



# **COPYRIGHT LAW & COPYRIGHTABLE WORK IN CYBER SPACE: AN INTERNATIONAL APPROACH**

**Author: Prof. (Dr.) S.P.S.Shekhawat, Head & Dean,**

Faculty of law, Jagan Nath University, Jaipur

**Co-Author: Ms. Bhawana, Research Scholar**

Faculty of law, Jagan Nath University, Jaipur

“The most important thing about intellectual property vs. creative expression is that copyright law was created not to stifle creativity but to encourage creativity.”

- **Shepard Fairey**

## **Abstract**

This research paper explores the concept of copyright law and the protection of copyrightable works in cyberspace. The internet has revolutionized the way people create, distribute, and consume content, which has posed significant challenges for copyright law. The paper examines the different types of copyrightable works in cyberspace, including literary, artistic, musical, and audiovisual works, as well as computer programs and databases. The paper discusses the legal framework of copyright law and its application to digital content. It examines the limitations and exceptions to copyright law, such as fair use, and how these apply in the digital realm. The paper also addresses the challenges of enforcing copyright law in cyberspace and the role of digital rights management technologies in preventing unauthorized copying and distribution of digital content.

Furthermore, the study delves into the global legal structure governing copyright law, encompassing accords and pacts like the Berne Convention and the World Intellectual Property Organization Copyright Treaty<sup>1</sup>. These agreements establish a foundation for worldwide collaboration and the implementation of copyright law in the online sphere. The research paper ultimately asserts that copyright law remains a vital mechanism for

<sup>1</sup> [https://en.wikipedia.org/wiki/Berne\\_Convention](https://en.wikipedia.org/wiki/Berne_Convention)

safeguarding the rights of content creators in the digital realm. Although the obstacles presented by the virtual landscape are substantial, the ongoing development of copyright law and its utilization in cyberspace will persistently shield the concerns of copyright holders and foster ingenuity and originality.

## INTRODUCTION

The idea of copyright law has existed for many centuries, but its importance has amplified in the face of the internet and the digital era. The emergence of digital platforms has made the protection of copyright-eligible creations more crucial than ever. The convenience of generating, disseminating, and accessing digital content has presented significant complexities for copyright law and its enforcement. This research paper aims to delve into the intricate realm of copyright law within the digital landscape. The paper will investigate various forms of copyrightable works in cyberspace, encompassing literary, artistic, musical, and audiovisual creations, as well as computer programs and databases. Additionally, it will explore the legal framework surrounding copyright law and its application to digital content, including the existence of restrictions and exemptions such as fair use provisions.<sup>2</sup>

The paper will also address the challenges of enforcing copyright law in cyberspace, including the ease of copying and distributing digital content, and the role of digital rights management technologies in preventing unauthorized copying and distribution. Furthermore, the research paper will delve into the international legal framework for copyright law, including treaties and agreements such as the Berne Convention and the World Intellectual Property Organization Copyright Treaty. These agreements provide a framework for international cooperation and enforcement of copyright law in cyberspace.<sup>3</sup>

## OBJECT OF COPYRIGHT LAW

Copyright law is designed to safeguard original creative works such as literature, music, art, and drama. It grants exclusive rights to the creators, allowing them to reproduce, distribute, display, and create derivative works based on their original creations. The primary aim of these exclusive rights is to incentivize creators by providing financial incentives and legal protections, thus encouraging the development and dissemination of new works. However, copyright law also aims to strike a balance between the rights of creators and the public's interest in accessing and utilizing creative works for educational, research, and cultural purposes.<sup>4</sup>

In today's world, copyright protection encompasses various industries involved in the production and distribution of books, magazines, newspapers, entertainment media, including dramatic and musical works for performances, publication of music, cinema, broadcasting, and more. Unlike other forms of property, copyright, as intellectual property, can traverse national boundaries more easily and rapidly. The advent of technology has made it increasingly simple to copy copyrighted material. As a result, controlling copyright infringement has become challenging and often impossible. Books, recorded tapes, video cassettes, and

