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INTELLECTUALIS

Lights, Camera, Showbiz!
IP & The Entertainment Industry



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Editors' Note

Dear Readers,

We proudly present the Fourth edition of Volume 5 of Intellectualis, with the theme ‘**Lights, Camera, Showbiz! - IP & The Entertainment Industry.**’ In this edition, we have covered lesser known aspects about copyright-related rights such as celebrity rights around the world, posthumous personality rights and character rights. Our members have also contributed to more practical aspects like the drafting of talent management agreements, audio-visual compliances in the OTT era, fair use in the context of social media, paparazzi and documentary film-making. Furthermore, we have highlighted the relationship between media and IP with our pieces on the 2022 Amendment to the IT Rules, 2021, the Prevention of Misleading Advertisements, 2022 and the legal issues involved in broadcasting contracts that have become highly relevant in today’s age.

We hope that you take the time to read what our e-newsletter has to offer. We would like to extend our gratitude to the student body of School of Law, CHRIST (Deemed to be University) for their overwhelming response to the newsletter. This edition would not be possible without all our committee members, especially those in the Research and/or Editorial sub-team. We would also like to thank our Faculty Coordinator Dr. Avishek Chakraborty for constantly supporting us and guiding us through the drafting of this newsletter.

We hope you enjoy reading this edition!

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Smooth Like Butter: Analysing South Korea's Celebrity Rights Laws with Other Jurisdictions

-Neha Srikanth & Diya Naveen

Who is a Celebrity?

Understanding what the term "celebrity" means is important before debating celebrity rights. It's also critical to remember that celebrities have the sole authority to capitalize on the value of their status. Celebrities today include everyone who aspires to gain public notice, including reality T.V. stars, authors, artists, politicians, models, athletes, musicians, singers, and well-known corporate executives.¹ The first criterion for assessing whether a person is a celebrity or not is public perception. The Latin term "celebritatem," which means "the condition of being famous," is where the word "celebrity" originates. The *Martin Luther King Jr. Center for Social Change v. American Heritage Products Inc.* case established how "celebrity" is to be defined.² It was put forth that the term "celebrity" should be understood broadly to include more than the conventional categories of movie actors, rock stars, and athletes. By definition, the individual whose identity has been misused has become a celebrity for the purposes of the 'right of publicity' when an illegal use of their identity is made that is both direct and motivated by business.³ This is known as the "direct commercial exploitation of identity" test. The term "celebrity" is not defined in the Indian Copyright Act. But reference may be

made to Section 2(q) of the Act (which includes the abovementioned activities) for the definition of performance. It is only sometimes the case that a performer is also a celebrity, and vice versa. A performer can be an actor, a singer, a musician, etc. as defined under Section 2(qq) of the Copyright Act, 1957.

What are Celebrity Rights?

Due to the lack of mention or inclusion in specific statutes, celebrity rights are not considered statutory rights per se. Celebrities have several rights because they are humans and well-known people. A collection of existing rights are applied to, and have jurisdiction over celebrity rights. When someone offers public goods or services, while using the trademark or brand of another person, it is referred to as passing off. Personality Rights, Privacy Rights, Reproduction and Distribution Rights, Character Rights, Rental Rights, Performance Rights, Lending Rights, etc., are among the rights available to them. Protecting a celebrity's interests is possible thanks to trademark and copyright legislation. The Trademarks Act of 1999, the Copyright Act of 1957, the Consumer Protection from Unfair Competition Act (India), and the Right to Privacy have been deemed essential rights.

New Celebrity Right Laws in South Korea

In South Korea, the legal notion of the right to publicity is recent. Although no decision from the Supreme Court and no explicit statute provisions have been established, the Korean legal society started to theorize the idea of the right of publicity about 25 years ago due to the U.S. entertainment law cases. Eventually, the lower courts of Korea approved the right to publicity. The findings of the lower court in Korea state that the right to publicity is a unique property right separate from the conventional right to privacy.⁴ It was held that the ability to use someone's name, image, or any other aspect of their identity for profit is a property right. The courts have determined that the right to publicity can be passed down through generations.⁵ The right to publicity extends to the living and the deceased, and is safeguarded for 50 years following death. There have been numerous instances of celebrities and athletes in Korea asserting their right to publicity in opposition to unlicensed commercial use of their identities.

BTS: A Landmark Case Study

By building a fun-filled ecosystem of music and material that gives fans numerous ways to interact, BTS is enlarging its fan base.⁶ Although its primary source of income is music, the band is diversifying its I.P. asset portfolio and venturing into other forms of entertainment. The group and its intellectual property are managed by HYBE, the top entertainment management company in the Republic of Korea (ROK). BTS is creating a legacy that combines music, entertainment, and education.

These activities are supported by effective IP management.

Copyright

BTS's copyright portfolio encompasses more than just music; it includes novels, comics, music videos, variety programs, documentaries, mobile apps, DVDs, and streaming. Even the fantastical realm, "the Bangtan Universe," was developed by BTS (or B.U.). The band's transmedia approach, which produces and distributes content across several platforms to create a seamless fan experience, is supported by B.U. BTS uses brief "notes" posted on social media and actual cards in their physical albums to explain their story. Additionally, B.U. has produced two books (The Notes 1 and The Notes 2), the online comic Save Me, and appeared in BTS music videos (2019).

Trademark

The core of the band's trademark portfolio is the abbreviation "BTS," which stands for "Bulletproof Boy Scouts" in Korean. The band's name and logo have been registered as trademarks in the ROK for various items, including cosmetics, furniture, telecommunications, education, and entertainment software.

Celebrity Rights in India

In India, the law governing publicity and image rights is still developing. Courts have said in various judgements that personality rights include the right to have a public image as well as retain privacy in their personal sphere and lives. India needs to catch up to other countries around the globe in understanding the value of publicity and image

rights. However, the protection of an individual's publicity rights is included under the privacy rights conferred by Article 21 of the Indian Constitution, which is about the right to life and liberty. Celebrity rights are regarded as unique and unassailable property rights. It combines the collective and dignitary interests of fame; while the ingrained right only safeguards the dignitary side of fame.⁷ Although it falls under the broad scope of Article 21 of the Indian Constitution, the right to convert is not unqualified. Similar rights are subject to reasonable limitations under Article 19 of the Constitution to protect the public interest. The regulations for assigning and approving parallel rights are not covered by Section 14 of the Indian Trademark Act, 1999, which protects single personality specifics, such as names. The lack of conceptual clarity provided by the trademark law makes it difficult for judges to uphold the spirit of the legislation.

The Amitabh Bachchan Case – December 2022

The Delhi High Court recently awarded actor Amitabh Bachchan an ex-parte and interim order that forbids the replication of his voice, name, and images.⁸ Mr. Bachchan requested the same after other internet scams similar to the Kaun Banega Crorepati-based phony lottery scam were exposed. The order prohibits the defendants from using his name and any of his well-known monikers, including "BigB," "A.B.," and others. The injunction prohibits anyone from using his famous baritone voice or photographs for personal or commercial gain without his permission. The Court therefore determined that Amitabh Bachchan's personality and

publicity rights had been violated. The Court held that Mr. Bachchan has "*ownership over commercial exploitation of his personality, name, voice, image, likeness and other distinctively recognizable and linked features.*" And that his rights are violated by the misappropriation, use, and replication of his personality for gainful employment or other purposes. In 2018, the actor also requested for redressal and an injunction regarding the exploitation his distinctive baritone voice, which a tobacco producer utilized for marketing reasons.

Position of Celebrity Rights Laws in Different Jurisdictions

United States

The right to publicity and privacy are intertwined in American culture. The first person to assert this privilege before a New York court was Mrs. Roberson in the case of *Robertson v. Rochester Folding Box*.⁹ She claimed that the defendant corporation had utilized her likeness as a decoration for flour bags and used them for commercial promotion. The court denied the claim. However, the New York Assembly later established a statutory right to privacy, with violations punishable by both criminal and civil sanctions. The Georgia Supreme Court ruled in *Pavesich v. New England Life Ins Co.* that the unlawful use of an artist's portrait in advertising violated a newly created common law right to privacy.¹⁰ Celebrities intentionally put themselves in the public view when they have already attained a certain level of recognition, unlike Pavesich, who just wanted to be left alone. Celebrities were effectively prevented from arguing

that an unauthorized use of their identity violated their "right to be left alone" because courts have strictly defined the right to privacy. A few years later, a Georgian court finally distinguished publicity from privacy by characterizing it as a property right based on business interests. Several states in the U.S. now recognize the right, some through statute, others through common law, and the rest through a combination of both. In *Haelan Laboratories Inc v Topps Chewing Gum Inc.*, the two competing chewing gum makers were Haelan Laboratories and Topps Chewing Gum.¹¹ To encourage chewing tobacco sales, chewing gum was packaged by the producers with cards that featured the names and images of athletes, particularly baseball stars. Through a third party, Haelan Laboratories put together a set of player releases that were covered by exclusivity contracts. Additionally, Topps Chewing Gum Inc. kept releasing its rival cards that featured the athletes who had already subscribed to the Haelan cards. According to the ruling in this case, "*a man has a right in the publicity value of his photograph, in addition to, and independent from that right of privacy, i.e., the right to grant the exclusive privilege of publishing his picture, and that such a grant may validly be made 'in gross', i.e., without accompanying transfer of a business or anything else, no matter how it is labelled.*" The existence of a "property" right is irrelevant since, as is frequently the case, the word "property" in this context refers to the fact that courts would uphold claims with monetary value, which is in fact a public right.

Canada

The right to personhood is recognized under the Canadian common law in certain circumstances. This was upheld for the first time in *Krouse v. Chrysler Canada Ltd.*¹² The Court ruled that there is justification for an action in the appropriation of personality where a person's likeness has marketable value and is used to convey an endorsement of a product. In *Athans v. Canadian Adventure Camps*, the Court found that the personality right covered both image and name, and later extended this right.¹³

United Kingdom

The concept of publicity rights has encountered severe opposition under English law. These rights are viewed in opposition to the highest priority accorded to freedom of speech and expression in common law nations. Only a small group of citizens benefit from publicity rights and other celebrity privileges, with the broader public seeing little real advantages.¹⁴ The European Convention on Human Rights (ECHR) has forced the development of the law, nonetheless. In several cases, the Strasbourg Court has acknowledged that taking images without permission interferes with Article 8 rights under the ECHR. This was maintained, regardless of whether the photos were taken for journalistic or police objectives. The U.K. Tax Court ruled in *Sports Club plc v. Inspector of Taxes* that the funds paid under contracts for the marketing of international footballers' image rights should be recognized as representing those players' image rights and not as salaries.¹⁵ The potential for a claim for significant compensation was identified when the Hello!

Magazine released photos of Michael Douglas and Catherine Zeta-Jones' wedding without their consent. Recently, Naomi Campbell was granted compensation of £ 3,500 under the Data Protection Act for the publication of her photo in a piece about her pharmacological therapy. Finally, *Irvine v. Talksport* resolved the publicity rights issue.¹⁶ In this instance, successful Formula I driver Edmund Irvine's photograph was used in an advertisement for a radio station without his permission. The Judge ruled that he was entitled to remuneration based on a reasonable endorsement fee since he had a property right in the goodwill associated with his image.

What are Personality Rights?

A person's personality is reflected in their voice, likeness, signature, and other identifying features. Since celebrity status is a requirement for having personality rights and they are the main characteristic of any celebrity, they are also referred to as celebrity rights. These rights often apply to celebrities and well-known public figures so that their identities cannot be misused or stolen. Publicity rights, a division of personality rights, include image rights. It details the monetary worth of any representation of the person whose notoriety and reputation could be harmed by someone, such as through images or other artefacts. This privilege originates from the right to privacy and is only extended to well-known individuals or celebrities who may risk harming their reputations and careers, and to those whose goodwill may be used for financial benefit. Any unauthorized commercial exploitation of celebrities violates their right to their

personality because they have worked hard to build their renown and reputation. It was criticized in the *Tolley v. Fry* case that a picture of a well-known amateur golfer was used for advertising Cadbury chocolates. Tolley claimed that the defendants had taken advantage of his status as an amateur golfer by portraying him as having volunteered to appear in the advertising in exchange for cash or other incentives. The Court decided to award damages since the defendant's actions could have been considered libel. However, things have changed drastically, and now renowned people assert rights that are in conflict with one another, such as the right to privacy and fame.

Protection of Celebrity Rights under Trademarks and Copyright Law

The use of trademark law, copyright law, and passing off lawsuits may be used to safeguard celebrity rights. Therefore, violating a performer's non-property or recording rights becomes a statutory duty violation.

Trademark

Trademark registration has two significant effects on celebrity rights. A celebrity's persona may be approved for assignment or licensing for commercial purposes in the category of products and services for which registration has been requested, if any element of that celebrity's persona is trademarked. Second, the celebrity acquires the power to stop specific aspects of their personality from being used illegally. Trademark registration is unique in that it may provide public personalities with protection, in contrast to legal actions brought under the Trade

Practices Act of 1974 or the tort of passing off. Trademark law in India may be advantageous for business partners and celebrities; however, this protection may be limited.

According to Section 2(1) of the Indian Trade Marks Act, 2000, any "*sign capable of distinguishing goods and services of one person from another, any word (including human names), pattern, numerical, and shape of things or their packaging*" may be registered as a trademark. In India, courts protect movie names, characters, and titles under trademark laws. Indian law is still developing in this area. Nevertheless, *Star India Private Limited v. Leo Burnett India (Pvt) Ltd.* was the country's first character merchandising case.¹⁷

Copyright

What components of celebrity rights may be protected by the Copyright Act is still being determined. The court ruled in *Sim v. Heinz & Co. Ltd.* that a person's voice, likeness, or other identification is not given copyright.¹⁸ Celebrities can permit the reproduction, development of a derivative picture, sale, or display of, for instance, a commissioned photograph of themselves by others thanks to copyright, which grants exclusive but constrained rights of protection. An individual must be able to demonstrate ownership of the copyright in the image and copying of that image to bring a claim for copyright infringement. The biggest issue that celebrities have when it comes to celebrity photos is that they don't have any control over the image used for commercial purposes in celebrity-themed books. Any book adaptation by a famous author, even if

unique, is nonetheless eligible for copyright protection. The Indian Copyright Act of 1957 protects sketches, drawings, and other creative works. The work may be reproduced in any medium, including transforming two-dimensional works into three-dimensional works and vice versa, in accordance with Section 14 of the Act. This protection has been widened by the courts to cover fictional characters that are regarded as works of art. The famous children's comic book character Nagraj - the Snake King was found to be protected by Copyright Rules in the case *Raja Pocket Books v. Radha Pocket Books*.¹⁹ However, no copyright is granted for either the name or the image.

Conclusion

A celebrity's works, names, and likeness would be taken away and used against them if their right to privacy, publicity, and personality rights are not safeguarded.

Celebrities should take the following precautions to protect their rights:

- Registering names, signatures, brands, nicknames, and other names as trademarks.
- Registering their works as copyrighted to avoid unauthorized use and control their distribution, publication, public performance, performances, literary works, photographs, films, sound recordings, etc.

These protect them against any financial gains that illegal property users might make. It may be time for our legislators to enact laws about celebrity rights that will introduce, clarify, and safeguard against the

abuse of a celebrity's rights while ensuring privacy for those who fall under them.

