

# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

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Volume 3 | Issue 3

2021

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# An Analysis of Protection of Intellectual Property Rights in Cyberspace

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## ABSTRACT

*“Intellectual Property Rights” is a term used to describe the ownership of intellectual property. Intellectual property refers to mind-made works requiring imagination, talent, labour, and investment, such as musical, literary, and creative works, inventions, symbols, titles, photographs, and designs used in trade, as well as copyright protection. Patents, copyright, trademarks, designs, and geographical markings are also examples of intellectual property rights. Intellectual property is intangible or incorporeal property, which means that it has no visible presence and only resides in the eyes of the rule. Inventors and developers are encouraged and inspired to use their artistic creations for commercial purposes through intellectual property rights. for the greater good of humanity It gives the producer exclusive ownership of artistic and imaginative work.*

*The majority of intellectual property protection is provided in the form of exclusive rights over a set period of time. Exclusive rights are those that the owners of an intellectual property right may exercise to the exclusion of others. Following that, the inventions and creations are made publicly accessible to the general public. Each kind of intellectual property has a different kind of protection and a different term of protection. In today's knowledge-based economy, intellectual property has become extremely valuable. Since 2005, Indian citizens' perception of intellectual property has risen sharply. Intellectual property is an essential aspect of the activities and planning of technology and knowledge-based businesses. As many fields, ranging from entertainment to information and technology cyberspace, are now intertwined with emerging technology, intellectual property has become increasingly important. As a result, more affirmative defence laws are needed to provide sufficient legal protection and redress against those who infringe on intellectual property rights in cyberspace.*

**Keyword:** *Intellectual property, cyberspace, copyright, artistic creations*

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## **I. INTRODUCTION**

Man is the only living being on the planet with an imaginative mind. His ability to discover new ideas and make his life more enjoyable and glamorous has resulted from his ingenuity, talent, and imagination. In the twenty-first century, all new objects that a person created by using his imagination are considered his property, and those properties are referred to as "Intellectual Property Rights." Intellectual property refers to mind-made works requiring imagination, talent, labour, and investment, such as musical, literary, and creative works, inventions, symbols, titles, photographs, and designs used in trade, as well as copyright protection. Patents, copyright, trademarks, designs, and geographical markings are also examples of intellectual property rights. Intellectual property is intangible or incorporeal property, which means that it has no visible presence and only resides in the eyes of the rule. Intellectual property rights empower and enable inventors and developers to put their artistic efforts to good use for the greater good. It gives the producer exclusive ownership of artistic and imaginative work.

The majority of intellectual property protection is provided in the form of exclusive rights over a set period of time. Exclusive rights are those that the owners of an intellectual property right may exercise to the exclusion of others. Following that, the inventions and creations are made publicly accessible to the general public. Each kind of intellectual property has a different kind of protection and a different term of protection. In today's knowledge-based economy, intellectual property has become extremely valuable.

Since 2005, Indian citizens' perception of intellectual property has risen sharply. Intellectual property is an essential aspect of the activities and planning of technology and knowledge-based businesses. Intellectual property has been critical in many fields, ranging from film to information and technology, in the current era. As the world has progressed into the twenty-first century, we have become increasingly reliant on technology, especially the internet, in our daily lives. As for many ground-breaking technology advances, the internet provides people with the ability to serve as a multinational society, advertise, and work across all borders.

Over national boundaries and beyond any national government's reach we now live in a world of global civilization and a global village. The geographical boundaries of the World Economic Systems have now come to an end. Today, any commercial enterprise must exist in the presence of the internet in order to thrive. The importance of domain names in current

business operations is very strong since a website must have an address that is a domain name. However, information technology in general, and the internet in particular, have emerged as the most significant obstacle to intellectual property rights. Copyright and trademarks are the two major fields of intellectual property protection that have been profoundly influenced by transformation and the rise of the digital era. The internet has been dubbed "the world's largest copy machine," according to the WIPO's International Bureau. The aim of this analysis is to assess the Indian legal system's ability to deal with the issue of protecting intellectual property rights from current risks posed by new informational technical challenges.