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<sup>2</sup> *India Tv Independent News Service ... vs Yashraj Films Pvt. Ltd. on 21 August, 2012*

<sup>3</sup> *Harish Chander, Cyber Laws and IT Protection, PHI learning Private Ltd. Publication, New Delhi.*

<sup>4</sup> *In syndicate of the press of the university of Cambridge v. B.D. Bhandari 2011 (47) PTC 244 (Del.) (DB) at p. 293*

computer programs can be easily transported from one country to another, enabling the creation and distribution of thousands of unauthorized copies. The unauthorized home recording of radio and television programs has become widespread across the globe.<sup>5</sup>

### CHARACTERISTICS OF COPYRIGHT

Copyright is a legal principle that safeguards the rights of creators of unique works. Here are some essential aspects of copyright:

- a) Originality: Copyright law protects original works of authorship that are recorded in a tangible form, meaning they must be the result of the author's creativity and fixed in a medium that allows them to be perceived, reproduced, or communicated.
- b) Exclusive rights: Copyright grants creators exclusive rights to reproduce, distribute, display, and create derivative works based on their original creations. These rights ensure that creators have control over how their work is used and can financially benefit from their creations. <sup>6</sup>
- c) Limited duration: Copyright protection is not indefinite and has a limited lifespan. The duration varies depending on the jurisdiction but typically extends for the creator's lifetime plus a specified number of years after their death.
- d) Economic rights: Copyright law provides creators with economic rights, enabling them to profit from their works. Creators can choose to sell, license, or otherwise exploit their creations for financial gain. <sup>7</sup>
- e) Moral rights: Copyright law also grants creators moral rights, which allow them to protect their reputation and integrity as the authors of their works. These rights include being identified as the author and having the right to object to any modifications that may harm the author's honor or reputation. <sup>8</sup>
- f) International protection: Copyright protection is recognized internationally through various international agreements like the Berne Convention. This ensures that creators' works receive protection across multiple countries.<sup>9</sup>

Overall, copyright is a legal framework that safeguards the rights of creators by granting them exclusive economic and moral rights to their original works. It has a limited duration and provides international recognition to ensure adequate protection for creators.

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<sup>5</sup> *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), also known as the "Betamax case"

<sup>6</sup> *Time warner entertainment company v. RPG Netcom*, 2007

<sup>7</sup> *Sholay media and entertainment pvt. Ltd. V. parag sanghavi*, 2015 (64) PTC 546 (Del), P.556

<sup>8</sup> *Amarnath sehgal v. union of india*, 2005 (30) PTC 253.

<sup>9</sup> *Microsoft corporation v. S.K. Das*, 2013(56) PTC 335 (Del) at P. 338

**THE INFORMATION TECHNOLOGY ACT, 2000**

The Information Technology Act, 2000 is legislation in India that regulates electronic communication, digital signatures, and cybercrime. It was enacted by the Indian Parliament in 2000 and became effective in October of that year. The primary aim of the act is to grant legal recognition to electronic communication, facilitate electronic commerce, and combat cybercrime.

Here are some key provisions of the Information Technology Act, 2000: 10

- i. Recognition of electronic communication: The act establishes the legal recognition of electronic communication, electronic records, and digital signatures. This means that electronic contracts and transactions hold the same legal validity and enforceability as traditional paper-based transactions.
- ii. Regulation of digital signatures: The act sets up a legal framework for the usage of digital signatures, which are electronic signatures used to verify the authenticity and integrity of electronic documents. It recognizes digital signatures and establishes a Controller of Certifying Authorities to oversee the issuance of digital certificates.
- iii. Prevention of cybercrime: The act criminalizes specific acts committed through electronic communication, such as unauthorized access to computer systems, hacking, and the dissemination of offensive or obscene material online. It also provides for the establishment of a Cyber Appellate Tribunal to handle disputes related to cybercrime.
- iv. Data protection and privacy: The act includes provisions for the protection of personal data and privacy by imposing obligations on entities that collect and process personal information. It also establishes the Indian Computer Emergency Response Team (CERT-In) to coordinate responses to cyber threats and incidents.
- v. Promotion of electronic governance: The act promotes electronic governance by allowing the use of electronic records and digital signatures in government agencies and departments. This facilitates the delivery of public services and reduces reliance on paper-based transactions.<sup>11</sup>

In summary, the Information Technology Act, 2000 in India addresses various aspects of electronic communication, digital signatures, and cybercrime. It grants legal recognition to electronic transactions, establishes regulations for digital signatures, combats cybercrime, safeguards data protection and privacy, and encourages electronic governance.

