
COPYRIGHTS IN THE CHANGING PARADIGM OF THE ENTERTAINMENT INDUSTRY VIS-À-VIS THE PIRACY ISSUES

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ABSTRACT

With the rise of internet and mobile applications, Entertainment Industry in the contemporary scenario is not just limited to cinematographic films or songs alone; but also includes different forms of videos, web-series, 'status' uploads, dramatic representations, theatrical plays, gaming, animation films, cartoons, advertising, etc. In this fast paced world, the measure of efficacy and applicability of the legal contours is a much needed exercise. Since the platforms of entertainment have changed from television to internet run content platforms, there is a need to conform the law accordingly and effectively manage the issue of 'piracy' as well because privacy on internet is a myth. Since the pre-release of films, etc. on these platforms directly much affects the rights of the broadcasters, the question of the hour is to realise whether the same can be overlooked as new technology is surpassing the old one, or garner the much needed restrictions so as to create a stronger regime to curb piracy. This paper analyses the position of Indian copyright regime and the much needed measures so as to make law move hand in hand with the changing technology.

Keywords: Copyrights; entertainment; internet; DMCA.

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1. INTRODUCTION

India's entertainment industry (*hereinafter* referred to as the Industry) has made a radical shift both in form as well as medium, in the last decade. What earlier was seen to be a monotonous representation of sentiments on screen¹, has now become a mix of humor, drama, jingles, short music compositions, unreal/realistic acting in a satirical disposition, dark humor, melodrama, fiction, etc.² The ways of portraying a genre has also changed as now it is more dynamic and has overlapping undertones of diversity, mix cultures, etc.³ Indian Intellectual Property (*hereinafter* referred to as IP) pertaining to this Industry has subject matter in the form of mainly Copyrights⁴ and to some extent in the Trademarks Law⁵ as well.

The evolution of IP sector is one of the most important attributes of India's fast growing economy. The value of human effort as well as the human capital formation lies on the backbone of knowledge which in turn is reflected by inventions and growing technological advancements and thus intellectual property rights (*hereinafter* referred to as IPRs) have become the most important arena of rights as they help built up a strong image of the economy in times of global competition, recession, risks in innovation, etc.⁶ Inventions in the past were associated mainly to technological innovations and their role in creating a premise for development but at present they are also an important factor in determining the status of an economy along with its monetary affluence.⁷ With the development in the field of education and technical innovation, India has achieved huge success in the field of IPRs as well. Since it has a fast growing Intellectual property industry, it has to focus on creating suitable laws to support the same so as to strike a balance between its protection as well as public policy in order to encourage development of inventions.

1.1 NEED FOR IP PROTECTION AND JURISPRUDENCE

¹ Luz Fernandez- Aguilar, et al., *How effective are films in inducing positive and negative emotional states? A meta-analysis*, PLOS ONE, 21 November 2019, 14(11) e0225040.

Accessed: <https://doi.org/10.1371/journal.pone.0225040> on 15 Feb 2022.

² Ibid.

³ 7 HAFEEZ, ERUM, "HISTORY AND EVOLUTION OF INDIAN FILM INDUSTRY" p. 60-73 (2016).

⁴ Copyright Act, 1957, § 13.

⁵ The Trademarks Act, 1999.

⁶ GOULD, DAVID M., AND WILLIAM C. GRUBEN. "THE ROLE OF INTELLECTUAL PROPERTY RIGHTS IN ECONOMIC GROWTH." *DYNAMICS OF GLOBALIZATION AND DEVELOPMENT* (209-241) (Springer, Boston, MA, 1997).

Accessed: https://link.springer.com/chapter/10.1007/978-1-4615-6219-1_10 on 15 Feb 2022.

⁷ Holger P. Hestermeyer, "The Notion of "Trade-related" Aspects of Intellectual Property Rights: From World Trade to EU Law – and Back Again" SSRN 44 IIC 925-931 (2013),

Accessed: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2531978 on 16 Feb 2022.

Protection of the Intellectual Property has become indispensable and there are various reasons for the same. It is important to understand and value human effort in the development of technology as well as the change in the culture. The same ensures that people work with a commitment and utilize additional sources for further innovation in the projects that they undertake.

From the historical point of view, justifications have also been provided by different philosophical thinkers in relation to as to why copyright protection, in general, is necessary. As per the thought of John Locke, the rule of common ownership by all is in the interest of the society.⁸ Thus the fact that a lot of persons are benefitted by the creativity and labor of a single person is evidently recognized and it will thus ultimately be in favor of the public at large. This is seen slightly in contrast to the fact that one should be given rights so as to help him realize the true fruits of his own labor but at the same time, there is a hidden intent to benefit the public at large in the end. G.W.F. Hegel believed that an individual interacts with the society at large through property as this helps him in recognizing his dominion over the others.⁹ This relates to the idea that creation of intellectual property reflects in whole the personality of the creator and thus it helps him in achieving the said dominion it copyright subsists in it. This is just an idea of how political image of property is perceived in the need of copyright protection.

