
BRIDGING THE GAP: MEDIA LIABILITY AND INSURANCE LAW IN THE AGE OF INFLUENCERS AND STREAMERS IN INDIA

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ABSTRACT

The influencer economy in India has been growing rapidly, with influencers, streamers, podcasters, and digital entertainers becoming a part of the new reality in the media industry; however, the expansion has surpassed the legal and financial protection of the newly built industry. Digital creators have become decentralised media actors, thus putting themselves at great risk of lawsuits, such as defamation, copyright infringement, privacy and personality rights violations of their actions, misleading advertising liability and harm caused by synthetic or AI-driven media. The current statutory provisions provide high standards of accountability to creators, and the indemnities provided in brand partnerships under contract continue to place undue responsibility on creators. In this complicated risk landscape, India does not have any developed media-liability insurance ecosystem. This paper relies on case examples, such as ANI–YouTuber scandals, criminal cases involving deep-fakes, and the new personality-rights litigation to explain how creators are becoming more exposed without any real financial security. The paper asserts that such a legal-insurance gap creates an atmosphere of terror to free expression, kills creativity and inhibits the development of the digital media industry in India. The paper offers a holistic model comprising of IRDAI backed products of media liability, micro-liberalization of new licensing, anti-SLAPP legislation, synthetic media regulation, and contractual practice as an industry standard.

INTRODUCTION

India's digital creator economy has transformed rapidly over the last decade, driven by the surge in popularity of social media platforms such as Instagram, YouTube, Twitch, and more recently, short-form video content avenues such as Reels on Instagram and YouTube Shorts. Influencers, streamers, podcasters, gamers, and independent content creators shape public opinion, drive consumer markets, and function as media entities in their own right. This shift toward decentralised digital media has expanded business opportunities but also introduced a complex network of legal risks, including defamation, copyright infringement, privacy violations, and regulatory liability in advertising and endorsements. Despite this high-risk environment, India lacks a structured and accessible media liability insurance ecosystem tailored to digital creators. As a result, many creators operate without financial protection, leaving them vulnerable to litigation, damages, and reputational loss. This article examines the legal environment governing creators, evaluated why India's insurance market has not kept pace, and proposes reforms to develop a robust media liability framework.

INFLUENCER AND STREAMING ECOSYSTEM IN INDIA

The rise of digital creators in India corresponds with the expansion of modernisation models across social platforms. The influencers are paid by brand sponsorship, affiliate marketing, revenue sharing businesses, live-stream contributions, and creator funds. Industry reports suggest that influencer economy in India will reach 3,000 Crore by 2026, as a result of economic growth and content creation becoming professional.¹ As influencers assume quasi-journalistic and quasi-advertorial roles, their exposure to legal liability expands proportionately.

Online creators often struggle with the risks associated with incorrect claims, unproven assertions, or other harsh criticisms which may constitute defamation.² Internet dissemination is fast and viral, which poses reputational risk and legal susceptibility. In the same light, the creators often use copyrighted music, video clips or graphics to ensure that the content is more attractive, but this act (unless licensed) can result in infringement in accordance with the Copyright Act, 1957.³ The claim of privacy and personality-rights is additionally brought about

¹ Influencer Marketing Report 2023, Kroll & EY (2023).

² Gautam Bhatia, *Offend, Shock or Disturb: Free Speech Under the Indian Constitution* 114–18 (2016).

³ Copyright Act, No. 14 of 1957, India.

when the creators capture people without their permission or steal their likeness, and this right was well established in the post-Puttaswamy privacy jurisprudence in India and cases such as Titan Industries Ltd. v. Ramkumar Jewellers, which established the right to publicity.⁴

Another growing area of risk is false or misleading advertising, particularly since influencers can make their endorsement posts without disclosure. In the Central Consumer Protection Authority (CCPA), the guidelines on the prevention of a misleading advertisement and endorsement of misleading advertisement (2022) have provided the influencers with responsibilities to disclose material relations and validate the claims.⁵ Failure to comply may attract large amounts of monetary fines and a possible criminal charge under the Consumer Protection Act, 2019.⁶ With the spread of AI-generated synthetic media and deepfakes technologies, users of speech or image can additionally be held liable in case of un-authorised recording or use of a voice or likeness of another and also in case of the dissemination of manipulated information.⁷

