
A COMPARATIVE ANALYSIS ON DIGITAL MILLENNIUM COPYRIGHT ACT (DCMA), 1998 OF THE UNITED STATES AND THE INDIAN COPYRIGHTS ACT, 1957

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ABSTRACT

In this digital age, Intellectual Property Rights face strong challenges due to the robust and continuous evolution of the latest technology and the web. This research paper undertakes a comparative analysis of Digital Millennium Copyright Act (DMCA), 1998 of the United States and the Indian Copyrights Act, 1957 highlighting and exploring their historical evolution, judicial frameworks, and legislative intent. By examining the Copyright Act, 1957 in India and the Copyright Act, 1976 in the US, the study identifies key similarities and differences in their approach to protecting intellectual property. The Digital Millennium Copyright Act (DMCA) of 1998 fundamentally reshaped U.S. copyright enforcement in the digital era by introducing three core mechanisms: anti-circumvention provisions (Section 1201), safe harbor for online intermediaries (Section 512), and stringent civil and criminal remedies for infringement. In contrast, the Indian Copyright Act (1957), as amended, includes anti-circumvention safeguards through Sections 65A and 65B, added via the 2012 amendment. These provisions address technological protection and rights-management information, but crucially, require a mens rea, i.e. intent to infringe, to establish liability unlike the DMCA's strict liability approach. It will also touch upon the intermediary liability and their treatment in both the laws. In respect of Indian Law, this research will cover on topics that have not been dealt with in comparison with the DCMA, and whether these topics can be incorporated in the Indian Law. Both the United States and India are actively working to modernize their copyright laws in response to digital challenges, yet significant differences remain in their approaches to enforcement and protection. Examining these variations helps identify what aspects of each system are effective and what gaps still exist. Such insights are valuable for shaping more consistent and harmonized global copyright standards. Through doctrinal and comparative research methodologies, the paper examines the influence of international treaties and lay focus on how both jurisdictions adhere to international treaties like Berne Convention and

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TRIPS, embedding common standards yet diverging significantly in implementation and digital enforcement efficacy.

Keywords: DMCA, Indian Copyright Act 1957, anti-circumvention, safe harbour, Berne Convention, TRIPS

Hypothesis

Despite shared international obligations, the DMCA and the Indian Copyright Act adopt divergent approaches to digital copyright enforcement, reflecting differing balances between rights holders' protection and users' freedoms.

Research Problem

The emerging time calls for modernization, such is the case in the digital world. Both the US and India follow similar international obligations. Yet we find gaps and differences in enforcement and protection. While both jurisdictions seek to address emerging challenges in the digital environment, their divergent legal mechanisms create inconsistencies that raise questions about the effectiveness and fairness of each system. This divergence not only exposes gaps in the protection of rights holders and users but also complicates efforts to achieve global harmonization of copyright standards. The research problem, therefore, lies in examining these variations to determine which aspects of each system work effectively, where the shortcomings lie, and how lessons from both can contribute to more consistent international copyright protection and harmonization.

Research Question's

1. What gaps exist in the Indian framework when compared with the DMCA, and can certain features of the U.S. law be adapted into Indian law without undermining user rights?
2. How does DMCA (1998) and the Indian Copyright Act (1957, as amended) differ in addressing digital copyright challenges, particularly in dealing with intermediary liability?

Objectives

1. To conduct a comparative analysis of the DMCA, 1998 (U.S.) and the Indian Copyright Act,

1957, to understand how both frameworks address copyright protection in the digital era.

2. To trace the historical evolution and legislative intent behind the two copyright regimes.
3. To examine the treatment of anti-circumvention provisions, safe-harbour mechanisms for intermediaries, and remedies for infringement under both laws.
4. To analyse the differences in each jurisdiction's approach to intermediary liability and the balance between rights holders and users.
5. To assess the influence of international obligations such as the Berne Convention and TRIPS Agreement on both legal frameworks.
6. To identify gaps in the Indian copyright system and suggest reforms by drawing lessons from the DMCA.

Methodology

This study adopts a **doctrinal and comparative research methodology**, it emphasis on materials such as statutes, case law, legislative history, and scholarly commentary to analyse the DMCA, 1998 and the Indian Copyright Act, 1957. The **doctrinal research methodology**, helps us to analyse legislations, judicial interpretations, and amendments, particularly with respect to anti-circumvention provisions, intermediary liability, and enforcement mechanisms of the DCMA of the United States and the anti-circumvention safeguards of the Indian Copyright Act as per the amendments. The **comparative research methodology**, helps us analyse the similarities, differences and divergences between the U.S. and Indian regimes. It not only helps us evaluate the basic components but it will pose questions as to how each system addresses common challenges posed by digital technologies, piracy, intermediary responsibility and existing legal gaps.

