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[LONG ARTICLE]

An analysis of offences related to pirated movies

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Abstract: Piracy has become a new trend in this modern digitalized world. It refers to the reproduction or import of the entire or any part of a copyrighted work and sale thereof at a substantially lower price, in the black market, in turn, causing huge amounts of losses to the film industry all over the world. This kind of illegal activity infringes many laws in India, such as the Copyright Act, 1957, IT Act, 2000, etc. This paper will analyse the existing laws in India and the US for combating camcorder piracy. In this backdrop the current paper mainly focuses on three issues, part one deals with the offences relating to cam-cording piracy and its legal consequences. The second part deals with the change in the nature of crime and its legal consequences when the recorded movies are uploaded on the websites. Finally, it will deal with jurisdictional issues, when the upload of the pirated movie and its download are from different jurisdictions.

Keywords: Piracy; Pirated Movies; Cybercrimes; Copyright Act, 1957; IT Act, 2008

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INTRODUCTION

Digital piracy has become a new trend in this high-speed internet connection era. The term 'piracy' refers to illegal copying and distribution of copyrighted content such as software, movies, music, etc. Digital piracy refers to an act of duplicating and distributing the protected content over the internet without previous authorization from the copyright holder¹. Initially, with the introduction of videocassettes in the 1970s, the illegal manufacture and sale of pirated movies increased enormously². This paved the way for digital movie piracy in an increasingly digitized world. Movie piracy until the 20th century was considered to be a physical activity³ i.e. copying movies in CDs and DVDs and selling the same in the grey market. But the digital revolution has triggered the physical to non-physical, i.e. sharing through the internet (P2P file sharing).

Pirated movies are obtained through many methods, one of which is 'Camcorder piracy'.

An act of illegal recording of a movie and uploading the same is considered as a criminal offence all over the world. The major method used by pirates to smuggle the movies is the camcorder method, which includes recording a movie that is placed on the theatre screen by using a lightweight handheld camera with a

¹ PIRACY IN THE DIGITAL AGE. (2006), University of California, San Diego.

<https://courses.cs.washington.edu/courses/csep590/06au/projects/digital-piracy.pdf> [Accessed 8 May 2019].

² UK Film Council, *Anti-Piracy Task Force: an analysis and recommendation for actions*,

<https://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/uk-film-council-film-theft-in-the-uk.pdf> [Accessed 8 May 2019].

³ *Id.*

good quality video, usually mobile phones.⁴ Offences relating to piracy are not restricted to the camcorder piracy method but continues when the same is uploaded on a P2P website, known as the 'WEB-DL' method. This is a kind of method which occurs when the illegally recorded movie is uploaded on websites with good video quality. These websites allow one to either download or stream movies online. Online movie piracy contains two main forms: downloading complete files and streaming a movie. Downloading a movie generally takes a few minutes but streaming a movie allows movies to begin within a second. Both methods use the P2P⁵ system, which is considered illegal and illegitimate. The file-sharing platforms are responsible for the upload and download processes. These platforms or websites are usually organized by small private owners or administrators, usually not very profitable, except a few top sites⁶. The technology used by file sharing websites is Bittorrent⁷ technology, which allows one to download the file faster. The technology used is not illegal, but the contents shared on the websites without the permission of copyright owners makes it illegal. For instance, in 2012, the US courts shut

⁴ CAMCORDING AND FILM PIRACY IN ASIA-PACIFIC ECONOMIC COOPERATION ECONOMIES (2011), Carnegie Mellon University, <https://iipi.org/wp-content/uploads/2011/09/Camcording-and-Film-Piracy-in-APEC-Economies.pdf> [Accessed 8 May 2019].

⁵ Peer to Peer are computer networks that are connected to each other through the internet, which allows to share files between networks without a central system.

⁶ Digital Citizens Alliance and Media Link estimates that top "pirate" sites generate around an annual revenue of \$200 million. See "Good Money Gone Bad" report (2015).

