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# Copyright and Entertainment Industry: An Overview

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## ABSTRACT

Copyright, being one of the important Intellectual property rights (IPR), protects the rights of creators of artistic works, literary works, sound, films and related creations. This right provides the creator the authority over the creation of his or her own to explore benefits if used by others. Media platforms including social media use new ideas, images, sounds, scripts and many more means and methods of communication professional, commercial and personal purposes. The entertainment industry faces the most genuine and gravest of difficulties presented by piracy. While unapproved duplicating and dissemination of cinematograph movies and music is not a new thing but a new turn of events, the greatness of the issue has, in the new years, gained extents that undermine the presence of the whole business. Advancements in replication and innovation have made it a moderately straightforward matter, for even a beginner, to produce duplicates, which are of a tantamount norm with the duplicates being honestly made and advertised by the business. Piracy, *inter alia*, results in loss of revenue to owners of copyrights through royalties, illegally adds to the coffers of the pirate and defrauds the state of collectible cess through various levels of production and sale. Without mitigating the importance of the said consequences, it is the music/film industry that is the most seriously prejudiced. This paper discusses issues regarding copyright in entertainment media and piracy and also law regarding the same in India.

**Keywords:** *copyright, piracy, entertainment media, violation.*

## I. INTRODUCTION OF COPYRIGHT IN ENTERTAINMENT INDUSTRY

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings<sup>3</sup>. In fact, it is a bundle of rights including, *inter alia*, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work. Copyright is basically the right to copy or reproduction of the work

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<sup>2</sup> Author is a student, India.

<sup>3</sup> The Copyright (amendment) Act 2012, Section 13.

where copyright exists<sup>4</sup>. Copyright is additionally the creator's privilege for not permitting anybody to duplicate his/her unique work. Copyright goes on for a specific timeframe after which the work is said to enter the open space.

Copyright lasts for a certain time period after which the work is said to enter the public domain. In the case of original literary, dramatic, musical and artistic works, the duration of copyright is the lifetime of the author or artist, and 60 years counted from the year following the death of the author and then it goes into public domain. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organizations are protected for a period of 60 years which is counted from the year following the date of publication.

The Indian entertainment industry has progressed significantly in the recent years especially when it comes to content creation. When we talk of content creation we have also got to look after the originality of the content and whether the guidelines of the Intellectual Property Rights (IPR) have been adhered. IP rights is a significant shield against any sort of encroachment of the innovation and the inventiveness of the producers, giving acknowledgment to the intellectuals of the makers and guaranteeing the spread of original work among the public.

The Indian entertainment industry has developed leaps and bounds. Also with the rise development of film industry, there has been significantly the rise of Internet and social media as an alternate media platform. But at the same time, with such developments, it has been facing a lot of legal challenges with regards to piracy and copyright. Legal concerns and issues of the Indian entertainment issues have always remained a major point of discussion when it comes to IP rights violation specially with regards to copyrights laws<sup>5</sup>.

### **(A) Copyright and Indian Entertainment Sector**

Copyright in India is governed by Copyright Act 1957. Copyright consists of several rights for a particular work. Copyright act does not prohibit anyone from extracting what is required to create a something new. Copyright protects the rights of original creator and allows to make usage of such productions in a prescribed way.

Its first objective is to encourage authors, artist to pursue excellence and originality in their respective fields. It is to protect the rights of the original producer of any literary worker. When a singer sings a song he or she is entitled to get royalty on the songs sung by him or her. If

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<sup>4</sup> The Copyright (amendment) Act 2012, Section 14.

<sup>5</sup> Manish Verma & Tanushri Mukherjee, " Intellectual Property Rights and Indian Entertainment Industry: An Overview" 18CT 1(2017)

anyone wants to remake of it then the original producer should be given a proper credit so that people are well aware of original singer and its composers. The original producers should get the due credits, respect and fame for their creation<sup>6</sup>.

An another objective is that it allows usage of material. Section 52 of the Copyright Act 1957 allows people to make free usage of such material.