Exiting Legal Situation

In the United States, the Digital Millennium Copyright Act (DMCA), 1998 serves as a primary legislation in addressing issues related to digital rights management and online infringement. Under the DCMA, it bought out 3 major heads to tackle these issues. The first is the anti-circumvention provisions (Section 1201) which prohibits the bypassing of technological

protection measures, secondly, safe harbour for online intermediaries (Section 512) which limits the liability of online intermediaries, and lastly, stringent civil and criminal remedies for such infringement. Additionally, the US Copyright Laws deal with the “doctrine of fair use” which is an open-ended doctrine, allowing courts significant discretion to evaluate whether a use qualifies as fair based on the context. This flexibility encourages creativity and innovation by permitting transformative and educational uses that contribute to societal progress.

In India, The Indian Copyright Act (1957), as amended in 2012, address Sections 65A and 65B which introduces the anti-circumvention and rights management information, aligning India’s law more closely with international standards under WIPO treaties. When it comes to infringement, under the Indian Law Section 65A requires *mens rea* (intent to infringe) for liability under anti-circumvention. Additionally, The Indian Copyright Laws deal with the “doctrine of fair dealing” which offers limited exceptions to copyright infringement. The “doctrine of fair dealing” in India is a closed and restrictive doctrine, limited to specific purposes explicitly mentioned in the statute. While this approach provides certainty and safeguards the rights of creators, it may stifle innovation by not accommodating evolving uses, particularly in the digital age.

Introduction

In the digital landscape, where information flows freely and boundaries between original content and derivative works blur, copyright protection has become more critical than ever. Copyright law serves as a cornerstone of intellectual property rights, protecting creators’ works while fostering innovation and creativity. The evolving landscape of copyright law is intricately intertwined with technological advancements, presenting both opportunities and challenges in the digital age.² With the rapid growth of digital platforms and online intermediaries, questions of liability, enforcement, and user rights have become central to copyright discourse. This shift has compelled lawmakers worldwide to adapt traditional copyright frameworks to address issues such as piracy, technological circumvention, and fair use in a virtual environment.³

In view of the above, the United States of America enacted the Digital Millennium Copyright Act in 1988 in order to protect the originality of the content posted on digital platforms. The

² Madhumitha. K, A Comparative Analysis of Copyright Laws in India and the United States, LawfulLegal (23rd April, 2025)

³ Madhurima Datar, *Comparative Analysis of Indian Copyright Laws with International Digital Copyright Standards*, 4 (2024).

law addresses the issue of copyright infringement in the digital platforms and provides mechanisms for copyright holders to request the removal of infringing content from internet platforms. The law encompasses three major core ideas in order to tackle with the rising situations.⁴ Firstly, the **Safe Harbor** provisions outlined under **Section 512** shield online intermediaries from liability for user-generated infringements, provided they act promptly on valid takedown notices and avoid direct financial benefit from infringing content. Second, the **Anti-Circumvention Measures** prohibit bypassing digital rights management (DRM) technologies, restricting the creation or use of tools designed to defeat such protections.⁵ Lastly, the **Take Down Notices** enables copyright holders to request swift removal or blocking of infringing material, ensuring a structured process for enforcing exclusive rights in the digital environment. Additionally, looking at the legislative intent the DCMA protect online service providers from liability for user infringements, strengthen legal safeguards for copyright owners to encourage online sharing, and prohibit false copyright management information. The DMCA thus strikes a delicate balance between safeguarding the interests of copyright holders and enabling the continued growth of online platforms.⁶

In contrast to the above, the Indian Copyright Act of 1957 along with its notable amendment of 2012, makes provision for anti-circumvention safeguards through Sections 65A and 65B. Under Section 65A, criminalises circumvention of technological protection measures used to safeguard copyrighted works, but only when done with intent to infringe, except in cases explicitly permitted by law.⁷ Under this section, liability arises only when the act is done with the intent to infringe copyright and additionally in order to prove infringe of copyright mens rea is required. Section 65 B on the other hand, protects information identifying a work, its author, rights owner, and usage terms.⁸ It prohibits unauthorized removal, alteration, distribution, or communication of such information, providing both criminal and civil remedies to rights holders. This Section addresses the protection of rights management information (RMI). The Amendment Act has tried to bring the Indian Copyright regime in sync with technological advances and concomitant international developments. And accordingly, the

⁴ *Digital Millennium Copyright Act*, Wex, Legal Information Institute, Cornell Law School (last reviewed Sept. 2025)

⁵ *Digital Millennium Copyright Act (DMCA)*, UW Copyright Resource, University of Washington

⁶ *University Advisory*, Harvard DMCA, Harvard University

⁷ Sivagayathri Rameshbabu, *Copyright Laws in India, the UK, and the US: A Comparative Approach*, The BarErudite, Dec. 31, 2024

⁸ Nandita Saikia, *The Impact of the 2012 Amendments on the 1957 Copyright Act* (June 14, 2012), Law Matters | IN Content Law

ambit of reproduction right has been widened to include storing of the work in any medium by electronic means.⁹ Section 65A and 65B are inserted so as promote to digital rights management. Both these provisions are aimed at protecting the rights of the copyright owners in the digital domain. Against this backdrop, this research seeks to undertake a comparative analysis of the DMCA and the Indian Copyright Act, by identifying gaps in the Indian system and evaluating whether certain features of the DMCA can be adapted into Indian law, the study aims to contribute to the ongoing discourse on harmonization of copyright standards at an international level.

