

3 CMET (2016) 75

The Dirty Picture - The Prevalence of Piracy in Film Industry

by
Kartikey Gupta¹

INTRODUCTION

Copyright ordinarily and primarily means that the creator alone possesses the right to make the copies of his/her work or alternatively, may prevent all others in indulging or from making such copies. The basic motive for such a protection is the premise that "innovations require incentives".¹ The law of Copyright recognises and understands this necessity and stretches it in the form of legal sanction. Furthermore, any commercial exploitation of copyright work results in income to its creators and hence resulting in pecuniary rewards to his creativity. But where there's a way to the creativity, there's always a measure to circumvent the creative mind and input. One of the earliest and most popular being piracy.

The problem of piracy and its persistence has attracted the continuous attention of government policy makers and law enforcement officials because of the fact that piracy eats the economy like a pestering parasite. The wrath of piracy was not only prevalent before the introduction of Internet, it rather soared to its height after the coming of the digital environment, bringing up the incidence of digital piracy. This virus has sickened the music, publishing, media, software and entertainment industry equally.

As far as the film industry is concerned, piracy has had a knee-breaking distress here too. It is projected that U.S. film industry suffers losses in excess of US \$3 billion every year due to commercial piracy when losses from internet piracy are not even counted here.² A recent analysis by the Motion Picture Association of America (MPAA), in 2016 looked into this belief and found out that piracy harms around the US \$20.5 billion of the industry annually in the United States alone.³



India is estimated as the largest film industry, yet seriously wedged by the stance of piracy. A report, '*The Effects of Counterfeiting and Piracy on India's Entertainment Industry*,' released by US-India Business Council (USIBC) along with Ernst & Young showed that around 800,000 direct jobs and near about Rs. 16,000 crores are sacked due to piracy.⁴ As per a 2013 article in WIPO Magazine, the Indian film industry loses around INR 18,000 crores (US\$3.34 billion) and about 60,000 jobs every year due to piracy,⁵ when the size of the Indian film industry is estimated at Rs. 19,000 crores with over 2,000 movies released annually.⁶

Piracy has become an everyday word, and even the government seems helpless about it striving and thriving. This paper analyses the incidence of piracy and its various limbs. The first part of the chapter opens the prologue of piracy, the interface of piracy with the cinematographic work and the case of digital piracy. The second part looks into various measures to tackle the piracy. It focuses on the legislative aspect of it, analysing the Digital Millennium Copyright Act (DMCA), Digital Rights Management (DRM), Stop Online Piracy Act (SOPA) and Protection of IP Act (PIPA). The third part

analyses the Indian Scenario of countering piracy, the 2012 Copyright Amendment and improvising the DRM measure in Copyright Act. The last part of the combat deals with the other measures of fighting piracy which includes steps by government, entertainment entities and others to stop it.

ABOUT PIRACY AND ITS VARIOUS FACETS

Piracy and its Past

The phenomenon of Copyright Piracy is spread globally. 'Piracy' means an unauthorised reproduction, importation or distribution either of the whole or of a substantial part of works protected by copyright. The author enjoys the privilege of being the owner of the copyrighted work and hence has exclusive rights over it. Their rights often include the right to publish, reproduce, adapt, translate, assign, bequeath and other such. Any unauthorised/non-permitted use of the copyrighted work by any other person amounts to infringement.⁷



Page: 77

Copyright piracy is not different from any other kind of theft. In addition to economic loss, piracy obstructs the legitimate dues of the creative potential of other authors and artists, thus having an adverse overall societal impact. In its wider sense, 'piracy' can also be referred to as acts of 'bootlegging' or 'counterfeiting'.⁸

Piracy is as old as copyright itself. The first law on copyright came into being only in 1710 in England, whereas piracy was born by the end of the fifteenth century. This law on copyright was known as 'Queen Anne's Statute' which gave the right to reprint the work by the authors for the specific period of years. This law most importantly was only confined to the authors of books and their exclusive rights, particularly the right to reprint their book. It did not cover others creative areas like the paintings, drawings etc. which were also targets of piracy like other aspects relating to books. The 'Engravers Act' came into existence in 1735 to control this problem. Subsequently, with time, few enactments came into existence in this regard and ultimately The Copyright Act, 1911 came into light. The Copyright Act, 1957 in India brought the new regime of Copyright in India, also tailing the provisions related to infringement and piracy.⁹ The big leap was taken with Copyright Amendment Act, 2012 where the provisions in relation to digital piracy were introduced, not only to level up with the global and digital developments but also to combat the ever rising problem of piracy.¹⁰

DIGITAL OR INTERNET PIRACY

Where traditional acts of piracy or infringement were associated or linked to acts committed only for commercial exploitation, modern formulations recognise the act of piracy not only being limited to the sphere of the ambit of commercial exploitation but more to the infringement of Intellectual Property (IP). Thus, with time this unauthorised dissemination or distribution of work over the internet was protected. Even if there is no ill intent or economic motive to violate rights or commit piracy, it happens on a large scale in terms of peer-to-peer file sharing which comes under the ambit of piracy. This appropriately clears the scenario of infringement of IP rights which also occur with the prohibited act, whether of unauthorised copying, distribution or public performance, etc. The issue of appropriate damages or compensation is calculated on the basis of intent and



Page: 78

commercial gain rather than relevance to liability.¹¹ This was a wake-up call because the interests of the owners were affected to the degree that unauthorised copying over the internet had already affected creative industries around the world which could be appropriately termed as 'piracy'.¹²

The gruelling aspect of problems in respect to the digital content was the easy accessibility, which could be synonymously in control of the content added by reproduction or dissemination by anyone. This, in turn, causes a virtual loss and depreciation in the economic value of the content belonging to a specific owner. Digitisation has some adverse effects on copyright material in several ways as stated which includes implications of simplified reproducibility, cost reduction of reproduction, easier substitutability of the digitised copies and equally inexpensive dissemination of digitised products.¹³ This process of digitised reproducibility has enhanced the compressed volume and storage capability of the content along with a much easier way of extracting the content from the storage media¹⁴ and an easier communicability over the internet of such content. This fallout has become a huge threat for the unauthorised copying, which deprives the owner or the author of the copyrighted material. They would be divested of the economic returns on their investment of labour and capital which would, in turn, be proved as a disincentive for any creation.¹⁵

