

Infringement of Copyright And Grievances Redressal Mechanism

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Abstract-

Modern copyright law faces significant challenges due to advancements in digital technology and evolving legal frameworks. Algorithmic enforcement by online intermediaries can lead to a lack of transparency and accountability, with potential biases in automated content filtering. State sovereign immunity, as confirmed by the U.S. Supreme Court's decision in *Allen v. Cooper*, creates barriers for authors seeking redress against state entities. Balancing the rights of creators with public access and fostering innovation is critical. This research paper discusses these issues and emphasizes the need for effective redress mechanisms, transparency, and accountability to ensure fair outcomes in copyright law.

Keywords: Algorithmic enforcement, state sovereign immunity, copyright redress, public access.

1. Introduction to Copyright

Copyright grants creators' exclusive rights to control and profit from their original works, covering literature, music, art, films, software, and more. It typically lasts for the creator's lifetime plus 70 years. Key rights include reproduction, distribution, public performance, and creating derivative works. Exceptions like fair use allow limited use for criticism, education, or research without permission. Copyright infringement occurs when these rights are violated, leading to legal consequences. While protection is automatic, registering with a national copyright office provides additional benefits. International copyright protection is facilitated by treaties like the Berne Convention, enabling cross-border enforcement of copyright laws.¹

Objectives of the Study

The purpose of this study is to thoroughly examine India's domestic statutory and judicial framework for the protection of copyrights and its infringement. The discussion will explore the various provisions vis-à-vis laws, policies, and regulations in the matter of infringement the copyrights and its application under the Indian domain. It will also investigate India's institutional framework for infringement the copyrights and the roles of various government agencies involve in its protection. The objectives of this study are to provide the effectiveness of India's legal and institutional framework for copyrights protection.

Review of Literature

Here review of the literature investigates India's present legislative framework for the protection of copyright, infringement of copyrights and grievances redressal mechanism in India. The review examines the pertinent sources based on reference books, text books, research papers, articles and judicial interpretation of various high courts and Supreme Court of India.

Hypothesis

India has a specific Act to deal with the protection of copyright and sufficient grievances redressal mechanism to deal with the copyright issues and they are sufficient t to combat to established rights of innocent owner of

¹ Indian Copyright Act, 1957

the copyright. But the people are not aware about all these legal framework and effective implementation mechanisms. They have no idea about the when, where and how copyright infringement constitutes along with same they have no idea to deal with situation how and where they can file the suit? They are much confused that which one proceeding is easier and sufficient to deal with the situation. One most important thing is this that some innocent user has no idea that when and how they have infringed the copyright along with same they don't have any idea about fair use of copyright.

Objectives of the Study

Here are objectives of the study that are relevant to the research-

1. To explore and analyze the present legal and institutional framework regarding protection of copyrights and its infringement;
2. To analyze and identify domestic legal framework to deal with the copyright's protection and its infringement;
3. To study the judicial response in the implementation of copyright and its infringement;
4. Evaluate India's statutory measures to grievances redressal mechanism of copyright and its infringement.
5. To provide some recommendations to improve upon the present legal framework that deals with the copyright issues.

Moot Research Questions

The research has tried to address few specific moot questions to address research problems-

1. Is there any legal framework regarding the implementation of copyright and its infringement in India?
2. Are the legal and institutional frameworks regarding the protection of copyright in India coherence or it is fragmented?
3. What and when infringement of copyright constitutes?
4. What are the grievances redressal mechanism in the matter of infringement of copyright in India?
5. What are the remedies available primary and original owner of the copyright?
6. What is the judicial response in the establishment of the copyright?
7. Are the existing laws or policies made by the Indian Legislature are sufficient to establish the copyright in India?

Research Methodology

This section outlines the research methodology, emphasizing the use of primary and secondary sources. It employs analytical, descriptive, critical, and approaches. Primary data comes from legislative documents and judicial decisions, while secondary sources include textbooks, research articles, and online resources. Legal experts' insights support the research's doctrinal approach. Primary sources of data are based on collection encompasses and secondary sources, with existing laws and cases laws. The procedure involves libraries, online databases, research journals and legal websites.

2. What constitute infringement?

The exclusive rights conferred on the copyright owner includes inter alia reproduction of the work in a material form, storing the work in any medium by electronic means, publication of the work, performance of the work in public, making of adaptations and translations *etc.* under section 14 of the Copyright Act, 1957.

According to section 51, copyright in a work shall be deemed to be infringed-

- (i). when any person, without a license from the owner or the Registrar of Copyright does anything, the exclusive right to do which is by this Act conferred upon the owner of copyright, or permits for the public, unless he was not aware and had no reasonable ground for believing that such communication would be an infringement of copyright; or
- (ii). When any person makes for sale/ hire or by way of trade displays or offers for sale/ hire, or distributes either for trade purpose or to such an extent as to affect prejudicially the owner into India, any infringing copies of work (unless the import is for private and domestic use of the importer)².

