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## UNIT 9 LINKING, INLINING AND FRAMING

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### 9.1 INTRODUCTION

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The Web sites are soaked in information, much of it with varying degrees of copyright protection. In fact, the reality is that almost everything on the Net is protected by copyright law. Web sites are a composition of materials, often consisting of words, graphics, audio, and video, that are expressed to the consumer as information content. The subject matter expressed in the site is an electronic publication of this content. Since, designing, producing, and maintaining a sophisticated Web site is very expensive, protecting content ownership is extremely important. As Web sites become more and more interactive with consumers, their creation, design, and maintenance place enormous demands on innovative marketing techniques that should be legally protected.

Never before has it been so easy to violate a copyright owner's exclusive right to copy the material. Everyone with a computer and an Internet connection creates his own Web pages and thus become a publisher. Hence the rules that once applied to only a few companies bind million of people now.

This unit highlights the scenario when contents of your Web site are exploited by others without your permission or knowledge. The discussion is centred on copyright issues involved in the practices of Linking, In lining and Framing technologies which are normally being used on the Internet.

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### 9.2 OBJECTIVES

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After reading this unit, you should be able to:

- explain the concept of linking;

- make distinction between surface linking and deep linking;
- describe the liability for linking;
- explain the Indian law references to linking; and
- describe the legality of framing under Indian law.

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## 9.3 LINKING

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### 9.3.1 What is Linking?

The interactive feature of the Internet's most popular information access tool, the World Wide Web, to hyperlink defines its very culture distinguishing it from any other communications medium. On the Internet, a link is a selectable connection from one word, picture, or information object to another. Links usually appear as highlighted, underlined, otherwise prominent text or picture that can be selected by the user, resulting in the immediate delivery and view of another file. The highlighted object is referred to as an anchor. The anchor reference and the object referred to constitute a link. A link may lead either to another file in the same Web site, or to a file on a different computer located elsewhere on the Internet. Internet browsers automatically decipher the instructions given by links and retrieve the specified file. A single Web page may contain many links to other Web pages.

Linking is the *sine qua non* for the World Wide Web and in fact links are what make the World Wide Web a web. Links allow quick access to information that otherwise could take much time and effort to find. Linking is of two types:

**Surface linking:** When the home page of a site is linked it is the case of surface linking.

**Deep linking:** When a link bypasses the home page and goes straight to an internal page within the linked site it is the case of deep linking.

### 9.3.2 Liability for Linking

The Web was built for the purpose of enabling hypertext capabilities, allowing one site to link to and access another. In most cases, the owner of a Web page will desire the page to be the destination of as many links as possible because more links would mean more hits, and more hits would in turn mean wider dissemination of whatever information the page is designed to get across. To date, Web site owners have made money primarily from the sale of advertising at their sites. The advertising rate is set keeping in mind the number of people who visit the site.

The problem arises only with regard to the practice of deep linking. The home page of a Web site is used as the entry point to information contained within the Web site and welcomes users, explains the nature of the site and offers links that allow the user to navigate through the site. Deep links defeat a Web site's intended method of navigation. Further deep links may "steal" traffic from the linked site's homepage thereby decreasing the revenue that could be generated from advertising that is dependant on the traffic onto the site. A link is just a URL, the Internet address of a Web site and therefore like a street address is not copyrightable. But this technology of hyperlinking may aid in the distribution of creative material that belongs to someone else.

In the *Ticketmaster Corp. v. Microsoft Corp.* [United States District Court for the Central District of California, Civil Action Number 97-3055DPP] case, the plaintiff, Ticketmaster Corporation sued Microsoft for Microsoft's practice of linking, without permission, deep within its site rather than to the home page, and claimed, among other things, that Microsoft effectively diverted advertising revenue that otherwise would have gone to the plaintiff. Ticketmaster Corporation had also entered into contracts with other firms whereby those firms had agreed to pay to link to the Ticketmaster site. Free linking by Microsoft to the plaintiff's site could have devalued those contractual relationships. Allowing such a free link undercut Ticketmaster's flexibility both in designing its site and in its marketing efforts and arrangements with other sites. During the pendency of the court proceedings the parties entered into a settlement agreement whereby Microsoft agreed not to link to pages deep within the Ticketmaster site and agreed that the links will point visitors interested in purchasing tickets to the ticketing service's home page.