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Analysing Legal Requirements & Disputes Surrounding Talent Agency Agreements

- **Melissa Joseph**

Introduction

A talent agency is an organisation or individual that works with actors, broadcast journalists, film directors, models, musicians, writers, authors, screenwriters, professional sports, and other people in the entertainment industry. It promotes, protects, and supports its client's interests. Deal success is frequently based on contracts and other formalities like licences and permissions. The client, that is, the artist or performer, enters into an agreement with the agency which various clauses on the conduct of both parties. The terms controlling the artist's career, the scope of the work, and the specifics of the income earned are discussed in detail between the parties in the contract, known as a talent agency contract between an artist or performer and an agency. Depending on the status of the agency and the artist, the Talent Agency contract varies. For instance, the popularity of either or both parties may impact the contract's terms. The agreement may also change per the country's relevant governing law. Talent agencies may rebuild and reshape artists' careers, separated into sectors like modelling, advertising, music, etc. To avoid regretting entering into such a contract, it is crucial to create a contract and have all the conditions explicitly written down. Equally essential is ensuring that the agency and the

performer know their responsibilities from the beginning. Both sides will benefit from a more fluid connection going ahead in this way.

Contents of a Talent Agency Agreement

The context of an agreement is clarified by its recital clauses, which can aid in interpreting the agreement's purpose and goals. This comprises the agreement's introduction, which lists the parties and their pertinent companies, as well as the background information outlining the circumstances that led to the contract. A talent agency contract can be of two types: exclusive and non-exclusive contract.¹ A person who enters an exclusive contract is limited to working with a single talent agency and is not permitted to sign a deal with another agency while the complete agreement is in effect. During a non-exclusive contract, the artist is not limited to working with just one talent agency and is free to sign agreements with other agencies or seek employment independently. In the case of *Percept Talent Management Pvt. Ltd. v. Yuvraj Singh*,² the facts show that the agreement between Yuvraj and the Talent Agency is exclusive. It is mentioned that he cannot enter into a contract with any other agent to manage and market the services and day-to-day affairs in respect of media, advertisement and related

activities. The petitioner is the talent agency in the case of *SVF Entertainment Pvt. Ltd. v. Anupriyo Sengupta*,³. The respondent is an actor who got into an exclusive contract with each other wherein the petitioner confirmed that the producer would be providing services exclusively to the petitioner for the entire term of the agreement. During the duration of the said agreement, the respondent shall not, without the written consent of the petitioner, create or participate in any manner in any other film, television serial, or advertisement outside the banner of the petitioner. The said agreement was valid for a period of three years which was later extended to five years. It was found that the respondent had engaged himself in providing film-related services to a third party, Surinder Films, for which he still needs to obtain written consent from the petitioner. Hence, the petitioner filed an injunction against the respondent. The granting of the injunction is disputed in this case. The petitioner also mentioned that granting the injunction was crucial since he would otherwise have to incur irreparable damages. The Court held earlier that the petitioner did not object to the respondent doing films with M/s Surinder Films as also M/s Heartbeat Productions without obtaining prior approval. The Court found that the facts of the present case, the balance of convenience, are not in favour of the petitioner. The petitioner would not suffer any irreparable injury for not allowing his prayer for an order of injunction. Thereby, it was held that there was no point in keeping this application pending. Since the respondent was not called upon to file any affidavit, the allegations

made against him in the application shall be deemed not to have been admitted. A client could be skilled in several different areas. For instance, Zendaya is a professional actress, singer, and dancer. It is necessary to specify the agency's skills in showcasing and marketing in the Talent Agency Agreement. The agreement should also state in what region or country the agency is the talent's exclusive or non-exclusive agent. In this manner, the agreement can resolve any ambiguity if there is any overlap in the representation of that talent with another agent. The representatives and warranties clause in the contract ensures that an artist or performer (talent) does not grant a license or appear to use the name, photograph, promotion, merchandising or any other such activity with any product that is competitive with the Product. This can vary as per the terms of the contract. It can be for the agreement's duration or any extension specified in the agreement itself. In the case of *Percept Talent Management Pvt. Ltd. v. Yuvraj Singh*⁴, a promotion agreement was entered between the parties, which had a Negative covenant precluding Yuvraj from entering into a contract, upon expiry of the term of the contract, with a third party. The Court stated that a condition that operates during employment is valid. Still, a condition which operates beyond the expiry of the term of the contract has been held to be a restraint on trade. In this case, the Court held that it would amount to a clause in restraint of trade, and thereby the Court would be justified in declining to grant an injunction for the performance of a negative covenant of that nature. The obligations clause in a talent agency

agreement lays down all the obligations required to be followed by the agency or the agent. For example, the agent should take reasonable steps to publicise the artist and their offerings. To be successful, the talent must also provide the agent with a broad licence to utilise the talent's "image rights". Using the talent's name, voice, or picture to market them may grant a third party a sublicense of such rights. Additionally, the agent shall make reasonable efforts to coordinate castings and auditions, if appropriate, and give the talent all essential instructions and logistical details so that they may attend. In the case of *Fall (Inspector of Taxes) v. Hitchen*⁵, the taxpayer was a professional dancer engaged by Sadler's Wells Trust Ltd. under a written agreement. The agency not only allowed but also encouraged him to carry on outside work. Sadler's Wells Trust Ltd. followed the standard practice in the theatre of paying National Health Insurance contributions for all artists under the contract as if they were employees and not self-employed. The taxpayer thereby appealed to the commissioners against an assessment of income tax made on him under Schedule E of the Income and Corporation Taxes Act 1970 for the year 1969–70 in the sum of £712. The commissioners, accepting his contention that he should have been assessed for income tax under Schedule D, Case II of the Act, allowed the appeal since the taxpayer was under a contract of service as a professional dancer and that employment was not merely an incident to his profession as a theatrical artist and, since "employment" in Schedule E was coterminous with a "contract of service," the taxpayer had been

correctly assessed to income tax under Schedule E and, accordingly, the commissioners had erred in law in holding that he should have been evaluated under Schedule D, Case II. The agency is not required to get any licences, permissions, or insurance on the talent's behalf necessary for the talent to carry out the contractual activity. The agreement should specify the agent's authority over the talent's commercial dealings. The contract must also have a termination clause. This indicates the scenarios wherein an agreement could terminate. There could be a provision that requires a notice to be provided beforehand in case of termination from one party to the other. Other instances could include material breach of either party's obligations that are set ahead if the party is convicted of a criminal offence or on death or dissolution of the other party. For example: If Xander enters into a contract with Chrispo Talent agency and Xander dies, the agreement is terminated. In the case of *O'Sullivan and another v. Management Agency and Music Ltd. and Others*⁶, the Court established that the agents and the client share a fiduciary relationship. This was a dispute between a musician and the agency, wherein the musician entered into multiple contracts due to the undue influence of his agent. The dispute resolution clause indicates the kind of resolution process that parties would engage in if a conflict arises between them. For example, suppose Xander and the talent agency agree that they go through a mediation process before going to a court of law. When there is a dispute between them, they will go for mediation before going to Court. The governing law clause, as the name indicates, states what law

would prevail in case of a dispute. The governing law should be what the artist is convenient with.

Conclusion

A talent agency serves as an intermediary between professional and competent job prospects and organisations seeking such people. A talent agency agreement may be either exclusive or non-exclusive. The exclusivity, mode of payment, percentage commission, and applicable legislation for contract enforcement should all be explicitly stated in the contract, along with its duration and termination. However, the relationship between the talent and the agency might become strained if the fundamentals are not carefully discussed and accurately written into the agreement. For this reason, both parties should spend some time in the beginning carefully considering the most important topics so they can go on to concentrate on more crucial matters, such as putting the talent in the limelight.

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Breaking Down Compliances for Audio-Visual Content for OTT Platforms

Introduction

With the increasing development in technology over-the-top (OTT), players like Netflix, Amazon Prime and Hotstar are expanding rapidly in the entertainment industry. OTT provides content through the internet without a third-party operator

- **Anjali Saran & Preemal D'Souza**
controlling or managing the content. A user can access this content at a nominal fee. It bypasses traditional gatekeepers like cable and satellite connectivity and is a more streamlined means of providing content to a broader range of audience. Intellectual property rights play a significant role in OTT platforms. The OTT service provider itself

owns these rights. This provides an opportunity for future revenue generation and offers licensing authority. Copyright law plays a vital role as it aims to give credit for creative works to their creators while ensuring that the public has a right to knowledge. This is because copyright infringement is incredibly simple on the internet, which is viewed as a media without boundaries. Various factors, including copyrights, trademarks, and licensing, must be considered for content to be regarded as secure from the issue of ownership.

About OTT Platforms

Since there is no formal legal framework governing OTT Platforms, they have remained primarily uncontrolled, except for the general laws of the Information Technology Act of 2000 and the voluntary self-regulation codes governing online content.¹ In the past, many requests have been made under the Right to Information Act of 2005. This has raised concerns about the authority in charge of content regulation and the regulation itself. The Ministry of Information and Broadcasting confirmed that they lack the jurisdiction to regulate OTT Platforms in response to one such inquiry dated October 25, 2016. The Delhi High Court demanded clarification on the regulations governing OTT Platform material in a notification sent to government agencies in 2018. In response, the Ministry of Information and Broadcasting stated that it needed more power to govern these platforms and that it was not required to give such platforms any permission. The Ministry of Electronics and

Information Technology similarly stated that it did not police online content and that there are no rules for the same.²

Legal Compliances of OTT

Though no explicit laws regulate online content, few articles under The Information Technology Act, 2000 (IT Act) regulate certain aspects of the same. These include Sections 67A, 67B, and 67C of the IT Act.³ According to these provisions, anyone found guilty of transmitting or publishing pornographic or sexually explicit material, especially when it involves minors, will be punished with imprisonment. The Central Government is also empowered to issue directives under Section 69A of the IT Act that forbid disclosing specific information to the general public.⁴ The IT Rules were implemented to control social media intermediaries and digital media. Rule 2(i) of the IT Rules 2021 defines digital media as digitalized content that can be transmitted over the internet or computer networks and includes content received, stored, transmitted, edited or processed by any intermediary, publisher of news, or publisher of online-curated content.⁵ According to the Code, OTT websites must ensure that no content that is expressly forbidden by a court of law or prohibited by law is broadcast. The OTT platforms must assess the content, and only after considering several variables and their effects should they publish it. The criteria for evaluating such content include whether it compromises India's sovereignty and integrity, jeopardizes national security, harms relations with

other nations, or has the potential to incite violence and disturb public order.⁶ The OTTs should also examine the user's practices, beliefs, and religions and if they are disrespectful of any specific beliefs or religions. OTT platforms must also categorize the material according to its theme, type, tone, impact, and targeted age of the audience. All OTT platforms must also score their material and add a content description to tell the public about the theme to assist consumers in making educated decisions. The user should not be able to access any "A" rated content without providing the required age verification for content with that rating.

GENERAL COMPLIANCES TO BE FOLLOWED BY OTT

Any content to be viewed on any platform, be it electronic media or print media, must adhere to some general guidelines. In the case of *Romesh Thappar v. State of Madras*, the dissenting judgment stated that public order, decency and morality should be considered valid grounds for any content to be published or broadcast.⁷ Subsequently, these were also included within the scope of Art. 19(2) of the Constitution, which acts as reasonable restrictions to freedom of speech and expression, has been granted to all forms of multimedia.⁸

Therefore, OTT, emerging as a new form of airing platform with different audio-visual content, is an important form of media that also has to adhere to this basic guideline. As mentioned before, the content on OTT doesn't have to offend any community across religions and castes, as well as

should also not result in harm to any living organism (i.e., animals or plants). Also, for the series being shot at heritage sites like the Taj Mahal, Ajanta Caves, etc., precautions need to be followed by the crew to ensure that no artefact is harmed during the shoot.

This is also the reason why during the airing of certain movies, a *Warning* is shown. They usually appear as follows:

*"Warning: this comic occasionally contains strong language (which may be unsuitable for children), unusual humour (which may be unsuitable for adults), and advanced mathematics (which may be unsuitable for liberal-arts majors). No animals were harmed during this shoot. No offence is intended towards any products or individuals featured in this video."*⁹

Such types of warnings are common, especially for period dramas, wherein the movies or series deal with some historical figure. Such types of compliance are a must to be followed. If observed carefully, the warnings also range, depending upon the type of content on the OTT platform. It may span from talks about sexual abuse and violence to drugs to inappropriate language being shown. These are done to avoid lawsuits being filed for content that might be considered offensive to some people. An example of this can be seen in the movie *Padmaavat*, wherein, in the song, *Ghoomar*, the female protagonist's costume had to be modified due to the people of a particular community being offended by it. Even the OTT series *Tandav* was in great trouble due to its name closely being

associated with an important deity of Hinduism. Even popular international shows like Game of Thrones have been called out for being vulgar. It was said that the series tried to malign the name and the esteem associated with it. If these restrictions were not enough, OTT must comply with the enemy character concept. This is a concept wherein an enemy country's products and services are prohibited from being used or aired. The Indian Government recently banned the Pakistan-based OTT platform, *Vidly*, mainly due to this reason. Even the international OTT platforms in India, like Prime Video or Netflix, need to be careful regarding the content to be put on display for their Indian audience.¹⁰ OTTs operating in India also have to keep in mind India's various rules and regulations, for example, following the Emblem and Names (Prevention of Improper Use) Act, 1950, or the Flag Code of India, 2022. Any content that is in derogation to these Acts will be viewed strictly as offences and will be liable for punishment. These general compliances form the crux of OTT platforms that need to be adhered to, and violation of any of these conventions will attract the wrath of the Government and the public.

Reviewing of OTT Content

The non-presence of any formal and legitimate rules makes one think that OTT platforms are uncensored. In fact, during the Covid times in 2020, the use of OTT platforms sky-rocketed due to this very reason of airing anything without following much compliance. Subsequently, numerous cases were

filed before various authorities and Courts across India for regulating and reviewing the content on the OTT platforms. The Supreme Court then started dealing with the issue at hand. In a past virtual hearing with respect to the denial of a pre-arrest bail request recorded by Amazon Prime's Head of India Originals by the Allahabad High Court, it was opined by the Supreme Court that the enhanced IT rules "lack teeth" as there is no arrangement for indictment or fine. The rules don't do what's necessary to keep regulated "obscene/pornographic" content. The Court then made plainly it was agreeable to "screening" content displayed on these stages. That's what it noticed, *"Conventional film seeing has become wiped out. Presently, people, in general, see movies and web series on these stages. Should there not be some screening? We feel there ought to be some screen... There is p**n in certain movies."*¹¹ This is one of the reasons for both the introduction and failure of the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Chapters I-IV of this document deals with how content on any media (including OTT) is to be regulated, wherein 3 authorities are empowered to deal with the matter. The first is the Self-Regulating Mechanism, the second is the Body of Individuals from the field regulating content, and the third is the Oversight mechanism, wherein the Government monitors the content. Although these mechanisms exist, they can be availed only when a complaint is filed, meaning the contents are still largely unregulated.¹² This leaves scope for very few things to be regulated on OTT platforms. There is no concept of a Censor Board for OTT content, which

makes the reviewing process tricky and largely unchecked.

Conclusion

OTT platforms are emerging as a newer way of entertainment in India at a rapid rate. However, with the increasing use of these platforms also comes a rise in the cases against the content. OTT platforms are also facing certain compliance issues. It is important to note here that though a formal setup is missing, the content creators can take steps to ensure that their creation is within limits. The creators of such content should follow a process of self-regulation right from when the idea is conceptualized to the post-production process and ensure that all forms of compliance, legal and general, are followed. Due diligence should be taken to ensure that no objectionable content is aired on the platforms. Along with the self-regulation mechanism, the Government should also try to make a formal framework encompassing all these components to universalize the compliances and should also come up with ways to adjudicate upon these issues. With the dissolution of the Film Certification Appellate Tribunal, the responsibility now rests with the Government to ensure that films/content aired are not unacceptable. Another way is by generalizing the Censor Board to include OTT as well, although it might become a tedious task to regulate the vast amount of this OTT content.¹³

There is, hence, a critical requirement for correction in the ongoing administrative system to guarantee

the applicability of the essential guideline, for example, “Must Provide – Must Carry” across all methods of conveyance for broadcast content across all stages regardless of mode or method of conveyance including OTT platforms.¹⁴ This will warrant transparency and a level battleground and give impartial access to content to all purchasers on every one of the media.

