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## Property Rights, Cybercrime and Cyber piracy's Impact on Foreign and Domestic Business

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*Nowadays there has been an increase in the use of the internet in our society, which is giving rise to run businesses via the internet or online marketing. Property rights, cybercrime, and cyberpiracy have become hot topics worldwide, and their impact on foreign and domestic businesses. Property Rights explain the ownership of assets and resources, Cybercrime refers to the criminal activity which is committed with the help of computers and networked devices and cyberpiracy refers to downloading and disturbing copyrighted content digitally without the permission of the owner. The motive of this paper is to provide a full overview of Property Rights, Cybercrime, and Cyberpiracy, their impact on foreign and domestic businesses, how to protect them, their positive and negative impact, and legal frameworks in India and globally. Property Rights, Cybercrime, and Cyberpiracy have a huge impact on the business established globally.*

**Keywords:** *internet, online marketing, property rights, cybercrime, cyber-piracy.*

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### INTRODUCTION

Significant changes are being made to the world's system of intellectual property rights (IPRs). Many developing nations have made substantial efforts to enhance their IPR systems. The issue of regulatory convergence, notably in IPRs, is now addressed through a number of regional trading agreements. The World Trade Organization's adoption of the agreement on

trade-related intellectual property rights, or TRIPs, is the most significant development (WTO). TRIPs mandates that WTO members adopt and uphold strict, nondiscriminatory minimum standards for intellectual property protection. Strong security is being provided in many affluent nations for contentious sectors like biotechnology and computer databases.<sup>1</sup> Cybercrime is on the rise as corporate networks and internet usage grows. Today, companies of all kinds depend more on their network, data, and internet access. According to a McKinsey Global Institute report, the financial effect of the internet has indeed been the biggest among "customers and little, startup enterprises." The internet enables businesses of all sizes to have an international impact. Over two billion individuals are now connected by what was once a mysterious network for researchers and scientists a few decades ago but have now developed into a \$8 trillion per year e-commerce company.<sup>2</sup>

The most dreaded term that sends tremors through the creative sector is "**piracy.**" Every day up to the movie's release, a movie producer who has spent millions on the production must live in constant terror that the movie could leak and end up on illicit streaming services or torrent sites before it is even released. If a watchable pirated version of a movie does not appear until at least two weeks after its original release, it would be nothing less than pure chance. Similar to this, pirates practically instantly upload any television program that is shown on any well-known television channel to illegal streaming websites.

## WHAT DO YOU MEAN BY PROPERTY RIGHTS?

Property rights establish the actual and theoretical possession of materials and the permitted uses of those resources. These resources may be owned by private parties, public entities, or both. They may also be physical or intangible.<sup>3</sup> In many countries, people often assert their private or personal property rights. The foundation of every commercial transaction in

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<sup>1</sup> Keith E. Maskus, 'Intellectual Property Rights and Foreign Direct Investment' (*IATP*, May 2000) <[https://www.iatp.org/sites/default/files/Intellectual\\_Property\\_Rights\\_and\\_Foreign\\_Direc.htm](https://www.iatp.org/sites/default/files/Intellectual_Property_Rights_and_Foreign_Direc.htm)> accessed 22 June 2022

<sup>2</sup> 'The Impact of Cybercrime on Small Business' (*SBIR.STTR*) <<https://www.sbir.gov/tutorials/cyber-security/tutorial-1#>> accessed 23 June 2022

<sup>3</sup> Will Kenton, 'Property Rights' (*Investopedia*, 22 May 2022) <[https://www.investopedia.com/terms/p/property\\_rights.asp](https://www.investopedia.com/terms/p/property_rights.asp)> accessed 23 June 2022

economics is property rights, and how they are dispersed in a community affects how efficiently materials are used.<sup>4</sup>

## CONCEPT OF PROPERTY RIGHTS

Property is safeguarded by laws that have been firmly established and defended by the state. These laws specify who owns a piece of property and what rights and advantages come along with it. Although the definition of "property" is fairly broad, different legal systems provide different levels of legal protection for different types of property. People or small groups of people typically own property. Patents and Copyrights can be protected with the extension of the Rights of Property ownership.

