
INTELLECTUAL PROPERTY RIGHTS IN THE AGE OF CONTENT CREATION

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ABSTRACT

The contemporary landscape of content creation is dynamic and constantly changing. The digital revolution has greatly facilitated the creation and dissemination of material, resulting in a significant increase in accessibility and allowing individuals to become content creators. Nevertheless, within this expansion, there exists a crucial factor to be taken into account: Intellectual Property Rights (IPR) and its essential function in safeguarding the rights of content creators. The rapid and significant increase in the production of material in the digital era requires a strong legal structure to safeguard the rights of artists and encourage additional advancements. IPR serve as a comprehensive framework that provides legal protection for many types of intangible assets, such as creative works, inventions, and designs. This study examines the intricate relationship between IPR and content creation, particularly under the legal framework of India. This course explores the essential IPR laws, significant case studies, and developing obstacles that are relevant to content creators in India. Intellectual Property Rights (IPRs) are crucial for fostering economic growth and cultural advancement by providing exclusive privileges to innovators. IPRs like copyrights and trademarks enable authors to manage their information, ensuring long-term viability and reinvestment. They protect creators' distinctive voices and artistic expressions from unauthorised use, fostering a dynamic content environment. IPRs also encourage collaborations and licensing deals, promoting the development of new material through innovative concepts and mutually beneficial business ventures. However, the digital era presents challenges like copyright violation, content consolidation, and artificial intelligence creation. To navigate these challenges, an efficient IPR system is essential for creating a flourishing creative environment that benefits both creators and society.

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I. INTRODUCTION

The concept of intellectual property rights (IPR) has taken on new dimensions in the context of the rapidly developing digital era, which is marked by the transformative impact of technology on the production, sharing, and consumption of material. The advent of content production has ushered in a new era of artistic expression that has never been seen before. This new period has made it possible for individuals and organisations to quickly make and disseminate a wide variety of creations, including written articles, music, movies, and artwork. On the other hand, the rise in the production of content has brought up a number of distinct challenges and complexities in relation to the protection and execution of intellectual property. Amidst the exponential surge in content creation, it is imperative to acknowledge and protect the rights of the creators responsible for these works. IPRs are essential for safeguarding creative activities, granting creators legal and economic rights and entitlements to their creations. These rights promote and protect originality, motivate financial support for artistic projects, and guarantee that creators can receive appropriate compensation for their intellectual property.² Nevertheless, the advent of the digital environment has posed substantial obstacles to the conventional structure of intellectual property rights.

The readily accessible nature of digital copies and the speed with which information can be shared on the internet, has resulted in an alarming increase in copyright violation, piracy, and violation of rights of expression and personal liberty. Content creators encounter the challenging endeavour of managing a constantly changing digital environment, where their creations can be readily replicated, disseminated, and monetized without their consent or appropriate recognition. Moreover, the notion of fair use has grown more intricate in the era of mass content generation.

The boundary between transformative usage and copyright violation can get muddled when people adapt, alter, and reuse works that have already been created. The challenge of defining the bounds of fair use and finding a middle ground between artistic creativity, the capacity to express oneself, and the protection of intellectual property rights has become a process that is both complex and challenging. In addition, the ethical considerations that are involved in the production of content have become more significant. When it comes to plagiarism, credit, and the ethical use of user data, issues that have become critical difficulties for both content suppliers and consumers are becoming increasingly important. In view of the continued expansion of the digital ecosystem, it is of the utmost importance to tackle these ethical

² Kumar, S. and Mishra, A.K., "IPR in India: Status, Strategies and Challenges for Digital Content. Transforming Dimension of IPR: Challenges for New Age Libraries", p.5. 2015.

conundrums and embrace ethical standards that create a culture that values creative activities while simultaneously embracing the benefits that the digital era has to offer.³

One of the topics that is discussed in this paper is the shifting landscape of IPRs in this age of content generation. This paper dives into the significance of IPRs, the challenges that are faced by individuals who create content and possess rights to such content, as well as the legal and ethical considerations that serve as the foundation for the protection and implementation of intellectual property attached to such content. The objective of this paper is to be able to provide insight into the complexities of intellectual property rights in the digital era by conducting a comprehensive analysis of these fundamental elements. Additionally, the paper attempts to derive and suggest solutions to cultivate an environment that is harmonious and promotes innovation while protecting the interests of the content creators.

