust content moderation systems to prevent the unauthorized use of copyrighted materials by users. Efficient mechanisms for reporting and takedown requests should be in place, enabling copyright owners to promptly notify streaming platforms of infringing content. Streaming platforms should respond promptly to these requests and take necessary action to remove infringing content from their platforms.

Conclusion and Suggestion

The growth of streaming platforms in India has revolutionized the film distribution landscape, providing viewers with unprecedented access to a vast library of films. However, this growth has also brought forth complexities in copyright licensing that require careful consideration and resolution. This article has explored the impact of streaming platforms on film distribution, the challenges in licensing agreements and revenue-sharing models, territorial rights and licensing disputes, as well as the complexities arising from user-generated content and its implications for copyright infringement and performers' rights. The rise of streaming platforms has undoubtedly provided numerous benefits, allowing viewers to enjoy a wide range of films conveniently and on-demand. However, it has also presented challenges in negotiating licensing agreements and revenue-sharing models between streaming platforms and copyright owners. Balancing the interests of both parties is crucial to ensure fair compensation for copyright owners while enabling streaming platforms to offer a diverse and appealing content library. It is essential for stakeholders to engage in transparent and collaborative discussions to establish licensing models that are mutually beneficial and promote the sustainable growth of the film industry.²⁴

Territorial rights and licensing disputes pose additional challenges in the streaming era. With viewers increasingly seeking global content access, the industry must explore ways to

²³ Coff, Russell W. "The coevolution of rent appropriation and capability development." *Strategic Management Journal* 31.7 (2010): 711-733.

²⁴ Andriof, Jörg, et al. *Unfolding stakeholder thinking: Theory, responsibility and engagement*. Routledge, 2017.

overcome territorial restrictions and embrace more flexible licensing models. Global licensing agreements that allow for broader content availability can enhance viewer satisfaction and reduce the motivation for piracy. Additionally, efforts should be made to streamline licensing processes and ensure efficient mechanisms for resolving licensing disputes, facilitating smoother collaborations between copyright owners and streaming platforms.

The presence of user-generated content on streaming platforms raises concerns about copyright infringement and the protection of performers' rights. Streaming platforms need to implement robust content moderation systems to prevent unauthorized use of copyrighted materials. Clear guidelines and mechanisms for reporting and takedown requests should be in place to address copyright infringement promptly. At the same time, performers' rights should be safeguarded, ensuring their ability to authorize or prohibit the use of their works in user-generated content. Collaboration between streaming platforms, copyright owners, and performers' associations is crucial to establish frameworks that protect the rights of all stakeholders while encouraging creativity and user engagement.²⁵

To address the complexities in copyright licensing, a multi-faceted approach is necessary. It starts with strengthening copyright laws and enforcement mechanisms to provide a robust legal framework for combating digital piracy. Stricter penalties, deterrent measures, and international cooperation can create a deterrent effect and enhance the effectiveness of copyright enforcement. Collaboration with internet service providers is vital in blocking access to pirate websites and preventing the proliferation of infringing content.

Technological solutions also play a significant role in copyright protection. Digital watermarking and content identification algorithms can aid in detecting and preventing unauthorized distribution of copyrighted films. Blockchain technology holds promise in verifying ownership and licensing rights, ensuring transparency and reducing disputes. However, ethical considerations and careful implementation are necessary to balance copyright protection with individual privacy and freedom of expression.

To ensure fair licensing agreements, revenue-sharing models, and efficient content moderation systems, collaboration between copyright owners and streaming platforms is essential. Transparent negotiations and agreements should be established, considering the value of copyrighted content and the revenue generated by streaming platforms. Revenue-sharing models should provide equitable compensation to all stakeholders involved in the creation and distribution of films. Content moderation systems should be robust and responsive, addressing copyright infringement promptly and effectively.

²⁵ George, Gerard, Anita M. McGahan, and Jaideep Prabhu. "Innovation for inclusive growth: Towards a theoretical framework and a research agenda." *Journal of management studies* 49.4 (2012): 661-683.
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In conclusion, addressing the complexities in copyright licensing for streaming platforms requires a collaborative effort from all stakeholders. Striking a balance between the interests of copyright owners, streaming platforms, and viewers is essential for a sustainable and thriving film industry.²⁶ Clear licensing agreements, fair revenue-sharing models, efficient content moderation systems, and prompt response to takedown requests are crucial components of a robust copyright protection framework. By embracing legal solutions, leveraging technological advancements, and fostering collaboration, India can establish an environment that respects copyright, protects performers' rights, and ensures the continued growth and innovation of the film industry in the streaming era.

²⁶ Ubaldi, Barbara. "Open government data: Towards empirical analysis of open government data initiatives." (2013)