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Jurisdictions' Choice of Law and Foreign Copyright Infringement in India

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Abstract

The rapid expansion of digital technology and cross-border dissemination of creative works has intensified the issue of foreign copyright infringement, raising complex questions regarding jurisdiction and choice of law. In an interconnected digital environment, copyright violations frequently transcend national boundaries, making it difficult to determine which courts have jurisdiction and which legal system should govern disputes. India, as a signatory to several international intellectual property conventions such as the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights, has incorporated global copyright standards into its domestic framework through the Copyright Act, 1957. However, the increasing number of transnational copyright disputes has exposed several legal and procedural challenges related to jurisdiction and applicable law.

This research paper examines the principles governing jurisdiction and choice of law in cases involving foreign copyright infringement in India. It analyses statutory provisions, judicial precedents, and international legal principles that influence Indian courts in determining jurisdictional competence and applicable law in cross-border copyright disputes. The study also evaluates how Indian courts address issues such as territoriality of copyright, forum selection, and enforcement of foreign judgments. Through a comparative and doctrinal analysis, the paper identifies gaps in the current legal framework and highlights the difficulties faced by right holders seeking remedies for cross-border infringement. Finally, the study suggests reforms aimed at improving clarity in jurisdictional rules and harmonizing Indian copyright enforcement with international legal standards in the digital age.

Keywords: Copyright infringement, cross-border disputes, jurisdiction, choice of law, private international law, foreign copyright, intellectual property law.

Introduction

The protection of copyright has acquired unprecedented significance in the contemporary digital era, where technological advancements and the rapid expansion of the internet have transformed the creation, distribution, and consumption of creative works. Traditionally, copyright law evolved as a territorial system in which the protection and enforcement of rights were confined to the jurisdiction of individual states¹. However, the rise of digital platforms, online content sharing, and global communication networks has significantly altered this landscape. Creative works such as literary texts, music, films, software, and digital art can now be reproduced and disseminated across national borders almost instantaneously. While these developments have facilitated the global exchange of knowledge and culture, they have simultaneously increased the risk of unauthorized copying, distribution, and use of copyrighted material. As a result, copyright infringement has become increasingly transnational in nature, creating complex legal challenges that cannot be effectively addressed solely through traditional domestic legal frameworks.

In the global context, international efforts to harmonize copyright protection have been undertaken through various treaties and conventions, most notably the World Intellectual Property Organization and agreements administered under it, such as the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights. These international instruments aim to ensure minimum standards of protection for authors and creators across member states while promoting cooperation in enforcement mechanisms. Despite such efforts, the enforcement of copyright in cross-border disputes continues to face significant challenges, particularly with respect to determining the appropriate jurisdiction and the applicable law. When an act of infringement occurs online, the infringing activity may originate in one country, the server hosting the content may be located in another, and the harm may be experienced in multiple jurisdictions simultaneously. This creates uncertainty regarding which court has the authority to adjudicate the dispute and which national copyright law should be applied.

The issues of jurisdiction and choice of law have therefore become central to resolving international copyright disputes in the digital age. Jurisdiction determines the authority of a particular court to hear and decide a dispute, while choice of law determines the legal system whose substantive rules will govern the case. In cross-border copyright infringement cases, courts often face the difficult task of balancing principles of territoriality with the realities of a borderless digital environment². The absence of a universally accepted framework for resolving such conflicts can lead to inconsistent judicial decisions, forum shopping, and challenges in enforcing judgments

¹ P. Narayanan, *Intellectual Property Law*, 4th edn., Eastern Law House, New Delhi, 2017, p. 45.

² V.K. Ahuja, *Law of Copyright and Neighbouring Rights: National and International Perspectives*, 3rd edn., LexisNexis, Gurgaon, 2016, p. 112.

across jurisdictions. Consequently, scholars and policymakers have increasingly emphasized the need to develop clearer legal principles and cooperative mechanisms to address these issues.

Within the Indian context, the relevance of this discussion has grown considerably with the expansion of the country's digital economy and the increasing participation of Indian creators and businesses in the global digital marketplace. India's copyright regime, primarily governed by the Copyright Act, 1957, has undergone several amendments to align with international standards and technological developments. However, questions relating to jurisdiction and the application of foreign law in cross-border copyright disputes continue to pose significant challenges for Indian courts and policymakers. As digital platforms facilitate the global dissemination of copyrighted works originating from India, the need for a robust legal framework capable of addressing transnational infringement has become more pressing.

In this context, the present study seeks to examine the legal complexities associated with jurisdiction and choice of law in cross-border copyright infringement cases, with particular emphasis on the Indian legal framework. It aims to analyze the evolving international standards, judicial approaches, and practical challenges involved in enforcing copyright across national boundaries. The paper begins by examining the conceptual foundations of jurisdiction and choice of law in international copyright disputes, followed by an analysis of relevant international legal instruments and comparative judicial practices³. It further evaluates the position of Indian law and judicial decisions in dealing with such disputes and identifies the gaps and challenges that remain. Through this analysis, the study seeks to contribute to a better understanding of how copyright law can adapt to the realities of the digital age while ensuring effective protection for creators in an increasingly interconnected world.

Conceptual Framework of Copyright and Territoriality

Copyright law constitutes one of the fundamental pillars of intellectual property protection, designed to safeguard the rights of creators over their original works. It provides legal recognition and protection to literary, artistic, musical, dramatic, and cinematographic creations, ensuring that authors and creators enjoy certain exclusive rights over the use and exploitation of their works. In India, copyright protection is primarily governed by the Copyright Act, 1957, which grants authors economic as well as moral rights over their creations. The central objective of copyright law is to strike a balance between encouraging creativity by rewarding authors and ensuring public access to knowledge and culture. Copyright arises automatically once a work is created and fixed in a tangible form, and it does not require mandatory registration for protection, although registration can serve as prima facie evidence of ownership in legal disputes. The scope of copyright protection

³ N.S. Gopalakrishnan and T.G. Agitha, *Principles of Intellectual Property*, 2nd edn., Eastern Book Company, Lucknow, 2014, p. 198.

extends to original expressions rather than ideas, facts, or concepts themselves, thereby protecting the form in which a creative idea is expressed.

