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# Internet Service Providers and Copyright: Void in the Indian Law

## INTERNET SERVICE PROVIDERS AND COPYRIGHT: VOID IN THE INDIAN LAW

*by*
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ABSTRACT

*Most transmissions today happen online and this is made possible due to the presence of a category of persons who are identified as Internet Service Providers (ISPs). To ensure that they are able to continue with their activities without undue external interferences, the legal machinery has to come into play. The attempt in this paper is to examine the extent to which the Indian legal system has been able to accommodate the legitimate requirements of ISP's in comparison to the United States (US) law and also to identify the shortcomings of the Indian system.*

Keywords: ISP, Copyright, Liability of ISP, Internet Service Provider, Content Provider

A meaningful life in the contemporary sense requires access to all possible facilities of life at fingertips. To a considerable extent, this is made possible with the widespread coverage that the internet has today. Internet is a network of computers which is scattered throughout the globe. The US Supreme Court in *Reno* v. *American Civil Liberties Union*[1] compared the internet as a combination of a library and a shopping mall. The term 'internet' is now commonly and interchangeably used with the notion of 'world wide web' (hereinafter 'web') which is a network of websites connected by



hyperlinks and are stored in servers.[2] A server is a computer that "serves" many different computers in a network by running specialized software and storing information.[3]

For all activities to happen smoothly over the internet and the web, the presence of two sects of entities becomes essential. Firstly, those who create the content that has to be displayed using the web and secondly, those who help maintain the server and consequently make the information available to all. The first category thus becomes the content creators and the second category becomes the service provider, who is the intermediary that facilitates the content to reach its intended user. What is unique about the internet and the web is that it is global and not restricted to any particular political territory and consequently its regulations are also multi-jurisdictional. This also creates other problems like the creator of the content might actually not be the person who displays such content on-line, thereby creating a distinction between content creator and content provider. The content creator, content provider and the service providers may be different in different jurisdictions and as a consequence different laws apply to them.

In the contemporary context it is impossible to live without internet and the facilities it provides, particularly in the field of information and communication technology. To ensure this, it becomes necessary to understand how the Indian legal system protects and attaches liabilities to the various stake holders involved in the

activities of content creation and its dissemination. The first part of the paper deals briefly with the creator of the content and his rights, the second part deals in detail the notion of service provider, their activities and their rights and responsibilities in relation to using copyrighted work. For a better understanding of this, similar provisions of the US law have been compared. With the help of these understandings, an attempt has been made to assess the drawbacks of the Indian position and suggest modifications that need to be brought into the Indian law to ensure that the service providers are in the best position to dissemination information via the internet.

## I. CONTENT PROVIDER

Anyone who creates a work that is capable of being displayed and communicated through the internet may, for the purpose of this paper, be treated as 'content creator'. When the content so created satisfies the requirements under the copyright law, it gets automatically vested with a copyright[4] and the content creator becomes the author or owner of such



copyright, as the case may be. For a content created to get a copyright in India such content must fall within the category of work[5] i.e. it must be either a literary,[6] musical,[7] artistic[8] or dramatic[9] work, a cinematograph film[10] or a sound recording.[11] What has to be noted is that not all such works gets protection under the copyright mandate. The condition precedent for getting a copyright protection is that the work must be original.[12] The meaning of the term 'original' as far as copyright is concerned is quite different from the common English usage. For the purpose of copyright 'originality' does not mean inventive, novel or unique. All that is meant by 'original' is that it must have originated from the author himself[13] and he must have exercised the requisite labour, skill and effort in producing that work.[14] The second condition is that it is the expression that gets protection and not the ideas.[15]

Once copyright gets vested in a work, only its rightful owner can do or permit certain acts to be done with such work.[16] These rights are both economic and moral in nature. The economic aspect of the rights ensures that the owner of such work can economically exploit the work by entering into multiple market-based activities. These activities[17] are:

1. Reproduction of the different categories of work including its copying and storage in digital forms.[18]
2. Distribution of the copies of the work but not of those copies on which the right has already exhausted by the exercise of first sale of such copy.[19]



3. Communication the work, irrespective of whether such communication is made at the behest of the owner of such work or the user of the same.[20]
4. To adapt[21] the work into any other form including its translation[22] and incorporation in cinematograph films,[23] wherever such adaptation, translation and incorporation into cinematograph film is possible.
5. To give on commercial rental the copies of computer programs, cinematograph films and sound recordings, provided that such copies has not already been

subject to legal sale.[24]