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<sup>10</sup> Information Technology Act, 2002, available at: [https://en.wikipedia.org/wiki/Information\\_Technology\\_Act,\\_2000](https://en.wikipedia.org/wiki/Information_Technology_Act,_2000)

<sup>11</sup> Dr, Farroq Ahmad, *Cyber Law in India*, New Era Law Publications, New Delhi, 2012, Page No.28.

## INFRINGEMENT OF COPYRIGHT IN CYBER SPACE<sup>12</sup>

Copyright infringement in cyberspace refers to the unauthorized utilization of copyrighted material in the online realm. It encompasses activities like copying, distributing, uploading, and streaming copyrighted content without obtaining proper permission. Common instances of copyright infringement in cyberspace include:

**Piracy:** Illegally sharing and distributing copyrighted content like movies, music, and software through platforms such as peer-to-peer networks, torrents, and unauthorized streaming websites.

**Plagiarism:** Copying and using someone else's work without authorization and presenting it as one's own creation.

**Content scraping:** Unauthorized copying of content from websites and utilizing it without permission, whether for commercial or non-commercial purposes.

**Counterfeiting:** Selling counterfeit products, including fake designer items, electronics, and software, online.  
**Linking:** Providing hyperlinks to infringing content or websites hosting copyrighted material without proper authorization.

Copyright owners can employ legal measures to combat infringement in cyberspace, including issuing cease and desist letters, submitting takedown notices, and initiating legal proceedings. In certain cases, intermediaries like internet service providers, search engines, and social media platforms may also be held accountable for facilitating infringement. To safeguard against copyright infringement in cyberspace, copyright owners can take proactive steps such as registering their works with copyright authorities, utilizing digital rights management tools, and implementing anti-piracy technologies. These measures aim to protect their intellectual property rights and deter unauthorized usage of their copyrighted material.<sup>13</sup>

## COPYRIGHT IN A WORK SHALL BE DEEMED TO BE INFRINGED.<sup>14</sup>

Copyright infringement occurs when an individual performs certain acts without the permission of the copyright owner. These acts include:

1. **Reproduction:** Making copies of the work, whether in whole or in part, using any means like electronic, mechanical, or photographic methods.
2. **Distribution:** Selling, renting, leasing, or lending copies of the work to the public.
3. **Public Performance:** Showing or playing the work in public, either directly or through any device or process.
4. **Public Display:** Displaying the work in public, either directly or through any device or process.

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<sup>12</sup> Exception to Infringement, available at: <http://copyright.gov.in/ExceptionstoInfringement.aspx>

<sup>13</sup> Tabrez Ahmad, *Cyber Law and E-Commerce*, APH Publishing Corp., New Delhi, 2003

<sup>14</sup> Available at: <http://copyright.gov.in/Documents/CopyrightRules1957.pdf>

5. Adaptation: Creating derivative works based on the original work, such as translations, adaptations, or abridgments.
6. Communication to the Public: Making the work available to the public, whether through broadcasting, internet transmission, or any other means of public communication.

It is important to understand that this list is not exhaustive, as copyright owners may have additional rights depending on their specific work and the jurisdiction in which they operate.