This impediment of unauthorised digital copying has a direct effect on the development of the copyright.¹⁶ The industries who have adopted the digital technologies like the audio-visual industries (AVI) are the worst hit copyright industries. The audio-visual players in the market have sought to deal with the threat by 'regulating technologies that aid infringement.'¹⁷




PIRACY VIS-À-VIS CINEMATOGRAPHIC WORKS

The two important forms of cinematographic piracy are 'video piracy' and 'cable piracy'. Piracy always affects the economic value of the work and likewise affects the revenue directly. Any film produced or taken in the form of video through cassette without proper permit or authorization from the person holding the right i.e. producer leads to video piracy. When the producers sell their rights on the video to another party generally after a period of six weeks after the release is basically for selling or lending, it does not include any other method to tamper the purpose agreed upon.¹⁸ The recordings kept for sale are purported for home viewing purpose only. Any other commercial use of the video cassettes like playing in video parlours or in cable networks amounts to copyright infringement.

The most common issues related to video piracies are faced when a third party markets the video cassettes before the producers sell their right or when the producer sells the rights to one but a third party makes cassettes and sells them. This accounts for most of the losses made by the Indian film industry in recent years.¹⁹

In the present internet age, peer to peer sharing of files over the internet is one of the primary sources of piracies under the category of offline piracy. A pirated online version of the cinematographic work is uploaded on the internet within a minuscule period which exploits the value of the work commercially. This has become a new common trend, rather an inexpensive method of watching the content which in turn causes a huge loss to the producers.²⁰ Though video piracy has been very rampant, it

is arduous to get a clear estimate or evaluation of its impact and extent in India due to the lack of proper track of information. Besides this, video piracy can be categorically divided where the piracy through video parlours is largely extensive in the smaller towns or the rural parts of India. According to the resolution signed and agreed upon by Film Makers Combine, a video release of a film can be made only after six weeks of theatrical release. But the cable operators clearly breach this and show the movies much before the stipulated period.²¹ This highly extensive case of cable piracy in the country is clearly

 Page: 80

damaging. These days almost all new releases are shown on the cable or uploaded on the internet simultaneously with the exhibitions in theatres.


Thus it is clear from the above explanations, that to show a film on a cable network, the operator should have proper authorization from the person holding the right i.e. acquisition of proper authorization. But many a times, films, especially the new releases, are shown through cables without such authorization, which is tantamount to piracy, and with the medium of the internet coming up, this incidence has adopted a divergent form. One such cried about instance is that of 'Aereo TV' of the USA, where the company via its patented dime sized antenna used to transmit the signals of the broadcasters to its subscribers at a meagre rate of eight dollars per month, and without paying any share out of it to the actual broadcasters. The case's fate was decided by a 9 judge bench of Supreme Court of US, where it ruled what Aereo was doing was nothing but piracy and hence prima facie copyright infringement. A similar case took place in India by 'Jadoo TV', where the company used to transmit the pirated television signals and broadcast at cheaper rates via the internet.²²

Satellite channels are much safer where piracy is a rare phenomenon where the channels do the filming after buying proper broadcasting rights from the right holder and these channels are better organised. Even in this scenario, there are channel operators who violate rights of the others. There is a huge loss to the whole industry which is legitimately involved directly, starting from the producers to the owners of the theatres and, indirectly the Government loses its income from taxes paid for entertainment, sales and the excise duty at the points of legitimate production/selling.²³

MEASURES TO COMBAT PIRACY

The Legislative Measures

The United States of America enacted the Digital Millennium Copyright Act (DMCA) in extension to the existing copyright law, which came into force in 1998. The Act entails six exceptions to infringement i.e. educational research, protection of minors, encryption research, the privacy of individuals, reverse engineering, and security testing. The DCMA added Section 512 specifically to the Copyright Act which sets forth the limitation of liability on the service providers in case of online copyright infringement and

 Page: 81

assigned rules in case of non-profit educational institutions.²⁴ It is based on the concept of the safeharbour which protects the rights of Internet Service Providers (ISPs), *inter alia*, cases of third party violation. The Act has to face criticism time and

again for its inability to deal with the relevant issues that are intended to curb online piracy. With the ever growing pace of technology, it is imperative for the law to be updated accordingly.

In the view of saving the interests of copyright holders, the Stop Online Piracy Act (SOPA) was brought into being. The main purpose of the Act was to remove all unknown or foreign websites which supported or encouraged downloading copyrighted material and caused its infringement. The judge under this Act has the power to give rulings on the legitimacy of a website or block the same if required in a particular case.²⁵ Mr. Lamar Smith was the representative who introduced the SOPA bill to stop people involved in piracy from harnessing the profits of others and harming the interest of the industry that forms 60% of the US exports. The Act aims at curbing the use of the internet as a mode of communication for this infringement.²⁶

The drawbacks of this Act were stated by the opponents who were considered to be damaging. This Act aims only at the websites, not the internet users using this website. The Court may order to take down the website ex-parte, in the case of illegitimacy. This means these orders can be passed without the other party having been given an opportunity to be heard in the gradual response. Further, this Act asks the (ISPs) to create a modified system to get hold of the activities with ease. The challenge posed in this was that the system would differ for all networks and it may intrude the 'right to privacy' of the user which might turn conflicting.²⁷

Japan initiated an International Trade agreement ACTA, to which the USA was a part. In 2006 the USA conferred certain rights and corresponding duties to protect the intellectual rights through an agreement for the ratification from various countries. This want for change was in the pipeline for a long time and had undergone a huge change with the countries suggesting their different perspectives. In 2010, a conference was held in the USA with all public announcements where law professors and organisations stated their concerns in regard to the clauses in the agreement. They also



asked for a hold on certain terms until further discussions were made on it.²⁸

THE SAGA OF DRM

In response to this growing threat and to make the best use of the opportunities provided by the digital world, the DRM technologies evolved. DRM technologies enable the copyright owners to gain better control over their works by allowing users only the categories of access/use permitted by the copyright owners.²⁹ Among the commonly used DRM technologies include user authentication gateways for any database, averting the copying of contents in a CD, digital safe boxes, watermarks etc.³⁰ But DRM, like most of the user threatening technologies, hasn't been aloof of alternate circumvention technologies.³¹