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Safeguarding the Rights of Musicians in The Music Industry of India

- Sarah Wilson

Introduction

One of the most unscrupulous and controversial contracts within the music industry, known as the “360-degree deal”, also known as the *multiple rights deal*, where the record labels retain complete control over an artist’s publishing rights, touring rights, as well as merchandising rights. This results in subsequently assigning all economic rights of the artist to the profit-oriented record labels. This is only an example, of the unequal bargaining power within the music industry, which results in long-term distress to the artists. The *Current status quo* in most cases, although it differs from a case-to-case basis, depending on the contractual clauses, the status quo is the record label paying the artist a percentage of the record sales, which is the royalty, in exchange for the selling his or her entire sound recording to the record label. This ownership leads to the record label having the right to distribute, reproduce, communicate and license the work to anyone as they suppose.¹ This article discusses the scope of protection granted to artists under the Indian Copyrights Act, 1957, the unconscionable contracts and the inequality of bargaining power within the music industry and suggests possible amendments.

The Unconscionable Contracts & The Inequality of Bargaining Power Within the Global Music Industry

Unconscionable contracts may lead to long-term arrangements of granting exclusive rights to record labels with exploitative royalty reductions within the terms of the contract. One party is in a dominant position, and the weaker party can’t renegotiate the terms of the contract. Even though this would be an Unconscionable contract, merely on the ground of inequality it can’t be held as unenforceable, unless it is an instance of unreasonable restraint of trade or under influence. These unconscionable contracts take place when there is an inequality of bargaining power. Therefore, the music industry is subject to many such unconscionable contracts, which have prima facie inequality of bargaining power, however, can’t be held as unenforceable because it doesn’t fulfil any ground of unenforceability of the contract.²

The Protection to Indian Musicians under the Indian Copyright Act, 1957

Under the Copyright Act there exist two kinds of copyrights in musical work:

1. Sound Recordings
2. Musical Compositions

In musical compositions, the ownership lies with the composer, lyricists and songwriters of the music.

This includes the arrangement and combinations of lyrics, notes, rhythms or chords. The performer/singer of the song can claim the performer's rights and morality rights.

In the absence of any contractual agreement with the recording label, the performer can claim acknowledgement and credits on the record via the means of the quasi-contractual agreement under sec. 70 of the Indian Contract Act (1872) as was held in the case of *Neha Bhasin v. Anand Raj Anand*.³ The performer shall be entitled to royalties in case of making of the performances for commercial use as was held in the case of the *ISRA v. Chapter 25 Bar and Restaurant*.⁴ The lyricist, on the other hand, owns the copyright over the lyrics, as a literary work under the act. However, the master copyright and the whole ownership of the sound recording lays with the producers of the music. This includes electronically, mechanically, or digitally produced work through speaking, singing, or fixation of other sounds. Therefore, the ownership of sound recording and the ownership of the musical composition, is with two different entities unless the artist himself is the music producer, which is not the case for most minor and struggling artists. Under Section 17 of the copyrights act,⁵ the author is the first owner of the copyright unless the exception of the contract of service is applied, then the work created in the course of employment would all be owned by the employer. Which is the challenge faced in the music industry today, because sec. 17, facilitates the corporate ownership of the work created under the course of employment. Therefore, the producer of the sound recording has complete ownership over

the sound recording, and the composer loses his rights under the contract of service with the producer/record label, as was held in *IPRS v. EIMPAA*.⁶ It is the terms of the contract binding the two parties, that has to be looked into in order to determine who has the copyright ownership. In India, as well, the glorification of the author's rights within a copyrighted work is merely a cloak to cover up for concentrated industrial exercises which have been modelled after the work-for-hire provision in US copyright law, which facilitates the ownership of the work in hands of profit-oriented corporates rather than the creator himself. It is standard industry practice, for the creators to collectively assign the copyright in the masters to the record label in advance when the artist signs his first record deal, which subsequently results in a lose-lose situation for artists further resulting in shrinking pay-outs.

The Future of Independent Musicians and the Way Forward

A possible way out of such contracts is the amendment to sec. 17 of the Copyrights Act, ensuring that the corporations may never become the first owner of the copyrighted work, but rather the ownership remains with the artist himself. This would ensure the artist's equal bargaining power in future contractual agreements with the record labels. Rather one can devise a revenue-sharing arrangement, without the requirement to assign the work, ensuring the author and the record label, could share revenues on broad dissemination and other services. Under this, a 50-50 approach, where the half is a non-assignable, remuneration right of the

artist themselves, and the other half could be assigned to the record company exclusively. Although the music industry is host to several unconscionable contracts, detrimental to artists, there is still scope to establish an effective judiciously shared revenue system, contributing to the social discourse, catering to the needs of both, the artist and the record label.

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Paparazzi vs. Celebrities: Who Owns The Image?

- Prarrthana G

Introduction

The paparazzi culture started booming during the 1950s, and they soon became an integral part of the film and media industry worldwide. The photographers needed celebrities, and the celebrities needed the photographers. In the current times of constant technological advancements and the rise in popularity of social media, this soon became a legal problem as many photographers would financially benefit from posting the pictures of celebrities by mostly violating the celebrity's right to privacy. Celebrities no longer had the right to their publicity nor any control over any images that were presented or circulated in the public's eyes. This raised the question of who "owns the image?", was it the one who photographs it or the one who is getting photographed? Over the years, many celebrities have sued many photographers and media outlets for

posting pictures of them without their consent, many claiming that they owned the pictures as it was of them. The simple answer to this is no; the photographer owns it as his artistic work.

Provisions under the Indian Legislation

The debate between personality rights and artistic work rights has been ongoing regarding the ownership of paparazzi photos. Under section 2(d)(iv) of the Copyright Act of 1957, it is considered that anyone taking a picture is the author of that work, and therefore it is artistic work. Section 2(c)(i) states that a photograph qualifies as an artistic work. On the other hand, personality rights have been mentioned in several Supreme Court rulings even though they are not statutorily recognized in India as of yet. The Hon'ble Apex Court ruled in the ICC development case and held that a person's

voice, signature, and characteristics would all be considered his personal rights.¹ In the case of *Titan Industries Ltd. v. Ramkumar Jewellers*, the Court referred to "personality rights" as an "enforceable right in the identity or persona of a human being."² In the same case, the defendant (Ramkumar Jewellers) used an unauthorized photograph of Amitabh Bachan and Jaya Bachan wearing the plaintiff's jewelry (Titan Industries) to promote his goods. The plaintiff was prohibited from using the unauthorized photo of Amitabh Bachan and Jaya Bachan by an injunction issued by the Delhi High Court. This case defined and protected a celebrity's right to publicity. The right of publicity is an intellectual property right that guards against the misuse of a person's name, likeness, or other indications of their personal identities—such as their voice, signature, likeness, or photograph—for commercial gain. Legislation governs the copyright of any work in the relevant jurisdiction or its respective country. Subsequently, the respective country's Copyright Act protects the paparazzi's rights. According to Section 17 of the Indian Copyright Act of 1957, the "author" of any work is the original owner, who also has the copyright to it. The photographer is considered the author of the photographs under Section 2(d). Therefore, it fairly follows that the paparazzi have the initial legal ownership of the pictures they take. Only if the use of these images falls under one of the exceptions listed in Section 52 of the Act, such a right can be disputed. The copyright for these photographs is considered to be an infringement under Section 51 if anyone else distributes or publishes them without

authorization. According to Section 51(b), any act that results in the sale, exchange, distribution, or public display of a work without the author's or owner's consent constitutes a copyright violation.³ So, in a broader sense, even the subject of the photograph would not publish or distribute it unless they obtained the paparazzi's permission.

Paparazzi Pictures - Are They Considered Fair Use?

There is no ambiguity in the law because the person who takes the photo is clearly defined as the author in India. Despite what the Copyright Act stipulates, no celebrity could assert fair use or dealing in relation to photographs protected by the copyright. Sharing a photo for "private and personal use" on a public account is clearly commercial in nature and goes beyond the bounds of private communication. When it is addressed to a small group of people, it is regarded as private communication. When made on a social media platform, posts do not have the privilege of being referred to as private communication. Since posting such a photograph amounts to "public" communication, the copyright owner has the right to communicate with the public. In this situation, the celebrity's claim of fair use would not be considered a strong defense, especially given that the author is legally separate in accordance with the law.⁴

A Global Perspective

One of the newest celebrities to face charges for publishing a paparazzi photo without permission is

Emily Ratajkowski. The lawsuit was brought by Eva's Photography (the business that hired the aforementioned paparazzi) over Emily Ratajkowski, a model and actress, who used the photo on her personal Instagram account. A fashion company also shared this post on its website for everyone to see. Emily was the only target of the complaint, which was made for "misconduct and violation" of the United States copyright laws. According to the judge, the actress's alteration of the image by writing "mood forever" on it may have qualified as a transformative use, shielding her from copyright claims. Transformative use, also known as transformation, is a type of fair use under US copyright law that builds on a work protected by copyright in a different way or for a different purpose than the original and doesn't violate the copyright of the work's owner.⁵ In another case, Robert Barbera, a photographer, sued singer and artist Ariana Grande in 2020 because she posted paparazzi photos of herself on her Instagram account. The plaintiff had asserted that the artist was violating his copyright because he had not granted the artist prior authorization. The plaintiff argued that the act should not be considered fair dealing because the artist used the image to advertise her merchandise. The parties reached a settlement amount that was paid by the artist to end the lawsuit.

Conclusion

Unless and until they manipulate the photo or violate any particular rights of the celebrity without permission, the paparazzi's rights over their artistic work in photography are protected. However, there is a need for legislation in the country to balance the interests of both photographers and celebrities. The photographer is clearly the author of the photograph according to Indian law; however, it is important to discuss whether celebrities should also be considered co-authors or co-owners of the photographs.

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Analysing the Various Kinds of Merchandising Rights

-Aditi Shandage

Introduction

Merchandising is known as the marketing of any sales strategy to promote products in retail locations and influence consumer behaviour to increase sales. Now, Merchandise rights, in simple words, means the rights to promote, sell, and grant a licence for tangible goods that are connected to one's copyright ownership, including t-shirts, posters, action figures, games, and even the cover art of books. They are a component of the collection of "derivative" rights that the copyright naturally confers.¹ India initially had the trade and merchandise act of 1958, which was later repealed and replaced by the Trade Mark Act of 1999. There is no specific provision for merchandising right now. The elements under merchandising rights are all protected under IP law. Merchandising rights can be of various types, i.e., character, personality, image etc. For example, merchandise rights under sports can further be of sports personalities or teams. A merchandising right can be carried out either by the owner of the merchandise or any other person who holds Intellectual Property rights over such merchandise.² A Merchandising Agreement may cover a character, mascot or logo that is easily recognized by the public. It might also be applied to a piece of software or other patented technology, such as a production technique. These contracts could be

exclusive or nonexclusive. A merchandising agreement allows you to specify the roles and obligations of each party, including who is in charge of protecting the rights to the product you are licensing. If you are a retailer or manufacturer and you would like the licence to make or manufacture a product for distribution and sale and you own licensing rights to a product and would like to grant a licence for another company to utilise, you need to complete a Merchandising Agreement paperwork.³ The terms under which the owner of intellectual property, often in the form of a trademark, service mark, or copyright, allows a party, known as the licensee, the right to use the property for distribution, marketing, and sale are described in a merchandise licence agreement. Most typically, this property takes the shape of a made-up figure or mascot, well-known trademark, motion picture, television programme, or video game. However, it can also be used to transfer ownership of a piece of software or a production method that is patent-protected.⁴ Merchandising cases present a kind of mixture between word-based trademark infringement claims and product configuration: which generally contains preserved and protected marks, but the marks are mostly product features than brands. The "free riding" that would occur if rivals could sell T-shirts with their logos on them is

the argument used by supporters of the merchandising right to support their position. Since such rivals would be "trading on their goodwill," they are likely stealing something that should by law belong to the owner of the trademark.⁵

Sports Merchandising

Since business and other related activities are connected to merchandise, the majority of problems in sports merchandise are civil in character. These conflicts frequently include private persons, rival economic entities, or rival sports figures or athletes and corporations. The majority of the problems related to intellectual property, licencing, and compliance with contractual responsibilities. Sports merchandise can be divided into three categories: merchandise connected to sports personalities, merchandise connected to teams or clubs, and merchandise connected to occasions, leagues, and competitions.⁶ Due to the fact that IP covers patents, trademarks, designs, copyrights, and other intellectual properties, IP Law is a significant portion of the regulations governing sports merchandise. For instance, Real Madrid Football Club sells and distributes a variety of merchandised goods in addition to playing football, such as hats, bags, bottles, apparel, and so forth. Therefore, it is necessary to safeguard the logo and other intellectual properties against unauthorised use and copying.⁷ India considers *Zee Telefilms v. Union of India*⁸ to be the Magna Carta of sports law. The case of *K Murugan v. Fencing Association of India, Jabalpur, 1991*⁹ likewise emphasised the value of

sports. In conclusion, sports in India have attracted a lot of attention, even from a legal standpoint, with the introduction of business in sports and the growth of commercialization.

Personality Merchandising

The rights that are available to a person to allow him to safeguard his rights as to his name, reputation or any other component of his personality are known as personality rights. For example, Actors and celebrities need to safeguard their personality rights because they are widely admired around the world. This is to make sure that no one is unfairly using their image to promote their products. It's interesting to note that commerce can also utilise personality rights. An actor might team up with a brand or seller and launch a company using his persona. David Beckham and Sachin Tendulkar, both famous athletes, have copyrighted their names to prevent others from using them for profit. Even Amitabh Bachchan has copyright over his voice, face and name.¹⁰

Character Merchandising

At the Walt Disney Studios in Burbank, California, character merchandise was first organised as a system in the United States in 1930. (California). When the company created its animated characters (Mickey, Minnie, and Donald), one of its employees, Kay Kamen, established a division dedicated to the secondary business exploitation of those characters. To the surprise of most, Kamen was successful in obtaining many licences for the production and sale

of low-cost mass-market items like banners, shirts, toys, and other things. Character merchandising is the practice of profiting from well-known characters by utilising their voice, appearance, or language. Character merchandise can be regarded as legal if it is done by the owner or another authorised individual, but it is illegal if it is done by anybody else. The producer has the sole rights because they are the copyright owners of every act in a movie, animation, or other programme. Any advertisement, poster, or visual representation is protected as a creative work under Indian copyright law.¹¹

Conclusion

It can be well understood via the above discussion that even though there are various mechanisms to solve the merchandising issue of various types with the help of Article 21 of the Indian constitution, the copyrights act, the trademarks act etc, but without having a specific legislation or some sort of harsh mechanism the problems of merchandising cannot be solved completely. All these indirect legislations are not able to help the suffering parties to the best of their demands as the courts merge merchandising cases in the larger IP law. Hence, a new legislation for merchandise alone is the need of time.