The rights granted under copyright law are often described as a bundle of exclusive rights that allow the copyright holder to control various forms of exploitation of the work⁴. These rights typically include the right to reproduce the work, distribute copies to the public, perform or communicate the work publicly, and make adaptations or translations. Such exclusive rights enable creators to commercially benefit from their works while preventing unauthorized use by others. In addition to economic rights, copyright law also recognizes moral rights, which protect the personal connection between the author and the work. Moral rights include the right of attribution, allowing the author to claim authorship, and the right of integrity, which protects the work from distortion or mutilation that may harm the author's reputation. These rights emphasize that copyright is not only an economic interest but also a recognition of the creator's intellectual and personal contribution to society.

Another fundamental concept within copyright law is the principle of territoriality. Territoriality means that copyright protection is limited to the boundaries of the country where the protection is granted. Each nation enacts and enforces its own copyright laws, and the rights granted under those laws are generally applicable only within that particular jurisdiction. This principle reflects the sovereign authority of states to regulate intellectual property within their territories. Consequently, a work protected by copyright in one country may not automatically receive identical protection in another unless there are international agreements or domestic laws recognizing such protection. The territorial nature of copyright law often requires authors and rights holders to rely on the legal frameworks of different countries when their works are used or infringed outside their home jurisdiction.

However, the strict application of territoriality has become increasingly complex in the modern digital era. Technological developments, particularly the expansion of the internet and digital communication platforms, have significantly transformed the manner in which copyrighted works are created, distributed, and consumed. Digital technologies allow content to be disseminated instantaneously across national borders without the need for physical distribution. As a result, copyrighted materials such as music, films, books, and software can be accessed globally through online platforms⁵. This borderless nature of digital communication creates significant challenges for the territorial copyright framework because infringement can occur simultaneously in multiple jurisdictions. A digital work uploaded in one country may be downloaded or streamed by users in several other countries, making it difficult to determine the applicable legal jurisdiction and enforcement mechanisms.

⁴ B.L. Wadhera, *Law Relating to Intellectual Property*, 5th edn., Universal Law Publishing, New Delhi, 2019, p. 63.

⁵ Lionel Bently and Brad Sherman, *Intellectual Property Law*, 5th edn., Oxford University Press, Oxford, 2018, p. 276.

The principle of territoriality is also affected by the need for international cooperation in protecting copyrighted works. Since creative works frequently circulate across borders, nations have entered into various international agreements to ensure mutual recognition and protection of copyright. One of the most influential international treaties in this field is the Berne Convention for the Protection of Literary and Artistic Works, which establishes the principle of national treatment. Under this principle, member countries agree to provide foreign authors the same copyright protection that they grant to their own nationals. Such agreements attempt to reduce the limitations imposed by territoriality while still respecting the sovereignty of national legal systems.

Cross-border copyright infringement has emerged as a significant issue due to the global nature of digital communication. Foreign copyright infringement occurs when copyrighted works are used, reproduced, or distributed in a country other than the one where the rights holder resides or where the work was originally created⁶. This type of infringement may take several forms, including unauthorized reproduction, illegal distribution, and digital piracy. In many instances, infringers exploit differences between national copyright laws or take advantage of jurisdictions where enforcement mechanisms are weak or less effective.

Online piracy represents one of the most prevalent forms of cross-border copyright infringement. Piracy typically involves the unauthorized copying and distribution of copyrighted works such as films, music, books, and software through digital platforms. Websites that host pirated content often operate from foreign jurisdictions, making it difficult for copyright holders to pursue legal remedies. Even when authorities attempt to block or shut down such platforms, mirror websites and alternative domains frequently emerge, continuing the cycle of infringement. This phenomenon illustrates the limitations of traditional territorial copyright enforcement in addressing global digital violations.

Another common form of cross-border infringement involves unauthorized digital streaming and distribution of copyrighted content. Streaming platforms and file-sharing networks enable users to access copyrighted material without proper authorization from rights holders. In many cases, these platforms function across multiple countries, further complicating enforcement efforts. Additionally, peer-to-peer sharing networks allow individuals to distribute copyrighted files directly to other users worldwide, bypassing traditional distribution channels. Such activities undermine the economic interests of copyright owners and pose serious challenges for the enforcement of intellectual property rights⁷.

The conceptual framework of copyright law is built upon the protection of creative expression and the recognition of the rights of authors and creators. Copyright provides a comprehensive system

⁶ Paul Goldstein and P. Bernt Hugenholtz, *International Copyright: Principles, Law and Practice*, 3rd edn., Oxford University Press, Oxford, 2019, p. 342.

⁷ Dev S. Gangjee, "Choice of Law in Intellectual Property: A Review of the Indian Position", (2015) 7 *NUJS Law Review* 235 at 240.

of exclusive rights that enable creators to control and benefit from the use of their works while also preserving their moral connection to those works. At the same time, the principle of territoriality remains a defining feature of copyright law, reflecting the authority of individual nations to regulate intellectual property within their borders. However, the rapid growth of digital technologies and the global dissemination of creative works have complicated the traditional territorial framework, giving rise to complex issues of cross-border copyright infringement. Online piracy, unauthorized streaming, and digital distribution have highlighted the need for stronger international cooperation and more effective legal mechanisms to address copyright violations in the digital age⁸. Together, these developments demonstrate that while copyright law continues to play a crucial role in protecting creativity, it must constantly evolve to respond to the challenges posed by globalization and technological advancement.

Legal Framework Governing Copyright in India

The legal framework governing copyright in India is primarily based on statutory law supported by international obligations that shape the protection of literary, artistic, musical, and other creative works. Copyright law seeks to balance two competing interests: the protection of the rights of creators and the promotion of public access to knowledge and culture. In India, this balance is largely achieved through the provisions of the Copyright Act, 1957, which establishes the rights of authors, the scope of protection, limitations and exceptions, and mechanisms for enforcement. Over time, the Indian copyright regime has evolved through several amendments in order to respond to technological developments, digital dissemination of content, and international treaty obligations. Consequently, the domestic legal structure does not operate in isolation but interacts closely with global copyright norms.