#### **(A) The Problem and its Setting**

The present study is mainly devoted to the evaluation of the efficacy of the Indian legal system to deal with the problem of protection of intellectual property rights.

#### **(B) Objectives of the Study**

The primary objective of the study is to examine the nature and the extent of violations of intellectual property rights like trademarks and copyright in cyber space.

#### **(C) Hypotheses**

The hypothesis of the study is that the intellectual property rights such as copyright, patents, trademarks are interwoven with digital technology and the present legal system is inadequate to deal effectively with intellectual property rights violations in cyberspace.

#### **(D) Research Methodology**

The present study is basically doctrinal one; the method adopted for this study involves in-depth analysis of primary sources such as statutes, judicial decisions, international conventions, reports of statutory and non-statutory commissions of national and international, appointed by the government. Secondary sources such as writings of the authors in the field such as, copyright, Trademark, Domain name, Software, national and international policies have been analysed

#### **(E) Importance of the Study**

The importance of the study lies in the fact that it identifies the factors that are responsible for intellectual property rights infringement in cyberspace. The ability of computer to share data with other computers with the help of networking has led to a major communication revolution.

### **(F) Scope of the Study**

The scope of the study is limited to analyse various intellectual property issues relating to copyright, Software, trademark infringement on the Internet.

## **II. INTELLECTUAL PROPERTY RIGHT AND THE INTERNET**

In this information age, the "information is control" is even more accurate. There have been few incidents and discoveries in human experience that have completely changed all aspects of human development. The Information Technology revolution is one of those moments in human culture that can be compared to some other major breakthrough, such as the steam engine or the invention of the wheel. Many people believe that as the Information Technology revolution reaches maximum maturity, the future will never be the same. Any almost difficult challenge had been made feasible by information technology. Virtual content is now just a mouse click away from one's own personal computer. Intellectual capital has been increasingly important since the dawn of the science and information technology age. As a result, intellectual property (IP) and the assets associated with it have become valuable resources that are closely guarded. The world has seen an increase in cross-border transactions in recent years, especially in the last decade. Companies operate in several nations and offer their products and services to entities in multiple locations across the globe. Since intellectual property rights ("IPRs") are country-specific, determining and examining the level of protection given to IPRs in each jurisdiction in a global economy is important. Since cyberspace is brimming with intellectual interactions, protecting intellectual property rights is crucial<sup>2</sup>. India's intellectual property systems and mechanisms are becoming more nuanced and dynamic, which is important for promoting technical innovation for socioeconomic benefits<sup>3</sup>.

The core of life and community is creative thinking and language. Any piece of artistic expression brings spice to life and enriches our world. Great men like Leonardo Da Vinci, Shakespeare, Raja Ravi Verma, and Vishnu Sharma, among others, created works that not only affect human action but also provide rich sources of knowledge and culture. The importance of imagination to humanity is immeasurable, and artists have long held a unique position in society<sup>4</sup>.

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<sup>2</sup> Debord E.Bouchox, *Intellectual Property: The Law of Trade Marks, Copyrights, Patents and Trade Secrets*, 2nd ed., (Canada:West legal Studies,2000),p.4.

<sup>3</sup> Edwards, Lilian and Charlotte Waelde, *Law and the Internet: Regulating Cyberspace*, (Hart Publications, Oxford,1997) ,p.44.

<sup>4</sup> Dr.Kalyan C.Kankanala, *Fun IP, The Fundamentals of I.P* (Bangalore: Brain League IP Service, 2012) p.42.

### **(A) Definition of the Internet**

The growing impact of the Internet on our society, it is very difficult to give a definition of the Internet. In providing a legal response to the impact of the Internet on our society, the United States Supreme Court described the Internet as “unique medium- known to its users as “cyberspace’- which is located in no particular geographical location but available to anyone, anywhere in the world”. Indeed, the Internet can be described as the electronic nervous system of our society which gives the world its dynamic structure.<sup>5</sup> In *American Civil Union v. Reno*<sup>6</sup>, the term Internet was defined as: “The Internet is not a physical or tangible entity, but rather a giant network which inter-connects numerable smaller group of linked computer networks. It is network of networks. Many networks are connected to other networks, which in turn are connected to other networks in a manner which permit each computer in any network to communicate with computers on any network in the system. This global web of linked networks and computers is referred to as the Internet.