Some of the DRM technologies adopted in the context of cinematographic works are as follows:

- (1) **Video Home System (VHS)** -They are cassettes or recording tapes, offering home multimedia storage. Highly popular during the seventies, there storing capacity was consequently increased from one to two and subsequently four hours. First brought up by Sony Betamax, the technology faced many ups and downs. Later, the introduction of Video Cassette Recorder (VCR) upsurged the controversy bringing a lawsuit and one of the most landmark cases in American

History, the Betamax case, where the recording of a film was held within the boundaries of fair use and the doctrine of exhaustion.³²

- (2) **Content Scrambling System (CSS)** - It uses the encryption algorithmic program to code or decode the content on any DVD. It is mandatory for the manufacturers of DVD players to license this technology to decrypt the encrypted data in the discs, and hence this has now become a standard technology. The technology further developed, gave birth to



Page: 83

DeCCS in 1999 to implement the CCS technology in computer devices operating on Linux OS. Though the technology has always been surrounded by controversies and allegations of illegality.³³

- (3) **Windows Media DRM**— Developed by Microsoft, was a user operated media instruction device operating on right management language.³⁴ It performed the functions of burning, copying, forwarding, playing a media, later adding the functions like transfer of media to other devices. This was a major breakthrough for the music industry as it allowed the making of illegally downloaded media files or stale media files unplayable.
- (4) **Protected Media Path**— Developed by Microsoft, introduced in Microsoft Vista, it included Protected Video Path which prevented DRM restricted content including media files, graphic cards, RAM's to be functional on a pirated software or Vista OS, thus protecting the media and software industry.³⁵
- (5) **Advanced Access Content System (AACS)**— It was a joint consortium of all the major international players in the entertainment industry, developed to encrypt the Blu-ray and DVD discs as DRM protected.³⁶

Although media distributors consider digital rights management as a necessity to fight piracy, it sometimes gets in the way of legitimate consumers by restricting the use they can make of material they legally buy and own. Complaints vary from meagre annoyances, like authentication to play a purchased music, to even serious problems, like lack of protection mechanism to properly play media. There are a number of movements that object to DRM and argue that it limits consumer rights and information access.³⁷

Hence some of the arguments against the adoption of DRM are:³⁸



Page: 84

- (1) **DRM massively failing to avoid privacy**— One of the arguments against the employment of digital rights management systems is that they fail to prevent piracy. While a number of measures have been taken to prevent unauthorised users from copying digital content and distributing it over the Internet, these DRM approaches and methods have time and again been casually compromised. As a thumb rule, the technologies relying primarily on tokens, tags, and watermarks embedded within pure information content are ultimately undermined by technologies designed to remove those locks.
- (2) **DRM de-motivates legitimate buyers**— Studies have shown that digital rights management systems potentially deter honest consumers from purchasing

legitimate content. Authentication, regional settings and limitations on the number of installations allowed pose inconveniences to legitimate buyers. The plausible side effect makes buying of pirated content by legitimate buyers quite apparent. This ever-growing trend underscores the complexity of piracy and the alarming need to counter the fundamental issue of evolving the supply chain ecosystem.³⁹

- (3) **DRM Increases the Cost of Management**— Companies using digital rights management systems must carefully measure the cost impact of such solutions on profit margins. To put it simply, DRM systems can inflate company costs. Implementation and funding of DRM related IT services requires massive investment, consequently hampering the business model overall. In response to these concerns, a number of companies have been re-evaluating their use of DRM systems. Rapidly growing piracy is a reflection of a sudden and fundamental change to supply chain ecosystems, spurred on by the digital revolution and the Internet. The fact that piracy is difficult to control reflects industries' general lack of preparedness for this sudden change. Anti-piracy solutions should, therefore, focus on exploiting piracy within acceptable ranges while attempting to limit excessive levels of piracy.⁴⁰

THE INDIAN SCENARIO OF COMBATING PIRACY **The Copyright Amendment Vis-À-Vis Cinematographic Works**

Articles 11 & 12 of WIPO Copyright Treaty (WCT) and Articles 18 & 19 of WIPO Performers and Phonograms Treaty (WPPT) mandate the contracting parties to take 'adequate' and 'effective' legal remedies against



unauthorized meddling of information and rights management of electronic dealings and information, they also impose a duty to enforce law to take strict measures against the promoters of such violation of right.⁴¹ Although India did not become the part of WIPO Internet treaties, the introduction of new provisions by 2012 Amendment Act present a different picture. The provisions similar to the provisions contained in WIPO Internet treaties have been adopted in the form of Secs. 65A and 65B.⁴²

While the first provision (Section 65A) deals with protection against circumvention of technological measures, the second provision (Section 65B) deals with protection of rights management information. According to the Section 65A(1) relating to protection of technological measures, if any person circumvents an *effective* (emphasis added) technological measure used for the purpose of protecting any of the rights conferred under the Copyright Act, with the *intention* (emphasis added) of infringing such rights, s/he shall be punished with imprisonment which may extend up to two years and shall also be fined.⁴³ However, the Section 65A(2)(a) of the Copyright Act explicitly mentions that the provision shall not prevent any person from doing anything referred to therein for a purpose not expressly prohibited by the Copyright Act. Moreover, this provision also permits third parties to ease circumvention, provided the detailed records of the person and purpose, circumventing shall be facilitated. Apart from this, the anti-circumvention provision also specifically exempts circumvention of technological measures for the purpose of certain activities like encryption research, lawful investigation, security testing of a computer system or a computer network with the authorization of its owner or operator, protection of privacy and measures necessary in the interest of national security.⁴⁴

The anti-circumvention provision read along with the exceptions implicates three

major observations. First, it restricts the applicability of the anti-circumvention provisions to the intentional instances only. The legislation, by this, has elevated the bar for a purpose not expressly prohibited by the Copyright Act, the anti-circumvention provision will not be applicable. Thirdly, subject to certain procedural mandates, the legislature also allows circumvention by the third parties.