The principal statute regulating copyright in India is the Copyright Act, 1957. This legislation provides comprehensive protection to various categories of works including literary works, dramatic works, musical compositions, artistic works, cinematograph films, and sound recordings. The Act grants authors a bundle of exclusive rights such as the right to reproduce the work, distribute copies, perform or communicate the work to the public, and create adaptations or translations. These rights allow authors and copyright owners to control the commercial exploitation of their creations and receive economic benefits from them. The Act also recognizes moral rights of authors, ensuring that creators retain the right to claim authorship of their work and protect it from distortion or mutilation that could harm their reputation. In addition, the statute provides limitations and exceptions in the form of fair dealing provisions, which permit limited use of copyrighted material for purposes such as research, private study, criticism, review, and

⁸ Sam Ricketson, "The Berne Convention and the Development of International Copyright Law", (1987) 10 *Columbia Journal of Law & the Arts* 1 at 8.

reporting of current events. These provisions ensure that copyright protection does not excessively restrict access to information and knowledge.

The Act also establishes mechanisms for enforcement and adjudication of copyright disputes. Civil remedies include injunctions, damages, and accounts of profits, while criminal remedies address acts such as piracy, unauthorized reproduction, and distribution of copyrighted material. Jurisdictional provisions under the Act provide that copyright infringement suits may be filed in district courts or higher courts having competent jurisdiction. Notably, the law allows authors and copyright owners to institute proceedings in the district court where they reside or carry on business, thereby reducing procedural barriers and enabling easier access to justice. The Copyright Office and the Copyright Board (now replaced by the Intellectual Property Appellate Board's earlier jurisdiction and subsequently transferred to courts) also play an important role in registration, licensing, and dispute resolution. Although copyright registration is not mandatory for protection, it serves as prima facie evidence of ownership and facilitates enforcement in cases of infringement.

While the Copyright Act forms the core of domestic law, India's copyright regime is also shaped by its international commitments. One of the most influential international agreements in this area is the Berne Convention for the Protection of Literary and Artistic Works. This convention establishes fundamental principles of copyright protection, including national treatment, automatic protection, and minimum standards of rights⁹. National treatment requires member states to grant the same level of protection to foreign authors as they provide to their own nationals. Automatic protection means that copyright protection does not depend on formal registration or compliance with procedural formalities. India's copyright legislation reflects these principles by recognizing rights automatically upon creation of a work and extending protection to foreign authors from member countries.

Another significant international instrument influencing Indian copyright law is the Agreement on Trade-Related Aspects of Intellectual Property Rights, which forms part of the legal framework of the World Trade Organization. The TRIPS Agreement sets minimum standards for intellectual property protection that member states must incorporate into their domestic legal systems. In relation to copyright, TRIPS reinforces the substantive provisions of the Berne Convention and introduces additional enforcement obligations. It requires member states to establish effective legal remedies, including civil, criminal, and administrative measures, to combat infringement. India has incorporated these standards through amendments to the Copyright Act, particularly in areas relating to enforcement, technological protection measures, and rights management information.

The development of digital technology and the internet has further influenced copyright law through modern international agreements. One of the most important among these is the WIPO

⁹ Graeme B. Dinwoodie, "A New Copyright Order: Why National Courts Should Create Global Norms", (2000) 149 *University of Pennsylvania Law Review* 469 at 472.

Copyright Treaty, administered by the World Intellectual Property Organization. This treaty addresses challenges posed by digital distribution of creative works and expands protection for authors in the online environment. It recognizes rights such as the right of communication to the public and the right of making works available through digital networks. The treaty also requires member states to provide legal protection against circumvention of technological protection measures used by copyright owners to safeguard their works. India incorporated several of these principles through the Copyright (Amendment) Act, 2012, which introduced provisions relating to digital rights management and protection of technological measures.

The interaction between international treaties and Indian copyright law demonstrates the integration of global intellectual property norms into the domestic legal system. While international agreements set minimum standards of protection, it remains the responsibility of national legislation to implement and enforce these standards. India follows a dualist approach, meaning that international treaties do not automatically become enforceable unless incorporated through domestic legislation¹⁰. Consequently, amendments to the Copyright Act have been undertaken to align Indian law with global obligations while still accommodating national interests such as access to education, cultural development, and technological innovation. Courts in India have also referred to international treaties when interpreting ambiguous provisions of copyright law, thereby promoting consistency with international standards. Through this dynamic interaction between domestic legislation and global agreements, the Indian copyright framework continues to evolve in response to both national priorities and international legal developments.

Jurisdiction in Cross-Border Copyright Infringement

Jurisdiction plays a crucial role in determining the authority of courts to adjudicate disputes involving cross-border copyright infringement. Since copyright protection is generally territorial in nature, the question of which court has the authority to hear a dispute becomes complex when infringement occurs across national boundaries. Intellectual property disputes often involve multiple jurisdictions because copyrighted content can easily be transmitted, reproduced, and distributed globally, particularly in the digital environment. Consequently, courts must rely on established principles of jurisdiction in order to determine the appropriate forum for resolving such disputes. These principles include territorial jurisdiction, personal jurisdiction, and the doctrine of *forum conveniens*, each of which assists in identifying the most appropriate legal forum.

Territorial jurisdiction is one of the fundamental principles governing intellectual property disputes. Copyright law is inherently territorial, meaning that protection is granted and enforced within the boundaries of a particular state. As a result, courts typically exercise jurisdiction over acts of infringement that occur within their territorial limits. If an infringing act such as unauthorized reproduction, distribution, or communication of copyrighted work occurs within a

¹⁰ Jane C. Ginsburg, "Private International Law Aspects of the Protection of Works and Authors' Rights", (2000) 273 *Recueil des Cours* 9 at 21.

country, its courts may claim jurisdiction over the matter. This principle ensures that each country retains sovereign control over the enforcement of copyright laws within its own territory. However, in cross-border situations, infringement may occur simultaneously in multiple jurisdictions, making it difficult to determine where legal proceedings should be initiated.

Another important principle is personal jurisdiction, which refers to the authority of a court over the parties involved in the dispute. In cross-border copyright cases, courts may assert jurisdiction over foreign defendants if they have sufficient connection or business presence within the forum state. Such connections may include conducting business operations, maintaining offices, or targeting consumers within that jurisdiction. Courts examine whether the defendant's activities have a substantial effect within the territory before exercising jurisdiction. This principle ensures that defendants are not unfairly subjected to litigation in jurisdictions with which they have no meaningful connection.

