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Copyright Infringement in the Entertainment Sector: An Indirect Liability for the Film Makers

NANDITA V¹

ABSTRACT

The controversies associated to copyright infringement in the entertainment sector is endless and this in turn takes a toll on the directors as it poses an unsaid obligation on the film maker to ensure that the movie does not violate the copyright laws. Copyright subsists in work and not in mere idea or formulation of thoughts which leads to several complexities. In India mainly, the informal discussions and casual conversations among the movie team might as well result in the reproduction of this work since there was no concrete work established by the author regarding the same. The authors fear of being exploited and expect their rights to be held safe. A filmmaker or any person who is involved in the sector of entertainment and media must be aware of the previous works that exist to avoid copyright infringement.

The entertainment sector is heavily reliant on the response of the people. A copied work in most instances is identified by the people even before it reaches the creator. Therefore, cautious steps must be taken to protect original works and also while creating such works. An original creator of the work at this point is put under liability to ensure there is no infringement even in case of genuine or minor errors. The paper makes an attempt to completely understand copyright infringement in the entertainment sector as a whole and places an emphasis on the film industry which would highlight how filmmakers in India have exploited several ideas under the realm of expressing it differently.

Keywords: Theatre, Art, Author, Cinematograph, Unauthorised.

I. INTRODUCTION

Entertainment sector in general is huge and has wide scope. However, the movie and cinematography sector is subject to a lot of controversies especially soon after the release of the movie. This mainly arises due to a controversial remake or the plagiarism of certain scenes and sequences. Under such circumstances, the form of redressal and the legal constraints are often not exposed to the public. There are several reasons why intellectual property rights, such as

¹ Author is a student at Tamil Nadu National Law University, India.

copyright, are justified. The first argument is that if someone has worked hard and developed something new, then they should be granted the right. This research paper aims to discuss about several situations as to how this copy right infringement in entertainment sector is bound to happen and the challenges that India currently faces and the future difficulties that the society is just about to face. This research paper also analyses about the legal consequences under such a violation.

(A) Materials and methods

This research paper is non-doctrinal in nature. The research depends on both primary and secondary sources. There are many other sources like political views, debates, commentaries of various authors, books, journals, websites on the internet, enactments etc that have been used. The primary sources used in this research include precedents and statutes. Secondary sources include sources such as the internet, articles, journals, newspapers, and magazines.

II. COPYRIGHT INFRINGEMENT IN CINEMATOGRAPH FILMS

(A) Protection of rights of the creator

In accordance to the basic fact that copyright infringement creates a huge loss to the original creator, it is well known that in the entertainment sector, under the event of copyright infringement there is a huge loss to the author mainly under monetary terms since the response of audience to this field is not predictable and the loss of such content is irreparable. *R.G Anand v. M/s Deluxe Films*² (1978) is an important case that explains about the works that come under the ambit of being copyrighted. Here, it has been said that a person cannot claim copyright on an “idea, subject matter, plot, theme, and historical facts” and infringement of the copyright in such cases are limited to the expression and arrangement used by the author of the copyrighted work.” This simply refers that copyright cannot be claimed in the form of idea but there must be in terms of a work. Section 63 of the Copyright Act, 1957 provides punishment for the offence of copyright infringement. The remedies available for infringement of copyright issues is applicable under civil as well as criminal remedies. The *Zee Telefilm v. Sundial Communication*³ case, which determined that a concept qualifies as a "novel (new) idea" if it is evolved into an expression, was cited by the Bombay High Court. Such a creative concept is protected by copyright.

The entertainment industry has been one among the rapid employers globally. The first and foremost need for prevention of copyrights piracy in entertainment media is to protect the right

² *R.G Anand v. M/s Deluxe Films*, (1979) 1 SCR 218.