Page: 86

According to Section 65B(i) of the Act, if any person knowingly removes or alters any rights management information without authority, s/he shall be imprisoned for up to two years and shall also be fined. Similar punishments have been prescribed for persons who distribute or import for distribution, broadcast or communicate to the public, copies of any work or performance without authority, knowing that the rights management information has been removed or altered without authority as per Section 65B(ii). The provision also specifically mentions that the criminal remedies provided are in addition to the civil remedies already provided under the Copyright Act for the copyright owners in such works.⁴⁵

There are two factors which need to be highlighted: First when compared to the provisions relating to the protection of technological measures, the provisions relating to the protection of rights management information take a far more rigid approach. This is visible from the absence of any explicit exceptions under the provision. Second, by explicitly mentioning the additional availability of civil remedies, the provision on the protection of rights management information shows a stricter approach, compared to the provision against circumvention of technological protection measures. Both the provisions have succinctly seemed to capture the essence of the WIPO Internet treaty. These provisions along with the blanket exception of fair use in respect to DRM measures pose a win-win situation for both the producers and the consumers as the provision doesn't go too far to restrict the use of the rights management, and also ensures consumer preferences in mind. Although DRM in its bare form has often been alleged to be unfairly lucrative to the producers, the same is not the case when the same has been brought in India, probably because of the fact that the WIPO treaty itself has not been ratified, rather a more concise view has been taken to benefit the industry and the economy.⁴⁶

The reason for this can be an apparent difference in approach concerning the economy and the consequently the film industry between the enacting countries like U.S. and EU on one side and India on the other side.⁴⁷ While some have argued that considering this difference in economic situations in India and other enacting countries, the DRM was not necessarily needed, many do feel that the current adoption of the enactment opens gates for various other Hollywood producers to come and invest and not surprisingly that has happened. India flashes itself as the biggest movie industry in



Page: 87

the world with more than 1200 movies being produced in a year, yet being severely impacted by the stance of piracy.⁴⁸ But the provisions and introduction of DRM have definitely started the journey to the light at the end of the tunnel.

THE STANCE OF INDIAN JUDICIARY

The judiciary had to rely on the basic provisions of copyright law, without the touché of instruments like DRM and electronics right management, forget about their effective application in cases of digital piracy. However, Indian judiciary has proved its mettle in dealing with the cases of infringement successfully and efficiently to some extent, but a bigger picture of the scene still states a redundant attitude of the court. Decisions like *R.G. Anand v. Deluxe Films*,⁴⁹ *Swati Films v. National Films Development Corpn.*, *Zee Telefilms Ltd. v. Asia Producers etc.* have proven as benchmark decisions.

The other side is not so promising. The Copyright Act provides both civil and criminal nature remedies. As far as civil is concerned, Sec. 55(1) of the Act provides civil remedies by way of injunctions, damages and other methods conferred by law in the case of infringement.⁵⁰ Hence, in the event of infringement, the usual practice is to go for compensatory damages, punitive damages, accounts of profit etc., although such damages cannot be sought in the cases of infringement where the alleged owners, may become owners in future.⁵¹ Often the recourse of exemplary damages is taken to establish the seriousness of piracy.⁵²

The other and the most popular type of civil remedy is preventive in nature, i.e. injunctions, interim or interlocutory injunctions being the most popular one, which prevents the defendant from engaging in any such activity which may cause the plaintiff an irreparable damage, before the commencement of any suit for the same.⁵³ Luckily, the courts have been quite liberal in issuing injunctions and hence the mere presence of a prima facie case for irreparable damage has been held to be sufficient to get an injunction,⁵⁴ but the courts have restrained themselves from issuing injunctions for the future release of films due to its uncertainty.⁵⁵



There have been two most popular of such injunctions, Mareva Injunctions and Anton Pillar Orders, both being ex parte in nature. Mareva Injunctions, the principal purpose of which is to refrain the defendant from disposing of assets which may be required to satisfy the claim of the plaintiff or removing them from the jurisdiction of the court,⁵⁶ is a highly discretionary recourse upon the court and a great amount of judicial care is exercised while issuing it.⁵⁷ Anton Pillar Orders, meanwhile, aims at securing evidence and hence allows the plaintiff to take possession of infringing copies and documents and other relevant material required to keep the infringing stock.⁵⁸ The Anton Pillar Orders have often helped in extracting the source flow of the pirated work.⁵⁹

But the practical aspect shows that these injunctions are ineffective in stopping the piracy incidence. To get more out of the law and a more regressive measure, owners turn to criminal remedies, but they too have gone into oblivion. Copyright Act under Secs. 63 to 66 provides criminal remedies in cases of infringement. Sec. 63 states that piracy is punishable with imprisonment up to 3 years or fine up to Rs. 2 lakhs. However, the criminal justice system too has proved ineffective because, firstly, although criminal remedy is more effective than civil, the criminal proceedings and sanctions are both timeconsuming and tardy, normally such investigations, trials, and remedies go on for more than 8-10 years, making the whole process exhaustively despairing. Moreover, street vendors, who get out on bail easily, usually commit these instances of piracy. The police is also not very concerned about such cases.

In such a situation, most of the producers now and even considering the bigger threat of internet piracy, are turning towards the John Doe or popularly known as Ashok Kumar Orders in India.⁶⁰ This injunction is issued against unknown persons, acting as blanket injunctions, prohibiting and covering all those persons and instances who indulge in such activities. These orders pose two attractive advantages. First, that once such order is released by the court, a notice is enough to initiate proceedings against any such pirate, rather than going through the filing process all over again. Second and more importantly, these orders cover all the alleged infringers within its ambit and hence is super effective in cases of online peer to peer


 Page: 89

sharing or piracy.⁶¹ Hence a notice is served upon the ISP's mandating them to prevent the streaming of movies in pirated websites, for which the order has been sought.⁶²

OTHER MEASURES TO COMBAT PIRACY

There's no silver bullet to kill the piracy, but there definitely are many lead bullets to bring it down. The law enforcement agencies are trying their level to counter it. But some other measures have also been taken to fight against it. These solutions are not focused on eliminating it, but rather on managing it. At many places like U.S.A., it has been argued to keep its level at healthy standards, probably the same approach is required in India too. Online piracy is the biggest challenge, and managing it in India is an even challenging task for which effective management solutions are required. Some of the methods that have been adopted are as follow:—