² Dr. Jain. A. K., "Intellectual Property Laws-II", Ascent Publications, 3rd edition, 2012, reprint, 2013/2014/2015/2016, pp. 160.

For the purpose of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”.

There must be substantial copying of the work (Fateh Singh Mehta v. O.P. Singhal)³.

3. Copyright Grievances Redressal Mechanism

A Copyright Grievances Redressal Mechanism is a system for addressing complaints and disputes related to copyright infringement. It involves several steps: filing a complaint, investigating claims, notifying the alleged infringer, and seeking resolution. If a violation is confirmed, remedies could include content removal, licensing, or legal action. The process may offer Alternative Dispute Resolution (ADR), like mediation or arbitration, for faster outcomes. Appeals can be made if parties disagree with a resolution. This mechanism aims to protect copyright holders' rights while allowing fair use and balancing legal complexities, ensuring an efficient and equitable approach to resolving copyright disputes.⁴

4. Infringement of copyright

Infringement of copyright refers to the unauthorized use or exploitation of copyrighted material, which violates the rights of the copyright owner. The Copyright Grievances Redressal Mechanism is a comprehensive process designed to address these infringements, allowing copyright owners to seek remedies and enforce their rights. Following are an in-depth look at this mechanism, covering the steps involved, legal aspects, and best practices.⁵

Step-by-Step Process of Copyright Grievances Redressal: Identifying Infringement: The first step involves recognizing potential copyright infringement. Copyright owners, their representatives, or third parties can detect infringements through various means, such as direct observation, automated detection tools, or user reports.

Filing a Complaint: Once infringement is identified, a formal complaint is filed. The complaint typically includes details about the copyrighted work, the nature of the alleged infringement, and supporting evidence. Depending on the context, complaints can be filed with:

Government Agencies: National copyright offices or other governmental bodies that oversee copyright enforcement.

Online Platforms: Websites or platforms that host user-generated content, like YouTube or Instagram, often have a Digital Millennium Copyright Act (DMCA)⁶ takedown process or similar mechanism.

Legal Representatives: Law firms or legal professionals specializing in intellectual property.

2. Initial Review and Notification

The body or platform that receives the complaint reviews it to assess its validity. If the complaint appears credible, the alleged infringer is notified, usually with a cease-and-desist letter or a takedown notice. This notice should include:

- a) Details about the copyright owner and the copyrighted work.
- b) Information on the alleged infringement and why it is considered a violation.
- c) A request to cease infringing activities or remove the infringing content.
- d) A deadline for response or compliance.
- e) Possible consequences for failure to comply.

³ AIR 1990Raj.08.

⁴ [alternative dispute resolution | Wex | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

⁵ Copyright Act, 1957

⁶ Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998).

3. Response from the Alleged Infringer

The alleged infringer is given an opportunity to respond. Responses can range from:

- a) **Compliance:** The infringer agrees to remove the content, cease activities, or negotiate a licensing agreement.
- b) **Counter-Notification:** If the alleged infringer believes the claim is incorrect, they can file a counter-notification explaining why the claim is invalid. This could be based on fair use, lack of copyright protection, or other legal defenses.
- c) **Ignoring the Notice:** Failing to respond or comply with the request, leading to further action.

Defenses to Infringement

In the condition of infringement of copyright defendant can take defenses which is alleged against him are-

- a. the alleged infringement does not relate to the substantial part of plaintiff's work;
- b. though the work is derived from common sources, his work is an independent work⁷.

Suit of copyright infringement: Where it can be filed?

In the non-compliance of section 62 and section 132, having resort to section 20, plaintiff may be entitled to file a suit in the condition of infringement of copyright against the defendant only at the district court within local limits of which causes of action wholly or partially arises, or where defendant resides, carries on business or personally work for gain or high court having original jurisdiction.

Remedies

The Copyright Act, 1957 provides both remedies civil as well as criminal in the infringement of copyright. Trial of the infringement of the copyright shall be made only by the the Court of Metropolitan Magistrate or Judicial Magistrate of First Class. As per Section 55 (1) the copyright owner is entitled to file a suit for **injunction, damages and account** etc. In the condition of infringement of copyright, a **civil suit** can be filled requesting-

- A. Injunction: To prohibit further unauthorized use.
- B. Damages: Compensation for losses suffered due to infringement.
- C. Accounts: An account of profits made by the infringer.

The criminal proceeding in the matter of infringement of copyright shall be start by lodging the FIR under Section 154 of the Cr.PC or making an application before the Magistrate under Section 156 (3) of the CrPC. But by filling the **criminal case** penalty may includes fine or imprisonment. Section 63 of the Act provides provision that a person who is knowingly infringes or abets to infringe of copyright shall be punished for a term between six months to three years and also fine shall be imposed upon the infringer for an amount between Rs. 50000/- 200000/. In the case of repetition of same offence/ act it may be 01 to 03 years jail along with fine Rs. 100000 to 200000.