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‘De Minimis’ In The Indian Context

- Ananya Singh

Introduction

Intellectual property rights have been formed to protect the creative ideas or inventions of their inventor/creator. Hence, many legislation and legal doctrines have been formulated to protect this right. One such Doctrine is the Doctrine of ‘*De Minimus*’. The term “de minimis” is derived from Latin and means “pertaining to minimal things”.¹ The phrase “*de minimis non curat lex*,” which translates to “the law does not care for minor things”, is the source of the legal term de minimis.² De minimis is a legal theory that permits minor or insignificant issues to be omitted from a rule or requirement. The Courts may employ it as an exclusionary tool to eject unimportant issues from a case. A majority of the countries of the world does not statutorily recognize this Doctrine. However, this Doctrine enjoys a certain degree of protection in India and the USA.³

‘De Minimis’ in India

De minimis clauses are frequently used in contracts as preventative measures to limit the applicability of restrictions where a party's failure to abide by such limits only has a minimal or trivial impact. They can also be utilized to establish a bar for pursuing warranty claims and as a catalyst for the right to recover loss or damage covered by an indemnity or a right to compensation under provisions for costs. Most nations worldwide do not have laws that explicitly recognize this principle, but Indian Courts have done so. The Delhi High Court, in the case of *Super Cassettes Industries Ltd. & Ors. v. Chintamani Rao and Ors.*, wherein the dispute was regarding the fair use of certain sound recordings and clips of the film made by Super Cassettes and YRF. The Learned Single Judge of the Hon'ble Delhi High

Court rejected the fair use defence inter alia because the Copyright Act provides for specific rights vested in a copyright holder along with specific exceptions thereto, and the Court cannot apply a general principle outside the scope.⁴ Then came along the decision of the Delhi High Court's Division Bench judgment in the matter of *India TV Independent News Service Pvt. Ltd & Ors. v. Yash raj Films Private Limited* in 2012 was the first to use the “de minimis” criterion in the area of intellectual property.⁵ Ten years after that ruling, *Shemaroo Entertainment Limited v. News Nation Network Private Limited*, a case heard by a single judge of the Bombay High Court, furthered the law on the matter.⁶ This case clearly shows the changing standards of the “de minimis” principle established by the aforementioned rulings.

Landmark Case Laws

The Delhi High Court Division Bench was concerned with two combined cases in the 2012 *India TV Independent News Service Case*.⁷ In the first instance, the plaintiff claimed that the defendants had appropriated the opening line of the well-known Bollywood song *Kajra Re Kajra Re* for use in a television commercial. In the second instance, an aspiring singer performed nine stanzas from nine songs that made her famous on the chat show *India Beats*. The plaintiffs in both of these cases alleged that the defendants violated their copyright for the audio files. Without delving into the concept of de minimis, the Delhi High Court's Single Judge heard both of the above-mentioned

joined cases before concluding that only Section 52 of the Indian Copyright Act of 1957 permits the use of copyrightable works by anyone without the author's express permission and that this section does not cover derivative copyrightable works.⁸ The Single Judge ruled that the Defendants' use of the Plaintiff's sound recording, even in the most minute form, would violate the Plaintiff's copyright and then issued an injunction preventing the Defendants from duplicating the relevant sound recordings. As a result, the Single Judge avoided discussing the de minimis according to the Defendants. The Defendants filed an appeal with the Division Bench of the Delhi High Court against the Single Judge's ruling against the joint order made in the two cases. The Division Bench of the Delhi High Court set out three approaches for the adopting of this principle with respect to copyright law. These were- “(i) *substantial similarity analysis*, (ii) *the fair use analysis* and (iii) *applying de minimis where a violation is ascertained to be trifling unimportant or insufficient*.”⁹ The Division Bench analysed the pros and cons of all three approaches in detail and laid down the following factors to be considered for applying *de minimis* as a defence for copyright infringement:

- a) “*The size of the use and the type of harm it may cause*”
- b) *The cost of adjudication*
- c) *The purpose of the violated legal obligation*
- d) *The intent of the wrongdoer*
- e) *The effect on the legal rights of third parties.*”¹⁰

The Division Bench determined, using the guidelines and the relevant evidence, that the first incidence of harm resulted from the use of just 5 words from a song with 5 stanzas, utilised in a consumer awareness commercial and not for any personal financial advantage. Furthermore, the Court determined that the talk show in question in the second case lasted 45 minutes, only nine of which the artist performed at various points, taking up less than 10 minutes of that time overall. The Court further found that the Defendant's sole purpose was to inform the viewers of how the aspiring singer was exposed to the music business and the key turning points she achieved throughout her career. In both cases, the Division Bench decided that the defendant's minor infringement qualified for the "de minimis" defense. Current events, which fall under the definition of fair use and are therefore exempt from copyright infringement, the Defendant also, alternatively, raised Earlier In a recent case, *Shemaroo Entertainment Limited v. News Nation Network Private Limited*, the Bombay High Court discussed the notion of de minimis application to an intellectual property concern once more. Background information included the following: In 2019, the parties signed a contract under which Plaintiff granted Defendant a non-exclusive license to broadcast and use its library of cinematic works on Defendant's news channel.¹¹ The agreement was subsequently cancelled in 2020 when Defendant communicated its inability to continue with the aforementioned license. Despite this termination, Defendant continued to air Plaintiff's filmography on its channel. In addition to asserting that such use of

the cinematographic works was for reporting, the defense also invoked the "de minimis" defense and, in doing so, cited the judgment rendered in the aforementioned India TV Independent News Service case. The Bombay High Court's Single Judge thought about the decision and commented on the qualitative part of the de minimis defence. The Court ruled that factors other than the length of exploitation must be considered. The Court determined that the length of exploitation is important, but furthermore, the Bombay High Court reached the conclusion that such use of the Plaintiff's works would not constitute fair dealing and that such use of the content cannot be excused on the basis of the principle of de minimis either based on the foregoing and taking into account the similar nature of the use of the content by the Defendants under the earlier licence regime. Recently, there has been a case filed by actor Amitabh Bachchan seeking protection against the use of his voice in commercials, without his permission, for generating wrongful gains. This has been viewed strictly as an infringement. Here too, if viewed carefully, the use of de minimis can be applied as the use of voice was based on the five pointers laid down in the *India TV News Service Case*, wherein it was observed that the misuse of the voice could cause serious damage to third parties since the voice being used here is of a renowned person whose voice is generally used for commercials. The Delhi High Court ruled that the voice cannot be used without his permission.¹² However, this Doctrine is still evolving. While India is a country based on the Common law system, and this Doctrine is a part of

common law, yet many of the original common law countries, like the UK, are yet to adopt this Doctrine. Even in the US, this Doctrine is still in its nascent stage. In a recent case of *Bell v. Wilmott Storage Services, LLC*, the Ninth Circuit, clarified the role that the de minimis concept plays in copyright infringement cases, i.e., de minimis is to be ascertained and applied on the basis of the amount of copyright work that has been infringed and not just on the basis of the minimal use of such infringed copyright work.¹³ As can be seen through the various instances spoken about, de minimis as a concept is present in India and is being used for seeking protection. It can also be observed that the de minimis Doctrines of both India and the US run parallel, supporting the length or the amount of work that has been infringed rather than just observing the minimal usage. This view encompasses within itself a wider ambit, allowing victims greater leverage to approach the Court. Therefore, in future, de minimis can become an important part of the IPR structure. Moreover, it can be seen as a way of strengthening the IPR laws of the country by including and formulating doctrines that allow for the protection of the original work and artist to the fullest, promoting potential growth opportunities in the area.

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'I'm Not Getting Paid!' - An Artist's Cry for Help Amidst Shaky Royalty Laws

- Joanna Jacob

Introduction

The quintessential concern regarding one's creative works being given recognition is one thing; ensuring that it gets its due along with credit is another. What has to be granted to any kind of work is its rightful and profitable monetisation. And so, when it comes to creativity, the creators of the so-called or known creations are to be presented with the best settlements in a light that is true to their innovative capabilities and their contribution to society that brings about an influence of its own. Society develops as people evolve. People evolve through creativity, ideas, innovations, and actions - each individual contributes to society's progress differently. Some of the lots take a rather close-knit path, and therein it becomes a special kind that requires itself to be presented and accepted in a manner that the consumption and influences of the said innovations credit the creators each time it comes about. Quoting Edward de Bono "*There is no*

doubt that creativity is the most important Human Resource of all. Without creativity, there would be no progress, and we would forever be repeating the same patterns."¹Based on the belief that every creative mind should get recognition and remuneration, Copyright Laws cover various aspects of the works being registered, protected and monetized. "Works"include literary creations like books, anthologies, journals, newspaper articles, music and lyrics, software programs, databases, etc. These works are given their due credit in the form of 'Royalties' to their creative founder. From the inception of creative works being documented to its contractual bindings and eventually being presented to the public, the continuing process and final goal is to get paid its remuneration. For literary works, it is paid in the form of royalties - commonly understood as legally binding contractual payments being made by an entity to any other individual or company for the use of 'assets' that belong to another.² This

‘other’ refers to the owner/creator of a particular literary work being marketed or sold to another. Such works are copyrighted under the legislated Copyright Act of the particular country. Laws that govern royalties protect these payments made to the owners in order to preserve the rights of the work that was made, and these rights are to be exercised by the owners, unless it has been specified otherwise in any clause or statement in its contracts. To navigate through the same, all the discrepancies must be stipulated and ambiguities within the Act must be delved into.

The Relationship Between Royalties and Copyright Laws

Copyrights are legal rights that have exclusively been given to the creator/originator of a literary creation for a specified period, which may vary depending on the kind of work it may be.³ In intellectual property law, copyrights pose to be the umbrella that protects these innovations by providing exclusive rights in the form of protection against further reproduction, adaptation, publication, performance, or display. In a manner as such, copyright laws control and authorise the use and distribution of creative forms of expression. Usually works are copyrighted before, or at the time of their release or publication. From then onwards, creators are entitled to get paid for it. And hence be motivated to create more such works in the future since the recognition and pay that they get benefits their public persona. On the other side of the spectrum, royalties definitively indicate the payments made for

the work. The fee is paid to the one holding the rights and as an exchange to the use of the particular work that has been copyrighted.⁴ Although this does not infer that the work is owned by them, it only indicates that at that specific moment, the creator gets their due. It does not promise a transfer of the copyright's ownership; instead, it is a form of compensation made to the owner of the innovation with respect to their rights for the use of their work. However, royalties are not specifically defined in the Copyright Act of 1957 since it has various sections that delve into it in specific instances.⁵

The Rights of Owners of Copyrighted Works

The assignment of copyrights is an instance that focuses on the factuality and conveyance of literary works through modes that will be made accessible to the public at large. It can be inferred from Section 18 (1) of the Copyright Act, 1957⁶ that the person who assigns the copyright in favour of another could only do so if it has been indicated to the copyright owner that the terms regarding its use and exploitation would be accepted while entering into the agreement for the same. Whether it be movies, music, books, literature, etc., the right to royalties is paramount for all the begetters. For books, royalties are the calculated amounts that a publisher pays for the book sales to the author in exchange for their rights. The rates may vary depending on the sales, the publishers, and the contracts. For music, the industry is cosmic, and works are areas across colossal spheres. Royalties in this sphere are generally generated through licensing of copyrights. It refers to

the songs, its music, lyrics, and recordings of the musicians and lyricists.⁷ They then become 'assets' to the owner, making them entitled to a 'royalty interest', which refers to the rights of the so-called innovators to collect their fair share for the use and exploitation of their works in the future.

Modes of Assignment and Licensing of Royalties

There is a prevalent undisputed issue concerning royalty laws and copyrights. Although works get their deserving recognition and remuneration, many a times, a lot of it gets lost along the way, i.e., works don't get their due credit, and creators lose out on their rights and interests due to the lack of incentives. This is because royalties are not delivered, and creators' rights are infringed upon.⁸ Stagnation in royalty supplies is one assumption, but what mostly resonates here is the rapid evolution of technology. Access to music, movies, literature and other sources of entertainment has become simpler than ever with access to digital media and online streaming. Platforms like Pandora, YouTube, Amazon, Spotify, SoundCloud, Groove, TuneIn Radio, etc. didn't exist earlier, but now we are able to enjoy the benefits of streaming with the click of a button. CDs, telegrams, gramophones, radios, etc. no longer have any relevance besides antiqued values and vintage fancy. With streaming, people no longer have to pay for such devices and equipment; rather, to access music, they just need to get a subscription which entitles them to unlimited access. Piracy is another significant concern that has been on the rise

for quite some time. In order to keep up the value of music equipment, copyright laws specify certain conditions. Section 19 (1) of the Copyright Act, 1957 states, "*No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.*"⁹ Royalties are not pre-determined, so they will not be paid in advance prior to the commencement of the contract unless it has been agreed upon in exceptional instances. Even if this is the case, it won't be entirely accurate because the amount is variable. To validate such clauses and uphold the purpose of royalties, licensing is mandatory - Licensing is the grant of use of rights through payment of a licensing fee to the owner of the particular intellectual property. These are fixed amounts set on the intellectual assets based on which the royalties are meted out.

Protection Against Unfair Exploitation

The whole purpose of royalties is to ensure the rightful remuneration of creators and see that there are no discrepancies in the process. It must be understood that royalties are not paid as a lump sum amount all at once, but they're paid to the owner of the IP as a recurrence.¹⁰ Even after months and years of the work having seen success, the owner gets paid mostly monthly or on a term agreed upon in its contract. But sometimes artists, even the well-known ones, don't get paid even though their work has been considerably used for a long time.

Many contracts nowadays and even earlier on have dealt with these issues variedly. At the inception of

the agreement itself, the parties specify the terms of the media contract, where the licensor who receives the royalties mentions specific clauses that would make clear the issues regarding the use and exploitation of the creative works. And in hindsight would also specify whether or not one should take permission for the further use of such rights. Section 17 of the Copyright Act, 1957 is an exception to the general rule of the author being the first owner of the copyright.¹¹ This section simply lays down that a person who pays a consideration for the work to be done shall become the first owner of the copyright. This has a flip side to it since the ambiguities lie rumbling. Permission is required in some instances for the use of such works unless specified in the given section, where in actuality, it is not required. Section 107 of the Copyright Act, 1957 states that *others may use original works for activities such as criticism, comment, news reporting, teaching, scholarship, and research.*¹² *The Indian Performing Rights Society v Entertainment Network India Ltd/ (IPRS v ENIL)* - In a major landmark judgement on an issue regarding radio broadcasting, the Delhi HC held that the 2012 amendment does not alter the provisions of the Act. On interpretation whereof of the judgments cited, it was held that communication to the public of underlying literary and musical works as part of sound recording (under authorisation/licence from the owner of the copyright in the sound recording) does not require authorisation/permission from the owner of the copyright for the underlying literary and musical works of the sound recording. It was also made clear that even if there is a live

performance of songs incorporating the literary and musical works of the members of IPRS, even if such songs also have a sound recording for such live performance, a licence from IPRS will be necessary.¹³ In similar judgements, there have been specifications of the multitude of discrepancies on issues regarding payment of royalties due to terms of contracts being violated and owners being scrutinised. In the case of *The Chancellor, Master and Scholars of the University of Oxford & Ors. v. Rameshwari Photocopying Services And Anr, CS (OS) 2439/2012*, the Court had analysed the legality of the issue. Under Section 52 of the Indian Copyright Act, it provided the methods of use and exploitation of literary works that do not require making payments to their original owners through 'fair dealings' under permissible levels.¹⁴ In *Midas Hygiene Industries Pvt. Ltd & Ors v Sudhir Bhatia & Ors (AIR 2004 SC 121)* regarding copyright and trademark infringement, the Court held that an injunction cannot be granted on the grounds of delay in action.¹⁵ In the case of *ESPN Star Sports v Global Broadcast News Ltd & Ors, 2008 (38) PTC 477 (Del)*, the fundamental right to Free Speech and Expression was brought up to signify the right to report news under Article 19(1)(a) of the Constitution of India. But the judge held that repeatedly broadcasting special programs may amount to exploitation.¹⁶ And in *Super Cassettes Industries Ltd v My Space Inc and Anr, 2011 (48) PTC 49 (Del)*, an injunction was sought for the display of copyrighted materials on other websites that were clearly unauthorised, which led to an infringement of copyrights.¹⁷

Conclusion

On determining the various factors that lead to a gap in the laws governing royalties to artists and understanding the ambiguities, it is brought to our notice that the absence of specific regulations regarding royalties is the critical issue that has led to such circumstances in the first place. But copyright laws have been governing the issue effectively except in instances where it requires specific provisions.¹⁸ This has sort of become the reason why artists who deserve their due get lost along the way and remain unknown. Not just that, but their work also misses out on the actual credit that it deserves. Nevertheless, the existing laws provide some clauses that enable them to look into the matters and sort out the issues that have prevailed.