## **II. COPYRIGHT AND ITS IMPORTANCE IN ENTERTAINMENT INDUSTRY**

### **(A) Original Dramatic Work**

Section 14 of the Act characterizes "copyright" as a restrictive right with the proprietor to make a transformation of the concerned abstract, musical or imaginative work. A motion picture falls under the definition of a "cinematograph film", and the term "author" in relation to a cinematograph film means the producer of such motion picture. Also section 51 of the Act provides that any individual who does anything in which the owner has the copyright, without the license of the same then the copyright would be infringed.<sup>7</sup>

"When two authors portray in literary or dramatic form the same occurrence, involving people reacting to the same emotions under the influence of an environment constructed of the same materials, similarities in incidental details necessary to the environment or setting are inevitable; but unless they are accompanied by similarities in the dramatic development of the plot or in the lines or action of the principal characters, they do not constitute evidence of copying. They are comparable to similarities in two works of art made by different artists from the same original subject, and in the usual case are too trivial and unimportant to amount to a substantial appropriation of copyrighted material."<sup>8</sup>

The Copyright Act, 1957 provides that "dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematography film.

In, *Institute for Inner Studies v. Charlotte Anderson*,<sup>9</sup> the Delhi High Court stated that for a work to be called as a dramatic work, the "work has to be the one which is capable of physically performed or accompanied by action. The other requirement for a work to be called as dramatic work is fixation of the matter in the form of writing or otherwise which means certainty of

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<sup>6</sup> "How copyright has changed the Entertainment Industry in the recent time" available at <https://blog.ipleaders.in/how-copyright-has-changed-the-entertainment-industry-in-the-recent-time/> last accessed 15 April,2021.

<sup>7</sup> *Mishra & Asutosh*, "Enforcement of Copyright for the protection of Entertainment Industry", SG, 59(2016)

<sup>8</sup> *Colis v. Cater* (1898)78 LT 613

<sup>9</sup> 2014 (57) PTC 228 (Del)

incidents as a predetermined plan. Where there exists a reasonable doubt as to complete certainty of the performance of the work in the manner conceived by the author or writer, in such cases, the work falls short of the requirement of fixation or certainty of the performance and therefore cannot be called as dramatic work. Such instances of doubtful nature of certainty include sport games, news presentations, aerobics and by necessary implication also include other exercises, daily routines, Yoga and Pranic Healing techniques, it can be said that prima facie the Asanas of Yoga or Pranic Healing do not fall within the ambit of the dramatic work.”

### **(B) Original Musical Work**

Section 2(p) of the Act<sup>10</sup> makes it clear that musical work is the music itself and the graphical notation of such music but does not include any words or any action intended to be sung, spoken and performed with the music. Therefore, the statute has made a distinction between musical work and a song which may or may not be with music. But even a song which is sung and which has music will not become a musical

In *Corelli v. Gray*<sup>11</sup> where the resemblances between the copyrighted work and the duplicate lead to the aggregate impact that the respondent had imitated the original and that the similitudes between the two works are not incidental, sensible deduction of colorable impersonation or of apportionment of the work of the proprietor of the copyright by the litigant is demonstrated. An activity for infringement of the duplicate right was recorded by the proprietor. Lord Hans worth, M. R. tracked down that the quantum taken was generous and a considerable piece of the musical copyright could be imitated separated from the real film.

Also, In *Star India Pvt. Ltd. v. Piyush Agarwal*<sup>12</sup>, the Delhi High Court held that music was not quite the same as sound for example music just implied what were musical notes which were found on the paper or other composing medium, and not what was heard. What was heard, and which was called music in layman's terms, was actually a sound made by the artist by playing an instrument regarding melodic notes.

In *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Ass*<sup>13</sup>. Justice Krishna Iyer observed “copyrighted music is not the soulful tune, the superb singing, the glorious voice or the wonderful rendering. It is the melody or harmony reduced to print, writing or graphic form. The Indian music lovers throng to listen and be enthralled or enchanted by the

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<sup>10</sup> Supra Note 27

<sup>11</sup> (1914) 30 TLR 116

<sup>12</sup> 2014 (58) PTC 169 (Del) at p. 179.

<sup>13</sup> (1977) 2 SCC 820 at p. 8.4

nada brahma, the sweet concord of sounds, the raga, the bhava, the laya and the sublime or existing singing.”