### **(B) Meaning and Definition of Cyberspace**

Cyberspace is a virtual environment in which a large number of computers are linked together to share data, information, knowledge, and documents. Cyberspace is a simulated environment where two or more people interact and interact directly rather than physically meeting.

William Gibson, a science fiction author, invented the term “cyberspace” in 1984 to describe his concept of a vast computer network connecting all humans, computers, and sources of knowledge in the world, through which one might travel or “navigate” as if in a virtual environment.<sup>7</sup>

Since the term “cyberspace” was coined as a synonym for “internet” and described as “a collection of electronic networks that span state and national borders”.<sup>8</sup>

The term “Cyber,” which seems to refer to the science of cybernetics, was well selected for this reason because it is derived from the Greek verb “kubernao,” which means “to steer” and is the origin of the word “to rule.” It implies both navigation in an electronic data space and control, which is accomplished by controlling such data. For example, in one of his novels, William Gibson explains how anyone might direct computer-controlled helicopters to a

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<sup>5</sup> Kammal Ahmmad, “*The Law of Cyber Space-An invitation to the Table of Negotiations*”, (United Nations Institute of Training and Research 2005), p.17.

<sup>6</sup> US District Court of Pennsylvania Report, 1996, 929, (Supp 824).

<sup>7</sup> Lawrence Gomes, “Cyber Crimes”, *Criminal Law Journal*, VOL.4, Oct-Dec 2001, at 185.

<sup>8</sup> *Ibid.*

different destination by entering cyberspace. As a result, Gibson's cyberspace is not a passive storage space like a library; the connectivity networks link to the physical world, allowing cyberspace navigators to interact with the world. To begin with, a space has a nearly endless extension, containing so many objects that they can never be fully comprehended at once. This is a fair definition of modern electronic data sets, such as the internet. Second, space connotes freedom of movement, the ability between travel to other states or locations. Finally, a space has some kind of geometry, which includes terms like distance, direction, and dimension.<sup>9</sup>

“The notional world in which interactive contact exists or augmented reality,” according to the Oxford Dictionary. Cyberspace is more than a technological advancement in terms of interactive communications or user interface architecture. Cyberspace is a metaphysical experiment, a medium for testing our very sense of reality, with its virtual realities and artificial universe”.<sup>10</sup>

According to William Gibson, “all those who live by machines will one day commingle in a mutually generated augmented reality: “mankind's unimaginably complex consensual hallucination, the matrix, cyberspace, where the great corporate hot cores exploded like neon novas, details so thick you experienced sensory deprivation if you wanted to apprehend more than the merest outline”.<sup>11</sup>

### **(C) Concept of Information Technology**

Information Technology has evolved over thousands of years as a technological support for human thought and communicating. In today's turbulent economy, it is one of the fastest growing industries. Information technology is described as "any technology that allows us to obtain information”.<sup>12</sup>

### **(D) Meaning of the Word 'Information'**

“Facts or intelligence provided or acquired' is the definition of information. Data, message, text, picture, sound, speech, codes, computer programmes, applications, and databases, as well as microfilm or computer generated micro fiche, are all examples of information.<sup>13</sup>

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Veer Singh and B.B. Parsoon , “Cyber Crimes and the need for National and International Legal Control Regimes” ,*PULR*,Vol.44, 2002, at 37-39.

<sup>12</sup> Robert Merges, *Intellectual Property in the New Technological Age*, 2<sup>nd</sup> ed., (New York: Aspen Law and Business, 2000), p.48.

<sup>13</sup> Sec.2 (v) of Information Technology Act, 2000.

### **(E) Meaning of the Term ‘Information Technology’**

Information Technology (IT) is a new technology that is used to create, store, select, convert, and distribute various types of information.

