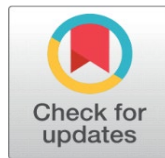
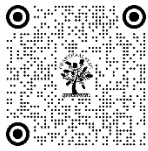


INTELLECTUAL PROPERTY LAW IN THE DIGITAL AGE: CHALLENGES AND OPPORTUNITIES FOR VISUAL AND PERFORMING ARTISTS

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ABSTRACT

This paper examines how intellectual property (IP) law is evolving in relation to visual and performing arts in our digital era, with a focus on the Indian context. By analyzing recent court cases, laws, and industry practices, it explores the key challenges artists face in protecting and monetizing their work online, as well as new opportunities created by digital technologies. The research finds that while digital reproduction and distribution have made copyright enforcement much harder, they have also opened up exciting new avenues for creation, collaboration, and connecting with audiences. The paper argues that IP frameworks need to be updated to better balance protecting artists' rights with the realities and possibilities of our digital world, particularly in the Indian legal and cultural landscape.

Keywords: Artistic Expression, Copyright Law, Digital Platforms, Intellectual Property, Technological Innovation

1. INTRODUCTION

The dizzyingly rapid progress of digital technologies over the last few decades has dramatically transformed how we create, share, and experience visual and performing arts. From digital photography and AI-generated art to streaming platforms and virtual reality, new mediums and channels have emerged that blur the lines between artistic disciplines and challenge our long-held notions about originality, ownership, and control. This shifting landscape presents both exciting opportunities and worrying pitfalls for artists trying to protect and profit from their creative works. On one hand, digital tools enable entirely new forms of artistic expression and collaboration, while online platforms allow artists to reach global audiences directly. On the other hand, the ease of digital copying and sharing has led to rampant copyright infringement and devaluation of creative works. Intellectual property law – especially copyright law – plays a crucial role

in navigating these new realities. Despite that, laws constructed in the analog age often struggle to keep pace with how fast technology evolves. The result has been considerable uncertainty among artists and continuing discussions over where to best draw the line between safeguarding creators' rights without stifling an open internet. In India these issues are further complicated with our own cultural and to some extent legal backdrop. More recently, art in all its forms (save for perhaps the classics and most of our folk arts) is finding greater acceptance when explored through the digital medium. At the same time, our IP laws — while mostly aligned with international standards— have a number of features that are distinctive to India and affect how these issues play out in practice. In this paper, the author addresses some of the significant challenges and opportunities that arise at the crossroads between copyright law and digital technologies for visual/performing artists in India. By examining contemporary case-law, statutes and practices, the panel provides insight into the changing landscape for artists creating in a digital context. Ultimately, it calls for recalibration of our IP regimes that allows us to maintain the basic protections while opening up and spreading out on digital platforms.

2. COPYRIGHT IN THE DIGITAL AGE: AN INDIAN PERSPECTIVE

The Copyright Act of 1957 in India is good for the arts. It gives the painter, sculptor, choreographer an automatic right of copyright from the moment a work is created. These persons have the right to reproduce and distribute their works and make derivative versions of whatever it is they do. But here is the catch; this protection will only last during his lifetime and for 60 more years. It is shorter than other countries but yes, in many ways, it balances incentives for creators with broad access to our rich cultural work. Where things start getting really complicated is when some new media take the enforcement of those copyrights and with India's enormous internet user base, it's like trying to find a needle in a haystack when spotting infringement. Plus, we've got this whole debate raging about whether platforms like YouTube should be held responsible for what users post. It's a real headache, let me tell you. But it's not all doom and gloom. We've got this thing called "fair dealing" in our copyright law. It's kind of like the "fair use" doctrine in other countries, but with its own Indian twist. Basically, it allows for the limited use of copyrighted material for things like criticism or review. But here's where it gets tricky in the digital world - what about all those Bollywood song remixes and meme-makers using stills from classic films? These are big in India and generally serve as reflections on our culture and politics. The courts are beginning to look at these issues, but there's much still not known.

Another big issue we are grappling with is orphan works, you know, those copyrighted pieces for which the owner is untraceable. It's a real problem in India, given our incredibly diverse cultural heritage. Imagine chasing up the author of some ancient folk art that has been digitized and shared online. A nightmare. There are some proposed solutions, like limiting liability for people who make a good faith effort to find the owner, but implementing this stuff is easier said than done. At the end of the day, we are still trying to figure out how to balance protecting the rights of artists with the reality of our digital world. Not easy; particularly in a country like India with our strong traditions of artistic reinterpretation and remixing. We need to find a way to harness the creative potential of digital technologies without leaving our artists high and dry. It's a tough nut to crack, but I reckon we'll get there eventually. After all, *jugaad* is our specialty, right?