In a Scottish case, *Shetland Times, Ltd. v. Dr. Jonathan Wills and Another* [1997 FSR 604.], the plaintiff, the Shetland Times operated a Web site through which it made available many of the items in the printed version of its newspaper. The defendants also owned and operated a Web site on which they published a news reporting service. Defendants reproduced verbatim a number of headlines appearing in the Shetland Times. These headlines were hyperlinked to the plaintiff's site. Clicking on the headline took the reader to the internal pages in the plaintiff's site on which the related story was found. In the process, the front page of the Shetland Times' site (on which paid advertisements appeared) was bypassed, significantly diminishing the value of the site to potential advertisers. The court issued an interim interdict barring defendants, without the plaintiff's consent, from copying headlines from the plaintiff's newspaper onto their Web site, and creating hyperlinks from those headlines to the location on the plaintiff's site on which the article described in the headline appears.

What liability is there for the content on a linked site? A hyperlink used by a Web site does not directly cause copying of any substantive content by anyone, but instead merely provides a pointer to another site. A surface link to a home page does not generally require permission. This position is based on the theory that going online creates an implied license for anyone with a computer to view the Web site. Simply placing a surface link is no more an infringement than the library catalogue telling you it stocks a book, is an invitation to you to photocopy it in its entirety. The very fact that a person or an entity has put up a Web site is in itself an invitation to all to visit the site. So, the owner of a Web site should only be happy that someone has provided a link to his Web site.

But what exactly can be the liability for a deep link under the Copyright Act of India. By virtue of section 14 and 51 of the Indian Copyright Act, *reproducing any copyrighted work, issuing copies of the work to the public or communicating the work to the public* could amount to copyright violation. But in case of deep linking the linking site is not reproducing any work. The reproduction, if at all any, takes place at the end of the user who visits the linked page via the link. Can the linking site said to be issuing copies of the work or communicating it to the public? Technically, the linking site is only informing people about the presence of the work and giving the address of the site where the work is present. It is the user's discretion to access the work by clicking the link. But nevertheless the linking site is definitely aiding in the distribution of the work.

Looking from another angle, section 2(ff) of the Copyright Act says:

Making any work available for being seen or heard or otherwise enjoyed by the public directly or *by any means of display* or diffusion other than by issuing copies of such work regardless of whether any member actually sees, hears or otherwise enjoys the work so made available.

This definition of communication to the public could be stretched to cover the communication of contents of a Web site on the Internet as the expression *by any means of display* has been used to define communication.

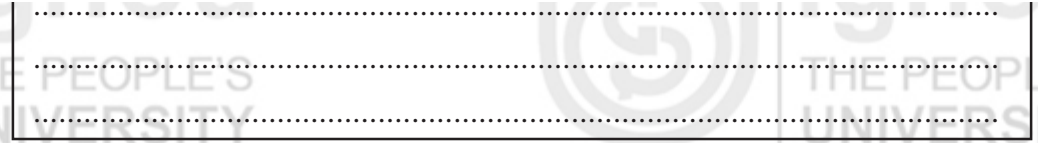
But in case of deep linking problems could arise. Without deep linking, the Internet as we know it would collapse. You couldn't have a search engine, for example. But some grey areas do need to be addressed. It is quite different for a search engine to deep link than a competitor of an e-business Web site to do the same. Deep linking to commercial Internet databases without the permission of the content owner could raise many problems. It would be difficult for any business to see its content being used by a competitor for free just because the new technology allows it. Many publishers are moving to curtail or block *permanent* deep links, as more free content moves behind registration screens or is shepherded after a few days into paid-for archives. But many Web sites would welcome deep links as well.