“Information technology” is defined as “the analysis or use of computers, telecommunication networks, and other devices for storing, retrieving, and transmitting information,” according to the Oxford Dictionary.”<sup>14</sup>

"Computer technology" is defined as "the research, design, development, deployment, support, or management of computer-based information systems, especially software applications and computer hardware," according to the Information Technology Association of America (ITAA). It is concerned with the safe conversion, storage, processing, transmission, and retrieval of information using electronic devices and computer applications.<sup>15</sup>

### **(F) Concept of ‘Intellectual Property Rights’**

Property is derived from the Latin word *proprius*, which means "one's own." With this in mind, we should interpret the term "intellectual property" to refer to the legal rights that can be claimed in relation to the result of human intelligence. Any human endeavour that encourages society's economic, social, technological, and cultural advancement should be promoted, and the creator should be appropriately compensated by providing legal security to his intellectual production.

The concept "intellectual property" is a common word that became popular in the twentieth century. This umbrella term refers to a set of legal systems, each of which confers ownership rights in a certain subject matter of varying degrees. As a result, Intellectual Property Rights (IPR) are the legal rights that regulate the use of human minds' creations.<sup>16</sup>

### **(G) Intellectual Property in Cyberspace**

Before diving into the Indian IPR landscape, it's important to first grasp the legal definition of the term "domain." The concept "property" has a wide range of uses, each with a different degree of generality. Land, in its broadest sense, refers to any of a person's legal rights, regardless of type. In rule, a man's land is all he owns. In a second, more limited context, land

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<sup>14</sup> <http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100003879>, (Visited on 20.2.2017).

<sup>15</sup> Rayudh, C.S, *Media and Communication Management*, (Mumbai: Himalaya, 1993), p.466. [ogya.edu.iq/ce/Lectures/SarmadFuad-MIS/MIS\\_Lecture\\_3.pdf](http://www.ogya.edu.iq/ce/Lectures/SarmadFuad-MIS/MIS_Lecture_3.pdf) ([http://shodhganga.inflibnet.ac.in/bitstream/10603/3814/14/14\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/3814/14/14_chapter%204.pdf), visited on 13/1/2017).

<sup>16</sup> Dr.M.K.Bhandari, *Law Relating to Intellectual Property Rights*, 2<sup>nd</sup> edn, (Allahabad: Central Law Publication, 2010), p.2.

refers to not all of a person's rights, but rather his exclusive rights as opposed to his personal rights. The former refers to his estate or land, while the latter refers to his status or personal circumstances. In a third application, the term refers to only certain proprietary rights that are both proprietary and in rem, rather than all proprietary rights.<sup>17</sup>

### **(H) Meaning and Definition of Copyright**

The term "copyright" comes from the word "copier," which was first used in 1586. At the most basic form, copyright refers to a person's sole right to "copy" such intellectual works produced by that person.<sup>18</sup>

### **(I) Copyright From Gutenberg to the New Information Technology**

The invention of Gutenberg's printing press necessitated the development of copyright legislation. The English East India Company brought the English Copyright Act of 1942 to India, resulting in the creation of a copyright law in India. In 1911, the Statute was amended, and in 1914, a new Copyright Act was passed.

The main provisions of the Act were as under:

- (i) The authors' right was born immediately when the work was created;
- (ii) Protection was meant for the material which was original and not to ideas;
- (iii) The term of the right extended up to 25 years after the death of author. By virtue of the provisions of Article 372(1) of the Constitution of India, it remained applicable even after the India attained independence in 1947. With a view to consolidating and amending the old law, the Copyright Act was re-enacted in 1957.<sup>19</sup>

The Copyright Act of 1957 is India's oldest piece of intellectual property law. Prior to 2012, the Act was revised five times, one each in 1983, 1984, 1992, 1994, and 1999 to satisfy national and international standards.<sup>20</sup>

When emerging technology emerge, there is a greater need for regulatory action. The advent of information technologies at the end of the twentieth century necessitated improvements in standard copyright law. Through the Copyright (Amendment) Bill, 2010, the legislature intends to amend the Copyright Act of 1957. One of the goals of the Copyright (Amendment)

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<sup>17</sup> Copyright in Digital Era, *Building Evidence for Policy*, (Washington DC: National Academic Press).