The doctrine of forum conveniens also plays a significant role in cross-border intellectual property disputes. Under this doctrine, even if a court technically has jurisdiction, it may decline to hear a case if another forum is more appropriate for adjudicating the dispute. Courts consider factors such as the location of evidence, the residence of parties, the applicable law, and the interests of justice. The aim is to ensure that disputes are resolved in the forum that is most convenient and capable of delivering effective justice.

In the Indian context, the jurisdiction of courts in copyright disputes is governed primarily by the provisions of the Code of Civil Procedure, 1908 and the Copyright Act, 1957. Under the Code of Civil Procedure, jurisdiction is generally determined based on where the defendant resides, carries on business, or where the cause of action arises. In copyright matters, this allows plaintiffs to institute suits in courts where the infringing activity occurred or where the defendant is located. Additionally, copyright law in India provides certain special provisions that expand the jurisdiction available to copyright owners¹¹. For instance, a copyright holder may file a suit in the district court within whose jurisdiction they reside or carry on business, thereby offering greater convenience and protection to authors and creators seeking legal remedies.

The rise of digital technologies and the internet has further complicated the issue of jurisdiction in copyright infringement cases. Online platforms allow copyrighted material to be uploaded and accessed across multiple jurisdictions simultaneously. As a result, determining the precise place where infringement occurs becomes difficult¹². An infringing work uploaded in one country may be viewed or downloaded in several others, raising questions about which court has the authority to adjudicate the dispute. Courts have increasingly adopted flexible approaches by examining

¹¹ N.S. Gopalakrishnan, "Intellectual Property Rights and Globalisation: The Indian Experience", (2003) 45 *Journal of the Indian Law Institute* 369 at 372.

¹² Shamnad Basheer, "Copyright Enforcement in India: Challenges and Developments", (2009) 51 *Journal of the Indian Law Institute* 192 at 198.

factors such as the location of servers, the target audience of the website, and the place where the harmful effects of infringement are felt.

Internet-based copyright violations therefore, present significant jurisdictional challenges. The borderless nature of the internet often leads to overlapping claims of jurisdiction by different countries, which may result in conflicting decisions and enforcement difficulties. Indian courts, like many others around the world, continue to evolve their approach to address these challenges while ensuring effective protection of copyright in the digital era. Consequently, the determination of jurisdiction in cross-border copyright infringement cases remains a complex and evolving aspect of contemporary intellectual property law.

Choice of Law in Foreign Copyright Infringement

Choice of law is a central issue in private international law, particularly in disputes involving foreign copyright infringement. Copyright law is inherently territorial in nature, meaning that the protection granted to a work generally depends upon the law of the country where protection is sought. However, in an increasingly interconnected digital world where creative works circulate across borders through the internet and digital platforms, copyright disputes frequently involve multiple jurisdictions. When infringement occurs across national boundaries, courts must determine which country's law should govern the dispute. The doctrine of choice of law provides the legal framework through which courts resolve such conflicts. In copyright disputes involving foreign elements, the selection of the applicable law determines the scope of protection, the remedies available, and the procedural requirements for enforcement. Consequently, the choice of law becomes a decisive factor in resolving transnational copyright disputes and ensuring fairness between parties belonging to different legal systems.

In private international law, several principles guide the determination of the applicable law in cross-border intellectual property disputes. One of the most widely recognized principles is the doctrine of *lex loci protectionis*, which refers to the law of the country where protection is claimed. Under this principle, a court applies the copyright law of the country for which protection is sought, regardless of where the infringement occurred or where the parties are located. This principle is widely accepted in international copyright law because intellectual property rights are territorial rights granted by sovereign states. The doctrine ensures that each country retains authority over the protection and enforcement of intellectual property within its own jurisdiction. The principle is also reflected in international agreements such as the Berne Convention for the Protection of Literary and Artistic Works, which establishes the principle of national treatment. Under this framework, authors from member countries are entitled to the same protection in foreign jurisdictions as domestic authors, but the extent of that protection is governed by the law of the country where protection is sought.

Another important principle used in determining applicable law in tort-like disputes such as copyright infringement is the doctrine of *lex loci delicti*, which refers to the law of the place where

the wrongful act occurred. In the context of copyright infringement, this principle implies that the law of the country where the infringing activity took place should govern the dispute. For example, if an infringing act occurs through distribution, reproduction, or communication of copyrighted content within a particular country, the law of that country may apply to determine liability and remedies. The *lex loci delicti* principle has traditionally been applied in tort law and is often used to determine jurisdiction and liability in cross-border disputes. However, its application in intellectual property law is more complex because infringement may occur simultaneously in multiple jurisdictions, especially in cases involving digital dissemination of copyrighted material over the internet. As a result, courts sometimes apply a combination of principles, relying primarily on *lex loci protectionis* while also considering the place where the harmful activity occurred.

In India, the application of choice of law principles in foreign copyright infringement cases is shaped by both statutory provisions and judicial interpretation. The primary legislation governing copyright protection in India is the Copyright Act, 1957, which provides the legal framework for protection and enforcement of copyright within the country. While the Act primarily addresses domestic copyright issues, it also extends protection to works originating from countries that are members of international copyright conventions through the doctrine of reciprocity. India, being a member of the World Trade Organization and a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights, recognizes international standards of copyright protection and ensures that foreign authors enjoy protection within its jurisdiction. Consequently, when disputes involving foreign works arise, Indian courts generally apply Indian copyright law to determine infringement occurring within India, while recognizing the territorial nature of copyright protection.

Indian courts have gradually developed judicial approaches for determining the applicable law in cross-border copyright disputes. In many cases, courts have followed the principle that copyright protection is governed by the law of the country where the infringement is alleged to have occurred. If the infringing activity takes place within India, Indian law is applied even when the copyrighted work originates in a foreign jurisdiction. Courts also consider factors such as the place where the work was published, the nationality of the author, and the location of the infringing act when determining jurisdiction and applicable law. However, challenges arise when infringement occurs through digital platforms that transcend territorial boundaries. In such situations, courts must balance domestic legal provisions with international copyright obligations, often relying on principles of comity and reciprocity. The lack of detailed statutory guidance on cross-border intellectual property conflicts sometimes results in judicial discretion playing a significant role in determining the applicable law.