1.2 COPYRIGHTS AS A PART OF THE INDUSTRY: SCOPE

Entertainment refers to any activity which provides pleasure and it may refer to different things with respect to different eras. In the ancient times, Old plays and theatrical performances were included in the ambit of entertainment but now-a- days, it may involve access to clubs, shopping malls, restaurants, etc.¹⁰ Owing to influences from the west, entertainment has gone a diverse change and with development of various social norms, it will continue to change its ambit.¹¹ In general parlance, entertainment industry is the one which is devoted to providing entertainment and it is being re-defined at some point of time or another. Copyright shares its boundaries with those of publishing, computer generated works, photography, entertainment

⁸ ARNEIL, BARBARA JOHN LOCKE AND AMERICA: THE DEFENCE OF ENGLISH COLONIALISM (Oxford University Press, 1996).

⁹ Christopher S. Yoo, "Introduction, in *CRITICAL CONCEPTS IN INTELLECTUAL PROPERTY LAW: COPYRIGHT*" UNIVERSITY OF PENNSYLVANIA U of Penn Law School, Public Law Research Paper No. 12-39

¹⁰ Vorderer, Peter. "Entertainment theory." COMMUNICATION AND EMOTION. Routledge, 139-162 (2003).

¹¹ Nallathiga, Ramakrishna. "Integrating Entertainment, Tourism, Heritage and Culture into the development of Cities: A Case for Mumbai." ITPI JOURNAL 3.3 (2006): 67-72. Web.

involving Cinematographic Films (*hereinafter* referred to as CF), architecture, transmission and broadcasting, artistic creations, etc. as well.¹²

The idea of Copyright evolved through the Gutenberg's printing¹³ and is now a concept affecting every part of the walks of human life. Copyrights are mainly given for the expression of a particular thing and that expression but not the idea contained in the same is protected.¹⁴ The subject matter of copyrights¹⁵ in the Industry relates mainly in the production, broadcasting and use of CF¹⁶, music¹⁷, advertising¹⁸, web series,¹⁹ theatrical plays²⁰, televisions serials²¹, gaming²², animation²³, etc. Fashion Industry, though being a subset of the industry, has a different paradigm. *Folklore* is also a kind of entertainment in few areas such as villages or small towns wherein dramas or 'nautankis' are performed.²⁴ Though it is being regarded to come under a *sui-generis* ambit of Traditional Cultural Expressions²⁵ but till the day comes, copyrights contain the same.²⁶

In various countries such as USA copyrights protect science as well as useful arts.²⁷ In France, however the original idea was to include Patents, trademarks and copyrights as a unified concept under a single 'umbrella term'.²⁸ In India, this concept developed through a series of acts passed by the parliament before and after the independence.²⁹

¹² Sontakke, Atharva, and Himaja Bhatt. "SCOPE of Rights of Broadcasting Organisations under Copyright Act, 1957." RAJIV GANDHI NATIONAL LAW UNIVERSITY STUDENT LAW REVIEW 1 (2012): 102-121. Web.

¹³ Mezei, Péter. "The Role of Technology and Consumers' Needs in the Evolution of Copyright Law—From Gutenberg to the Filesharers." GEISTIGES EIGENTUM UND URHEBERRECHT AUS DER HISTORISCHEN PERSPEKTIVE, LECTIONES IURIDICAE 10 (2013): 71-79. Web.

¹⁴ Super Cassettes Industries v. Bathla Cassettes, 107 (2003) DLT 91.

¹⁵ Shukla, Dr. "Copyrights Piracy in Entertainment Media: Technological Development and Challenges to the Intellectual Property Rights." Available at SSRN 1845278 (2011).

¹⁶ MRF Ltd v. Metro Tyres Ltd. 1979 SCR (1) 218.

¹⁷ Literary Copyright Act, 1842; *Feist v. Rural* 499 U.S. 340 (1991).

¹⁸ Music Broadcast Limited and Ors. v Tips Industries Ltd. and Ors., (IPAB), OP (SEC-31D)/3/2020/CR/NZ.

¹⁹ Ashutosh Dubey v. Netflix Inc. I.A. 3754/ 2020 IN CS(OS) 120/2020.

²⁰ Indian Performing Rights Society v. Aditya Pandey & Anr. 2011 (47) PTC 392 (DEL).

²¹ Zee Entertainment Enterprises v. Sony Pictures Networks India Pvt. Ltd. AIR 2017 Bom 221.

²² Sony Computer Entertainment Europe Ltd. v. Harmeet Singh 2012 (51) PTC 419 (DEL).

²³ Disney Enterprises, Inc. and ors. v. Kimcartoon.to & ors. CS (COMM) 275/2020.