3. NEW FORMS OF ARTISTIC EXPRESSION IN INDIA'S DIGITAL LANDSCAPE

Digital, AI-generated art is now coming up in India and that's a tricky place to be as we try and understand the traditional notions of authorship versus creative output. We have a great heritage of joint and collaborative artistic traditions here, but these new technologies are going further. Consider AI-created art. That there has been BotWars™ in India now, challenging the fact that these outputs are written by humans and therefore able to be copyrighted under its laws. Obviously our courts haven't weighed in on this just yet, but it's easy to see how matters like these could be hot-button issues moving into the future as AI participation and control is only expected to grow. It is even possible that we will have to develop new legal mechanisms for these hybrid human-machine creatures, as a continuation of ancient formations based on the collective authorship. Interactive and participatory art In India, digital platforms are bridging the fabric of a creator or an audience. Some really nice projects like this are being created – more videos, the oldest website and live concert in your computer. Type of work: DesignIt's possible to making digital rangoli or collaborating over online kolam pattern! All of this art is great, and the those new creation methods are giving rise to a lot of really good questions when it comes to copyright law about authorship but also ownership. For instance (again, ghosts of my own experiences) the terms may say that the platform owns an interest in user contributions — or it could be a jumble of strings running between more than one contributor. As these art forms that involve the participation of many people in creation are still evolving, we really need better ways to approach this legally: There is a long tradition in India where much of the Community Art was done. Virtual and augmented reality (VR/AR) are revolutionising art in India | As we

usher into the era of virtual & augmented technology, artists in all directions push boundaries breaking loose behind tensioned imaginations towards comprehensive fuller physical limits. Some incredible artisans are working wonders with these technologies, exploring our cultural history, smashing through modern socio-political issues. On the one hand you have people building VR experiences that will let you walk through ancient temples in mind-blowing detail, while on the other artists can use AR to project digital art across urban landscapes as a visual commentary on anything from environmental collapse and social inequality. However, these newer mediums are also throwing up some head-scratching IP questions — especially in the Indian context. How do you enforce copyright law on a virtual sculpture of Hindu god that can be experienced but not touched? But what will happen when these AR artworks impinge on the real world and interact with copyrighted elements of architecture, such as building facades or public sculptures?

4. ONLINE PLATFORMS AND ARTIST RIGHTS: THE INDIAN SCENARIO

The rise of user-generated content (UGC) platforms in the country has also opened up a plethora of opportunities for artists to that they are able showcase their work and interact with audiences on an ad-free environment. However, it's not all rosy - these platforms have also brought a whole host of copyright headaches with them. Goliaths like YouTube and Instagram, as well as indigenously developed apps such Moj and Josh have put in place a content ID system to detect copyright violation. That said, these systems are hardly foolproof. But they've tended to overshoot, and in the process sometimes catch perfectly valid fair dealing uses. While the 2021 IT Rules attempted to clarify platform liability and endorse proactive monitoring, it is still an open question whether this will be effective. As this has become more and more popular, we're still in the process of figuring out how to protect rightsholders while keeping artistic expression well-lit online along with thriving communities across all platforms. Vivid change in the music industry of India with transitioning to digital streaming While platforms like Gaana, JioSaavn and Spotify have almost ended piracy while giving listeners access to huge libraries of songs, it has also left many artists crying over low royalty payments. The licensing beware of this narrows through using report labels, movie manufacturing agencies and accumulating societies so convoluted that it makes its nearly impossible for artists (mainly indie artists) in order to navigate the maze and on how they are able to very well make from streaming wages. More voices sound as the information and revenue share talk needs to be less uncommon. Whilst some artists are starting to get creative and test out new ways of 'monetising' their work by trialling different platforms or release strategies. Still, more are advocating for statutory interventions to even the playing field in this new digital world. It's going to be some very careful balanceing act for India as streaming takes over music consumption.

The new kid on the block in this wide world of digital assets are non-fungible tokens (NFTs), a truly unique asset that has opened up exciting opportunities for both domestic and overseas Indian artists to further commercialize their art. As a result, Indian artists are able to sell digital minted assets for thousands of dollars due to this blockchain-based technology creates an inherent sense of scarcity and provenance around digital goods. We even see traditional Indian art forms being “tokenized,” inviting new markets and revenue streams as well. However, it's not all sunshine in the NFT garden. The Indian unregulated landscape has been infested with scams, theft and hundreds of copyright infringements. A lack of accountability has led to several NFT marketplaces being accused of not adequately checking that sellers are the copyright owners for tokenizing works in their catalog. Many of these legal, regulatory and taxation issues could be resolved only once the market matures in India therefore it is inevitable that we will have more clarity on ownership rights, authenticity aspects as well transferability feature through smart contracts or otherwise when dealing into production/distribution/disposal etc. with regard to digital assets – like NFTs.