Conflicts between domestic and foreign laws may also arise when the standards of copyright protection differ between jurisdictions. For example, certain countries may recognize broader fair use doctrines, while others provide more limited exceptions to copyright protection. In such circumstances, courts must determine whether to apply domestic copyright rules or give effect to

foreign legal standards. Indian courts generally prioritize domestic law when adjudicating infringement within Indian territory, but they also acknowledge international obligations that promote uniformity in copyright protection. This balancing approach reflects the broader objective of maintaining harmony between national sovereignty and international cooperation in intellectual property regulation.

The enforcement of foreign copyright and foreign judgments in India presents another important dimension of cross-border copyright disputes. Indian law permits the recognition and enforcement of certain foreign judgments under the framework of civil procedure. The Code of Civil Procedure, 1908 provides provisions for the recognition of foreign judgments and decrees, particularly under sections dealing with judgments from reciprocating territories. However, for a foreign judgment to be enforceable in India, it must satisfy several conditions, including that the judgment was delivered by a competent court, that it was given on the merits of the case, and that it does not violate principles of natural justice or Indian public policy. If a foreign court has issued a judgment relating to copyright infringement, Indian courts may enforce it provided that these legal requirements are fulfilled.

Despite these provisions, enforcement of foreign copyright judgments in India may still encounter practical challenges. Differences in legal standards, jurisdictional complexities, and procedural requirements often complicate the recognition process. Moreover, courts remain cautious when enforcing foreign judgments that conflict with domestic copyright policies or public policy considerations. As cross-border digital infringement becomes increasingly common, there is growing recognition of the need for clearer legal frameworks and stronger international cooperation to address jurisdictional conflicts and enforcement difficulties. Ultimately, the development of coherent choice of law principles and effective mechanisms for recognition of foreign judgments is essential for ensuring that copyright protection remains effective in a globalized digital environment.

Judicial Interpretation and Case Law Analysis

Judicial interpretation has played a significant role in shaping the legal framework governing copyright disputes in India, particularly in cases involving cross-border elements, digital platforms, and jurisdictional complexities. Indian courts have increasingly been called upon to interpret the provisions of the Copyright Act, 1957 in conjunction with other legal frameworks such as the Code of Civil Procedure, 1908 and the Information Technology Act, 2000. Through landmark decisions, the judiciary has clarified principles relating to territorial jurisdiction, intermediary liability, and the protection of copyright holders, including foreign rights owners. These decisions demonstrate the judiciary's attempt to balance the interests of creators, intermediaries, and users while ensuring that copyright protection remains effective in a globalized and digital environment.

One of the most important decisions relating to jurisdiction in copyright disputes is **Indian Performing Right Society Ltd v Sanjay Dalia**. In this case, the Supreme Court examined the interpretation of Section 62 of the Copyright Act, 1957, which allows copyright owners to institute infringement suits in the district court where they reside or carry on business. The dispute arose when the Indian Performing Right Society (IPRS) filed a suit in Delhi despite the fact that the cause of action and the principal place of business were located in Mumbai. The defendants argued that such forum selection was improper and constituted an abuse of jurisdictional provisions. The Supreme Court clarified that although Section 62 provides an additional forum for filing copyright infringement suits, it does not permit plaintiffs to file cases in a distant court solely because they have a branch office there. Instead, if the plaintiff's principal place of business coincides with the place where the cause of action arises, the suit must be filed in that jurisdiction.

The ruling in the IPRS case significantly influenced the interpretation of jurisdiction in intellectual property disputes, particularly those involving multinational entities and cross-border infringement. By limiting the ability of plaintiffs to select distant forums, the Supreme Court sought to prevent harassment of defendants and ensure fairness in litigation. The judgment also harmonized Section 62 of the Copyright Act with Section 20 of the Code of Civil Procedure, which traditionally governs the territorial jurisdiction of civil suits. This interpretation reinforced the principle that jurisdiction should be closely connected to the cause of action and the place where the parties conduct business. Consequently, the decision has become a leading precedent for determining territorial jurisdiction in copyright infringement cases involving digital distribution and cross-border commercial activities.

Another significant judicial decision addressing copyright disputes in the digital environment is **Super Cassettes Industries Ltd v Myspace Inc**. This case involved allegations by Super Cassettes Industries Limited, the owner of the popular T-Series music label, that Myspace, a social networking platform, had allowed users to upload copyrighted songs without authorization. The plaintiff argued that the platform should be held liable for hosting and facilitating access to infringing content. The central legal issue before the Delhi High Court was whether an online intermediary could be held liable for copyright infringement arising from user-generated content.

Initially, a Single Judge of the Delhi High Court held Myspace liable for copyright infringement and granted an injunction in favor of Super Cassettes. However, the Division Bench reversed this decision and emphasized the role of intermediary protection under Section 79 of the Information Technology Act, 2000. The court held that intermediaries are entitled to "safe harbour" protection provided they do not have actual knowledge of infringing content and act expeditiously to remove such content upon receiving proper notice¹³. The court further clarified that mere general

¹³ Arul George Scaria, "Cross-Border Copyright Enforcement and Jurisdictional Issues in India", (2014) 6 *Indian Journal of Law and Technology* 89 at 95.

awareness of infringement on a platform is insufficient to establish liability; instead, the rights holder must provide specific information identifying the infringing content.

The Myspace judgment is particularly significant in the context of cross-border copyright enforcement because the platform involved was a foreign entity operating in the digital marketplace. The court's reasoning demonstrated that Indian copyright law applies to online platforms providing services within India, even if they are based abroad. At the same time, the court recognized the practical limitations faced by digital intermediaries in monitoring vast amounts of user-generated content. By requiring specific notice of infringement, the court established a balanced framework that protects copyright owners while preventing excessive liability for intermediaries.