²⁴ Vera Albino, "Traditional Cultural Expressions, a Protection Beyond Intellectual Property Law" *Inventa International*, (6 March 2018) <<https://inventa.com/en/news/article/288/traditional-cultural-expressions-a-protection-beyond-intellectual-property-law>> accessed 15 Feb 2022.

²⁵ UNESCO, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, (2005); CLT-2005/CONVENTION DIVERSITE-CULT REV.

²⁶ *Ibid.*

²⁷ U.S. Constitution, Art I, (8) Clause 8.

²⁸ Justin Hughes, "A short history of "intellectual property" in relation to copyright" SSRN. 33 Cardozo Law Review 1293 (2012) Cardozo Legal Studies Research Paper No. 265.

²⁹ KALA THAIRANI, HOW COPYRIGHT WORKS IN PRACTICE, p.2 (1996).

In the contemporary scenario, the industry is a foundation for many theatre owners, broadcasters, etc. The multiplexes have come up as a cherry on the top which have completely revolutionized the idea of cinema and its experience. The television as well provides a wide array of channels, holders of which broadcast content in all requisite formats. Internet has provided another dimension to this concept. With ease of access, various DTH providers allow channels to be accessed from the specific mobile applications (*hereinafter* referred to as apps) owned by them at any place and time. Moving further, there are other forms of entertainment created by the social media. There are specific content creation apps, prone to misuse and piracy related issues as well.

The Telecom Regulatory Authority of India (*hereinafter* referred to as TRAI), has played an important role in keeping a check on the same.³⁰ However, it is difficult to keep a check on the downloading, spread and creation of content on internet platforms. There are various ‘*copy-cat*’ sites which steal the unsecured data of the users and display it across their domains.³¹ Public at large can easily access the same and thus lead to piracy.

2. LEGAL CONTOURS PERTAINING TO THE INDUSTRY: WHAT BUNDLE OF RIGHTS FORM COPYRIGHTS?

2.1 COPYRIGHT IN THE INDUSTRY: ITS EXISTENCE

From the point of view of brevity and ease of explanation, the subject matter pertaining to the industry can be divided into 3 spheres *viz.* Video Content (including movies, web series, television serials, theatrical plays, advertisements, etc.); Audio Content (including music related works); and Gaming and Animation.

2.1.1 Video Content including CF, etc.

Video content is the most common means of entertainment. The technology has provided a means of creating all forms of videos of anything that there is present in form of matter and is visible. CF includes a form of projection by means of a cinematograph which makes the onlooker believe that the series of pictures taken together when moved in a fast pace is actually

³⁰ Behera, Santosh Kumar, and West Bengal-INDIA Purulia. "M-learning: a new learning paradigm." INTERNATIONAL JOURNAL ON NEW TRENDS IN EDUCATION AND THEIR IMPLICATIONS 4.2 (2013): 24-34. Web.

³¹ NATHAN BENEDICT, PIRACY, PROSPERITY, AND COPYRIGHT IN THE DIGITAL MILLENNIUM: A CASE STUDY OF THE MUSIC INDUSTRY, December 2012, web.

a visual of something in motion.³² It also includes records (such as VCR)³³ and any work of visual recording along with a sound recording which perfectly overlaps the same to make it in form of a video film qualifies as CF.³⁴

The video industry includes copyrights as an amalgamation of theatre rights, cable rights or the pay TV rights, Free TV rights³⁵ and Video Rights.³⁶ The ownership of these rights is vested in its producers depending upon the nature of ownership.³⁷ If the ownership is single, it is mostly of a production house(s) but it can also be held in different aspects of the film or parts of the film. The distributors are the one who buy or lease the theatrical rights³⁸, originally owned by the producer and deal with the theatre owners for the release of the film to the general public. At times the films are shown on TV and this brings it in the ambit of Satellite Rights³⁹ which are again owned by the producers who allow the signals to be diverted to different distributors.

Before digitalization, cable rights were an important aspect of Copyright but the idea no longer exists. The cassettes or CDs available in the market are of two types- personal viewing or sale. If the cassettes which are bought for personal viewing are sold in commercial sense then it would amount to infringement and the person can be sued. The sale is made by authorized persons only who through an agreement agree to sell the fixed no. of copies of the film and the agreement between the distributor and the producer may regulate the place of sale as well. In the case of music of the CF, the producer of the music sells his right to the producer of the film and it thus becomes an integral part of the film itself.⁴⁰

The 2012 act⁴¹ for the first time introduced the rights of the directors, etc. as well. It has tried to discern the relationship between the concepts of 'authorship' and 'ownership'.⁴² Since the actual script is different from the end product, mere ownership of the script does not suffice for

³² SHUBHA GHOSH, A ROADMAP FOR TRIPS: COPYRIGHT AND FILM IN COLONIAL AND INDEPENDENT INDIA.

³³ Entertaining Enterprises & Others v. State of Tamil Nadu & Anr. AIR 1984 Mad. 278.

³⁴ Copyright Act, 1957, S. 2 (f).

³⁵ Garware Plastics and Polysters Ltd. v. Telelink_AIR 1989 Bom 331.