The moral aspect of the right creates a personal relation with such work that it has to be identified with that of its creator and that such work cannot be mutilated or distorted by any other person, irrespective of the fact that the creator no longer holds his economic interest in such work.[25] The major difference between the exercise of an economic right and a moral right is that the exercise of the economic right is time bound[26] while that of the moral right is in perpetuity.[27]

In all factual situations it might not be the content creator that displays such content online. The person who does this activity, for the purpose of this paper, may be treated as content provider. As the activity of displaying the content, which has copyright, online, amounts to the act of communication to public, and the same can be done only with the permission of the copyright holder. When the activity of the content provider is without the permission of the copyright holder, such content provider becomes liable for direct infringement of copyright.[28]

## II. SERVICE PROVIDER

Internet Service Provider (ISP hereinafter) is any person or company or organisation through which a user can obtain access to the internet and the web. Traditional ISPs provide connection to the Internet and usually offer



users, email and newsgroup access.[29] Others offer web space for users to create their own home pages.[30] Bulletin Board operators and telecommunications infrastructure, such as Cisco and local telephone companies, could also be regarded as an ISPs.[31] All ISPs also act as passive nodes as packets of information are sent through them.[32]

ISPs can be distinguished based on their functional character as:[33]

1. An *access provider*, which connects an end user's computer to the Internet, using cables or wireless technology, or also facilitating the equipment to access the Internet;
2. A *transit provider*, which allows interaction between a computer and the access provider, and the *hosting providers*, and its function is merely the transmission of data (*mere conduit*);
3. A *hosting provider* has one or several computers with available space or “servers”, with access to transit providers, which may be used for its own purposes or for use by third parties, who make content available from other computers connected to access and transit providers.

Much of the activities of the intermediary overlap with the exclusive rights of the copyright holder. For example, when an intermediary transmits a material from the server to the computer of the user the technology requires multiple copies of the same to be made. When the material so transmitted has a copyright, the activity amounts to reproduction within the meaning of the Copyright Act and hence within the exclusive domain of the copyright holder and consequently violate his right thereby making him eligible for appropriate remedies. What needs to be noted at this point is that though the activities of ISPs amounts to the rights of copyright holders, such activities are initiated not at the behest of such ISPs but by the users of such content after the same had been made available by the content provider. Hence the liability that the ISP can attract is also different from that of the content provider and is secondary in nature.

So, if the intermediary is expected to do its functions, particularly involving the transmission of copyrighted work, then mechanisms needs to be put in place so that they can act without fear of legal sanctions. To ensure this copyright laws of various countries have brought out mechanisms to limit the liability of ISP in these situations so as to guarantee that the right to information and freedom of speech and expression are not a casualty.

## III. LIABILITY OF ISPS

As the ISP acts as an intermediary between the content creator and the user of such content in the digital context, its liability is the same as any intermediary in the off-line world. Some of the common off-line world counterparts to ISPs are the publisher of a book or its distributors, the owner of a movie theatre, etc. The publisher may prior to the publication of such book know the actual content of the book but the same cannot be expected out of its distributor. The owner of the movie theatre is also in the like position as the distributor of a book. In such situations the publisher of the book is in a position to control the publication of the book while the distributor or any other like situated person is not. Thus, the liability to which off-line world intermediaries are held depends upon the amount of knowledge of the content for which they are acting as intermediary, the relationship between the intermediary's profit and the content of the message, and the ability of the intermediary to control the content in order to prevent harm.[34]

What is interesting to note at this point is that though the international copyright norm was updated to deal with internet and digital context with the coming into force of the WIPO Copyright Treaty[35] in 1996, it does not contain any reference to service providers or their liability. This has given countries absolute freedom to deal with the issue in the manner that would best sub serve their domestic interest.

## IV. LIABILITY UNDER THE US LAW

The question of ISP liability was first raised in the *Playboy Enterprises Inc.* v. *Frena*,[36] where the Court held the ISP liable on the ground that intent or knowledge is not an element for infringement. Thus, the only recourse left out for the ISP was to monitor all information that passes through its



servers to ensure that none of it was protected by copyright, thereby hampering free speech to a good extent.[37] This also placed an undue burden on the ISP for which it lacks competence. The court was fast in rectifying this position in *Religious Technology Centre* v. *Netcom On-Line Communication Services Inc.*,[38] where it was held that the ISP shall not be liable as it is a mere conduit and not in a position to know about the information that is being transferred through its network. Thus the liability of the ISP has been linked with its intent or knowledge on the infringing activity.

