

**THE IMPLEMENTATION OF THE CONCEPT AND PROVISIONS OF
COPYRIGHT LEGISLATION IN THE INDIAN FILM INDUSTRY**

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INTRODUCTION

When consumers enter “digital version”, “free download”, “Torrent” or “Pirated Install” on their web browsers, malware assaults and cyber vulnerabilities are two of the top result that appear. As a result of digitalization, traffic to pirated websites has surged, and so has online video consumption. According to many, digital piracy authority, piracy in India increased by 62 percent due to this development of internet and cyberspace. Stremio, Popcorn Time, Solarmovies, 123Movies, and Tamil Rockers are some of the most popular pirated sites.

The cyberspace is amongst the most crucial innovations that humanity has produced until time. The mode of communication that is increasing at the highest rate is conversational. The volume of internet traffic continues to increase by one-hundred-fold every 100 days. There is little doubt that its influence on the spread of knowledge is significant. The introduction of the internet has transformed the mode, quality, and speed of information transfer. Information is distributed globally via this medium, and it is possible to assess, read, print, and download information from all around the world. No single individual or entity is able to exercise absolute control over the internet. This is referred to as the information technology communications anarchy since there is no centralised authority for information technology communications.

While the internet and the expansion of knowledge-based enterprises have resulted in the creation of a new type of property, this new property is the result of human intellect and effort. This newly devised type of property is known as intellectual property. This type of property is derived from the product of the intellect of human, such as fictional works, paintings, artistic designs, and other forms of creativity in the fields of practical or fine arts. The set of rights includes the right to buy, sell, or lease. This class of things also includes copyrights, patents, trademarks, and designs. Intellectual property differs from traditional of asset as its worth and applications of such asset are very unclear. Because it is easily and

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freely available to the general public, it is also more likely to be stolen. Intellect is a primary contributor to the making of these goods. It is tough to preserve, which makes it an important area to safeguard.

ORIGIN OF COPYRIGHT LAW

Although it was originally implemented during colonial occupation, copyright legislation in India has gone a long road ahead ever since. One of the very first laws regarding copyright was passed in India in 1847 by the then Governor General of the country. When the Copyright Act of 1911 came into effect in England, it became inherently enforceable to India because India was then an intrinsic part of the British Raj. The copyright act (the Act of 1957) was in effect for the entire country from when it was enacted until independence in 1958, after a fresh copyright law (the Act of 1957) went into effect. Following the enactment of the Act, several revisions have been made to it.²

According to the 2012 changes, Indian Copyright Law is now in accordance with the Internet Treaties and accords namely the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Additionally, by including technological protection mechanisms in the legislation, the new law assures that fair use of copyrighted materials does not suffer in the digital era because of specific fair use rules. A large number of revisions have been added to the bill to facilitate accessibility for handicapped individuals, making the bill friendlier to authors, special provisions for people with disabilities, and streamlining copyright management.

To categorise revisions made via The Copyright (Amendment) Act 2012, one can think of them as

- Including changes to privileges in works of art, cinematograph movies, and audio recordings.
- Right related amendments included in the WCT and WPPT.
- Additional author-friendly modifications, about the manner of Assignment and Licenses.
- Measures to improve access to copyrighted works.

² *Study on Copyright Piracy in India*, sponsored by Ministry of Human Resource Development Government of India, (Jan.29, 2018, 10:04 AM)
<http://copyright.gov.in/Documents/STUDY%20ON%20COPYRIGHT%20PIRACY%20IN%20INDIA.pdf>.

- Strengthening enforcement of online piracy while safeguarding against it.
- Minor adjustments, like the Reform of the Copyright Board, should be made to our copyright system.³

The Indian Copyright Act provides protection to original literary, dramatic, musical, and artistic works, cinematic films, and sound recordings. It is important to recognise that when you say anything is unique, you imply it is not a rip-off of someone else's work or idea. This Act grants copyright holders the power to carry out a range of actions or authorise others to do so. Prominent amongst these are:

- to reproduce the work in material form;
- to publish the work;
- to perform the work in public or communicate it to the public;
- to produce, reproduce, perform or publish any translation of the work;
- to create a cinematic film or a recording in connection with the work;
- to make any necessary changes to the work; and
- to perform any of the acts in regard to a translation or adaptation of the work listed in sub clauses to (a) to (f)⁴

CINEMATOGRAPHY IN THE REALM OF COPYRIGHT LAW

The copyright sector, throughout the globe, in general and film business in particular supports not just to cash creation for its rightful owners but also safeguards the labour that is dedicated to it. Aside from this, the government's exchequer also obtains cash through a revenue collected by the entertainment tax. India is home to one of the biggest movie industries in the world, with around one thousand movies made every year.