³⁶ Ibid.

³⁷ Nandita Saikia, *The Bollywood Amendments Film, Music and Indian Copyright Law (2010 to 2012)*.

³⁸ Copyright Act, 1957, § 30.

³⁹ Video Master v. Nishi Productions, (1998) 18 PTC 117.

⁴⁰ Indian Performing Rights Society Ltd v. Eastern India Motion Pictures Association 1977 AIR 1433; Sony Corp. of America v. Universal City Studios, Inc. 464 US 417 (1984).

⁴¹ Copyright (Amendment) Act, 2012.

⁴² Volume 17, THE PARLIAMENTARY HISTORY OF ENGLAND FROM THE EARLIEST PERIOD TO THE YEAR 1803: FROM WHICH LAST-MENTIONED EPOCH IT IS CONTINUED DOWNWARDS IN THE WORK ENTITLED "HANSARD'S PARLIAMENTARY DEBATES." V. 1-36; 1066/1625-1801/03.

the ownership of the film.⁴³ This means that different forms of copyright subsist with different people.

The idea becomes a bit complex on social media domains. As per the policy of the app owners, the content created over the app is owned by the app itself and none else.⁴⁴ In other cases, the web domains provide a service of ‘display’ which is broadcasting service. As per their agreement, the content is published and in some cases though it is not owned by the domain itself, it is still licensed to the social media provider.⁴⁵ This creates a situation of fix for the performer. The protection is not available to the person who is a part of the video and the merely because he/she is a part of it, they do not become the owner of the copyright. The performance itself is prone to risk of copying by the public at large and brings it in public domain. The protection has been negated by the Bombay High Court.⁴⁶

2.1.2 Audio Content: Musical Works, etc.

Audio content is included in songs, jingles, background scores⁴⁷, voice modulation⁴⁸, use of instruments⁴⁹ etc. the copyright act provides for the term ‘musical works’⁵⁰ as the ultimate ambit of all these.

*Masakali 2.0*⁵¹ controversy that recently emerged, highlighted the need of permission from original singers, and other persons including lyricists, composers, etc. in case if the song is a remake by the owner company itself. However the need of obtaining a lawful consent was pressed in this case. Similarly the *Genda Phool*⁵² song composed by Baadshah had

⁴³ RG Anand v. Delux Films & Ors. AIR 1978 SC 1613; & Vipul Amrutlal Shah v. Shree Venkatesh Films Pvt. Ltd. & Ors. 2009 SCC OnLine Cal 2113; and Barbara Taylor Bradford v. Sahara Media Entertainment Ltd. PTC 2004 (28) 474.

⁴⁴ King, Jennifer, Airi Lampinen, and Alex Smolen. "Privacy: Is there an app for that?." Proceedings of the Seventh Symposium on Usable Privacy and Security (2011).

⁴⁵ "Instagram and copyright - what are the terms of use?," Copyrightlaws.com: Copyright courses and education in plain English, 11-Jan-2021. [Online]. Available: <https://www.copyrightlaws.com/instagram-and-copyright/>. [Accessed: 06-Mar-2022].

⁴⁶ Fortune Film International v. Dev Anand AIR 1979 Bom 17.

⁴⁷ Austin v. Columbia (1923) CC 398.

⁴⁸ Metzler v. Curwen (1935) CC 127.

⁴⁹ Redwood Music v. Chappell (1982) RPC 109.

⁵⁰ Copyright Act 1957, S. 2(p).

⁵¹ "Indian Music and the Copyright Controversy", The *IP Press*, Jan 29, 2021.

Accessed <https://www.theipress.com/2021/01/29/indian-music-industry-and-the-copyright-controversy/> on 15 Feb 2022.

⁵² Ibid.

controversial lyrics from an old song. The author of the lyrics was not given any credit and thus he paid the original author, as per his demand, a sum of rupees 5 Lacs.

2.1.3 Animation and Gaming

Animation and gaming as a concept developed through rise of computers. It was only after computers came that simple algorithm based games were created. Today, gaming and animation industry has reached a completely new arena. They are not only a medium of storytelling but also an engrossing process as to how the scene would change depends upon the choice of user itself. It allows an interaction based interface to develop. Animation films or series are also regarded as a part of CF itself. Today, they are a depiction of ‘amalgamation’ of the subject matter of the copyrights as provided under the Copyrights Act, 1957⁵³. Due to this amalgamation, the individual aspects are copyrightable in nature and they even show the creativity of a human who has executed the same by application in form of a Computer Programme. The main element which is common to different video games in that they all are regulated by means of a computer or a computer software. As far as gaming and animation industry is concerned, the copyright mainly subsists in the hands of the designer or designing company.⁵⁴

There are different benefits which are coming up with the development of the gaming industry in India. India is a huge market for the gaming industry as it contains the largest youth population and with the western influences the choices of individuals are also changing since they now demand better quality games with new technological advancements in them.⁵⁵ There is also seen a presence of great centres for the development of the games such as Sony, Digital Chocolate, Microsoft, Nvidia, Zynga, Ubisoft, etc.