The legislative attempt to restrict the liability of ISPs in their activities in relation to transmission of copyrighted works is dealt under the Digital Millennium Copyright Act 1998 (hereinafter 'DMCA') which introduced various amendments to the US Copyright Act, 1976. The Act defines ISPs based on their activities and has 2 definitions. The first definition of service provider is as "an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points

specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received."[39] This definition is used in the context of limitation of liability in transitory communications.[40] The other definition of service provider is as "a provider of online services or network access, or the operator of facilities therefor."[41] This is a much wider definition of the term and is used in the context of limiting their liability in instances of system caching,[42] storage of information in systems or networks[43] and information location tools.[44]

The Act ipso facto does not absolve ISPs of all liabilities for all their activities. The Act envisages 4 situations/ activities where the liability of ISPs needs to be limited based on satisfying certain conditions. Apart from the specific conditions based on the activities under taken, all ISPs need to comply with two conditions to absolve them from copyright infringement liability. These are:[45]

1. They must adopt and reasonably implement a policy of terminating in appropriate circumstances the accounts of subscribers who are repeat infringers.



2. They must accommodate and not interfere with the standard technical measures[46] adopted by the copyright holders with a view of protecting their works.

The Act contemplates four activities from which ISPs needs to be protected, on satisfying particular conditions. They are:

1. Transitory communications[47] — these comprises on materials being transferred from the server to the user and the activity of the intermediary is to facilitate such transmission i.e. the ISP is merely acting as a conduit for the transmission of the information which was initiated at the behest of the user.[48] In order to attract this exemption from liability the following conditions needs to be satisfied:
   a. Transmission should have been initiated at the behest of someone other than the such service provider,[49]
   b. Such transmission should be an automatic technical process without the interference of the service provider,[50]
   c. The recipient of such material should not have been determined by the service provider,[51]
   d. No intermediary copy or transient storage should have been made which is accessible to a third party other than the intended user,[52] and
   e. There should have been no modification or alteration in the material that had been transmitted.[53]
2. System caching — it is a process of storing data in a cache.[54] The advantage of caching is that saves time and also reduces network traffic burden. The ISP is absolved of the liability for intermediate and temporary storing material in cache[55] so as to reap its advantages provided certain specific conditions are satisfied which are:
   a. The material has been available by any person other than the ISP.[56]

b. The material has been transmitted through the network at the behest of a person other than the ISP.[57]

c. The storage is through an automatic technical process.[58]

d. The material transmitted should not be modified.[59]

e. The ISP must comply with the rules of refreshing, reloading or updating material in accordance with generally accepted industry standard data communication protocol.[60]

f. The ISP should not interfere with the ability of the technology to return the material to the user.[61]

g. If the provider of the content has set up prior conditions for the access to such material, the ISP shall permit access only on the satisfaction of such condition.[62]

h. If any material has been made available on line without the authorisation of the copyright holder then the ISP shall remove or block the same promptly upon notification.[63]

3. Storage of information on system or network at the direction of the users[64] — comes into play in situations where the ISP provides space for storage of material on their platform by others.[65] What has to be noted is that though the space for storage is provided by the ISP the storage is directed by the user. The liability of the ISP is absolved on the condition that:

a. ISP do not have the knowledge of any infringing activity,[66]

b. In situations where the ISP has the right and ability to control the activities on its platform it does not receive any direct financial benefit from such infringing activity.[67]

c. Upon notification of such infringing activity expeditiously removes or blocks access to such material.[68]



d. ISP should have appointed an agent to receive such notification, the details of which shall be communicated to the public via their website and to the Copyright Office.[69]

4. Information location tools[70]—these are ISPs which help the users of the technology identify where information they seek lies. The service providers under this category gets absolved of their liability provided:

a. They did not have the actual knowledge of the infringing activity and,[71]

b. In situations where the ISP has the right and ability to control the activities on its platform it does not receive any direct financial benefit from such infringing activity,[72] and

c. Upon receiving such knowledge acted expeditiously to remove or block such information.[73]