⁷ Bit torrent file is a file created by the seeder which contains the IP address for the seeder computer. The seeder needs to activate the BitTorrent file to connect the seeder computer to a tracker server, which is a computer responsible for linking downloaders with the seeder computer and enable them to download the files in the bit torrent files.

down the popular file sharing platform 'MegaUpload.com', which was involved in the activity of sharing pirated movies⁸. The offences dealing with piracy are considered as IP related crimes - "the unauthorized copying and distribution of copyright content".

This type of crime is not similar to cybercrime as the piracy offence has a long and glorious history. Since the 1970s, many movies have been copied and transferred to CDs and DVDs and sold in the grey markets. The prominence for internet piracy came into being in the late 1990s, with the emergence of Napster's case, where many unauthorized copyright contents of music files were traded by millions. Napster was a file sharing platform, where users who downloaded the software got access to the central database to search music they had on their computer which gets stored on the central server. Users would then search for files from the available list and if both users were online, that file was put into contact and music would be transferred. It gave access to millions of music files freely. Ultimately, Napster was found guilty of contributory and vicarious infringement.⁹ From then on, many sites were involved in such activities, not only music but also movies; even software piracy also came into the picture.

HYPOTHESES

It is hypothesized that averting the offences relating to camcorder piracy in this modern digitalized world is justified. It is hypothesized that changes in consequences when the recorded movies are uploaded on the websites have influenced changes in the laws of pirated movies.

⁸ Illegal File Sharing & the Film Industry (2015) <https://www.econ.berkeley.edu/sites/default/files/Illegal%20File%20Sharing%20%26%20The%20Film%20Industry.pdf> [Accessed 11 May 2019].

⁹ Inc. v. Napster Inc., 239 F.3d 1004 (9th Cir. 2001).

EXISTING LEGAL SITUATION

The Camcorder piracy offence came into light after digitalization and ease of availability of high-speed networks. All these factors constituted cam-cording piracy. This type of illegal recording and downloading was considered as infringement of the Copyright Act. In the USA, to combat movie piracy, several legislations were enacted such as NET Act (No Electronic Theft), 1996; Computer Fraud and Theft act, 1986, and Digital Millennium Copyright Act, 1998.

In India, cam-cording is considered as copyright infringement and thus, Section 65A and 65B of the Copyright Act, 2012 prohibits such offence. Other laws like the Information Technology Act, 2000, and the Civil Procedure Code, 1908 deal with the jurisdictional challenges. Other than the legislations, there are voluntary organizations like MPAA, FACT, STOP, and Anti-Piracy organization.

LITERATURE REVIEW

Movie piracy, especially cam-cording piracy is a hot topic in today's digital entertainment era. The authors *Jason D. Koch, Mike D. Smith, Rahul Telang* in their article titled "*Camcording and Film Piracy in Asia Pacific Economic Cooperation Economies*" highlight the need to combat camcording or WEB-DL piracy. The authors also highlighted the impact of illegal recording and uploading in the file sharing websites along with case studies. Another article titled "*Online piracy of Indian movies: Is the film industry firing at the wrong target*", by *Arul George Scaria* focused on digital piracy, especially in India. He also highlighted certain legal measures to be undertaken by India against digital movie piracy.

RESEARCH METHODOLOGY

The research methodology used is descriptive, analytical, and exploratory. For a better understanding of the topic, the researcher has reviewed many articles including primary and secondary sources. As digital piracy is a recent emerging talk from the 20th century, the background information, progress, and the current state of matter is collected mainly through primary data i.e. from official websites FFT, MPAA, through blogs and other relevant data available on the internet with respect to movie piracy.

CAMCORDING AND WEB-DL PIRACY

Cam-cording piracy occurs when a person enters the theatre with any type of recording device such as a camcorder, smartphone, voice recorder, etc. with an intention to record audio or video of any part of the movie screening in the theatre.¹⁰ This kind of activity is considered illegal. Camcorder offence occurs only when the movies being copied are released in theatres, i.e. the released movies are copied and uploaded on file sharing websites within a day or even an hour of release, making them available to the public. Generally, these pirated movies are for free and one can open the website on any device having an internet connection and download the uploaded movies. This act is also advantageous to the person who is not willing to watch movies in theatre by paying for it. The only difference between watching a movie in the theatre or through illegal download is that the print, when copied is not of high quality. This act of piracy makes a huge remark mainly on:

(A) Entertainment industry; and

¹⁰Fight Film Theft, *What is Camcorder Piracy?*,
<http://fightfilmtheft.org/camcorder-privacy.html>.

