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COPYRIGHT IN MEDIA AND ENTERTAINMENT INDUSTRY- Richa Raseniya¹**ABSTRACT**

Copyright is crucial within the realm of Intellectual Property Rights (IPR) as it safeguards the rights of creators across various domains such as art, literature, music, films, and other forms of creative expression. It empowers creators with control over their creations and guarantees them due rewards when their work is utilized by others. However, media platforms, including social media, often use new ideas, images, sounds, scripts, and other forms of communication for both personal and professional reasons, which can cause problems related to copyright infringement.² The entertainment industry, in particular, faces significant challenges due to piracy. While unauthorized copying and distribution of cinematographic movies and music is not a new phenomenon, recent advancements have exacerbated the problem, posing a serious threat to the industry's existence. Technological developments have made it easier for individuals, even amateurs, to produce high-quality copies comparable to those produced and marketed by the industry.

Piracy not only leads to financial losses for copyright holders in terms of royalties but also illicitly benefits the pirates and deprives the state of potential revenue throughout different phases of production and distribution. The music and film sectors suffer most from these repercussions.

This paper addresses the complexities surrounding copyright issues in entertainment media and piracy, as well as the legal framework pertaining to these matters in India.³

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² Constituent Assembly Debates, April 30, 1947 from eparlib.

³ Indian Kanoon, Constituent Assembly Debates on May 1, 1947 from indiankanoon.org

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I. INTRODUCTION OF COPYRIGHT IN ENTERTAINMENT INDUSTRY

Copyright constitutes a legal safeguard granted to creators of literature, drama, music, visual art, and other forms of creative expression, as well as to producers of films and recordings. It encompasses a range of entitlements including the ability to replicate the work, communicate it to the public, alter it, and translate it, with minor distinctions contingent upon the nature of the creation. Essentially, copyright bestows upon the creator the sole authority to duplicate or reproduce the work.

The length of copyright protection differs based on the nature of the creation. In the case of original books, plays, songs, and artworks, copyright extends for the lifespan of the creator and an extra 60 years postmortem. Subsequently, the work enters the public domain, available for unrestricted utilization by all. Cinematograph films, sound recordings, photographs, publications made after the creator's death, anonymous or pseudonymous works, government works, and works of international organizations are protected for 60 years from the year following their publication.⁴

In India, the entertainment industry has experienced significant growth in recent years, particularly in content creation. However, ensuring the originality of content and adherence to Intellectual Property Rights (IPR) guidelines are essential. IP rights serve as a crucial defense against infringement, recognizing the creativity of creators and ensuring the dissemination of original work to the public.⁵

With the rise of the film industry and the emergence of the Internet and social media as alternative platforms, the Indian entertainment industry faces legal challenges related to piracy and copyright infringement. These issues have been a focal point of discussion, especially concerning copyright laws.

The Copyright Act of 1957 governs copyright in India, protecting the rights of creators while allowing for the extraction of material to create something new. It aims to encourage excellence

⁴Indian Kanoon, Constituent Assembly Debates from indiankanoon.

⁵JSTOR, Constituent Assembly Debates on Fundamental Rights from jstor

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and originality in various fields, safeguarding the rights of original creators and ensuring fair usage of their productions.

Overall, copyright plays a crucial role in the Indian entertainment sector, promoting creativity while addressing legal challenges and protecting the rights of creators.

Another objective of copyright is to allow the use of copyrighted material. Section 52 of the Copyright Act 1957 provides provisions that enable people to make free use of certain materials.

II. COPYRIGHT AND ITS IMPORTANCE IN ENTERTAINMENT INDUSTRY

(A) Original Dramatic Work⁶

The exclusive privilege given to the proprietor to modify literary, musical, or artistic works is termed "copyright" in Section 14 of the Copyright Act. When discussing a motion picture, the term used is "cinematograph film," and the individual responsible for its production is denoted as the "author" within this framework. Moreover, copyright violation is delineated in Section 51 of the Act as any activity performed by an individual contravening the rights of the copyright holder without the necessary license.