5. INTERNATIONAL HARMONIZATION EFFORTS: INDIA'S ROLE

In today's interconnected digital world, it is becoming an increasingly frustrating hassle to try and get everyone on the same understanding of intellectual property laws in this digital world which is full of connections between all kinds. Like herding cats to march in a line! India, of course has been right there amidst it all and entered the numerous international treaties and agreements to unravel this mess. We have signed some doozies, such as the WIPO Copyright Treaty and also WIPO Performances and Phonograms Treaty. These bad boys push copyright protections out into the wild west of the digital frontier. Oh, and remember the Marrakesh Treaty -- we'd already joined that one in 2014. These boys are why copyright feels like the wild west of the digital frontier. Remember the Marrakesh Treaty we ratified in 2014? This is all done to enable the visually impaired having access to our published works, showing not only that we are doing more than an effort in protecting copyrights – but also guaranteeing knowledge accessibility for everyone. So not only do we

have the Beijing Treaty on Audiovisual Performances that gives performers in audio visual works a long-lacking spate of economic and moral rights. HOWEVER, and here is the kicker despite all these fancy treaties there are still some pretty big disparities between how different countries operate with respect to copyright laws.

They are causing enough trouble for the Indian artists to work in a globally digital marketplace. The battle continues over just how long copyrights should last, what kinds of exceptions and limitations there ought to be, in fact even the most fundamental questions like whether or not these laws work at all. Although India has been punching way above its weight in these international pow-wows. This is what Len & I have been advocating for: an outcome that doesn't work against the small guys, which are many developing countries, and continues to sing from Kumbayah hills on how knowledge should be more openly available. Suffice to say the debates concerning IP issues in this new fangled digital age are far from over, but I wouldn't bet against India with its incredible long river of a tongue. The global norms that will be central to how our children communicate are still being written and we have a vital role in these conversations so you won't see us on the sidelines.

6. LOOKING AHEAD: POTENTIAL REFORMS IN THE INDIAN CONTEXT

While the digital world continues to turn, IP laws find it difficult to keep pace. It is as though we are trying to walk down a crowded street in Mumbai with a map from the 1950s and that simply won't do anymore. A major reform in our IP frameworks to serve legitimate interests such as the artists themselves and their growth through innovation. A major part of this needs to include revisiting our fair dealing provisions. At a moment when remixes and mash-ups, the homespun wild analog digital creativity that supports India's viral online culture is climbing through cyberspace at an impressive rate (Thanks in part to those of us who are straight-up crackers here in Navi Mumbai.). they're about as limber as a rusty hinge. The generics in our laws only provide so much cover for the folks who bring music into the world, and it is to us on Capitol Hill to widen this bracket going forward with accurate language. Meanwhile, we are starting to see some intriguing ideas for different systems of compensation. Now, think of a world in which the costs from internet capabilities or device distribution were not pooled into creators essentially without their say so based on whether they are really being used if your work is online. This has the potential to be a game-changer for our vibrant, creative community as it empowers artists with (at least) some guaranteed payments which are separate from an antiquated type of exclusivity rights mode. Now, let's talk tech. Both Blockchain and AI are revolutionizing industries. Using blockchain to register & enforce copyright globally ~ the way we track and enforce ownership in countries. This would be a big win for Indian artists wanting to protect and monetize their work on the global stage, if only they could automate licensing and royalty payments with smart contracts. AI, then is a whole new kettle of fish for the realm of art grants. When machines get in on the creative game, we might need some innovative new legal structures to determine what belongs to who. Perhaps we can take a leaf from our traditional theory of collective authorship and place it into the modern age with ease along AIs. Finally, and perhaps most uncomfortably for the platforms — platform accountability. Plenty of people argue about how to tighten up the safe harbor provisions and notice-and-takedown systems But we need to be able strike a balance that works for everyone — platforms, consumers as well-rightsholders alike and not interfere with our vibrant digital economy. We might have to start asking platforms to do more filtering in such a politically unacceptable way, but we should probably also accompany that with better defences for fair dealing. It's a tricky balance, but it is one that could be absolutely essential for the development of creativity in digital India.

7. CONCLUSION

The rise of the digital age has marked profound changes to how visual and performing artworks are made, shared, and monetized in India. Despite presenting immense challenges to traditional notions of copyright, new technologies have also unlocked unprecedented forms of creative expression and expanded opportunities for artists to access new audiences. Intellectual property law offers the guiding fault lines for such developments; however, the original frameworks that developed in the analog world frequently have trouble keeping to speed with digital advancement. Updating and harmonizing our IP regimes are still urgently necessary for the Indian context, where they should best meet the interests of Indian artists and their fans by facilitating the democratizing and community-building potential of digital platforms. Specified areas of further research and policy development in the context of the Indian case include: refining fair dealing influences for the digital environment, developing legal structures for computer-assisted and other digital art forms, enhancing systems of rights management and remuneration on digital networks, clarifying jurisdiction obstacles related to digital networking, and balancing protection of artists' rights with open internet benefits. If we

thoughtfully modernize our intellectual property law for the digital era, we can form a vibrant creative environment that sustains Indian artists while serving a more extensive public interest in the cultural field.

CONFLICT OF INTERESTS

None.

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