
APPLICATION OF COPYRIGHT LAW TO THE INDIAN FILM INDUSTRY: AN ANALYSIS

Dr. Seema Surendran, Professor, School of Legal Studies CMR University, Bengaluru

Abhishek.S.Kumar LLM, School of Legal Studies CMR University, Bengaluru

ABSTRACT

Under the Indian Copyright Act, 1957 as amended, copyright is a bundle of exclusive rights conferred upon the owner of the copyright by virtue of Section 14 of the Act. A cinematograph film is a joint effort of various contributors like the producer, director, actors, music composer, lyricist, choreographer, art director, spot boys, and various other artists. Provisions of competition law will be applicable when being in a position of market dominance due to the protection granted under copyright law if there is abuse by the producer. Copyright infringement poses a significant challenge to the industry, impacting creative expression, revenue streams, and the sector's overall growth.

The film industry in India is a significant contributor to the country's economy and cultural heritage. However, like any other industry, it is subject to regulations under copyright law. This paper explores copyright law in regulating the conduct of stakeholders in the Indian film industry, and the legal frameworks that aim to promote and protect intellectual property rights and ensure that consumers have access to diverse and high-quality content. This paper also examines the application of copyright law to the Indian film industry from an international perspective, by considering the international view, and the need for effective enforcement measures to safeguard the rights of creators in the Indian film industry.

Keywords: Film Industry, India, Copyright Law, Regulations, Stakeholders, Intellectual Property Rights, Licenses, Permissions, Fair Use, Compliance, Legal Frameworks, Consumer Choice, Innovation.

INTRODUCTION

Bollywood, as the Indian film industry is commonly referred to, has made a substantial contribution to the economy and cultural legacy of the nation. However, it is also governed by copyright, just like any other industry. While copyright law gives authors exclusive rights to their works in the market. Copyright law is also crucial for defending the rights of filmmakers, producers, and other business operators. Authors have the exclusive right to publish all of their works, including films, under the Indian Copyright Act of 1957. Copyright infringement has had an influence on the film business, costing producers and filmmakers a lot of money through unauthorized distribution and piracy. The Cinematograph Act of 1952, which imposes criminal penalties for film piracy, is one of the several steps the Indian government has put in place to combat the practice¹. The Copyright Office and the Intellectual Property Appellate Board were also established by the government to regulate copyright-related issues. In the Indian film industry, the protection of the creator's rights depends greatly on copyright regulations. To maintain the continuous growth and development of the sector, stakeholders must abide by certain laws and regulations.

Copyright protection is essential to safeguard such information and prevent it from being duplicated since the whole media and entertainment sector is based on creativity and always produces something fresh.² One category of intellectual property, or intangible property, is copyright. All of us have observed a recent tendency in the film business towards remakes of well-known or legendary movies. A license from the owner of the copyrights of the original film is typically required in order to remake it. Sometimes remakes are made by adapting or getting inspiration from the original movie. Such remakes are not subject to a license from the copyright holder. It's critical to understand the distinction between using an original work as a source of inspiration or motivation for an adaptation and just copying it verbatim.

ROLE OF COPYRIGHT LAW

Copyright laws play a significant role in regulating creativity in the business. The Indian film industry is one of the largest and most active in the world, generating over 1,000 films each year in multiple languages. The protection of the creator's intellectual property rights under copyright laws encourages them to produce new works. It grants the authors exclusive ownership rights over their creations, preventing unauthorized use or duplication. The rights of

¹ The Cinematograph Act, 1952: The Guardian of Victorian Morality and Decency By Aastha Khanna

² Copyright claims in the film industry, Author: Vidhya Sri Thresa

directors, performers, and musicians are safeguarded by copyright legislation in the context of the Indian film industry. By giving producers legal protection, it additionally promotes the production of fresh, original content. But copyright legislation can also be problematic for the Indian film industry, particularly in light of piracy. The black market and widespread distribution of pirated copies of films online make piracy a serious problem for the industry. The economic viability of the entire business is threatened by piracy, which not only affects the artists by depriving them of their just compensation. Therefore, it is essential to effectively enforce copyright laws to stop piracy.

