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Inspiration: A Mirror of Copy or not?

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ABSTRACT

According to The Writers Guild of America, roughly around 50,000 scripts or screenplays have been registered by several established and aspiring writers to protect their work from the prying eyes of plagiarists. Like, The Writers Guild of America, India too has got an association to protect the rights of these budding screenwriters in the form of the Screenwriter's Association (SWA, formerly known as the Film Writer's Association). These associations are often created to effectively safeguard the creations of screenwriters.

But certain screenwriters register their creations, knowing that their work is outrightly copied from another. A large number of screenwriters evade legal troubles by saying that they were inspired by some of their previous works; under Copyright Law in India, getting inspired does not amount to plagiarism or infringement of copyrights, but the inspiration must be kept in check because if the content is inspired too much from the original, then it is said to be a copy and that amounts to infringement of copyrights.

The laws and other statutes that were passed for the protection of piracy of films have been extensively discussed in recent days but in today's world, plagiarists often evade legal consequences by stating that their work has only been inspired by the original and not copied.

I. INTRODUCTION

Around 1,500 – 2,000 films are released in India across 20 languages, these 2,000-odd films had lakhs of people working for them, crores of budget, and box office behind it but the primary reason for all these things to happen is the writer of the film. Without him/her, nothing would be possible, it is one person's idea that gives hope to a lot of people around him/her.

These screenwriters write their scripts at the request of their producer, the public, or for themselves but no matter what the major factor is, all the screenwriters try to make their screenplays as lovable as much it can because they believe any script which is written is only for the sole purpose of winning the hearts of the audience. It is the ultimate appreciation that a writer would get but to make their content promising, the writers need to give something different to the audience. They often try to leave the audience spellbound or joyful after watching the movie.

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Screenwriters often take loads of time to finish their respective scripts in order to give a proper output to the producer; during this period, they start to brainstorm and narrow down a single idea. After narrowing it down, the next step is to write the idea; this step is often regarded as the toughest one because putting the ideas on paper often requires a great level of knowledge and diligence. Screenwriters often experience huge pressure to finish their scripts on time from the producers, so they try to put their ideas to paper as quickly as they can.

While writing the scripts, the writers often hit a creative block as they run out of ideas, to evade from it they either hire an additional writer or do some extra research on the topic, but the major problem that these writers try to avoid is none other than “Plagiarism”. It is the Achilles heel for a writer; they often try to be very careful about the content that they create if any similarity is found between their work and others. It results in a massive backlash from the critics and the audience.

Though the bigger backlash often comes from neither the critics nor the audience, it is the original creator himself. Very often if someone’s work is plagiarized, the original author or the owner files a case against the plagiarist under Section 51 of the Indian Copyright Act, 1957. They often try to claim compensation from the plagiarist but is there any provision to say what does not amount to plagiarism?

Yes, Section 52 of the Indian Copyright Act, 1957 explains certain acts which do not amount to infringement of copyrights. Under that section, there are several sub-clauses that explain what does not amount to infringement of copyrights but there is a grey area that is often exploited by the screenwriters, “Inspiration”. The statute does not outrightly mention anything about the term “Inspiration”, certain writers take the defense of inspiration, stating that their work wasn’t outrightly copied, but instead, it was just inspired by the original work.

There is no quantum that can be decided on the amount of inspiration that can be taken from the original work because it is a matter of relativeness, it can’t be measured in numbers but instead, it is decided by a person’s view point on the literary work. This grey area has been very often debated in recent days and even certain filmmakers have been extensively questioned and trolled by the public. Before going deep inside the topic, let’s take a look at the concept of “Copyright”.

II. COPYRIGHT

What is a copyright?

A copyright is a right given by the law to the creators of literary, dramatic, musical and artistic

works, producers of cinematograph films and sound recordings. It is the exclusive rights of the original creator to refrain the plagiarists from printing, publishing or selling his/her work to an individual or the public.