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Analysing the Flaws in the 2012 Amendment to the Copyright Act, 1957

- Manushri Bhat

Overview

The Copyright (Amendment) Act, 2012 was enacted in December 2012 to reform how copyrighted works are licensed and monetized in India.¹ While the amendment's intent was noble- to make licensing and monetizing copyrights less onerous for content creators, the unintended consequence of the CA2012 is that it has only served to further stifle innovation and creativity by suppressing entrepreneurship and competition in digital content creation space. In this article, light shall be shed on three major flaws in the amendment that make it an ineffective piece of legislation that fails to meet its stated goals.

The following fails will be analyzed:

- Section 14A, which amends the Copyright Act 1957 to restrict the use of temporary licenses.²
- Section 29A of the act allows the producer of phonorecords to breach the reproduction right granted to the copyright owner of the phonorecord.³
- Redundancy of Section 31C mandating a statutory license for cover versions.⁴

Issues

Section 14A of the Amendment Act prohibits “intermediaries” from granting temporary licenses

without the copyright owner's permission. The term *intermediary* is not defined under the Copyright Act, 2012. However, the definition of the term *intermediary* used in the UK Copyright, Design and Patents Act, 1988 includes entities such as cable operators that distribute TV content on behalf of broadcasters as well as internet intermediaries like Youtube and Facebook.⁵ These entities would not be able to grant temporary licenses without first obtaining the written permission of the copyright owner as mandated under Section 14A.⁶ As a result, these companies would have to approach individual copyright holders individually and negotiate to obtain the necessary permissions before distributing the content to their customers. This would result in higher costs and significant delays for the companies involved, hindering their ability to compete effectively with other internet service providers and online platforms.

Redundancies and Ambiguities

This would be especially problematic for smaller companies that may or may not have the resources or expertise to negotiate regularly with numerous copyright holders and licenses. It would also encourage monopolies in certain markets and reduce competition and innovation in those areas, as major players could dominate the market due to greater resources and economies of scale. Section 29A of the CA2012 allows the producer of a phonorecord to exploit the same work in multiple formats as long as the different forms of the phonorecord do not differ in quality or performance.⁷ For example, suppose an

artist records an album in stereo or mono. In that case, the producer could use the recording in both formats as long as they are identical in quality and performance. This would essentially allow the producer of multiple versions of the same record without having to obtain the permission or license of the original copyright holder. Similarly, suppose the artist had recorded the song in different keys. In that case, the producer could exploit the song in any of the different keys as long as they were all identical in quality and performance. Possibly the most unnecessary part of the Act is Section 31C, which calls for a statutory license for cover versions. Section 31C(1proviso) reads: “*Provided that such sound recordings shall be in the same medium as the last recording unless the medium of the last recording is no longer in current commercial use.*”⁸ The definition of “*commercial use*” is evolving quickly. Physical recordings on CDs and cassettes are no longer used as frequently as they once were. Most of the time, musical pieces are used in digital contexts like online streaming. Due to the frequent pre-release creation of illicit copies online, it is now more difficult to detect piracy. In addition to the above, multiple other factors are matters of concern overall.

Conclusion

The amendment expands the definition of fair use to cover a wide range of activities than was initially intended. As a result, it puts the responsibility on individual users to determine whether a particular use would be considered fair. It also removes

important protection for online services that host user content and allows content owners to sue them if a user posts infringing material on their sites.⁹ Furthermore, the amendment expands the exclusive rights granted to copyright holders to provide them with more excellent protection for their work. While these changes are intended to provide copyright protection for online content creators, they could lead to increased licensing fees that discourage people from creating or sharing content online. These changes could also negatively affect internet services such as search engines and social media sites that rely on user-generated content. Overall, the changes imposed by the 2012 amendment are designed to protect the interests of the copyright holders at the expense of everyone else.

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Idea-Expression Dichotomy In The Streaming Age: A Tale As 'New' As Time?

-Samrudh P

Introduction

In Copyright Law, the most accepted theory for the justification of such protection is to incentivise and foster creativity. This also signifies that the expression of an abstract idea is being protected and not the idea per se. As there can be multiple approaches towards expressing an idea, all of these different expressions should co-exist in order to

eschew infringement.¹ Justice Brennan defines this dichotomy as “the essence of copyright law is the distinction between protected expressions and unprotected ideas.”² *Baker v. Seldon*³ is one of the first idea-expression cases from the US. It laid down the differentiation between idea and expression and granted protection to only the latter. However, this differentiation albeit laid down since the inception of

copyright law, intricacies relating to the same still persist even today. In the above-mentioned case⁴, the plaintiff had developed a specific approach to accounting and the case revolved around if the defendant had infringed his proprietary rights over his invention by using the same idea. The court decided in favour of the defendant as the expression of the same idea was different. This dichotomy exists today along with its principles and tests to figure out if a contention is an idea or an expression or an only approach towards expressing an idea. The doctrine of merger is when an idea can possibly only be expressed in a certain way, and if so then the expression cannot be granted with protection. The same was held in the case of *Harper & Row Publishers v. Nation Enters.*⁵ however, in the field of cinematography, the idea of a story might stay the same, however, even the approaches to it might be similar. In such cases, as it usually is in movies and series, the differentiation becomes a bit intricate. Nevertheless, it can be understood through a comparison of different jurisdictions and approaches.

The Genesis of the Dichotomy

The opinion of the idea-expression dichotomy isn't new to the Indian Jurisdiction, there have been opinions on the same throughout history. The first-ever such a decision can be dated back to *Baker v. Seldon* which first laid down the understanding of the concept. The same was also reflected in *Nichols v. Universal Pictures Pictures Corp.*, which was concerning substances and plays.⁶ It also opined that

the idea of expressing the thought isn't related to the expression of the plot, i.e, the storyline of any play can be similar and can have its roots from other plays or books as well, and can also be an interpretation of any other movie, book, essay, poem or any other source of literature. But what is essential is that the expression of the storyline or the idea of the expression shouldn't be the exact same as the copyrighted one. And another crucial part is that any copyrightable entity doesn't require formalisation or registration as any creative entity is subject to copyrightability per se. The same can also be seen in the Copyright Act, 1957. As the roots of the legislation can be seen in other jurisdictions and approaches. Albeit the approaches taken in other jurisdictions can be different, as in some jurisdictions any creative entity cannot avail protection unless it is registered with the department. And in other some, basic protection can be availed; however, in order to claim compensation for infringement and such, registration is obligatory.⁷

Its Position in India

In India, the case that brought about the demarcation between idea and expression can be seen in *RG Anand v. Delux Films.*⁸ Where the aggrieved party was a playwright and his allegation was that the defendant had copied fragments of his play and incorporated the same in a movie. The matter had reached the supreme court. It subsequently opined that there exists no infringement in the contentious matter. As its justification was that only the idea was shared by both the play and the movie. However, its

expression was different, and ergo there is no encroachment. It also further laid down a test to analyse if there is infringement or not. The test revolves around spectators and their impression of both the subject matters at hand. If the deduction is that both entities are the exact imperatives of each other then it can be deemed as encroachment. This principle and the same test are widely followed even today, although the case was back in 1978. In the case of *R. Madhavan v. S.K Nair*⁹, the Kerala High Court also opined that some mere similarities and other instances aren't sufficient enough to be qualified as infringement. It also ratified the seven-point preliminary laid down in the *R.G Anand* case laid down by the Supreme Court. The essence of this decision is also reflected in Sec. 13 of the Copyright Act, 1957, which talks about fields that attract the protection of copyrightability. And an idea isn't included in its ambit.¹⁰ The criteria of ordinary observation were also established in the same case. This was further followed in the case of *MRF Limited v. Metro Tyres Limited*.¹¹ where the Court additionally observed a few more criteria to test encroachment amongst movies and other film productions:

1. Comparison of the substance, foundation and treatment of the two entities in contention.
2. Reasonable Man's Test: The ordinary viewer's opinion if one is a derivative or copy of the other.

The Court also defined that a copy of a film is one that substantially, fundamentally, materially and

essentially, resembles or reproduces the original film.¹² In the case of *Maddock Films Private Limited v. Shiboprasad Mukherjee* (2017), the same criteria of ordinary observation were upheld and the decision of the lower court was agreed upon. Which was the issuing of an injunction against the release of a new film called 'Hindi Medium', which was allegedly a copy of a Bengali movie with the exact same plot. The requisite tests were applied the injunction stayed in place as the movie was indeed a copy of the older Bengali movie. As it matched the instances and wasn't merely a similarity between the two productions.¹³ Another recent case as such is *Vinay Vats v. Fox Star Studios India Pvt. Ltd.*¹⁴, where the Court had to decide between two contradicting judgements from the past and deem which one is more relevant in the current scenario. The necessary tests were also applied and the infringement was decided.

Conclusion

This case was in 2019, which proves the fact that although the judgement and the idea of the contention have been cleared decades ago, the problem and new cases concerning the same will always be present. And in contemporary Indian society, where creativity and production seem to be booming, there will be more cases regarding the same old idea-expression dichotomy. Even though the contention is old, its application remains as new as time. This is solidified by the recent cases relating to the same as well. But the problem of examining the infringement can still go a long way. Currently, only the facts and a few other tests are the basis for

the decision on infringement. With soaring creativity also comes similar and intricate expressions of the same ideas, which would subsequently call for better tests and approaches to determine the infringement of such copyright. Sure, the decision in the RG Anand case does act as a basis and a landmark judgement that governs all rising cases concerning idea and expression. When compared to the demarcation of these two in the US, it can be seen that the definition is pretty clear. However, in India, the clarity isn't even provided in the legislation per se. which also leads to only judgements to rely upon. Thus, there can be more work that can be put into, in order to ameliorate the situation in the country.

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A Comparative Analysis of Posthumous Personality Rights around the World

- Shreya Sampathkumar

What are Posthumous Personality Rights?

In providing major relief to actor Amitabh Bachchan¹, the Delhi High Court passed an interim order that the latter's name, image or voice may not be used without authorisation. The progressive approach that the Court took has contributed to the nascent jurisprudence of the limited recognition that personality/ publicity rights receive in India. Publicity/ personality rights are rooted in privacy law - a component of four torts safeguarding a plaintiff's right "to be left alone".² Cultural backgrounds, political influences and social constructs are inseparable from the law's inherent logic and morality.³ The censorship of information from the past has to be legally regulated, barring which it lacks sanction and, as a result, legitimacy. This is true, be it the deceased's interests, those of their successors, those previously affiliated with them and concerned political communities. Personality rights can be understood as a stack of rights revolving around an individual himself as though he were an asset. These rights are used mainly by celebrities since their images, names, and signatures are commercially used to market products and services.⁴ While publicity rights have no value by themselves, they attain value when a celebrity or her assignee enforces the right to derive profit, perhaps through sale or service. What sets such a sale or service apart from an average good or service

is that it bears the name or likeness of a celebrity. Regardless of perceptions surrounding the idea of a publicity right, perhaps as a right of value or a property right, its commercial exploitation typically involves transactions of considerable monetary value.⁵ The expanding market for celebrity rights and the digitisation of media have rendered them omnipresent, explaining the rise in awareness of legal protection granted to protect celebrities' interests in their identities.⁶ The Puttuswamy judgement⁷ set the stage for discussion in clarifying that privacy rights do not extend beyond an individual's lifetime. The most important question, however, remains - despite personality/ privacy rights being rooted in the right to privacy, can the former be said to extend beyond an individual's lifetime by citing a difference in their fundamental natures?⁸ This question has been deliberated below through a survey of different jurisdictions' laws on posthumous personality rights.

India

The Indian stance on personality rights law remains budding, let alone posthumous personality rights law. However, the question of the posthumous persistence of personality rights has occasionally been addressed, as analysed below. The Supreme Court, for the first time, recognised publicity rights as a subset of the right to privacy in *R. R. Rajagopal*

v. State of Tamil Nadu⁹. It was held that personality rights were infringed when an individual's name or likeness was used without his permission.

In the case of *Deepa Jayakumar v. A. L. Vijay and Ors.*¹⁰, the petitioner is the niece of late Dr. J. Jayalalithaa, who was a former Chief Minister of Tamil Nadu, appealed to the Madras High Court seeking an injunction against certain films and web series based on the latter's life that was made without the petitioner's consent; thereby violating the family's as well as her aunt's right to privacy. The Court refused to grant an injunction because one's right to privacy or reputation during one's lifetime ceased with one's death and could subsequently be inherited by one's legal heirs. They reasoned that the makers of the films and web series thus relied on information available in the public domain, and the petitioner's consent was not necessary. In *MakkalTholaiThodarpuKuzhumam Ltd. v. Mrs. V. Muthulakshmi*¹¹, the Madras High Court observed that the posthumous right to privacy of notorious bandit Veerappan, who was gunned down by authorities almost two decades ago, ceased to exist upon his death, and arguing otherwise was baseless since publications had been made even during Veerappan's life that he did not oppose. Nevertheless, the Court safeguarded Veerappan's kin's rights in holding that only information available in the public domain must be used for film and serial depictions.¹² In 2021, Delhi High Court, in *Krishna Kishore Singh v. Sarla A. Saraogi & Ors.*¹³, reaffirmed the inextricability of publicity rights from the right to privacy. The case involved late actor

Sushant Singh Rajput's father seeking an injunction restraining the unauthorised use of his son's name and likeness in media ventures. Relying on the *Puttuswamy* judgement, the Court held that the right to privacy ceases to exist with the individual's death and suggested a deeper analysis of this question in stating that evidence would have to prove the usage of Sushant Singh Rajput's persona was still being commercially exploited by the defendant filmmakers.¹⁴ It can be derived from the above cases that Indian publicity right jurisprudence has developed in a manner that has inextricably intertwined personality rights with the right to privacy; as a result, posthumous personality rights are handled the same way as the posthumous right to privacy.¹⁵ Aside from the law developed by the Indian judiciary, it is interesting to note Section 57 of the Copyright (Amendment) Act, 2012¹⁶, which discusses the possibility of enforcement of the moral rights of a work's author by her legal representatives. It appears that this provision has been made to protect the honour and dignity of an author. Owing to the similar nature of personality rights to copyrights, which protect the author against economic damage, Section 57 of the Act supports the argument to assess posthumous personality law as a separate field of study. Additionally, Section 499 of the Indian Penal Code of 1860¹⁷ punishes defamation of a deceased individual, given that such attribution to the deceased would have harmed her reputation had he been alive, with an intent to hurt her family's or relatives' feelings. Thus, criminal action may be preferred over civil action in such cases.¹⁸ In conclusion, Indian law must create a

statutory distinction between the right to privacy - a largely constitutional right, and personality rights - inherently economic and, similar to copyright, must be assignable to the legal heirs of its holders.¹⁹

China

In short, Chinese law does protect posthumous privacy and reputation. However, there is no direct statutory protection for the same. The body of law relating to the same, under the supervision of the Chinese Supreme People's Court, has gradually been developed by Chinese courts through varying legal interpretations, which Chinese courts have followed, resulting in a judicial law to protect posthumous reputation and privacy. A noteworthy feature of the Chinese system is that (in contrast to the Indian system) it protects posthumous privacy under the name of posthumous reputation for two reasons; one, privacy attained the status of an independent civil right only in 2010 and two, because posthumous privacy invasions have been treated by plaintiffs as posthumous defamation, as will be understood from the cases explained below. The “Hehua Girl” case of 1989 is a landmark case of the Supreme People’s Court. A novel based on the life of the famous late Chinese artist Ji Wenzhen used her stage name - “Hehua Girl”, in a series published in a local newspaper. The series contained several unsettling depictions of her personal life with graphic illustrations. Her mother filed a case claiming defamation, an illegal representation of her daughter’s likeness, and an invasion of her reputation. For the first time, the Supreme People’s

Court recognised that posthumous reputation rights deserve protection and held that Ji Wenzhen’s mother had a right to sue accompanied by civil liability yet to be decided upon. A public apology and compensation were demanded from the defendants, along with an order barring the book’s publication in any form. In 1998, the Supreme People’s Court, in the case of Zhou Haiying v. Shaoxing

YuewangZhubaohangQinfanLuxunXiaoxiangquan, insisted upon the protection of posthumous interest in likeness. This case concerned the appropriation of a dead person’s likeness and portrait by a jewellery store. It was held that the close relatives of the deceased are allowed to sue in case of any tortuous infringement of the dead’s likeness or its commercial use. Defamation is punishable by Chinese criminal law as incitement by slander or as criminal defamation. However, like Chinese civil law, there is no set statute dealing with defamation of the dead. Records show that few cases of this type have been reported under criminal law and that all of them were decided in 1989, after which there is no further information. It can be said, as a result, that criminal defamation of deceased individuals is a substantially symbolic law. Other types of posthumous interests are subsets to a deceased individual’s personality and dignity, which may lead to being charged with defamation in Chinese law.

