

# A Comparative Analysis on the Importance of Copyright and Trademark Laws for Assessing Business Applications: A Study of USA and India

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**Abstract:** *The advent of cyberspace has revolutionized intellectual property law, creating both opportunities and challenges in the enforcement of copyright regulations. This paper examines the implications of digitization on copyright law, focusing on the disparities between the legal frameworks of the United States and India. Through a descriptive and comparative analysis, the study highlights how the U. S., with its established laws like the Digital Millennium Copyright Act (DMCA), has successfully addressed challenges arising from digital copyright infringement. In contrast, India's legal framework, governed by the Copyright Act of 1957 and supplemented by the Information Technology Act, 2000, lacks explicit provisions for cyberspace, relying heavily on judicial interpretations. Key issues such as software piracy, jurisdictional ambiguities, and the role of internet service providers are explored. Findings suggest that while the U. S. law offers clarity and effective mechanisms for enforcement, India's approach remains in its nascent stages, necessitating significant reforms to align with global standards. This study underscores the importance of robust legislative measures and international cooperation in mitigating the growing issue of copyright infringement in cyberspace.*

**Keywords:** Cyberspace, Digital Copyright, Intellectual Property Law, U. S. Copyright Law, Indian Copyright Law, Digital Millennium Copyright Act (DMCA), Information Technology Act

## 1. Introduction

The word "cyberspace" was introduced by the Canadian physicist William Gibson in his 1984 novel *Neuromancer*. Gillis (2006) characterized it as a universally shared illusion that is perceived on a daily basis by billions of individuals across all countries. Essentially, it is a digital realm formed by interconnected computers and computer networks on the internet. The advent of digital technology has sparked a revolution in the domain of intellectual property law. An important advantage of cyberspace is its ability to streamline the movement of data between computers, surpassing the complexities of physical distribution. It has significantly contributed to globalization by enabling seamless information interchange across different locations, thereby promoting enhanced communication and knowledge dissemination. According to the United Nations Educational, Scientific, and Cultural Organization (UNESCO), around 850, 000 items, such as books, journals, electronic resources, and multimedia, are produced worldwide every year (Behera, 2018). Nevertheless, it has also been shown to have negatively impactful consequences. According to Meng et al. (2018), the objective of legislation pertaining to copyright is to guarantee that there is a reasonable equilibrium between the rights of the author and the rights of the general public. Nevertheless, as a result of the development of the internet and the expansion of cyberspace, it has become more difficult to draw a clear border between the interests of the general public and those of the author. In comparison to carrying out the crimes in person, it has made it easier to commit some offences in a way that is more convenient. Copyright infringement is one example of such illicit actions. In the past, the person who committed the infringement had to physically carry out all the actions,

making it simple to find and identify them. However, with the proliferation of numerous networks in cyberspace, it has become increasingly difficult to trace and apprehend the offender or prevent similar infringements from happening repeatedly. Hence, digitization significantly impacts the process of creating, reproducing, and distributing copyrighted works (Menell, 2002). Nowadays, virtually any type of information may be communicated over cyberspace. Prior to their release, films such as *Star Wars* and *Spider - Man* could be readily obtained through digital means, thanks to the emergence of digital technology (Miao et al., 2018). Given these circumstances, nearly every nation has recognized the necessity of formulating and implementing robust legislation to mitigate the harm suffered by writers as a result of widespread, untraceable copyright infringement.

## 2. Review of Literature

A study conducted by Ahmad (2009) examines the different copyright regulations in the digital realm inside the United States and evaluates their level of efficacy. It has conducted a comprehensive analysis of all the legal disputes that have occurred in the United States with the assistance of legislation. It denotes the success rate and failure rate of litigation. Nevertheless, its scope and effectiveness are restricted. It is the purpose of this text to investigate the limits of this convention. According to Ranjan and Srivastava (2021), the rise in copyright infringements can be attributed to a number of factors. The ease with which digital material may be shared, the cheap cost of distribution and download, the lack of a supranational body to govern, the challenges in locating offenders, and the uncertainty in deciding jurisdiction over activities that infringe upon copyright are some of the elements that contribute to the problem. The research study investigated a variety of issues

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concerning the hazards associated with copyright protection in cyberspace, including the role that local legal regimes play in combating these threats and the international legal regimes that are designed to overcome them. They have specifically addressed the problem of software piracy, which is one of the most significant types of copyright infringement in the context of the internet environment. Mohan and Mini (2021) have contributed to this discussion. The term "software piracy" may refer to a number of different activities, including but not limited to the following: soft lifting, internet piracy, hard disc loading, software counterfeiting, unlawful use of academic software, and renting software without authority. There are a number of variables that contribute to the phenomenon of software piracy. Some of these causes include a lack of public knowledge, high software prices, the absence of legal enforcement, social and cultural effects, and the widespread availability of pirated software on the internet.