- Limited access to tangible resources including homes, automobiles, books, and telephones
- Non-human animals such as horses, dogs, cats, or birds.
- Copyrighted works, such as words, concepts, or inventions

According to the legislation, certain persons are designated as the owners of other categories of property, such as communal or state property. Usually, they are regarded as public property. Ownership is imposed by those with cultural or political clout. The owner or right holder has the freedom and can do whatever they want with the property thanks to property rights. That involves keeping it, using it solely for personal purposes, selling it, renting it out, or transferring it to another individual.<sup>5</sup>

## RIGHTS TO ACQUIRE PROPERTY

In Personal Property, individuals need to obtain and transmit through mutual agreement or through agronomics. Agronomics is a distinctive case, where a person can obtain any previous resource which is not owned by anyone. Examples of Agronomics acts include crop utilization and utilization of natural resources.<sup>6</sup> Typically, the government distributes the assets and control of those regions where there are no property rights. This indicates that

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<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

political goals rather than economic ones are used to distribute resources in this situation. Thus, the government decides whom to talk with, or exclude or get any incentive from the usage of the property.<sup>7</sup>

## **PERSONAL RIGHTS OF PROPERTY**

Individuals require the capacity for excluding others from the uses and advantages of their property under private property rights, which are claimed to be a crucial component of the capitalist economies including its legal systems and philosophies. Since only an entity may hold the title and make a claim to the property, all materials held by private persons are highly competitive. Owners of private possessions also have a specific right to utilize goods or services.<sup>8</sup>

## **PRIVATE RIGHTS OF PROPERTY AND PRICE OF MARKET**

Prices of the market in Capitalist societies originate from personal property transfers. The payment is between the owner of the property and the person who is interested to acquire the property. For instance, an investor acquires \$1000 of Apple Shares. In such a case, apple will value \$1000 more than its stocks.<sup>9</sup>

## **EXTERIORITY AND MARKET FAILURE OF PROPERTY RIGHTS**

Externalities are a result of a commercial contract that affects the third party. The impact of the exteriority might be beneficial or harmful. Intellectual property is frequently cited as being fundamental to exteriority.<sup>10</sup> Private Property rights are protected by a legal system that efficiently distributes costs and benefits all the respective parties. Markets can fail if the rights are not clear. The transactions can have consequences to the third parties that are not captured in the transaction values. Resources cannot be efficiently utilized in the absence of private property rights.

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<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid*

<sup>9</sup> *Ibid*

<sup>10</sup> Sean Ross, 'How Do Property Rights Affect Externalities and Market Failure' (*Investopedia*, 30 September 2021) <[https://www.investopedia.com/terms/p/property\\_rights.asp](https://www.investopedia.com/terms/p/property_rights.asp)> accessed 23 June 2022

## ADVANTAGES OF PROPERTY RIGHTS

The environment of the current situation is very rivalrous; innovation is the cornerstone of every business which is related to intellectual property. Long term success of the company depends upon innovation which provides a competitive edge and aids. Intellectual Property Rights are not only valuable for technological companies but also for those companies which invest huge sums in R&D of creating native products and services.<sup>11</sup> It's important to evaluate an existing intellectual property to check whether it is in line with the business aims or objectives of the company. This helps the company to find out ways to grasp intellectual property through licensing opportunities. Successful companies must look for new ways to expand their product offering and increase sales revenue.

Economic development and growth could be stimulated by IPRS, this was recognized by several economists. IPR can be crucial to innovative products, product design, and technological advancement.<sup>12</sup> Underdeveloped nations have a system of property rights that encourages the spread of knowledge through inexpensive copies of imported goods and technology. Domestic creativity and innovation are not mature enough to deserve protection, as stated by policies. Insufficient IPRS might inhibit technological evolution at low economic development levels.<sup>13</sup> The invention involves existing technologies and products in the majority of cases. Underdeveloped countries should adopt new management and organizational systems for quality control in this rivalrous environment.<sup>14</sup>

## DISADVANTAGES OF PROPERTY RIGHTS

Where market power dominates market expansion, the negative impacts of property rights can easily be found there. Hike in profits are affected by both, property rights induce entry without vagueness.<sup>15</sup> Direct supply mode is negatively related to property rights, licensing is

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<sup>11</sup> Keith E. Maskus, 'Intellectual Property Rights and Economic Development' (2000) 32 (3) Case W. Res. J.Int'l, 471 <<https://core.ac.uk/download/pdf/214079093.pdf>> accessed 25 June 2022

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

not, this was revealed by examination of entry made choice. It was implied that Property rights stringent countries infringement risk will avoid direct supply.