### **(C) Choreographic Work**

Choreography is the specialty of masterminding or planning of ballet dance or stage dance in symbolic language. To fit for copyright assurance, it should be decreased to composing. The type of composing is unimportant.

Issue subsisting on dance moves was dealt with by the Supreme Court of India in the case Academy of General Edu., Manipal vs B.Malini Mallya.<sup>14</sup> As per the facts of the case, Dr. Karanth developed Yakshagana ballet where he executed the will in favour of Manini Mallya, transferring the copyright of the dance to her.

The facts stated that Dr Karanth designed Yakshagan ballet where he the transferred the copyright to Manini Mallya. Later on she filed a suit alleging copyright infringement by the the Academy for performing the dance without her consent or permission.

The Hon’ble Supreme Court held that the rights were vested with Ms Mallya because a new form of a ballet dance that is reproduced in a literary format is considered as a dramatic work that is copyrightable.

However, the Court clarified that the Academy could take the benefit of the fair use provisions of the Copyright act 1957 and observed as follows:

*“When a fair dealing is made, inter alia, of a literary or dramatic work for the purpose of private use, including research and criticism or review, whether of that work or of any other work, the right in terms of the provisions of the said Act cannot be claimed. Thus, if some performance or dance is carried out within the purview of the said clause, the order of injunction shall not be applicable. Similarly, the appellant being an educational institution, if the dance is performed within the meaning of provisions of clause (i) of sub-section (1) of Section 52 of the Act strictly, the order of injunction shall not apply thereto also. Yet again, if such performance is conducted before a non-paying audience by the appellant, which is an institution if it comes within the purview of an amateur club or society, the same would not constitute any violation of the said order of injunction.”*

Thus, its crystal clear that law identifying with copyright in choreography is dim and disrupted. Notwithstanding, for artists, it is very plain as it gives performers right. The need of great importance with respect to Intellectual Property Law in India is more mindfulness and openness

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<sup>14</sup> Academy Of General Edu.,Manipal & ... vs B.Malini Mallya(2009), SCC 389

of innovativeness in dance which won't just urge more choreographers to protect their privileges yet in addition feature an expansion in application for copyright in choreographic works.<sup>15</sup>

### III. INFRINGEMENT OF COPYRIGHT IN ENTERTAINMENT INDUSTRY

Copyright infringement refers to the *unauthorized use of someone's copyrighted work*. Thus, it is the use of someone's copyrighted work without permission thereby infringing certain rights of the copyright holder, such as the right to reproduce, distribute, display or perform the protected work.

Copyright infringement alludes to the unapproved utilization of somebody's protected work. Consequently, it is the utilization of somebody's protected work without authorization.

Section 51 of the Copyright Act specifies when a copyright is infringed. According to Section 51 of the Act, Copyright is deemed to be infringed if:

- A person without obtaining the permission of the copyright holder does any act which only the copyright holder is authorized to do.
- A person permits the place to be used for communication, selling, distribution or exhibition of an infringing work unless he was not aware or has no reason to believe that such permission will result in the violation of copyright.
- A person imports infringing copies of a work
- A person without obtaining the authority from the copyright holder reproduces his work in any form.

#### (A) Copyright Infringement

##### 1. What Constitutes Copyright Infringement?

The copyright law enables the author or the creator with heaps of right with regards to production of his work. It simply means that the author has the rights to make duplicate copies of his works. Infringement means to make unauthorized use, reproduction or distribution of such production by someone other than the producer or creator himself.<sup>16</sup>

Section 51 of the Act deals with infringement of copyrights, which under the said provision is deemed to be infringed by any person when he inter alia without a license granted by the owner

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<sup>15</sup> Copyright in choreography, available at <https://blog.ipleaders.in/copyright-in-choreography-2/> (Last modified on 15 April 2021)

<sup>16</sup> Copyright and the entertainment industry, available at <https://blog.ipleaders.in/copyright-and-the-entertainment-industry/> (Last modified at 15 April, 2021)

of the copyright does anything, which is the exclusive right to do, conferred by the Act upon the owner of the copyright. Further, Section 2(m) defines the meaning of 'infringing copy'. To substantiate infringement, the copyright owner must show that: (a) only he/she own the valid copyright, and (b) the infringer has exercised one or more of the owner's exclusive rights to reproduce, publicly distribute, perform, display or adapt the copyrighted work.