³ *Zee Telefilm v. Sundial Communication*, (2003) SCC Bom 344.

of a performer. Under the entertainment sector, for instance when we look at the film industry it involves people from diverse backgrounds and involves multi-faceted roles. Piracy being an unauthorized form of reproduction of specific work, it refers to an unethical form of distributing certain original content without the permission of the original creator⁴. Taking film makers in specific, the film makers are allowed to make use of the existing films to get an idea of what to do but the prescribed amount has been set to make sure that the creator doesn't lose his credit. The gravest challenges are posed to the creators through the most serious concerns posed by piracy issues. The Sound Department of the entertainment sector plays a huge role since it involves tunes, background music, songs and various other types of recordings. The cost of piracy violation in this sector creates a pecuniary damage to the creator and under most instances, the pirated audio content sounds extremely similar to the original content and there wouldn't be a compromise on the quality due to which there would arise serious concerns in the market scenario among the various creators. Section 51 of the Indian Copyright Act 1957 explains about several works that has been protected through the act. Especially during the pre-production stage, several strong agreements are entered into by the makers of the movie and several other parties⁵ associated.

(B) Copyright violation through OTT platform

The functioning of OTT platform is regulated through Information Technology Act, 2000. There are several difficulties posed to the intermediaries of this platform. In the case Sun TV Network Limited Vs Amazon⁶, Sun TV had obtained permanent injunction for almost 28 movies and this was displayed over the OTT platform of Amazon. The copyright law aims to achieve its function of providing reward to the original creators of an innovation. In OTT Platforms, inventive works have been commercialised in the form of exhibiting it to the public. During the time of outbreak of Covid 19, there was an unusual increase in the usage of OTT platform since people had to restrict their movement and were not allowed to move around freely. To tackle with the controversies that used come up regarding the copyright issues in the OTT Platform, Information Technology (Guidelines for Intermediaries and Digital Media Ethics Codes) Rules, 2021⁷, has been notified. There needs to be a balance such that the original

⁴ Twentieth Century For Film Corp. v. Sohail Maklai Entertainment, (2010) 112 Bom LR 4216.

⁵ Myspace Inc. V Super Cassettes Industries Ltd., (2016) SCC Del 6382

⁶ O.A. No.110 of 2021 <https://www.livelaw.in/columns/copyright-claims-film-industry-copyright-act-of-1957-178561>

⁷ Notification dated, the 25th February, 2021 G.S.R. 139(E): The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) rules, 2021: Ministry of Electronics and Information Technology, Government of India (no date) Notification dated, the 25th February, 2021 G.S.R. 139(E): the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 | Ministry of Electronics and

creator is not affected and at the same time, the surrounding should also promote innovations and should encourage creative forms of work.

Majority of the work handled through OTT Platform are governed as under the Copyright Act⁸. An infringement in OTT Platform occurs when there is an infringement of copyright of another person. This in turn is dealt under Sections 27-29 of the Copyright Act. In order to cope up with the modern era, India is at a tough spot to modernise its copyright laws. While dealing with OTT Platforms in specific, it is important to note two types of intellectual property rights that it deals with – licensing and co-production deals. In addition to this, The Information Technology Act, 2000 considers the unauthorized distribution of copyrighted content as an offence. With an increased viewership and interest towards OTT Platforms in the modern era it is quite burdening financially and also brings up a lot of uncertainty while dealing with intellectual property rights. There needs to be a harmonious relationship between the Government and the OTT Platform owners.

III. PREVENTION OF COPYRIGHTS PIRACY IN ENTERTAINMENT MEDIA

Online Piracy refers to the unauthorised distribution or downloading of certain exclusively copyrighted works. Despite its well-known legal constraints and the protection towards the intellectual property rights, several countries continue to practice piracy. The film industry of India is diverse in nature due to its varied regional films which form as the primary entertainment in a multi-lingual country like India. Sometimes, certain parts of a movie or integral captivating scenes might be let out through online sites even prior to its release which in turn creates an economical loss. Under Section 21 of the Copyrights Act, the activities contributing to infringement of copyright can be identified.

