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***Legal Issues With Respect To Online File  
Sharing And Copyright***

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***Abstract***

The core element of copyright is that persons who produce such intellectual work should be able to support themselves through their talent and labour and that innovation must be recognised. Owners are given control over and a share of the money made from the commercial exploitation of their works pursuant to copyright protection. Copyright comes into being as soon as the work is produced since it is about safeguarding "original expression." Intangible forms of expression that can be viewed, reproduced, or otherwise communicated either directly or with the aid of a computer or mechanism are protected by copyright as "original authors of workship."

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## **I. Introduction**

The core element of copyright is that persons who produce such intellectual work should be able to support themselves through their talent and labour and that innovation must be recognised. Owners are given control over and a share of the money made from the commercial exploitation of their works pursuant to copyright protection. Copyright comes into being as soon as the work is produced since it is about safeguarding "original expression." Intangible forms of expression that can be viewed, reproduced, or otherwise communicated either directly or with the aid of a computer or mechanism are protected by copyright as "original authors of workship."

The introduction of new technologies in the digital sphere has made the copyright system more difficult to implement. While the development of digital and information technologies has in some ways promised the owners of copyrights a larger market, on the other hand, those same technologies have sounded a danger to the owners of copyrights with a loss of control over their own property. Effective administration and control of newer digital items is becoming a big challenge as they hit the market. The copyright holders are constantly in danger of ceding control of their protected works. They are employing technology to maintain control over their creations in order to defend them against the onslaught of digital commodities on the worldwide web.

It would be impossible to enforce copyright laws against individual internet users worldwide because even downloading could be considered a copyright violation. Therefore, since Internet Service Providers (ISPs) permit and facilitate copyright infringements, copyright holders have shifted legal responsibility for infringement to ISPs.

## **II. Copyright In Digital Medium**

While technological advancements have always shaped the boundaries of copyright law, the advent of digital technology in recent years has presented a whole new set of problems for the copyright system. It is challenging for copyright owners to manage the reproduction of their works because digital works are easily duplicable and producing thousands of "perfect" copies is a straightforward task. Additionally, the ease of transmission via the internet has caused copyright owners to face additional challenges. A computer with an internet connection can upload a pirated copy of a digital work, making it accessible and spread around the world.

## **III. File Sharing – Meaning And Process**

Allowing access to many types of digital material, such as documents, photographs, computer programs, multimedia files including audio and video, graphics, computer programs, e-books, etc., is known as file sharing. The phrase can be used to describe both private and public content or data dissemination in a network. Different networks may have different privileges and a different sharing scheme. Most file-sharing tasks rely on two fundamental sets of network requirements. They are:

1. File Hosting Services
2. Peer-to-peer File Sharing

## **IV. Technology That Permits Online Sharing**

On the Internet, data is transmitted as packets. To make transmission easier, each piece of data that crosses the network is divided into a number of smaller packets. This particular packet is then transferred and travels a different path before arriving at its destination. When all of the packets that make up a message have reached their final destination, they are reassembled to create the original message<sup>1</sup>. Every network has specialised hardware called routers that manage the transfer of the aforementioned packets. The router determines the optimum routes for each packet's trip by examining the destination of each packet.

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<sup>1</sup> A. D. Murray, *The regulation of cyberspace: Control in the online environment*, (1st Ed., 2007)

A system like packet switching makes sure that the networks are not clogged with data as it passes through. The transmission of smaller data packets is simpler.

## **V. Advantages Of File Sharing Through Digital Means**

As previously noted, copyright law has historically eyed new technologies with suspicion before eventually embracing them into the legal framework. The same is true of the technology that makes it possible to share files online. Online file sharing has drawn a lot of criticism from a variety of quarters for purportedly encouraging the unlawful distribution of copyrighted content, yet its advantages cannot be disregarded. Such systems are used for some behaviours that can be deemed improper. However, rather than totally ignoring its significance, legal institutions should determine how the same might be regulated. The numerous parties involved, such as the artists, producers, distributors, etc., can benefit from free online file sharing in a number of ways that could very well be included into the law.