Copyrights

Several artists consider their work part of their identity and associate it with their reputations.

France, Japan, Canada and Nigeria are some countries with laws that recognise moral rights as special rights, comprising the right of paternity and the right to integrity of artistic works. Similarly, Chinese law includes moral rights in copyright protection. Chinese copyright law provides an author with, inter alia, the right of integrity, the right to publish, author, revise, reproduce, alter, distribute, lease, exhibit, and project. The term of protection of authorship, integrity and alteration under Chinese law is unlimited. It also protects publication rights for the author's entire lifetime plus fifty years after her death.

Publicity Rights

Unlike India, while publicity interest in China originates from the right to privacy, the law protects the economic interest of publicity rights in a deceased person's name and likeness. The Sup. People's Ct. Explanation of Several Issues Concerning Determination of Tort Liability of Mental Damages (2001) bestows upon close relatives of the deceased the right to seek compensation for the mental trauma caused by harm to the dead's likeness, honour, name, and reputation, illegal disclosure and infringement of the dead's right to privacy that contravene public morality and interests. There have been cases concerning the unauthorised commercial use of deceased persons' names - plaintiffs tend to consider this an offence of posthumous reputation, as discussed at the beginning. The practice in China has been to deem the dead's belongings as relevant to an individual's

posthumous reputation, and any violation in the form of indecent treatment of dead bodies, the dead's belongings, graveyards or coffins will be treated as a violation of posthumous personality and dignity. This can be observed in the 2001 Supreme People's Court Interpretation, which allows the dead's close relatives to file for emotional damages in case any violation of the above type occurs.

Canada

Certain provinces in Canada mandate that the right, by statute, extinguishes on death, while by common law, the right is inheritable after death for at least fourteen years. Canadian courts have ruled explicitly that personality rights surpass an individual's death—the judgement in the case of *Gould Estate v. Stoddart Publishing Co.*²² established the survivorship of personality rights. One of the first issues dealt with in *Gould* was that of standing. Glenn Gould, a famous Canadian classical pianist, was held to have personality rights still and, had he remained alive, could have sued for personality appropriation. However, he had passed away fourteen years before the filing of the suit by his estate. The Court held that his estate had standing and settled the position that personality rights could indeed survive the right holder's death in descending to his heirs. However, the longevity of such rights remains unsettled. Considering that academia contends that personality rights are similar to copyrights, the provisions for subsistence of copyright may be considered - 'for the life of the author, the remainder of the calendar year in which

the author dies, and a period of fifty years following the end of that calendar year'.²³ Thus, it is rational to conclude that the limitation period is unlikely to be less than fourteen years. The exercise of the right during the individual's life has not been mandated, and no territory or province in Canada requires the commercialisation of the individual's identity to deem the existence of his personality rights. Courts in Canada generally agree that personality rights extend beyond an individual's death, except for certain statutes that specifically bar the enforcement of personality rights beyond death.

Canadian law perceives personality as a proprietary right rather than a personal one. Personal rights tend to be inalienable, whereas proprietary rights are alienable, descendible, and assignable by contract or will. Through tort, however, personality rights are descendible to the individual's estate, with the term of posthumous protection remaining contentious. The tort of misappropriation of posthumous personality was first established in the Gould case, although the precise duration of the tort was left undetermined by the Court.

South Korea

Article 3 of the Korean Civil Code²⁵ provides that only a living individual can be the subject of rights and obligations. Thus, a deceased individual cannot be the subject of rights and obligations. While this is indisputable for property rights, property rights remain a topic of debate. Like Chinese law, Korean society views any act defaming the dead as likely to

injure the bereaved's honour, and an individual's social standing ought to be distorted even after his death. Article 308 of the Korean Criminal Code²⁶ states that the deceased may also be a victim of criminal defamation on the condition that the alleged fact is false. In South Korea, opposing views exist on the subject - on the one hand, acknowledgement of the deceased's personality rights and, on the other, tortious remedies to the bereaved for the violation of said rights. In South Korea, there are competing views so that while certain scholars maintain that the dead's personality rights must be acknowledged, others take the opposing view that violates said rights. As deliberated under the study of every country's posthumous personality law, moral rights are protected under copyright well into death in South Korea as with India, China and Canada. Thus, it would be groundless to withhold legal protection for posthumous personality rights. In theory, the range of protection of such rights is identical to the range for the living. This range would encompass defamation, personal distortion and the right of informational self-determination. For instance, even a truthful press report on the personal details of the dead may constitute an infringement of posthumous personality interests. The question that South Korean posthumous personality jurisprudence must seek to address will evolve into one of the identities of individuals who are entitled to be granted injunctive relief on behalf of their dead kin.

United States

While federal legislation does not explicitly address posthumous personality rights, the U. S. Does allow for its recognition under statutory and common law. There appears to be no landmark Supreme Court judgement or federal act that governs personality rights. Consequently, afforded protection levels under the right to publicity depend on one's claims. Indiana, California and Tennessee, the U. S. 's entertainment capitals, recognise these rights but differ in limitations, standards, extents, and durations. For instance, some states mandate that the deceased ought to have exercised his personality rights during his life to be protected after his death. In general, posthumous personality rights are recognised and descendible in the U. S., and the prevailing custom is that there is no prerequisite of exercise during one's life. In addressing the question of the descendibility of posthumous personality rights, most U. S. Courts have answered in the affirmative, which bodes well for legal heirs who wish to obtain an injunction and be compensated for damages in respect of unauthorised use of the deceased's name or likeness, maybe even in holograms, for example. California protects personality rights through the State's Common Law Right of Publicity and the Statutory Right of Publicity - both codified in the California Civil Code. Posthumous protection in California spans 70 years after the death of the holder of rights, but only if the latter's legal heirs have registered such a claim with the State Secretary to ensure exclusive exploitation of the deceased's persona and benefit

from any compensation from infringement. According to California law, "any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is identified" requires the celebrity's or his estate's consent.²⁸

Conclusion

The advent of digitisation will magnify the perils of falsification by allowing the rendering of deceased celebrities as virtual characters, especially in online worlds like the metaverse, for instance. Worldwide collecting, information distribution and international marketing of entertainment products have highlighted the need to remove jurisdiction-specific personality rights to replace them with straightforward tortious remedies and relevant private international law. This is of utmost importance to bring forth a balance between personality rights and freedom of expression.²⁹ One's death does not extinguish overnight one's celebrity status. Such status does not merely persist but, in some cases, continues to hold commercial value and be exploited to profit from. Thus, it is prudent to vest the celebrity's legal heirs' rights and the autonomy to restrain any misuse of the celebrity's name and likeness. In light of this realisation, a simplistic view that publicity rights arise from privacy rights that they would extinguish after one's death may not bode well for the forthcoming "digital world". The Indian system may need to re-address the extant jurisprudence on posthumous personality rights.

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Decoding the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022

- Kandalam Abhisvara & Janet Treesa

Introduction

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules 2021) was introduced by the Ministry of Electronics and Information Technology. These Rules govern aspects such as due diligence by social media intermediaries, a code of

ethics and safeguards for digital media and so on.¹ There were several challenges to the IT Rules, 2021; especially Part III —the section of the Rules governing producers of online curated content and publishers of news and current affairs information. These challenges were mostly brought by media organisations and media / journalist associations. The Supreme Court has currently stayed all

challenges to the IT Rules, 2021 pending before the High Courts. Given the pendency of the matters, the Ministry released a proposed amendment to the IT Rules, 2021: Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022. It is submitted that the amendment's proposed additions and modifications raise certain concerns. The Amendment primarily affects the intermediaries with respect to their obligations under Rule 3.

Proposed Amendments – 2022 Amendment to the IT Rules, 2021

Broadly, the following are the proposed amendments:

1. All intermediaries are required to enforce user compliance with their rules, guidelines, and other agreements; and must prevent users from hosting, displaying, publishing, uploading, transmitting, storing, updating, or sharing the information listed in Rule 3(1)(b)(i)-(x).
2. All intermediaries shall maintain reasonable expectations of due diligence, privacy, and transparency and ensure accessibility to their services.
3. The rights of citizens, as provided by the Indian Constitution, are to be respected by all intermediaries.
4. All intermediaries must respond to complaints for the removal of content covered by Rule 3(1)(b)(i)-(x) within 72 hours of receiving the complaint.

5. Establishment of a Grievance Appellate Committee to hear appeals against the Grievance Redress Officer's judgements made in accordance with Rule 3(2). The decision of the Grievance Appellate Committee is to be complied with by all intermediaries.

Concerns Regarding the Amendments

While several of the proposed amendments essentially call for clarification and do not affect intermediaries directly, there are two proposed amendments that immediately raise concerns and may directly threaten the principle of the intermediary safe harbour as it is understood in Indian law:

- Intermediary Safe Harbor under Rules 3(1)(a) and (b): The Central Government has effectively compelled intermediaries to guarantee and make sure that users of their platform / services comply with their terms and conditions, as well as those of Rule 3(1)(b)(i)-(x) of the IT Rules, 2021; under the proposed amendments to Rule 3(1)(a) and (b). Currently, an intermediary is simply obligated to make available its terms and conditions, privacy policy, user agreement, etc. publicly, and to caution users not to publish, host, upload, transmit, share, or otherwise make available any information that is subject to Rule 3(1)(b)(i)-(x).² Furthermore, it has been noted in several decisions³ that intermediaries handle a

significant amount of information and are therefore unable to determine which requests are legitimate and which are not. It has also been noted that when interpreting the legislative provisions under the IT Act, intermediaries are not required to independently inspect information being hosted on their platform to ensure compliance since they are not granted the authority to identify and remove infringing content.⁴ In practicality, Rule 3(1)(a) and (b) will have the effect of requiring intermediaries to implement mechanisms and measures to guarantee, and to prevent their users from uploading, hosting, displaying, altering, sharing, and other actions that violate the intermediaries' own terms and conditions, and/or fall under Rule 3(1)(b)(i)-(x). Simply put, intermediaries will have to begin examining and filtering each piece of content submitted by users before it is posted or uploaded in order to make sure that it complies with both their terms and conditions and Rule 3(1)(b)(i)-(x) requirements. For an intermediary to be eligible for the safe harbour under Section 79(1) of the IT Act, it must meet the standards set forth in Rule 79(2): one of the two requirements of Section 79(2) are to be met. Section 79(2)(c) merely requires an intermediary to observe its IT Act due diligence responsibilities, which are essentially those outlined in the IT Rules, 2021. 79(2)(a) stipulates that in order to

receive safe harbour, an intermediary's role should be limited to granting access to a communication system through which third parties make information available (for e.g., Google search engine).⁵ On the other hand, according to 79(2)(b), intermediaries are entitled to safe harbour as long as they refrain from performing the following three actions: (1) initiating the transmission of information, (2) choosing the recipient of the transmission, and (3) selecting or changing the information that is included in the transmission. Insofar as an intermediary will now have to decide which content is allowed and which is not allowed to be uploaded on its service or platform, this goes directly against Section 79(2). This puts the intermediary in a tight spot because, in order to comply with the proposed amendment, it must violate the Section 79(2) requirement, thus forfeiting its safe harbour under Section 79(1). And, in order to keep its safe harbour, it must meet the requirements under Section 79(2), which would cause it to violate the proposed amendments to Rule 3(1)(a) and Rule 3(2)(b).

- 'Accessibility' to the services of Intermediaries and maintenance of reasonable expectations of 'Due Diligence', 'Privacy' and 'Transparency': Rule 3(1)(m) fails to provide definitions to the words 'privacy', 'accessibility', and 'transparency'; thereby at the first instance creating confusion. Moreover, the SPDI Rules⁶

already establish the standards and requirements for handling sensitive data, including financial records, health information, and so on. It also places a “transparency” mandate on entities to ensure that users are made aware of the purpose of such data, the purpose for which it will be shared (if at all), and to provide a mechanism for giving express consent for the same. Because of this, it should have been clarified if the government expects different or higher standards of “privacy” and “transparency” than those already established under the SPDI Rules. The word “due diligence” should also be given the meaning it implies under this amendment. Further, there is no mention of the Rights of Persons with Disabilities Act of 2016, and no guidelines or requirements are laid down for the expected accessibility standards that an intermediary should adhere to.

- Respect for the Rights of citizens under the Constitution of India: According to the Press Release by the government, the amendment was introduced in the first place as “a number of Intermediaries have acted in violation of constitutional rights of Indian citizens” and could probably also be pointed to the Twitter saga and actions undertaken by Twitter in conflict with the Central Government.⁷ However, ironically, the amendment creates a conflict between the intermediary’s own terms and conditions, the

IT Rules; and the individuals’ right to freedom of speech and expression.

- Removal of content within 72 hours of receipt of a complaint: To identify, review, adjudicate, and decide regarding the grievances within 72 hours seems practically difficult for the intermediaries. The probability of them being missed or chances of confusion and irregularities will be presumably high due to this short duration. The following are the only exemptions provided for under Section 3(1)(b):
 1. sub-clause (i) - “*Belonging to another person and the user does not have a right*”;
 2. sub-clause (iv) - “*Patent, Trademark or Copyright infringements or other proprietary rights*”; and,
 3. sub-clause (ix) – “*Violating any law for the time being in force*”.
- As a first step in ensuring adherence to the 72-hour timeframe, intermediaries may decide to remove any content for which a takedown or removal request has been made; which results in a chilling effect of speech. The doctrine of chilling effect refers to instances wherein governmental laws and actions are of a nature which does not directly censor free speech but , they have the impact of self-censorship. This doctrine is often quoted in Indian jurisprudence.⁸ They will next examine whether the

takedown was legitimate, warranted, or required to be supported by a court order.

- *Setting up of the Grievance Appellate Committee and intermediaries to be bound by such decisions:* The Grievance Appellate Committee (GAP) does not specify any important safeguards regarding the procedures to be followed, how the committee will be organised, who will be its members and whether or not industry representatives will be invited, what will be the committee's jurisdictional area, what types of complaints will be allowed to be appealed against, what will be the committee's powers and what orders/directions it can issue, etc. Moreover, the Committee is required to only be constituted of functionaries of the Central Government, who are supposedly "independent" individuals. The provision of proper safeguards for an officer's appointment to and/or their removal is a prerequisite for the independence of members, which is absent in the present case. Additionally, it disregards any intermediary representation during the appeal hearings, thereby infringing on the natural justice principles. This is especially troubling considering that the GAP appears to have been given wide discretionary authority to impose any orders or directives against an intermediary, including those whose implementation may not be technically practicable or even possible; thus

potentially exposing the intermediary to unnecessary contempt proceedings.