## **2. Interpretation of Copyright Infringement by Indian Courts**

Indian Courts have set out specific tests to figure out what and which works can be ensured under the current system of intellectual property law, especially copyright, and henceforth, just for these works can a creator or proprietor guarantee assurance against infringement

## **3. Some of the Leading Case Law**

In *R.G. Anand v. M/s Deluxe films*<sup>17</sup>, the Hon'ble Supreme Court stated the following in relation to copyright infringement:

- i. Idea, subject matter, themes, plots or facts cannot come under the regime of copyright. Infringement of copyright in such cases is restricted to the form and manner of the idea of the author of his protected work.
- ii. Where the same idea is developed in a different manner, it is manifest that the source being common, similarities are bound to occur. To be significant, the duplicate should be a considerable and material one, which on the double prompts the end that the respondent is liable for a demonstration of piracy.
- iii. Where the reader or the viewer pursuant to having read or seen both the works is undoubtedly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.
- iv. Where the subject is something very similar however is communicated diversely with the goal that the resulting work turns into another work, no inquiry of infringement of copyright emerges.

## **IV. PROTECTION OF COPYRIGHT IN ENTERTAINMENT INDUSTRY**

Section 13<sup>18</sup> clearly states the works which comes under the regime of copyright protection. Such work should be original musical, dramatic, cinematography films or sound recordings etc. It is important to note here that in case of copyright in a cinematograph film or a sound recording, nothing will affect the separate copyright protection in any work in respect of which

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<sup>17</sup> 1978 AIR 1613, 1979 SCR (1) 218

<sup>18</sup> Copyright Act, 1957 (14 of 1957)



or a substantial part of which, of the film or of the sound recording is made. Section of the act 13 indicates that what are the summary of works which meet all prerequisites for copyright protection.<sup>19</sup>

Section 14<sup>20</sup> of the Act elucidates in a clear way as to what are the bundle of rights associated with each piece of copyrighted work as mentioned in the previous section such as in the case of a literary ,dramatic or musical work except computer programs the rights available are for some purposes. For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof, namely :-

(a) In the case of a literary, dramatic or musical work not being a computer programme:-

(i) To reproduce the work in any material form including the storing of it in any medium by electronic means,

(ii) To issue copies of the work to the public not being copies already in circulation,

(iii) To perform the work in public, or communicate it to the public,

(iv) To make any cinematograph film or sound recording in respect of the work,

(v) To make any translation of the work

(vi) To make any adaptation of the work

(i) To do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub clauses (I) to (vi)

(b) In the case of a computer programme-

(c) To do any of the acts specified in clause (a)

(i) To sell or give on hire, or offer for sale or hire, any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions

(d) In the case of an artistic work,-

(e) To reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work,

(i) To issue copies of the work to the public not being copies already in circulation

(ii) To issue copies of the work to the public not being copies already in circulation

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<sup>19</sup> JANHAVI PRAKASH TIWARY , “ COPYRIGHT INJUNCTIONS AND INDIAN ENTERTAINMENT INDUSTRY”

<sup>20</sup> Copyright Act, 1957(14 of 1957)

- (ii) To include the work in any cinematograph film,
- (iii) To make any adaptation of the work
- (iv) To do in relation to an adaptation of the work any of the acts specified in relation to the work in sub clauses (i) to (iv)
- (f) In the case of a cinematograph film-
- (g) To make a copy of the film, including a photograph of any image forming part thereof.
- (i) To sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions.
- (ii) To communicate the film to the public
- (h) In the case of a sound recording-
- (i) To make any other sound recording embodying it,
- (ii) To sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions,
- (iii) To communicate the sound recording to the public.

#### **(A) Performer's Rights**

Performer's are also provided with an exclusive set of rights 'as enumerated under Section 38 A. A performer has an exclusive right subject to the provisions of this Act to do or authorise for doing any of the following acts in respect of the performance or any substantial part thereof, namely:—

- (a) to make a sound recording or a visual recording of the performance, including—
  - (i) reproduction of it in any material form including the storing of it in any medium by electronic or any other means;
  - (ii) issuance of copies of it to the public not being copies already in circulation;
  - (iii) communication of it to the public;
  - (iv) selling or giving it on commercial rental or offer for sale or for commercial rental any copy of the recording;
- (b) to broadcast or communicate the performance to the public except where the performance is already broadcast.