Most remakes are not required to obtain permission from the copyright owners. It's important to recognize the differences. The difference between using an original work as a source of inspiration or motivation for an adaptation and just duplicating it verbatim must be clearly understood. When creating a remake or adaptation, it's essential to assess how much of the original work is being used, the extent of changes made, and whether the new work adds a significant amount of originality or transformative elements. These factors can influence the legal requirements and the need for permission from the copyright owner.

It's important to note that the word “copy” has occasionally been used in place of the word “infringement” when the Copyrights Act of 1957 refers to a film (Act). The making of a carbon copy or physical duplicate of a film clearly qualifies as an infringement of the film, according to a casual reading of the Act. The Act's Section 141 contains this information³.

Indian courts have had to strictly construe the term “copy” because it isn't defined in the Act, which has led to years of discussion. This kind of argument is well-illustrated in the 1978 case of *R.G. Anand v. M/s. Delux Films & Ors*⁴. In this ruling, the Supreme Court broadened the definition of “copying” and created guidelines for figuring out what constituted copying or violation of copyrights in creative works. The guiding principles state that a theme or concept cannot be protected by copyright and that if a topic or idea is employed in two separate works, similarities may arise. The final measure of whether a work has been copied or infringed upon is how the copied work affects the reader or viewer after viewing both works. These guiding concepts are still applied in cinematograph films today.

³ Copyright Infringement In Hindi And Bengali Film Music Industry In India: A Critical Study Of The Role Of Indian Law Enforcement Mechanism Thesis Submitted For The Award Of The Degree Of Doctor Of Philosophy In Law Under The University Of North Bengal Submitted By Avishek Chakraborty Registration No. 740019 [2004-2005] Under The Supervision Of Professor (Dr.) Gangotri Chakraborty Head, Department Of Law Department Of Law University Of North Bengal Raja Rammohanpur, Dist Darjeeling, India February 2017.

⁴ 1978 AIR 1613, 1979 SCR (1) 218

In the recent case of *MRF Limited vs. Metro Tyres Limited*⁵, the Delhi High Court outlined the criteria for deciding whether a remake is an “inspiration” and/or “adaptation” or merely a duplicate of an original film. The Delhi High Court reviewed section 13 of the Act, which stipulates that a film must be an original work to be copyrighted, and added that manufacturing a “copy” of an original film without the owner's consent is also regarded as an infringement. The regulations governing copyright play a critical role in regulating and fostering originality and innovation in the Indian film industry. They aid in, safeguarding the creator’s intellectual property rights, and promote the production of fresh, original content. To guarantee that the industry continues thriving and sustainable, these laws must be effectively enforced.

Bollywood has been accused of stealing stories from other films, whether from Hollywood or the South Indian film industry on numerous occasions, there have even been instances where a Bollywood film has also been copied. Did you know that everyone's favourite movie, *Sholay*, has a song called “Mehbooba Mehbooba” which is a rip-off of Demis Roussos Say You Love?⁶

INTERNATIONAL COPYRIGHT AGREEMENTS AND INDIA'S PARTICIPATION

The international view of copyright law in the Indian film industry is largely influenced by the framework established by the World Intellectual Property Organization (WIPO) and the international treaties it administers, such as the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

1. **Berne Convention:** The Berne Convention is one of the most important international treaties or copyright protection. India became a member of the Berne Convention in 1928. This treaty establishes minimum standards for copyright protection and ensures that the rights of creators are recognized and protected internationally. It provides automatic protection to creative works without the need for formalities such as registration or notice. Under the Berne Convention, copyright protection extends to literary and artistic works, including films. It grants exclusive rights to the creators, such as the right to reproduce, distribute, and publicly perform their works, and prohibits unauthorized use by others.