As an initiative from the State towards the prevention of piracy, the State can instruct the Internet Service Providers to block the sites that hosted such pirated movie stuff on internet without due permission and authorization. Making of movies is extremely profitable for the entire team as well as several parts of the society as a whole due to huge economical gain through the release of the movie. Copyright and prevention of piracy tends to have overlapping rights since prevention of piracy creates a broader spectrum and establishes a theatrical right wherein it establishes a right to exhibit films in the theatres. This refers to a form of copyright that is brought into picture by the distributor from the film producer. Piracy under the ambit of copyright under Intellectual Property Rights comes under two forms – video piracy and cable

Information Technology, Government of India. Available at: <https://www.meity.gov.in/content/notification-dated-25th-february-2021-gsr-139e-information-technology-intermediary> (Accessed: January 7, 2023).

⁸ The Copyright Act, 1957

piracy wherein video piracy here refers to the release of video recording or cassette without due authorization. In the case *Balaji Motion Pictures Vs Bharath Sancham Nigam*⁹, a similar issue regarding piracy was observed by the Bombay High Court wherein a movie named “Udta Punjab” was released online without due authorization which in turn affected the response after the release of the film. Though the video was taken for the purpose of CBFC certificate, there were certain videos leaked due to which the filmmakers being the original copyright holders had moved towards the court to remove this video from the network. The Copyright (Amendment) Act, 2012, has brought in several dynamic changes in the ambit of intellectual property rights which also includes laws concerning piracy. Section 65A of the act is the newly added provision and it protects the technology protection measures (TPM) used by copyright owners against circumvention.

The prevention of piracy highlights certain important things. Authors are entitled to certain exclusive rights which includes the right of reproduction, the right to distribute his original work and communicating the same to the public. Several treaties all over the world grants special rights to the author of the copyrighted work and at the same time also helps the public to access it for free. This includes treaties such as Berne Convention, the Trade Related Intellectual Property agreement, 1994 (TRIPs), and the WIPO Copyright Treaty, 1996 (WCT). In accordance to Section 65A of the Copyright Act, Technology Protection Measures have been undertaken to protect the original works and if any person tries to infringe such a right then that person is bound to be prosecuted by law with imprisonment up to two years and shall also be liable for a fine. Further, Section 65B of the Act facilitates to make a provision for “the removal and alteration of digital rights information that is not authorised, and distribution” thereafter, makes this as a criminal offence. Information Right Management (IRM) is essentially used to protect sensitive information from being used in an unauthorized manner. These provisions are beneficial since it helps to protect film, music, and publishing industry from piracy.

IV. LAWS APPLICABLE TOWARDS CINEMA FIELD

Sometimes, infringement of copyright is categorized under the word “copy”. In the field of media, several criteria has been laid down to classify what would amount to infringement of copyright in an artistic work¹⁰. Film makers are under a constant obligation. In the case of *MRF Limited Vs Metro Tyres Limited*¹¹, the High Court of Delhi has made clear instructions regarding the test required the rules that ought to be followed while remaking a film. Under the

⁹ *Balaji Motion Pictures Vs Bharath Sancham Nigam*, (2016) SCC Bom 16029.

¹⁰ *R.G. Anand V. M/s. Delux Films & Ors*, (1978) AIR SC 1613.

¹¹ *MRF Limited Vs Metro Tyres Limited*, (2019) 79 PTC 368 (Del).

ambit of this case, Section 13 of the Act was discussed wherein it has been stated that in order to obtain the copyright of a film, it must be an original work and if found for copying without adequate authorization from the owner, it would be termed as an infringement. At several instances¹², it has also been clarified by the Honourable Court that under the circumstance of copying a film, it does not just refer to physical form of copying it. But instead, when there is a materialistic or even a reproduction of the idea of the film it might as well constitute to a copyright infringement.