EXISTING LEGAL FRAMEWORK IN INDIA

Defamation in India is governed by both civil and criminal frameworks. Section 356 of the penal statute (Bharatiya Nyaya Sanhita, 2023) criminalises defamation, punishing it with imprisonment or fines.⁸ Despite the transition from the Indian Penal Code to IPC, the offence of defamation continues with similar language and application.⁹ However, new challenges emerged with the issue of online defamation. Courts now have to assess harm arising from instant, widespread digital dissemination. In *Subramanian Swamy v. Union of India*¹⁰ the Supreme Court upheld the constitutionality of criminal defamation, reinforcing the liability of speakers, which includes influencers. Civil defamation remedies under the Code of Civil Procedure include damages and injunctive relief, granting courts broad power to restrain harmful speech.¹¹

⁵ Central Consumer Protection Authority, Guidelines for Prevention of Misleading Advertisements & Endorsements (2022).

⁶ Consumer Protection Act, No. 35 of 2019, §§ 2(47), 10.

⁷ NITI Aayog, Responsible AI for All (2021).

⁸ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 356.

⁹ Indian Penal Code, 1860, §§ 499–500.

¹⁰ *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221.

¹¹ Code of Civil Procedure, 1908, Order XXXIX.

Influencers are frequent users of media assets, such as music, clips, and images, and are therefore also exposed to liability under the Copyright Act, 1957, which prohibits unauthorised reproductions, distribution, and communication of copyrighted works.¹² Infringement claims have increased with the rise of user-generated short-form videos, as seen in disputes involving TikTok creators before the Delhi High Court.¹³ The lack of a standardised micro-licensing regime in India forces creators to rely on platform-provided libraries, many of which offer limited legal guarantees.

Intermediary liability also significantly shapes the digital environment. Section 79 of the Information Technology Act, 2000 provides conditional immunity to intermediaries for third-party content.¹⁴ The Supreme Court in *Shreya Singhal v. Union of India*¹⁵ clarified that intermediaries cannot be expected to judge legality of content on their own and must act only upon court or government orders. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 expanded due-diligence obligations, creating compliance burdens for platforms that host creators' content.¹⁶ So, while intermediaries may be protected, creators themselves remain directly liable for the content they upload.

The CCPA Endorsement Guidelines mandate disclosure of material connections, prohibit misleading claims, and require influencers to exercise due diligence before endorsing products.¹⁷ ASCI's "Influencer Advertising Guidelines" (2021) supplement statutory regulation through self-regulation, requiring clear advertising markers such as "#ad" or "#sponsored".¹⁸ Failures by influencers have already resulted in show-cause notices and penalties under the Act, indication increasing regulatory scrutiny.¹⁹

Most creators enter into contracts with brands, agencies, and platforms. These agreements often include indemnity clauses placing liability for infringing or misleading content on the creator. This affects creators who often lack bargaining power, exposing them to significant financial risk if disputes arise from sponsored posts or advertising campaigns. These contractual

¹² Copyright Act, 1957, §§ 14, 51.

¹³ Sony Music Entm't v. Chandra, CS(COMM) 409/2019 (Del. HC).

¹⁴ Information Technology Act, 2000, § 79.

¹⁵ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

¹⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

¹⁷ CCPA Guidelines (2022), supra note 5.

¹⁸ Advertising Standards Council of India (ASCI), Guidelines for Influencer Advertising in Digital Media (2021).

¹⁹ Press Release, CCPA Issues Notice to Several Influencers, Ministry of Consumer Affairs (Jan. 2023).

liabilities are not covered by ordinary cyber insurance or personal indemnity products.

MEDIA LIABILITY INSURANCE: GLOBAL PRACTICE VS INDIAN REALITY

Globally, media liability or Errors & Omissions (E&O) insurance is a well-established tool used by film studios, newspapers, publishers, broadcasters, and most recently, digital creators. These policies typically cover defamation, privacy claims, copyright and trademark infringement, plagiarism, and advertising injuries. In the United States, E&O coverage is often mandatory for film distribution or major editorial work.²⁰ Similarly, the United Kingdom has a mature multimedia liability market regulated by the Financial Conduct Authority (FCA).²¹

India, however, has no dedicated, widely available media liability insurance for influencers. While insurers like HDFC, ERGO, ICICI Lombard, and New India Assurance offer forms of professional indemnity or cyber risk insurance, these products do not comprehensively address creator-specific risks such as defamation arising from commentary or copyright claims stemming from content creation.²² The Insurance Regulatory and Development Authority of India (IRDAI) has not released guidelines encouraging specialised media liability products, contributing to the slow development of the sector.²³