CINEMATOGRAPHY FILM

In the case of a cinematograph film, the soundtrack is present, even if it is silent. In addition, it encompasses any cinematography-style work done by any procedure similar to cinematography. A film believed to be an activity undertaken by a methodology akin to

³ *Inside Views: Development In Indian IP Law: The Copyright (Amendment) Act 2012*, (Jan. 29, 2018, 10:20 AM) <https://www.ip-watch.org/2013/01/22/development-in-indian-ip-law-the-copyright-amendment-act-2012/>.

⁴ Chapter-III Legislative Provisions in India, (Jan. 29, 2018, 11:23 AM) https://shodhganga.inflibnet.ac.in/bitstream/10603/128961/16/09_chapter%203.pdf.

photography is defined as a video film. An unedited performance of a live event such as a sporting event, or a theatrical or musical performance, may be filmed for use in a movie.

In association with the film, the music used in the film involves coordination of the film's cinematographic film and is therefore protected by copyright. In *Balwinder Singh v. Delhi Administration*,⁵ and *Tulsidas v. Vasantha Kumari*,⁶ Video and television is also cinematographic works, according to the argument in both the judgments.

Copyright relates to the right to authorise most filmed performances in cinematography and especially in the following events:

- make a duplicate of the movie;
- to permit the film to be seen and heard in public in the case of visual pictures, and in the case of audio, to be audible in public in the case of sound.;
- to use such sound track to produce any record containing the audio in the segment of the musical score connected with the film;
- to disseminate the film via television.

In general, copyright protects two types of rights: exploitable and moral rights. Exploitable rights (sometimes known as "economic rights") are those that the work's owner can use to make money. The sole freedom to make copies, adaptations, or images of copyrighted content, as well as the right to licence these rights to others, belongs to the copyright owner.⁷

In addition to his ownership of his own creation, the author of a work is always guaranteed to maintain his or her moral rights. Moral rights are rights attached to an individual's identity as an author. Authors have the right to select when and if their work will be published, as well as the right to retain authorship and the responsibility to protect their reputation. The fact that many instances both India and the U.K. preserve the author's unique entitlement to derivative works supports the author's distinct claim to derivative works. The idea itself (form, style, and arrangement), but not the representation of that idea, is copyrightable. This means that even though two authors separately conceive the same idea, they are not blocked from publishing their work as long as they use distinct materials.

⁵ AIR 1984 Delhi 379.

⁶ (1991) 1 LW (Mad) 220 (229).

⁷ Copyright Act of 1957.

A revolution in the motion picture industry has occurred across the world during the last several years. A new trend has emerged in the world of entertainment, particularly in the area of digital media. Thanks to the broadband networks made possible by broadband networks, users can now freely download unauthorised copies of pre-recorded media files, referred to as "pre-cords," over P2P networks. Consumers who have downloaded a song or other file are able to transmit it to other users in digital format using the P2P software. The precipitous decrease in the growth of the recording industry over the last few years is attributable to file sharing. While online piracy could lead to the loss of intellectual property rights in digital goods, that doesn't mean all piracy leads to copyright infringement. With the introduction of the internet, new methods of copyright infringement have emerged, which makes it much more difficult to combat the damage caused to copyright-based companies. In today's music market, both online piracy and illicit downloads have diminished sales of genuine CDs and lawful digital distribution are becoming a replacement for legitimate CD purchases.

Digitalization has posed a serious threat to entertainment industry. It is manifested from scheme of Digital Literacy Scheme for rural India. The widespread adoption of these approaches has the potential to create more sustainable and successful business models across several media sectors. Cable television officially became digital in 2012, marking the beginning of a long process of digitization. In various phases, initiatives have been undertaken.

