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## **Determining the Modes of the Prevention of White-Collar Crimes Under the Indian Copyright Act, 1957: An Analytical Study**

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### **ABSTRACT**

An intellectual property is regarded as the unique creations or inventions arising out of human intellect and creativity that mostly have great potential and commercial value in global business and trade. Especially in today's world with the onset of technological advancements that have skyrocketed the rates of accessibility has also thereby increased resulting in a lot of criminal activities to arise within the sphere - with information, knowledge and technology that is so frivolously common amongst people unfair use and exploitation of other people's works have been infringed upon explicitly and extensively. And within the domain of intellectual property such concerns arising would call for its protection against such exploitation and therefore the rights are out in place; What we deal with here is the emergence of 'White - Collar Crimes' in the sphere of intellectual property, pertaining to the Infringement of Copyright. The existence of White - Collar Crimes in all spheres of law is something that is commonly known yet in terms of *Copyright Infringement* it has been garnering momentum rather lately and so it is to be known, given the prevalence of such crimes that the law must find a way to provide remedies against the same, with regard to the concern that the existing legislations have not entirely been able to tackle it.

Claim statement - The determination of the fact that copyright infringement is a White-Collar Crime is true to a great extent since the existing laws have not been able to tackle the issue to a point that they've been able to prevent it entirely.

Research question: If the laws provided under *The Copyright Act, 1957* are ineffective in preventing White - Collar Crimes what must be done to curb the prevalence of such crimes with respect to copyright infringement?

To give precise clarity regarding such concerns having a colossal impact upon the public such a study has been conducted to identify the key factors that ignites the inceptions of offenses suchlike. Researching upon extensively by looking into the different forms of white collar crimes that exists within the laws of copyright and also within the realm of intellectual property as a whole the purpose of the study seeks to reflect on the methods that could be used to bring about laws to prevent such occurrences, since the existing ones haven't been successful entirely to do so, and also present a new light into such crimes by effectivising the laws that have been legislated thereon.

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**KEYWORDS** - White Collar Crimes, IPR, Copyright Infringement, Violations, Technology, Innovations

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### **Purpose of The Study**

To be able to efficiently study the efficacy of the existing laws on Copyright ms with regard to the visibly rampant rates of crimes as such that has been prevailing, and subsequently determine the possible remedies that could be provided. In order to apply such a principle with the eventual goal of attaining applicability and effectiveness of the laws in place, it is recommended that the concept of '*Copyright Infringement*' is carefully recognised and assessed; determine whether the terminology in relevance, i.e, White Collar Crimes appears as such in consonance with the infringement of copyright, and thereon examine the impacts of such crimes whilst contemplating the existing provisions and decipher remedies that would be sought.

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### **Methodology**

The paper is an attempt towards understanding the various modes of prevention of white collar crimes that exist within the facets of intellectual property in the form of an analytical study.

The researcher has specifically focused on the key area of research to be surrounding infringement of copyrights with the help of primary sources such as statutory provisions, regulations, etc. and secondary sources like articles, journals and websites. The data that has been collected has further been carefully examined and reviewed in order to find the actual discrepancies relating to the issue and figure out remedies to prevent the same and understand as to how it may have occurred previously. The objectives are to majorly justify the relevance of the issue and study the concept of infringement of copyright and understand how the concept of 'White Collar Crimes' apply in such instances. Furthermore the study also focuses on determining how the remedies are going to actually be effective in achieving the goal of this research. The approach adopted in the study would primarily be that of a qualitative

form so that the insights gathered from the in depth research would help in the application of the theories examined in the actual framework. Eventually the researcher's goal is to come up with a conclusion backed by information in the form of findings from the research that has been conducted to fix the lacuna in the law by identifying the discrepancies that arise by critiquing the existing modes of scrutiny which is the laws that have been implemented but has proven to not be effective rather. This requires analysis in the form of scrutinizing the numerous sources of information and evidence that have been made available through various scholarly sources, journals, books, articles and databases. With the aim of achieving answers to questions that are many, more often than not we end up in the kinds of dilemmas that are constantly present around us, since the ways to navigate its course and the repercussions into society has been rather challenging to allow for us to cultivate its resolutions. As a matter of fact, the data analyzed gives a deep insight into the nature of these white collar crimes and also suggests preventive strategies which could be applied from its inception once it has been identified. Along with that the paper has delved into the specifics relating to what white collar crimes are and how in matters relating to copyright infringement it holds relevance, by identifying at first whether or not it actually amounts to being so.