Two authors portray a common scenario where individuals respond to identical emotions within a setting composed of identical materials in literary or dramatic formats. Inevitably, there are similarities in incidental details necessary for the environment or setting; however, these do not imply copying unless accompanied by resemblances in the dramatic progression of the plot or the actions and dialogues of the main characters. These resemblances are akin to parallels observed between two artworks crafted by different artists but rooted in the same initial subject matter, often too inconsequential to amount to substantial appropriation of copyrighted material.

A "dramatic work" is defined by the Copyright Act of 1957 as any item that is composed, recited, choreographed, or presented in a silent performance, with the acting or arranging being fixed in

⁶ Section 124A in The Indian Penal Code, 1860 - Indian Kanoon from indiankanoon.

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writing or another format. It excludes cinematographic films, though. The Delhi High Court specified in the *Institute for Inner Studies v. Charlotte Anderson* case that a written work should have the potential for physical enactment or be complemented by action. Another condition is that the material must be formalized in writing or an alternative format that confirms the method of execution. If there is reasonable doubt about the complete certainty of the performance as envisioned by the author or writer, then the work would not meet the requirement of fixation or certainty of performance, and therefore cannot be considered a dramatic work. Instances of uncertainty encompass sports matches, news broadcasts, aerobics, and by extension, workouts, daily regimens, Yoga, and Pranic Healing practices. Initially, the Yoga poses or Pranic Healing techniques may not seem to fit the criteria of a dramatic piece.

As per Section 2(p) of the Act, an original musical composition solely comprises the music and its visual representation; it excludes any lyrics or actions intended to accompany the music. Hence, even when presented with music, the law delineates between a song and a musical composition between the copyrighted work and the copy were used in *Corelli v. Gray* to determine that the respondent had copied the original work, which was considered infringement. It was determined by Lord Hansworth, M. R. that a significant amount of musical copyright had been copied. The Delhi High Court distinguished between music and sound in the *Star India Pvt. Ltd. v. Piyush Agarwal* case. Music was defined as melodic notes found on paper or another writing medium, whereas sound—often referred to as music informally—was the actual sound made by playing an instrument.

Judge Krishna Iyer stressed in the *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Ass* case that music protected by copyright is about more than just a catchy melody or outstanding performance—rather, it's about the melody or harmony that is expressed in textual or visual form. Fans of music are drawn to the way melody or harmony are portrayed visually. The idea of Nada Brahma, or the divine harmony of sound, includes all aspects of music, such as the raga, the rhythm (laya), the emotional expression (bhava), and the singing (sacred or existing). Regarding choreographic works, choreography involves arranging or designing ballet or stage dances using symbolic language. To qualify for copyright protection, choreographic works must be expressed in a written form, and the specific form of writing used is not relevant.

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In the case of Academy of General Education, Manipal v. B. Malini Mallya, the Indian Supreme Court examined dance movements. Dr. Karanth crafted a Yakshagana ballet and assigned the copyright to Ms. Mallya. Subsequently, Ms. Mallya alleged that the Academy infringed her copyright by staging the dance without her authorization. The Supreme Court ruled in favor of Ms. Mallya, affirming her entitlement to the rights. This decision was based on the acknowledgment that her innovative ballet dance style, when presented in a literary format, qualifies as a dramatic creation safeguarded by copyright.

The Academy was able to take use of the fair use exceptions provided by the Copyright Act of 1957, as the Supreme Court made clear. A fair use for research, review, critique, or private usage is not subject to copyright holder assertion. Similarly, the performance may not go against the injunction order if it complies with certain Act requirements, such being given by an educational institution in front of an audience that does not pay admission.

India's laws pertaining to copyright in choreography are changing and provide artists with fundamental rights. Even though there is still uncertainty, it encourages awareness and openness in intellectual property law. This promotes copyright applications for choreographic works and encourages choreographers to protect their inventions, encouraging creativity in dance.