India faces a major challenge in terms of inadequacy of rules and regulations pertaining to the Animation industry, as it comes under the purview of the working of Ministry of Information and Broadcasting. The recent ban on Chinese apps opened horizons for Indian App creators but at the same time called for major piracy related issues in the industry. The need of the hour is to create measures governing this part of the industry as soon as possible so as to curb this menace.

⁵³ *Supra* Note 4.

⁵⁴ *Tetris Holding v. Xio Interactive* 863 F. Supp. 2d 394 (D.N.J. 2012).

⁵⁵ Sam Castree, III, “A Problem Old as Pong: Video Game Cloning and the Proper Bounds of Video Game Copyrights”, sept 8, 2014 SSRN abstract_id=2322574

2.2 REGISTRATION ASSIGNMENT AND LICENSING OF COPYRIGHTS: PRESENT LEGISLATIVE SCENARIO

The mandate of registration of Copyrights⁵⁶ for its effective enforcement is an evolving concept altogether. In certain cases, it was held to be not mandatory⁵⁷ to get the copyright registered. It has also been held that it is only for the purpose of creating a presumption of ownership in the holder.⁵⁸

There are mainly three steps involved in the Registration of the Copyrights viz. Filing of the application; Examination; and Registration. The right to apply is with the owner or the author and he has to file the application along with the requisites of Form IV in triplicate and fees. The registrar examines the same and calls for objects which are received by him in 30 days. If no objections are reached, the Copyright is said to be registered.⁵⁹

In India, assignment and licensing is based on transferability of ownership and can be culminated into 2 types: voluntary⁶⁰ or Compulsory.⁶¹ It is for a specific time only and can be curtailed by limitations of the original owner itself.

With a rise in piracy measures claimed for films such as ‘Happy New Year’, ‘Masaan’, ‘3 Idiots⁶²’, ‘Udta Punjab’ etc. the industry needs better and effective measures apart from John Doe orders in order to present a stricter regime. The rise in piracy related cases in the industry, the controversies and the issue is reflective of the need of proper adherence. A suitable approach has been adopted by The Indian Copyright Office that seeks the 2020-21 copyright amendment proposals⁶³, promises certain bold steps to be taken up by the government in order to curb the menace of online piracy, however the efficacy of the same is only a test of time.

⁵⁶ Copyright Act, 1957, § 45.

⁵⁷ Kumari Kana v. Sundara Rajan (1972) Ker LR 536.

⁵⁸ Nav Sahitya Prakash v. Anand Kumar AIR 1981 All 200.

⁵⁹ *Supra* note 56.

⁶⁰ Copyright Act, 1957, § 18, 30.

⁶¹ Copyright Act, 1957, § 31.

⁶² Debadyuti Banerjee and Parth Gokhale, “The ‘3 Idiots’ Controversy focusing On The Contractual Liabilities And Moral Rights Of The Author”, NUJS Law Review, Web.

⁶³ Lynn Lazaro, “The Proposed Indian Copyright Amendment Rules And Suggestions For Further Amendment”, MONDAQ, 18 Nov 2020 Accessed: <https://www.mondaq.com/india/copyright/1006962/the-proposed-indian-copyright-amendment-rules-and-suggestions-for-further-amendment> on 15 Feb 2021.

3. NEIGHBOURING RIGHTS IN RELATION TO COPYRIGHTS AND RISING ISSUES & CONTROVERSIES

The neighbouring rights pertaining to copyrights in the industry are not just restricted to making of a copy of the film/ sequel or adaptation (different language, remake, etc.) but moreover to taking of photographs or stills of CF, selling hiring, etc. The right to promote is also a part of the same. However, there are some important neighboring rights associated with the Copyrights. These are mainly the Performers' and the Broadcasters' Rights.

3.1 PERFORMERS' RIGHTS

One of the major & rising concerns is that of the implementation of Performers' Rights since the actors who get paid for their works or the artists being a part of the music creation including background artists etc. have no fix remuneration of their work and it is generally dependent upon the terms of contract. When the dissemination of the rights of display to the public takes place, certain intermediaries are also involved such as the performers, broadcasters etc.⁶⁴ A lot generally depends upon the actual release. Pre-release or illegal makes it difficult for the actual owners as well let lone these intermediaries, etc. to get full acknowledgement of their labor. The concept of protection such rights has once been negated by the Bombay High Court.⁶⁵ The Copyrights act⁶⁶ however discusses benefits pertaining to the performers or the actors of the CF only. It is not determined by the Act whether recorded performance of a live performance is considered as live performance or not. This issue was finally resolved by the 2012 amendment and only those performers not included in the credits list were kept devoid of protection.⁶⁷ Similarly, acts infringing the rights of the performers are also provided protection for.⁶⁸

3.2 BROADCASTERS' RIGHTS

The rights of the traditional broadcasters in form of theatre owners have been affected not only by the existing Covid – 19 pandemic situation but also by the rise in number of internet content service providers such as Netflix, Amazon Prime video, etc. The exclusivity of the rights of the

⁶⁴ AK KOUL AND VK AHUJA (EDS), LAW OF COPYRIGHT: FROM GUTENBERG'S INVENTION TO INTERNET, p 19 (2009).