Also, where once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the producer of the film of the performer's right in the same film. Provided that, notwithstanding anything contained in this sub-section, the performer shall be entitled for royalties in case of making of the performances for commercial use <sup>21</sup>

Now, apart from these economic rights 'another genre of rights, known as moral rights 'are also provided under S.57 and S. 38B, these rights are also known as Author's special rights ' which give the author.

### **(B) Moral Rights**

Moral Rights of the author are enumerated under section 57 of the Indian Copyright. Section 57 provides that where an assignment of the rights either wholly or partially has take place ,the author still has certain rights which are -

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honor or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

Explanation. Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.

(2) The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author

### **(C) Section 38 B**

Section 38B provides that where the performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right, to claim to be identified as the performer of his performance but not where there is omission which is dictated as per the use of the performance. The performer also reserves the right to restrain or claim damages in case there is any mutilation, distortion or any such act which is prejudicial to his

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<sup>21</sup> NARAYANAN P—INTELLECTUAL PROPERTY LAW, 2007 EASTERN LAW HOUSE 3<sup>RD</sup> ED

reputation. The section is also supplemented with an explanation which says that for the purposes of this clause, it is hereby clarified that mere removal of any portion of a performance for the purpose of editing, or to fit the recording within a limited duration, or any other modification required for purely technical reasons shall not be deemed to be prejudicial to the performer's reputation.<sup>22</sup>

## V. OFFENCES AND PENALTIES RELATING TO COPYRIGHT

The infringement of copyright cases is culpable under the Indian Copyright Act, 1957. The provisions revered under the act put the weighty punishments and fines on infringement of copyright. Section 63 of Copyright Act, 1957 gives discipline to an infringement of copyright. The burden of proof consistently lies on the prosecution to prove the guilt. The Copyright (Amendment) Act, 1996, improved the discipline for copyright and recommends detainment to the wrongdoer which might be reached out for a base time of a half year to a limit of 3 years, and punishment regarding fine ought not be under Rs.50,000 to Rs.2 lakhs.

Intellectual Property Rights (IPR) also provides for the punishment of infringement and violation of copyright laws in India. Expanding the utilization of corrupt exercises in IPR's prompts severe punishments against copyright infringement in India. Copyright infringement by and large gives criminal just as civil solutions to the owner. In the event that copyright is infringed, the owner has the selective option to bring an activity against the individual who infringes his work and recuperate harms or a record of benefits. The infringer should need to pay the harms to the owner for cash lost or spent because of the copyright infringement.<sup>23</sup>

In special conditions, copyright infringement can likewise go under the domain of criminal law and be taken as a criminal offense. Fines and detainment are potential punishments in criminal offense of copyright encroachment. Nonetheless, in **Cheran P. Joseph v. K. Prabhakaran Nair**, (1967)<sup>24</sup> the Karnataka High Court held that "a criminal court may not give a finding on the subject of infringement if the suit is pending before the civil."

## VI. COPYRIGHT PIRACY

Copyright piracy is a phenomenon prevalent worldwide.<sup>25</sup> Piracy, being one of the significant sources of losses which the film industry has to put up with every year.

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<sup>22</sup> JANHAVI PRAKASH TIWARY, "COPYRIGHT INJUNCTIONS AND INDIAN ENTERTAINMENT INDUSTRY" NLU15

<sup>23</sup> Copyright and the Entertainment Industry, available at <https://blog.ipleaders.in/copyright-and-the-entertainment> (Last modified 13<sup>th</sup> April 2021)

<sup>24</sup> 1967 CriLJ 1517 a

<sup>25</sup> Study on Copyright Piracy in India, available at <https://copyright.gov.in/documents/study> (Last modified 13<sup>th</sup> April 2021)