(B) Economics of countries.

A. Entertainment Industry

Due to piracy, six out of ten movies are unable to recoup the actual investment made in the movie. According to MPAA, the average motion picture cost \$98 million to make and market domestically.¹¹ The main work of the entertainment industry is to produce movies and make promotions so that it will earn revenue on the box office. But the act of piracy caused many entertainment industries to lose revenue and has also caused losses to copyright holders.

B. Economic Knock

Due to the growth of commercialization and digitalization, and availability of high technology, the revenue made by the entertainment sector is increasing and at the same time, its contribution to the economies of the states is also increasing. This sector eradicates unemployment by providing jobs, thereby increasing the standard of living in the country. Piracy hurts the economies when these industries are not generating minimal revenues due to illegal copying and sharing through websites for free. It also drives out the legitimate jobs of theatre owners, video stores and their employees.¹² The profits obtained from this unlawful activity often ends up in the hands of website owners.

Digital technologies have brought a revolutionary change in movie piracy. Previously, when several copies were made in CDs and DVDs, the level of quality would go down eventually. For instance, when a book is photocopied, the first copy will be generally good; nonetheless, the quality will reduce and decrease with further reproductions. However, this is not the case in digital technology, where the storage is made in binary data – subsequent reproduction does not affect its quality. All

¹¹ *Ibid.*

¹² *Ibid.*

these consequences made WEB-DL piracy a recent evolving trend.

WEB-DL piracy is a continuous act that occurs when the recorded movies are uploaded on a file sharing platform, usually torrents. This type of piracy is considered to be an offence when it is uploaded and downloaded without prior permission from copyright holders. The WEB-DL piracy is not only limited to recorded movies uploading on a website but also leaking any movie or part of a movie before the official release date. In the recent case where '*Udta Punjab*' movie was leaked before its official release date on the internet on two separate file sharing platforms, it was proved that there has been copyright infringement. A 25-year-old was arrested and prosecuted under the Information Technology Act and the Copyright Act, 2012.¹³ Similarly, a recent controversy in a Hollywood movie titled '*The Secret Life of Walter Mitty*' was leaked before its actual release. The pirated copy contained the watermark¹⁴ 'Property of Ellen DeGeneres' which indicated that someone in the production team had leaked it. However, during the investigation, it was found out that the movie was leaked through an unidentified movie pirate platform.¹⁵

LEGAL FRAMEWORK GOVERNING PIRACY

Piracy is not a recent concept. After the Napster case, it is considered to be an 'IP related offence'. Many international conventions came into force to eradicate piracy all over the

¹³ ANI, *Mumbai Police make first arrest in Udta Punjab leak case*, HINDUSTAN TIMES (Jun. 22, 2016), <https://www.hindustantimes.com/bollywood/mumbai-police-make-first-arrest-in-udta-punjab-leak-case/story-CEOaxsTb3DAGFwYqkFk3eK.html>.

¹⁴ Digital watermarks are deliberately subtle markers that can be used to find the source of pirate streams.

¹⁵ Rounak Biswas, *Udta Punjab and Online Piracy of Bollywood Movies*, BANANA IP (Jun. 18, 2016), <https://www.bananaip.com/ip-news-center/udta-punjab-sad-story-online-piracy-bollywood-movies/>.

world. One such convention is the *Cybercrime Convention*. Article 10 of the convention states that 'all the parties signed to the Berne Convention, TRIPS Convention and WIPO Copyright Treaty must adopt such legislation to establish criminal offence under its domestic law, for copyright infringement'¹⁶, except if the act is committed morally. But if the act is committed wilfully on a commercial scale by using a computer system, then it amounts to violation of copyright content which is illegal under the conventions.¹⁷ An international obligation which is binding on each party directs to adopt such responsibility and recognize copyright infringement as a criminal offence. However, there are few drawbacks with respect to this convention – mainly because this convention was drafted a few decades ago and does not include all other conventions and treaties with respect to piracy control.