Modernizing Indian Copyright: A DMCA-Inspired Approach

Intermediary liability & Safe Harbor

A major gap in the Indian copyright framework compared to the DMCA lies in safe harbor protections for online intermediaries. Under the DMCA, Section 512 The DMCA Safe Harbor provisions incentivize service providers to cooperate with copyright enforcement by granting them immunity from liability for user-generated infringements, provided they take certain steps. Safe harbor protections apply to four main activities: providing networks and infrastructure, caching infringing content, hosting or storing infringing content, and linking or directing users to infringing content. Importantly, these protections apply only when the infringement is committed by a third party, not the service provider itself. To qualify, service providers must meet threshold requirements, including adopting and implementing a policy to terminate repeat infringers, informing users of this policy, accommodating technical measures used by copyright owners, and designating agents to receive takedown notices. Additionally, for hosting/storage and linking activities, service providers must comply with notice-and-takedown procedures and must not have prior knowledge of the infringement. These provisions create a structured framework that balances the protection of copyright owners with the operational needs of intermediaries and user rights in the digital environment.¹⁰ In contrast, India's Section 79 of the IT Act, 2000 offers only conditional protections, with ambiguous guidelines on compliance, notice procedures, and timelines. Safe Harbour Protection India - "Intermediary" is defined widely and depending on the context can include entities as varied

⁹ Sayed Hashimy & Emmanuel Elimhoo Kimey, *Protection of Digital Contents Under Indian Copyright Law in the Light of International Conventions*, 5 SSRN Elec. J. 1302, 1302–11 (2022)

¹⁰ Copyright Alliance, DMCA Safe Harbor, <https://copyrightalliance.org/education/copyright-law-explained/the-digital-millennium-copyright-act-dmca/dmca-safe-harbor/> (last visited Oct. 18, 2025).

as internet service providers, social media companies, e-commerce apps, and even cyber café. The passage of the IT Act in the year 2000 saw the first version of an intermediary liability law in India in the form of Section 79. It provided expansive protection (a safe harbour) to intermediaries for third party content as long as they had no knowledge of its illegality or exercised due diligence. The concept of "safe harbor" under Section 79 of the IT Act, 2000 acts as a defense for the intermediaries but there are instances where there is a clear infringement of Intellectual Property Rights by the intermediaries. The intermediaries like ISPs, web hosts, social networking sites and blogging platforms provide important tools and platforms that allow users to access the Internet, host content, share files and transact business. Websites like Blogspot, Youtube and Facebook only provide a platform for users to post their content, and do not have any editorial control over this content.

Unlike the DMCA, India's legal framework does not explicitly and systematically address copyright infringements through its intermediary liability provisions. Section 79 of the IT Act, 2000, in conjunction with Section 52 of the Copyright Act, 1957, provides conditional immunity to intermediaries but creates overlapping and sometimes conflicting obligations, leading to legal uncertainty. While the DMCA establishes a clear notice-and-counter-notice process for users to challenge takedown requests, India lacks a similarly robust and transparent mechanism, often prioritizing the complainant and leaving users with limited recourse outside judicial intervention. Intermediaries are granted safe harbor only if they exercise "due diligence" and comply with guidelines under the IT Rules, 2021. However, vague terms such as "grossly harmful" or "disparaging" create ambiguity and impose potentially ill-defined duties on intermediaries, which may inadvertently undermine free speech protections and hinder consistent enforcement.

Anti-Circumvention

The primary gap between the DMCA and India's Section 65A lies in the liability standard and enforceability. Under Section 1201 of the DMCA, circumvention of technological protection measures (TPMs) is prohibited regardless of intent, creating a strict liability regime that strongly deters piracy and unauthorized access. In contrast, India's Section 65A requires proof of mens rea, meaning the infringer must have the intent to violate copyright, which weakens enforcement in practice. This intent requirement allows individuals to circumvent TPMs without automatically triggering liability, reducing protection for rights holders in the digital

environment.¹¹

The DMCA's Anti-Circumvention provisions (Section 1201) make it illegal to bypass technologies that copyright owners use to protect their works, such as encryption or password protections. These provisions were enacted not only to prevent piracy and economically harmful unauthorized use, but also to support legitimate dissemination of copyrighted works. Enforcement under Section 1201 does not require proof of actual copyright infringement, the mere act of circumventing protection measures constitutes a violation. The law distinguishes between technologies that control access to a work versus those that control exclusive rights: hacking access-control technologies is prohibited, while hacking rights-control technologies is generally not prohibited, though trafficking in circumvention tools is illegal. The DMCA also provides limitations and exceptions, allowing acts such as reverse engineering, encryption research, and security testing. Additionally, the U.S. Copyright Office reviews the statute every three years to create temporary exemptions for certain uses. This comprehensive and flexible framework ensures both strong protection for copyright holders and periodic adjustments to accommodate legitimate uses in the evolving digital landscape.¹²