Procedure for Take Down

Whenever the ISP receives a notification[74] that an infringing activity is taking place to which such ISP was an unknown accomplice, the law requires that the ISP expeditiously removes or block access to such content or such other infringing activity by complying with the appropriate procedure.[75] If upon such notification the ISP fails

to take positive action, it shall be construed that the ISP has requisite knowledge of the infringing activity and consequentially would be liable for infringement of copyright. An additional protection is also afforded to the ISP for complying with the notification against liability from any person having claims based on the ISP having taken down the material.[76]

The law also gives third parties opportunities to third party whose material has been taken down on notice to file a counter notification and get the material again uploaded.[77] In spite of this the standard of care that copyright owner needs to take before sending a notice to the ISP is minimal.[78]



As a result, many commentators argue that copyright holders can abuse this mechanism to censor speech that they don't like.[79]

This concern was taken into consideration while deciding *Lenz* v. *Universal Music Corpn.*[80] Here Ms. Lenz had made a home video of his son dancing to a song on which the defendant held copyright and uploaded it on YouTube. The defendant had sent a take down notice to You Tube and as a result of the same got removed. On its removal Ms. Lenz sent a counter notification stating that her use comes under the notion of Fair Use and consequential the video was uploaded. This was challenged by the defendants where the Court held that the owner of copyright before sending such take down notice needs to assess the applicability of defences including fair use and thereon send such notice only on good faith.

## V. LIABILITY OF ISP UNDER THE INDIAN LAW

The question of liability of intermediary, in general, under the Indian law was first addressed through the enactment of the Information Technology Act in 2000. The purpose of this legislation was to ensure safe electronic transmission of data, facilitating e-commerce and facilitating electronic filing of documents with the Government. The notion of service provider is captured under the term "intermediary" in the Act and it means any person who on behalf of some other person receives, stores or transmits data or provides any service with respect to this message.[81] If we try to draw a parallel between this provision and the US provision, it can be safely concluded that the activity of storage of information on system or networks and transitory communications are squarely covered in both. There was no clarity as to whether the provision envisages activities like system caching and information location tool.

With a view to clarify this position, the provision was replaced by including certain categories of service providers therein along with the activity there are eligible to do.[82] Now 'intermediary' is understood as:

> "…. any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online



payment sites, online-auction sites, online-market places and cyber cafes."[83]

The inclusion of service providers like search engines and web hosting service

provides makes it clear that the activities of system caching and information location tools are also included within the Indian law. Thus, we can safely conclude that the actors and activities covered under the Information Technology law and US Copyright law in relation to ISPs are the same.

The next question that requires to be examined is whether there exist any mechanisms to absolve the liability of ISPs due to third party activities, which has been dealt under section 79 of the Act. The section, as amended in 2008, makes it clear that on compliance with certain conditions the intermediary shall not be liable for the acts of third parties.[84] These conditions are:

1. The function of the intermediary is limited to providing access to the information,[85]
2. The ISP does not initiate such transmission,[86]
3. The ISP does not select the receiver of such information,[87]
4. The ISP does not select or modify the information that is being transmitted,[88] and
5. The ISP observes due diligence while performing its function.[89]

The provision also lays down certain situations in which the liability of the ISP shall not be absolved under the law. Such situation are:

1. The ISP has conspired, abetted, aided or induced the commission of the activity,[90] and
2. Upon receiving knowledge of any infringing activity in relation to any information, data or communication link residing in or connected to computer source under the control of such ISP, it has failed to immediately remove or disable the access to such information.[91]



When we analyse the Indian law, it can be seen that the liability of the ISP is prima facie absolved only in cases where the function of the ISP is to provide access. So, an ISP which provides any kind of storage of information or information location tool becomes liable in all situations. But the part of the provision which fixes the liability on ISP uses the term "information, data or communication link residing in or connected to computer source"[92] gives the impression that ISP which provides any kind of storage of information or information location tool can also absolve themselves of their liability. Thus, it can be seen that there exists a lack of clarity in the understanding of the provision. If the law is understood to include all kinds of ISP then the Indian law becomes in sync with the US position.

The next pertinent question which ought to be considered is whether the provision that absolves the ISP of its liability under the IT Act, 2000, can be invoked in case of copyright infringement too, for the reason that the liability for copyright infringement is provided in a different law.