III. INFRINGEMENT OF COPYRIGHT IN THE ENTERTAINMENT INDUSTRY

The term "copyright infringement" describes the unapproved use of someone else's intellectual property, such as distribution, performance, display, or replication, without the owner's consent. The following situations constitute copyright infringement, per Section 51 of the Copyright Act: Without authorization, someone does any action that only the copyright holder is permitted to take. permitting the sale, distribution, display, or communication of a work that is infringing, unless the person doing so was uninformed of the violation or had no basis for suspecting that the use in question would be against copyright. bringing in illegal copies of a work. Using the work in any way without the owner of the copyright's consent

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1. When someone utilizes a work protected by a copyright without the owner's consent, they are infringing on the exclusive rights that copyright law grants. This is known as copyright infringement. Infringement occurs in the following circumstances, according to Section 51 of the Indian Copyright Act: carrying out any action without authorization that only the copyright holder is permitted to carry out, permitting someone to use a space for the transmission, sale, distribution, or display of a work that is infringing, unless they were aware that doing so would be against copyright or had no cause to suspect that it would bring in copies of a work that are illegal. Using the work in any way without the owner of the copyright's consent. Direct infringement occurs when anything is copied verbatim, but indirect infringement is caused by secondary culpability.

2. Interpretation of Copyright Infringement by Indian Courts

Indian courts have outlined distinct standards for assessing copyright infringement, delineating the eligibility of works for protection under intellectual property law. As a result, only works satisfying these standards are eligible for defense against infringement by their creators or proprietors.

3. Key Case Law Examples

In the case of *R.G. Anand v. M/s Deluxe Films*, the Supreme Court provided insights into copyright infringement:

- i. Copyright does not extend to ideas, subject matter, themes, plots, or facts. Infringement is limited to the specific expression of these ideas in the protected work.
- ii. Similarities between works are inevitable when based on a common idea. However, for infringement to occur, the copying must be substantial and material, leading to the conclusion that piracy has taken place.
- iii. A clear impression of copying arises when a reader or viewer perceives the subsequent work as a replica of the original after comparing them.
- iv. If the subject matter is the same but expressed differently, resulting in a distinct work, copyright infringement does not arise.

IV. PROTECTION OF COPYRIGHT IN THE ENTERTAINMENT INDUSTRY⁷

Section 13 of the Indian Copyright Act, 1957, explicitly outlines the categories of works eligible for copyright protection, encompassing original literary, dramatic, musical, and artistic creations, as well as cinematograph films and sound recordings. It's crucial to note that individual components within a cinematograph film or sound recording hold distinct copyright protection, regardless of the overall copyright status of the work. For instance, the musical composition, lyrics, and sound recordings featured in a cinematograph film can be independently utilized by the original owner, the producer. The segregation of a musical composition from a cinematograph film does not establish a separate copyright for the music composer.

Section 14 of the Act details the array of entitlements linked with each copyrighted work. For literary, dramatic, or musical creations (apart from computer programs), the ensuing rights are accessible:

- (a) Duplicating the work in any tangible format, encompassing electronic storage.
- (b) Dispensing copies of the work to the public, excluding copies already circulating.
- (c) Presenting or broadcasting the work to the public.
- (d) Producing cinematograph films or sound recordings derived from the work.
- (e) Creating translations or modifications of the work.

Additionally, in the case of translations or adaptations, the same rights apply as those specified for the original work.

For computer programs, the rights include selling, renting, or offering for sale or rent copies of the program, regardless of previous sales or rentals.

⁷ Voltaire's beliefs and philosophy - Study.com \

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Regarding artistic works, the entitlements comprise duplicating the work in any tangible form, distributing copies to the public (excluding those already distributed), and portraying three dimensional pieces in two dimensions or vice versa.