When copyright infringement occurs, the copyright owner has the right to take legal action against the infringer. This may involve seeking damages, obtaining an injunction to prevent further infringement, or pursuing other available remedies under the law. In certain cases, criminal penalties may also apply for copyright infringement.<sup>15</sup>

## **COPYRIGHT AND INTERNET**

The relationship between copyright and the internet is intricate and multifaceted. The advent of the internet has revolutionized the sharing and dissemination of copyrighted works, presenting both opportunities and challenges for copyright protection. On one hand, the internet has made it incredibly convenient to share and distribute creative works, leading to concerns about widespread infringement. Platforms like social media, file-sharing networks, and streaming services have made it easier for individuals to access and share copyrighted content without proper authorization, posing significant challenges for copyright enforcement.

The proliferation of online platforms has amplified the scale and speed of copyright infringement, making it increasingly difficult to monitor and control the unauthorized use of copyrighted material. This has raised important questions about how to effectively enforce copyright laws and safeguard the rights of copyright owners in the digital age. It has become a pressing issue for policymakers, content creators, and users alike to find a balance that promotes creativity and innovation while respecting the rights of copyright holders.

However, the internet has also opened up new avenues for copyright owners to reach broader audiences and distribute their works globally. It has provided creators with unprecedented opportunities for self-publishing, independent distribution, and direct interaction with their audience. Digital platforms, online marketplaces, and streaming services have become valuable channels for creators to showcase and monetize their creative works. The internet has empowered artists, musicians, writers, and other content creators to connect with their fans, explore new business models, and gain exposure on a global scale.

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<sup>15</sup> Copyright Issues, available at: <https://corporate.findlaw.com/intellectual-property/current-copyright-issues.html>

Furthermore, the internet has spurred the development of innovative technologies and tools to help protect copyrights. Digital rights management (DRM) systems, watermarking techniques, and content identification algorithms have emerged to assist in monitoring and controlling the use of copyrighted material online. These technologies aim to prevent unauthorized copying, track the distribution of copyrighted works, and enable copyright owners to enforce their rights more effectively.

As the internet continues to evolve, the relationship between copyright and the online environment will remain a crucial and ongoing concern. Policymakers will need to adapt copyright laws to address the challenges posed by the digital landscape, striking a balance between protecting intellectual property rights and promoting access to creative works. Content creators will need to navigate the complexities of the digital marketplace, employing strategies to protect and monetize their copyrighted material. Users, on the other hand, must be aware of their rights and responsibilities regarding the use of copyrighted works in the online space.

In summary, the internet has revolutionized the way copyrighted works are shared, creating both opportunities and challenges for copyright protection. While it has made copyright infringement easier, it has also provided new avenues for distribution and tools to safeguard copyrights. Finding a harmonious and effective approach to copyright in the online environment is an ongoing task that requires collaboration between stakeholders to ensure the continued growth and protection of creative expression in the digital age.

## **WHY IS COPYRIGHT ILL EQUIPPED TO DEAL WITH THE INTERNET?**

The emergence of the internet has presented significant challenges to the existing copyright framework, which was primarily designed for traditional media formats. The internet's ability to facilitate widespread reproduction and distribution of copyrighted material has posed difficulties for copyright laws, which have struggled to adapt to these new circumstances.<sup>16</sup>

One of the key reasons for the inadequacy of copyright law in the internet age is its slow pace of change and adaptation. The law often lags behind technological advancements, making it challenging for lawmakers to address the evolving nature of digital media and online activities effectively.

The global nature of the internet further complicates the application of copyright law. With varying copyright regulations across different countries, there is a lack of consistency and clarity in enforcing copyright across borders. This inconsistency adds to the complexities of protecting copyrighted works in the online

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<sup>16</sup> Nandan Kamath, *Law Relating to Computers, Internets and E-Commerce* 230 (Universal Law Publishing Co. Pvt. Ltd., 2<sup>nd</sup> edn., 2005).

environment.

The internet has also facilitated widespread unauthorized copying and distribution of copyrighted material, resulting in a prevalent culture of digital piracy. Efforts to control and enforce copyright infringement in this digital landscape have proven to be challenging due to the ease with which users can access and share copyrighted content without the copyright owner's consent or awareness.