⁵ *MRF Limited vs. Metro Tyres Limited*, 2019 (79) PTC 368 (Del) Delhi High Court

⁶ Wilkinson-Weber, C. M. (2010). From commodity to costume: Productive consumption in the making of Bollywood film looks. *Journal of Material Culture*, 15(1), 3-29.

2. TRIPS Agreement: The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international treaty administered by the World Trade Organization (WTO). India became a member of the WTO in 1995, thereby becoming subject to the provisions of the TRIPS Agreement. TRIPS set out minimum standards for intellectual property protection, including copyright, that member countries must adhere to. It requires member countries to establish effective copyright laws and enforcement mechanisms to safeguard the rights of creators and owners. TRIPS mandates that copyright protection must be granted to original literary and artistic works, including films, and specifies the exclusive rights granted to copyright holders.⁷

India, as a member of both the Berne Convention and the TRIPS Agreement, has an obligation to comply with the minimum standards for copyright protection established by these treaties. This includes granting automatic protection to creative works, recognizing the exclusive rights of copyright holders, and providing effective enforcement mechanisms to combat copyright infringement. However, it's important to note that while these international treaties provide a framework for copyright protection, each member country has some flexibility in implementing and interpreting the provisions according to their national laws and requirements. Therefore, the specific details and nuances of copyright law in the Indian film industry may vary within the scope of international standards.

Copyright law is designed to protect the rights of creators and owners of original works, including films, by granting them exclusive rights over their creations. These rights enable creators to control and monetize their works while preventing others from using, reproducing, distributing, or performing their works without permission.

1. Right of Reproduction: Copyright grants the creator the exclusive right to reproduce their work. This means that only the copyright holder has the authority to make copies of their film, whether in physical or digital form. Others cannot duplicate the film without permission, which helps protect the economic value of the work⁸.
2. Right of Distribution: Copyright provides the right of distribution, allowing the copyright holder to control the initial distribution of copies of their film. This means that only the copyright holder or authorized distributors can legally distribute copies of the film, such as through theatrical releases, DVD sales, or online platforms.

⁷ Cottier, Thomas. "The agreement on trade-related aspects of intellectual property rights." The World Trade Organization: legal, economic and political analysis (2005): 1041-1120.

Unauthorized distribution can infringe upon the creator's rights and undermine their ability to monetize their work.

3. **Right of Public Performance:** Copyright law grants the right of public performance, which means the exclusive right to publicly showcase the film. This includes screenings in movie theatres, broadcasting on television, or streaming on digital platforms. Public performance rights ensure that the copyright holder has the authority to control how their work is presented to audiences and to negotiate licenses and royalties for such performances.
4. **Right of Derivative Works:** Copyright provides the right to create derivative works based on the original film. This means that only the copyright holder can create adaptations, sequels, or other derivative works using the characters, storylines, or elements of the original film. This exclusive right allows the copyright holder to maintain creative control over their work and its subsequent iterations.

The Berne Convention, which has 179 member countries, establishes minimum standards for copyright protection and recognizes the exclusive rights of creators⁹. It ensures that copyright protection is automatic and does not require formalities such as registration. The convention also recognizes the rights of reproduction, distribution, and public performance, allowing creators to control the use and dissemination of their films. Similarly, the TRIPS Agreement, with 164 member countries, sets minimum standards for intellectual property protection, including copyright. It mandates that member countries provide adequate legal protection and enforcement mechanisms for copyright holders, granting them exclusive rights over their works. While the specific details and nuances of copyright law may vary among different countries, the international view emphasizes the importance of granting exclusive rights to creators and owners of original works, including films. This framework ensures that creators have the ability to protect their economic interests and exercise control over the use and dissemination of their works, fostering a thriving creative industry globally.¹⁰

SIGNIFICANCE OF COPYRIGHT LAW IN THE INDIAN FILM INDUSTRY

In the Indian film industry, copyright law is of utmost importance in safeguarding the rights of filmmakers, production houses, and other stakeholders. The primary legislation governing

⁹ Reichman, Jerome H. "Universal minimum standards of intellectual property protection under the TRIPS component of the WTO agreement." *Int'l L.* Vol. 29. 1995.