So, should the law be amended to stop deep linking without permission of the owner of the content? Or should the law provide complete immunity to links of all kinds. Internationally, no law till date has put a ban on deep linking. There are indeed problems in doing so. On the one hand one has to consider the rights of the owner of content and on the other hand the interests of the society for which growth of the Internet is all important. The international treaties and laws do emphasize the importance of control in the hands of the content owner, but specifically they have not dealt with the problem of deep linking. It would not be proper for the Indian legislation to include a provision banishing deep links altogether because the current provisions are sufficient to check the unauthorized use of someone's content through deep linking and using these provisions courts can fill the vacuum by deciding from case to case basis; if a deep link has been created with bad intent and in order to derive unjust enrichment out of somebody's content then it could be injected.

Before linking deep within a Web site the prudent course for businesses and individuals would be to seek permission. And for the creators of a Web site who want that it is not linked to a pornographic or shabby site could place a prohibition in its 'terms of use' similar to, "*Do not link to this site without our express consent*". If you link to a site that includes illegal material, could you be liable? It may be best to post a disclaimer on your site indicating that the links are for information only, and do not constitute an endorsement or approval of the material on the linked sites.

Please answer the following Self Assessment Question.

<b>Self Assessment Question 1</b>	<i>Spend 3 Min.</i>
What are the different kinds of linking?	
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.....	



## 9.4 INLINING

### 9.4.1 What is Inlining?

Inlining or ‘In-line linking’ enables a Web page to summon different elements from diverse pages or servers to create a new Web page. Instead of copying the elements to the composite page, the elements are linked in by “pulling in” graphic or image files from another site and displaying on the composite Web page. Thus, the composite page would consist of a series of links to other sites and servers. While browsing the composite page, the page directs the browser to get the pictures, graphics etc. from the original sources.

An example would be a Web page on art that contains images stored around the world. The Web page could contain the text: “See my favourite paintings”. Using an IMG link, the Web page could then direct the visiting browser to retrieve the images of famous paintings from the Web page of various museums and place it immediately below the text. To the end-user, the integration of the two pieces of content (text and pictures) is seamless, despite the fact that they were taken from two very different sources. The viewer cannot distinguish that the image has originated at and been imported from a separate site and may never come to know that it was not created or stored at the site being visited by him. In this respect, inlining is different from deep linking where the user is usually aware that he has “changed pages”, either from the different appearance of the newly accessed page, or from the change in the URL address display in the Web browser.

In the USA the Dilbert dispute, though did not involve the filing of a complaint or any judicial determinations, is one of the few inline controversies and thus serves as a point of discussion for these links. Dan Wallach created “The Dilbert Hack Page”, a site that presented the Dilbert comic strip via inlining to the United Media Web site, where the comic strips were located. The images appeared on Wallach’s Web site via inlining. United Media, speaking for United Feature Syndicate, Inc., owner of the copyright in the comic strip, requested by letter to Wallach to discontinue the link. United Media contended that “the names or likenesses of the Dilbert comic strips and all other United Media intellectual property cannot be used – on the World Wide Web or elsewhere – without the express, written consent of UFS”. United Media asserted that Wallach’s inline links to copyrighted material constituted an unauthorized display of a copyrighted work, a violation of the Copyright Act. To avoid litigation, Wallach removed the page.

