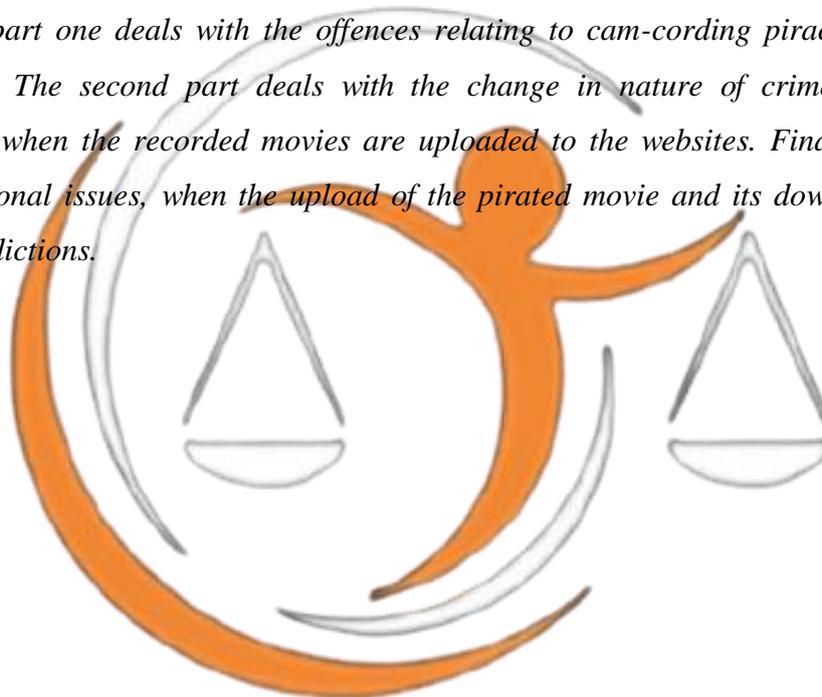


CONSPIRACY OF PIRATED MOVIES: THREATS AND REMEDIES

Virupakshi. R¹

ABSTRACT

Piracy has become a new trend in this modern digitalized world. Piracy refers to the reproduction or importing of the entire or any part of copyrighted work and selling the same at a substantially lower price, in the black market. In turn, causing a huge amount of losses to the film industry all over the world. This kind of illegal activity infringes many laws in India i.e. Copyright Act, 1957, IT Act, 2000. This paper will analyze 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 nature of crime and its legal consequences when the recorded movies are uploaded to the websites. Finally, it will deal with jurisdictional issues, when the upload of the pirated movie and its download are from different jurisdictions.



¹ADVOCATE.

INTRODUCTION

Digital piracy has become a new trend in this high-speed internet connection era. Digital piracy refers to an act of duplicating and distributing the protected content without previous authorization from the copyright holder i.e. sharing over the internet. The concept of pirated movies has increased drastically with the ages. Initially, with the introduction of videocassettes in the 1970s, the illegal manufacture and sale of pirated movies increased enormously. This paved way for digital movie piracy along with the increasing digitalized world. Movie piracy until 20th century was considered to be a physical activity² i.e. copying movies on 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 such method is 'Camcorder piracy'.

An act of illegal recording and uploading the same is considered as a criminal offense all over the world. The major method used by pirates to smuggle the movies was the camcorder method, which includes recording a movie that is placed on a theatre screen by using a lightweight handheld with a good quality camera usually mobile phones. Offences relating to pirated movies 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 the good video quality. These websites allow one to either download or stream movies online. Online movie piracy contains two main forms: downloading complete files or streaming a movie. Both methods use P2P system,³ which is considered illegal and illegitimate. The file-sharing platforms are responsible for the upload and download process, these platforms or websites are usually organized by small private owners or administrators not very profitable, but exceptions to top sites. The technology used by file sharing websites is Bit Torrent's technology, which allows one to download faster.

The technology used is not illegal, but the contents shared on the websites without the permission of copyright owners make it illegal. For instance, in 2012, the US courts shut

²Ibid.

³ Peer to Peer are computer networks that are connected to each other through internet, which allows to share files between networks without central system.

down the popular file-sharing platform known as MegaUpload.com, which was involved in the activity of sharing pirated movies.

The piracy offences are considered as IP related crime, '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 were 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 much unauthorized copyright content of music files was traded by millions. Napster was a file-sharing platform, where users who downloaded the software get access to a central database to search for the music they had on their computer and gets stored on a central server. Users would then can search for files from the available list and if both are online, that file put both into contact and music will be transferred. It gave access to millions of music files freely. Ultimately Napster was found guilty of contributory and vicarious infringement.⁴From then on many sites were involved in such activities, not only music but also movies, even software piracy also came into the picture.

HYPOTHESIS

It is hypothesized that averting the offences relating to camcorder piracy in this modern digitalized world is justified.

It is hypothesized that how changes in consequence, when the recorded movies are uploaded on the websites have influenced changes in the laws of pirated movies.