¹⁰ Arnes, Roy. *Third-world filmmaking and the West*. University of California Press, 1987.

copyright in India is the Copyright Act of 1957, which was amended in 2012 to align with international standards and address emerging challenges in the digital age.

The Copyright Act of 1957, as amended, provides protection for various works, including films, and grants exclusive rights to copyright holders. Here are some key provisions related to copyright in the Indian film industry:

1. **Originality and Copyright Protection:** The Copyright Act recognizes original works as eligible for copyright protection, including original cinematographic films. It defines a cinematographic film as any work of visual recording on any medium, including digital formats.
2. **Ownership and Exclusive Rights:** The Copyright Act confers copyright ownership to the author or creator of the film, who is typically the producer or production house. As the copyright holder, they have exclusive rights over the film, including the right to reproduce, distribute, communicate to the public, and adapt the film.
3. **Term of Protection:** The Copyright Act specifies the duration of copyright protection for films. In the case of cinematographic films, the term is generally 70 years after the death of the last surviving author of the film. If the film is anonymous or pseudonymous, the term is 70 years from the date of publication or creation, whichever is shorter.
4. **Moral Rights:** The Act also recognizes moral rights, which include the right to be identified as the author or director of the film and the right to object to any distortion, mutilation, or modification of the film that could harm the reputation or integrity of the creator.
5. **Performers' Rights:** The Copyright Act also addresses the rights of performers in films. It grants performers certain rights, such as the right to be identified as the performer and the right to prevent the unauthorized recording or reproduction of their live performances.
6. **Fair Use and Exceptions:** The Copyright Act includes provisions for fair use, allowing the use of copyrighted works, including films, for specific purposes such as criticism, review, news reporting, research, or education. These provisions balance the rights of copyright holders with the public interest in accessing and using copyrighted works.

The Copyright Act of 1957, amended in 2012, provides the legal framework for copyright protection in the Indian film industry. It grants exclusive rights to copyright holders, ensuring

that they have control over their films and the ability to monetize their creations. These provisions play a crucial role in safeguarding the rights of filmmakers, production houses, and other stakeholders in the Indian film industry.

SCOPE OF COPYRIGHT PROTECTION IN THE INDIAN FILM INDUSTRY

From an international perspective, there have been concerns and debates regarding copyright enforcement in the Indian film industry. India has faced criticism for inadequate enforcement of copyright laws, which has resulted in issues such as piracy and unauthorized distribution of films. These challenges not only impact the Indian film industry but also have implications for international stakeholders seeking to protect their copyrighted works.¹¹

One of the primary concerns is the prevalence of piracy in India, which has been a longstanding issue. Piracy refers to the unauthorized reproduction, distribution, or sharing of copyrighted content, including films. The Indian film industry has been particularly vulnerable to piracy due to the availability of cheap digital storage devices, widespread internet access, and organized piracy networks. This has resulted in significant financial losses for filmmakers, production houses, and other stakeholders, as well as a detrimental impact on the overall industry.¹²

To address these concerns and improve copyright enforcement, India has taken several steps and initiatives. Here are some examples:

1. **Legislative Reforms:** India has made efforts to align its copyright laws with international standards. The Copyright Act of 1957 was amended in 2012 to incorporate provisions for digital rights management, protection of technological measures, and enforcement mechanisms. These amendments aimed to enhance the legal framework for copyright protection and enforcement, specifically addressing digital piracy challenges.
2. **Specialized Agencies:** The Indian government has established specialized agencies to tackle copyright infringement and piracy. For instance, the Cyber Crime Cell and the Intellectual Property Rights (IPR) Cell are responsible for identifying and prosecuting

¹¹ Shah, Vidhi Mitesh. "Regulations on Piracy and Pirated Works in India: An Analysis." *Jus Corpus LJ* 3(2022):92.