Section 65A criminalizes the circumvention of effective technological protection measures (TPMs) applied to safeguard copyrighted works, but only when done with the intent to infringe copyright. This provision aims to protect digital content from unauthorized access and copying while aligning India with international obligations under WIPO treaties.¹³ Unlike the DMCA, Section 65A requires proof of mens rea, meaning that liability arises only if the circumvention is performed with the intention of violating copyright. The law also includes certain permissible exceptions, such as acts carried out for lawful investigations, security purposes, or other situations explicitly authorized by the statute. While Section 65A strengthens India's copyright protection in the digital domain, the requirement of intent and narrower scope reduces its deterrent effect.¹⁴

¹¹ Swaraj Paul Barooah, Disruptive (Technology) Law? Examining TPMs and Anti-Circumvention Laws in the Copyright (Amendment) Act, 2012, 5 NUJS L. Rev. 583 (2012).

¹² Neil A. Benchell, The Digital Millennium Copyright Act: A Review of the Law and the Court's Interpretation, 21 J. Marshall J. Computer & Info. L. 1 (2002)

¹³ Hashimy, Sayed & Kimey, Emmanuel Elimhoo. (2022). Protection of Digital Contents Under Indian Copyright Law in the Lights of International Conventions. SSRN Electronic Journal. 5. 1302 - 1311. 10.2139/ssrn.4003072.

¹⁴ Prateek Chakraverty, Effective Applicability of Sections 65A and 65B of Copyright (Amendment) Act, 2012 Using Case Study of Digital Watermarks, 20 J. INTELL. PROP. RTS. 388 (2015).

Fair Use vs. Fair Dealing

The concept of fair dealing under Section 52 of the Indian Copyright Act aims to balance the rights of copyright owners with the public's need for access to knowledge, particularly for purposes such as research, education, criticism, and reporting. Section 52 of the Indian Copyright Act, 1957 embodies the principle of fair dealing, providing limited exceptions to copyright infringement for specific purposes such as private use, research, criticism, review, and reporting of current events, including public speeches. The scope of fair dealing is deliberately narrow, ensuring that any use outside the enumerated purposes constitutes infringement. Judicial interpretations emphasize proportionality and the protection of the copyright holder's interests. In *Civic Chandran v. Ammini Amma*¹⁵, the Kerala High Court held that fair dealing must involve limited use, avoiding any impact on the original work's commercial value. Similarly, in *Academy of General Education v. B. Malini Mallya*¹⁶, the court reiterated that the assessment of fair dealing should be **case-specific**, considering both the purpose and extent of the use. Together, these decisions underscore that fair dealing in India is strictly regulated, focusing on balancing public access with the protection of copyright owners' economic and moral interests.¹⁷ However, its scope remains narrow and rigid compared to the more flexible U.S. fair use doctrine under the DMCA. The landmark case of *The Chancellor Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*¹⁸ illustrated this tension, as the Delhi High Court upheld the right of students and educational institutions to reproduce copyrighted material for academic purposes. Despite this progressive ruling, Indian fair dealing jurisprudence is often criticized for lacking normative clarity and not adequately addressing socially valuable uses like educational copying. With the rise of digital content, India's framework faces new challenges in applying fair dealing to e-books, online courses, and digital databases. Scholars and policymakers therefore advocate for amendments to Section 52 to accommodate digital uses, incorporate technological measures like Digital Rights Management (DRM) and blockchain for copyright tracking, and align more closely with global fair use principles. Such reforms could help India strike a better balance between

¹⁵ *Civic Chandran v. Ammini Amma*, 1996 (2) KLT 67 (Ker.).

¹⁶ *Academy of Gen. Educ. v. Malini Mallya*, (2009) 4 KCCR 2490 (Kant.).

¹⁷ Madhumitha K., A Comparative Analysis of Copyright Laws in India and the United States, LAWFUL LEGAL (Apr. 23, 2025)

¹⁸ *The Chancellor Masters & Scholars of the Univ. of Oxford v. Rameshwari Photocopy Servs.*, 2016 SCC OnLine Del 6229 (Del. HC).

protecting copyright holders and ensuring equitable digital access to educational and cultural resources.