In simple terms, the cinema industry is heavily reliant on creativity. The filmmakers who have copyright for their films possess an exclusive legal right to reproduce, publicly display and there are several other wide varieties of advantages offered as a reward towards the original creator. This is a mechanism through which the creativity of an individual can be protected and can be prevented from unnecessary claim or ownership by another person, it is not as simple as it sounds. The copyright that exists in a cinematograph film comes under the ambit of Section 13(1)(b). The integral part that any film maker should be aware of is the level of originality that he has to maintain in a cinematograph film. Several films come in the form of documentaries or might also be a result of a live incident or a newspaper report. However, to deal with this, the Act does not prescribe any specified level of originality that a cinematographic film must abide to.

There are certain rights granted to a holder of copyright in a cinematographic film. This comes under Section 14(d) of Copyright Act and through this provision the right has been given such that the author of the film is allowed to communicate the film to the public. The author is also permitted to sell or give on hire or offer for sale or hire any copy of the film and is also allowed to make a copy of the film which includes the photograph of the film forming a part. All these are completely admissible as under the Act and these rights are exclusive for the author.

IPR Law comes handy when we think about Indian cinema in specific because the Copyright Act, 1957 aims to protect an original artistic work. In one of landmark judgments, R.G Anand Vs M/s Delux Films & Ors¹³ the plaintiff was a playwright and wrote a play named “Hum Hindustani” and he had narrated this play to another person who then converted this to a film without prior authorization. This movie was named as “New Delhi” and this was brought before the Supreme Court for copyright infringement. This is a very common scenario in Indian Cinema since script writers have a habit of narrating their story to their fellow mates and

¹² Shree Venkatesh Films Pvt. Ltd. V. Vipul Amrutlal Shah & Ors, (2010) 1 CHN 818 (DB)

¹³ R.G Anand Vs M/s Delux Films & Ors, (1978) AIR SC 1613

however this gets converted to a movie after which several controversies would arise regarding the movie. Through this case it can be understood that Copyright protection limits itself to an idea, subject matter, themes, plots, historical events or legendary facts. In a famous case, XYZ films filed a case against UTV Motion Pictures¹⁴ wherein, the movie “Raid: The Redemption” was copied and almost 20 minutes of this movie was compressed into a movie named Bhaagi. In this case, the Bombay High Court observed that “the copyright held by the plaintiff does not exist in the core part of the movie but instead exists only in the realization or effect of the movie. In particular, it subsists only in a specific part of the realization and if that has not been copied, then work of the rival is entirely different and there is no infringement.

V. CONCLUSION

It is indeed a huge battle between the creators in the entertainment industry and the people who try to make unauthorised use out of it. The unauthorized and illegal access of the original content discourages new creators and it is extremely difficult to track down every move. The issue of piracy on the other hand is unmanageable since the restricted use of the creator is violated. All of this act as a threat to the original creators. Though there are adequate laws to punish the offenders who cause infringement of copyrights, there needs to be higher punishments and most of the people escape from such offences. Therefore, protection of original work is of utmost importance at all costs. The Indian audience have always been welcoming towards remaking and copy of Hollywood movies either knowingly or unknowingly. People have to be made aware regarding how harmful it is to steal the content of an original creator and how impactful it is towards the entertainment media as a whole. The industry will flourish only if there is more encouragement towards original creations and creative works from individuals.

VI. RECOMMENDATIONS

The Copyright laws by far make sure that no person gains unauthorised access and will also not be able to reproduce the copyrighted work but however, the loopholes still do exist in the form of copying several ideas combined all at once or in parts without coming into notice of the author. However, under instances where the author has let out certain information regarding his work in a causal conversation, such an idea or unformulated work is not protected under the Copyright law and this has to be made clear to the authors, film makers or the artists so that they do not let out their unique and distinctive ideas. Only if such an awareness is promoted, the ideas of original creators can be protected and in turn unnecessary suits can be avoided.

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