A. The United States of America

From an early age, the US is one of the major markets for pirated films. Many cam-cording movies were recorded in DVDs and sold in local markets, through smuggling to other countries. These copyright infringements were prosecuted according to laws of copyright framed at that time. The old act does not cover digital piracy – where the physical exchange of copyrighted content decreased drastically, with the growth of digitalization and high-speed network. From the evolution of technology, the Copyright Act has taken many changes. *The Computer Fraud and Abuse Act*, enacted in 1986 is age-old law, which has been amended subsequently for almost 6 times to cope up with the change in technology. Currently, it is codified in the US Code Title 18, Section 1030. This law grants permission to the federal government to step in and take actions against any computer fraud occurring, which in turn

¹⁶ Alisdair A Gillespie, *Cybercrime: Key Issues and Debates* (ROUTLEDGE 2015).

¹⁷ *Id.*

has affected business and the economy of that state – thus, providing jurisdiction to the federal government over computer-related crimes and issues¹⁸.

In the mid-1990s fears began to evolve due to the growth of digitalization and high-speed networks – and the US Congress introduced a bill to combat online copyright infringement. Eventually, the *No Electronic Theft Act, 1997* was enacted to discourage people from uploading and downloading illegal copyrighted content by imposing fines and imprisonment. This law applies even when a person does not benefit commercially, but the act of illegal uploading and downloading, impliedly becomes unlawful. This act split the online copyright infringement as a federal crime into two levels – firstly, the commercial value of downloading and uploading should amount to \$1000, and punishment under this level will be one-year imprisonment or \$100,000 fine or both. The second level is more severe, where if at least ten copies have been made within 180 days period and the person responsible for this has gained minimum \$2500, the punishment is up to \$250000 fine or imprisonment up to five years¹⁹.

In 1998, *The DMCA (Digital Millennium Copyright Act)* was formed in order to protect against those individuals who violate DRM. It is an amendment to Title 17 of the US code. The main aim of this act was to criminalize any production and distribution of copyright content popularly known as DRM. The remedies available were limited i.e. those ISPs platform when used for illegal distribution of copyright material should block such sites or access to illegal material once notified by the copyright holders²⁰.

The US also has an organization that works and regulates motion pictures for decades. In 1922, an organization called

¹⁸ Aaron lawyer, 'List of Piracy Laws in The United States', (Aaronkellylaw.com), <http://www.aaronkellylaw.com/list-of-piracy-laws-in-the-united-states/> [Accessed 12 May 2019].

¹⁹ *Id.*

²⁰ *Ibid.*

MPPDA (Motion Pictures Producers and Distributors Association) was established in order to eradicate the absence of "offensive material" and prevent government interference in filmmaking. Later the name was changed into MPAA (Motion Pictures Association America) in 1945. Since then, this organization acted as the voice and advocate for the film and television industry, protecting creativity and bringing entertainment to the world²¹. In 1975, MPAA established the 'Film Security Office', to work closely with law enforcement to curb film piracy. In 2008, CEO Dan Glickman bolstered an IP protection team for Pro-IP act, the first anti-piracy laws enacted in the US²². Further, in 2017, this organization took a big step to curb online piracy by launching Alliance for Creativity and Entertainment (ACE), a global coalition dedicated to protect the legal entertainment market and reduce online piracy²³. [In 2018], the MPAA is excelling in the field of protecting IP, advancing technological innovation, and supporting trade policies over the globe. This may lead to further expansion in the global film and TV market²⁴.

The remedies available under both international and domestic laws to curb piracy movies are – firstly, the copyright holder can claim injunction from a court of law to block such websites or disable the access to file sharing websites; secondly, the plaintiff through cyber investigation platform can make an inquiry and search the actual IP addresses responsible for sharing illegally recorded movies and the owner or any person responsible for such act matching the IP address will be prosecuted and punished, either imprisonment or fine or both. Usually, when one or more states are involved in a piracy case, the affected person would prefer the first remedy i.e. blocking

²¹ *Who are we, Motion Picture Association,*
<https://www.mpa.org/who-we-are/>.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

the access and file sharing websites. This remedy is easily accessible, where the jurisdiction is not affected.