Additionally, the internet has given rise to alternative business models that challenge the traditional copyright framework. Open source software, Creative Commons licensing, and crowd funding platforms have provided new opportunities for creators and users, but have also raised questions about how copyright law should be applied and adapted to accommodate these innovative approaches.

In summary, the internet has introduced complexities and challenges that the traditional copyright framework was not originally designed to address. The slow pace of legal adaptation, the global nature of the internet, the prevalence of digital piracy, and the emergence of alternative business models have all contributed to the need for ongoing discussions and adjustments to copyright law in the digital era.<sup>17</sup>

## **CYBER SPACE AND INDIAN JURISDICTION**

The realm of cyberspace transcends physical borders and operates in a virtual world that presents unique challenges to legal systems worldwide, including those in India. In India, the Information Technology Act, 2000, serves as the primary legislation governing cyberspace, digital transactions, and cybercrime. However, the nature of the internet, with its borderless and decentralized structure, poses significant hurdles to enforcing the law effectively in the virtual realm.

One of the key difficulties arises from the jurisdictional limitations of cyberspace. Identifying the location of offenders or victims in cybercrime cases can be incredibly challenging, as individuals and entities can operate from any part of the world. This makes it difficult for national legal systems, including India's, to track down and prosecute those involved in cybercriminal activities. The lack of clear jurisdictional boundaries complicates law enforcement efforts and hinders the effective application of existing legal frameworks.

To tackle these challenges, it is crucial for the Indian government to collaborate with international organizations and other countries. Developing cooperative mechanisms, such as mutual legal assistance treaties, can enable better coordination and information sharing between jurisdictions. Strengthening international cooperation is essential to address cyber threats and establish effective mechanisms for

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<sup>17</sup> How to Copyright Digital Media, *available at*: <https://www.legalzoom.com/articles/how-to-copyright-digital-media>(Visited on March 18, 2020).

investigating and prosecuting cybercrimes that transcend national boundaries.

Furthermore, it is essential to continuously adapt and evolve legal frameworks to keep pace with the ever-changing landscape of cyberspace. Governments, including India's, need to stay abreast of technological advancements and work towards enacting legislation that is flexible and capable of addressing emerging challenges. This may involve amendments to existing laws or the introduction of new legislation specifically designed to address cybercrimes and protect individuals' rights in the digital realm.

In addition to legal measures, raising awareness and promoting digital literacy among the public is crucial. Educating individuals about their rights and responsibilities in cyberspace can help prevent cybercrimes and promote responsible online behavior. Empowering users to protect themselves and report cyber incidents is a vital aspect of creating a safer digital environment.

The virtual nature of cyberspace presents a formidable challenge for legal systems worldwide, including India. Addressing the jurisdictional limitations, fostering international cooperation, and continuously adapting legal frameworks are all essential steps in effectively combating cybercrimes and ensuring the protection of individuals' rights in the digital age.

## **PROBLEM OF DISTRIBUTION AND REPRODUCTION RIGHTS**

Copyright law grants copyright owners the rights to control the distribution and reproduction of their works. However, in the digital era, enforcing these rights has become increasingly challenging. Distribution rights are undermined by the ease with which digital content can be shared on a massive scale without physical copies. This has resulted in widespread piracy and unauthorized sharing of copyrighted material. Policing the vastness of the internet and addressing infringers operating in countries with lax copyright laws pose significant hurdles for copyright owners.

Similarly, reproduction rights face difficulties due to the ease of replicating digital content without any loss of quality. Once a digital file is shared, it can be reproduced indefinitely without the need for additional copies. This lack of control over reproduction makes it challenging for copyright owners to prevent unauthorized copying and distribution of their works.

To address these challenges, copyright owners have employed various strategies, such as implementing digital rights management (DRM) technologies and entering into online licensing agreements. These approaches aim to protect digital content and regulate its distribution. However, they have sparked controversy and have had

mixed success in effectively safeguarding copyright owners' rights. 18

Overall, the digital age has posed significant obstacles to enforcing distribution and reproduction rights in copyright law. Copyright owners continue to explore new strategies and technologies to protect their works, but the ever-evolving nature of digital technology necessitates ongoing efforts to find effective solutions in this complex landscape.