## CYBER CRIME

### *What is Cyber Crime?*

Cyber Crime is defined as a criminal activity that involves the use of computer-related devices as well as networked devices. As we observe that some cyber-crimes are carried out to generate profits, on the other hand, some are carried out against computer devices in order to disable them. Other cybercriminals disseminate malware, ransomware, unlawful material, photos, and other stuff through computer hardware or networked devices. Some offenders engage in both offences, i.e., spreading the virus on computer devices as well as disabling devices and networks.<sup>16</sup>

Cybercriminals utilize both business data and sensitive data of individuals to steal and resell them. It's important to protect or make backup data as the frequency of cybercrimes may rise in 2022 and the coming future, this is because a lot of work and corporate meetings are done via computer devices or remotely this makes the fresh target for the cybercriminals to act on it. Criminal activity on the internet is a much broader aspect that cyber-crime includes all essential elements of human criminal activity that have been moved to cyberspace. A senior British Officer reported that half of all the crimes in the UK are related to cybercrime. He added that they focused on a narrower definition of criminals who were gaining illicit access to the computer devices of victims. India is not a special case as the active users in India are over 646 million as of December 2021, as reported by Bharat 2.0, which made India the second largest surfers in the world.<sup>17</sup> In the last 12-18 months India has faced damages of about USD 500,000 from Cyber-attacks.<sup>18</sup>

*Various types which have a greater economic impact include:*

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<sup>16</sup> Kate Brush, 'Cybercrime' (*Tech Target*) <<https://www.techtarget.com/searchsecurity/definition/cybercrime>> accessed 25 June 2022

<sup>17</sup> 'Impact of Cyber Crimes on Indian Economy' (*Daily Excelsior*, 4 August 2020) <<https://www.dailyexcelsior.com/impact-of-cyber-crimes-on-indian-economy/>> accessed 25 June 2022

<sup>18</sup> *Ibid*

1. Losing of IP and confidential information related to business.
2. Pilferage of personally identifiable information due to financial crime and online fraud.
3. Manipulation of financial information that is directed towards publicly traded companies.
4. Production and supply interruption and diminished trust in online activity are opportunity costs.

Cyber rivals are becoming more enlightened and ingenious. Among the 100 countries, WannaCry, India was the third worst affected, as reported reiterated. The paper that was linked advised that the government enhance its attention to crucial elements of the nation, work in concert with corporate groups, educate people at the school level, and develop native tools for creating a safe and cyber-flexible environment in the nation.

## **LEGAL PROTECTION FROM CYBERCRIME IN US AND INDIA**

### *Cyber Crimes Law in the US*

The FBI's cyber branch is the leading federal agency renowned for handling threats by cybercriminals, terrorists, and foreign adversaries.<sup>19</sup> **For example**, Massachusetts law cites that online harassment is a crime that is punishable with a fine of up to \$1,000, a maximum of two-and-a-half years in jail, or both. In Tennessee, online harassment and stalking are considered a Class A misdemeanor, and a convicted cybercriminal can face a jail sentence of, at most, 11 months, and 29 days, a fine of up to \$2,500, or both.

### *Cyber Crime Laws in India*

*Information Technology Act, 2000 (IT Act)*<sup>20</sup>

The first cyber law was introduced by the Indian Parliament.