<sup>18</sup> Dr.B.L.Wadehra, *Law Relating to Intellectual Property*, 4<sup>th</sup> edn. (Delhi: Universal Law Publication) p.263.

<sup>19</sup> Akhil Pradas & Aditi Agarwal, *Copyright Law Desk Book Knowledge, Access & Development*, (Delhi: Universal Law Publishing Co.Pvt.Ltd., 2009), .p.17.

<sup>20</sup> P. Narayan, *Law of Copyright and Industrial Designs*, 4<sup>th</sup> edn , (Kolkatta: Eastern Law House, 2007), p.6.

Bill, 2010, is to solve the problems of the new world and the internet.<sup>21</sup> The Copyright (Amendment) Bill, 2010, on the other hand, aimed to apply copyright rights to the digital world, with anti-piracy legislation being the top priority. The Copyright Amendment Act of 2012 makes major changes in terms of reach, as it addresses the problems faced by the Internet but still going past these challenges.<sup>22</sup>

### **III. INTERFACE BETWEEN INTELLECTUAL PROPERTY RIGHTS AND INFORMATION TECHNOLOGY**

The ability of a computer to exchange data with other computers through networking has ushered in a significant telecommunication revolution. The idea of cyberspace has emerged as a result of networking. Facts, challenges, situations, hypotheses, methods, and other items exchanged by two or more disciplines, techniques, or fields of research are referred to as interface. Any arrangement for communicating information by programmes or equipment is referred to as an interface. In the information technology age, the concepts of copyright, patent, and trademark have taken on a different meaning. The following questions have emerged as a result of this context.

#### **(A) Impact of Information Technology on Intellectual Property Rights**

The advent of the Internet, or information media, has resulted in an exponential increase in the amount of questions about how to defend intellectual property rights on the Internet. In order to secure intellectual property rights on the Internet, though. However, in order to secure intellectual property rights on the Internet, it is necessary to determine the Internet's effect on the area of intellectual property rights. This is also needed in order to provide a thorough legal review of jurisdictional questions in the case of violation of intellectual property rights in cyberspace. In the world of science and technology, the twenty-first century has seen unstoppable progress. Computer networks and telecommunication systems are the two major groups. The division of cyber law that governs information technology for gathering, saving, transmitting, and communicating data is known as information technology. India will also use information technologies to tap into conventional commodity markets. Digital technology is transforming the way the developed world progresses, and it opens up new doors for us in competitive fields such as copyright, trademarks, and science.

Digital infrastructure benefits the general public, including residents in remote communities,

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<sup>21</sup> Aparna Viswanathan, *Cyber Law Indian and International Perspectives on Key topics including at a Security, E-commerce, Cloud Computing and Cyber Crimes*, 1<sup>st</sup> edn, (Nagpur: Lexis Nexis Butterworths Wadhwa, 2012) p.240.

<sup>22</sup> *Ibid.*

by providing access to information. As a result of the information technology revolution in developing nations, where software development has advanced rapidly, exponential growth in all areas is likely. It's no surprise that India will join the knowledge superhighway. The "Internet" connects over 40 million people to 20,000 networks distributed across 130 countries. As technology advances, hardware and software are expected to become less costly, as they have expanded their capabilities even in remote regions. We must take advantage of this fantastic tool in all of its forms, including social, educational, and economic growth. Computer connectivity has made information available to people all over the world in a timely and cost-effective manner.<sup>23</sup>

Prof. Amartya Sen, a Nobel Laureate, believes that only technology can provide a focused path for growth, which, when combined with health-care programmes, can help countries reduce poverty by capacity building.<sup>24</sup> We do not forget, though, that information technology is a wonderful divider, separating the haves from the have-nots.<sup>25</sup> As a result of the advent of emerging modes of technology in the 1990s, intellectual property law began to face new problems, and territorial borders began to lose their meaning. Orthodox notions of authority and government are complex, but they come down to two points: "first, when you're online, you're simultaneously there and nowhere at the same time. Perhaps the most distinguishing feature of this remarkable modern "borderless" medium is its uniformity. Second, the Internet is not owned or controlled by any one person or government. As a result, some important intellectual property content, such as digital music, books, and apps, can be transmitted quickly across the internet without crossing boundaries in an internet world."<sup>26</sup>