## **VI. Advantages to Businesses**

Digital content can be copied for practically no money while maintaining the original's high quality. So, content industries may do away with the expenses of the conventional means of producing copies and disseminating them. The world has become smaller as a result of increased sharing capabilities, which might benefit the content sectors by making it simpler to attract opportunities. There are numerous instances of musicians who became well-known as a result of home videos they uploaded to file sharing websites and were subsequently discovered by record labels. It can lead to circumstances that are advantageous to both the artists and the content businesses. Psy, a South Korean musician whose song The Gangnam Style was originally written for a local audience but was later posted on YouTube and became incredibly successful, is a great illustration of this.<sup>2</sup>

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<sup>2</sup> Gangnam Style music video 'broke' YouTube view limit, BBC World, 4 December 2014, available at <http://www.bbc.com/news/world-asia-30288542>, last accessed on 4 June 2023.

## VII. Advantages to Artists

Artists are in a position to acquire broad visibility and a more varied audience with the aid of online networks. This contributes significantly to their music's efficient dissemination and promotion at a far lower cost. Justin Bieber, a Canadian musician, is a prime illustration of how content sharing on social media can boost an artist's popularity. Through family-produced YouTube videos in which he sang covers of various well-known songs, Bieber rose to fame as a singer<sup>3</sup>. Online file sharing also enables a higher percentage of word-of-mouth advertising. A network like this guarantees improved and enhanced contact with the listeners while promoting relevant products and services.

## VIII. Advantages to Consumers

The largest winners from the system of online file sharing might be said to be the customers. This is due to the fact that they have access to limitless, high-quality, variety stuff for free. These systems let users to quickly choose what content they want to access and how they want to consume it. They also allow users rapid access to a wealth of content. It offers a far wider range of options and allows people more ability to decide what material will do well in the industry.

## IX. Legal Developments Relating To File Sharing

Around the world, there have been a number of advancements regarding file sharing activity. The system's gaps that need to be filled will be highlighted by a thorough analysis of the same.

***International Developments:*** There are no particular requirements for the protection of intellectual content in the digital sphere under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, 1995. However, content owners in the US thought that more interpretation of the current rules was necessary. A complex legal framework for intellectual property rights in the digital sphere was set forth in a White Paper on the Intellectual Property and the National Information Infrastructure Report that the Clinton administration had released in 1995.

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<sup>3</sup> See Justin Bieber Biography, available at <http://www.biography.com/people/justin-bieber522504#childhood>, last seen on 17/03/2023.

The government planned to implement the policies based on the Report, but they were rejected by the US Congress after receiving harsh opposition from numerous copyright user groups.<sup>4</sup> In the same year, the US Government then presented the Report to the World Intellectual Property Organization (WIPO) in the form of treaty proposals<sup>5</sup>. Two treaties that were highly dependent on US arguments were passed in 1996 due to WIPO's efforts. The increase of copyright protection granted to content owners on the Internet was made possible by the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Despite entering into force in 2002, both Treaties were finalised in 1996.

In accordance with the Berne Convention, the WCT was a specific agreement that addressed the protection of works and the rights of their authors in the digital sphere. In addition to ensuring the protection of literary works under the Berne Convention, it also secured the protection of databases and computer programmes under the Copyright paradigm. Compared to the Berne Convention, the rights granted to content owners were expanded. This was accomplished by granting them additional public communication rights in addition to distribution and rental rights.

### **In U.S.A.**

For their suspected involvement in illicit file sharing operations, file sharing platforms have faced legal action on numerous occasions in the US. To prevent the distribution of protected content using these channels, the content industries have used a variety of strategies. To stop allegedly unlawful file sharing, measures have evolved from focusing on servers and accusing them of secondary infringement to sending out mass notices for infringement.

**Sony Corp. of America et al v. Universal City Studios et al<sup>6</sup>** : The Supreme Court of the United States found in a case that is also referred to as the "Sony Betamax case" that making individual copies of entire television programmes for time-shifting purposes is not copyright infringement but rather fair use.