- (1) **The Mode of Advertisement**— Often it has been found that the peer to peer sharing occurs mostly because not only the viewers want to see cheap, but also hassle or advertisement free experience. But many T.V. service providers like Netflix or Hulu, have now started streaming the video services at a lower cost and to balance it or meet their profit levels, they bring small advertisements. This not only helps in increasing the revenue for the service providers by increasing the number of users but also the additional revenue from the advertisement, ultimately helping in decreasing the incidence of piracy. The best source of this model being adopted is YouTube. This has helped in increasing the value content, consumer satisfaction and revenue. An all win situation.
- (2) **Focus on Consumer Value and Convenience**— In 2011; Apple came up with iTunes Match service. Through this, the Apple system would scan the hard drives of the users and let the users share the songs that matched from the vast iTunes repository to the other Apple users globally. The focus of the model was on luring the users to share the songs at a low cost and also keeping in mind the royalty to be paid to the music industry via iTunes. Apple now no longer cared whether the song downloaded was legitimate or not and disregarded it being pirated or not, as 70% of the fee charged by the Apple of \$25, would go to music industry, thus, bringing all the songs to one level, extracting legitimate royalties

 Page: 90

out of it and satisfying the users too.⁶³ The model is a huge success, and a similar model coming as a platform for sharing of videos won't come as a shock.

(3) **Taming with take down services**— This model simply entails removing the unauthorised content from the Internet altogether, wherever it is found. Since these technologies can often be expensive to implement, the content owners employ this only after the unauthorised content downloading has crossed a healthy level. Some of these service providers such as Attributor, Covington & Burling LLP etc. have combined the services with the legal aspects of anti-piracy.⁶⁴ The service is highly useful in cases of e-book services but has also been successfully adopted for video content by Media Serpla owned by Canada-based NEC.⁶⁵

These were some of the international measures adopted and non-legal too. As far as India is concerned, though piracy happens both in physical and digital form, the rate and threat to the industry by the physical form of piracy is more prominent than digital piracy. Following are some of the measures that have been adopted in India which are both legal and non-legal in nature

(1) **Alliance Against Copyright Theft**— AACT is an alliance between Bollywood and Hollywood. It is a joint combat to bring down piracy and is supported by many of the major producers of both Hollywood and Bollywood.⁶⁶ The alliance is more of a socio-legal in nature, wherein any person can call on AACT's toll-free number to report any incidence of piracy or pirated activities being conducted. The alliance has also garnered a wide support.⁶⁷



(2) **Kerala Anti-Piracy Cell**— It's a brilliant initiative by State government, functioning under state's crime branch. It works as a central unit for creation and data collection, combating, investigating and preventing the piracy in physical as well as web-based format. They were primarily intended to counter piracy instances in Malayalam film industry, and has solved more than 77 cases related to piracy and is active in serving notices for TV and web-based piracy activities.⁶⁸

Many other measures have been taken on the private level, such as by Hollywood-Bollywood initiative launched by United State Business Council along with FICCI to recognise and adopt the Optical Disc in India.⁶⁹ Moreover, the Government of India in its 12th Five Year Plan has allotted a sum of money to support the Ministry of Broadcasting and Information to bring down the incidences of piracy. All these efforts have shown a combinational effect of bringing down piracy to some extent.

THE ROLE OF THE INDUSTRY

The industry needs to go about as a facilitator and organiser of anti-piracy endeavours. The business affiliations along these lines would assume an essential part by examining data, channelizing detached activities and making a typical stage, to prompt and help the state in strategic planning and quicken the foundation of powerful enforcement components.

Further, sharing of data between different players in the business would go far in merging and recreating effective activities, which would advantage all players over the long haul. As an illustrative, the Andhra Pradesh Film Chamber of Commerce has made an Anti-Video Piracy (AVP) cell since May 2005. This devoted cell driven by a retired SP of the state (as of now driven by Mr. Keshava Reddy) alongside 59 other retired cops works in coupled with the Government and the law implementation organisations to battle piracy. The exercises of this AVP cell are financed by a corpus made of an intentional charge of US\$ 12.20 paid by every maker, wholesaler, and

exhibitor on every print of their movies. This fundamental exertion by the Andhra Pradesh film industry depends on very much enunciated and logical system, which is reflected in their charter.⁷⁰

The other critical illustrative, which underscores the need for sharing, perceiving and copying the endeavours of certain corporate is the Super



Page: 92

Cassettes Industries' (T-Series) activity to make a far reaching database of the public platform (discotheques, eateries, inns, worldwide radio stations) playing content possessed by T-Series. This was finished by undertaking broad ground operations to gather data, caught up by concentrated cooperation with these elements, teaching them about legal rights and limitations and negotiating licensing agreements with them on commonly advantageous terms. Systematised usage of this activity in the course of the most recent five years has made the income gathering from PPRs for T-Series go up to 10% of its aggregate incomes. The incomes of the music business everywhere from these sources are insignificant.

The system utilised and executed by Moser Baer (a main Indian optical disc maker) is worth mentioning. The organisation has as of late propelled in the market DVDs and VCDs of Indian filmed substance for less than one US dollar. The valuing is at a normal 1 to 1.5 times the cost of the pirated content DVDs/VCDs. This has essentially shaken the market since it has effectively figured out how to catch the market i.e. through low-end evaluating, which has been customarily obliged by the privateers. This system is purportedly being copied by other substance distributors and merchants also.⁷¹ These activities have offered some expectation for an ambushed M&E industry. Nonetheless, one would need to keep a watch on how these activities are taken off over a timeframe and whether they do offer the greatly required universal remedy for the business.

CONCLUSION

The debacle of the film and entertainment industry as a courtesy of piracy is berserk. As stated earlier, the catastrophe caused due to the piracy measures no length, no boundary. The primary factors for this ever increasing rate of piracy are uncontrolled sustenance of such activities and lethargic attitude of law enforcement agencies to get a control over these measures. However, the water crossed the level with the introduction of internet and peer to peer sharing. Anonymity became more of a bane than a boon for the economy, and the technology and law were not updated to tackle the monster which had started paralysing the industry. It was then that the govt. realised that the current legal framework was not enough to bring down the incidence of piracy. A big achievement of the government to meet the entertainment industry expectation took place by amending the Copyright Act which brought in measures to combat piracy, especially in the digital sphere. This along with the wave change of attitude of courts in dealing with the cases relating to digital piracy in entertainment industry helped a long way.