### **(B) Copyright Issues in the Digital World**

Digital documents can be downloaded conveniently and easily all over the world, copied without mistake for preservation, preserved compactly, and searched almost instantly. Networks, digital databases, electronic publishing, technological advances, satellite networking, cellular technology, and other emerging technologies are posing serious challenges to copyright legislation. Copyright is eligible for expressions rather than ideas, according to the Copyright Act of 1957, as long as the expression is "original." "Literary, dramatic, musical, sound capture, and cinematograph films" are examples of copyrighted

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<sup>23</sup> Abhijit Mukhopadhyaya, "The Information Technology Act 2000; An Overview", *Chartered Secretary*; Vol XXX No.8; Aug.2008, p.276.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Jane C.Ginsburg, "Putting Cars on the "Information Superhighway": Authors, Exploiters, and Copyright in Cyberspace", *Colum .L.Rev.*, 1995, pp.1466-67.

works. The owners of copyright are granted monopoly rights such as copying, dissemination, public correspondence, public presentation, translation, adaptation, and inclusion of literature and other works in sound recordings and cinematograph films. The owner has the right to request remedies under the Copyright Act of 1957 to enforce his rights.

### **(C) Copyright Issues in Cyber Space**

Artistic and literary production and re-creation was vastly enhanced by the Internet. The Internet is an excellent forum for artists and writers to disseminate their work because of its ease of dissemination from writer to audience, and then from viewer to viewer. Similarly, technology allows all of these audiences to quickly and easily edit, manipulate, distort, or redistribute an original work without the permission of the author. The internet and emerging media have created what has been dubbed the “digital challenge” of copyright law. Digital media allows individuals to produce an infinite amount of ideal digital versions of songs, books, or films, and to spread such digital works around the globe at the speed of light through the internet. The definition of copyright on the internet has taken on a new level as a result of digitalization. It enables high-quality copying to be completed efficiently, cheaply, and conveniently, and then delivered to potentially millions of individuals in a matter of seconds.<sup>27</sup>

## **IV. COPYRIGHT INFRINGEMENT IN CYBER SPACE: REMEDIES UNDER INDIAN LAWS**

Information Technology has revolutionised the commercial world and has expanded to other industries such as trade, finance, and entertainment. Any commercial enterprise today relies on the Internet to stay afloat. Information Technology is unaffected by nationality, ethnicity, ideology, or economy, and is entirely responsible for trade globalisation, free trade, and commerce. The effectiveness of copyright law as a way of regulating illegal copying has been strongly questioned due to advancements in copying technologies and lower costs of producing copies of all kinds of copyright works. Copyright protection grants the author of a work a ‘bundle of rights,’ including the exclusive right to replicate the work in copies, to create derivative works based on the copyright work, and to publicly perform or view the work. In a networked world, both of these privileges come into effect.<sup>28</sup>

### **(A) Copyright Infringement in Cyber Space**

The advancement of Internet technologies has aided the cultural and economic growth of

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<sup>27</sup> Netanel Neil W, “Copyright and a Democratic Civil Society”, *Yale Law Journal*, 1996, pp.283-287.

<sup>28</sup> Sterling, J.A.L., *World Copyright Law*, (London: Sweet & Maxwell, 2003), p.88.

society. It has been used to infringe on a work's copyright with impunity due to its existence of operation. Internet connectivity necessitates a simple modem infrastructure as well as a suitable arrangement with the access provider. Copyright refers to a legal privilege granted to the author or licensee to prevent the duplication of certain forms of artistic, informational, and entertainment works.<sup>29</sup> A copyright work is disseminated by different basic technological means, and the copyright is abused also through these methods. For example, it is simple to make digital or digitised versions of content such as text, images, audio, and video.