Overall, the Copyright Act provides a comprehensive framework for protecting various types of works in the entertainment industry, ensuring that creators' rights are safeguarded and respected. The International Journal of Law Management & Humanities, in its Volume 4, Issue 3, emphasizes various rights associated with copyrighted works:

For literary, dramatic, or musical compositions (excluding computer programs), entitlements comprise replicating the work, distributing copies to the public, presenting or transmitting the work to the public, producing cinematograph films or sound recordings derived from the work, and crafting adaptations of the work. Concerning cinematograph films, rights encompass duplicating the film, vending or leasing copies, and transmitting the film to the public. Regarding sound recordings, rights entail producing other recordings based on it, vending or leasing copies, and transmitting the recording to the public. Additionally, performers possess exclusive rights pursuant to Section 38A, which encompass creating audio or visual recordings of their performances, duplicating, distributing copies, transmitting, and vending or leasing recordings of their performances. They also retain the privilege to broadcast or transmit their performances to the public, unless previously broadcasted.

V. OFFENCES AND PENALTIES RELATING TO COPYRIGHT

Section V discusses offenses and penalties related to copyright under the Indian Copyright Act of 1957. It emphasizes the severe punishments and fines for copyright infringement, with Section 63 providing discipline for such offenses. The burden of proof rests on the prosecution, and amendments made in 1996 introduced stricter penalties, including imprisonment for up to three years and fines ranging from Rs. 50,000 to Rs. 2 lakhs.

Moreover, Intellectual Property Rights (IPR) also address copyright infringement, imposing harsh penalties to deter such activities. Copyright infringement can result in both criminal and civil remedies for the owner, allowing them to seek damages or profits lost due to the infringement. In special cases, copyright infringement may be considered a criminal offense,

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with potential penalties of fines and imprisonment, though the Karnataka High Court has ruled that criminal courts cannot adjudicate on infringement if a civil suit is pending.

VI. COPYRIGHT PIRACY

Copyright piracy is a widespread global issue, posing significant challenges to the film industry. Piracy involves the unauthorized reproduction, importation, or distribution of copyrighted works, often before their official release. This unauthorized access to films online, even before their theatrical release, leads to immense losses for film producers as audiences opt to download rather than pay to watch in theaters.

The copyright owner enjoys exclusive rights over their work, including reproduction, publication, translation, and public performance. Any unauthorized activity related to these rights constitutes copyright infringement, akin to theft, resulting in financial losses and depriving creators of their rightful earnings.

In cinematographic works, piracy commonly occurs through unauthorized duplication and distribution of films in various formats, including video and cable networks, without proper authorization. This widespread piracy poses a serious threat to the entertainment industry, endangering its existence.

The Bombay High Court issued an injunction barring the defendants from broadcasting, distributing, or providing access to the film "Happy New Year." The decree also forbade them from selling or leasing copies of the video or circulating it to the public through alternative avenues. Other parties were restrained from replicating, showcasing, releasing, distributing, or transmitting the film via mediums such as CD, DVD, Blu-ray, VCD, Cable TV, DTH, Internet, MMS, Tapes, or any other method without a valid license from the Plaintiff. These actions were deemed to violate the Plaintiff's copyright in the film.

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VII. REMEDIES FOR COPYRIGHT INFRINGEMENT⁸

Copyright remedies have played a crucial role in safeguarding the rights of creators from unauthorized exploitation of their works. In industries marked by fierce competition and the constant introduction of creative ideas, copyright infringement poses significant challenges.

Copyright violation arises when an individual, whether intentionally or inadvertently, replicates the creation of another creator. In India, there are three primary categories of remedies accessible for copyright infringement: civil, criminal, and administrative.

(A) Civil Remedies for Copyright Infringement⁹

Civil remedies for copyright infringement are outlined in Section 55 of the Copyright Act of 1957. These remedies include:

1. **Interlocutory Injunctions:** Interlocutory injunctions are the primary remedy sought in instances of copyright infringement. To obtain such an injunction, the plaintiff must demonstrate a prima facie case, establish a balance of convenience, and show irreparable harm.
2. **Pecuniary Remedies:** As per Sections 55 and 58 of the Copyright Act of 1957, copyright holders can opt for three monetary remedies. These include requesting an account of profits, seeking compensatory damages for losses resulting from infringement, and pursuing conversion damages determined by the worth of the infringing item.