Piracy means unauthorized reproduction, importing or distribution either of the whole or of a substantial part of works protected by copyright. In simple term, Piracy is an unauthorized website to keep open access to the public to download or watch any film, even before it has been officially released in theatres for the viewers to watch. When any such film “gets leaked” online even before the release date, the film producer has to suffer immense losses, as the maximum public first instinct is to download and watch the film therefore do not spend its money to watch the movie in the theatres.<sup>26</sup> The owner, being the author of the copyrighted work, enjoys certain exclusive rights with respect to his or her work. These include right to reproduce, to publish, to adopt, to translate and to perform in public. The owner can likewise sell, appoint, permit or give the copyright to another gathering on the off chance that he wishes so. In the event that any individual other than the copyright owner or his approved gathering attempts any of the previously mentioned exercises concerning a protected item, it adds up to infringement of the copyright. Copyright piracy is in this way like whatever other burglary which prompts misfortune to the proprietors of the property. Other than monetary misfortune, piracy likewise adversely influences the innovative capability of a general public as it denies inventive individuals, for example, creators and craftsmen their real contribution.<sup>27</sup>

In a cinematographic work piracy by and large happens through unapproved multiplication of the film in video structures as well as showing the video through link networks without taking appropriate authorisation from the film maker. The nature and degree of piracy likewise differ across the portions of the copyright business. At the point when we examine copyright in film, there are four distinct groups. The first makers of a film, who are the sole rightholders, can sell cinematographic rights, Video rights, Cable rights, business rights and satellite rights.

Media outlets today faces the most genuine and gravest of difficulties presented by theft. While unapproved duplicating and circulation of cinematograph movies and music is anything but a new turn of events, the size of the issue has, in the new years, procured extents that compromise the existence of the entire industry.<sup>28</sup>

In the case, **Happy New Year- Red Chilies Entertainments Private Limited vs. Hathway**

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<sup>26</sup> Role of Copyright in the Media and Entertainment, available at <https://www.legalbites.in/copyright-in-media-and-entertainment-industry/> (14<sup>th</sup> April,2021)

<sup>27</sup> Study on Copyright Piracy in India, available at <https://copyright.gov.in/documents/study> (14th April, 2021)

<sup>28</sup> Dr. Girjesh Shukla, “Copyrights Piracy in Entertainment Media: Technological Development and Challenge to the Intellectual Property Rights” SSRN 2 (2011)

**Cable & Datacom Ltd. &Ors.**<sup>29</sup> - The Plaintiff acting on its fear that pirated copies of the film might be circulated in the market or that the film might be transmitted through cable service operators, sought an injunction from the Court against such acts.

The Hon'ble Bombay High Court passed an order "restraining the Defendants from telecasting/broadcasting/distributing/putting on the cable TV network /disseminating/reproducing or otherwise making available to the public, the film 'Happy New Year'" or "from (i) making a copy of the said film, including a photograph of any image forming part thereof, (ii) to sell or give on hire, or offer for sale or hire, any copy of the said film, regardless of whether such copy has been sold or given on hire on earlier occasions, (iii) to communicate the film to the public in any manner whatsoever including by way of but not limited to telecasting and/or re telecasting the said film, or even otherwise dealing with the rights in the said film which vest exclusively in the Plaintiff, in any manner whatsoever." ; the order also restrains others "from communicating or making available or distributing, or duplicating, or displaying, or releasing, or showing, or uploading, or downloading or exhibiting, or playing, and/or defraying the movie "Happy New Year" in any manner without proper license from the Plaintiff or in any other manner which would violate/infringe the Plaintiff's copyright in the said cinematograph film "Happy New Year" through different mediums like CD, DVD, Blu-ray, VCD, Cable TV, DTH, Internet, MMS, Tapes, Conditional Access System or in any other like manner."<sup>30</sup>

## VII. REMEDIES FOR COPYRIGHT INFRINGEMENT

The remedy of copyright has played an exceptionally critical part in securing the privileges of the creators of different imaginative works from being industrially misused against their will. Particularly in the business with such ferocious rivalry where various creative thought are being executed and introduced each year.<sup>31</sup>

So significant issues which the film and media business manage as far as copyright infringement and unlawful reproduction of replicating of another person's work and professing to be a unique inventive thought. Copyright infringement has become a significant issue in the cutting edge world. Infringement happens when an individual deliberately or inadvertently duplicates the work of another maker.

