

## USER GENERATED CONTENT PRINCIPLES - INDIA

The Web is seeing a surge in User Generated Content (“UGC”), which refers to various kinds of publicly available media content contributed by end users. As India evolves into one of the fastest growing internet populations estimating to about 25 million ‘daily’ users and social internet clearly gaining popularity it is expected that more people will be creating and uploading content. This has led to worry amongst copyright owners that their intellectual property rights are not being sufficiently protected and, as a result, causing them to suffer a negative economic effect throughout the industry, including the print and entertainment industries.

In this environment, content owners and UGC website operators realize there is an urgent need for harmonization of principles to resolve this conflict. A set of customized guidelines would address the grievances and articulate the efforts in a coded format. Therefore, we have collaborated to establish these principles in order to curtail the existing problems. These principles will reflect an appreciation and understanding between copyright owners and site owners and it is anticipated that effective adherence to the principles will create harmony and operating framework in the industry and effectively minimize litigation.

1. Websites should demonstrate responsibility and respect for intellectual property rights by displaying information in pertinent places on their services about the importance of intellectual property rights.
2. During the upload process UGC site owners should notify the user that they may not upload infringing content. The Terms of Use hosted by the UGC service providers which should bind the user should expressly state that they prohibit uploading of any illegal content, and in the event such content is still uploaded, then the Site will have no choice but to remove such content and take action against the infringer.
3. UGC service providers should use effective content Identification Technology on user uploads and keep upgrading such technology, with a view to eliminate from their website all infringing user-uploaded audio and visual content for which Content Owners have provided Reference Material. It is expected that as the websites become popular and generate more revenue, they will seek to invest in the most advanced technology available.
4. UGC service providers shall (i) provide for technology enabling Content Owners to submit their Reference Materials, i.e. a database of their copyrighted works and (ii) permit Content Owners to indicate how they wish the matches to be treated. If a Copyright Owner authorizes specific users to upload content that would otherwise match

Reference Material submitted by the Copyright Owner, then the Copyright Owner should submit to the UGC service providers a list of such permitted users.

5. Where Content Owners have provided (i) Reference Material to the UGC service providers, (ii) instructions as to how the matches should be treated and (iii) a representation that they have the necessary rights regarding the content, then the UGC service provider should apply the Identification Technology to that content to implement the appropriate filtering process, described hereinbelow.
6. Once the Reference Material is submitted to the UGC service provider, the Identification Technology will be used to match the Reference Material with user uploaded content and follow the appropriate instructions vis a vis the content. If the Copyright Owner indicates in the applicable Reference Material that it wishes to block the user uploaded content that matches the reference data, the UGC service provider should use the Identification Technology to block such content before it is made publicly available on the service. The content Owner may also choose to opt for the alternative option of either licensing the matching content or simply uploading the matching content, in which case the UGC service provider may follow such instructions, in its discretion.
7. Copyright Owners should cooperate in a manner to ensure a balance of interests in (i) blocking infringing and illegal uploads and (ii) allowing wholly original and authorized uploads.
8. Copyright owners and UGC service providers should work in harmony to develop reasonable procedures to immediately address conflicting claims regarding the Reference Material and user claims that content was blocked by the filtering process was not infringing or was blocked in error.
9. UGC service providers should have an effective Notice and Take Down policy in place. UGC service providers should provide advanced searching and identification means to Copyright Owners in order to facilitate their ability to locate infringing content in all areas of the services and send Notice of infringement of their content to the UGC service providers. The Notice should specify the exact online location where the subject content is located on the services.
10. Pursuant to such notice, the UGC service providers should take prompt steps to take down the infringing content and notify the person who uploaded the content and in case of receipt of a counter-notification, provide a copy of such counter-notification to the person who submitted the original notice.
11. UGC service providers should make the effort of tracking infringing uploads by the same user and should appropriately deal with such Repeat Infringers by way of a Repeat

Infringer termination policy. The policy may include blocking the Repeat Infringer's account and blocking re-use of verified email addresses and tracking the Internet Protocol addresses so as to prevent the logging in by the same user with a different user ID.

12. It is understood that these principles are to operate as an industry-accepted set of guidelines and adherence to the same does not support disqualification from any limitation on direct or indirect liabilities relating to material online under the Copyright Act or other similar statutes of any applicable jurisdiction outside India.
13. If the UGC service provider adheres to the above Principles in good faith and demonstrates responsible behavior then the Copyright Owner shall not bring forth a claim of copyright infringement against such UGC service provider even with respect to any infringing content that may still continue to remain on the services despite adherence to these Principles.
14. These Principles may be revised and evolve from time to time as the stakeholders may deem fit and proper.