*Super Cassettes Industries Ltd.* v. *Myspace Inc.*[93] squarely deals with this issue. Here the defendant is a social networking and entertainment websites which provides services of storage and sharing of music and videos. The claim of the plaintiff is that copyright of the material stored and being distributed through the defendant belong to them and consequently the defendant is liable under Copyright Act. Under the copyright regime when a person permits for profit to use his place for communicating copyrighted work to the public, he shall also be liable for copyright infringement

unless he is able to prove that he did not have the reasonable ground for believing that such activity was infringing somebody's copyright.[94] It is also pertinent to note that the copyright Act did not give any kind of exclusion to the liability of intermediaries. The first question which was discussed was whether the notion of 'any place' includes webspace, to which the Court answered affirmatively.

Thereon the Court moved to consider the applicability of the IT Act to exempt liability under the Copyright Act. The interpretation of this was based on section 81[95] of the IT Act. The provision as originally enacted specifically provides that the Act has overriding effect over all other laws in force in India. The same was later amended in 2008 to include a provision which provided that the Act shall not restrict any person from exercising his right under the Copyright Act, 1957 or the Patent Act, 1970.[96] The Court held that a combine reading of the provision and the proviso gives the



effect that IT Act is not applicable in the cases of copyright infringement dealt under the Copyright Act. The impact of this interpretation is that there exists no legally recognised situation in which the ISP will be absolved of their liability for copyright infringement unless it lacked the adequate knowledge of an infringing activity.

## VI. THE 2012 COPYRIGHT AMENDMENT

The total absence of any kind of protection for the activities of ISPs lead to suspension of their activities, the consequence of which was non-access to material over internet. With a view to remedy this situation the Copyright Act was amended in 2012, where appropriate amendments were suggested.[97] Neither the Bill nor the Act has used the term either 'intermediary' or 'internet service provider' and consequently neither of them have been defined under the present Act. But the Standing Committee Report to the Amendment Bill has made it abundantly clear that the introduction of the provision was with a view to deal with the liability of internet service providers.[98]

Two provisions which could be understood to deal with ISP liability has been introduced in the amendment. The provisions were introduced as certain acts which will not amount to infringement.[99] What is interesting to note about these provisions is that they do not provide which all activities of the ISP will fall outside the purview of copyright liability, unlike the approach followed by the US law. The language used in both the provisions[100] are 'transient of incidental storage'. There is no indication in the Statute as to what does these terms mean. The Division Bench of the Delhi High Court in *Myspace Inc.* v. *Super Cassettes Industries Ltd.*[101] made a feeble effort in interpreting the provision. The Court opined that the notion of "transient means any work which is temporary or impermanent and incidental would mean something subordinate to something of greater importance."[102] Thus the Court concluded that this will include only "cached data, web cookies or any other like form of data, which is generated automatically to improve the performance of the core function."[103] The probable rationale that the Court would have used to reach this conclusion is the fact that clause (b) of section 52 specifically provides that such storage is "purely in the technical process of the electronic transmission". Based



on this interpretation the Court held that the amended provisions of the Copyright Act will not apply in the case of My Space which is a web hosting service. The Court to

justify its stand unequivocally stated that hosting and storing of data would not qualify for protection under 'transient and incidental storage' hence outside the purview of section 52.

The Division Bench also overruled the interpretation of the Single Bench[104] regarding the applicability of section 79[105] of the Information Technology Act in situations of copyright infringement. The logic used by the Single Bench was the amendment introduced to section 81[106] of the IT Act which states that the Act shall not apply in relation to the enforcement of rights under Copyright Act and Patent Act. The rationale of how the Appellate Court came to its conclusion is not very evident. It could be based on the Intermediary Guidelines Rules, 2011 which was frame to enforce the 2008 Amendment. It requires the intermediary to specify in the user agreement that the user shall "not host, display, upload, modify, publish, transmit, update or share any information that "infringes any patent, trademark, copyright, or other proprietary rights."[107] The understanding the Court seems to be that the sections comes into play only in relation to the protections of rights under copyright and similar forms of IP and not in relation with the exclusion of liability of ISP which is dealt under Section 79.

The Court there while examining whether My Space complied with all the conditions that has been provided via section 79, concluded that they only provided access to the information; did not initiate the transmission or select its receiver or modify the information that has been transmitted and has observed due diligence required of them. This made them eligible for protection from liability. The Court also emphatically concluded the sections of the information Technology Act and Copyright Act can be read harmoniously and liability under the Copyright Act can be absolved under the Information Technology Law.