II. KEY STATUTES IN INDIA GOVERNING INTELLECTUAL PROPERTY RIGHTS SUBSISTING IN CREATIVE WORKS

Copyright Act, 1957

In 1957, The Government of India enacted the Copyright Act to prevent the unlicensed reproduction and distribution of literary, dramatic, musical, artistic, cinematographic, and sound recording works. The Act further provides economic rights to such content creators, including the ability to reproduce, distribute, perform, or otherwise transmit their works to the public, as well as the right to make translations or adaptations of their works.⁴ Copyright protection in India usually extends for the duration of the author's life, plus an additional 60 years starting from the year after the author's death.

While it is true that the Indian Copyright Act of 1957 does offer a framework for the protection of artistic creations, it is of the utmost importance to acknowledge the limitations of this legislation in terms of appropriately covering digital content. As a result of the fact that the legislation was drafted prior to the arrival of the digital era, it has not been subjected to a comprehensive modification in order to adequately address all of the modern challenges. However, it does offer some protection:

Scope of Protection:

- i. The Copyright Act provides protection for a wide range of content, encompassing literary, dramatic, musical, creative works, cinematograph films, and sound recordings.

³ Trencheva, T., Lazarova, M., Denchev, S. and Basili, C., "Innovative Strategy of Intellectual Property Education in the Digital Age." ICERI2020 Proceedings, pp.2799-2804. (2020).

⁴ Baxi, Upendra. "Copyright law and justice in India." Journal of the Indian Law Institute 28.4 (1986): 497-540.

This safeguard applies to both tangible and electronic versions of these creations. In *YRF vs Sri Sai Ganesh Productions*,⁵ a lawsuit for copyright infringement was started by YRF against Sri Sai Ganesh Productions. The YRF claimed that Sri Ganesh Productions' film "Jabardasht" plagiarised substantial parts from YRF's film "Band Baaja Baaraat." These elements included the premise, theme, characters, narrative, story, script, and expression, among other features. The standards for evaluating originality were widened to encompass films, and the court treated them as protected works as a result. This was done in order to discern between the two films based on the fundamental elements, content, and core concept that they each possess. In addition, the court wanted to determine whether or not a typical moviegoer would consider one film to be a replica of the other. As a result of the court's decision, Sri Sai Ganesh Productions was found to have committed copyright infringement by blatantly replicating the essential, fundamental, and distinctive aspects of the YRF film. In *Ratna Sagar (P) Ltd. V. Trisea Publications & Ors*⁶ a copyright infringement allegation was made by the plaintiff, a major children's book publisher entitled "Living Science," against the respondent, "Unique Science." The plaintiff strongly claimed that the defendant's literary masterwork was a clever copy of theirs. After reviewing both publications, the court found the respondent guilty of copyright infringement and granted a perpetual injunction under Sections 14 and 19 of the Copyright Act.

- ii. In order to obtain copyright protection, it is essential to have both originality and fixation.⁷ The work must be both innovative and manifested in a physical form, encompassing digital formats as well. In *University of London Press Ltd. V. University Tutorial Press Ltd*⁸ the court determined that "original" refers to the quality of being innovative in one's statement. The court further determined that while fresh ideas are not obligatory, the manner in which the notion is articulated must be unique.

Rights Granted:

Copyright owners have exclusive rights to control various aspects of their work, such as:

- i. **Reproduction:** Making copies of the work, including digital copies of the completed work.
- ii. **Public performance:** Disseminating the work to the general audience, which may

⁵ CS (COMM) 1329/2016.

⁶ 1996 PTC (16) 597.

⁷ ⁶ Bhat, S.R., "Innovation and intellectual property rights law—an overview of the Indian law." IIMB Management Review, 30(1), pp.51-61 (2018).

⁸ [1916] 2 Ch. 601.

involve internet streaming or broadcast.

- iii. **Adaptation:** Adapting the content into another medium, such as transforming a novel into an audiobook, or an e-novel.
- iv. **Distribution:** Distributing the work to the public, for example, by selling it online.