Section 107 of the U.S. Copyright Act of 1976 establishes the fair use doctrine, which is broader and more flexible than India's fair dealing provisions. It provides a four-factor test to assess whether a use of copyrighted material is permissible: (1) the purpose and character of the use, including whether it is commercial or transformative; (2) the nature of the copyrighted work, with factual works more likely to qualify than creative works; (3) the amount and substantiality of the portion used, considering whether the "heart" of the work is taken; and (4) the effect of the use on the market value of the original work. U.S. courts have emphasized the importance of transformative use in key rulings. In *Campbell v. Acuff-Rose Music, Inc.*,¹⁹ the Supreme Court held that a parody of a song constituted fair use due to its transformative nature. Similarly, in *Google LLC v. Oracle America, Inc.*²⁰, the Court ruled that Google's use of Java APIs for Android was fair use because it added significant transformative value, fostering innovation. These cases illustrate how the U.S. framework prioritizes flexibility, innovation, and public benefit, particularly in the context of digital and derivative works.

The fair dealing provisions in Indian copyright law have been compared to the fair use doctrine in U.S. copyright law, with some scholars arguing that the latter provides greater flexibility and adaptability to new technologies. While fair dealing is often characterized as a more restrictive framework, recent judicial decisions in India have demonstrated a willingness to interpret fair dealing provisions more expansively, particularly in cases involving educational and research uses. The primary distinction between fair use in the United States and fair dealing in India lies in scope and flexibility. U.S. fair use, codified under Section 107 of the Copyright Act, 1976, is an open-ended doctrine that grants courts broad discretion to determine whether a particular use is fair, taking into account factors such as purpose, nature, amount, and market impact. This flexibility encourages creativity and innovation, allowing transformative, educational, and socially valuable uses that contribute to public knowledge and progress. In contrast, India's fair dealing framework under Section 52 of the Copyright Act, 1957, is closed and restrictive, permitting use only for enumerated purposes such as research, private study, criticism, review, and reporting of current events. While this provides certainty and protection for creators, it may inadvertently stifle innovation and restrict the application of copyright

¹⁹ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

²⁰ *Google LLC v. Oracle Am., Inc.*, 141 S. Ct. 1183 (2021).

exceptions in the evolving digital landscape, limiting access to new forms of educational and transformative content.^{21 22}

Conclusively, certain features of the U.S. DMCA can be adapted into Indian law without undermining user rights, provided they are calibrated to India's constitutional and socio-economic context. For instance, adopting clearer "safe-harbour" obligations similar to section 512 could help create predictable standards for intermediaries, while still preserving user rights by embedding strong counter-notice and due-process safeguards. Likewise, incorporating narrowly tailored anti-circumvention provisions section 1201 may strengthen technological protection measures, but must be paired with broad statutory exceptions for education, research, accessibility, and fair dealing—rights central to India under section 52 of the Copyright Act.²³

DMCA vs. India: The Digital Divide

In order for us to dwell into this concerning issue we must first acquit ourselves with the digital copyright challenges prevailing in the digital platform.

1. ***Online Piracy and Unauthorized Sharing*** - Online piracy refers to the illegal distribution and access of copyrighted works across various digital platforms. It involves the unlawful uploading, downloading, or streaming of movies, music, books, software, and other creative content without the authorization of the copyright owner. Numerous unauthorized streaming sites, file-sharing portals, and peer-to-peer (P2P) networks enable users to exchange or download such content freely, bypassing legitimate channels. This widespread infringement severely affects the entertainment, software, and publishing industries, leading to substantial financial losses and discouraging creativity and innovation. Moreover, online piracy disrupts legal distribution systems, undermines the rights of creators and producers, and poses challenges for governments and enforcement agencies trying to regulate digital content and protect intellectual property in the rapidly evolving online environment.

²¹ Yadav, Raj. (2025). Reimagining Copyright Law in the Digital Age: Challenges, Reforms, and Educational Access in India.

²² Datar, Madhurima. (2024). COMPARATIVE ANALYSIS OF INDIAN COPYRIGHT LAWS WITH INTERNATIONAL DIGITAL COPYRIGHT STANDARDS. 4.

²³ *Nimmer on Copyright*; Jane C. Ginsburg, "Copyright and Control," 101 Colum. L. Rev. 1613 (2001)