Page: 93

But apart from DRM technologies being adopted, many popular forums have taken their own initiative to tackle piracy. Some of these are:

GOOGLE'S ANTI-PIRACY PRINCIPLES

The main objectives of these principles state:

- *Create more and better legitimate alternatives* by developing affordable and enhanced user experience.
- *Follow the Money* by ejecting rogue sites from advertising and payment services.
- *Be efficient, effective, and scalable* by investing in streamlining the copyright removal process for search results.
- *Guard Against Abuse* by detecting and rejecting bogus infringement allegations, such as removals for political or competitive reasons.
- *Provide Transparency* by disclosing the number of requests we receive from copyright owners and governments to remove information from our services.

These principles guide the actions of Google employees, as well as our investment of tens of millions of dollars in new tools and systems to improve and expand our anti-piracy efforts.⁷²

YouTube Partner Success

More than one million accomplice channels are profiting from their YouTube recordings. More than four thousand rights holder accomplices utilise YouTube's content identification tool, Content ID, to deal with their copyrights showing up inside of client produced content on the site. These accomplices incorporate system supporters, motion picture studios, lyricists, and record names, and they are on the whole making countless dollars by utilising YouTube's Content ID devices to monetize these recordings.⁷³

The YouTube Copyright Centre



Page: 94

Along with the Content ID framework, copyright proprietors and their agents can submit copyright removal notices through the YouTube Copyright Center, which offers a simple-to-use web shape, and in addition, broad data goes for instructing YouTube clients about copyright. The Copyright Center additionally offers YouTube clients a web frame for "counter-seeing" copyright encroachment sees that they accept are confused or harsh.⁷⁴

FACEBOOK

Facebook reported that they would be battling "freebooting" (unauthorised video transfers to Facebook), by presenting another rights management device called Audible Magic, which utilises sound fingerprinting innovation to recognise and keep unapproved recordings from advancing onto the forum.

Likewise, the organisation has also set up a correspondence point, through which content proprietors can report unapproved transfers for Facebook's survey. Facebook has sworn to work with content proprietors to evacuate any substance transferred to Facebook that is observed to be encroaching and has set up policies to punish repeated guilty parties.⁷⁵

Thus by the cumulative effort of all the above-mentioned stakeholders of the Film Industry and producers of a various cinematograph film, we surely can provide an effective copyright protection to cinematograph films.

[†] Fifth Year Student, B.B.A. LL.B. (Hons.) National Law University Odisha, Cuttack.

- ¹ Arul George Scaria, *Piracy in the Indian Film Industry: Copyright and Cultural Consonance*, (1st edn, Cambridge UP 2014).
- ² David Jones, 'Film Industry Claims Victory in Shutdown of Major Piracy Sites' (*Ecommerce times*, 4 November 2015) <<http://www.ecommercetimes.com/story/82704.html>> accessed 13 April 2016.
- ³ Trevor Norkey, 'Film Piracy: A Threat to the Entire Movie Industry' (*Moviepilot*, 27 April 2015) <<http://moviepilot.com/posts/2889420>> accessed 12 April 2016.
- ⁴ 'Government, FICCI Differ on Optical Disc Law', *The Hindu Business Line* (India, 28 March 2008).
- ⁵ Rob Cain, 'India's Film Industry -- A \$10 Billion Business Trapped in A \$2 Billion Body' (*Forbes*, 23 October 2015) <<http://www.forbes.com/sites/robcaain/2015/10/23/indias-film-industry-a-10-billion-business-trapped-in-a-2-billion-body/#25b9ddf31005>> accessed 13 April 2016.
- ⁶ KV Kurmanath, 'How online piracy "industry" is a box-office wrecker', *The Hindu Business Line* (India, 6 November 2015).
- ⁷ International Bureau of WIPO, 'Basic Notions of Copyright and Related Rights', (WIPO) <http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/basic_notions.pdf> accessed 13 April 2016.
- ⁸ OECD, 'The Economic Impact of Counterfeiting and Piracy' (OECD, 2007) <<https://www.oecd.org/sti/38707619.pdf>> accessed 13 April 2016.
- ⁹ MHRD Government of India, 'Study on Copyright Piracy in India' 15 December 1999) <<http://copyright.gov.in/documents/study%20on%20copyright%20piracy%20in%20india.pdf>> accessed 13 April 2016.
- ¹⁰ Sibal Kapil, 'Statement of Objects and Reasons-Copyright (Amendment) Bill 2012' (*Rajya Sabha Bill*) <<http://164.100.24.219/BillsTexts/RSBillTexts/asintroduced/copyright.pdf>> accessed 13 April 2016.
- ¹¹ D Panethiere, 'The basis for copyright infringement liability: the law in common law jurisdictions,' [1997] *European Intellectual Property Review*, Special Report 15.
- ¹² Darrell Panethiere, 'The Persistence Of Piracy: The Consequences For Creativity, For Culture, And For Sustainable Development' (UNESCO, 2005) <http://portal.unesco.org/culture/en/files/30647/11444010025piracy_e.pdf/piracy_e.pdf> accessed 12 April 2016.
- ¹³ Tobias Bauckhage, 'Digital Rights Management: Economic Aspects, The Basic Economic Theory of Copying, Digital Rights Management, Technological, Economic, Legal and Political Aspects' (Springer Berlin/Heidelberg) 234-249, 239.
- ¹⁴ WIPO, 'Development of Ripping Technology' (Standing Committee Report on Copyright and Related Rights SCCR/10/2/Rev 2004).
- ¹⁵ Earl Brubaker, 'Free Ride, Free Revelation, or Golden Rule?' (1975) 18 *Journal of Law & Economics* 147-161.
- ¹⁶ William Landes & Richard Posner, 'An Economic Analysis of Copyright Law' (1989) 18 *Journal of Legal Studies* 379.
- ¹⁷ *Sony Corpn of America Inc v. Universal City Studios Inc*, 1984 SCC OnLine US SC 14 : 78 L Ed 2d 574 : 464 US 417 (1984).
- ¹⁸ D de Freitas, 'Piracy of Intellectual Property and the Measures Needed to Counter It' (1992) XXVI UNESCO Copyright Bulletin 7.
- ¹⁹ 'FICCI-KPMG Indian Media and Entertainment Industry Report 2010' (FICCI) <<http://www.kpmg.com/IN/en/IssuesAndInsights/ThoughtLeadership/Frames2010.pdf>> accessed 11 April 2016.
- ²⁰ 'Indian Film Industry-Tackling Litigations' (Nishith Desai Associates, 2013) <http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Indian%20Film%20Industry.pdf> accessed 12 April 2016.
- ²¹ Michael D Smith and Rahul Telang, 'Competing With Free: The Impact of Movie Broadcasts on DVD Sales and Internet Piracy' (2009) 33 *MIS Quarterly* 328.
- ²² Kartikey Gupta and Akansha Dixit, 'Up in The Aereo: The Case Of Aereo, And Its Impact And Position In India' (2015) 4 *Journal of Telecommunication and Broadcasting Law NUJS*.