Challenges and Limitations:

- i. The Copyright Act⁹ defines publication as “*making a work available to the public by issue of copies or by communicating the work to the public*”. However, this definition, may be construed as vague, and incomplete, and its application to the digital domain, lacks clarity, leading to challenges in interpretation.
- ii. The fair use concept, which permits restricted utilisation of copyrighted material without authorization, may not adequately accommodate the distinct characteristics of digital content and online sharing. It must be noted that the principle of fair use¹⁰ provided in the Indian Copyright Act only defines the purpose of fair use protected works such as: Criticism, Comment, News reporting, Teaching, Research, Personal use, Legal proceedings, and Reporting on current events, and not the medium or platform for dissemination of such fair used material.¹¹
- iii. The enforcement of copyright on the internet can be complicated due to a number of issues, including the ability to remain anonymous and the jurisdiction being considered.

Although there are certain restrictions, the Copyright Act of 1957 provides fundamental safeguarding for both digital and physical content. Nevertheless, it is crucial to recognise that the law may not comprehensively tackle all the current difficulties encountered in the digital realm.

The Trade Marks Act, 1999

The Trade Marks Act, 1999, was enacted to consolidate all the previous trade mark laws, with the purpose of providing a system for the registration and enhanced safeguarding of trademarks for both goods and services, as well as to prevent the use of counterfeit marks. A Trademark is a graphical representation of a business entity, the main purpose of it being to ascertain, categorise, and denote the origin of one's goods and services in order to distinguish them from

⁹ Copyright Act, 1957; Sections 14 & 3

¹⁰ Copyright Act, 1957; Section 52.

¹¹ Sharma, A., “Indian Perspective of Fair Dealing under Copyright Law: Lex Lata or Lex Ferenda?” (2009).

others in the course of trade.¹²

The Trade Marks Act, 1999 does not directly protect creative works and digital content. However, it allows the content creator to be aware of the rights of trade mark owners, and using any trademark into their content in a judicious manner. Creators are required to seek the explicit permission of the owner of a trademark before showcasing it on their social media accounts, or any other forms of creative works.

Facebook and Instagram, two of the most well-known social media platforms in the world, specifically prohibit the use of their trademarks, including their entire names and logos, in any content without first obtaining permission. In the event that an individual desires to use the logo into their content or website, it is necessary to complete a permission request form. Additionally, you have the ability to submit an application for special usage of any and all brand logos, such as placement in films or on commercial products, using this form.

Further, trademark allows the content creators to economize their content by setting up a brand for their business of selling their creative expressions. Class 41 of the Nice Classification of Trademarks extends trademark protection towards businesses pertaining to publication services both online, as well as offline; Class 9 for digital content of any kind including web content and downloadable and recorded media content; and Class 35 for shop services, online and offline services, and wholesale and retail sale services with respect to books, digital content, recorded / downloadable content etc... In a way Trademark protection is like an aid to the content creators which enables them to incentivise their content.

The Trade Marks Act, 1999, also extends to domain names by virtue of which content creators may seek to protect their web domains which may contain original digital contents of the creator. Any individual who breaches a registered domain name by using it as a trademark, as defined by the Trademarks Act of 1999, may be liable for infringement under section 29 of the Act.¹³

III. THE INDIAN LANDSCAPE

When it comes to the management of intellectual property rights in the field of content production, India, which is popularly known for its active and diversified artistic community, has many hurdles. A growing number of individuals and businesses in India are creating, inventing or producing a diverse range of works across a variety of platforms, which is

¹² Singh, H. and Khan, S., "Concept of Distinctiveness: Trade Marks Act, 1999," Issue 4 Indian JL & Legal Rsch.,4, p.1. (2022).