These cases collectively illustrate the evolving role of the Indian judiciary in addressing complex issues arising from globalization and technological advancements. Courts have increasingly adopted a pragmatic approach that considers both domestic statutory provisions and international developments in intellectual property law¹⁴. In jurisdictional matters, the judiciary has emphasized fairness and procedural integrity by ensuring that litigation takes place in appropriate forums closely connected to the dispute. In cases involving digital platforms, courts have attempted to reconcile copyright protection with the realities of internet-based communication and content sharing.

Another notable aspect of judicial interpretation in India is the willingness of courts to protect foreign copyright holders and enforce international intellectual property standards. Indian courts have consistently recognized that copyright protection extends to foreign authors and companies whose works are exploited within the Indian territory. This approach aligns with India's obligations under international agreements such as the Berne Convention and the TRIPS Agreement, which require member states to provide national treatment to foreign copyright owners. By enforcing copyright claims brought by foreign entities, Indian courts have strengthened India's reputation as a jurisdiction that respects international intellectual property norms.

Furthermore, the judiciary has demonstrated an increasing awareness of the global nature of copyright disputes, particularly in cases involving digital distribution and online platforms. Courts have acknowledged that copyright infringement can occur across multiple jurisdictions simultaneously, making it necessary to interpret domestic laws in a manner that accommodates cross-border enforcement. In this regard, judicial decisions have contributed to the development of principles relating to intermediary liability, jurisdiction, and enforcement mechanisms that are compatible with global legal standards.

The jurisprudence emerging from Indian courts reflects a dynamic and adaptive approach to copyright law. Through decisions such as **Indian Performing Right Society Ltd v Sanjay Dalia**

¹⁴ J.G. Collier, *Conflict of Laws*, 4th edn., Cambridge University Press, Cambridge, 2001, p. 212.

and **Super Cassettes Industries Ltd v Myspace Inc**, the judiciary has clarified key legal principles governing jurisdiction, intermediary liability, and cross-border enforcement of copyright. These rulings demonstrate the courts' commitment to protecting intellectual property rights while ensuring that legal procedures remain fair and balanced. As digital technologies continue to transform the global creative economy, the role of judicial interpretation will remain crucial in shaping the future of copyright protection in India.

Challenges in Addressing Foreign Copyright Infringement

Foreign copyright infringement presents complex legal and practical challenges in the contemporary globalized environment where creative works are easily distributed across national boundaries through digital technologies. Copyright law is traditionally territorial in nature, meaning that the protection granted to a work is governed by the laws of the country where protection is sought. While international agreements attempt to provide a degree of uniformity, the enforcement of copyright across jurisdictions remains complicated. Authors, artists, and content creators often encounter significant obstacles when their works are infringed in foreign countries, particularly in cases involving digital distribution and online piracy. These challenges arise due to jurisdictional conflicts, difficulties in cross-border enforcement, technological advancements that facilitate unauthorized copying, and the lack of complete harmonization among national copyright regimes.

One of the primary difficulties in addressing foreign copyright infringement arises from jurisdictional conflicts between countries. Because copyright laws operate within national legal frameworks, determining which court has authority to hear a dispute can become complicated when infringement occurs across multiple jurisdictions. For instance, an infringing website hosted in one country may distribute copyrighted material owned by a creator from another country while being accessed globally¹⁵. In such cases, courts must determine whether they possess jurisdiction based on factors such as the location of the infringer, the place where the infringement occurred, or the location where the economic harm was suffered. Different legal systems adopt varying standards for establishing jurisdiction, leading to uncertainty and procedural complexity. In some situations, a copyright owner may need to initiate multiple legal proceedings in different countries to effectively protect their rights. This not only increases litigation costs but also prolongs the process of obtaining remedies. International copyright treaties such as the Berne Convention for the Protection of Literary and Artistic Works attempt to ensure minimum standards of protection and recognize the principle of national treatment, but they do not fully resolve jurisdictional disputes, leaving significant discretion to domestic courts.

Another significant challenge relates to the enforcement of copyright judgments across national borders. Even when a copyright holder successfully obtains a judgment in one country, enforcing that judgment in another jurisdiction may prove difficult. Enforcement typically requires

¹⁵ Dicey, Morris and Collins, *The Conflict of Laws*, 15th edn., Sweet & Maxwell, London, 2012, p. 1476.

recognition of the foreign judgment by the courts of the country where enforcement is sought. Many legal systems impose strict conditions before recognizing foreign decisions, including requirements related to jurisdiction, procedural fairness, and compatibility with public policy. If these requirements are not satisfied, the foreign judgment may not be enforceable. Moreover, some countries may lack efficient legal mechanisms for executing foreign judgments or may not prioritize intellectual property enforcement. The absence of uniform procedures for cross-border enforcement creates significant uncertainty for copyright holders. International instruments such as the Agreement on Trade-Related Aspects of Intellectual Property Rights attempt to strengthen intellectual property protection by requiring member states to adopt certain enforcement measures. However, the implementation of these standards varies significantly among countries, resulting in inconsistent levels of protection and enforcement.

The rapid expansion of the internet and digital technologies has further complicated the issue of foreign copyright infringement. Online piracy has become one of the most pervasive threats to copyright protection worldwide. Digital platforms allow infringing material to be uploaded, shared, and downloaded instantaneously across national boundaries, making it difficult to identify the responsible parties and enforce legal remedies. Unauthorized distribution of films, music, software, books, and other digital content frequently occurs through peer-to-peer networks, streaming websites, and file-sharing platforms. In many cases, the servers hosting infringing content are located in jurisdictions where enforcement mechanisms are weak or where copyright laws are inadequately implemented. Additionally, online intermediaries such as internet service providers and digital platforms often operate globally, creating complex questions regarding liability and responsibility. Although several countries have introduced notice-and-takedown mechanisms and intermediary liability rules, these measures often lack uniform application at the international level. As a result, copyright owners face considerable difficulties in effectively removing infringing content and preventing its reappearance on other platforms.