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<sup>29</sup> SUIT (L) NO. 993 OF 201410 (Bombay High Court)

<sup>30</sup> Toils And Turmoil Of Media And Entertainment Sector, available at <https://www.mondaq.com/pdf/clients/689780.pdf> (last modified 14 April,2021)

<sup>31</sup> Role of Copyright in Media and Entertainment Industry available at <https://www.legalbites.in/copyright-in-media-and-entertainment-industry/> (Last modified 15 April, 2021)

There are three kinds of remedies an individual can get for copyright infringement in India – civil remedies, criminal remedies and administrative remedies.

### **(A) Civil Remedies for Copyright Infringement**

The civil remedies for copyright infringement are covered under Section 55 of the Copyright Act of 1957. The different civil remedies available are:

#### **1. Interlocutory Injunctions**

The main remedy is the award of an interlocutory injunction. In most case the application filled is for interlocutory help and the matter seldom goes past the interlocutory stage. There are three necessities for there to be an award of interlocutory directive – Firstly, a *prima facie* case. Secondly, there should be an equilibrium of accommodation. At last, there should be a irreparable physical issue.

#### **2. Pecuniary Remedies**

Copyright owners can likewise look for three financial remedies under Section 55 and 58 of the Copyright Act of 1957. Initial, a record of benefits which lets the proprietor look for the amount of cash made equivalent to the benefit made through unlawful direct. Second, compensatory harms which let the copyright owners look for the harms he endured because of the infringement. Third, transformation harms which are surveyed by the estimation of the article.

#### **3. Anton Pillar Orders**

The Anton pillar order gets its name from the holding in Anton Pillar AG V. Assembling Processes. The accompanying components are available in an Anton Pillar Order – First, a directive limiting the respondent from annihilating or infringing merchandise. Second, a order allowing the offended party's legal advisor to look through the respondent's premises and take merchandise in their protected care. Third, a order that the litigant be coordinated to unveil the names and addresses of providers and customers.

#### **4. Mareva Injunction**

The Mareva injunction becomes an integral factor when the court accepts that the litigant is attempting to defer or impede the execution of any pronouncement being passed against him. The court has the capacity to guide him to put entire or any piece of his property under the court's removal as might be adequate to fulfill the announcement. This is given all together XXXVIII, Rule 5 of The Civil Procedure Code, 1908.

## **5. Norwich Pharmacal Order**

The Norwich Pharmacal Order is typically passed when data needs to be discovered from a third party.<sup>32</sup>

### **(B) Criminal Remedies for Copyright Infringement**

Under criminal remedies, one may petition for detainment and fine, capture of infringing duplicates and conveyance of them to the owner. The Act endorses that the purposeful infringement or abetment of an infringement of the copyright in a work would be considered as criminal demonstration.<sup>33</sup>

Under the Copyright Act, 1957 the following remedies are provided for infringement:

- Imprisonment up to 3 years but, not less than 6 months
- Fine which may not be less than 50,000 but, may extend up to 2,00,000
- Search and seizure of infringing goods
- Delivery of infringing goods to the copyright owner.<sup>34</sup>

### **(C) Administrative Remedies for Copyright Infringement**

Administrative remedies comprise of moving the Registrar of Copyrights to boycott the import of infringement duplicates into India when the infringement is via such importation and the conveyance of the seized infringing duplicates to the owner of the copyright and looking for the conveyance.

This comprises of moving the Registrar of Copyrights to boycott the import of infringing duplicates into India when the infringement is by a method for such importation and conveyance of the reallocated infringing duplicates of the owner of the copyright and looking for the conveyance.

A convincing and fast fix is made available by the Act to keep away from importation into India the copies of a showcasing expert work made outside India, which is made in India, would infringe on copyright in the work.