¹³ Deva, S., "What's in a name? Disputes relating to domain names in India," International Review of Law, Computers & Technology, 19(2), pp.165-181 (2005).

contributing to the considerable growth that the content creation industry in India is experiencing. In spite of this, the IPR environment in India with relation to content production presents both opportunities and challenges along the way. The importance of protecting their work through IPR strategies, such as copyright, trademarks, and geographical indications, is becoming more and more apparent to those who are responsible for the creation of content. In order to improve the framework for IPR, the Government of India has implemented a number of steps, including the simplification of the registration process, the establishment of IP administrative bodies that are solely dedicated to IP, and the intensification of public awareness programmes. The Copyright Act and the Patent Act have both been amended in India in order to increase intellectual property rights (IPR) protection. The goal of these revisions is to improve enforcement and international conformity. The Indian government launched *IP Facilitation Cell (IPFC)* and *National Intellectual Property Development Centre (NIPDC)* to support creators in navigating the IPR system.¹⁴ Further, the sale of material is being made possible by platforms such as YouTube and Spotify, which also provide tools for the management of copyrights based on *Digital Millennium Copyright Act of 1998 (DMCA)*. Copyright societies like *Indian Performing Right Society (IPRS)* and *Indian Singers' Rights Association (ISRA)* provide collective licensing options for music content creators.¹⁵ Furthermore, The Indian market has a sizeable audience that content creators can target, which has the potential to result in increased revenue and visibility for the content creators.

On the other hand, despite the fact that it continues to be a significant issue, online piracy continues to cause financial harm to creators and impedes the growth of the creative economy. Particularly in the realm of digital technology, the enforcement of intellectual property rights can be a particularly complicated and time-consuming process. The problem of finding a middle ground between the rights of content providers and the public's access to information and the expense of that information is a complicated one. When it comes to managing the legal framework that governs intellectual property rights (IPR), it can be difficult and complicated, especially for individual artists. Despite the fact that there is a growing degree of awareness, there are still some artists who may not be aware of their intellectual property rights and the necessary precautions to protect them. This is especially true for individuals who live in rural areas.

¹⁴ M. Bala, D. Verma, "Analysis of Reforms in Intellectual Property Rights and Their Impact on Intellectual Property in India. In Meenu Jain, Sensitizing and Imparting Awareness about Intellectual Property Rights among Students," 2, pp.36-44. (2020).

¹⁵ Ponnuswami, K., "Performing Right of the Intellectual Worker: Judicial Annihilation," Journal of the Indian Law Institute, 28(4), pp.470-486 (1986).

IV. EMERGING CHALLENGES AND OPPORTUNITIES

Technological advancements and the ever-evolving patterns of consumer behaviour are the driving forces behind the constant evolution that occurs in the field of content development. The nature of this environment, which is always shifting, presents the field of IPRs with a number of challenges as well as opportunities. The purpose of this study is to investigate the most significant difficulties and possible solutions that are associated with IPR in the content development process.

Challenges:

- i. **The Rise of AI-Generated Content:** It is becoming increasingly difficult to differentiate between authorship and ownership as the level of sophistication of artificial intelligence (AI) continues to increase. This is because AI gives machines the ability to develop material that is increasingly complex and original. It is difficult for legal frameworks to keep up with the rapid improvements in artificial intelligence, which has led to questions over the ownership of work generated by AI and the most efficient ways to protect it.
- ii. **Phantomization and Content Sharing:** Despite the fact that digital platforms make it easier to share content, they can sometimes make the problem of copyright infringement much worse. It can be challenging for creators to monitor and prevent the illegal use of their work, which can result in potential financial losses and a decrease in the value of their creations.¹⁶
- iii. **Data Ownership and Privacy Concerns:** There have been new issues raised regarding privacy as a result of the collection and utilisation of personal data in the development of content. A substantial amount of deliberation is required in order to reach a harmonious equilibrium between the prerogatives of users to protect their privacy and the prerogatives of producers to utilise data for the purpose of customisation and financial advantage.¹⁷
- iv. **Borderless Infringement and Enforcement:** It is difficult to enforce intellectual property rights (IPRs) due to the fact that different jurisdictions have varied legal systems and enforcement standards. This is because the Internet is accessible all over

¹⁶ Eaton, J., "Trends in Advertising: How the Rise in Artificial Intelligence May Influence the Field of Content Strategy," Doctoral dissertation, East Tennessee State University, (2020).