⁶⁵ *Supra* note 43.

⁶⁶ Copyright Act 1957, § 2 (q), 2(qq), 38B.

⁶⁷ *Supra* Note 64.

⁶⁸ Copyright Act, 1957, § 38(3).

broadcasters⁶⁹ of a CF are as per the licensing of rights obtained by them.⁷⁰ A new set of ‘broadcasting reproduction rights’ were introduced in USA.⁷¹ Release of movies on the online platforms has affected the traditional broadcasters to the core. The situation gets problematic even more when the said movies are released prior to their actual release date and end up falling in public domain with access to all. The multiplex owners have their hands tied since the online content providers enjoyed monopoly in the present hard times. The same is lawful since the online service providers have lawful broadcasting rights. But the risk of security of the content online still prevails. Piracy in all forms exists over internet and though these platforms are secure and safe, pre-release of content over internet before actual release is still not protected against.

Since a lot of online platforms are a host of different web series etc. issues pertaining to efficacy of law with diversification of content creation is necessary. The present Copyright regime does not contain special provisions relating to licensing to online content broadcasters. In case of infringement or copy proliferation, no penalties apart from the traditional ones are specified. Such special cases need special remedies since the risk is much more humongous.

3.3 CHANGES INTRODUCED AFTER THE AMENDMENT OF 2012

The initial trends in the industry show that the Indian film producers used to work on a contract for service basis, wherein the songwriters, etc. were employed for the job. This mechanism however deprived them of incomes other than those of cinema hall exploitation, such as broadcast via satellite, IPTV, VODs, cover versions and especially ringtones, etc. The creators often raised the concern of having lesser bargaining power for claiming equitable remuneration as the producers of the work enjoy a dominating position.⁷²

The Copyright Amendment act which came up in 2012 aims mainly at providing the protection of Copyrights to the song creators as well apart from the producers of the film. Earlier the position was such that the songwriters, composers as well as singers were hired to create songs and no revenues were provided to them for any cover versions made for those particular songs.

⁶⁹ Copyright Act 1957, § 37.

⁷⁰ W. R. CORNISH, *INTELLECTUAL PROPERTY: PATENTS, COPYRIGHT, TRADE MARKS AND ALLIED RIGHTS*, 13-44, (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2nd Indian Reprint, 2003)

⁷¹ Australian Performing Rights Association v. Telstro Corporation Ltd. (1994) RPC 299 (FC).

⁷² Anand Nair, “*ROYALTIES AND RIGHTS SHARING IN FILM INDUSTRY IN INDIA POST COPYRIGHT AMENDMENT ACT 2012 – IMPACT ON CONTRACTUAL FREEDOM: A Comparative Study with the US and the UK copyright regimes*”, web.

For Broadcasters as well, it has now become mandatory to pay royalty each and every time the broadcast as such is made. The meaning of the term copyright has been enhanced by this very amendment and thus it now includes the right to store the works as well. Now it would be possible to make a 3D work from a 2D work.⁷³

The author's moral rights⁷⁴ have also been provided protection and amended to provide the legal representative as well to sue for the original creator of the work. Apart from these changes have also been introduced in the copyrights act in 2017 (finance act, 2017) and 2021 (Tribunals Reforms act 2021)

3.4 RISING CONTROVERSIES AND CASES

- The *Concept Note Controversies*⁷⁵ though not new, pose a major threat in the industry today. In these cases, the concept of a new CF or Television series is disclosed or directly copied before its official release by another show or CF. This not only affects the anticipation value of the original idea holder but also makes the whole idea redundant of any uniqueness or novelty. Such a situation can be redressed by perpetual injunctions⁷⁶ itself. The court in such cases looks for the fact whether any copyrightable material existed in the concept note itself or not.
- *Assignment* of work under Copyrights is a right provided by the Act itself.⁷⁷ However in certain cases, the issue arises in considering whether such assignment constitutes any 'special rights of authorship' in the assignee.⁷⁸ In a recent case⁷⁹, the court held that the director can claim ownership of the work done by him. Such a situation can lead to advancement of rights of the persons apart from producers to claim fruits of their works.
- In a recent case⁸⁰ the court extended *statutory licensing* in sound recording to an online service provider as well. The idea is novel and a landmark case for need of the better reforms in regard to online piracy in India. This case involved exclusive rights of Music Company breached by online service provider and the court held that there is a need of

⁷³ Copyright Act, 1957 § 14 (d) (i) (A).