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<sup>4</sup> Y. Tian, Re-thinking Intellectual Property: The Political Economy of Copyright, 88 (1st Ed., 2008)

<sup>5</sup> *Ibid*

<sup>6</sup> 464 U.S. 417 (1984)

## X. Digital Millennium Copyright Act, 1998

On October 28, 1998, President Bill Clinton officially signed the Digital Millennium Copyright Act (DMCA) into law. The act was established in order enable the US to uphold its duties under the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), two treaties that were signed in 1996. The DMCA addressed a number of significant copyright-related problems. The Copyright Office was obligated by Title I of the DMCA to carry out two studies in collaboration with the National Telecommunications and Information Administration (NTIA), one on encryption and the other on the impact of technical advancements on two current Copyright Act exclusions. The functioning of the First Sale Doctrine and the Exemption, which permits owners of copies of computer programmes to replicate and modify them for use on a computer, were also things that the Copyright Office was supposed to research. *By virtue of Title II of the DMCA, Section 512 of the Copyright Act was inserted in an effort to strike a compromise between the interests of content owners and network service providers.* This clause added four new restrictions on network operators' legal responsibility for copyright infringement. The restrictions were as follows and were based on the following four categories by a service provider:

- Transitory communications;
- System caching;
- Storage of information on systems or networks at direction of users; and
- Information location tools.

Although the DMCA addressed a number of other important issues, internet file sharing was most affected by the aforementioned issues. In the wake of emerging information and communication technologies, the DMCA was considered as a method to reinforce the legal protection around intellectual property rights.

**A & M Records v. Napster<sup>7</sup>**: The defendant (Napster), according to the court, was held accountable for both vicarious and contributory infringement of the plaintiff's copyrights. Since the Napster case examined how copyright rules and peer-to-peer file sharing networks interact, it has gained tremendous prominence.

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<sup>7</sup> A&M Records, Inc. v. Napster, Inc., decided by the US Court of Appeals for the Ninth Circuit

## **In India**

Although there haven't been as many protracted legal battles over illicit file sharing in India as there have been in the US, they have steadily increased. These have included everything from legal actions to the incorporation of technical tools for the assertion of rights. It has also been widely documented how to stop unauthorised distribution of creative content by using John Doe orders, often known as Ashok Kumar orders in India.<sup>8</sup>

**Super Cassettes v MySpace Inc**<sup>9</sup> : In 2007, the Super Cassettes Industries Limited (SCIL) sued My Space, a social networking site, claiming copyright infringement. This occurred as a result of My Space users distributing SCIL's copyrighted works there without the company's consent.

## **XI. Measures Introduced Through Copyright (Amendment) Act, 2012**

The Copyright Amendment Bill, 2012 was unanimously approved by both houses of the Indian Parliament in May 2012, bringing Indian copyright law into accordance with the WIPO-Internet Treaties. The 2012 Amendment made a number of amendments with the goal of bringing Indian Copyright Law into the digital era. The Copyright Act of 1957 was modified to make the relinquishment procedure easier by adding Section 21<sup>10</sup>. The modification allowed for relinquishment with a straightforward public notice to that effect, whereas the prior law called for a notification to the Registrar of Copyright. The Copyright (Amendment) Act of 2012 incorporated the Protection of Technological Protection Measures into Section 65A.<sup>11</sup> The issue of circumvention affecting public interest in having access to works made possible by copyright rules is also clarified by this amendment. For certain purposes, Section 2 enables circumvention. There is ambiguity surrounding the definition of the phrase "*effective technical measure*" and how it affects both the Fair Dealing Principle and the Copyright Exhaustion Principle. Stakeholders have reacted differently to the modification.

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<sup>8</sup> K. Shanmugam, Dear John, Telegraph India (11/07/2012)

<sup>9</sup> CS (OS) No. 2682/2008, Delhi High Court

<sup>10</sup> Section 21, Copyright Act 1957, Right of Author to Relinquish Copyright

<sup>11</sup> Section 37, The Copyright (Amendment) Act, 2012



## **XII. Conclusion**

Law alone cannot attempt to control sharing activities on the Internet, as evidenced by a study of the development of online sharing technologies and the various responses to it. Technology has been created to get around every piece of legislation. Law will always be two steps behind technical progress if technology is attempted to be regulated solely through legal means. This is due to how drawn out the legislative process is. Additionally, the legal responses imply that content owners typically spearhead the legal amendment requests that tighten their protection.

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