¹⁷ Srinivas, S. and Liang, H., "Being digital to being vulnerable: does digital transformation allure a data breach?" *Journal of Electronic Business & Digital Economics*, 1(1/2), pp.111-137 (2022).

the world. This creates opportunities for violations and hinders the ability of producers to protect their work on a worldwide scale. It also creates the possibility of violations.¹⁸

- v. **Balancing Innovation and Protection:** When it comes to protecting existing content while also encouraging innovation, it is of the utmost importance to create a happy medium. A lack of suitable safeguards can deter innovators from investing in their own original ideas, while too severe intellectual property rights (IPR) systems have the potential to stifle innovation.¹⁹

Opportunities:

- i. **Collaborative Ownership Models:** The investigation of alternative ownership arrangements for content generated by AI should be carried out. These structures might potentially include authors, developers, and even the AI system itself. It is possible that this will encourage cooperation and ensure that rights and advantages are distributed in an equitable manner.²⁰
- ii. **Leveraging Technology for Rights Management:** The utilisation of blockchain technology, in conjunction with other cutting-edge tools, can be utilised to automate the process of awarding licences, streamline the collection of royalties, and monitor the utilisation of material. The management of rights is simplified, and artists are given more control as a result.²¹
- iii. **Data Governance Frameworks:** Through the implementation of data governance frameworks that are both explicit and easily understandable, it is possible to effectively handle privacy issues, which in turn enables producers to utilise data in a responsible manner while also protecting user rights.²²
- iv. **Harmonization of International IPR Laws:** The effort to standardise intellectual property rights (IPR) legislation on a global scale may result in the establishment of a

¹⁸ Leong, S.H. and Saw, C.L., "Copyright Infringement in a Borderless World—Does Territoriality Matter? Society of Composers, Authors and Music Publishers of Canada v Canadian Association of Internet Providers [2004] 2 SCR 427." *International Journal of Law and Information Technology*, 15(1), pp.38-53 (2007).

¹⁹ Bhat, S.R., "Innovation and intellectual property rights law—an overview of the Indian law." *IIMB Management Review*, 30(1), pp.51-61 (2018).

²⁰ Matheson, Scott. "Access versus ownership: A changing model of intellectual property." *Law library collection development in the digital age*. Routledge, 153-176 (2018).

²¹ Bhat, S.R., "Innovation and intellectual property rights law—an overview of the Indian law." *IIMB Management Review*, 30(1), pp.51-61 (2018).

²² Srinivas, S. and Liang, H., 2022. Being digital to being vulnerable: does digital transformation allure a data breach? *Journal of Electronic Business & Digital Economics*, 1(1/2), pp.111-137.

more equitable competitive environment, the simplification of the enforcement of IPR across international borders, and the protection of creators all over the world.²³

- v. **Open Access and Fair Use Flexibilities:** By examining alternate licencing models such as open access and flexible fair use regulations, it is possible to achieve a balance between compensating creators and providing broader public access to knowledge and cultural expression.²⁴

V. SUGGESTION FOR CREATING A HARMONIOUS AND FAVOURABLE ENVIRONMENT FOR CONTENT CREATORS

The implementation of a diverse approach is required in order to establish an environment that is capable of achieving a harmonious balance between the interests of content creators and the interests of innovation. Here are some potential suggestions to consider:

Strengthening IP protection:

- i. **Swift and efficient enforcement:** Improvements should be made to the legal framework, and processes should be optimised, in order to make it easier for authors to pursue legal action against copyright infringement.
- ii. **Clear and adaptable laws:** Legislation pertaining to intellectual property rights (IPR) should be evaluated and revised on a regular basis in order to effectively control continually developing technologies and content formats, such as inventions that are produced by artificial intelligence (AI).²⁵
- iii. **Public awareness campaigns:** Artists and customers alike should be made aware of the significance of protecting intellectual property rights through the promotion of awareness campaigns.²⁶

Promoting fair use and responsible sharing:

- i. **Develop clear guidelines:** Outline the parameters of what constitutes "fair use" in the digital age, taking into consideration aspects such as the motive behind the use, the transformative qualities of the work, and the influence it had on the original piece.

²³ Stack, A.J., "International patent law: cooperation, harmonization, and an institutional analysis of WIPO and the WTO." Edward Elgar Publishing (2011).