Conclusion

While the objective behind the amendment to the IT Rules, 2021 is to ensure an Open, Safe, Trusted and Accountable Internet, and the regulation of the same, the Proposed Amendments would effectively invalidate *Shreya Singhal* and the decisions that followed, which would be devastating for the country's current intermediaries. They also pose a severe barrier for prospective international intermediaries trying to enter the Indian market. Clarifications regarding the Rules must be provided where required, and fine-tuned to address the concerns raised.

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Patents in the Entertainment Industry: Film Equipment & Accessories

- Preemal D'Souza

Introduction

According to some sources, filmmaking has a long history dating back to the early 1700s, when turning the colour of silver salts on exposure to light was discovered by German physicist Johann Heinrich Schulze. By the late 1800s, celluloid film had developed, making it possible to capture moving images with a camera. One year after using the word "Kodak" for the first time to sell his cameras, George Eastman had perfected the first transparent roll film for commercial use. Thomas Edison's motion picture camera was created in 1891 thanks to an Eastman invention called flexible film. Edison referred to his first-generation camera as the "*Kinetoscope*". On August 24, 1891, Edison submitted a patent application for the kinetoscope, and on August 31, 1897, the patent was granted.¹ A patent is a privilege applied to an

invention that forbids others from utilizing the inventor's concept without their consent. After the work is patentable, the inventor has 20 years to sell, use, distribute, make, import, or export it. In the entertainment sector, patents are typically used to safeguard technological advances in content development or delivery.

Illustrative Cases

"Motion picture" has always been at the nexus of innovation and entertainment, mixing audio, visual, and editing methods to interest the audience artistically. *Spiderman: Into the Spider-Verse*, a 2018 box office success, was animated using technology that Sony subsequently applied for patent protection. Sony asserts that the film's innovations go beyond aesthetic uniqueness or boundary-pushing success and qualify as a wholly

new creation thanks to the vibrant animation influenced by retro comic stylings and Pop Art artist Roy Lichtenstein. The production of a movie is a challenging task that requires investment to ensure quality in the various stages of its creation, including editing, special effects, sound effects, lighting, and more. It is noteworthy that practically every element used to create a movie or a musical album is protected by a patent. A patent ensures that those who produce these tools are fairly compensated through royalties, license fees, sales, and other revenue streams, whether they are video cameras, audio instruments, special effect props, or any other sizeable or little item. Regarding the number of applications submitted, both pending and fully finished, Sony and Samsung lead the sector. Microsoft and Panasonic have 88 and 84 applications pending, respectively, suggesting that they are no longer as interested in these patents as they once were. The rise of mobile content delivery coincides with Intel and Qualcomm's increased interest in these applications. An example of a patent in this industry is a Rail mounted camera system (U.S. Patent 4,699,484). The device enables filmmakers to produce interesting sequences for movie pictures. When the camera moves, it can capture full landscapes without locking the shot in place and zooming in or out. This particular patent described a camera system that incorporated a wheeled rail car with a running gear attached to a chassis with a movable panning head on top. A motion picture camera is attached to the panning head. The head rotatability of the rail car could pan 360 degrees and tilt up and down. The rail vehicle

was self-propelled. The U.S. Patent Office granted this patent to Murrell, Mary Howell and Michael Hofstein from California in October 1987.²

Case Study

Another example of a patent is that of a Sound Camera (U.S. Patent No. 2,238,497). For about twenty years, sound recording technology has been available for movies. The filmstrip must be pushed through the sound recording aperture at a constant and uniform pace to provide accurate sound reproductions on the filmstrip. It was usual practice to put a flywheel onto the sound drum shaft to get the speed control required to produce precise sound copies. Consequently, while capturing pictures, the sound could also be recorded onto a filmstrip. This 1941 invention, which the U.S. Patent Office also granted to Eastman Kodak, covered isolating the sound drum's start procedure to save film waste. Once the drum has attained the speed necessary for standard sound recording, the camera starts the sound drum and connects it to the film feed mechanism. The speed drum is detached from the drive after being linked to the film feeder, so the film exclusively turns the sound drum. Another instance could be the fading of scenes into each other, which holds its position among the oldest film editing effects used by filmmakers long before the period of digital animation and computer-generated imagery (CGI). This is done with a Motion Picture Recording Device Using Digital, Computer-Readable, Non-Linear Media (U.S. Patent 7,623,754).³ Motion picture cameras with

mechanisms that allowed a director or editor to set up an automatic dissolve for overlapping sequences were being developed in the 1970s. These transitions, also referred to as lap dissolves, could fade in a new scene over an existing one or fade out an existing one.

Conclusion

The invention of a motion picture camera with more possibilities for lap dissolves is protected by this specific patent, which was granted in April 1975 to the German company *Agfa-Gevaert Aktiengesellschaft of Leverkusen*. The length of the Claim 1 section, that is, the longer a claim, the less commercially valuable it is because patent infringement is an all-elements test, which means that to infringe every element and limitation in the claim must be found in the accused device. Undoubtedly this reduced the value of this patent, yet it still reflects significant advancements in cinema technology thanks to editing effects. With this versatile camera, a filmmaker can easily add a fade-out or fade-in effect or even combine the two effects for a smoother scene transition. Development

in technology has been significant over the past few decades; this can be seen through the evolution of patents in the entertainment industry. Patents have and will continue to play a massive role in this industry. The entertainment industry would not have grown so much if not for them. Hence, we must continue to keep the patenting practice alive to see further growth.

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Piracy under the Copyright Act, 1957

- Swaroopa Parthasarathi

Introduction

All of us want our work to be acknowledged as our own; anything created by us is like a new life given. The last thing any creator would want is to refrain from reaping the fruits of their hard work. This occurs when their material is sold illegally, commonly known as piracy. Piracy is the act of illegally reproducing or disseminating copyrighted material, such as computer programs, books, music, and films.¹ Piracy in the digital realm can be compared to physical theft and piracy because when a person illegally distributes a digital file on the internet or locally for free, he prevents the profit from the purchase of that item from going to the creator, creating an economic impact comparable to when actual pirates looted cargo.² There are five types of piracy:

- Counterfeiting: This involves the illegal acquisition, duplication, and distribution of any copyrighted material which directly imitates the original material.
- Internet Piracy: The act of downloading a file from the internet or purchasing online software through an online disc is known as internet piracy.
- End-user Piracy: This is a form of piracy where the user illegally reproduces the material without proper authorisation.

- Client-Server Overuse: Occurs when the number of clients exceeds the number prescribed in the server license.
- Hard-disk Loading: A business sells new computers with illegal copies of software loaded onto the hard disks to make the purchase of the attractive machines

Piracy is prominent in the entertainment and software industry. In the entertainment business, movies are illegally procured, copied and reproduced without having a license. They are leaked on unauthorised websites, or sometimes people record the movie on their phone and release it on the internet. In the software industry, multiple softwares are illegitimately copied and distributed.

The Controversy in Law

In India, piracy is an overlooked subject. There is hardly any legislation to govern it, and the criminal remedies for the same are minimal. The existing legislations on the subject suffer from many fallacies. The Copyright Act, 1957 has two types of remedies for a breach of copyright: civil and criminal remedies. Civil remedies include paying damages, whereas criminal remedies involve fines and imprisonment. However, the application of criminal remedies in India is negligible, and the application itself is faulty. The interpretation is not always accurate, leading to a misapplication of the

provision. Section 63 of the Act states: “Any person who knowingly infringes or abets the infringement of— (a) the copyright in a work, or (b) any other right conferred by this Act except the right conferred by section 53A, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.”³ Proviso to Section 69 reads as follows: “Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.”⁴ The problem is that a person is exempted from punishment if he has committed the offence without his knowledge. For such offences, knowledge ought to be deemed irrelevant. A person should still be held liable regardless of whether he was aware of his actions at the time of commitment of the offence. He can be given a lesser person than someone who had the ‘mens rea’ while committing the offence, but he should still be held liable because he has caused loss to someone else. The law is silent as to what amounts to due diligence. There is no test per se to prove that a person was acting diligently, which leaves the question of what amounts to due diligence open to interpretation. The language of the law is abstract, and some terminologies have different meanings in criminal jurisprudence. The Indian Designs Act 2000 also talks about piracy, Section 22(2) of the Act states: “(a) Person involved in piracy is liable to pay the registered proprietor of

*the design a sum not exceeding Rs 25,000 for every contravention recoverable as a contract debt.*⁵ (b) *Proprietor may bring a suit for the recovery of damages for any such contravention, and for injunction against the repetition. In case he succeeds, he will be entitled to recover such damages as may be awarded by the court and restrain the defendant in terms of the injunction granted by the court.*”⁶

Victims of Piracy

There are many victims of piracy today, from the media company Viacom 18 to the Bollywood movie Brahmastra, and no one is safe from their work being illegally reproduced. 80% of online streaming in India is pirated content, and recently our country ranked third globally based on the number of visits made to illegal video streaming sites. Viacom 18 has recently received an injunction order against many pirated websites and internet service providers for the T20 cricket league, the TATA IPL 2023. This is the first time the tournament will be streamed exclusively on Viacom18’s authorised platforms.⁷ Another recent instance is the leakage of the movie Prince, wherein it has also become a victim of piracy and is available for free online.

Role of Judiciary

The Indian judiciary’s perspective on copyrights and infringements has changed drastically. Previously, these issues seem to have not been given much importance, and judges would hesitate to impose a criminal penalty on the infringer. However, many cases have paved the way for the change in this

outlook. Several cases have been laid down, which have acted as a precedent for current issues. The following cases have brought about a landmark change in the field of copyright and piracy:

1. *Time Incorporated v. Lokesh Srivastava*⁸: The Court held that punitive damages must be granted to discourage and dishearten lawbreakers who indulge in violations with impunity.
2. *Microsoft Corporation v. Yogesh Popoet*⁹: The Court considered the violation of the plaintiff's trademark and copyrights and awarded damages of Rs 1.97 million for violating the plaintiff's rights.
3. *Microsoft Corp. v. Deepak Raval*¹⁰: The Court observed that had the claim of punitive damages been higher, the Court would not have hesitated in awarding the same.
4. *Microsoft Corporation v. Ms. K. Mayuri and Ors.*¹¹: The Court held that the plaintiff is entitled to the award of exemplary/punitive damages as well as damages on account of loss of reputation and damage to the goodwill because of the sale of spurious and pirated goods sold by the defendants in the name of the plaintiff's company and awarded a sum of Rs. 5,00,000 under those two heads. The total damages, however, were quantified as Rs. 10,00,000.
5. *Microsoft Corporation v. Mr. Kiran and Anr.*¹²: A sum of Rs. 5,00,000 was awarded to the plaintiff.

6. *Microsoft Corporation and Anr. v. Mr. A. Jain and Ors.*¹³: A sum of Rs. 5,00,000 was awarded to the plaintiff.

Conclusion

India has made enormous progress in copyrights, but piracy laws still need to catch up. Although a skeleton has been formed, piracy laws are still quite vague and abstract and only provide for civil remedies. Piracy is barely spoken about in any legislation, let alone criminal remedies. Criminal penalties need to be applied appropriately, and more provisions should be enacted because the horizon of the law is too broad. Ultimately, it is a form of theft that has to be acknowledged and placed on the same pedestal as physical theft.

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Analyzing the Feasibility of a Copyright Society for Indian Actors

- Karan Mathias

Introduction

Currently, in India, the Copyright Act, 1957 helps the creators of work protect their interests and the originality in works relating to authorship, lyricism, and composing. With the emergence of "performer rights" in the Indian Copyright Act of 1957 with its 2012 Amendment, the interests of the creators are now of utmost importance in an attempt to recognise the rights of classes of artists, including writers, musicians, and singers, and to safeguard their rights against any form of exploitation.ⁱ Courts in India, for the first time, explored performers' copyrights in *Fortune Films v. Dev Anand*.ⁱⁱ The court ultimately

ruled that an actor had no statutory right over how their on-screen work is used. The producer was believed to be able to utilize the performances however they wished since the actors were paid for their performances. Indian performers' rights were affirmed in the 1994 Amendment. Subsequently, in *Super Cassettes Industries v. Bathla Cassette Industries*ⁱⁱⁱ, it was determined that the performer's rights were separate from the copyright and that, as a result, the performer's authorization and consent must be obtained before a song can be recorded again. The Act lays down provisions under Section 33, which states that a society would be required to

be registered and fall within the control and supervision of the Government of India. The Act makes this provision for the creation of such copyright societies for the creators of original works, such as writers, musicians, composers, and lyricists, among others, to administer the rights on behalf of its members and grant licenses for the commercial exploitation of these rights. In India, groups such as the *Indian Singers Right Association (ISRA)* protect the rights and interests exclusively of singers, whereas organizations like the *Phonographic Performance Limited (PPL)* comprise members from a plethora of radio broadcasting and public performance disciplines, such as songwriters and composers.^{iv}

Position of Actors

Actors, however, are not covered in creating copyright societies in India. However, scholars contend that it is time that they are granted this right. Actors in India do not have the same legal copyright privileges as singers in India, in contrast to the United States, where organizations like the *Screen Actors Guild* negotiate on behalf of its members. A prominent number of actors in India, who work small roles and have little screen time, without a bargaining advantage, are meagrely paid for their performances. However, copyright scholars argue that allowing for the creation of a copyright society for Indian actors can equip them with collective bargaining quips. However, on the flip side, some actors are paid enormously, and a royalty will only take away rights from its true creator, as

recognized by the court in the *Fortune Films case*. In addition to this, it is pertinent to note that when actors' performances are taken out and viewed independently of the film, in furtherance of assessing royalties, the film loses out its holistic perspective. However, extending copyright societies to actors may impede on the process of transfer of rights. The process of transfer of rights from performers to producers in multimedia projects so that producers can negotiate business agreements with theatre chains, broadcasters, DVD merchants, and other parties now gets complicated with the producers having to obtain permission from each individual actor. For instance, a feature film might employ a number of actors in addition to playwrights, extras, and other contributors with rights to their work. Furthermore, actors' inclusion to in collaborative societies would not only increase their economic rights but also generate significant additional income. Individual actors with limited means and time to collect royalties from different companies who use their music or works, could use these copyright societies to anchor and bargain on their behalf. Now, actors can rely on societies to keep an eye out for performances, opportunities, and castings—as well as to discuss and collect royalties. These societies not only collect royalties but also prosecute the alleged offenders on behalf of these actors for violating copyright laws. For public viewings and screenings of the copyrighted content in its repertoire, these societies would aid in the collection of license fees on behalf of the actors and performers. For actors to receive the money they are legally owed in with respect to the royalty itself,

these societies could act as an essential and desirable instrument.

Observations Made

Thus, it is pertinent to note two things by the way of conclusion:

1. Firstly, Section 33 of the Act does not restrict 'copyright societies' merely to musicians/artists but could be expanded to actors as well.
2. Secondly, this creation of a copyright society for actors is quintessential for their economic benefit and bargaining potency, and thus, they will relieve actors from ethical and logistical hiccups and assist in granting licenses for the copyright, identifying its infringement, and starting corresponding legal processes.