2. ***Cross-Border Enforcement*** - The global enforcement of copyright laws poses a major challenge because copyright regulations vary widely among nations. When copyrighted material is infringed across borders, it creates complex jurisdictional issues, as determining which country's laws apply can be difficult. Differences in legal systems, cultural attitudes toward piracy, and levels of enforcement further complicate the process. As a result, copyright protection remains uneven and fragmented worldwide, leading to what is often called a "patchwork" system of laws. These inconsistencies make it hard for creators and copyright holders to safeguard their works effectively on a global scale.
3. ***Limitations of Digital Rights Management (DRM)*** - Digital Rights Management (DRM) technologies are designed to prevent the unauthorized copying and distribution of digital content such as music, movies, e-books, and software. However, their effectiveness is limited because technically skilled users can often bypass or hack these protections. Moreover, DRM systems can sometimes restrict legitimate user rights, such as transferring legally purchased content across devices or creating personal backups.
4. ***Peer-to-Peer (P2P) File Sharing*** - Peer-to-peer (P2P) file sharing enables users to exchange digital files directly over decentralized networks such as BitTorrent, without relying on a central server. This decentralized structure makes it extremely difficult to monitor, trace, or regulate the distribution of copyrighted materials. Since users can anonymously upload and download movies, music, software, and books, identifying and prosecuting infringers becomes a major challenge for enforcement authorities. The widespread use of such platforms has led to significant violations of copyright laws, resulting in financial losses for creators and industries, and has complicated efforts to ensure accountability in the digital environment.
5. ***Stream Ripping*** - Stream ripping refers to the act of extracting and downloading audio or video content from legitimate streaming platforms like YouTube, Spotify, or Netflix. Users often rely on third-party tools or websites to bypass Digital Rights Management (DRM) restrictions and save content for offline access. While it may appear harmless to consumers, stream ripping violates copyright laws and undermines the revenue models of artists, creators, and distributors, as these platforms operate under licensed

agreements with content owners. This practice threatens the sustainability of the digital entertainment ecosystem, as it erodes legitimate income sources and discourages lawful consumption of media.

6. ***Plagiarism and Digital Manipulation***-Digital manipulation involves altering, editing, or repurposing copyrighted works—for instance, by deleting, modifying, or combining original content to create unapproved derivative versions. Similarly, plagiarism occurs when individuals copy substantial portions of another's work and present it as their own without proper acknowledgment. In the digital age, where content is easily accessible and editable, such practices have become increasingly common. They not only violate copyright protections but also diminish the originality, credibility, and market value of the creator's intellectual property. These issues are particularly prevalent in literature, academic writing, digital art, music production, and social media content creation, highlighting the urgent need for stronger ethical awareness and enforcement mechanisms.²⁴

Having understood the major digital copyright challenges such as online piracy, cross-border enforcement difficulties, DRM limitations, P2P file sharing, stream ripping, and plagiarism, it becomes essential to examine how different legal systems respond to these concerns. Two significant frameworks that address these issues are the Digital Millennium Copyright Act (DMCA), 1998 of the United States and the Indian Copyright Act, 1957 (as amended in 2012).

Liabilities for Internet Intermediaries

India-In India, the safe harbour provisions for internet intermediaries are laid down under Section 79 of the Information Technology Act, 2000. This section provides protection to intermediaries—such as internet service providers, social media platforms, and hosting services—from being held liable for user-generated infringing content, as long as they comply with due diligence requirements. Specifically, intermediaries are not liable if they lack actual knowledge of the infringement or act promptly to remove content upon receiving a valid takedown notice. However, despite this protection mechanism, there remains a lack of clarity and specificity in the Indian framework when compared to international standards. Ambiguities

²⁴ Copyright Infringement in the Digital Age: Copyright Protection vs. User Rights, Legal Research & Analysis, (https://legalresearchandanalysis.com/copyright-infringement-in-digital-age/#COPYRIGHT_PROTECTION_VS_USER_RIGHTS)

in interpretation often result in confusion during enforcement and inconsistent outcomes across cases. This creates challenges both for intermediaries trying to ensure compliance and for copyright holders seeking effective redress.²⁵

United States of America - In contrast, the United States has a much more structured and detailed safe harbour system established under Section 512 of the Digital Millennium Copyright Act (DMCA), 1998. This provision clearly defines the conditions under which intermediaries can claim exemption from liability. Under the DMCA's notice-and-takedown procedure, intermediaries are required to act expeditiously upon receiving a valid notice from the copyright owner to remove or disable access to infringing content. The DMCA also sets out specific procedural requirements, including the designation of agents to receive infringement notices and adherence to defined timelines and documentation standards. These detailed rules ensure transparency, consistency, and accountability, making the U.S. system more efficient and predictable in comparison to India's relatively broad and less formalized framework.²⁶

Technological Protection Measures and Digital Rights Management (DRM)

India - In India, the safeguarding of authors' rights in the digital space was significantly strengthened through the Copyright (Amendment) Act, 2012. This amendment formally introduced provisions related to Digital Rights Management and Technological Protection Measures, particularly under Sections 65A and 65B of the Copyright Act, 1957. The main objective was to align India's copyright regime with international standards and the WIPO Internet Treaties. These provisions prohibit the unauthorized circumvention of digital protection systems and restrict the removal or alteration of rights management information without the consent of the copyright owner. Through these measures, Indian law aims to prevent the unlawful distribution of digital content while protecting the legitimate interests of creators and copyright holders.