B. Indian Context

Movies are the only accessible and affordable form of entertainment for the people in India. It is an integral part of the cultural life of the people. The evolution of movies historically in the Indian Film industry has paved the way for the evolution of Copyright laws in India. The historical method of long imprisonment and huge fines are remedies of copyright infringement, which has influenced the power of the film industry in India²⁵. Those remedies were available to overcome the challenges raised by VHS players and video cassette technologies of that time. The film industry from the past few years has been trying to battle the challenges arising from new digital technologies, especially online piracy. As a result of huge revenue losses and economic knockdowns in the entertainment sector, the Indian parliament recently amended the copyright law to include 'Digital Rights Management' ("DRM") provisions.²⁶

The entertainment sector in India has influenced many legislative processes, both at the national and state levels. Even the Constitution of India has vested powers to the parliament on copyright-related matters. The regional film industries have succeeded in imparting legislation on copyright matters in their respective states, either directly or indirectly²⁷. In 2012, the Copyright Act was amended to add two provisions of DRM. To curb digital piracy²⁸, Section 65A and 65B were inserted. *Section 65A* provides "protection for technological measures" – it states that "any person who circumvents an effective technological

²⁵ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, sec. 63-63A, Amended by The Copyright (Amendment) Act, 1984 (India).

²⁶ Juhi Gupta, *John Doe Copyright Injunctions in India*, 18 J.I.P.R. 351, 353 (2013).

²⁷ INDIA CONST. art. 246 and Schedule VII- List I.

²⁸ The Copyright (Amendment) Act No. 27 of 2012 (India).

measure applied to protect any of the rights conferred by this Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine"²⁹. Section 65B provides "protection of rights management information" – it states that, "any person, who knowingly- (1) removes or alters any rights management information without authority, or (2) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine."³⁰ These new provisions were inserted to provide criminal remedies along with civil remedies previously available to the copyright holders and also to combat online piracy and harmonize Indian copyright law with the two WIPO Internet treaties in order to extend protection to copyright holders around the globe in this inter-connected digital era. The Indian judiciary has adopted one of the DRM provisions i.e. *John Doe Orders*. It refers to those orders where the identities of defendants are unknown at the time of filing of the petition and the orders identify the defendants only by way of some description³¹. The Indian judiciary is broadly using these orders for judicial intervention against online piracy. These orders act as a tool for forcing the ISP or websites to block the entire content which amounts to piracy like, hypertext links and uploaded videos. *John Doe* orders are granted only after making a careful investigation. When the movie is released, it is the sole discretion of the makers of the movie to obtain the distribution rights of such a movie. Due to this copyright protection, the illegal copying and uploading on the website to the public for downloading freely is considered to be unlawful and would

²⁹ *Ibid*, s. 63 (A).

³⁰ *Ibid*, s. 63 (B).

³¹ Tanushree Sangal, *Piracy in the Media and Entertainment Industry in India: Stemming the Menace*, 20 ENT. L. R. (2009).

lead to copyright infringement. Downloading a movie from the websites is not illegal, but downloading without the authorization of such copyright holders is illegal and unlawful, thus punishable under the Copyright Act 2012.

CHALLENGE OF JURISDICTION

The judicial system's effectiveness is calculated based on regulations over the system's functioning, principles and its jurisdiction³². It is mandatory for any court to have jurisdiction to hear a case. It is the power or authority given to the court to hear a case and provide judgment. Any judgment obtained without jurisdiction is considered to be ineffective and void. Jurisdiction is normally obtained through two methods i.e. on the subject matter and Personal Jurisdiction. *On the subject matter* – it is the authority of a court to hear a particular type of case, specific to its subject matter; example company law cases are resolved in NCLT. *Personal jurisdiction* is also known as 'in personam jurisdiction', where the court has authority to hear cases based on the party's location or where the property involved in the suit is located. Every court has jurisdiction over persons within their territory. At the same time, no courts can exercise jurisdiction over another person's territory, unless there is some nexus between them³³. Traditionally, the jurisdiction between two parties falling outside the territory of different states is usually governed by the laws of the country agreed between the parties at the time of contract. But this traditional notion of jurisdiction is not prevalent in internet jurisdiction. The internet connects people from all over the world irrespective of their territory to transact with each other. These jurisdiction laws are not the same in the case of digital crime, as internet crime involves parties from different states.