## VII. THE MISSED OPPORTUNITY

The harmonious reading of the Copyright Act with the Information Technology Act is an imperfect understanding, for many reasons, of the copyright regime. Firstly, Copyright Act is a special law while the Information Technology Act is the general law. So, in all matters relating to copyright, the Copyright Act should be the final authority and its



determination cannot be replaced by the application of the Information Technology Act.

Secondly and more importantly, is the scope of the limitation of the liability of the internet service provider under the new copyright provisions. The interpretation the Court attached to both the provisions[108] primarily based on the language of clause 'b' which emphasises on 'purely technical process of electronic transmission' covers only certain activities that the ISP's perform. The acts of transitory communication, i.e. acting as a mere conduit for the transmission of the information, and also caching is squarely covered under this interpretation. In this respect the law in India is similar to the US position in certain aspects. The major difference in the US law which we see is that the liability of the ISP is absolved only when certain conditions are guaranteed. Most of these conditions are to ensure the non-interference of the ISP on the transmission of the information. The probable reason for the non-inclusion of these grounds could be that the language of the Indian provision implies the same. But what has to be noted is that the US position also requires a condition that the ISP complies with the rules of refreshing, reloading and updating of material in accordance with the

generally accepted industry standard data communication protocol. The advantage of this is that it forces the ISP too to be update on the mandate of the industry. The exclusion of a standard of this variety can been understood as a mis-step in fixing the liability of ISP.

When we look into the understanding of the Court in relation to section 52 clause 'c' it can been seen that the legislative intend was in no way understood and appreciated by the Judiciary. This provision also starts with the term 'transient and incidental' and qualifying 'storage' with these notions undoubtedly shows a flaw on the part of the legislator. In spite of this there is considerable doubt whether the intention of the legislature under this provision was to capture only incidental and transitory storage. This is particularity because of the presence of a take down position in the law. The rational of this being that if the law supposes that an ISP is in a position to take down any information based on the compliant, it is implied that such storage cannot be transient and need not be incidental.

The provision specifically includes '.... providing electronic links, access and integration...." This clearly shows the inclusion of the information location tools and mechanism for storage of information on system or network. The provision specifically says that such an activity must not have been specifically prohibited by the right holder. This, as we can see, is an additional condition on the compliance of which also shall the ISP be absolved of its liability. Thus, we can see much more similarity to the US position, particularly in relation to the activities captured under the exclusion of liability.



Another similarity we find between the Indian position and the US one, is the presence of the take down procedure. What needs to be noted is that this similarity ends merely on the recognition of the take down procedure. The US law requires that when they are informed via notice the presence of any material which violates copyright, they are required to remove of block access to such content. The Indian position has a much different approach. It requires that when a compliant is received regarding infringement of copyright, the ISP shall refrain from providing access to the same for a period of 21 days or such order is obtained from a competent court. This in short provides that unless there is a judicial apprehension as to the prima facie infringement of copyright, access to content available on the net can be blocked to a maximum of only 21 days. This from the point of view of providing access the Indian position is much balanced and worth appreciation. As pointed out earlier, the intentional removal or blocking of access and making the same available after a certain prescribed of time shows that the legislative intention here was to capture more than incidental and transitory storage. In spite of this the reading down of this provision as to merely applying to incidental and transitory storage is very disheartening and requires corrective measures at the earliest. This will ensure not only that the ISP's are able to do their legitimate functions without any unnecessary hindrance but also that the jurisprudence of copyright law in India grows in the right direction.

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[2] "Internet 101: What is Internet?", available at http://www.just.edu.jo/~mqais/cis99/PDF/Internet.pdf (accessed 14-9-2018).

[3] *Ibid*.

[4] *Nav Sahitya Prakash* v. *Anand Kumar*, 1980 SCC OnLine All 444 : AIR 1981 All 200.

[5] S. 2(y), Copyright Act, 1957.

[6] S. 2(o), Copyright Act, 1957.

[7] S. 2(p), Copyright Act, 1957.

[8] S. 2(c), Copyright Act, 1957.

[9] S. 2(h), Copyright Act, 1957.

[10] S. 2(f), Copyright Act, 1957.

[11] S. 2(xx), Copyright Act, 1957.