United States of America - Similarly, in the United States, the Digital Millennium Copyright Act (DMCA), 1998 explicitly prohibits the circumvention of technological protection measures designed to safeguard copyrighted material. Under Sections 1201–1203 of the DMCA, it is

²⁵ Minhas, K. (2024). Digital Copyright Laws for Over-The-Top (OTT) Platforms: Comparative Analysis of India and the United States. *Journal of Legal, Ethical and Regulatory Issues*, 28(S2), 1-12.

²⁶ Tabrez Ahmad & Sourav Dan, *Comparative Analysis of Copyright Protection of Databases: The Path to Follow*, School of Law, KIIT Univ., Bhubaneswar (Orissa)son

unlawful to bypass or tamper with digital locks or encryption that control access to copyrighted works. The Act also forbids the manufacture, distribution, or sale of devices and software intended to break such protections. These provisions are essential for maintaining the security, integrity, and commercial value of digital works. By enforcing strict anti-circumvention rules, the DMCA ensures that creators' intellectual property remains protected against unauthorized duplication and misuse in the digital ecosystem.²⁷

Enforcement and Compliance

India - In India, the judiciary plays a central role in the enforcement of copyright laws through both civil and criminal proceedings. When copyright infringement occurs, violators may face fines, imprisonment, or both, depending on the severity of the offence and as determined by the court under the provisions of the Copyright Act, 1957. Additionally, copyright owners whose works have been infringed have the right to seek monetary compensation, injunctions, or an account of profits derived from the infringement. These remedies aim to deter unauthorized use and protect the legitimate interests of authors and producers. However, despite these provisions, the practical enforcement of copyright laws in India **faces several challenges**. Procedural delays, limited technical resources, and the lack of specialized enforcement mechanisms often hinder timely resolution of cases. Moreover, the growing volume of digital infringements adds to the burden, making consistent and effective implementation within the copyright industry difficult to achieve.

MySpace vs. Super Cassettes Industries Ltd.: The Delhi High Court ruled that intermediaries can be held accountable for copyright infringement if they fail to remove infringing content after receiving a valid notice. The court emphasised the need for intermediaries to act quickly to safeguard their safe harbour protections under Section 79 of the Information Technology Act.²⁸

Google India Pvt. Ltd. vs. Visaka Industries: The Supreme Court of India held that intermediaries must only remove content after receiving a court order or government notification. This ruling established the scope of intermediary liability and highlighted the

²⁷ Madhurima Datar, *Comparative Analysis of Indian Copyright Laws with International Digital Copyright Standards*, 4 Indian J. Integrated Rsch. L. 579 (2024)

²⁸ *MySpace v. Super Cassettes Industries Ltd.*, (2012) 189 D.L.T. 1 (India)

significance of judicial control during the takedown process.²⁹

United States of America - In the United States, the Digital Millennium Copyright Act (DMCA), 1998 provides a systematic and efficient enforcement mechanism through its notice-and-takedown procedure. Under this framework, copyright owners can directly request the removal or disabling of infringing content from online platforms by submitting a valid notice. Intermediaries, in turn, are required to act promptly upon receipt of such notices to retain their safe harbour protection. Importantly, the DMCA also ensures procedural fairness by granting alleged infringers the right to submit counter-notifications if they believe the takedown request was unjustified. This dual mechanism of enforcement and redress ensures a balance between protection of copyright holders and safeguarding users' rights.³⁰

Viacom International Inc. vs. YouTube, Inc.: This seminal decision upheld the safe harbour principles of the Digital Media Content Act (DMCA), holding that YouTube was exempt from liability for content infringement so long as it took prompt action to remove the offending video after receiving a valid notice.³¹

Conclusion & Suggestions

Conclusion

In conclusion, the comparative study reveals that although both the US DMCA (1998) and India's Copyright Act (1957, as amended) aim to address digital-era challenges, their doctrinal and institutional designs diverge sharply. US law – through the DMCA – codifies a systematic “notice-and-takedown” safe-harbor regime (section 512) for online intermediaries, whereas India relies on a less-specified indemnity under the IT Act (Sec.79) that shields intermediaries only if they expeditiously process takedown notices without knowledge of infringement. Likewise, the United States' broad “fair use” doctrine fosters flexible, transformative uses, while India's fair-dealing exceptions remain strictly enumerated and narrow by statute. Anti-circumvention laws also diverge: India's Section 65A criminalizes only intentional circumvention of effective digital locks and even exempts circumvention for certain research or investigative purposes, whereas the DMCA broadly bans both circumvention and trafficking

²⁹ Google India Pvt. Ltd. v. Visaka Industries, (2011) 4 S.C.C. 457 (India).

³⁰ Sonendra Singh, *Copyright in Film Industry in United States and India: A Comparative Study*, 9 IJNRD (2024), Issue 10, ISSN 2456-4184.