³² Latin word Juris meaning 'Law' and Dicere meaning 'To Speak'.

³³ Suneet Dwivedi, *Jurisdiction Issues In Cyber Crimes*, https://www.academia.edu/3700793/Jurisdictional_Issues_in_Cyber_Crime.

This 'digital crime jurisdiction' issue evolved along with growing digitalization. The internet crime was considered to be cyberspace³⁴ crime, as there is a lack of geographical boundaries on the internet. Cyberspace provides immediate long-distance communications or provides short-time access to any websites all over the world. Any person can commit a crime anywhere within the globe through the internet. One such crime this paper is dealing with is offences relating to pirated movies.

Under offences relating to pirated movies, it is not very difficult to define jurisdiction, as it involves a website where uploading and downloading is taking place. The pirates use websites to upload the recorded movies without the authorization from copyright holders and allow the public to download it for free. These pirates, when using the internet remain in one physical jurisdiction and are subject to laws of that jurisdiction. Thus, it is implied that any person using either WWW (World Wide Web) or any other internet activities are subject to prosecution under any state laws when the same or other state user establishes a claim.³⁵ Although the jurisdiction with respect to online piracy should be determined by considering each case's facts as a single piracy crime case may involve three jurisdictions, such as,

- The laws of the state where pirates reside;
- The laws of that state where the cause of action has occurred;
- and
- The laws of the state where the affected person or person who initiated the claim resides.

Therefore, the major problem of internet crimes is whether the internet should be chosen as physical space or should be treated as a world within and should be free of various restraints. When coming to movie piracy, it is treated as copyright infringement, as the act amounts to illegal copying a movie who

³⁴ Cyberspace is the electronic medium of computer network where communications usually take place.

³⁵ *Supra*, note 33.

has copyrighted his work, in a theatre, and uploading on a file sharing website to make it accessible to the public. Thus, such cases are tried under copyright laws of states and any copyright infringement attracts liability. Even though the infringement is traced, it is difficult to hold a person liable due to cross-border laws.

INDIAN PERSPECTIVE

India is a contributor to major piracy works. The Motion Pictures Distributors Association India, in December 2009, researched and found that India is among the top ten countries around the globe to carry out P2P activities and BitTorrent is the most popularly used websites for illegal downloading³⁶. In order to curb this act of infringing copyright, India made legislative changes in copyright laws to provide remedies for online infringement as mentioned above. The *Civil Procedure Code* in India provides jurisdiction for cyberspace under *Section 20*. It states that "State can exercise its jurisdiction in actions involving persons where;

- there is more than one defendant at the time of commencement of the suit, actual or voluntarily resides or carries on business or personally works for gain;
- any defendants, where there are more than one, provided in such case, the leave of the court has been obtained, or the defendants who reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- The cause of section wholly or partly arises³⁷.

For extraterritorial jurisdiction, *Section 75 of the Information Technology Act* provides that this provision of the act applies to-

- any person irrespective of nationality;
- An offence or contravention committed outside India.³⁸

³⁶ Nikita Hemmige, *Piracy in The Internet Age*, 18 JIPR, 457-464 (2013).

³⁷ S. 20, The Code of Civil Procedure, 1908, Act No. 5 of 1908 (India).

According to this section, the crime committed is against a computer system or network located in India. The framers of this act have adopted the principle of universal jurisdiction in order to cover cybercrimes. It is not only important to adopt universal jurisdiction, but the enforcement of such jurisdiction should also be acceptable in other states. Thus, it is possible only through conventions and treaties between different nations. One popular treaty among that is WIPO Internet Treaty, where the offence relating to digital crime including piracy is prosecuted and enforced in all the states which are parties to that treaty.

The *Copyright Act* of India also provides provisions for an additional forum of jurisdiction to the aggrieved party for the infringement of copyright. *Section 62* provides that proceedings should take place in the 'District courts having jurisdiction'. Here jurisdiction can be placed where the person resides or where the business is carried on or personally works for gain³⁹. Thus, the plaintiff can institute proceedings in any jurisdiction on his own choice.