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## **Introduction - Delving Into The subject of White Collar Crimes & Its Relevance Within The Sphere of Copyright Infringement**

As per the numerous definitions of crimes that exist within the realm of law and society, one that gives an overall description of crimes is how they are unlawful acts that cause harmful effects on society which are intentionally committed when it has been specifically prohibited and made punishable as per the laws that govern us. And so based on the effects that crimes have on society and the numerous kinds that subsist a major kind that has gained prevalence because of its visible repercussions has been that of 'White Collar Crimes' - unlike the conventional narratives on crimes, needn't necessarily involve guns and ammunitions or any kind of direct action against one or a few, because most often crimes of such nature happen in silence and only its effects come out to be visible to all since it would appear so; more often described as '*Economic Crime*' since it typically refers to the following offenses committed primarily by businesses, their owners, executives, or employees, as well as by government or municipal officials and members of the professions: fraud, corruption, embezzlement, misappropriation, and malfeasance, tax fraud, property theft, trading, concealment, Ponzi schemes, misrepresenting financial statements, price-fixing, illegal cartels, and collusion as a result of environmental violations. Primarily the grave area in which WCC's emerge is in relation to business practices, trade, finance and corporate governance. Not suppressing the fact that WCC's are in fact crimes in every decipherable manner, and its direct link with intellectual property makes it an insightful matter to delve into and find aspects where discrepancies arise and find ways through which it could eventually be curbed.

It is to be noted that the severely rampant emergence of WCC's have turned into a major cause of concern, of course the phenomenon is certainly not new as it has been in practice for days on end. Besides the connotations that seem unconventional even to the perpetrators of such crimes, the offenders are all wrapped in a corporate blanket of economic greed in the course of business for each one's own personal gains and benefits not considering whether or not it would detriment others from their rights and interests. Embezzlement, cybercrime, fraud, misappropriation, misfeasance, extortion, etc. are all the primary modes of committing crimes of such nature and magnitude. And as a consequence to such unlawful activities we are able to define White Collar Crimes as something that is on the same lines as criminal offenses garnering greater momentum in all spheres of law, given the multiple instances that lead to the further prevalence. Undoubtedly in the context of IP laws where violations against the rights of creators are concerned WCC's have a great amount of significance due to its disturbing effects on the creators of such works. And so with respect to the theme of this paper, which is prevalence and prevention of White Collar Crimes in terms of Copyright Infringement there's a large scope of study and greater data analysis that could be done to identify the means of the inception of these offenses and figure out the multitude of their consequences so that effective remedies could be deciphered.

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### **Copyright Infringement: In Consonance With WCC's**

The unfolding of white collar crimes normally has a motive that routes back to a human emotion which is of greed, that is from thereon planned meticulously and executed in a manner that achieves the desired goal. Such offenders always hail from a very reputed and respectable group of the society. The term was first coined by sociologist Edwin Sutherland who defined white collar crimes as "*a crime committed by a person of respectability and high social status in the course of their occupation.*" In furtherance to the concept such crimes are committed during the course of their careers. Through modes of unethical business practices people of high stature and impeccable tech skills eventually find themselves upon opportunities that lead them to perpetrate these crimes. Disguised in a corporate persona they carry out conspiracy, concealment, deceit, fraud and more such; Copyright Infringement is one of the most typical forms of WCC's and it is pertinent to know that it associates a multitude of public and private sector businesses and individuals who deliberately exploit their powers and interests to carry out activities that result in a violation of an intellectual property. It is highlighted by *The Federal Bureau of Investigation* that components such as cheating, lying, stealing are considered as white collar crimes but Copyright Infringement occurs when there has been creations of an individual arising out of their intellect and labor is being unethically exploited or violated by another for their own benefits disregarding the absolute rights of the actual creator. Copyright includes works of an individual in the form of authorship that have been expressed in any tangible medium providing the creator with rights and powers to further adapt, distribute, translate, perform etc. Literary works, frantic works, musical works, audio and video recordings, video games, software etc are the obvious subject matters of copyright and it further extends to some non obvious examples like dance routines, architectural elements and designs as well. *Section 52 of The Copyright Act, 1957* provides specific protection against infringement of copyright. If an individual performs an act that they're unauthorized to do, especially one that only the copyright holder is entitled to perform, then that act amounts to infringement in the form of violation of the creator's rights.