In his paper, Kishor (2021) highlights the fact that pirated and counterfeit software not only supports cybercrime but also results in significant productivity and economic damage for manufacturers and organizations. Additionally, it poses severe security issues and dangers to our country's key infrastructure. The worldwide counterfeit ranking list places the counterfeiting of electronic and software products as the second greatest breach of copyright in cyberspace, after the piracy of medicines as the most significant violation. The value of the market for counterfeiting software is projected to be \$58.8 billion, while the market value of counterfeiting electronic goods is believed to be \$100 billion.

### 3. Research Gap

In the realm of digitization, the issue of copyright infringement in cyberspace has emerged as a significant hurdle. There are other factors contributing to this phenomenon, one of which, in my perspective, is the extent of enforcement of copyright legislation in different nations. To validate this perspective, a comprehensive examination will be conducted on the legislations implemented in the two chosen nations for analysis - the USA and India. The USA has a well-established copyright law, while India has a copyright law that is still in the process of development.

### 4. Research Methodology

This article makes use of a research approach that is both descriptive and comparative in nature. The task requires providing a description of the laws that are in place in both nations across a number of different categories, and then closing with a comparison of the two countries. The research piece is based on secondary material that was collected from a variety of sources, including papers, books, newspaper articles, and reports that were distributed by a large number of committees and organizations.

### 5. Findings

Copyright infringement in the digital realm encompasses various activities, such as framing (incorporating another individual's work into one's own website and encircling it with custom frames) and linking (affixing a hyperlink from

one website to another or incorporating their content into one's own), in addition to software piracy and the uploading and downloading of copyrighted materials (Zekos, 2016).

Multiple reasons contribute to the widespread violation of copyright on the internet. These factors encompass: preservation of reproduction quality, negligible expenses for replication or dissemination, capacity for anonymous action, and uninformed users lacking comprehension of the current copyright legal structure. Another significant determinant is the absence of any supranational governing body capable of overseeing copyright protection for products in the digital realm. Additional concerns, such as jurisdictional issues and the challenge of identifying the perpetrator among a huge population of internet users, contribute to the complexity of addressing violations (Miao et al., 2018).

Taking into consideration the fact that the United States of America was the country that was the pioneer in the creation of computer software is of the utmost importance. Because of this, the nation was the first to be responsible for dealing with cases of intellectual property infringement in the digital arena. No other nation was able to take on this obligation. The United States courts were obliged to use their jurisdiction in order to deliver justice to those who had been wronged by copyright infringement as a result of the growing number of instances involving copyright infringement. For the purpose of determining whether or not they have jurisdiction over allegations of intellectual property infringement, the courts have, since the 1990s, adopted two criteria. In the United States, the amount of interactivity of a website within a certain jurisdiction is evaluated in order to establish the jurisdiction of the courts in that jurisdiction. A website that does not actively engage with its visitors is not sufficient to establish personal jurisdiction within the eyes of the Court, according to the viewpoint of the Court. On the other hand, it is sufficient to establish personal jurisdiction if the defendant is able to do business with residents of a certain jurisdiction via the use of a website. The fact that this test did not set clear criteria for assessing the acceptable amount of involvement that is required to establish jurisdiction was, however, a key weakness of the test. There was no indication as to whether or not a continuous daily record is required, or whether or not a regularly regular practice is sufficient. Within the context of the *Calder v. Jones* case, the second examination, which is more frequently referred to as the "effects test," was carried out. First, there must be a purposeful action; second, there must be a particular targeting of the forum state; and third, there must be an understanding that the bulk of the damage will occur in the forum state. These are the circumstances that decide whether or not the test is subject to jurisdiction. Therefore, if the individual who is affected by the breach of copyright or the distribution of the content that is protected by copyright is located within the jurisdiction of the state that is hosting the forum, then that state has full power over the matter. The first test is of significant relevance in determining jurisdiction in recent instances of infringement, despite the fact that the second criterion is at the moment used less often than the first (Muralidhar, 2010).