[12] S. 13(1) of the Copyright Act, 1957. There requirement of originality is only a precondition for literary, dramatic, musical and artistic work. The rationale of this could be that by its very nature both cinematographic films and sound recordings are derivative and hence not original.

[13] *University of London Press* v. *University Tutorial Press*, (1916) 2 Ch 601.

[14] *Eastern Book Co.* v. *D.B. Modak*, (2008) 1 SCC 1 : AIR 2008 SC 809; *Ladbroke (Football) Ltd.* v. *William Hill (Football) Ltd.*, (1964) 1 WLR 273 : (1964) 1 All ER 465.

[15] *R.G. Anand* v. *Delux Films*, (1978) 4 SCC 118 : AIR 1978 SC 1613.

[16] S. 14, Copyright Act, 1957.

[17] For a better understanding scope of the rights of the copyright holder refer Arathi Ashok, "Economic Rights of Authors under Copyright Law: Some Emerging Judicial Trends", vol. 15, Journal of Intellectual Property Rights, January 2010, pp. 46-54.

[18] Ss. 14(a)(i), (b)(i), (c)(i), (d)(i) & (e)(i), Copyright Act, 1957.

[19] Ss. 14(a)(ii), (b)(ii), (c)(iii), (d)(ii) & (e)(ii), Copyright Act, 1957.

[20] Ss. 14(a)(iii), (b)(i), (c)(ii), (d)(iii) & (e)(iii), Copyright Act, 1957.

[21] S. 14(a)(vi), Copyright Act, 1957.

[22] S. 14(a)(v), Copyright Act, 1957.

[23] S. 14(a)(iv), Copyright Act, 1957.

[24] Ss. 14(b)(ii), (d)(ii) & (e)(ii), Copyright Act, 1957.

[25] S. 57, Copyright Act, 1957.

[26] In case of literary, dramatic, musical and artistic works the term of protection is the duration of the life of the author plus 60 years and that is the case of cinematograph film and sound recording is 60 years from the next year of its publication. Ss. 22 to 29, Copyright Act, 1957.

[27] S. 57, Copyright Act, 1957.

[28] S. 51, Copyright Act, 1957.

[29] Matthew R. Just, "Internet File-Sharing and the Liability of Intermediaries for Copyright Infringement: A Need for International Consensus" Journal of Information Law & Technology, 2003(1) available at https://warwick.ac.uk/fac/soc/law/elj/jilt/2003_1/just/ (accessed).

[30] *Ibid.*

[31] *Ibid.*

[32] *Ibid.*

[33] Claudio Ruiz Gallardo and J. Carlos Lara Gálvez, "Liability of Internet Service Providers (ISPs) and the Exercise of Freedom of Expression in Latin America", available at https://www.palermo.edu/cele/pdf/english/Internet-Free-of-Censorship/02-Liability_Internet_Service_Providers_exercise_freedom_expression_Latin_America_Ruiz_Gallardo_Lara_Galvez.pdf (accessed).

[34] Greg Holtz, "Intermediary Liability and the Role of ISPs", vol. 3(1), Darmouth College Undergraduate Journal of Law, 2005, pp. 37-44, at p. 39.

[35] Together with the WIPO Performances and Phonograms Treaty, 1996 is known as Internet Treaties.

[36] 839 F Supp 1552 (MD Fla 1993). Here the defendant operated a bulletin board service on which plaintiff's copyrighted photographs were posted by third parties.

[37] Greg Holtz, "Intermediary Liability and the Role of ISPs", vol. 3(1), Darmouth College Undergraduate Journal of Law, 2005, pp. 37-44, at p. 39.

[38] 907 F Supp 1361 (ND Cal 1995). Here the defendants, operator of a bulletin board service and internet access provider, were challenges when their subscriber posted plaintiff's copyrighted material.

[39] S. 512(k)(1)(A), Copyright Act, 1976.

[40] S. 512(a), Copyright Act, 1976.

[41] S. 512(k)(1)(B), Copyright Act, 1976.

[42] S. 512(b), Copyright Act, 1976.

[43] S. 512(c), Copyright Act, 1976.

[44] S. 512(d), Copyright Act, 1976.

[45] US Copyright Office Summary, DMCA, available at.

[46] S. 512(i), Copyright Act, 1976.

[47] The most common example for this is service providers like Airtel, BSNL, etc.

[48] S. 512(a), Copyright Act, 1976.

[49] S. 512 (a)(1), Copyright Act, 1976.