The actual act of duplicating the work of the copyright holder is referred to as primary infringement. For instance, making copies of books to distribute them for profit. However, a person might occasionally merely duplicate a little portion of the work, like a paragraph from an article. In such a situation, the copyright holder must prove two things:

1. Only when an unauthorized person copies a significant portion of the work does a copyright violation occur. Taking a lyricist's memorable phrase as an example.
2. The court considers how the work will be seen by the average person when making its decision. It is considered plagiarism if the average person can tell that the work was taken from another source.

Further the scope of infringement of copyright extends in the form of secondary infringement where an individual's copyright is being exploited unethically under his oblivion and is being used for others' benefits in the form of selling infringed copies, distributing them, importing them, etc. The three major kinds of copyright infringements are :

- 1) Direct Infringement
- 2) Contributory Infringement
- 3) Vicarious Infringement

One of the most common forms of infringement now does not even make proper reason for it to be considered so, image and text - two of the most common subjects of infringement and it is used in various fields of academia, research, and more. Whether this theoretically amounts to plagiarism, yes it does but has now rather come under fair dealing rather. The existing legislations that have been enacted to provide protection against abuse and infringement of intellectual property rights are *The Trade Marks Act, 1999*, *The Patents Act, 1970 (amended in 2005)*, *The Copyright Act, 1957*, *The Designs Act, 2000*

*The Geographical Indication of Goods (Registration and Protection) Act, 1999*, *The Protection of Plant Varieties and Farmers Rights Act, 2001*, *The Information Technology Act, 2000*.

Although the legislations seem to be in place, its enactment came about for the very reason which was to provide intellectual property protection and guarantee rights to its innovators somewhere along the way discrepancies crept in and a hurdle of sorts emerged. The laws were made to govern unfair practices but now it has found a broken road, the laws regulated seems to be having trouble with its applications since the emergence of violations as such do not seem to find an endpoint. Perpetrators of violences of all kinds find a way back to come into the picture and the provisions of all the legislations are unable to entirely put an end to such crimes from resurfacing.

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## **Internet Copyright Infringement - A Pertinent New Facet In The WCC Frontier**

In the scope of emerging WCC's that appear through modes of copyright infringement one key facet of exploration lies within tech - Internet Copyright Infringement. We are all aware of the technological advancements that have been significant for a while now, it dates back to moments that we can no longer remember or ever want to go back to, it's almost as if it's dreadful to look back in such a time. Rapid increase in access to technology globally has made individuals more reliant on every aspect and inventions of tech and more. We've all become so heavily reliant that technology and the internet especially has become an easy way out of a lot of the things that we are required to deal with on a day to day basis. It has become the primary tool of all the responsibilities that one is tasked with. And in a world where crimes do not ever forbid itself from surfacing even the benefits of technology and the internet soon turns out sour; people wrongly exploit their resources, knowledge and skills to find an alternative that's quicker and requires less effort and so when it comes to even work, businesses, academics and research people are fully reliant on online databases and precedents that enable them to do their jobs better.

And in a picture where white collar crimes are gaining traction for disregarding and violating the intellectual property rights that belong to another all of us have come into a consensus where we've been made to understand the value of originality and that in order to meet our needs we are infringing the rights of others who have worked harder than we have. The rapid rise of technology in turn has also paved the way for WCC's to exist in the cyberspace as well. The internet although has protocol in place to ensure that it doesn't happen but direct copying also does not seem to have a strong cover up either. The technology of copying and pasting has undoubtedly become the most common kind of infringement, and the rate at which it persists is inexplicable and inexcusable. In regular scenarios where white collar crimes are identified there is an instance where a person has committed an unlawful act in a workplace or some other place of employment but here in this instance with respect to the internet access to databases and information in itself is a common workplace resource for all and therefore the common use of this source results in habitually infringing on copyrights. Generally white collar crimes lack physical violence, it's more on the lines of forgery, fraud and deception and this kind of an infringement where tech and internet is concerned it amounts to be '*Internet Embezzlement or Fraud*' resulting in significant damages that scars the society from its authenticity.