EXISTING LEGAL SITUATION

The Camcorder piracy offence came into light after digitalization, ease of availability of the high-speed network, all these factors constituted for camcording piracy. This type of illegal recording and downloading was considered an infringement of the copyright act. In the USA to combat movie piracy, many legislations were enacted such as the NET act (No Electronic Theft), 1996, Computer fraud and Theft act, 1986, Digital Millennium Copyright Act, 1998. In India, the same act is considered copyright infringement and thus sec 65 (A) (B) of the Copyright Act, 2012 prohibits such offence. Other laws like Information

⁴ Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001)

Technology Act, 2000, Civil Procedure Code, 1908 for jurisdiction challenges. Other than legislations there are voluntary organizations like MPAA, FACT, STOP, Anti-Piracy organizations.

LITERATURE REVIEW

Movie piracy especially camcording piracy is a hot topic in today's digital entertainment era. the author *Jason D. Koch, Mike D. Smith, Rahul Telang* In their article '*camcording and film piracy in Asia pacific economic cooperation economies*' highlighted the need to combat camcording or web-dl piracy. He also highlighted the impact of illegal recording and uploading in file sharing websites along with case studies. Another article '*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.

OBJECTIVE OF THE STUDY

The main objective of this research paper includes:

- To study the key legal challenges raised when a person is caught filming a movie in a theatre.
- To provide a detailed analysis on legal consequence changes when the same is uploaded on a website.
- To provide a detailed analysis on arising jurisdictional challenges when it is uploaded on the website.
- Lastly to suggest certain recommendations to the current legal system governing the pirated movies in India.

RESEARCH METHODOLOGY

The research methodology used is descriptive, analytical, and explorative. 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 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, and also through other blogs

and other relevant data available on the internet with respect to movie piracy. The researcher even relied on many relevant articles published in well-known journals.

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 intentionally records audio or video of any part of the movie screening in the theatre, amounts to camcorder piracy.⁵ This kind of act is considered illegal, camcorder offence occurs only when the movies are released in theatres i.e. the released movies are copied and is uploaded on file-sharing websites within a day or hour of release, in turn, making available to the public. Generally, these pirated movies are for free, one can open the website on any device having an internet connection and download the uploaded movies. This act is also advantageous to a person who is not willing to watch movies in theatre by giving fare. The only difference between watching a movie in a theatre or through illegal download is that the print when copied in the theatre is not of high quality. This act of piracy marks huge remarks mainly on- (a) the Entertainment industry, (b) the Economics of countries.

a. Entertainment Industry

Due to piracy six out of 10 movies unable to recoup the actual investment made on bringing a movie. According to MPAA, the average motion picture cost \$ 98 million to make and market domestically.⁶ The main work of the entertainment industry is to produce movies, make promotions so that it will earn revenue in the box office. But the act of piracy caused many entertainment industries to lose revenue. Also caused losses to such 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 the website for free, it also drives out the legitimate

⁵<http://fightfilmtheft.org/camcorder-privacy.html>

⁶Ibid 10.

jobs of theatre owners, video stores, and their employees.⁷ The profits obtained from this unlawful activity often end up in the hands of website owners.

Digital technologies have brought a revolutionary change in movie piracy. Previously when several copies were made on 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 same is photocopied that photocopy, the quality will reduce and eventually decreases 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 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 download 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 the '*Udta Punjab*' movie was leaked before its official release date on the internet on two separate file-sharing platforms of Torrent.com and by downloading it was proved that there has been copyright infringement. A 25-year-old Deepak Kumar was arrested and prosecuted according to the Information Technology act and Copyright act, 2012. Similarly, a recent controversy in Hollywood movie title '*The Secret Life of Walter Mitty*' was leaked before its actual release. The pirated copy contained the watermark property of Ellen DeGeneres' it impliedly held that someone in the protection team has leaked. However, during the investigation, it was found out that the movie was leaked through an unidentified movie pirate platform.

LEGAL REGIMES GOVERNING PIRACY

Piracy is not a recent one, after the Napster case, it is considered to be an offence under IP. Many international conventions came into force to eradicate piracy all over the world. One such convention is *Cybercrime Convention*. Article 10 of the convention states that 'all the parties signed to the Bern Convention, TRIPS convention and WIPO Copyright Treaty, must adopt such legislation to establish criminal offence under its domestic law, for copyright infringement'. The exception is given if the act is committed morally. But if the

⁷Ibid 10.

act is committed willfully on a commercial scale by using a computer system then it amounts to a violation of copyright content which is illegal under the conventions.⁸ An international obligation which is binding on each party states to adopt such obligation and recognize copyright infringement offence as a criminal offence. There are few drawbacks with respect to this convention, mainly this convention was drafted a few decades ago and does not include all other conventions and treaties with respect to piracy control entered after this convention.

USA

From an early age, the US is the major market for pirated films. Many cam-cording movies were recorded on 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 amended subsequently almost 6 times to cop-up with a technology change. Currently, it is codified in the US code title 18, section 1030. Where this law grants permission to the federal government to step in and take actions against any computer fraud that occurred, which in turn has affected the business and economy of that state, thus provide jurisdiction to the federal government over computer-related crime issues.