²⁴ Elkin-Koren, N. and Fischman-Afori, O., "Rulifying fair use." *Ariz. L. Rev.*, 59, p.161 (2017).

²⁵ Eaton, J., "Trends in Advertising: How the Rise in Artificial Intelligence May Influence the Field of Content Strategy" (Doctoral dissertation, East Tennessee State University) (2017).

²⁶ Sodhi, G., Jain, A. and Singh, R., 2019. "Technology Start-ups and IP Protection in India." CUTS Institute for Regulation and Competition, New Delhi-India (2019).

- ii. **Educational initiatives:** It is important to provide people with information that explains how to behave responsibly on the internet and how to properly conform to copyright rules.²⁷
- iii. **Collaborative platforms:** The implementation of revenue-sharing schemes is one example of a system that may be used to facilitate the ethical sharing of material while also guaranteeing fair compensation for the creators of the content.

Fostering a culture of innovation:

- i. **Support for innovation hubs:** It is important to support the formation of conditions that are suitable to the collaboration of innovators, the discovery of fresh thoughts, and the exchange of knowledge from one person to another.²⁸
- ii. **Access to resources:** In order to facilitate the innovation process, it is important to provide creators with inexpensive access to resources, tools, and opportunities for training
- iii. **Open innovation models:** It would be beneficial to accelerate the process of invention by facilitating collaborations between existing producers and startups. This would encourage the exchange of ideas and speed up the process.²⁹

Building a collaborative ecosystem:

- i. **Multi-stakeholder dialogues:** Encourage artists, platforms, governments, and consumers to maintain open lines of communication and work together in order to address emerging challenges and opportunities.
- ii. **Industry standards and best practices:** For the purpose of protecting the rights of artists and fostering the development of novel concepts, it is necessary to establish and strictly enforce universal norms for the production, distribution, and commercialization of content.
- iii. **Collective licensing initiatives:** Communal licencing options that simplify the management of copyright and ensure that authors are compensated fairly should be looked into.³⁰

Additionally, set aside resources for the purpose of protecting the confidentiality and safety of data. It is essential to ensure the protection of materials and personal information belonging to artists in order to cultivate trust and encourage creative expression. Diversity and inclusiveness

²⁷ Ibid.

²⁸ Ibid.

²⁹ Agrawal, V. and Parveen, R., "A study of why IPR is vital for start-ups in India: in the present scenario." Universal Research Reports, 9(3), pp.7-12. (2022).

³⁰ Ibid.

should be promoted; it is imperative to make certain that persons of all different identities and backgrounds are provided with equal opportunities to participate in the ecosystem of content creation. Further, foster the evolution and usage of AI technologies that preserve creators' rights and have a positive impact on the creative process; advocate for the advancement of ethical AI.³¹

It is crucial to bear in mind that there is no universally applicable answer, and the optimal method will probably entail a blend of these and additional strategies. Through collaborative efforts, all parties involved can establish a conducive atmosphere that fosters both concord and ingenuity, while guaranteeing equitable compensation for content producers.

VI. CONCLUSION

In conclusion, the Indian legal system is making progress in order to address the complexities of the digital era in terms of intellectual property rights in the content creation industry. In spite of the fact that landmark rulings and subsequent changes have been of great aid, there are still challenges that need to be addressed with regard to fair use, internet piracy, and the advent of new material formats. Creators are required to maintain a level of awareness regarding the latest developments in the legal system and to apply IPR mechanisms in a strategic manner in order to protect their work and make the most of their efforts. In the meantime, government initiatives are working to make it easier for creators to access the IPR system. Open access models offer alternative options. Considering the ongoing shifts that are occurring in the content creation business, it is absolutely necessary to develop a robust and adaptable intellectual property rights (IPR) framework in India. To effectively manage the ever-evolving digital environment and to develop a robust ecosystem that encourages creativity and propels innovation, it is essential for policymakers, industry pioneers, and creators to continue working together. This will allow for the promotion of innovation and the protection of the rights of creators in the country.

³¹ Lim, D., "AI & IP: innovation & creativity in an age of accelerated change." *Akron L. Rev.*, 52, p.813 (2018).