A copyright helps the creator to get due recognition and acts as an incentive to encourage creativity in the society. It acts as a safeguard to the creator and no one can use the work of the creator, until they themselves grant the license or permission to use their work.

Copyright Law in India

The Indian Copyright Law is at accordance with the international standards that had been agreed in the Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Indian Copyrights Act, 1957 is fully in accordance with the Berne Convention for protection of Literary and Artistic Works, 1886 and the Universal Copyrights Convention, to which India is a party. India is also a member of the Geneva Convention for the Protection of Rights of Producers of Phonogram.

India has often taken a solid stand to protect the creation of the original author, as the nation has very often been appreciated for its proactiveness in the World Intellectual Property Organization (WIPO) and United Nations Educational, Scientific and Cultural Organization (UNESCO).

In India, the Copyright Act, 1957 has been amended 5 times since its inception, it has been amended in the year of 1983, 1984, 1992, 1999 and recently in 2012. The Act has been divided into 15 chapters and 79 sections. Moreover, the Central Government, by virtue of section 78 has the power to make rules by notification in the Official Gazette, for carrying out the purposes of this Act. Under the Act, a copyright office was established and the office was led by the Registrar of Copyrights, he/she was supposed to act under the guidance and direction of the Central government. In the recent times there has even been controversies that the registrar acts merely as a puppet of the central government but the government has dismissed these allegations. The primary objective of this office was to maintain a record of copyright containing the names or titles of work, the names and addresses of authors, etc. The registrar has certain powers like granting and dismissing of applications for compulsory licenses and to inquire into complaints of importation of infringing copies. A Copyright Board has been set up under the Copyrights Act 1957 and the proceedings that are conducted before it are deemed to be judicial proceedings.

Origin of the Law

The idea of copyright emerged ever since the invention of printing press arrived, back in those

days, i.e, 15th Century, a literary work is very hard to duplicate because it was generally written by the author and it involved lots of time and effort by the plagiarist to replicate the original but since the invention of the printing press, replicas can be created mechanically, gone are the days which requires physical output to manually write the duplicates. After, the invention of Johannes Guttenberg's printing press in Mainz, Germany in the 15th Century, people started to recognise the need to protect the printers and booksellers and thus certain rights to printers, publishers and also authors were granted. The art of printing spread quickly in Europe. During the end of the 15th Century, England emerged as the epicentre of printing trade in Europe. The spread of the printing press formed the creation of a class of intermediaries, who would make initial investment by bringing out the book, i.e., the printers, who doubled as booksellers as well. They were called the "stationer's" in England. In 1557, Queen Mary I, granted the permission of regulating the book trade to the Stationer's company of London. In 1662, the Licensing Act came into existence, which made sure none of the books which were printed in England would go unregistered with the Stationers' Company and if any book which was unregistered then the book would be prohibited to the public. This was the first clear statute that was passed to protect the rights of the author and to avoid plagiarism. The licence era was short lived. After the introduction of the Queen Anne's Statute of 1709, the concept of copyrights came to be legally recognised, and the concept of 'public domain' was introduced.

It was the first codified law on Copyrights and it is often seen as the fore-father of all the copyrights law in the world. The statute was enacted on 10th April, 1710 by Queen Anne. The Statute was passed to destroy the monopoly of the bookseller and also to bring down the evil of privileged censorship from free expression, so that any author can publish his/her opinion in their works without any interference from the seller. This statute revolutionized literature because after the Act was enforced, public at large had access to the print material and it gave huge creative freedom to the authors.

Registration of Copyright

Registration is not required to get a copyright in a work under Indian law. When a work is created and given a material form, it acquires a copyright, as long as it is original. The Copyright Act establishes a method for copyright registration. Unlike the United States, however, registration under Indian law does not give any unique rights or privileges with respect to the registered copyrighted work. The particulars entered in the Register of Copyright are prima facie evidence. Without further proof of originality, papers purporting to be copies of entries and extracts from the Register certified by the Registrar of Copyright are admissible in evidence in all courts.