The more that technology advances and the internet matures there will be more ways of infringing that people will eventually come up with to profit from copyrighted contents on another scale, in the form of piracy, distribution, etc. The US copyright law has been more and more reliant on making copyright infringement illegal, as shown by the *Digital Millennium Copyright Act (DMCA)*. This has been done to discourage Internet copyright violations. The crime of infringement, in particular, includes not only the act of infringement but also actions that benefit from internet copyright infringement, such as

the development and distribution of tools, equipment, or services that make it possible to get around restrictions on access to works protected by copyright. Additionally, it makes it illegal to get around an access control without actually violating any copyrighted material. While the concept and emergence of internet copyright infringement is still in comparison a lot newer the laws relating to copyright and infringement are way older and has provisions that could be applicable in current scenarios as well, but in terms of execution it is necessary to find the right key point from where the whole issue stemmed from and requires mandatory regulation and enforcement of the penalties.

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### **Results and Findings: Determining The Reasons That Led To WCC's To Prevail**

The fact has been established, that mere fabrication of IP without the consent or knowledge of the copyright holders is what is termed as Copyright Infringement, because such violations occur itself when a third party violates the copyright owner's rights, like individual ownership of work for a specific period. When it comes to judicial decisions it is ultimately made clear that there are legitimate cases that act as precedents in relation to copyright infringement. Such instances are pertinent to be noted especially in a common law country like India where it is the doctrine of precedent that governs the whole aspect of decision making. Therefore, precedent is as much a source of law as it is a statute. And so all the lower courts are bound by the higher courts, if the issues in both decisions are the same. In case a prior decision was delivered by a court that was not technically 'superior' to another then the latter court is encouraged to follow the previous decision for the maintenance of judicial decorum. It is obvious to exclaim that issues related to copyright and its infringement isn't mere or an easy task to manage since creative arguments arise at all times and such pertinent problems did arise in significant cases that dramatized the entire scope of copyright infringement and its effects.

In the judgment of *Rogers vs. Koons 960 F.2d 301 (2d Cir. 1992)* - An image of a couple holding a row of puppies was taken by photographer Art Rogers, who later sold the image for use in greeting cards and other items. Internationally known artist Jeff Koons saw Rogers' shot while working on an exhibit about the banality of daily objects and used it to inspire a group of statues. Koons made a substantial profit when he sold several of these constructions. Rogers filed a copyright lawsuit against Koons after spotting the copy. In response, Koons asserted fair use through parody.

The court concluded that a "typical person" would be able to identify the duplicate because of how similar the two photos were. Koon's contention that he could have used a different defense was rejected.

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### **The Associated Press vs. Fairey, 09 Civ. 1123 (AKH)**

The Hope poster was produced by renowned street artist Shephard Fairey during President Obama's initial run for office in 2008. Though formally separate from the campaign, the design quickly came to represent Obama's candidature.

The Associated Press discovered in January 2009 that the image on which Fairey supposedly based the design was one taken by AP freelancer Mannie Garcia, and the AP demanded payment for Fairey's usage of the image. Fairey argued that his work did not diminish the value of the original photograph in his response, asserting fair usage as his justification. Despite the absence of a trial and a final decision, this case generated a lot of discussion regarding the importance of effort in copyright disputes. Without Fairey's poster, Garcia's work is unlikely to have ever attained the amount of fame that it did. Garcia said he was "so proud of the photograph and that Fairey did what he did artistically with it, and the effect it has had," but he still had an issue with Fairey taking the picture without his consent and without giving credit to the original creator.

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### **Gucci v Guess, 09 Civ. 4373 (SAS)**

Guess was sued by Gucci for infringing five of their trademarks along with using similar logos which came as not much of a surprise given the various suits filed against Guess for IP Infringements. Most of their disputes were almost resolved up until the Gucci suit came along which resulted in a decision where the decision of the court held that Gucci was entitled to accounting profits limiting the damages and Guess was made liable for all the allegations made against them ultimately barring them from using most of those designs.