The absence of claims data, uncertainty in valuing reputational harm, and lack of risk-rating models for digital creators have contributed to insurers' reluctance.²⁴ Additionally, many creators publish globally, creating cross-jurisdictional risks, particularly in countries with aggressive defamation regimes, making underwriting more complex.²⁵

DISCONNECT BETWEEN DIGITAL RISK AND INSURANCE PROTECTION

The mismatch between creators' risk exposure and available insurance coverage is stark. Many influencers operate without legal teams, making them highly vulnerable to takedown notices, cease-and-desist letters, or litigation. A single defamation suit, even if it is ultimately unsuccessful, can impose substantial legal fees and reputational loss. Empirical studies show

²⁰ Media Insurance: A Practical Guide, Lloyd's Market Association (2020).

²¹ FCA Handbook: Insurance Conduct of Business Sourcebook (ICOBS) (UK).

²² HDFC ERGO, Media Liability Policy Brochure (2022).

²³ IRDAI Annual Report 2023-24.

²⁴ Indian Journal of Insurance & Risk Mgmt., Vol. 12, No. 3 (2022).

²⁵ Jeffrey P. Cunard, International Media Liability Risks, Harvard J. L. & Tech. (2020).

that litigation costs in online speech cases in India have risen dramatically due to increased invocation of criminal and civil defamation in digital contexts.²⁶

Creators may moderate or censor their content due to fear of legal exposure, impacting creative freedom and reducing critical commentary online. This chilling effect undermines the diversity and democratic vibrancy of India's digital media environment.²⁷ Meanwhile, brands enforce strict contractual indemnities, shifting risk almost entirely onto creators, further deterring experimentation and creativity.

LIABILITY RISKS FOR INDIAN INFLUENCERS AND DIGITAL CREATORS: CASE STUDIES

A number of recent Indian disputes demonstrate the expanding spectrum of legal exposure faced by influencers and digital creators, particularly in copyright defamation, personality rights, and AI-generated synthetic media. A widely discussed example is the dispute between news agency Asian News International (ANI) and YouTuber Mahesh Rajesh Keshwala (known as "Thugesh"), where ANI accused the creator of copyright infringement for using interview footage without authorisation, prompting legal proceedings in Delhi and signalling a growing willingness of legacy media entities to enforce rights against online creators.²⁸

In a related controversy, ANI filed a defamation suit in the Delhi High Court against YouTuber Mohak Mangal following his criticism of ANI's copyright-strike practices, illustrating the heightened defamation exposure faced by creators who comment on media or political issues.²⁹

Meanwhile, the emergence of AI-generated deepfakes has produced new forms of reputational and legal harm. In 2025, the Punjab police registered an FIR after a deepfake video depicting Chief Minister Bhagwant Mann circulated online, alleging criminal defamation and technological manipulation. The investigation underscored the ease with which synthetic

²⁶ Apar Gupta, *Litigation Trends in Indian Online Speech Cases*, Internet Freedom Foundation Working Paper (2022).

²⁷ N. Suzor, *Lawless: The Secret Rules That Govern Our Digital Lives* (2020).

²⁸ ANI takes legal action against YouTuber for alleged copyright violation," *Exchange4Media*, Aug. 7, 2025. <https://www.exchange4media.com/media-others-news/ani-takes-legal-action-against-youtuber-for-alleged-copyright-violation-146168.html>

²⁹ "Copyright Row: ANI moves Delhi High Court against YouTuber Mohak Mangal," *Exchange4Media*, May 28, 2025. <https://www.exchange4media.com/influence-zone-news/copyright-row-ani-moves-delhi-high-court-against-youtuber-mohak-mangal-143868.html>

media can trigger legal action under cybercrime laws.³⁰ Similarly, prominent influencer Raj Shamani obtained a court injunction expanding the protection of personality rights by preventing unauthorised commercial use of his likeness, including through AI-generated imitations. This development is especially relevant for creators whose public persona forms part of their commercial identity.³¹

Cases involving private individuals also reveal substantial gaps in legal protection, as shown by the arrest of an individual in Assam who used AI tools to fabricate sexually explicit content by featuring influencer Archita Phukan (“Babydoll Archi”), monetising the fake material through fraudulent online accounts. This incident illustrated both the psychological and economic harms synthetic media can inflict.³²

Intellectual property risks extend into brand partnerships as well. In *Castrol India Ltd. v. Gaurav Taneja*,³³ the Delhi High Court considered allegations that a creator’s content misused proprietary material belonging to the brand, showing that influencers can face liability even without commercial collaborations when contractual and intellectual boundaries are insufficiently defined. Together, these cases reflect the complex, expanding risk environment for digital creators in India and reinforce the pressing need for regulatory guidance and tailored media-liability insurance mechanisms capable of responding to the realities of modern content production.