⁷⁴ Copyright Act, 1957 § 57.

⁷⁵ *Urvi Juvekar Vs Global Broadcast News Ltd* [2008 (36) PTC (Bom)]; *Zee Entertainment Enterprises Ltd V. Gajendra Singh* 2008 (36) PTC 53 (Bom)

⁷⁶ Code of Civil Procedure, 1909, O 39 R 2-4.

⁷⁷ Copyright Act, 1957, §18.

⁷⁸ *Sajeev Pillai v. Venu Kunnapalli & Anr.* FAO No. 191 of 2019.

⁷⁹ *Ibid.*

⁸⁰ *Tips Industries v. Wynk Music NoM (L) No. 197 of 2018 in Commercial Suit IP (L) No. 114 of 2018*, decided on 23-04-2019.

statutory license to be first obtained by such service providers and only then broadcast the same.

4. PIRACY IN THE ENTERTAINMENT INDUSTRY

4.1 MEANING OF PIRACY

When the acts of reproduction, import, usage as own or transfer/ transmission of any copyrightable material is done without the permission of the author, it qualifies as Piracy.⁸¹ In common parlance it is referred to as a theft of intellectual property contained in Copyrights. Putting the works of a user in public domain is a crime similar to that depriving the use of rightful object of to the rightful owner. The labor of the product does not give any effective fruits to the rightful owner. It not only affects the owner itself but also demotivates the society from hard work and sincerity.⁸² An example of piracy can also be live broadcast of performance without the permission of the performer.

4.1.1 Piracy In Films

Piracy is like a battleground for CF producers. Without rights of dissemination provided in terms of the CF, if any portion of it is released, it qualifies as piracy. This involves video copied from theatres as well.

4.1.2 Piracy in Sound Recording

The Sound recording industry is not devoid of piracy. The recent Wynk Music Controversy⁸³ is an eye opener. There are various cases wherein illegal broadcasting and downloading of songs are not protected. With the availability of songs everywhere, little is mandated in form of legal contours to save it from falling in the public domain. The release of the song qualifies as falling of it in the Public Domain. The use of auto- tuner has further made the whole concept complex.

⁸¹ Oxford Dictionary, ed. 2020.

⁸² Kiran George, "When Central Perk Came to Town: The Legality of a TV Show Themed Restaurant" September 3, 2016 web accessed on 16th October 2016.

⁸³ Supra note 79.

4.1.3 Piracy in Gaming

In the gaming industry, the issue of piracy has been the most common issue of all since the origin of this industry. The video gaming became popular in 1980's wherein it was not a cumulative effort of a lot of people and rather was a personalized effort as a result the protection needed was also to a single person only yet it also highlighted the fact the protection which was ensured needed to be of such a nature that it would protect the individual right against the other individuals in the same industry. Since the industry of gaming was not that popularized, due to its characteristic of being a product of a not-so advanced technology, the protection was almost impossible since the underlying code of creation of the game was very simple to copy or analyze to create one of its own. For example, Pong was programmed by a single employee at Atari based on a description of the game Tennis on the Magnavox Odyssey.⁸⁴ Pong itself later spawned a rash of similar games. Second, the contours of copyright law as applied to computer programs were far from defined, as courts struggled to apply square legal principles to round technologies. One Circuit Court judge remarked, "*Applying copyright law to computer programs is like assembling a jigsaw puzzle whose pieces do not quite fit.*"⁸⁵

Ultimately, however, the courts set out some important threshold matters, matters such as that videogames fulfill the fixation requirement needed for copyright; and the audiovisual display of video games qualify for copyright protection, regardless of the underlying computer code.⁸⁶

The Hindi film "Udta Punjab" Controversy is another example the movie got leaked online just two days before the actual release date and just before the actual release, the producers of the film filed an urgent application before the High Court as per the principles of John Doe (Or Ashok Kumar) Orders as well as Order 1 Rule 8 and section 151 of CPC.⁸⁷

⁸⁴ MATT BARTON & BILL LOGUIICE, THE HISTORY OF PONG: AVOID MISSING GAME TO START INDUSTRY, GAMASUTRA, (Jan. 9, 2009),

http://www.gamasutra.com/view/feature/132293/the_history_of_pong_avoid_missing_.php?print=1.

⁸⁵ Lotus Dev. Corp. v. Borland Int'l, 49 F.3d 807, 820 (1st Cir. 1995).

⁸⁶ Sam Castree, III, "A Problem Old as Pong: Video Game Cloning and the Proper Bounds of Video Game Copyrights", sept 8, 2014 SSRN abstract_id=2322574.

⁸⁷ Nishith Desai, "THE WAY FORWARD: LEARNINGS FROM IMPORTANT INTELLECTUAL PROPERTY CASE LAWS & DEVELOPMENTS FROM 2014" Web.