¹² Nhamo, Godwell, et al. "Implications of COVID-19 on gaming, leisure and entertainment industry." *Counting the cost of COVID-19 on the global tourism industry* (2020): 273-295.

individuals and organizations involved in copyright infringement, including those engaged in online piracy.

3. **International Cooperation:** India has sought international cooperation to combat copyright infringement. It has collaborated with international organizations, such as the United States Trade Representative (USTR), to address intellectual property concerns and enhance enforcement efforts. Additionally, India participates in bilateral and multilateral discussions and forums focused on intellectual property rights and copyright enforcement.
4. **Public Awareness Campaigns:** The Indian film industry, along with governmental and non-governmental organizations, has initiated public awareness campaigns to educate the public about the importance of copyright and the impact of piracy. These campaigns aim to promote the legal consumption of content and discourage piracy.

While efforts have been made to improve copyright enforcement in the Indian film industry, challenges persist, and there is still room for further improvement. However, India's commitment to international treaties, such as the Berne Convention and TRIPS, demonstrates its recognition of the need for adequate copyright protection and enforcement in line with international standards. Continued efforts and collaborations are crucial to addressing the concerns surrounding copyright enforcement in the Indian film industry and protecting the rights of creators and international stakeholders.¹³

INITIATIVES AND MEASURES TO COMBAT PIRACY

The Indian government's implementation of measures to combat piracy, such as the establishment of specialized agencies like the Cyber Crime Cell and the Intellectual Property Rights (IPR) Cell, is an important step in addressing copyright infringement in the Indian film industry. These agencies play a crucial role in identifying and prosecuting individuals and organizations involved in copyright infringement and piracy, thereby deterring such activities and enforcing copyright laws¹⁴. It's important to recognize that the Indian film industry is diverse and encompasses various regional industries and languages. Copyright issues can vary across different regions and stakeholders, and the enforcement landscape may differ accordingly. Each region may have its own specific challenges and approaches to copyright

¹³ Carroll, Archie B., and Jill Brown. *Business & society: Ethics, sustainability & stakeholder management*. Cengage Learning, 2022.

¹⁴ Chaudhry, Peggy E., and Alan Zimmerman. *The economics of counterfeit trade: Governments, consumers, pirates and intellectual property rights*. Springer Science & Business Media, 2009.

protection and enforcement. Additionally, the Indian film industry has actively taken measures to protect its intellectual property rights and combat piracy. Film production companies, industry associations, and individual stakeholders have been proactive in pursuing legal actions against copyright infringers and raising awareness about the negative impact of piracy on the industry. While challenges related to copyright enforcement persist, it is evident that the Indian film industry acknowledges the importance of copyright protection. It has been taking steps to strengthen its legal framework and enforcement mechanisms in line with international standards. The implementation of specialized agencies and the collaborative efforts between the government, industry stakeholders, and international partners demonstrate a collective commitment to combat copyright infringement and piracy. Continued efforts in awareness campaigns, capacity building, and technology advancements are essential to further strengthen copyright enforcement in the Indian film industry. By addressing these challenges and building a robust enforcement ecosystem, the industry can better safeguard the rights of filmmakers, production houses, and other stakeholders, while fostering creativity, innovation, and economic growth.¹⁵

EFFECT OF CENSORSHIP ON THE INDIAN FILM INDUSTRY

From an international perspective, the impact of censorship on the Indian film industry can be seen as a potential constraint on artistic freedom and creative expression. While every country has the right to regulate and censor films based on its cultural and societal norms, it is essential to strike a balance between censorship and freedom of expression. Here are some key points to consider:

1. **Artistic Freedom and Expression:** Censorship can sometimes limit the artistic freedom and expression of filmmakers. It may result in the modification or removal of scenes, dialogues, or entire storylines, which can dilute the original vision of the filmmaker and compromise the integrity of the film. This can hinder the exploration of diverse themes, challenging ideas, and unconventional narratives.
2. **Cultural Diversity and Global Perceptions:** Censorship can impact the portrayal of cultural diversity in Indian films. Certain elements, cultural nuances, or local references may be altered or removed to comply with censorship guidelines. This can result in a

¹⁵ Liu, Zheng. "The impact of government policy on macro dynamic innovation of the creative industries: Studies of the UK's and China's animation sectors." *Journal of Open Innovation: Technology, Market, and Complexity* 7.3 (2021): 168.

more homogenized representation of Indian culture, potentially affecting the global perceptions of Indian cinema¹⁶.