### **(B) Copyright Infringement in Cyber Space: The Copyright Act, 1957**

On the Internet, intellectual property rights are especially vulnerable to violation. Piracy has become increasingly simple, and copyright violations of copyrighted content have become major legal issues. Illegal dissemination of copyrighted works in the virtual universe is a major concern for copyright owners, especially publishers of books, films, music, and apps. As a result, law enforcement officials continue to investigate and prosecute cyber copyright pirates.<sup>30</sup>

### **(C) Liability of Linking, Caching, Hyper Linking under Copyright Act 1957**

A website's hyperlink does not actually allow someone to copy any meaningful material, but rather serves as a pointer to another domain. In most cases, a surface connection to a home page would not demand authorization. This viewpoint is based on the idea that by going online, everyone with a device is granted an implicit licence to view the website. Placing a surface connection isn't an intrusion<sup>31</sup> any more than the library catalogue.<sup>31</sup>

### **(D) Remedies for Violation of Copyright in Cyberspace under the Copyright Act 1957**

As copyright is violated, the holders of the copyright have the power to sue for restitution, injunctions, benefit of accounts, and delivery up of infringing products. Copyright holders whose interests have been infringed may seek redress from Indian courts in a number of ways. One of these steps is to require that all unauthorised copies, including master copies, be impounded and burned. Monetary restitution, which may provide monetary penalties, punitive damages, legal expenses, and attorney fees, is another way that courts provide protection to copyright holders. The copyright Act, 1957 provides three types of remedies in case of infringement of Copyright as follows:<sup>32</sup>

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<sup>29</sup> W.R. Cornish, *Intellectual Property*, 3<sup>rd</sup> edn, (Delhi: Universal Law Publishing Co. Pvt.Ltd., 2001), p.7.

<sup>30</sup> [http://www.rmlnl.ac.in/webj/alok\\_kumar\\_yadav.pdf](http://www.rmlnl.ac.in/webj/alok_kumar_yadav.pdf), (visited on 15/7/2017).

<sup>31</sup> See Section 51 of the Copyright Act 1957.

<sup>32</sup> See Sections 54, 62, 63, 63b of the Copyright Act,1957.

- (i) Civil Remedies (section 54-62)
- (ii) Criminal Remedies (section 63, 63B)
- (iii) Administrative Remedies.

The remedies of civil nature available to the aggrieved person under the Act are:

- (i) Injunction
- (ii) Damages,
- (iii) Conversion of account,
- (iv) Restrain, and
- (v) Otherwise as conferred by law.

### **(E) Mens Rea in Case of Infringement Copyright on the Internet**

Section 63 of the Copyright Act, 1957 prescribes the remedies of criminal nature for knowing use of infringing copy of computer program. Section 63B of the Copyright Act, 1957 provides that the person who knowingly makes use of an infringing copy of a computer program on a computer shall be:

- (i) Punishable with imprisonment for the term which shall not be less than seven days but which may extend to three years; and
- (ii) With fine which shall not be less than Rs.50, 000 but which may extend to Rs.2 lakh.

The theory "Actus nonfacit reum nisi mensit rea" underpins the common definition of crime. This means that an act is not a felony because it is performed with the intent to commit a crime. In the case of typical copyright infringement, our statute expressly states that the defendant must commit the offence "knowingly." The adverb 'knowingly' is an indirect way of indicating that 'mensrea' is expected.<sup>33</sup>

The Information Technology Act of 2000 does a good job of introducing both the need for "mens rea" and "strict liability." Since there is no suggestion of mens rea as a required component of the offence, the responsibility under Sec.43 is a kind of strict liability.

### **(F) The Copyright (Amendment) Act 2012**

The infringer or the Internet Service Provider will be held liable for copyright violations on the Internet (ISP). Many people are interested in the act of copyright theft on the internet.

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<sup>33</sup> Shailaja Menon, *Protection of Intellectual Property in Cyber Space*, 1<sup>st</sup> edn, (Delhi: Authors Press Global Network, 2003), p.90.