*“to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as electronic methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act,*

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<sup>19</sup> Kate Brush (n 16)

<sup>20</sup> Information Technology Act, 2000

1872, the Banker's Book Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto."<sup>21</sup>

### ***Legal Frameworks of the Act***

These are sections of the IT Act 2000<sup>22</sup>:

- **Section 43**<sup>23</sup>: It states that those who involved themselves in cybercrime damage the digital property of the victim without taking prior permission from the victim. This section provides compensation for damage to such property.
- **Section 66**<sup>24</sup>: Any act that is fraudulent in character and that is specified in Section 43 is subject to this section's application. 3 years in jail and a maximum fine of Rs. 5 lakh.
- **Section 66B**<sup>25</sup>: Any person who illegally accepts stolen communication devices or computer comes under the purview of this section. Punishment for 3 years and a fine up to 1 lakh.
- **Section 66C**<sup>26</sup>: Any person under this section fraudulently makes an e-sign or stealing or using any other forms of identity theft, comes under the purview of this section and is punishable for 3 years and a fine up to 1 Lakh
- **Section 66D**<sup>27</sup>: This section explains that if any person is caught cheating by personation using any computer or any other resources will be found guilty and imprisoned for 3 years and a fine of 1 lakh.
- **Section 66E**<sup>28</sup>: This section states that clicking images of private areas, and transmitting them without the permission of an individual will be punished under this section for 3 years and a 2 lakh fine.

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<sup>21</sup> Nikunj Arora, 'Cyber crime laws in India' (*iPleaders*, 28 April 2022)  
<<https://blog.iplayers.in/cyber-crime-laws-in-india/>> accessed 25 June 2022

<sup>22</sup> *Ibid*

<sup>23</sup> Information Technology Act, 2000, s 43

<sup>24</sup> Information Technology Act, 2000, s 66

<sup>25</sup> Information Technology Act, 2000, s 66B

<sup>26</sup> Information Technology Act, 2000, s 66C

<sup>27</sup> Information Technology Act, 2000, s 66D

<sup>28</sup> Information Technology Act, 2000, s 66E



- **Section 66F**<sup>29</sup>: Under this section, if anyone is caught doing any act of cyber terrorism will be imprisoned for life.
- **Section 67**<sup>30</sup>: This section states that if anyone is caught publishing vulgar content digitally will be punished for 5 years and a fine of Rs. 10 Lakh.

***Indian Penal Code, 1860 (IPC)***<sup>31</sup>:

Some provisions of the Indian Penal Code, 1860

- **Section 292**<sup>32</sup>: This section restricts the sale of vulgar materials but it has evolved to deal with cybercrimes as well in this digital age. The manner in which vulgar material of children is published or transmitted also comes under the purview of this section. The punishment under this section is up to 2 years and a Rs. 2000 fine and for repeated offenders Rs. 5000.
- **Section 354C**<sup>33</sup>: Under this section talks about voyeurism which includes watching women's sexual action is punishable by 3 years for first-time offenders and 7 years for a second-time offenders.
- **Section 354D**<sup>34</sup>: This section involves stalking which means physical and online stalking. Tracking a women's location through online means, her social media account, email, mobile no, and such personal or private details will be punishable under this section for 3 years with fine and second-time offenders 5 years with a fine.

In the case of *Kalandi Charan Lenka v State of Odisha (2017)*<sup>35</sup> Victim got some unpleasant text messages from an unknown number, which hurt her reputation. Additionally, the suspect sent her emails, set up a false Facebook profile, and uploaded altered images of her. As a

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<sup>29</sup> Information Technology Act, 2000, s 66F

<sup>30</sup> Information Technology Act, 2000, s 67

<sup>31</sup> Nikunj Arora (n 21)

<sup>32</sup> Indian Penal Code, 1860, s 292

<sup>33</sup> Indian Penal Code, 1860, s 354C

<sup>34</sup> Indian Penal Code, 1860, s 354D

<sup>35</sup> Nikunj Arora (n 21)

result, the High Court determined that the accused violated Section 354D of the Indian Penal Code and the Information Technology Act by engaging in cyberstalking.<sup>36</sup>