POSSIBLE MEDIA LIABILITY INSURANCE FRAMEWORK IN INDIA

A robust media liability insurance system would introduce financial certainty for creators and encourage responsible content creation. Such insurance would allow creators to engage in commentary, satire, critique, and investigative content without fear of ruinous liability. Countries with well-developed media insurance coverage encourages professional growth and stimulates responsible media practices, with underwriters requiring editorial checks, legal

³⁰ “Raj Shamani’s win extends personality rights to India’s content creators,” *LiveMint*, Nov. 19, 2025. <https://www.livemint.com/entertainment/raj-shamani-personality-rights-creator-economy-legal-impact-india/amp-11763455800055.html>

³¹ “Delhi HC protects personality rights of podcaster Raj Shamani, refuses to order restraint for satirical material,” *Indian Express*, Nov. 17, 2025. <https://www.indianexpress.com/article/cities/delhi/hc-protects-personality-rights-podcaster-raj-shamani-refuses-restraint-10370715/>

³² “ANI admits to court that it has charged up to Rs 45 lakh from YouTubers,” *The Reporters’ Collective*, June 24, 2025. <https://www.reporters-collective.in/newsletters/ani-shares-with-court-it-has-taken-up-to-rs-45-lakh-from-youtubers>

³³ *Castrol India Ltd. v. Gaurav Taneja & Anr.*, COMM IPR SUIT (L) NO.35287 of 2024

review systems, or established content workflows.³⁴

In India, the IRDAI could develop a sandbox for media liability products or incentivise insurers to create policies tailored to creators.³⁵ These policies may adopt risk-scoring methods assessing a creator's platform, audience size, niche, and compliance with disclosure norms. Moreover, specialised products would align India's creator economy with global practices, opening avenues for international brand partnerships.

POLICY, LEGAL, AND INSURANCE REFORMS

Meaningful reform requires coordinated action. IRDAI should encourage the development of creator-oriented media liability products and facilitate industry-wide data collection to build risk models. Legislatively, India could consider anti-SLAPP laws to deter frivolous defamation suits, which are increasingly used to silence online criticism.³⁶ Furthermore, India's copyright licensing environment requires modernisation, including the establishment of micro-licensing solutions similar to ASCAP or BMI in the U.S., enabling creators to legally use music or clips at scale.³⁷

Addressing deepfake and AI-generated content is also essential. Jurisdictions such as the European Union and several U.S. states have enacted laws regulating synthetic media and protecting personal rights.³⁸ India should consider similar frameworks to define civil and criminal liability for creators and platforms.

Insurers, in collaboration with law firms and creator agencies, should develop standard contract templates with clear allocation of liability and mandatory insurance clauses. Education and awareness programmes could help creators understand legal risks and encourage adoption of best practices.

CONCLUSION

India's creator economy is expanding at an unprecedented pace, but legal and financial safeguards have not kept up. Influencers and streamers operate within a regulatory framework

³⁴ Lloyd's Market Ass'n, *supra* note 20.

³⁵ IRDAI Regulatory Sandbox Regulations, 2019.

³⁶ Abhinav Sekhri, *The Case for Anti-SLAPP in India*, Nat'l L. Sch. of India Rev. (2021).

³⁷ WIPO, *Collective Management of Music Rights* (2020).

³⁸ EU AI Act, COM(2021) 206 Final; Texas Deepfake Law, Tex. Elec. Code Ann. § 255.004.

that exposes them to defamation, copyright infringement, privacy violations, and advertising penalties, yet they have limited access to tailored media liability insurance. This disconnect threatens both creators' livelihoods and the broader digital media ecosystem by deterring critical or experimental content. Developing a structured media liability insurance market, supported by legal reform, regulatory guidance, and industry collaboration, would empower creators, protect consumers and advance India's digital economy. A comprehensive insurance ecosystem is essential not only for mitigating risk but also for sustaining the creativity, diversity, and independence that define modern digital media.