Copyright abuse on the internet is committed by the following parties:<sup>34</sup>

- (i) Internet service providers
- (ii) and the individual

ISPs (internet service providers) are companies who offer internet connectivity to their clients or subscribers. While it seems that the individual who uploads the paper should be held accountable for violations, there is a trend to keep the service provider responsible. This is due to mostly two factors.<sup>35</sup>

## V. CONCLUSION

Since we live in the "digital age," information technology has become an integral part of our daily lives, transforming the whole planet into a "virtual community" of everybody connected through the internet. Nobody owns the Internet, and no single individual or organisation has complete power of it. The value of intellectual property has risen as a result of advances in information technology. Intellectual property is information accessible in cyberspace in the form of electronic applications, trade secrets, literary works such as fiction, books, and magazines, and artistic works such as art, photos, and sound recordings. As a result, intellectual property rights apply to digital content. In cyberspace, copyright and trademark are critical issues in intellectual property rights. Traditional interpretations of trademark and patent law are inapplicable to Internet-related conflicts. The 'Internet' has had such an effect that copyright enforcement seems to be routinely outsmarted by accelerated exchange of 'information' across geographical boundaries. Web pages are a collection of resources that are expressed to the user as information content, and often include language, images, audio, and video. Protecting copyright rights is critical since planning, creating, and managing a complex web site is very costly. When users becoming more involved with websites, the production, construction, and management of these sites places tremendous demands on creative marketing strategies that should be legally covered. The Information Technology Act of 2000 adds valuable new resources to the battle against cyber piracy, but it doesn't fix the issues that have arisen as a result of the rise of domain names. The Information Technology Act of 2000 does not address issues about violations of certain Intellectual Property Rights, including copyrights, trademarks, and patents. There is no single authority or control point on the Internet. There is no single rule-making body that has exerted comprehensive regulatory

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<sup>34</sup> <https://www.ijsr.net/archive/v5i5/NOV163712.pdf>, (Visited on 16.5.2017).

<sup>35</sup> Kahandawaarchchi Thilini, "Liability of Internet Service Providers for Third Party Online Copyright Infringement: A Study of the US and the Indian Las", Vol.12, Nov.2007, *Journal of Intellectual Property Rights*, pp.553-561.

dominance over the Internet due to the fact that information technology is borderless.

The internet's evolution, or technical advancement, has changed the world of copyright in many ways. The digital world has made it very convenient to distribute material, in addition to practically eliminating the expense of duplication. Although the simplicity of copying and dissemination of material saves copyright holders a lot of money, it also exposes them to uncontrollable pirate attacks. The vulnerability of copyright law under which Internet media has been provoking the legal fraternity to come up with sophisticated legal measures to address the problems raised by the Internet has prompted the legal fraternity to come up with sophisticated legal measures to address the problems posed by the Internet Unlike the real world, where piracy is prevalent, the digital world lacks the competence and legal power to regulate copyright rights in cyberspace. Since technology is transnational in nature, tracing copyright violations in cyberspace is more complex. Lack of political commitment, insufficient regulatory arrangements, bad law implementation, or a lack of funds should not be a barrier to copyright protection. With the rapid pace of technological change, it is critical to resolve these concerns and incorporate adequate protections in copyright law to ensure that the copyright law maintains its proper balance. The rules of the Copyright Act of 1957, as amended by the Copyright (Amendment) Act of 2012, provide answers to the majority of copyright-related problems in cyberspace. However, in order to pursue realistic alternatives in cyberspace, courts would need to take a rational view. Around the world, intense legal attempts have been made to find regulatory formulae to deal with the remaining copyright problems in cyberspace that are not protected by conventional standards. The Information Technology Act of 2000 has yet to become a law, necessitating a new perspective and approach that can successfully address the problems faced by information technology. The Digital Millennium Copyright Act, 1998, defines copyright theft on the Internet and compensates the author of such work for economic damage. By following this Act, infringement must be adequately regulated by India's copyright legislation, allowing the enforcing agency to avoid copyright infringement in cyberspace. The standards outlined in the WIPO Internet Treaties and the WIPO Copyright Treaty of 1996 should be used to improve current copy right legislation. While there are copyright law principles and international copyright regimes in place, the key issue is their applicability in cyberspace. Many copyright challenges in cyberspace are unique and difficult to resolve, necessitating the development of new regulatory systems to address them.

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