- ²³ Neelam Veerjee, 'Indian piracy industry packs a \$4 bn punch' (*Mint*, 24 March 2008) <<http://www.livemint.com/Home-Page/fk0Vy2kErBH96TaNJR2ijM/Indian-piracy-industry-packs-a-4-bn-punch.html>> accessed 12 April 2016.
- ²⁴ The Digital Millennium Copyright Act, 1998.
- ²⁵ Smith Lamar, 'Fighting Online Piracy' (*New York Times*, 10 January 2012) <<http://www.nytimes.com/2012/01/10/opinion/fighting-online-piracy.html>> accessed 13 April 2016.
- ²⁶ Ross Drath, 'Hotfile, Mega upload and The Future Of Copyright On The Internet: What Can Cyberlockers Tell Us About DMCA Reform?' (2012) 12 *John Marshall Review of Intellectual Property Law* 205.
- ²⁷ Ross Doug, 'With SOPA Shelved, Anti-Piracy Advocates Take New Approaches' (*CNN*, 22 March 2012) <<http://edition.cnn.com/2012/03/22/tech/web/isps-sopapiracy/index.html>> accessed 12 April 2016.
- ²⁸ 'Over 75 Law Profs call for halt of ACTA, Program on Information Justice and Intellectual Property' (*WCL*, 28 October 2010) <<http://www.wcl.american.edu/pijip/go/blog-post/over-75-law-profs-call-for-halt-of-acta>> accessed 12 April 2016.
- ²⁹ Armstrong Timothy K, 'Digital Rights Management and the Process of Fair Use' (2006) 20 *Harvard Journal of Law & Technology* 50.
- ³⁰ Besek June M, 'Anti-Circumvention Laws and Copyright: A Report from the Krenochan Center for Law, Media and the Arts' (2004) 27 *Columbia Journal of Law & the Arts* 447-449.
- ³¹ Samuelson Pamela and Suzanne Scotchmer, 'The Law and Economics of Reverse Engineering' (2002) 111 *YJL* 1631-1633.
- ³² Ben Anderson and Eric J Renzulli, 'Modern Digital Rights Management Methods' (*WPI*, 2007) <https://www.wpi.edu/Pubs/E-project/Available/E-project-051109135624/unrestricted/modern_DRM_methods.pdf> accessed 11 April 2016.
- ³³ *Universal City Studios Inc v. Reimerdes*, 82 F Supp 2d 211 (SDNY 2000).
- ³⁴ Ross J Anderson, 'Security Engineering: A Guide to Building Dependable Distributed Systems' Wiley (2nd edn 2010).
- ³⁵ Peter Gutmann, 'A Cost Analysis of Windows Vista Content Protection' (*University of Auckland*, 2010) <https://www.cs.auckland.ac.nz/~pgut001/pubs/vista_cost.html> accessed 12 April 2016.
- ³⁶ 'Advanced Access Content System (AACs)-Pre-recorded Video Book' (*Aacsla*, 2010) <http://www.aacsla.com/specifications/specs091/AACS_Spec_Prerecorded_0.91.pdf> accessed 12 April 2016.
- ³⁷ Dana Dahlstrom and Nathan Farrington, 'Piracy in Digital Age' <<http://courses.cs.washington.edu/courses/csep590/06au/projects/digital-piracy.pdf>> accessed 12 April 2016.
- ³⁸ Hasshi Sudler, 'Effectiveness of Anti-Piracy Technology: Finding Appropriate Solutions for evolving Online Piracy' (2012) 56 *Business Horizons* 149-157.
- ³⁹ Mark Stamp, 'Digital Rights Management, The Technology Behind the Hype' (2003) 4 *Journal of Electronic Commerce Research* 103.
- ⁴⁰ Brian A LaMacchia, 'Key Challenges in DRM: An Industry Perspective' 2696 *Digital Rights Management series of Lecture Notes in Computer Science* 51-60.
- ⁴¹ Arul George Scaria, 'Does India Need Digital Rights Management Provisions or Better Digital Business Management Strategies?' (2012) 17 *Journal of Intellectual Property Rights* 463-477.
- ⁴² Sanjib Chakraborty, 'The Future Development of Copyright in India' (*Odisha Government*, December 2013) <<http://odisha.gov.in/e-magazine/Orissareview/2013/dec/engpdf/91-101.pdf>> accessed 12 April 2016.
- ⁴³ Zakir Thomas, 'Overview of Changes to the Indian Copyright Law' (2012) 17 *Journal of Intellectual Property Law* 324-334.
- ⁴⁴ Zakir Thomas, 'Digital Technologies and Emerging Copyright Measures' (2003) 8 *Journal of Intellectual Property Law* 276-301.
- ⁴⁵ *Ibid.*
- ⁴⁶ Samuelson Pamela, 'US Digital Agenda at WIPO' (1997) 37 *Virginia Journal of International Law* 369-440.