CASE LAWS

A. Bit Torrent case

In October 2005, a Hong Kong resident Chan Nai-Ming (Defendant) was convicted for distributing 3 movie files over the internet using the P2P file sharing tool known as, Bit Torrent. The Hong Kong magistrate court sentenced the defendant with 3 months of imprisonment. This has been a landmark case in the history of internet piracy, where the magistrate observed that "not only uploading files on the internet P2P file amounts to an offence, but also enabling the third party to download the file is considered to be illegal as it

³⁸ S. 75, Information Technology Act, 2000, Act No. 10 of 2009 (India).

³⁹ S. 62, Copyright (Amendment) Act, 2012, Act No. 27 of 2012 (India).

infringes the copyright holder's rights and attracts criminal liability".

The Magistrate took a different view with regards to Section 118(11) (f) of the Copyright Ordinance and stated that an act of making available to public attracts only civil liability according to copyright ordinance, but in this case, the defendant's acts itself attracted both civil and criminal liability i.e. he not only loaded films from CDs but also created Bit Torrent file and published the hypertext link and name of the movies from where one can download the file. He also kept his computer on with the internet connection so that third parties can download such movies.

In November 2005, the Magistrate gave a verdict on the BT case by sentencing the defendant to 3 months of imprisonment. Thus, Magistrate's ruling in Hong Kong paved way for overseas developments in file sharing cases i.e. WEB-DL piracy.

B. KAT case

A File sharing website 'Kickass Torrent' was shut down after its owner was arrested in Poland. The shutdown had a huge impact on the Indian audiences, as they contributed 24% of revenue to KAT⁴⁰. The defendants alleged that the platform itself is not copyrighted; therefore the illegal sharing of copyrighted content [becomes] void. This counterclaim was dismissed by the court stating that "when a content is protected under copyright laws, it is irrelevant whether the sharing platform is copyrighted or not", however, the files used [were] also [illegally downloaded]⁴¹.

⁴⁰Kian Ganz, *The messy battle against online piracy*, LIVE MINT (Aug. 2, 2016), <https://www.livemint.com/Consumer/YtbRN9fv6ZgZCZOexcsWMI/The-messy-battle-against-online-piracy.html>.

⁴¹Ernesto Van der Sar, *Court Won't Drop Case Against Alleged Kickass Torrents Owner*, TORRENT FREAK (Aug. 4, 2017), <https://torrentfreak.com/court-wont-drop-case-against-alleged-kickasstorrents-owner-170804/>.

CONCLUSION

To conclude, the offence relating to piracy is increasing drastically and due to digitalization and high-speed network, the offence is crossing borders. Thus, it is important to regulate such types of offences as it causes a huge impact on the copyright holders, entertainment industry, and the country's economy. The Indian film industry has always played a significant role in influencing the evolution of copyright law in India. The new DRM provisions under the Indian copyright law are no exception in this regard. Based on the study report provided by the film and media industry, the Indian parliament concluded that online piracy is causing huge losses to the film industry and copyright holders and considered that DRM provisions are an adequate solution to the problem. The Indian judiciary has also inadvertently supported this view by issuing many broad worded orders that can affect the legitimate uses and users of the internet in India. The primary consumers of those pirated products might be the (potential) consumers abroad, who are deprived of access to legitimate channels for watching Indian movies. It is high time for the industry to evolve innovative business practices to reach those potential consumers, rather than solely relying on threats against those consumers through technological and legal measures. If the industry attempts to continue with their age-old business models through legal and technological protection measures it may only deviate their (potential) consumers to other avenues of entertainment in the digital world. There are fewer laws in India to fight against movie piracy. The offence is crossing the border, thus there is a need for a strict law to curb movie piracy internationally.

Therefore, India should become a signatory to the conventions on the cybercrimes treaty and should implement it. In order to minimize the offence of illegal recording, it is suggested for India to establish anti-cam-cording legislation. Campaigns should be held, including celebrities, to create awareness

against cam-cording movie piracy and the impact it is creating on the entertainment industry and economy of the country.