- **Section 379<sup>37</sup>:** This section involves theft the punishment of which is up to 3 years in addition to a fine. The role of this section arrives when any cyber-crime involves a hijacking of a device, stealing data, or computer and mobile
- **Section 463<sup>38</sup>:** This section explains faking data digitally and the Punishment is 7 years with a fine.
- **Section 465<sup>39</sup>:** This section deals with the punishment of forgery. Offenses like spoofing emails and false documents in the cyber world are included in the purview of this section and are punishable for 2 years with or without a fine.
- In the case of *Anil Kumar Srivastava v Addl Director, MHFW (2005)*<sup>40</sup>The petitioner submitted a complaint with false accusations against the Additional Director after forging the Additional Director's signature. The court found the petitioner guilty under Section 465 and 471<sup>41</sup> of the Indian Penal Code, 1860.<sup>42</sup>
- **Section 468<sup>43</sup>:** This section describes that if fraud is committed with the intent to cheat then it is punishable by 7 years with a fine. It includes mail spoofing also.

## CYBER PIRACY

### *What is Cyber Piracy?*

Cyber piracy is described as the deceptive behavior that businesses and people participate in to make money off of online consumers. Cybersquatting and domain parking are two examples of the kinds of actions that are referred to as cyberpiracy. It gives a solution for a legal assistance program that lacks the time and money to pursue a settlement.<sup>44</sup> When a

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<sup>36</sup> *Kalandi Charan Lenka v The State of Odisha* (2017) BLAPL No.7596/2016

<sup>37</sup> Indian Penal Code, 1860, s 379

<sup>38</sup> Indian Penal Code, 1860, s 463

<sup>39</sup> Indian Penal Code, 1860, s 465

<sup>40</sup> Nikunj Arora (n 21)

<sup>41</sup> Indian Penal Code, 1860, ss 465 and 471

<sup>42</sup> *Anil Kumar Srivastava v Addl Director, MHFW (2005)* 3 ESC 1917

<sup>43</sup> Indian Penal Code, 1860, s 468

<sup>44</sup> John McKeown, 'What Is Cybersquatting and Cyberpiracy?' (*Mondaq*, 10 September 2020)

phony brand name has been used on a website to divert visitors away from the website of the brand owner, this is known as cyber piracy. Typo squatting is when someone registers a domain name that is substantially identical to a brand name that is typed incorrectly with the goal of receiving hits from people who misspell the brand name.

**'Piracy'** is a form of theft. Pirates used to get what they like. Piracy nowadays is the term for intellectual property theft. This encompasses all digital content, such as pirated music, movies, apps for smartphones, and eBooks.<sup>45</sup> The impact of piracy on business is considerable for a property owner who loses money and distributor. Music and Entertainment Piracy.

## MUSIC AND ENTERTAINMENT INDUSTRY

We have often seen the FBI warnings in Hollywood movies at the beginning of it. The language warns several penalties "... *unauthorized reproduction, distribution, or exhibition of copyrighted motion pictures ...*"

**For Instance - Avi Lerner**, the producer of *Expendables 3*, paints a gloomy picture: "*If piracy continues to be rampant like this, then in four to five years it will be the end of the independent film business as we know it and the studios will be making way fewer films than they do now.*"<sup>46</sup> India is no exception to cyberpiracy cases. The movie **Udta Punjab** was the best example of cyber piracy, the movie was leaked online on different websites before its official release dates.<sup>47</sup> *Ruth Vitale*, the CEO, states "*The problem is that our industry has become a victim of our own red-carpet celebrity and our ability to create 'movie magic'. People see only the awards shows – our one day of celebrating our industry. What they fail to understand is the thousands of man hours that go into bringing entertainment to audiences. It's 18-hour days, 7 days a week. And it's hard work.*"

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<<https://www.mondaq.com/canada/trademark/983738/what-is-cybersquatting-and-cyberpiracy>> accessed 25 June 2022

<sup>45</sup> David Sarokin, 'What Is the Effect of Piracy on a Business?' (*CHRON*, 24 April 2019)

<<https://smallbusiness.chron.com/effect-piracy-business-24541.html>> accessed 25 June 2022

<sup>46</sup> *Ibid*

<sup>47</sup> Princess Kalyani, 'Online Piracy and Copyright Infringement: Issues and Challenges' (*Latest Laws*, 15 September 2019) <<https://www.latestlaws.com/articles/online-piracy-and-copyright-infringement-issues-and-challenges-by-princess-kalyani>> accessed 25 June 2022

## **BRAND IMAGE PIRACY**

Along with an astonishing amount of lost revenue, the impact of piracy on individual brands can take detriment their goodwill and brand image. As we observe that large industries' reputations getting tarnished the sole business operators are also at high risk.<sup>48</sup> A well-known board game known as **CATAN** received lots of negative customer views after increased counterfeits in the market. The piracy not only tarnished their reputation but also diminished their revenue drastically.