[50] S. 512 (a)(2), Copyright Act, 1976.

[51] S. 512 (a)(3), Copyright Act, 1976.

[52] S. 512 (a)(4), Copyright Act, 1976.

[53] S. 512 (a)(5), Copyright Act, 1976.

[54] Cache is a hardware or software component that stores data so that future requests for that data can be served faster. Available at https://en.wikipedia.org/wiki/Cache_(computing) (accessed).

[55] S. 512(b), Copyright Act, 1976.

[56] S. 512(b)(1)(A), Copyright Act, 1976.

[57] S. 512(b)(1)(B), Copyright Act, 1976.

[58] S. 512(b)(1)(C), Copyright Act, 1976.

[59] S. 512(b)(2)(A), Copyright Act, 1976.

[60] S. 512(b)(2)(B), Copyright Act, 1976.

[61] S. 512(b)(2)(C), Copyright Act, 1976.

[62] S. 512(b)(2)(D), Copyright Act, 1976.

[63] S. 512(b)(2)(E), Copyright Act, 1976.

[64] The most common example of this service provider is YouTube.

[65] S. 512(c), Copyright Act, 1976.

[66] S. 512(c)(1)(A), Copyright Act, 1976.

[67] S. 512(c)(1)(B), Copyright Act, 1976.

[68] S. 512(c)(1)(C), Copyright Act, 1976.

[69] S. 512(c)(2), Copyright Act, 1976.

[70] The most common example of this is google and other search engines.

[71] S. 512(d)(1), Copyright Act, 1976.

[72] S. 512(d)(2), Copyright Act, 1976.

[73] S. 512(d)(3), Copyright Act, 1976.

[74] Under Ss. 512(b)(2)(E), 512(c)(1) and 512(d).

[75] S. 512(c)(3).

[76] S. 512(g)(1).

[77] *Ibid.*

[78] *Michael J. Rossi* v. *Motion Picture Assn. of America*, 391 F 3d 1000 (9th Cir 2004), available at https://caselaw.findlaw.com/us-9th-circuit/1308565.html (accessed).

[79] Jennifer M. Urban & Laura Quilter, "Efficient Process or Chilling Effects? Takedown Notices under Section 512 of the Digital Millennium Copyright Act", 22 Santa Clara Computer & High Tech. L.J. 621, 68-82 (2006).

[80] 801 F 3d 1126 (2015).

[81] S. 2(1)(w), Information Technology Act, 2000 (as enacted).

[82] S. 4(H), Information Technology Amendment Act, 2008.

[83] S. 2(1)(w), Information Technology Act, 2000.

[84] S. 79(1), Information Technology Act, 2000.

[85] S. 79(2)(a), Information Technology Act, 2000.

[86] S. 79(2)(b)(i), Information Technology Act, 2000.

[87] S. 79(2)(b)(ii), Information Technology Act, 2000.

[88] S. 79(2)(b)(iii), Information Technology Act, 2000.

[89] S. 79(2)(c), Information Technology Act, 2000.

[90] S. 79(3)(a), Information Technology Act, 2000.

[91] S. 79(3)(b), Information Technology Act, 2000.

[92] *Ibid.*

[93] 2011 SCC OnLine Del 3131 : (2011) 48 PTC 49.

[94] S. 51 (a)(ii), Copyright Act 1957.

[95] S. 81 — The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

[96] S. 42, Information Technology Amendment Act, 2008.

[97] S. 31, Copyright Amendment Bill, 2010.

[98] Two Hundred Twenty Seventh Report on the Copyright (Amendment) Bill, 2010 at para 19.2. Available at

http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20HRD/227.pdf (accessed 10-4-2012).

[99] S. 52, Copyright Act, 1957.

[100] Ss. 52(b) & (c), Copyright Act 1957.

[101] 2016 SCC OnLine Del 6382. Available at https://indiankanoon.org/doc/12972852/.

[102] *Id.*, para 59.

[103] *Ibid.*

[104] *Super Cassettes Industries Ltd.* v. *Myspace Inc.*, 2011 SCC OnLine Del 3131 : (2011) 48 PTC 49.

[105] Deals with the situations in which ISP's shall not be liable.

[106] Deals with the overriding impact of the IT Act.

[107] R. 3(b), Intermediary Guidelines Rules, 2011.

[108] Ss. 52(b) & (c).