3. Global Distribution and Reception: The impact of censorship on Indian films extends beyond the domestic market¹⁷. Censorship cuts or alterations made to films may affect their international distribution and reception. Certain scenes or themes that are deemed acceptable in other countries may be subject to censorship in India, limiting the global reach and reception of Indian films.
4. Industry Competitiveness: Censorship policies and restrictions can influence the competitiveness of the Indian film industry on the global stage. Excessive or inconsistent censorship practices may deter foreign investments, collaborations, or co-productions. Filmmakers and production houses may opt for countries with more liberal censorship regulations, potentially resulting in a loss of opportunities for the Indian film industry.
5. Digital Age Challenges: The rise of digital platforms and online streaming has brought new challenges to censorship.¹⁸ While traditional censorship mechanisms may focus on theatrical releases, online content, and streaming platforms are often subject to different regulations or face challenges in enforcement. This dynamic landscape adds complexity to censorship practices and raises questions about the applicability and effectiveness of traditional censorship models.

It's worth noting that each country has its own unique cultural, political, and legal considerations when it comes to censorship. While some countries may have more lenient censorship practices, others may have stricter regulations. Balancing cultural sensitivities, social values, and freedom of expression is an ongoing challenge for governments and regulatory bodies worldwide. Overall, the impact of censorship on the Indian film industry from an international view highlights the importance of striking a balance between cultural norms, artistic freedom, and global competitiveness¹⁹.

¹⁶ Vasudevan, R., 2011. The meanings of 'Bollywood'. *Beyond the boundaries of Bollywood: The many forms of Hindi cinema*, pp.3-29.

¹⁷ Vasudevan, R. S. (2017). *Geographies of the Cinematic Public: Notes on Regional National and Global Histories of Indian Cinema*.

¹⁸ Shaw, Gareth, and Xiaoling Zhang. "Cyberspace and gay rights in a digital China: xQueer documentary filmmaking under state censorship." *China Information* 32.2 (2018): 270-292.

¹⁹ Birch, David. "Film and cinema in Singapore: Cultural policy as control." *Film Policy*. Routledge, 2005. 197-222.

CONCLUSION

Copyright law protects filmmakers' creative works and ensures that they are able to profit from their efforts²⁰. Copyright law is also important in protecting the intellectual property rights of filmmakers. Piracy is a major issue in the Indian film industry, and stricter enforcement of copyright laws is needed to combat this problem. Additionally, it has given films a structure for commercialization and legitimization, enabling their global release and distribution. The adoption of copyright law has improved the Indian film industry generally, leading to higher incomes and more prospects for the sector. The fundamental statute controlling copyright law in India is the Indian Copyright Act, which was passed in 1957 and offers a thorough structure for copyright protection. The Indian film industry is subject to copyright laws. Copyright law is crucial in protecting the rights of filmmakers, producers, and other stakeholders and preventing piracy.²¹ However, the effectiveness of these laws depends on their implementation and enforcement, which is often inadequate in India. The government and industry stakeholders need to work together to strengthen the legal framework and enforcement mechanisms to ensure the industry's fair and balanced operation. In order to guarantee the protection of filmmakers' rights and support the expansion of the Indian film industry, this law is believed to continue to evolve.

²⁰ Copyright law protects filmmakers' creative works and ensures that they are able to profit from their efforts

²¹ Pager, S.A., 2017. The role of copyright in creative industry development. *Law and Development Review*, 10(2), pp.521-576