## **THE EFFECTS OF DIGITAL PIRACY ON THE INDUSTRY**

The whole chain of distribution, from the author to the end user, is impacted by the effects of piracy. It is challenging to estimate the extent of internet piracy and the number of businesses affected because it encompasses all types of theft.<sup>49</sup>

*There are some recent estimates and examples:*

1. OTT service providers like Amazon, Netflix, and Hulu lost about \$50 billion a year from piracy content.
2. Illegal streaming and duplication of movies, and web series leads to a loss of about \$52 billion a year by 2022.
3. The industry of music lost about \$12 billion a year from piracy.

There are several problems with India's internet copyright infringement legislation. Dealing with these has now become more challenging due to the increase in technology. The judiciary is taking its time to resolve these cases and to establish rules about different circumstances in the online realm that might exacerbate problems like internet piracy.

## **LEGAL PROTECTION FROM CYBER PIRACY IN US AND INDIA**

*Examples of Legislative Actions by the US<sup>50</sup>*

*Database Protection*

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<sup>48</sup> David Sarokin (n 45)

<sup>49</sup> *Ibid*

<sup>50</sup> Hedi Nasheri, 'Addressing Global Scope of Intellectual Property Law' (*OJP*, January 2005)

<<https://www.ojp.gov/pdffiles1/nij/grants/208384.pdf>> accessed 25 June 2022

The current copyright law provides less protection for databases. This was corrected by introducing two database protection bills that were brought by 106th Congress (1999-2000): the Collections of Information Antipiracy Act (“CIAA”) and the Consumer and Investors Access to Information Act of 1999.

### *Copyright Act*

The copyright act was first introduced in 1897 and has always been differentiated from civil violation. This act was frequently amended just to strengthen and broaden the scope.

## **LEGAL SCENARIO IN INDIA**

In India,<sup>51</sup> all kinds of literary, art, music, drama work, and works of producers and cinematographers are protected under The Copyright Right Act of 1957. The increase in cases of cyber piracy rushed the Indian Government to take tough actions to save the filmmakers. The **Copyright Laws** in India were revolutionized by **The Copyright (Amendment) Act, 2012** which amended cyber piracy frameworks in India.

**Section 65A**<sup>52</sup> was used by the owners of copyright against a breach. This was used by the copyright owners to protect their rights to the copyrighted work. If anyone is found to be evading it will be imprisoned for 2 years along with a fine.

**Section 65B**<sup>53</sup> also deals with Information Rights Management (IRM) which saves important information from cybercriminals. Under this section any unauthorized and intentional alteration is punishable.

**The IT Act 2000** – the dispersal of fake or duplicate copies of copyright content.

## **CONCLUSION**

Data is essential to the conduct of numerous cybercrimes and the creation of cybercrime vulnerabilities. Although data offers its users (individuals, businesses, organizations, and governments) countless options, these advantages can (and have) been misused by some for

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<sup>51</sup> Swati Shalini, ‘Legal Battle Against Online Piracy in India’ (MYADVO, 24 July 2018)

<<https://www.myadvo.in/blog/the-legal-battle-against-online-piracy-in-india/>> accessed 25 June 2022

<sup>52</sup> Copyright (Amendment) Act, 2012, s 65A

<sup>53</sup> Copyright (Amendment) Act, 2012, s 65B

illegal ends. In particular, without the users' informed agreement, choice, and the required legal and security precautions, the huge collection, storage, use, and dissemination of data facilitates numerous cybercrimes. Additionally, governments and organizations are ill-prepared for the sizes at which data is gathered, analyzed, and transferred, which raises a host of cybersecurity threats. Systems, networks, and data security, as well as privacy and data protection, are interconnected.