As a result, registration only establishes a presumption that the person listed in the Register is the rightful author, owner, or holder of the rights. The inference is not conclusive. However, if no contradictory evidence is presented, it is not essential to provide additional proof to establish that the copyright belongs to the person named in the Register. When time is of the importance to seek urgent orders in infringement cases and criminal prosecutions, registration comes in handy. To seek protection under Indian law, no copyright notice is required.

However, registration of works is not an essential condition precedent to avail copyright protection. Registration serves as a prima facie evidence of copyright ownership in the Court of Law. In the case of **Asian Paints (I) Ltd. Vs Jaikishan Paints & Allied Products²**, the High Court of Bombay has observed:

"Registration under the Copyright Act is optional and not compulsory. Registration is not necessary to claim a copyright. Registration under the Copyright Act merely raises a prima facie presumption in respect of the particulars entered in the Register of Copyright. The presumption is however not conclusive. The Copyright subsists as soon as the work is created and given a material form even if it is not registered".

III. WHAT IS THE DIFFERENCE BETWEEN INSPIRATION AND COPY?

We all draw inspiration from others even without knowing that we were inspired. A screenwriter usually comes up with a unique line or a plot only to his disappointed that the line or the plot was inspired by a movie that he/she saw years ago. In recent days, the talking point of the cinema industry is whether to take inspiration from an already existing movie a copy or not? Many have argued that a substantive amount of inspiration taken from the original one amounts to copy. Even if a small scene or the style or the tone of some other film is inspired, then the original must be given the due credits or else it will amount to plagiarism.

Copyright issues in the Indian film industry

Veteran Kollywood filmmaker Vetrimaaran has often given the due credit of the film that has inspired him to do. In one of his interviews, he mentioned that his film 'Aadukalam' was heavily inspired by Alejandro Iñárritu's 'Amores Perros'. In the end credits of the film 'Aadukalam', Vetrimaaran has given the due credits to the original.

Another recent example is filmmaker Lokesh Kanagaraj whose film 'Kaidhi' was an inspiration from the Hollywood blockbuster 'Die Hard' and Kamal Haasan's cult-classic 'Virumaandi'. Like Vetrimaaran, Lokesh has also given the due credits to the original work by mentioning the

² 2002 (6) Born CR 1: (2002) 4 Born LR 941: 2002(4) MAH LJ 536

films in the pre-credits sequence.

Vetrimaaran and Lokesh Kanagaraj are a classic example of how inspiration must be dealt with the right way. There are several directors and screenwriters, who often take the shorter route of plagiarism by blatantly copy pasting the original work. For instance, Christopher Nolan's sophomore film 'Memento' was blatantly copied by Kollywood filmmaker A.R. Murugadoss in his film 'Ghajini', which was made in Tamil and then later remade in Hindi under the same title. The director refused to accept that he was inspired by Nolan's 'Memento' and he never gave the due credit to the original.

Copyright issues in Hollywood industry

Sometimes people tend to get the same idea but at different times. For example, many fans called out Christopher Nolan's 'Inception' a rip-off from the anime 'Paprika', as both the works portray surrealism and have a psychic world in which the lead characters are seen living in but Nolan himself has refused that has only been heavily inspired by the movie 'Matrix', 'The Thirteenth Floor', 'Dark City' and his own film 'Memento'. Things like these are often rare because both parties are not at fault. The similarity of concepts is encouraged but the similarity of the content is a big 'No' for any creator.

Copyright and plagiarism have common underlying features that differ and diverge in how the legal system approaches monitoring the conduct. In most cases, copyrights are in jeopardy if there is a measurable economic impact. Plagiarism is a major issue if there is greater reputational damage. Is it possible to connect them? Yes, and they frequently are, leaving both sides perplexed as to what is going on. A few months ago, the literary rights owners of William Faulkner sued Woody Allen for using a paraphrasing of a Faulkner quote as a speech in his film *Midnight in Paris*. It wasn't long before the courts realised it wasn't a copyright issue.

