

**Legal Issues  
In**  
**Cyberstalking & Other Cyber Crimes, Intermediary Liability & Safe Harbor, and  
Information Technology**

## Legal Issue- I

**Whether mere use of identity of some other person amounts to identity theft under Section 66C of IT Act?**

# Introduction

## ❖ What is Identity theft?

- Using someone's personal information in order to impersonate them and acquire money or goods in their name
- Types of identity theft – criminal, financial, medical, child, identity cloning
- Techniques of committing identity theft – hacking, phishing, vishing, carding etc.

## ❖ Laws governing identity theft in India:

- Section 66C of the Information Technology Act, 2000 (“IT Act”) inserted vide the IT Act Amendment, 2008 prescribes punishment for identity theft
- *“Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine with may extend to rupees one lakh.”*

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## Judicial Interpretation

### ❖ **Shreya Singhal vs U.O.I [Writ Petition (Criminal) No.167 OF 2012]**

- *“It will be clear that in all computer related offences that are spoken of by Section 66, mens rea is an ingredient and the expression "dishonestly" and "fraudulently" are defined with some degree of specificity...The provisions contained in Sections 66B up to Section 67B also provide for various punishments for offences that are clearly made out...Under Section 66C, whoever fraudulently or dishonestly makes use of any identification feature of another person is liable to punishment with imprisonment...”*

### ❖ **Alok Mukherjee vs Olx India (P) Ltd. [CC No. 35/1/13]**

- *“In the present matter neither there was any intention to deceive nor wrongful gain or loss to any person is caused. It cannot be said that person who posted the wrong information was having dishonest or fraudulent intention... In such circumstances, it can be said safely that no offence u/s. 66C IT Act is also committed.”*

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### ❖ **State of Uttarakhand and Ors. Vs. Akhtar Ali and Ors. [Criminal Miscellaneous Application No. 2724 of 2019]**

- *“.....mere use of identity of some other person...did not attract provisions of section 66C of Act. It requires something more. Fraudulent and dishonest intention for identity theft was essential...”*

## **Legal Issue- II**

**Whether intermediaries can be made liable for hosting infringing content?**

## Relevant Provisions

### ❖ Information Technology Act, 2000 –

- **Section 2(w)**- intermediary, with respect to any particular electronic records, means “*any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes*”
- **Section 79**- Exemption from liability of intermediary in certain cases

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### ❖ Information Technology (Intermediaries Guidelines) Rules, 2011–

- **Rule 3** - Due diligence to be observed by intermediary

## Judicial Interpretation

### ❖ **My Space Inc. vs Super Cassettes Industries Ltd. [FAO(OS) 540/2011, C.M. APPL.20174/2011, 13919 & 17996/2015]**

- *“... Section 79 provides an affirmative defence to an intermediary as long as it complies with the associated conditions. Under Section 79(2)(a) an intermediary can seek safe harbor protection if its role is limited to "providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted...If the host has specific knowledge that the transmitted content is unlawful, then no safe harbor can be granted...Reference is made here to Rule 3(3) of the Intermediary Rules, which was released by way of a clarification to Section 79 of the IT Act. Rule 3(3) specifically provides that an intermediary shall not knowingly host or publish any information for the purpose of sub rule 2 to Rule 3... Furthermore, under Section 79(2)(b) an intermediary should not initiate the transmission, select the receiver of the transmission and select or modify the information...The other aspect that needs to be complied with is the "due diligence" clause under Section 79(2)(c)...”*

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## Judicial Interpretation (Contd.)

❖ **Christian Louboutin Sas vs Nakul Bajaj & Ors [CS (COMM) 344/2018, I.As. 19124/2014, 20912/2014, 23749/2014 & 9106/2015]**

- *“... While the so-called safe harbour provisions for intermediaries are meant for promoting genuine businesses which are inactive intermediaries, and not to harass intermediaries in any way, the obligation to observe due diligence, coupled with the intermediary guidelines which provides specifically that such due diligence also requires that the information which is hosted does not violate IP rights, shows that e-commerce platforms which actively conspire, abet or aide, or induce commission of unlawful acts on their website cannot go scot free...”*



## Judicial Interpretation (Contd.)

### ❖ Facebook Inc vs Surinder Malik & Ors [CM(M) 1263/2019]

- “...Considering the provisions of the IT Act and Information Technology (Intermediaries Guidelines) Rules, 2011, platforms such as Facebook and Instagram, which claim to be intermediaries not performing any active role in the posting of such information by third party alleged infringers, have a duty only to take down the posts which are brought to their notice by the Plaintiff in terms of Section 79(3), by following due diligence...