A substantial amount of progress was made during the first phase of implementation in the four metros. Industry is now working to realise short-term benefits that include the potential to commercialise content, greater transparency, and fairer revenue distribution throughout the value chain. These short-term benefits are achieved by a reduction in the costs of content delivery and by making more money available for investment in distinguishable and classy content.

Even when projected timelines are accounted for, it is likely that the implementation of Phase 2 digitization will happen on a similar timeframe to what has been envisaged so far, but with

a delay. The entertainment industry is almost 77% digitized. Indian digital industry is expected to cross 3100 crores by 2020.⁸

The growth of India in 2014 ranked it as the world's fastest-growing smart phone market.⁹ This growth was achieved due to the implementation of the Digital India project. India was the first country in 2014 to be placed on the United States' International pirate watch list, which included countries like Nigeria, Bangladesh, Somalia, and others where piracy is a problem.¹⁰ India has negotiated co-production agreements with China and Canada.¹¹ Such Treaties not only allow Indian filmmakers to benefit from tax breaks, but also from reduced visa requirements in partner nations.

While India is appreciated for its efforts in the past decades to fight piracy in terms of the impacts of it was, the raid on criminal camcorder pirate cartels Yamraj and NiCkkk DON has been certainly one of the main effects that came from that.¹² While the multiplex tickets of a legitimate recently released movies cost INR 150-200, the pirated DVD costs INR 30-40.¹³

MEANING OF THE TERM PIRACY

Piracy is an unlawful duplication of content and is then offered on the open market at a significantly cheaper price. It is one of the prevailing threats for entertainment. Facilitated usage of technology has become a cause for wild piracy. Piracy is now a straightforward business. At a relatively modest price, CD authors are available on their own. Wherever there is a doubt about penalising wealthy countries, the penalty of pirating connected issues is quite serious, whereas the government has not paid adequate attention in Asiatic countries and particularly in India owing to more interesting issues.

⁸ Report published by Delliote International, April 2015, (Jan. 30, 2018, 11:00 AM) https://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/IMI%20report_singlePage.pdf.

⁹ E Marketer newsletter, 29 December 2014, KPMG Report 2014, (Jan. 30, 2018, 11:35 AM) <https://assets.kpmg/content/dam/kpmg/pdf/2014/03/FICCI-Frames-2014-The-stage-is-set-Report-2014.pdf>.

¹⁰ The Hollywood Reporter "India join China, Russia, Switzerland on Piracy watch list", 24 June 2014, (Feb. 12, 2018, 11:50 AM) <https://www.hollywoodreporter.com/news/general-news/india-joins-china-russia-switzerland-714572/>.

¹¹ The Hollywood reporter, "India, china sign film co production," 18th September 2014, (Jan. 29, 2018, 12:30 PM) https://assets.kpmg/content/dam/kpmg/pdf/2015/03/FICCI-KPMG_2015.pdf.

¹² The Hollywood Reporter, "China Asia-India the problem areas in camcorder piracy cases" 8th December 2014, page 10, (Jan.30,2018, 01:05 PM) <https://www.hollywoodreporter.com/movies/movie-news/cineasia-india-china-problem-areas-755349/>.

¹³Id.

After being overtaken by China, India became the second-largest country with respect to the number of internet users.¹⁴ In India more than millions of mobile internet users have been identified by January 2016.¹⁵ Wireless modems, notably 4G, sustained robust increase in the number of 3G subscribers, while at the same time, significant amounts of 2G coverage in rural India as well as through other digital ecosystem participants in support of Digital India Program had contributed to making this possible. The availability of inexpensive Smartphone and tablet devices has fuelled the growth of mobile screen sizes. the number of Smartphone users in India is estimated to be 10%.¹⁶

TYPES OF PIRACY

1. Internet Piracy: Illegal downloading is the downloading and dissemination of unauthorised copies of intellectual property, such as films, shows, songs, games, and software programmes, via the online file sharing network, rogue server, websites, and hacked computers. Black market pirates are also known to utilise the online platform to sell unlawfully replicated DVDs through online auctions.¹⁷

2. Peer-To-Peer Piracy: One of the greatest threats to the current revenue model of the media industry is the illicit sharing of files over peer-to-peer networks. This section serves to provide a guide for media industry experts on the construction of P2P database networks, particularly with respect to their capacity to assess responsibility and the abilities of media companies to litigate and press charges against P2P software designers and consumers. When everyone on the network has equal participation in the resources and direct peer-to-peer communication does not require a centralised server or gateman, then this is considered a P2P model. In typical client-server systems, the IP of the server is fixed. However, in P2P systems, a search mechanism is activated that can locate the right node in real-time. Several different approaches to peer-to-peer systems have evolved, some differing greatly with respect to their search and storage strategies.