The paraphrasing, or "quoting" someone using your own words instead of the original, was more akin to plagiarism, though not in this case because Faulkner's name was also mentioned in the screenplay a few lines down. We'll never know if it was enough to have had reputational damage because U.S. law lacks a plagiarism branch.

IV. CASE LAW ANALYSIS

In the case of *Shree Venkatesh Films Pvt. Ltd vs Vipul Amrutlal Shah & Ors*, a Hindi film titled as 'Namastey London' was released in the year 2007, starring Akshay Kumar and Katrina Kaif. It was a runaway success, as the film earned more than Rs.100 crores in box office collections. Critics appreciated the plot of the film as it was found to be very unique and new to the Indian

cinema industry.

On 22nd July, 2009 before the release of ‘Poran jaye Joliya Rae’, a Bengali film, newspapers such as Hindustan Times and others reviewed the film and they criticized the film as nothing but a carbon copy of the Hindi film ‘Namastey London’. On 24th July, 2009 the Bengali film was released and after 10 days the film seemed to get good recognition among the people and it generated lot of revenue in the Bengal region. The producers of ‘Namastey London’ were keenly monitoring the situation and they filed an injunction suit to stop the screenings of the film on the grounds of copyright infringement.

The plaintiff in this case raised a key issue, which is:-

- The Bengali film was a blatant copy of the original Hindi film and more than substantiative part of it was copied.

The defendant challenged that the film was not a copy, as they heavily relied on the judgement in the case of R.G Anand v. M/s. Delux Films & Ors.³, where the Supreme Court held that:

"46. Thus on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:

1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.
2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal limitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy."

They also challenged that the film ‘Namstaey London’ itself a copy of 1970 Hindi film ‘Purab Aur Paschim’ and they had no rights to sue the production house for infringement of copyrights.

The court discussed on the issue by stating:

“Does copy mean

³ AIR 1978 SC 1613

- (a) a carbon copy or an exact replica of the original? or
- (b) a substantial replica of the original or a substantial replica of a part of the original or
- (c) a substantial similarity of the copied work with the original work is in the both works viewed by viewer of ordinary prudence.

Where there is an alleged substantial similarity in the film taken as a whole with another film, in the opinion of the said viewer there is infringement of the copyright in the film. A part of a film, e.g. story and screenplay may similarly enjoy copyright. A narrow meaning of the word "copy" is an apposite and should never be given."

The court in its judgement held that the film fulfilled the criteria of copying a substantial part of the original as there were certain scenes which were outrightly copied scene by scene. Moreover, the learned judges of the case viewed the film, they were satisfied that the film 'Namastey London' is unique and does not have any resemblance with the 1970 Hindi film 'Purab Aur Paschim'. The film has substantial innovation in it and does not have any plagiarized content from any of the previous films.

The court ordered the defendants to pay 1/3rd of the revenue got from the box office to the receivers, i.e, the plaintiff, the rest 1/3rd shall be with the defendant and the rest shall be distributed to the distributors who had no role in the issue.

V. CONCLUSION

The difference between 'Inspiration' and 'Copy' is separated by a very thin line. The only thing that differentiates them is giving due credits to the original creator. Yes, only when someone credits the original creator of the work can take the defence of 'inspiration', when very little to almost zero credit is given then it is often presumed as a 'copy'. Copy leads to plagiarism. Plagiarism leads to the infringement of copyrights.

To avoid these kinds of trouble, it is better to get the approval of the original creator and then publish your works on which ever platform you want. Getting a NOC from the original creator must be the first task of the writer before he/she releases the film. Hence, inspiration of an idea cannot be considered copyright infringement until the original creator is duly credited for his/her work.

VI. BIBLIOGRAPHY**A) BOOKS REFERRED:**

- Textbook on Intellectual Property Rights thoroughly revised by Dr. S. V Damodar Reddy and Fore worded by Dr. Madabhushi Sridhar
- Sreenivasulu NS: Law relating to Intellectual Property, 2nd edition

B) STATUTES REFERRED:

- The Copyright Act, 1957.