### ❖ Swami Ramdev & Anr. vs Facebook, Inc. & Ors. [CS (OS) 27/2019]

- The Court interpreted “that resource” to mean a “computer resource” which “encompasses within itself a computer network” and held that “...if an information or data has been uploaded on a computer network, the platforms would be bound to remove it and disable it from that computer network completely...so long as the uploading from India led to the data or information residing in the network or being connected to the network, the same ought to be disabled or blocked globally. Any other interpretation of Section 79 would result in reducing the efficacy of the provision which equates the computer resource which initially created the information and the resource from where it is to be disabled or removed”.

## **Legal Issue- III**

**Whether OTT platforms are sufficiently regulated under the IT Act, 2000 and the Information Technology (Intermediaries Guidelines) Rules, 2011?**

# Introduction

## ❖ Information Technology Act, 2000 –

- **Section 67** - Punishment for publishing or transmitting obscene material in electronic form.
- **Section 67A** - Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.
- **67B** - Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.

## ❖ IMAI Code of Best Practices for Online Curated Content Providers

## Judicial Interpretation

### ❖ **Justice For Rights Foundation vs Union Of India [W.P.(C) 11164/2018]**

- Petition seeking writ of Mandamus to bring regulation over contents of the broadcasts made on the online platforms (such as Netflix, Amazon Prime Video etc.)
- *“...no general power for regulation or material in the internet platform is available. But if the internet platform is misused for carrying information or material which are not permissible under law then the provisions of the Information Technology Act provides for deterrent action to be taken and as and when complaints are received, the statutory competent authority takes action in the matter...Keeping in view the aforesaid, namely, the provisions of the Information and Technology Act and the Rules framed thereunder and, particularly, the provision provided in the Sections as detailed hereinabove, we are of the considered view that in a public interest litigation, this Court cannot issue a mandamus for framing general guidelines or provisions when there are stringent provisions already in place under the Information and Technology Act...”*

### ❖ **Nikhil Bhalla vs Union Of India & Ors. [W.P.(C) 7123/2018 & CM Appl. 27132/2018]**

- Petition seeking direction for writ for framing of guidelines governing Over The Top (OTT) Media Service Providers (on the allegation that the content published by them is offensive)

## Judicial Interpretation (Contd.)

- *“The claim in the proceedings is identical to what was sought in Justice For Rights (supra). In these circumstances, the Court is of the opinion that a different view cannot be taken.”*

### ❖ **Mr Padmanabh Shankar vs Union Of India.** [Writ Petition No. 6050 Of 2019 (C)]

- *“...in this petition, we are called upon to decide the legal issue of applicability of the provisions of the said Act of 1952 to films, cinema, serials etc, which are transmitted or broadcasted through the internet.... When we come to web-server, it is essentially a program that uses Hyper Text Transfer of Protocol [http] to serve the files that form web pages to the users which are provided in response to their requests which are forwarded by http client on their computers. There may be various films or serials transmitted via internet. If we take into consideration the concept of internet and how the internet operates, it is impossible to accept the submission that the films or serials which are transmitted or exhibited through internet will constitute films within the meaning of Clause (dd) of Section 2 of the said Act of 1952. In fact, if we consider the concept of internet, it is very difficult to accept the contention that through the internet there is an exhibition of films or serials. The internet contemplates transfer of files in response to the requests made by the users...As pointed out by some of the respondents, the provisions of the IT Act may take care of the objectionable activity for which the petitioner has objected to...”*

## Judicial Interpretation (Contd.)

### ❖ **Mehul Choksi vs Union Of India & Ors. [W.P.(C) 5677/2020 & CM 20540/2020]**

- *“...the learned senior counsels appearing for the respondent nos. 2 and 3 have brought to my notice the order dated 08.02.2019 passed by the Division Bench of this Court in WP(C) No.11164/2018 titled Justice for Rights Foundation v. Union of India and the order dated 09.04.2019 passed by the Division Bench of this Court in WP(C) No.7123/2018 titled Nikhil Bhalla vs. Union of India & Ors.,...In view of the above orders of the Division Benches of this Court and being bound by the same, prayer...as sought in the present petition, cannot be granted...”*

# THANK YOU!

## Questions?

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