3. Anton Piller Orders:

Anton Piller orders, stemming from the precedent set in *Anton Piller AG v. Manufacturing Processes*, facilitate the preservation of evidence and the seizure of infringing goods. These orders commonly include instructions prohibiting the defendant from disposing of or infringing upon goods, permitting the plaintiff's legal representative to conduct a search of the defendant's premises, and mandating the disclosure of suppliers' and customers' names and addresses.

⁸ Civil Remedies for Copyright Infringement in India - IPLeders

⁹ Remedies against Infringement | Copyright | Areas of Law | Law Library - AdvocateKhoj

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4. Mareva Injunction:

Mareva injunctions are invoked when the court suspects the defendant of obstructing justice. Consequently, the court may direct the defendant to place their assets under the court's jurisdiction to ensure compliance with any court directives. These legal mechanisms provide avenues for copyright owners to seek redress for infringement and protect their intellectual property rights in accordance with Indian law.

5. Norwich Pharmacal Order

Usually, a Norwich Pharmacal Order is granted when it's necessary to get information from a third party.

The following are possible criminal remedies for copyright infringement: jail time, fines, seizure of copies that violate the copyright, and transfer of those copies to the copyright owner. Intentional copyright infringement and aiding and abetting copyright infringement are considered criminal offenses under the Copyright Act of 1957.

Under the Copyright Act of 1957, the following remedies for infringement exist:

- Imprisonment ranging from six months to a maximum of three years.
- Fines that may vary from INR 50,000 to INR 2,00,000.
- Conducting searches and confiscating illicit items.
- Restitution of the infringed products to the copyright holder.

Administrative measures for copyright infringement entail petitioning the Registrar of Copyrights to prevent the importation of infringing copies into India and to surrender the confiscated infringing copies to the copyright owner.

The Act provides a swift solution to prevent the importation of copies of a copyrighted work made outside India, which would infringe on the copyright in India. Section 53 of the Copyright

Act empowers the Registrar of Copyrights to issue an order banning the importation of such copies for the benefit of the copyright owner.

VIII. COPYRIGHT LAW IN THE ENTERTAINMENT INDUSTRY

Copyright serves as a crucial tool in the entertainment industry to safeguard original works from unauthorized access. It grants exclusive rights to the owner, ensuring that their material cannot be utilized without permission. In today's competitive landscape, obtaining copyright protection for original works is essential to prevent potential losses for creators.

The entertainment industry, which plays a vital role in captivating our lives, constantly strives to produce new content and scripts to maintain its relevance. However, creating compelling storylines is challenging, and creators often collaborate with investors, producers, and agencies to bring their ideas to life visually. During this process, there's a risk of unauthorized sharing or misuse of documents, leading to the loss of rightful credits for the owner. Therefore, securing copyright protection for one's work is crucial to prevent such exploitation.

It's essential to emphasize that copyright safeguards solely the manifestation of ideas, not the ideas per se. Consequently, while concepts and ideas remain unprotected, any manifestation stemming from them is eligible for copyright protection under the law.

As Jawaharlal Nehru observed, the influence of films in India surpasses that of newspapers and books combined, making them a powerful medium of communication reflecting both present and past societal trends.¹⁰

IX. CONCLUSION

Copyright serves a crucial function in protecting creators' rights within the entertainment sector. It confers exclusive privileges to owners, preventing the unauthorized exploitation of their original creations. Given the proliferation of digital platforms and the perpetual demand for fresh content, copyright safeguarding is indispensable in averting potential losses for creators.

¹⁰ The term of copyright protection for cinematograph films

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The entertainment industry, which has a significant influence on society, relies on compelling storylines and scripts. Acquiring copyright for a creation is essential to deter unauthorized sharing or misuse throughout the collaborative process of visualizing ideas. While copyright safeguards the expression of ideas, rather than the ideas themselves, it acts as a vital instrument in preserving originality and thwarting exploitation.

Strict penalties for copyright infringement, including imprisonment and hefty fines, aim to deter such activities. However, challenges remain in enforcing copyright laws, particularly in the face of widespread piracy. Ongoing efforts to raise awareness and promote transparency regarding Intellectual Property Rights in India are essential to encourage more creators to protect their rights and foster innovation in the entertainment industry.

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