¹⁴ AMAI-IMRB Internet in India Report,2014, (Jan. 30,2018, 01:45 PM)
<https://cms.iamai.in/Content/ResearchPapers/e7cb87e7-74b3-4c2f-8bfc-09ccfd7fb265.pdf>.

¹⁵ Economic Times, Sunday, January 10,2016.

¹⁶ KPCB Internet Trend Report,2014, (Jan. 30,2018, 03:10 PM),
<https://www.kleinerperkins.com/perspectives/2014-internet-trends/>.

¹⁷ LuigieProserpio, Severino Salvemini and Valerio Ghirngelli, *Management Entertainment Pirates Determinants of Piracy in the software, music and movie Industries*, p 34-36, 2015.

While Napster, as one of the young crops of P2P file-sharing websites, initially employed a centralised index to keep and browse for items on the network, the development of another network, Bit-Torrent, introduced decentralised searching and content distribution. The Napster approach has participants connecting to a central database, where they publicly stated the content, they intend to distribute. The user seeks certain material in the database, and so acquires IP addresses of the servers where the content is located. Once they have this information, they are able to immediately download the content from one of the nodes they have discovered. Discovery and tracking of developers becomes easier with this centralised system since it enables easy identification of all the files, and it is therefore straightforward to trace who is providing and who is receiving data.¹⁸

3.Theatrical camcorder piracy: Filmmaker Cam cording or infringement copies of new release films that emanate from cinema halls are quickly posted online following the premiere of the film.¹⁹This has a significant impact on distribution cycle, performance, and jobs. When someone arrives to the cinema hall through any form of recording device, such as a camcorder, a voice recorder, or any other kind of equipment, they are known as cam-cording.

4.Cable piracy: The term "cable piracy" denotes to the illicit broadcasting of movies over cable network. It is not unusual for films, specifically the most recent releases, to be shown on cable with no permission from the copyright holder. Piracy is an uncommon occurrence with satellite channels due to the fact that these are usually organised and are largely used for distributing films without having paid for the necessary copyright permissions.

5.Software Piracy: The software piracy consists of first of all, using the software illegally, and then disseminating it without authorization. While both small and large businesses are plagued by software piracy, the degree to which this issue plagues them varies greatly.

6.Optical Disc Piracy: When optical disc piracy takes place, this activity refers to illegal manufacturing, selling, distribution, or trading of discs in optical disc formats with motion pictures on them, and the illegal fabrication and transmission of feature films.

¹⁸ Sanjay Goel, Paul Miesing & Uday Chandra, *The Impact of Illegal Peer-to-Peer File Sharing on the Media Industry*, (Jan. 30, 2018, 03:45 PM)

https://www.researchgate.net/publication/259729302_The_Impact_of_Illegal_Peer-to-Peer_File_Sharing_on_the_Media_Industry/link/5c701aa9299bf1268d1df998/download.

¹⁹ FICCI -KPMG REPORT 2015, (Jan. 30, 2018, 04:30 PM), https://ficci.in/spdocument/20723/Executive-summary-FICCI_KPMG-report-2016.pdf.

7. Internet and Mobile Piracy: The further advancement of technology is definitely going to lead to an increase in piracy, as the enforcement methods are presently so feeble. There are very high hopes for the growth of the Indian mobile phone market, and it's one of the fastest growing in the globe. There are many other methods of getting pirated materials, such as accessing the Internet, downloading material from peer-to-peer websites, and torrenting. Files like these can be significantly compressed and then transferred to a Smartphone or obtained from the internet without further processing.²⁰

2016 NATIONAL POLICY ON INTELLECTUAL PROPERTY RIGHTS

A huge step in the country's strong protections and promotion of the Intellectual Property Rights (IPRs) was taken with the launch of the National IPR Policy in 2016, which entailed significant and revolutionary reforms on the board. To aid in fostering creativity and innovation while also acknowledging the importance of intellectual property in the development of the economy, the GOI approved a new policy. The Action plan for India's quest to increase creativity and stimulate innovation details the various aspects involved in the pursuit of such goals, including a well-informed public about intellectual property, an expanding ecosystem for creating, commercialising, and enforcing IP, and policies and practises that encourage innovation.