- ⁴⁷ 'Westkamp Guido, Study on the Implementation and Effect in Member States' Laws of Directive 2001/29/EC on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society: Part II - Implementation of Directive 2001/29/EC in the Member States' (*European Commission* 2007) <http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf> accessed 14 April 2016.
- ⁴⁸ Taj Kunwar Paul, 'Prevention of Film Piracy in India' (2002) 30 Int'l Bus Law 409.
- ⁴⁹ (1978) 4 SCC 118 : AIR 1978 SC 1613.
- ⁵⁰ *Dabur India Ltd. v. KR Industries*, (2008) 10 SCC 595 : (2008) 37 PTC 332.
- ⁵¹ *Time Warner Entertainment Co. v. RPG Netcom Globe*, 2007 SCC OnLine Del 759 : (2007) 34 PTC 668 (Del).
- ⁵² *Hawkins Cookers Ltd. v. Magicook Appliances Co*, 2002 SCC OnLine Del 1044 : (2002) 25 PTC 713.
- ⁵³ *RM Subbiah v. N Sankaran Nair*, 1978 SCC OnLine Mad 158 : AIR 1979 Mad 56.
- ⁵⁴ *Macmillan and Co Ltd. v. K and J Cooper*, 1923 SCC OnLine PC 59 : AIR 1924 PC 75.
- ⁵⁵ *Columbia Pictures Industries Inc v. Robinson*, 1987 Ch 38 : (1986) 3 WLR 542.
- ⁵⁶ *CBS United Kingdom Ltd. v. Lambert*, 1983 Ch 37 : (1982) 3 WLR 746 : 1983 FSR 127.
- ⁵⁷ *Mirabai Films (P) Ltd. v. Hathway Cable and Datacom (P) Ltd.*, 2002 SCC OnLine Del 228 : (2002) 25 PTC 148.
- ⁵⁸ *Anton Piller KG v. Mfg Processes Ltd.*, 1976 Ch 55 : (1976) 2 WLR 162 : 1976 RPC 719.
- ⁵⁹ *Systematica Ltd. v. London Computer Centre Ltd.*, 1983 FSR 313.
- ⁶⁰ 'Lawrence Liang, Meet Ashok Kuman the John Doe of India; or the Pirate Autobiography of an Unknown Indian' (*Kafila*, 18 May 2012) <<http://kafila.org/2012/05/18/meet-ashok-kumar-the-john-doe-of-india-or-the-pirate-autobiography-of-an-unknown-indian/>>, archived at <<http://perma.law.harvard.edu/0tYU2NpFGcj>> accessed 13 April 2016.
- ⁶¹ 'Ganesh Reddy, See Want to Combat Piracy? Go for John Doe Order' (*Deccan Herald*, 25 May 2012) <<http://www.deccanherald.com/content/252129/F>> accessed 12 April 2016.
- ⁶² Nikhil Pawa, 'No More John Doe Orders? Indian ISPs Get Court Order for Specificity in URL Blocks' (*Medianama*, 20 June 2012) <<http://www.medianama.com/2012/06/223-no-more-john-doe-orders-indian-isps-get-court-order-for-specificity-in-urls/>> accessed 12 April 2016.
- ⁶³ 'Parmy Olson, 'Why Copyright Holders Love iTunes Match and Pirates Hate It' (*FORBES*, 8 June 2011) <<http://www.forbes.com/sites/parmyolson/2011/06/08/why-copyright-holders-love-itunes-match-and-pirates-hate-it/#56879c133807>> accessed 12 April 2016.
- ⁶⁴ 'Simon & Schuster Brings Contributor Anti-Piracy Data to Authors' (*Digital Book World*, 21 March 2012) <<http://www.digitalbookworld.com/2013/simon-schuster-brings-contributor-anti-piracy-data-to-authors/>> accessed 12 April 2016.
- ⁶⁵ Jay Alabaster, 'NEC launches software to quickly find video clips in large archives' (*It World Canada*, 11 April 2012) <<http://www.itworldcanada.com/article/nec-launches-software-to-quickly-find-video-clips-in-large-archives/46183#ixzz45pDsdexH>> accessed 12 April 2016.
- ⁶⁶ 'Bollywood - Hollywood anti-piracy coalition named Alliance Against Copyright Theft' (*Business of Cinema*, 3 July 2010) <<http://businessofcinema.com/bollywood-news/bollywood-hollywood-antipiracy-coalition-named-alliance-against-copyright-theft/31551>> accessed 10 April 2016.
- ⁶⁷ 'Alliance Against Copyright Theft & FICCI to join hands for anti-piracy co-ordination cell' (*Business of cinema*, 16 October 2010) <<http://businessofcinema.com/bollywood-news/alliance-against-copyright-theft-ficci-to-join-hands-for-anti-piracy-coordination-cell/32119>> accessed 11 April 2016.
- ⁶⁸ 'Kerala Police official website' <<http://keralapolice.org/newsite/anti-piracy-cell.html>> accessed 10 April 2016.
- ⁶⁹ Hollywood-Bollywood Initiative (Anti-piracy), 'US India Business Council' <<http://www.usibc.com/advocacy/initiatives/piracy>> accessed 10 April 2016.
- ⁷⁰ 'Tollywood Wants to Fight Piracy With an App That Doesn't Work' (*NextBigWhat*, 9 April 2013) <<http://blog.nextbigwhat.com/film-piracy-in-india-297/>> accessed 14 June 2016.

⁷¹ 'MoserBaer Cheap CD/DVDs-Kill Piracy' (*Enidhi*, 15 August 2007) <<http://www.enidhi.net/2007/08/moserbaer-cheap-cddvds-kill-piracy.html>> accessed 14 June 2016.

⁷² 'How Google Fights Piracy' (*bestvpn*, 12 September 2013) <<https://www.bestvpn.com/blog/7551/google-fights-piracy/>> accessed 14 May 2016.

⁷³ 'Online piracy, Content ID and the role of intermediaries: is this the right direction?' (*The1709blog.blogspot*, 12 February 2013) <<http://the1709blog.blogspot.in/2013/02/online-piracy-content-id-and-role-of.html>> accessed 14 May 2016.

⁷⁴ Colin Campbell, 'Everything you need to know about the YouTube copyright crisis and why you should care' (*Polygon*, 14 December 2013) <<http://www.polygon.com/2013/12/14/5208782/everything-you-need-to-know-about-the-youtube-copyright-crisis>> accessed 14 June 2016.

⁷⁵ Cammy Harbison, 'Facebook Takes on 'Freebooting' Video Piracy With New Tool And Policies Aimed To Help Publishers Receive The Credit They Deserve' (*idigitaltimes*, 28 August 2015) <<http://www.idigitaltimes.com/facebook-takes-freebooting-video-piracy-new-tool-and-policies-aimed-help-publishers-470149>> accessed 14 May 2016.

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.