In the mid-1990s fears began to evolve due to the growth of digitalization and high-speed networks, the US Congress introduced a bill to combat online copyright infringement. Eventually *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 though when a person does not benefit commercially, but the act of illegal uploading and downloading, impliedly becomes unlawful. This act split 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 fines or both. The second level is the severe level, where if at least ten copies have been copied within 180 days period and the person responsible for this

⁸Ibid.

should gain a minimum of \$2500 is punished up to \$250000 fine or imprisonment up to five years.⁹

In 1998 *The DMCA (Digital Millennium Copyright Act)* was formed 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 legally i.e. those ISP's platform when used for illegal distribution of copyright material should block such sites or access to illegal material once notified by the copyright holders.¹⁰

The US also owns an organization that works and regulates motion pictures for decades. In 1922 an organization called MPPDA (Motion Pictures Producers and Distributors Association) was established to eradicate the absence of “offensive material” and prevent government interference in filmmaking. Later the name changes into MPAA (Motion Pictures Association America) in 1945, since then this organization has acted as the voice and advocate for the film and television industry, protecting creativity and bringing entertainment to the world.¹¹ In 2008, the CEO Dan Glickman bolsters an IP protection team for the Pro-IP act, the first anti-piracy laws enacted in the US.¹² In 2017 this organization took a big step to curb online piracy by launching Alliance for Creativity and

The remedies available under both international and domestic laws to curb piracy movies are, firstly the copyright holder can claim an 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 inquire 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 the access and file sharing websites, this remedy is easy, where the jurisdiction is not affected.

⁹Ibid.

¹⁰Ibid.

¹¹<https://www.mpa.org/who-we-are/>

¹²Ibid.

INDIAN CONTEXT

The film industry for the past few years trying to endeavor the challenges arising from new digital technologies especially online piracy. As a result of huge revenue loss and economic knockdown in the entertainment sector.

The Indian judiciary is broadly using 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, uploaded videos. When the movie is released, it is the sole discretion of the makers of the movie to obtain distribution rights of such a movie. Due to this copyright protection, the illegal copying and uploading on the website to enable them to the public for downloading freely is considered to be unlawful and would 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 on the basis of regulations over the system's functioning, principles, and jurisdiction. Any court must 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 particular types of cases 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 the case based on the parties location or where the property involved in the suit is located. Every court state 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 them. 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. Internet connects people from all over the world irrespective of their territory to transact with each other.

This jurisdiction law is not the same in the case of digital crime, as internet crime involves parties from different states, involves multiple parties with a virtual connection. These digital crime jurisdiction issues evolved along with growing digitalization. Internet crime was considered to be cyberspace 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 offences relating to pirated movies.

Under this crime, it is not that 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 authorization from copyright holders and allow the public to download them for free, these pirates when using the internet remains in one physical jurisdiction and are subject to laws of that jurisdiction. Thus it is impleaded that any person who uses either WWW (World Wide Web) or any other internet activities is subjected to prosecution under any state laws when the same or other state user established a claim. Although the jurisdiction with respect to online piracy should be determined by considering each case facts i.e. a single piracy crime case may involve three jurisdictions, that is,

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

Therefore the major problem of internet crimes lies in whether the internet should be chosen as a physical space or should be treated as the 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 has copyrighted his work, in a theatre and uploading it on a file-sharing website to make it accessible to the public. Thus such cases are tried under copyright laws of states, 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 the contribution of 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 Bit Torrent is the most popularly used website for illegal downloading. 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* India provides jurisdiction for cyberspace under *Sec 20*.

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 enforcing 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 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. *Sec62* provides proceedings that should take place in the 'District courts having jurisdiction', here jurisdiction can be a place where the person resides or where the business is carried on or personally works for gain.¹³ Thus the plaintiff can institute proceedings in any jurisdiction on his own choice.

CASE LAWS

Bit Torrent case:

In October 2005, the Hong Kong magistrate court sentenced the defendant to 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 illegal, but also enabling the third party to download the file is considered to be illegal as it infringes the copyright holder's rights and attracts criminal liability".

⁴¹ Sec 62 of Copyright Act, 2012.

The Magistrate took a different view with regards to section 118(11)(f) of the Copyright Ordinance, 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, also kept his computer on with the internet connection so that third parties can download such movies.

In November 2005, the Magistrate gave the verdict on the BT case by the sentencing 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.¹⁴

KAT case:

A File sharing website Kickass Torrent was shut down after the alleged owner was arrested in Poland. The shutdown had a huge impact on the Indian audiences, as they contributed 24% of revenue to KAT. The defendants alleged that the platform itself is not copyrighted, then the illegal sharing of copyrighted content itself 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 illegal downloading.

CONCLUSION

To conclude, the offence relating to piracy movies 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 offenses as it causes a huge impact on the copyright holders, entertainment industry, and the country's economy. 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 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 by celebrities to create awareness against cam-

cording movie piracy and the impact it is creating on the entertainment industry and economic sector of the country.