Section 53 of the Copyright Act engages the Registrar of Copyrights in making a request precluding the importation into India of such duplicates for the utilization of the owner of the

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<sup>32</sup> “What are the remedies available for Copyright Infringement In India?” available at <https://blog.ipleaders.in/remedies-available-copyright-infringement-india/> (Last Modified 15 April, 2021)

<sup>33</sup> Remedies Against Infringement of Copyright, available at <https://singhania.in/blog/remedies-against-infringement-of-copyright> (Last modified 15 April,2021)

<sup>34</sup> What are the remedies available for Copyright Infringement In India, available at <https://blog.ipleaders.in/remedies-available-copyright-infringement-india/> (Last modified 15 April)



copyright in any work, party his obligation authorized agent in the wake of making such request as he esteems.<sup>35</sup>

### VIII. COPYRIGHT LAW IN ENTERTAINMENT INDUSTRY

In Entertainment Industry, Copyright used as a tool to protect their original work in the long haul so that no one has access to it without the permission of the maker. The material is secured by copyright and the owner of the material has select option to utilize it. In present scenario, their is a cut-throat competition which makes it necessary for the maker to get copyright of their original work. The absence of copyright on the material may cost tremendous losses to the maker or the creator. The entertainment industry is greatly affected as it is important to protect and prevent the original work of the author.

The entertainment industry has played a very fundamental role in making our life fascinating. Every author or maker or owner is in search to create new content, new taglines, new scripts to make a hold in the industry. Whenever, any new script, content is drafted, it is difficult for any author or maker to come up with an eye catching storyline. The author at that point approach the investors, producers, agencies to give their script a new extent and convert into visual. In the middle of this, there are chances that these documents can misuse by an outsider as there is no proof of sharing, which might lead to loss of the legible credits that suppose to be given to the owner. So, it is always better to ensure your work before somebody utilize it for their own benefits.

The fundamental concept of copyright in the entertainment industry it does not grant protection for mere ideas and facts. Since ideas and concepts are not protected under copyright law, any form of expression developed from these ideas can definitely be protected.

Jawahar Lal Nehru stated *“The influence in India of film is greater than newspaper and book combined. Movies are a form of communication and it is a reflection of society both present and the past”*

If a person evolve a story or a concept in his mind-just like any fantasy movie, they can express it in the form of scripts, novel, show or a serial for which protection is obtained. There are certain categories of copyright available in the Act:

1. Literary work
2. Dramatic work

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<sup>35</sup> Remedies Available To A Person For Infringement Of Copyright, available at <https://blog.ipleaders.in/remedies-available-person-infringement-copyright/> (Last modified 15 April,2021)

3. Artistic work
4. Musical work
5. Cinematography work.<sup>36</sup>

An action can be regarded entertaining by one and not so by the other. In any event, for one individual the origination of entertainment may change throughout some stretch of time. However, to examine certain sources which are regarded as giving entertainment to the overall population, similar to movies pictures, TV and music. Copyright in cinematographic works is more complex in nature as there exist a variety of copyrights in a single work and many times these rights are also overlapping.<sup>37</sup>

## **IX. CONCLUSION**

The present study reveals that infringement of copyright and piracy is a menace that denies the legitimate dues and rights of creative people and therefore the real challenge is how to enforce the law properly. As we know that the law is for the society and society must assume its responsibility along with government for its successful implementation.

The purpose of copyright standards is to ensure and protect the works of creator and give some monetary advantages to him over the long haul. The extent of copyright has been reached out up to the entertainment and media industry. Copyright has a ton of importance in the field of entertainment outlets as it secures rights of the creator and assists him with adding more qualities to the first work without fearing theft. Entertainment industry should be secured against deceitful exercises which are expanding step by step at a disturbing rate in the public eye. Entertainment industry should take certain preventive measures to protect against the piracy.

In this way, importance ought to be given on the proper execution and implementation of Copyright laws. The current laws on copyright encroachment should be rigorously followed without any predispositions. There should be an implementation of criminal sanctions against digital piracy as it is one effective way to curb these practices. It is needed in India to aware people of the copyright laws and to strengthen the copyright regime. The growth of Intellectual Property Rights in the entertainment industry is required for the extension of artistic and creative work in the industry.

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<sup>36</sup> Copyrights In The Media Industry, available at <https://vakilsearch.com/advice/copyrights-in-the-media-industry/>, (last modified 15 April,2021)

<sup>37</sup> Copyright and the entertainment industry, available at <https://blog.ipleaders.in/copyright-and-the-entertainment-industry/> (last modified 15 April, 2021)