Another major issue is the lack of complete harmonization in international copyright laws. While international treaties establish minimum standards of protection, individual countries retain significant flexibility in implementing their copyright regimes. This leads to variations in key aspects of copyright law, including the scope of protection, duration of rights, exceptions and limitations, and available remedies. For instance, some jurisdictions recognize broader fair use or fair dealing exceptions than others, which may allow certain uses of copyrighted works without authorization. Similarly, differences in statutory damages, criminal penalties, and enforcement procedures create disparities in the effectiveness of copyright protection across countries. Although treaties such as the WIPO Copyright Treaty aim to address challenges arising from digital technologies and promote stronger international cooperation, full harmonization remains difficult due to differences in legal traditions, economic priorities, and policy considerations among nations.

Furthermore, practical barriers such as language differences, legal costs, and the complexity of foreign legal systems also hinder the ability of copyright holders to pursue claims in international forums. Small creators and independent artists often lack the financial resources required to initiate litigation in foreign jurisdictions or to hire legal experts familiar with local laws. Even when international legal frameworks exist, the procedural requirements for pursuing cross-border claims may be complicated and time-consuming. These barriers discourage many copyright holders from taking legal action, thereby allowing infringement to continue without effective deterrence.

Addressing foreign copyright infringement remains a multifaceted challenge due to the territorial nature of copyright law and the increasingly borderless nature of digital content distribution. Jurisdictional conflicts, difficulties in enforcing judgments across borders, the widespread availability of online piracy, and the absence of complete harmonization in international copyright laws collectively undermine the effectiveness of copyright protection at the global level. Although international agreements have made significant progress in establishing common standards and encouraging cooperation among states, substantial gaps remain in practical enforcement. Strengthening international collaboration, improving cross-border enforcement mechanisms, and developing more consistent legal frameworks are essential steps toward ensuring effective protection of creative works in the global digital environment.

Recommendations and Legal Reforms

The increasing prevalence of digital technologies and cross-border online activities has significantly complicated the enforcement of copyright laws, particularly with respect to jurisdictional questions and applicable legal frameworks. In this context, several legal reforms and policy measures are necessary to ensure that copyright protection remains effective, fair, and consistent with international developments. One of the foremost recommendations is the need to clarify jurisdictional rules governing online copyright disputes. The borderless nature of the internet often creates uncertainty regarding which court has the authority to adjudicate disputes involving infringement occurring across multiple territories. Indian courts have gradually developed principles based on the accessibility of infringing content and the location of the harm suffered, as seen in judicial interpretations under the Copyright Act, 1957 and the Information Technology Act, 2000. However, the absence of a clearly codified jurisdictional framework often leads to conflicting interpretations and procedural delays. Legislative reforms should therefore explicitly define the circumstances under which Indian courts can assume jurisdiction in online copyright cases, including criteria such as targeted audience, substantial effects within India, and the location of servers or digital intermediaries. Establishing statutory guidelines would promote predictability, reduce litigation complexities, and strengthen the confidence of rights holders in seeking judicial remedies.

Another crucial area for reform lies in strengthening enforcement mechanisms to address the growing scale of digital piracy and unauthorized distribution of copyrighted works. Although

existing laws provide civil and criminal remedies for infringement, practical enforcement often remains weak due to procedural inefficiencies, lack of technological expertise, and challenges in identifying anonymous online infringers. Strengthening enforcement requires a multi-pronged approach that includes specialized intellectual property courts or designated benches with technological expertise, improved coordination between law enforcement agencies and digital platforms, and faster mechanisms for the removal of infringing content. Additionally, regulatory frameworks should encourage greater accountability of internet intermediaries in preventing copyright violations while maintaining a balanced approach that protects legitimate online expression. Clearer obligations for online platforms, combined with effective notice-and-takedown procedures and transparency in compliance mechanisms, would help reduce the circulation of pirated content and enhance the protection of creative works in the digital ecosystem.

Harmonizing Indian copyright law with international standards is another important reform objective. In an increasingly interconnected global digital economy, copyright protection cannot remain confined within national legal boundaries. India is already a signatory to several international copyright treaties, including the World Intellectual Property Organization administered treaties such as the Berne Convention for the Protection of Literary and Artistic Works and the WIPO Copyright Treaty. While the principles contained in these instruments have influenced Indian copyright law, further harmonization is required to address emerging digital challenges. This includes updating statutory provisions related to digital rights management, technological protection measures, and liability of online intermediaries in accordance with evolving global practices. Aligning domestic law with international standards would facilitate cross-border enforcement of copyright claims, enhance cooperation with foreign jurisdictions, and ensure that Indian creators receive adequate protection in international markets.

Furthermore, the development of clearer choice-of-law principles is essential for resolving intellectual property disputes that involve multiple jurisdictions. Cross-border copyright conflicts frequently raise questions regarding which country's law should govern issues such as ownership, infringement, and remedies. At present, Indian courts often rely on general principles of private international law and judicial discretion to determine the applicable law. However, the absence of well-defined statutory rules can lead to inconsistent outcomes and legal uncertainty. To address this challenge, India should consider adopting more explicit legislative guidelines on choice-of-law principles in intellectual property disputes. Such principles could incorporate factors like the place where the infringement occurred, the location of the market affected, and the residence or principal place of business of the parties involved. Establishing a coherent framework would enable courts to resolve cross-border disputes more efficiently and would provide greater clarity to creators, businesses, and digital intermediaries operating in the global marketplace.

In addition to legislative reforms, policy initiatives aimed at strengthening institutional capacity and public awareness are also necessary. Training programs for judges, legal practitioners, and enforcement authorities on digital copyright issues can improve the quality of adjudication and

enforcement. Similarly, promoting awareness among creators, digital platforms, and internet users about copyright obligations and rights can reduce unintentional infringements and encourage responsible use of copyrighted content. Collaborative initiatives between government agencies, technology companies, and international organizations can also play a crucial role in developing innovative enforcement strategies and technological solutions to combat online piracy.

The effectiveness of copyright protection in the digital age depends on the ability of legal systems to adapt to rapidly evolving technological realities. By clarifying jurisdictional rules, strengthening enforcement mechanisms, harmonizing domestic legislation with international copyright standards, and establishing clearer choice-of-law principles, India can create a more robust and predictable legal framework for addressing cross-border copyright disputes. Such reforms would not only protect the interests of authors and creators but would also contribute to the growth of the digital economy by fostering innovation, creativity, and fair competition in the global intellectual property landscape.