Section 64 provides power to police officer to seize the all copies of work without warrant, wherever found and produce the same before a Magistrate. Under Section 66 of the Act the Court has power to order for disposal of all the infringing copies or plates that are in possession of the alleged offender. The offence under the Copyright Act is bailable as per the decision of the Delhi High Court in the *State of NCT of Delhi v. Naresh Kumar Garg*⁷.

Resolution and Appeals

The complaint can be resolved in several ways

Takedown: The infringing content is removed from a platform or taken out of distribution.

Licensing: The infringer agrees to obtain a license, allowing them to use the copyrighted material legally.

Settlement: The parties reach a settlement, often involving compensation or an agreement to avoid future infringement.

⁷ CRL.M.C. No. 3488/2012.

Legal Action: If the infringement is severe or not resolved through other means, the copyright owner may pursue legal action, leading to court proceedings.

Legal Proceedings

If legal action is pursued, the case is typically brought to a court with jurisdiction over copyright matters. Legal proceedings can involve:

Filing a Lawsuit: The copyright owner files a lawsuit against the alleged infringer, seeking damages, injunctions, or other legal remedies.

Discovery and Evidence: Both sides present evidence and arguments to support their case. This can include copyright registrations, proof of infringement, and expert testimony.

Court Rulings: The court makes a ruling based on the evidence and legal arguments. Remedies can include monetary compensation, injunctions, or other orders to stop further infringement.⁸

Appeals

If a party is unsatisfied with the court's ruling, they may have the right to appeal to a higher court. The appeals process involves reviewing the case's legal aspects to determine if errors were made in the initial ruling.

4. Alternative Dispute Resolution (ADR)

Some copyright disputes are resolved through ADR, which can offer a quicker and less formal approach. ADR includes:

Mediation: A neutral third party facilitates discussions between the parties to help them reach an agreement.

Arbitration: A binding process where an arbitrator hears both sides and makes a decision, which is typically final.

Best Practices for Copyright Grievances Redressal

To ensure an effective redressal mechanism, consider the following best practices:

Transparency and Communication: Clear communication with all parties involved, providing detailed information about the complaint, process, and outcomes.

Education and Training: Educating users, creators, and stakeholders about copyright laws, fair use, and proper licensing.

Timeliness: Addressing complaints promptly to minimize the impact of infringement and provide a swift resolution.

Fairness and Impartiality: Ensuring that the process is fair to all parties and impartial in its judgments.

Record Keeping: Maintaining detailed records of complaints, resolutions, and legal outcomes for future reference and compliance.⁹

5. Modern copyright law

Modern copyright law is complex, especially with digital advancements. Challenges include algorithmic enforcement by online intermediaries and state sovereign immunity, each impacting creators and public access

⁸ The Digital Millennium Copyright Act of 1998

⁹ WIPO ADR for Digital Copyright and Content Disputes

to content. Algorithmic enforcement can lack transparency and accountability, risking overreach and bias, while state sovereign immunity may leave authors without recourse against state copyright infringement. Evolving legal frameworks must balance the rights of creators with public access and innovation. Addressing these challenges requires robust redress mechanisms, clear procedures, and effective oversight to ensure that copyright law serves both creators' interests and broader societal needs fairly.

6. Overview of Copyright Issues and Algorithmic Enforcement

Perel and Elkin-Koren (2015) highlight the increasing role of algorithmic enforcement in copyright law, particularly in online intermediaries. These intermediaries, often mega platforms, have been granted considerable power to enforce copyright through automatic processes, largely due to the Digital Millennium Copyright Act (DMCA) and similar legislation. The authors stress that while these systems provide a means to efficiently remove infringing content, they also raise concerns about transparency, accountability, and potential bias. This shift towards automated enforcement can lead to a lack of clarity regarding how decisions are made, who is responsible for them, and whether these processes adhere to principles of due process and public oversight.

7. Balancing Copyright Protection and Public Access

Rafiqi and Bhat (2013) explore the evolution of copyright law in response to technological advancements, emphasizing the challenge of balancing incentives for creators with public access to creative works. The Internet and peer-to-peer (P2P) networks have transformed the way content is distributed, leading to the digital dilemma where the rapid, high-quality reproduction of content poses challenges to traditional copyright protection. This phenomenon creates tension between the ideals of "information wants to be free" and the need for stronger proprietary control. The authors examine emerging issues in copyright protection within this digital environment, underscoring the need for adaptable legal frameworks that address these complexities.