## CASE LAWS: CYPER SPACE AND COPYRIGHT

- *A&M Records, Inc. v. Napster, Inc.* (2001)<sup>19</sup>: This landmark case dealt with the issue of online music sharing and copyright infringement. The court ruled that Napster, a file-sharing service, was liable for copyright infringement because it facilitated the unauthorized sharing of copyrighted music.
- *Sony Corp. of America v. Universal City Studios, Inc.* (1984)<sup>20</sup>: This case dealt with the issue of home recording of copyrighted television programs. The court ruled that home recording for personal use was not a copyright infringement, and that the sale of the VCRs used for home recording was legal.
- *Perfect 10, Inc. v. Google Inc.* (2007)<sup>21</sup>: This case dealt with the issue of copyright infringement through the use of thumbnail images. The court ruled that Google's use of thumbnail images was not a copyright infringement, as it constituted fair use.
- *MGM Studios, Inc. v. Grokster, Ltd.* (2005)<sup>22</sup>: This case dealt with the issue of file-sharing software and copyright infringement. The court ruled that Grokster, a file-sharing service, was liable for copyright infringement because it promoted and encouraged its users to share copyrighted material.
- *Viacom International Inc. v. YouTube, Inc.* (2010)<sup>23</sup>: This case dealt with the issue of copyright infringement through the use of user-generated content on YouTube. The court ruled that YouTube was not liable for copyright infringement because it had taken reasonable steps to remove infringing content when notified by copyright owners.

These cases illustrate the complex and evolving nature of copyright law in cyberspace, and the challenges faced by courts in interpreting and applying copyright law to new digital technologies and practices.

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<sup>18</sup> Protection of right to reproduction in internet under copyright law <http://medcraveonline.com/FRCIJ/FRCIJ-06-00228.pdf>

<sup>19</sup> *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir., 2001)

<sup>20</sup> *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), also known as the "Betamax case"

<sup>21</sup> *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir., 2007)

<sup>22</sup> *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005)

<sup>23</sup> *Viacom International, Inc. v. YouTube, Inc.*, 676 F.3d 19 (2nd Cir., 2012)

## CONCLUSION AND RECOMMENDATIONS:

In the realm of cyberspace, copyright law encounters numerous obstacles due to the transformative impact of the internet on the creation, distribution, and consumption of copyrighted works. While attempts have been made to adapt copyright law to technological advancements, it still struggles to fully tackle the complexities of the digital age.

To effectively address these challenges, it is crucial for policymakers and lawmakers to continually strive towards establishing a more agile and responsive legal framework for copyright in cyberspace. This involves updating existing laws to align with the evolving digital landscape and formulating new legal mechanisms to combat online copyright infringement.<sup>24</sup>

In addition to legislative efforts, copyright owners and creators can employ various strategies to safeguard their works in cyberspace. These strategies may include implementing digital rights management techniques and engaging in online licensing agreements. Concurrently, it is important for users and consumers of copyrighted content to be knowledgeable about copyright laws and to respect the rights of copyright owners, while advocating for increased access to and utilization of copyrighted works in the digital era.

A collaborative and inclusive approach is essential to effectively tackle the intricate challenges surrounding copyright in cyberspace. This entails engaging stakeholders from government, industry, civil society, and academia in meaningful discussions and cooperation. By working together, it is possible to establish a balanced and effective copyright system that fosters creativity, innovation, and widespread access to knowledge in the digital age.<sup>25</sup>

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<sup>24</sup> Protection of Copyright in the Digital age and the role and liabilities of ISPs, *available at*: <http://www.legalservicesindia.com/article/1638/Protection-Of-Copyright-In-The-Digital-Age-The-Role-And-Liabilities-Of-ISPs- In-India.html>

<sup>25</sup> Copyright in Digital Era, *available at*: [http://www.rmlnl.ac.in/webj/alok\\_kumar\\_yadav.pdf](http://www.rmlnl.ac.in/webj/alok_kumar_yadav.pdf)