³¹ Viacom Int'l Inc. v. YouTube, Inc., 676 F.3d 19, 21 (2d Cir. 2012).

in circumvention technologies. These legal choices reflect deeper constitutional and cultural priorities. The US Constitution's Copyright Clause explicitly ties protection to "promoting the Progress of Science," encouraging innovation, whereas Indian jurisprudence treats copyright more modestly. Indeed, the Delhi High Court has described copyright as "designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public", underscoring India's emphasis on balancing creators' rights with public benefit. This contrast is mirrored in policy rhetoric: India's recent accession to WIPO's internet treaties was justified as enabling creators to "enjoy the fruit of their labour" and to build a "vibrant creative economy", even as lawmakers must still safeguard education, access, and equity. These systemic differences highlight the harmonization challenge. International norms and technology pressure India to tighten protections, but commentators warn that stricter regimes may impede education and innovation unless offset by strong user exceptions. In particular, the balance between user freedoms and rights-holder interests remains fraught: the US model grants broad user latitude (within fair use) but empowers rights-holders with aggressive enforcement tools, whereas India's model so far heavily favours rights-holders, risking a chilling effect on creativity. Harmonization need not slavishly copy foreign models; India should calibrate reforms to its own values and realities so that copyright serves both creativity and the public interest. Both the DMCA and the Indian Copyright Act operate under shared international obligations such as the TRIPS Agreement and Berne convention, yet they ultimately adopt very different approaches to digital copyright enforcement. The DMCA follows a highly rights-holder centric model, focusing on strict technological protection and rapid enforcement. It includes strong anti-circumvention rules that broadly prohibit bypassing digital rights management, even for lawful uses, and establishes the "notice-and-takedown" safe-harbour system that pushes online platforms to act quickly, often automatically to remove allegedly infringing content. In contrast, the Indian Copyright Act takes a more cautious, balanced approach, placing greater emphasis on user rights, fair use, and judicial scrutiny. India's anti-circumvention provisions are narrower and tied to the purpose of infringement, not mere access. Its intermediary liability framework also requires a more formal "notice-and-counter-notice" process, which helps avoid over-blocking and protects legitimate user expression. *Hence agreeing to the Hypothesis -*

"Despite shared international obligations, the DMCA and the Indian Copyright Act adopt divergent approaches to digital copyright enforcement, reflecting differing balances between rights holders' protection and users' freedoms."

Thus, even under the same international framework, the two regimes reflect different policy priorities: the DMCA prioritises efficient enforcement and strong protection for rights holders, while the Indian law seeks to maintain a fairer balance between copyright protection, access, and user freedoms.

Suggestions

1. Adopt clearer and more structured safe-harbour obligations (similar to DMCA Section 512)-India should introduce a detailed safe-harbour framework that clearly defines intermediary responsibilities, timelines, and compliance standards. This would reduce ambiguity under Section 79 of the IT Act and create predictable expectations for platforms hosting user-generated content.
2. Implement a transparent notice-and-counter-notice mechanism-Alongside safe-harbour rules, India should mandate a formal counter-notice process that allows users to challenge wrongful takedowns. Such due-process safeguards help maintain a balance between enforcement and protection of user rights, preventing over-censorship by intermediaries.
3. Introduce narrowly tailored anti-circumvention provisions aligned with Section 1201 of the DMCA-Strengthening Section 65A by adopting limited strict-liability standards for technological protection measures (TPMs) can improve digital enforcement. Additionally, requirement of mens rea should not be a mandate, rather strict liability of the US should be adopted.
4. Expand statutory exceptions to safeguard education, research, and accessibility-Any strengthened anti-circumvention regime must include clear exceptions for academic uses, preservation, research, security testing, and accessibility for persons with disabilities. These exceptions ensure that technological protections do not undermine public interest uses.
5. Enhance fair dealing provisions to accommodate digital realities-India should broaden Section 52 to include transformative uses, parody, digital archiving, and other socially beneficial uses. This will bring Indian law closer to the flexibility of the U.S. fair use doctrine and support innovation in the digital environment.

6. Establish explicit obligations for intermediaries to act only upon valid notices-To prevent arbitrary or excessive take-downs, intermediaries must be required to remove content only after receiving complete, legally compliant notices from rights-holders. This ensures transparency and avoids misuse of the takedown process.
7. Mandate periodic review of anti-circumvention exceptions-Similar to the triennial rulemaking process under the DMCA, India should allow periodic reviews to update exceptions and ensure relevance with emerging technologies, new digital uses, and evolving public interest needs.
8. Promote a balanced enforcement model aligning with constitutional principles-Any adaptation of DMCA-like features must conform to India's constitutional rights such as freedom of speech, the right to education, and access to information. This ensures that copyright protection does not disproportionately impact users, researchers, or marginalised communities.

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