8. The Importance of Redress Procedures in Social Policies

Gauri (2013) discusses redress procedures in the context of social policies, emphasizing their role in ensuring basic fairness and accountability. Effective redress mechanisms require a robust supply of procedures within government, independent institutions, and courts, alongside a demand from civil society and the media. Although Gauri's focus is on social policy, the principles can be applied to copyright grievances. A well-designed redress system helps maintain accountability and provides insights for policy design, which is crucial given the increasing role of online platforms in copyright enforcement.

9. New Copyright Directive and Challenges

Stalla-Bourdillon et al. (2017) critically analyze the proposed new Copyright Directive in the European Union, which aims to address issues such as cross-border access and the role of online services in content distribution. The authors express concerns about the directive's mandatory filtering provisions for user-generated content, questioning its alignment with European Court of Justice (CJEU) case law and the Charter of Fundamental Rights of the European Union. They highlight potential conflicts with existing legal precedents and stress the importance of re-assessing the directive's provisions to ensure they do not infringe on fundamental rights.

10. State Sovereign Immunity and Copyright Protection

Wang (2021) addresses the impact of state sovereign immunity on copyright protection, focusing on the U.S. Supreme Court's decision in *Allen v. Cooper*. The decision confirmed that the Copyright Remedy Clarification Act of 1990 (CRCA)¹⁰ does not abrogate state sovereign immunity, potentially creating an imbalanced bargaining power between states and authors. This imbalance may undermine incentives for creativity and innovation, as authors may struggle to seek redress for copyright infringement by state entities. Wang proposes measures to mitigate these challenges, emphasizing the need for compelled and voluntary state participation to ensure authors' rights are protected.¹¹

¹⁰ Copyright Remedy Clarification Act of 1990

¹¹ Copyright Remedy Clarification Act of 1990 (CRCA)

Judicial Pronouncements:

The Hon'ble Supreme Court in, *Midas Hygiene Industries P. Ltd. And Anr. V. Sudhir Bhatia and Ors.*¹² Held that a case and a desist notice acts as a very important and useful tool for adjudicating cases relating to copyright infringement in favour of the copyright holder. Rule 75 of the Copyright Rules, 2013 further provides for contents of a "take down notice" that can be sent by the copyright owner to the infringer. It is always favorable to exhaust these remedies before approaching the court.

In *Syndicate of Press University of Cambridge v. Kasturi Lal & Sons*¹³ the court said that "while the universal nature of knowledge and its dissemination freely is a laudatory but it must not transgress rights of an author guaranteed by the Copyright Act. Those who possess the ability to create also possess the right to assert that their creation be recognized and identified with them. They have the right to proclaim that no other person infringes upon their claim of originality and the right to limit the use and prevent the abuse of their creation".

In *Warner Bros. Entertainment Inc. v. Mr. Santosh V.G. MIPR*¹⁴ the court said that the Copyright Act, the underlying theme of when infringement occurs was whenever the activity seeks to profit from the work, or uses it commercially, contrary to the terms of the copyright owner's permission.

In *M/s Blackwood & Sons Ltd. V. A. N. Parasuraman*¹⁵ the court said that an infringement of copyright is in the nature of invasion of a right to property and therefore the intention of the infringer is irrelevant, provided there is an infringement.

Conclusion:

The complexities of modern copyright law necessitate a multi-faceted approach to ensure fairness and justice. Algorithmic enforcement and state sovereign immunity pose distinct challenges, potentially hindering the protection of creators' rights while impacting public access to content. To address these issues, it is crucial to establish clear redress mechanisms that provide transparency and accountability. Legal frameworks should be adaptable, balancing creators' rights with the public's need for accessible information and fostering innovation. Ultimately, these efforts must aim to create a copyright system that is both robust in protecting intellectual property and flexible enough to support creativity and public interest.

Recommendations:

On the basis of overall discussion few specific suggestions are as under to deal with issues and make easier-

01. Awareness Programmes: It has been observed the few innocent owner has no idea about the infringement of copyright. They have no idea that when and where their copyright has been infringement? In the same place there are some innocent users they also have no idea that when and how they have infringed the rights of primary and original owner? So, in this regard general awareness programmes must be organized in mass time to time.

02. Proceeding must be easier and short: Innocent copyrights owners are confused about the proceeding where, when and how he can file the case and get remedy? The procedures involved are very lengthy and time taking. So, procedure must be shorter and easy.

03. Protection of rights: Although the Act provides provisions regarding the rights of original owner but in the same time it is very difficult to identify and protect the rights of fair users. So, rights of fair user must be protected.

04. ADR Mechanism must be promoted: Regarding to deal with the copyright issues it will be very easy to deal with the issues involving the ADR mechanism. A least both party have option to resolve the issues easy and quickly.

¹² 2004 (3) SCC 90

¹³ (2006) 32 PTC 487 (Del.)

¹⁴ 2009 (2) 175 (Del.).

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