In, *Leslie A. Kelly v. Arriba Soft Corporation* [Case No. 00-55521, US Court of Appeals for the Ninth Circuit], a visual search engine (ditto.com, formerly known as Arriba) crawled the web to produce thumbnail images of photographs and used them to link to the original pictures. Leslie Kelly, a professional photographer was upset that the search engine reproduced thumbnails of the images on his site which, when clicked, produced the full-size image in a window on Arriba’s site. The page used so-called in-line linking to display the original full-sized image, surrounded by text describing the size of the image, a link to the original web site, the Arriba banner,

and Arriba advertising. Kelly filed suit on April 6, 1999, alleging copyright infringement. A California District Court ruled that both the creating of the thumbnails and the inline-linking is justified under the fair use doctrine. On appeal by Kelly, the Ninth Circuit Court of Appeals affirmed and reversed in part the district court decision. The display of the tiny images was deemed to be legal fair use, but not the inline-linking. On February 6, 2002, the US Court of Appeals for the Ninth Circuit held that that unauthorized inline linking to images residing on the copyright owner's Web site violates the copyright owner's right of public display. The court rejected defendant's fair use defence and stated that inline linking diminishes the opportunities of the copyright owner to sell or licence the images on his own Web site. The Electronic Frontier Foundation (EFF) filed a brief, thereafter, urging the court to reconsider the part of its ruling on inlining to copyrighted images. The EFF argued that the ruling against "inline linking" threatened to transform everyday Web site activities into copyright infringements. In July 2003 the court withdrew that portion of its opinion which was relating to inlining, leaving it to the lower court to take a fresh look at the issue. It is now open for the court to reconsider whether inlining is violative of copyright or not.

Please answer the following Self Assessment Question.

<b>Self Assessment Question 2</b>	<i>Spend 3 Min.</i>
Content on the Internet is protected by copyright law. Do you agree?	
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### 9.4.2 Inlining and Indian Law

As in linking one has to turn to section 51 read with section 14 of the Copyright Act, 1957 to test the legality of inlining. By virtue of section 14 and 51, *reproducing any copyrighted work, issuing copies of the work to the public or communicating the work to the public* could amount to copyright violation. The person who employs an inline link on his site is not causing any reproduction of the copyrighted content. This is because the link's creator never copies the pirated content; instead merely provides a visiting browser with instructions to retrieve the image, which is then incorporated into the overall page on the user's site. Thus the only person who copies the protected image is the final user who never comes to know that his browser is fetching different elements from different sites. So, the reproduction, if at all any, takes place at the end of the user who visits the linked page via the link. Also, the creator of the inline link is not issuing copies of the work nor communicating or distributing the work to the public. But he can be said to be aiding in such communication and distribution.

Looking from the angle of section 2(ff) of the Copyright Act the definition of communication to the public could be stretched to cover the communication of

contents of a Web site on the Internet as the expression *by any means of display* has been used to define communication.

Section 14(a)(vi) grants the right of adaptation only to the owner of copyrighted work. By inlining the linking site could take some elements from the linked site's multimedia settings and create its own, thereby affecting the right of making a derivative work of the linked site because taking some elements from the multimedia setting and combining them with some other could well fit into the definition of adaptation. So, adaptation rights do come in picture vis-à-vis inlining.

Inlining brings in the question of moral rights as well. Section 57 of the Copyright Act, 1957 says:

1. Independently of the author's copyright, and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—
  - a. to *claim the authorship* of the work; and
  - b. to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such *distortion, mutilation, modification* or other act would be prejudicial to his honour or reputation.
2. The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

First, this section allows the copyright author to claim authorship of the work. In case of inlining the user is confused about the original source and hence may never come to know about the author. The user may never know from where different elements of the site have emanated.

Second, it talks about the right of integrity. The author of the copyrighted work has a right to see that his work is not being *distorted, mutilated or modified*. Copyrighted graphic image could be pulled into a site with its image appearing on a single page combined with other images, thus creating another work virtually new and different from the original thereby strongly implicating the right to integrity of the work. The combination of various elements could be termed as modification or even mutilation in certain circumstances.

Even if a Web page allows others to link to it, it cannot be presumed that it has also granted permission to link to individual elements of the page. If someone were to create a composite Web page by summoning various elements from a different Web site without necessary permission, it is clear that such a use would not be protected as fair use. By stripping an element of its context, you also strip many of the copyright privileges that may have been attached.