There is a lack of clarification about this topic in the Indian law. In accordance with the Indian Copyright Act of 1957, Section 62 (2), the courts have the ability to hear lawsuits involving infringements of copyright occurring on the internet. Based on this clause, it is possible to pursue legal action at a site that is not one of the ones mentioned in Section 20 of the Criminal Procedure Code, 1908. Because of this, the District Courts may have the authority to hear cases involving these offences in accordance with Section 62. In light of this, there is once again a very serious question about the constitutionality of Section 62 (2) of the Act. This is because it would entail the exercise of legal power outside national boundaries, which is in direct contradiction to Article 1 (2) of the Constitution of India, 1953. In spite of the fact that it contains a number of cyber restrictions, the Information Technology Act does not directly address the problems that are associated with intellectual property rights (Saha and Keshri 2008). Because of this, the provisions do not provide any kind of settlement. Despite this, the Indian judiciary has interpreted that the Indian courts have the competence to exercise jurisdiction under certain parts of the constitution. With the interpretation of Section 51 (a) of the Copyright Act, 1957, the meaning of the word "any place" has been enlarged to include public places, libraries, and other similar sites where profit might be generated. This was done in the case of *Super Cassettes Industries Ltd. v. Myspace Inc. and Anr.* According to Sahoo and Chatteraj (2022), it includes both real - world locales and virtual areas that are accessible via the internet or the online world.

With the purpose of bringing the Copyright Act into conformity with the provisions of WIPO treaties, the United States of America passed the Digital Millennium Copyright Act in the year 1998. Protection against the act of evading technical obstacles that copyright holders apply in order to preserve their works is provided under Section 1201 of the United States Copyright Act, 1976. This provision was added by Section 103 of the Digital Millennium Copyright Act (DMCA). The technical protections that have been recognized fall into two separate categories: those that prevent illegal admission to a copyrighted work and those that prevent unauthorized replication of the copyrighted work. Both of these categories are considered to be very important. To achieve the goal of promoting equal use, the first attempt to evade the law was effective, whereas the second attempt was unsuccessful. In accordance with the rules that are outlined in Article 11 of the World Copyright Treaty (WCT) and Article 18 of the World Intellectual Property Organization's Performances and Phonograms Treaty (WPPT), these adjustments were put into effect. Within the context of the case *Kelly v. Arriba Soft Corp.*, the United States Court of Appeals has determined that the provision of reduced - size copies of pictures and the automated organization of websites containing images are both examples of fair use. In line with Article 19 of the WPPT, Section 1202 was devised with the purpose of ensuring that the information pertaining to copyright management is genuine. Furthermore, it incorporates particular laws for the equitable use of works on the internet, in addition to the implementation of technological measures for the protection of copyrighted content that are accessible online. Section 14 of the Indian Copyright Act of 1957

included the word "hire" in line with Article 7 of the World Copyright Treaty (WCT) and Article 9 of the World Performances and Phonograms Treaty (WPPT). Also included in this section was the word "hire. " Computer programs and cinematograph films qualify for commercial rental rights thanks to this inclusion. The word "hire" was changed to "commercial rental" in Section 14 (d) and (e) in order to limit the applicability of hiring to just business rentals and exclude non - commercial rentals. Non - commercial rentals were not included in this restriction (Baghel and Upadhyay, 2019).

When there is an infringement of copyright over the internet, there are several individuals that are involved in the act. It is customary to infer that the person who uploads the material is the one accountable for the violation. There are essentially two reasons behind this, which are as follows: 1) Because of the vast scope of cyberspace, it is difficult to determine the precise individual who is responsible for uploading content that is protected by intellectual property rights. On the other hand, a service provider is a business that has a physical presence. It is possible that a person does not possess the financial resources necessary to pay for a copyright infringement, but an organization is able to compensate for the financial losses that are the consequence of an infringement. The law of two countries on the establishing of responsibility clearly demonstrates this occurrence in a clear and obvious way:

By using legal precedents, the United States of America has established the legal liability that is associated with the violation of copyright in the sphere of the internet. One of the first cases that shows this is *Sony Corporation v. Universal Studios*. When it came to the three fundamental issues, the court issued its decision: Netcom cannot be held completely responsible for the material that is uploaded by its customers, and this is the first and most important point. From the point of view of the Internet service provider (ISP), they are simply liable for providing the tool, while the customer who submitted the material is the one who is accountable for the first act of infringement. With regard to this topic, this remark shows a clear contrast with the previous verdicts. Furthermore, the relationship between the infringing activity and Netcom's financial circumstances was not strong enough to demonstrate that Netcom was liable for the infringing behaviour. It is also possible to hold Netcom liable for contributory infringement, despite the fact that it cannot be held responsible for direct infringement or even indirect infringement. On the other hand, the need for proof continued, and this subject was not settled in preparation for the trial. It was eventually decided that the matter will be settled outside of the courtroom (Tripathi, 2020).

1998 was the year that saw the passage of the Digital Millennium Copyright Act. In point of fact, the United States of America was the first country to establish restrictions on the liability of Internet Service Providers (Goold, 2015). In accordance with the Online Copyright Infringement Liability Limitation Act, which is often referred to as Title 11 of the Digital Music and Content Act (DMCA), the limitation was implemented on October 28, 1998. As a result of a number of issues, including transitory digital network connections, system caching, mistakenly



connecting or directing users to websites that included infringing products, and the unintended storage of copyright - infringing content on their systems, the infringers were not held accountable for their actions. If there was vicarious responsibility or contributory infringement caused by the Internet service providers, the owners of the copyright were not entitled to receive any financial compensation or court orders from the ISPs. The Internet service providers were given the authority to make use of the defence of fair use (Beans, 1999). There are two conditions that the service provider has to satisfy before they may argue that they have restrictions on responsibility. This includes the following items: It is of the utmost importance that they abstain from impeding any of the existing technological measures that are designed to protect or determine contents that are protected by intellectual property rights. Due to the fact that it holds internet service providers liable for contributing to copyright infringement when third parties are involved, the bill constitutes a substantial departure from the copyright law that is now in effect in the United States. Additionally, there is a system for counter notification, which enables the republication of a person's content that has been removed in error as a result of a request being made by the owner of the copyright. As a result, it is possible to assert with complete assurance that the United States of America has a well - developed legal system that covers this matter, with provisions that are clear and unambiguous on potential liabilities and potential remedies. Because of this, there is a substantial foundation for legal adjudication (Goold, 2015).

The stance in India is diametrically opposed to that of the USA. There is currently no established legislation or ruling that offers specific guidance for these types of infringements. However, there is uncertainty over the precise placement of those who violate copyright laws inside the wording of this clause. The phrase "under this Act, rules or regulations formed thereunder" specifically refers to a restriction imposed solely by this Act, and does not include any restrictions imposed by the Copyright Act. It is crucial to examine multiple legal precedents in India pertaining to this circumstance. The judicial response indicates that the Internet Service Providers (ISPs) have been deemed responsible for acts of contributory infringement, for failing to comply with the terms of the IT Act, 2000 (Tripathi, 2022).

## 6. Conclusion

The analysis indicates that the US law has successfully adapted to address emerging challenges to copyright protection, whereas the Indian law has not kept pace with these developments. The Indian Copyright Act lacks explicit measures for implementing copyright protection in cyberspace, leaving its stance ambiguous. While the laws in the United States have established explicit rules for the courts, the Indian legal system has entirely entrusted the judiciary with the task of interpreting the law in a flexible manner to accommodate the evolving circumstances. This is the reason why piracy rates in India have not been successfully reduced, despite the development of procedures by numerous entities. While the issue is present in the USA as well, there is a robust legal framework in place to address the problem, supported by technology interventions.

Nevertheless, it cannot be unequivocally stated that the Indian legislature is disregarding the matter. The law is now in its early stages of development and progressing gradually. In the coming decades, it is anticipated that a comprehensive strategy will be taken to align with American law. Therefore, the study has unequivocally adhered to the reported problem and is consistent with past research. Hence, the remedy resides inside the root cause itself, which necessitates the efficient enforcement and utilization of legislation in the digital realm.

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