The first objective of the policy is to increase public knowledge of the fiscal, societal, and cultural values of intellectual property rights. In order to facilitate this goal, additional IPR educational initiatives will be implemented, such as the incorporation of IPR lessons in the education system. Although school-age children are a substantial portion of the piracy market, both in terms of films and of downloading copyrighted music, the students' demand for stolen materials isn't strong. It is intended that adding IPR studies in their coursework will assist students comprehend the value of Intellectual Property rights as well as how infringement of those interests results in financial loss to not just the rights holder, but also seems to have a large impact on the country's economy. Additionally, IPR studies would emphasize to at minimum a significant portion of the population who are not aware that they may be inadvertently aiding piracy that the intermediaries for illicit items are not equal to legitimate ones.

²⁰ Id.

The second objective of the policy suggested that relevant revisions be made to the Cinematograph Act, 1952 in order to include criminal penalties for the unlawful duplicating of films and the fourth objective in the policy emphasises the importance of media and public consciousness along with strict regulation procedures to prevent both physical and virtual piracy.

The process of implementing guidelines and procedures as well as augmented cooperation between many organisations and giving vision and direction on enforcing anti-piracy metrics; integration and communicating of competence and best practises at the global level; study of the scope of IP infringements in different sectors; analysis of regulatory issues and obstacles in enforcing anti-piracy regulations; and introduction of suitable innovation remedies for suppressing online piracy.

By working with partners to conduct fact-finding investigations to determine the degree of piracy and also the causes for it as well as ways to counteract it, we will set the stage for initiatives to prevent piracy.

STRATEGIES FOR COMBATING PIRACY

- 1. *The Legal Framework:*** The first step in combating piracy is the implementation of legislation to protect copyrights, as described in the start of this essay. The Statute of Anne, which is most commonly known as the beginning of modern copyright law, has led to the formation of a multitude of domestic and international law and agreements that help to keep copyright protection and pirate prevention simple worldwide. One way to think of Berne Convention for the Protection of Literary and Artistic Works (1886), Universal Copyright Convention (1952) and World Intellectual Property Rights Copyright Treaty (1996) is as accords designed to protect copyright. Regardless of the fact that the online is a worldwide instrument, the value of these accords cannot be overestimated.
- 2. *Network Administration:*** Additionally, with regard to the legal aspects, the question of network administration is significant. Additionally, if a user cannot be induced to refrain from downloading by the prospect of punishment, another alternative is to restrict the authorized users from accessing the resources that they would use to download the application. In the most prevalent circumstances, publishing companies obtain ISPs (also known as Internet Service Providers, or ISPs) to block access to

certain sites and Web addresses to restrict customers from accessing certain sites. Some governments undertake these activities by creating their own country-wide internet filters. As of April 2013, 29,000 websites are inaccessible in Turkey due to a blockade imposed by the Turkish government. The filtration is used to ban a list of websites, such as news sources, which contain pornography, other contentious material, and websites that are known to have illegally copied another site's content.

3. ***Anti-Counterfeiting and Piracy Initiative (APEC)***: APEC was enacted in 2005 and dealt with minimising the spread of fake goods, as well as cracking down on the selling of fraudulent products over the internet, while also raising awareness on IPR security and border enforcement measures.²¹
4. ***Anton Pillar Injunction***: To receive the order, the claimant must establish the satisfaction of the Court that the following requirements are fulfilled:
 - a) the harm is extremely serious.
 - b) evidence exists to prove that this individual has evidence in his possession that will most likely be demolished before any application can be made; and
 - c) there is a probability that incriminating evidence will be wrecked before an application can be made.