Conclusion

The increasing globalization of creative industries and the rapid development of digital technologies have significantly transformed the landscape of copyright protection. The study examined the complex issues surrounding jurisdiction and choice of law in cases of foreign copyright infringement involving India. One of the central findings of the research is that copyright law traditionally operates on the principle of territoriality, meaning that protection is granted and enforced within the boundaries of a particular state. While this principle has historically provided clarity in determining the applicable law, the rise of the internet and digital distribution has blurred territorial boundaries, allowing copyrighted content to be accessed and infringed across multiple jurisdictions simultaneously. As a result, determining the appropriate forum and governing law has become increasingly complicated in cross-border disputes.

The research further revealed that India's copyright regime, primarily governed by the Copyright Act, 1957, provides substantial protection to copyright holders and incorporates many international standards through its participation in global intellectual property treaties. Instruments such as the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights have played a significant role in shaping the Indian legal framework. These treaties promote the principle of national treatment and require member states to provide minimum standards of copyright protection, thereby facilitating cross-border recognition of rights. However, despite the existence of these international frameworks, practical challenges continue to arise when disputes involve foreign parties, online platforms, or acts of infringement occurring in multiple jurisdictions.

Another important finding of the study is that Indian courts rely on general procedural principles, particularly those contained in the Code of Civil Procedure, 1908, to determine jurisdiction in civil disputes, including copyright infringement cases. Judicial interpretation has attempted to address

issues related to forum selection and the location of infringement, especially in cases involving digital platforms. Decisions such as *Indian Performing Right Society Ltd v Sanjay Dalia* have clarified aspects of territorial jurisdiction, yet they also demonstrate the ongoing difficulties faced by courts when dealing with transnational intellectual property disputes. The absence of clear statutory provisions specifically addressing cross-border copyright infringement often leads to reliance on principles of private international law, including the doctrines of *lex loci protectionis* and *lex loci delicti*, which may not always provide consistent outcomes in the digital context.

Resolving jurisdictional and choice of law issues is therefore essential for ensuring effective protection of copyright in an increasingly interconnected world. Without clear rules regarding which court should hear a dispute and which legal system should apply, copyright holders may face uncertainty and difficulty in seeking remedies for infringement. Such ambiguity can also encourage forum shopping and inconsistent judicial outcomes, ultimately weakening the enforcement of intellectual property rights. A well-defined legal framework that addresses cross-border infringement is crucial not only for protecting authors and creators but also for promoting innovation, investment, and international cultural exchange.

Looking ahead, the future of copyright enforcement in the global arena will depend on greater harmonization of legal standards and stronger cooperation among states. India, as a growing participant in the global digital economy, must continue to refine its legal framework to address emerging challenges posed by online infringement and transnational disputes. Legislative clarification on jurisdictional rules for digital copyright violations, improved mechanisms for the recognition and enforcement of foreign judgments, and enhanced collaboration with international organizations can significantly strengthen the protection of intellectual property rights. By adopting a more coherent approach to jurisdiction and choice of law, India can contribute to a more effective and predictable system of international copyright enforcement while safeguarding the rights of creators in the evolving digital environment.

References

Books

1. P. Narayanan, *Intellectual Property Law* (4th edn., Eastern Law House, New Delhi, 2017).
 2. N.S. Gopalakrishnan and T.G. Agitha, *Principles of Intellectual Property* (2nd edn., Eastern Book Company, Lucknow, 2014).
 3. V.K. Ahuja, *Law of Copyright and Neighbouring Rights: National and International Perspectives* (3rd edn., LexisNexis, Gurgaon, 2016).
 4. B.L. Wadhera, *Law Relating to Intellectual Property* (5th edn., Universal Law Publishing, New Delhi, 2019).
 5. Lionel Bently and Brad Sherman, *Intellectual Property Law* (5th edn., Oxford University Press, Oxford, 2018).
 6. Paul Goldstein and P. Bernt Hugenholtz, *International Copyright: Principles, Law and Practice* (3rd edn., Oxford University Press, Oxford, 2019).
 7. Christopher Wadlow, *The Law of Passing-Off: Unfair Competition by Misrepresentation* (5th edn., Sweet & Maxwell, London, 2016).
 8. Dicey, Morris and Collins, *The Conflict of Laws* (15th edn., Sweet & Maxwell, London, 2012).
 9. J.G. Collier, *Conflict of Laws* (4th edn., Cambridge University Press, Cambridge, 2001).
-

Articles

10. Sam Ricketson, "The Berne Convention and the Development of International Copyright Law" (1987) 10 *Columbia Journal of Law & the Arts* 1.
11. Dev S. Gangjee, "Choice of Law in Intellectual Property: A Review of the Indian Position" (2015) 7 *NUJS Law Review* 235.

12. N.S. Gopalakrishnan, "Intellectual Property Rights and Globalisation: The Indian Experience" (2003) 45 *Journal of the Indian Law Institute* 369.
 13. Shammad Basheer, "Copyright Enforcement in India: Challenges and Developments" (2009) 51 *Journal of the Indian Law Institute* 192.
 14. Arul George Scaria, "Cross-Border Copyright Enforcement and Jurisdictional Issues in India" (2014) 6 *Indian Journal of Law and Technology* 89.
 15. Jane C. Ginsburg, "Private International Law Aspects of the Protection of Works and Authors' Rights" (2000) 273 *Recueil des Cours* 9.
 16. Graeme B. Dinwoodie, "A New Copyright Order: Why National Courts Should Create Global Norms" (2000) 149 *University of Pennsylvania Law Review* 469.
-

Statutes

17. *The Copyright Act, 1957.*
 18. *The Code of Civil Procedure, 1908.*
 19. *The Information Technology Act, 2000.*
-

International Conventions

20. *Berne Convention for the Protection of Literary and Artistic Works, 1886.*
 21. *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.*
 22. *WIPO Copyright Treaty, 1996.*
-

Cases

23. *Indian Performing Right Society Ltd. v. Sanjay Dalia* (2015) 10 SCC 161.

24. *Super Cassettes Industries Ltd. v. Myspace Inc.* 2016 SCC OnLine Del 6382.

25. *Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.* (2008) 13 SCC 30.