Should the law be amended to outlaw inlining or to allow this practice? The Copyright Act talks about various rights of owners and authors of works and describes situations where these rights can be infringed. So, there is no need for the law to be changed as such in this regard. A complete ban could restrict the growth of the Internet. At the same time owner's content should not be subject to exploitation by one and all. In this situation, it is for the courts to decide upon the legality/illegality of inlining from

case to case. The measure would always be the Copyright Act, the philosophy of which is amply clear. In case an inline link amounts to aiding in distribution or communication with dishonest intentions, the courts will come forward and declare such inlining illegal.

It is considered a breach of net etiquette to link to anyone else image through an IMG link without permission. Consequently, one should obtain permission from the copyright owner of the image prior to creating an inlining link.

Please answer the following Self Assessment Question.

**Self Assessment Question 3**

*Spend 3 Min.*

What is copyright violation? Explain

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## 9.5 FRAMING

### 9.5.1 What is Framing?

Web browsers allow Web authors to divide pages into “frames”. A frame is an independently controllable window on a Web site through which pages from another Web site can be viewed. Since it is possible for a site to call a frame’s contents from a different location, a programmer might “frame” another’s Web content beneath his own navigation or banners. This allows him to use creative content owned by another entity to sell banner advertising on its on site. A typical use of frames is to have one frame containing a selection menu in one frame and another frame that contains the space where the selected (linked to) files appear.

In *Washington Post Co. v. Total News, Inc.* [97 Civ.1190 (S.D.N.Y.)] The Washington Post filed a complaint against an online news site, Total News, the publisher of the Web site [www.totalnews.com](http://www.totalnews.com). TotalNews, an aggregator of web news sources, employed frame technology to display news sites from around the Web. Total News had created pages with frames that contained hyperlinks to other news Web sites, such as *The Washington Post*, *CNN*, *USA Today*, *Time* and *Sports Illustrated*, etc. Web users, therefore, could use [www.totalnews.com](http://www.totalnews.com) to access articles from various sources. The TotalNews Web site generated its revenue from advertising, which it placed in a static border frame. Clicking on a hyperlink to ‘*The Washington Post*’ within the Total News Web page displayed the content of The Washington Post page within a frame that was surrounded by TotalNews’s URL, logo, banner, advertisements and information. Six content providers – CNN, Time-Warner, Reuters, The Washington Post, The Wall Street Journal and the LA Times, sued TotalNews, claiming that such framing was the Internet equivalent of pirating copyrighted material. They also alleged misappropriation, trademark infringement and trademark dilution. The plaintiffs complained that TotalNews has designed a



parasitic Web site that republishes the news and editorial content of other Web sites in order to attract both advertisers and users. Total News settled the case by agreeing to link to, rather than frame, the Post's Web pages of various plaintiffs and the court did not have an opportunity to decide any of the legal issues that were raised by the plaintiffs.

In, *Futuredontics Inc. v. Applied Anagramic Inc.* [1997 46 USPQ 2d 2005 (C.D. Calif. 1997)] Applied Anagramic, Inc., a dental services Web site, framed the content of a competing site. The frames included information about Applied Anagramic as well as its trademark and links to all of its Web pages. A district court ruled that the addition of the frame somewhat modified the appearance of the linked site and such modifications could, without authorization, amount to infringement.

Please answer the following Self Assessment Question.

<b>Self Assessment Question 4</b>	<i>Spend 3 Min.</i>
What do you mean by frame in context of cyberspace?	
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### 9.5.2 Legality of Framing under Indian Law

As in linking and inlining one has to turn to section 51 read with section 14 of the Copyright Act, 1957 to test the legality of framing. The person who frames some other site's content on his site is not causing any direct reproduction of the copyrighted content. This is because the framer never copies the pirated content; instead merely provides a visiting browser with instructions to retrieve the content, which is then incorporated into the overall page on the user's site. Thus the only person who copies the content is the final user who never comes to know that his browser is fetching different elements from different sites. Also, the framer is not directly issuing copies of the work nor communicating or distributing the work to the public as the user's browses is actually fetching the content directly from the owner's site. But he can be said to be aiding in such communication and distribution.