In *Anton Pillar v. Manufacturing processes*,²² The court agreed to implement a mechanism of substantial relevance to some intellectual property rights, one that had previously been submitted for approval. In these kinds of proceedings, the plaintiff appeared before the High Court or Patents County court in Camera unaccompanied by any notice to the defendant for an order that the defendant allow him with his solicitor to inspect the defendant's premises and to seize copy of photograph material related to the infringement. It is also possible for the defendant to be forced to provide the infringed items, keep infringing stock, or reveal incriminating documentation. He may also be asked to provide information, for instance regarding his supplier or the whereabouts of the infringing items that have transited through his hands.

5. ***John Doe Order***: Before a defendant's infringing activities result in harm to the intellectual property protection of the artist, who created artistic works such as

²¹ See; *APEC Anti-Counterfeiting and Piracy Initiative*, (Feb. 10, 2018, 11:15 AM), <http://www.wcl.american.edu/pijip/go/research-and-advocacy/enforcement/anti-counterfeiting>.

²² (1976) Ch. 55; R.P.C. 719.

movies, songs, and so on, the rights of the inventor are preserved by granting a John Doe Order. Also, it is likely that many people will identify John Doe's identity as Rolling Anton Pillar, Anton Pillar, or Ashok Kumar. The long-established and well-respected British Queen's Bench created the concept of a John Doe Order, a complex equitable remedy that grants the plaintiff the right to seek and obtain an injunction order from a hypothetical defendant; thus, it gives the plaintiff the opportunity to prevent any evidence of their wrongdoing from being destroyed.²³

John Doe orders were first passed in Indian Courts in a case by the Delhi High Court,²⁴ which relied on the judicial systems of developed nations like Canada, the United States, England, and Australia.

As detailed processes for checking websites' listings are implemented with standardised norms, judicial clarity and predictability to copyright holders and website users are provided.

Some good practises could be adopted from jurisdictions like Singapore, where courts have also come to rely on testimony that the internet sites that were targeted were obstructed in other jurisdictions, or that a large amount of traffic was generated, or that the web pages did not agree with takedown notices that were served by the plaintiffs, or that the websites included instructions for circumventing measures to disable access.²⁵

Besides the aforementioned ways to prevent online piracy of movies and additional tactics, such soft legislation and technological techniques, are also accessible in this high-tech era. As technology like watermarking and block-chain technology continue to evolve, new developing technologies to combat unlawful material consumption, such as digital media, are becoming possible. Additionally, the extent to which other soft legal enforcement measures, such as public-private partnerships and infringing website listings, may be made public will be revealed.

BEST PRACTICES

All copyright infringement deterrence strategies and regulations must be built on an in-depth analysis of the reasons for copyright infringement.

²³ Ajay Sharma, *John Doe Orders in Indian Context* (Feb. 12, 2018, 03:05 PM), <https://rmlnlulawreview.com/2017/10/25/john-doe-orders-in-indian-context/>.

²⁴ *Taj Television Ltd. & Anr. vs. Rajan Mandal & Ors*, [2003] F.S.R. 22

²⁵ *Disney Enterprises Inc, and Others vs. M1 Ltd and Others*, [2018] SGHC 206.

In India, laws governing copyright infringement do not equate to piracy, even if the legal system is much weaker and the literacy and affluence in the country is lower. The same is true of locations with varied histories and greater regulatory authority.

Furthermore, the new National IPR Policy aims to fuel additional alterations to India's IPR framework, especially with regard to the streamlining of laws and regulations in order to improve their efficiency and the stimulation of additional research in order to guide legislative policymaking. Additionally, it ought to help make alterations to the Copyright Act, which is often pushed to fit the pace of media convergence, the constantly changing content landscape, and the advancement of technology. In addition, another area of reform involves making the adjudicatory and redress mechanisms function more effectively, with the aim of putting these mechanisms to the test to date. With regards to this, there is the further challenge of reform for the functioning of the adjudication and redressal mechanisms, and how they may perform and more effective which led the Delhi High Court releasing notice to the Department for Promotion of Industry and Internal Trade (DIPP) and requesting a status report.

It is also possible that India might examine additional strategies to pool resources and deal with the pending cases by, for example, creating up expert IP forums and other bureaucratic frameworks with protections to help the courts. In order to safeguard civil liberties, it is necessary to guarantee that any administrative framework has been clearly defined; features clear legal authority and are subject to scrutiny by the courts. In addition to serving as an IP arbitrator, an IP ombudsman might also be established to aid injunctions, and additionally verify the data made by both the litigants in such matters.