Clearly the everyday activities of the sector have not only led to discrimination for some and mode of unprecedented profit for the rest. The exploitation can be to unimaginable extent and thus the protection of the same by means of effective law is necessary.⁸⁸

4.2 DMCA AND INDIAN LAWS

DMCA is an American Authority that protects copyrights across domains of Google. Since the majority of internet searches involves the same, it is an important authority for Indian Copyright regime as well. This Authority provides for action of ban or 'removal from display' the impugned websites and thereby prohibits circumvention. There is however, no measure of prevention by the same.⁸⁹

The Indian position in this regard have been taken up in the section 14 and 51 of the act. Section 14 provides for exclusivity of action or authorization. On the other hand, Section 51 proved for infringement by non- authorized use or use without a license.⁹⁰ Indian courts have time and again made use of certain foreign decisions such as *Falcon v. Famous Players Film Co.*⁹¹ and *Moorhouse v. University of New South Wales.*⁹²

The Indian law is silent as far as the consideration of contours of the rights actually conferred upon the assignee or licensee of every case. The same needs proper attention when referred to those of internet related domains. The balance can be achieved by linking provisions and lacunae of those relating to Information Technology Act 2000 as well.

4.3 JOHN DOE ORDERS

The John Doe or the Anton Pillar orders are a new initiative in this regard. These are more of a preventive nature providing for a remedy against unidentifiable culprits of infringements. This is an effective remedy which controls breach but not an ultimate panacea because the rights are injunction and not penal actions.⁹³ There have been several cases such as that of Z

⁸⁸ Anand Nair, "ROYALTIES AND RIGHTS SHARING IN FILM INDUSTRY IN INDIA POST COPYRIGHT AMENDMENT ACT 2012 – IMPACT ON CONTRACTUAL FREEDOM: A Comparative Study with the US and the UK copyright regimes", web.

⁸⁹ Steve P. Calandrillo & Ewa M. Davison, "THE DANGERS OF THE DIGITAL MILLENNIUM COPYRIGHT ACT: MUCH ADO ABOUT NOTHING?" *WILLIAM & MARY LAW REVIEW*, Vol. 50, p. 349-415, (2008).

⁹⁰ Indian Copyright Act, 1957, s. 51(a)(i).

⁹¹ Om Prakash v. Radhey Shyam Kathawachak, AIR 1945 All 55.

⁹² Suprecassette Industries v. Nirulas Corner House (P) Ltd., 148 (2008) DLT 487.

⁹³ Hayhurst Grodon W, *Ex parte Anton Piller Orders with Jon Doe defendants*, *EUROPEAN INTELLECTUAL PROPERTY REVIEW*, 9 (9) (1987) 257.

khoon maaf and *Thank you*⁹⁴ where the police force were also involved in assisting the court in enforcement of the orders. It has now become a trend in the film industry wherein the producers seek the John Doe orders in order to curtail the online piracy as the movies are leaked 1 or 2 days before the actual release date. At times the result is such that the entire websites are blocked by the department of Telecommunication in order to render justice to the Holder of the Copyright.⁹⁵

Recently the release of the movie 'A flying Jatt' caused the total of over 800 websites to get blocked because of the John Doe Orders that were issued in its favor.

5. CONCLUSION AND SUGGESTIONS

With the emerging aspects of the digitalization and widespread use of the internet, copyrights are not seen to be exclusively held in the hands of the owners and it is difficult to effectuate the position of liability of the internet service providers as well as grab hold of the individuals who are at a position to infringe the copyright.

DMCA as per the provisions brings out the liability of the internet service providers which is a solution to some extent since it curtails the free uploading of materials which hold a copyright. The Three strikes law is also an effective measure to curtail the activity of the user since it gives the user a warning thrice in form of dialogue box which in itself is effective in nature. However the same is not enough.

John Doe Orders have come up as a blessing for the producers of the music and film industry and it is an important future prospect of even the gaming and animation industry. IP Asset Management Companies are another emerging industry which are mainly dealing with the protection of the interests of the producer and disallow the infringement of the works of the copyright owners to take place.

There is however a need for stricter provisions in terms of 'negligently letting the others to copy or make pirated copies' from the website to be regarded as an act accounting for punishment. This is a much needed safeguard since security of the work promised is much

⁹⁴UTV Software Communications Ltd. v. Home Cable Network Ltd. & Ors., CS(OS) No. 821 of 2011, decided on 4 April 2011.

⁹⁵SABAM v. Scarlet, Case C70/10, decided on 24 November 2011.

different from actual practice of the same. The hacked website owners need to be active and inform the authorities such as DMCA for better and timely actions to be taken in this regard.

The act of knowingly downloading the copyrightable work from the domain and websites or other similar e-sources, needs to be accorded as an act of causing 'reproduction' of the original work and qualifying as infringement of the right of the owner. The protection must be extended against screenshots, live- streaming video creation, etc. as well.

Further, what can be seen from a close scrutiny is that the law regarding illegal downloading of songs and music related works have needs to be changed per se and be included in acts amounting to infringement.