In the case of *'The Spartan Engineering Industries Pvt Ltd & Anr v Dassault System Solidworks Corporation & Anr, High Court of Delhi, CS(COMM) 34/2021,*

The Delhi High Court had addressed the issue of software copyright infringement. The court noted that "software infringement is a serious issue, and requires to be addressed in the bud" when making the decision. The defendants also invoked Section 63 of the Act, making it illegal to intentionally use a stolen software program. The Court granted the Plaintiffs an ex-parte ad interim injunction prohibiting the Defendants from using, reproducing, and distributing any pirated, unlicensed, or unauthorized software programmes that belong to the Plaintiffs. The injunction also prohibits the Defendants from formatting their computer systems or erasing any data that might aid in the copyright infringement of the Plaintiffs.

On the contrary, when it comes to the binding value of judgement in India, all the decisions of the Supreme Court are undoubtedly binding on all the other courts that are subordinate to it.

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## Review and Recommendations: How to Avoid Copyright Infringement

Having understood that the prevalence of crimes that increase at rates that keep exceeding as time goes forward it is right to say that copyright is one of those IP that requires protecting to safeguard its creators rights and interests as it is so susceptible to infringement of all kinds. Normally as soon as an idea is expressed on paper or any other tangible medium then the work is guaranteed copyright protection for a stipulated period of time. The perpetrators of copyright infringement and their actions are not to always be pre determined whereas once it has been brought to the picture there are certain legal measures that could be effective mused to avoid such instances in all; the ways to ensure that depends upon the individual(s) to whom it may concern, since it is required of them to understand what all they are entitled to copyright. Along with that there are a few pertinent things to also keep in mind regarding the originality of the content being either used or expressed - which is to refrain from using or exploiting works that are not original. Web search engines and databases do provide the minimum level of necessary information that is required for us from which we have to include our own inputs, because information out there is vague and not everything is entirely valid. And so a work that has been displayed if it is being used by another, even a simple process like copy and paste to present or represent another idea, still amounts to infringement.

As measures to tackle IP violations along with the existing legislations that were already in place several other acts also eventually came about to bring down the effects of WCC's and prevent it from furthering. One such enactment was *The Prevention of Money Laundering Act, 2002*.

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## Limitations of The Study

The paper focused on achieving results in the sphere of intellectual property pertaining towards the prevention of white collar crimes with respect to the infringement of copyright as per The Copyright Act, 1957. The efficiency of the laws that were already enacted were scrutinized in consonance with the rampant rise of such crimes thereby providing remedies and modes to prevent them. Proper assessment and examination of the existing laws along with determining the inceptions of such crimes were deciphered upon. The key area of research was highly complex and vague to cover entirely even with the amount of data collected and analyzed. The discrepancies remain within the whole ambit of these laws and there is no sought after method to entirely crush it. The method of research and obtaining the information, based on which this study has been conducted included literature review from a variety of important studies, documents and journals. The goal has been to determine steps to prevent the rampant rates of white collar crimes subsequently derailing the society and therefore the topic has vaguely touched upon the multitude of issues that fall within the ambit of intellectual property violations. And throughout the course of the study the key challenges that were faced were to in fact determine how it would be possible to reduce such crimes. Although there exists sophisticated technology and prior scholarly studies there is also a global phenomenon of business and trade that also sees no end of the tunnel. With human beings scattered across the seas and laws being vastly implemented it has become impossible to be wholly specific at this point. And in order to address these challenges we must have greater understanding of the issues that we are surrounded by and also understand the legal provisions as to how the IP must be protected.

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## Conclusion

It has come to our attention after an in depth analysis touching upon some significant issues that there is no one established way through which preventing white collar crimes would deem to be successful because we do not always know when the initiation of a crime of such nature has taken place. And since such violations do not have any seemingly visible physical effects or injuries as such its effects do not have significance until the results of such actions have actually occurred. And so the legislation that is in place needs to effectivise the enactments and the laws that have been implemented prior to the issues that have now skyrocketed. Additionally throughout the course of the analysis it has been brought to notice that even the existing laws lack command and efficacy, that being the reason why we have not been able to curb these issues earlier itself and therefore it must now be effectivised. The measures to be taken once infringements have taken place is through remedies Provided under *Section 55 of The Copyright Act, 1957* - in the form of injunctions, damages and accounts. Injunctions act as the most effective remedy to prevent such crimes and damages compensate the copyright holder whose works were violated