Section 14(a)(vi) grants the right of adaptation only to the owner of copyrighted work. The framing site could take some elements from the framed site's multimedia settings and create it's own, thereby affecting the right of making a derivative work of the framed site because taking some elements from the multimedia setting and combining them with some other could well fit into the definition of adaptation. So, derivation and adaptation rights do come in picture vis-à-vis framing.

Framing brings in the question of moral rights as well. Section 57(1) of the Copyright Act, allows the copyright author to claim authorship of the work. In case of framing the user is confused about the original source and hence may never come to know about the author. The user may never know from where different elements of the

site have emanated. The creator of a frame does not literally “copy” the contents of the framed page but only directs the user’s browser to summon content from another Web site and show the same along with the content of the framing site. Since the URL of the framed Web page does not appear on the screen, the user accessing a framed site may not perceive the site as being framed and may attribute the appropriated material to the home site owner. This could implicate the right of the author to be identified as such, since the user never comes to know that he is viewing content from a different site.

The author of the copyrighted work has a right to see that his work is not being *distorted, mutilated or modified*. Content from various sites could be pulled into a single window, thus creating another work virtually new and different from the original thereby strongly implicating the right to integrity of the work. The combination of various elements could be termed as modification or even mutilation in certain circumstances.

Should the law be amended to outlaw framing or to allow this practice? The Copyright Act talks about various rights of owners and authors of works and describes situations where these rights can be infringed. Imagine a situation akin to the *Washington Post* case. The world renowned news portals make huge investments in terms of time, effort and cost to bring a news report. What if someone just frames the same by a simple technique? It would be wholly unfair to do so or to allow so. In this situation, it is for the courts to decide upon the legality/illegality of framing from case to case. The measure would always be the Copyright Act, the philosophy of which is amply clear. In case a frame amounts to aiding in distribution or communication with dishonest intentions, the courts will come forward and declare such inlining illegal.

Despite the paucity of judicial guidance in this area it could be stated that framing could amount to copyright infringement. Therefore, the use of frames to contain linked content should only be carried out with the express permission of the owner of the framed materials.

Let us now summarize the points covered in this unit.

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## 9.6 SUMMARY

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- Almost everything on the Net is protected by copyright law.
- Linking is of two types; surface and deep linking.
- Inlining or ‘In-line linking’ enables a Web page to summon different elements from diverse pages or servers to create a new Web page.
- Inlining is different from deep linking where the user is usually aware that he has “changed pages”, either from the different appearance of the newly accessed page, or from the change in the URL address display in the Web browser.
- A frame is an independently controllable window on a Web site through which pages from another Web site can be viewed.
- The technologies of linking, inlining and framing could be abused to violate someone’s copyright.

- Moral rights which are included within the overall doctrine of copyright could also be jeopardized by these technologies.

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## 9.7 TERMINAL QUESTIONS

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1. How in linking could lead to copyright violations?
2. What is meant by the term 'framing'? How framing could lead to copyright violations?
3. Write a note on linking technologies and its copyright implications.

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## 9.8 ANSWERS AND HINTS

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### Self Assessment Questions

1. Surface linking and deep linking.
2. Yes.
3. Frame is an independently controllable window on a website through which page from another website can be viewed.
4. Reproducing any copyrighted work, issuing copies of the work to the public or communicating the work to the public amounts to copyright violation.

### Terminal Questions

1. Refer to sub section 9.3.1 of the unit.
2. Refer to section 9.4 of the unit.
3. Refer to section 9.2 of the unit.