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Analysing Character Rights in India

- Shreya Jagadish & Harthik Roy

Introduction

Characters, animated or otherwise, have become a part of our daily lives since they began appearing in comic books, television shows, merchandise, and more movies. The artists who create such characters use their imagination, intellect, and imagination to give these characters specific and unique attributes such as costumes, alter egos, superpowers, backstory, etc., that consumers can identify them when they read about them or watch a TV show or a

movie based on such characters. These distinguishing characteristics also lend expression to the artist's concept. Because of these factors, the creator/artist must protect such a character to prevent infringement, copying, and misappropriation by third parties. Production companies, advertisers, licensees, and businesses that invest a significant amount of money in acquiring rights to such characters for use in various media such as TV, movies, radio, and merchandising must also be concerned about infringement of their rights over

such characters by any third party. Because of these factors, such characters must fall within the scope of Intellectual Property Rights. It is critical to understand when such characters fall under copyright and trademark protection and what happens to characters already in the public domain but may be used in new copyrighted work. After gaining popularity, a cartoon character that starts as a character in a comic book may be extensively commercialised in connection with a wide range of products and services, thereby providing ample revenue-generating avenues.

What Part of the Characters Are Protected Under Copyright Law

The character rights of an animated or non-animated character are given under IP law, copyright or trademark law. Here, people identify themselves as the character, which can be seen as a product and is protected by trademark or copyright law. Not every character is protected under copyright law, and it is all based on the show's success, where that particular character has played a role. Even if the show was not successful, the character is popular enough. For example, Robert Downey J., famously known for the character Iron Man, is seen by people as Iron Man, and so identified. Characters may be differentiated into graphic and fictional characters. While a graphic character can be depicted simply by a cartoon or other form of graphic representation, and its physical representation and characterisation is visible to the reader, a fictional character is a word portrait in which the physical appearance and

characterisation reside in the reader's mind. Because images are more easily identifiable, remembered by readers, and characterised than literary descriptions, they are easier to protect legally. Copyright protection under the pretext of 'artistic work' cannot be granted to such graphical characters because such characters and their personalities develop from various episodes created by the artist/creator, which cannot be visually expressed and can only be perceived by the human mind. However, copyright law can protect character expressions that can be graphically represented through drawings, colours, art, storyboards, etc. While fictional characters are generally associated with copyright protection, increasing commercialisation has meant that the intellectual property in these characters is no longer limited to the artistic works that created them but has also extended to associated goods and services, which have benefitted significantly from the enormous appeal and popularity of these fictional characters, also known as character merchandising.¹ In the famous case of *Warner Brothers Pictures v. Columbia Broadcasting Systems*, the test of 'story being told' was applied. In this case, the Court held that copyright protection would only be applied to the characters if the story revolves around the particular character.²

Position in India

In the past decade, we have seen a drastic rise in the growth and market value of the Animation Industry in India. This growth needs protection, as well as legal awareness. Only original literary, artistic,

musical, dramatic works, sound recordings, and cinematographic films are protected under Section 13 of the Copyright Act of 1957.³ While comic strips may qualify as a 'literary work', the cartoon drawings/ graphics may be covered under 'artistic work'. However, since the law only protects the original work and not the idea, a cartoon character cannot be granted copyright protection as an 'artistic work'. Although comic book characters are not explicitly protected under the Copyright Act, several courts (both in and outside India) have granted copyright protection to such characters. These courts have been liberal in protecting characters if they have distinguishing characteristics and traits. The High Court of Kerala held in *Malayala Manorama v. V T Thomas*⁴ that the cartoon characters 'Boban and Molly' were created before Mr. Thomas started working for the publishing house and, thus, not in the course of employment. As a result, the creator would retain ownership of the character; however, if Mr Thomas created the character while on the job or under a service contract, the publishing house would retain the copyright. In the famous case of *Warner Bros. Entertainment Inc. v. Harinder Kohli and Ors*,⁵ the plaintiffs were registered proprietors of the "Harry Potter" word mark. Plaintiffs claimed that the film "Hari Puttar" is an infringement of the "Harry Potter" trademark. The suit for permanent injunction seeks to prevent trademark infringement, passing off, dilution, damages, and the rendering of accounts of profits earned by Kohli and co-parties through the use of the contested trademark and an order transferring the domain name www.hariputtartheilm.com to Warner. Warner

claims to have obtained trademark registration in India for the word mark "Harry Potter," which infringes on the plaintiffs' registered trademarks by naming their film "Hari Puttar", which is visually and phonetically similar to their mark. Warner also claims that their trademark is a well-known character who stars in a series of seven novels written by British author Ms J.K. Rowling. At the time of the execution of the agreement, the film was tentatively titled "Hari Puttar", which was later modified to "Hari Puttar a Comedy of Terrors". The title was registered with the Indian Motion Picture Producers Association (IMPPA), The Film and Television Producers Guild of India Limited, and international bodies such as the Title Registration Bureau and Motion Picture Association of America Inc. Warner claims that the title is an infringing variant of their trademark. It was claimed that enormous confusion and deception were being created in the minds of the former's potential audience, resulting in the dual torts of unfair competition and passing off. Furthermore, the Court had produced publicity materials, and the promotional video was said to add to the confusion. Warner claimed that as soon as they learned of the proposed title "Harry Puttar," they contacted Kohli and co-parties. Kohli and his colleagues argued that the name derives from the film's theme, plot, and character depictions. They explained that the film's main protagonist was Hariprasad Dhoonda and that Hari is a short form of the same. Furthermore, Puttar in Punjabi means "son," and the film focuses on the family's son, who is the true hero. They also stated that the language of the film would be a mix of

Hindi and Punjabi and that it would be distinct from the Harry Potter books and films in terms of storyline, characterisation, and language. The Court focused on Warner Bros.' assertions that they were false, as well as the suppression of relevant facts. Regarding Warner's failure to prevent Kohli and others from setting up their business or venture despite having knowledge, the Court stated that their acquiescence would preclude them from claiming equitable relief. Warner Bros. had failed to establish a *prima facie* case for the grant of an *ad interim* injunction in their favour, according to the Court. The balance of convenience was also said to favour Kohli, who had invested large sums of money and entered into numerous agreements and business tie-ups with various third parties. The Court stated that it was their responsibility if Warner was concerned about protecting their rights. The *vigilantibus non dormientibus* principle was stated to apply. Furthermore, the Court determined that they had failed to establish that the film's release would result in irreparable loss or injury. According to these arguments, the Court denied Warner's application, ruling that it was not maintainable.⁶

Position in US Law

Under US law, fictional characters can be protected separately from their underlying works. The legal principle of derivative copyrights explains this. To obtain this protection, a creator must demonstrate that the characters are sufficiently original and distinct to warrant it. Under federal law, a derivative work is safeguarded as a component of the rights

granted to the original work's author. Some characters become well-known outside the particular book or film they initially debuted. Think about characters like Wonder Woman, Hannibal Lecter, Fred Flintstone, or James Bond. These people are far more than just one movie or TV show. They can start franchise series since they are well-known in and of themselves.⁷ As a result, the character's creator would seek comprehensive protection for the character as a whole rather than just for the particular work in which the character is featured.

Only the United States has established various criteria to assess whether fictional characters are protected by copyright. A fictional character must be an original work, have a creative component associated with it, and be depicted in a tangible medium to be protected in the US.

The American Courts developed the following criteria to decide whether a fictional character qualifies for copyright protection:

- a. The Story being told test: The "story being told test," first used in *Warner Bros. v. Columbia Broadcast System*, is applied here. This test states that a fictional character can only be protected by copyright if it "constitutes the story being told." This means that the fictional character must be essential to the story and take centre stage rather than simply acting as a plot device. The *Sam Spade* test states that a character that does not play a crucial part in the plot of a creative work is not entitled to copyright protection.

b. *Graphical and word portrait characters:*

This test allows for the grant of copyright protection to characters that are rendered graphically or as word portraits. This means that the character must have unique personality features and visual components. In this way, the character would not be considered a "stock character" and would be protected by copyright.

- c. *The "Well-delineated" test:* This test states that a character is only copyrighted if it is clearly defined. This means that the character must be sufficiently developed and have various traits to distinguish it from stock characters. To establish if a character is clearly defined, a three-step test is usually used - The character must, first and foremost, have distinct physical and psychological traits that fit the chosen fictional figure. Secondly, the character needs to have traits that can be recognised in many settings. Thirdly, the character must have certain distinctive expressive qualities that must be maintained throughout the story. Therefore, if a fictional figure passes the three-step criteria, it might be protected by copyright.⁸

Character Merchandising Rights

Character merchandising is merely a business technique that enables the person who created or owns the character to advertise and provide goods and services to individuals who may be interested in them. Any type of merchandise is acceptable,

including T-shirts, cups, bottles, hats, toys, paintings, caricatures, etc. There are three different types:

1. *Fictional character merchandising:* This is the most traditional and well-known type of character merchandise. It comprises utilising fictional characters' core or fundamental personality traits to market or advertise products and services. This attracts customers who are more interested in the product's components than the product itself, thereby expanding the product's market reach. Such fictional characters can appear in someone's writing, artwork, or filmmaking.
2. *Personality merchandising:* Personality merchandising is the practice of using famous people to promote products and services. When famous people are linked to goods and services, customers are likelier to relate to and recognize the brands they are endorsing. Consumers are mostly persuaded to purchase the recommended goods.
3. *Image merchandising:* Here, fictional characters from movies or television series are portrayed by actual actors in marketing and advertising campaigns for products and services. The most recognisable or distinguishing characteristics of a real-life individual and those of their fictitious equivalent are combined to create the character. Such circumstances give people a dual reputation, allowing them to carry both their personal reputation and the reputation of the character they are portraying.

For product commercialisation, the owner and the character's authors are protected under copyright law; however, fictional characters must be distinctive and original to qualify. The proprietor can register their character or any feature, like a sound, with the Trademark Office and then market their character through a licencing or assignment arrangement to investigate the commercial market by creating merchandised goods. Licenses can be granted under exclusive or nonexclusive terms. Exclusive license agreements are restrictive in that only the approved licensee can market the character. In comparison, even while a licensee has the right to market the character under a non-exclusive license, the owner/licensor is free to enter into other trademark merchandising arrangements with other parties.⁹

Conclusion

The rapid advancement of technology and digitization, combined with globalisation, has aided in the easy and quick accessibility of fictional characters worldwide. As a result, numerous instances of unauthorised use of protected characters continue to emerge. As a result, owners and creators must be vigilant and prioritise obtaining copyright and trademark protection for their respective characters.

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‘Have You Watched ‘Dilwale’? If Yes, Which One?’: Trademark & Copyright Issues Involved in Film Name Titles

- Sudekshana Venkatesan & Devrata Siddharth Morarka

The title of a film is what allows the audience to identify the work of the film as originating from the particular director or artist. Such being the case, ample protection is essential in order to check the unauthorised use of such a title. However, what is the appropriate form of protection for a film title?

Copyright

Copyright protection is granted to “works” (as defined under Section 2 of the Copyright Act, 1957). As per the definitions, only the film is protected under the Copyright regime and not the title¹. Also, the *de minimis* principle comes into operation and does not qualify for protection under the Copyright Act. (Pepsi Co. case) Therefore the protection under the copyright regime is not for the title. The Madras High Court, vide its order dated April 19, 2018 in a suit filed by K.S. Rajasekaran to stall the release of the Rajnikanth-starrer ‘Kaala’ over a title infringement dispute, reiterated the principle that there is no copyright in a title.² “*What, therefore, follows is that if a junior user uses the senior user’s literary title as the title of a work that by itself does*

not infringe the copyright of a senior user’s work since there is no copyright infringement merely from the identity or similarity of the titles alone.”³

Trademark

Since it cannot be denied that a “Title” plays an important role in the recognition of any cinematographic work, it is pertinent that ownership and validity of titles be registered with the Trademark Registry. Trademark is the appropriate form of protection which can be granted for film titles. This is because, like a trademark, the title performs the source-identification function for the film. Also, since the title is short, it does not qualify for protection as copyright. The Supreme Court upheld that “the title of a film can be registered and protected under Class 41 under the Trademark Rules.”⁴ However, the question of whether a film title satisfies the requirements of a trademark arises. The requirement of distinctiveness falls short in the case of film titles because in most, if not all cases, the title is merely a generic term. That is when proof of acquired distinctiveness is required. This can be inferred from the following⁵:

- Period of use
- Promotional activities
- Promotion expenses
- Continuity of use
- Box office collection
- Sales statistics on ticket transactions
- Individuals who purchased or watched the work of the owner

With these proofs, the makers can succeed in an action for infringement over the film title.

Cases:

A film's title plays a crucial role in attracting various viewers, as a captivating title would be more intriguing for the viewers and beneficial for the film itself. There have been several cases dealing with IP issues with the title of a film.

1) *M/s Lyca Productions &Anr. v. J.Manimaran*⁶

The plaintiff claimed that he was producing a film titled 'Karu', which meant "fetus" in Tamil. He also claimed that he had registered this title with the Film and Television Producers Guild of South India in 2011. The Defendant was also producing a film titled 'LycasKaru' and stated that the title was registered with the Tamil Film Producer Council from 2017. According to the Plaintiff, since the Producers Guild was the previous registrant of the name "Karu," the Defendant should be prohibited from using a similar name since it was customary industry practice. The single judge had found the case to be in the plaintiff's favour.

2) *KrishikaLulla.v.ShyamVithalraoDevkayya & Anr.*⁷

This was a case cited in order to settle the above case mentioned (M/s Lyca Productions &Anr. Vs. J.Manimaran). The Division Bench ruled that since a third party who is not a member of such council is not subject to the internal rules and regulations of such a guild, the registration of a work's title with film guilds or councils that are not recognised copyright societies cannot prevent that third party from using the title. "The mere use of common words, such as those used here, cannot qualify for being described as 'literary'... The title in question cannot, therefore, be considered to be a 'literary work' and, hence, no copyright can be said to subsist in it, vide Section 13; nor can a criminal complaint for infringement be said to be tenable on such basis."

3) *Sholay Media and Entertainment Pvt Ltd v. Parag M Sanghavi*⁸

This was a famous case in which the Register of Trade Marks awarded trademark protection to the various characters featured in the film such as 'Gabbar. Due to some restrictions on trademarks, the title of 'Ram Gopal Verma ki Sholay' was changed to 'Ram Gopal Verma ki Aag'. This was done as the Court prevented anyone from using trademarks identical to Sholay as it had received much attention and high status.

4) *Kanungo Media Ltd v. RGV Film Factory*⁹

The Defendant was denied an injunction for using the trade name "Nishabd," which the Delhi High

Court found to be confusingly similar to the plaintiff's film. The Honourable Court cited a number of rulings from American courts and noted that the Indian Copyright Act takes the same view. The Court determined that just using a senior user's literary title as the title of a junior user's work does not violate that senior user's copyright since there is no copyright infringement based only on the resemblance or identity of titles.

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Critical Analysis: Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022

-Thomas Alex & Shreya Sampathkumar

Introduction

Advertisements are widely used to promote products, services, brands, campaigns, events, achievements and businesses. With new and upcoming technologies and varying consumer tastes, especially in a post-COVID world, businesses compete in advertising and leverage marketing opportunities to bond with their customers to reap the commercial benefits. Consequently, the competitive pressure to achieve good sales and big turnovers turn them into advertising techniques that deceive target customers. Consumer rights in India were initially protected against misleading advertisements with the enactment of the Consumer Protection Act, 2019 (CPA) by the Ministry of Consumer Affairs, Food & Public Distribution. The CPA recognised making false or misleading advertisements as unfair trade practices and prescribed punishments and penalties. The CPA established the Central Consumer Protection Authority (CCPA) to regulate related problems, issuing directions and imposing penalties against thereof. In June 2022, to protect consumer rights

against broader advertising issues, the CCPA notified the Guidelines on Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 (the "Guidelines"), with immediate enforcement.

Brief Overview of the Guidelines

The present guidelines define "bait advertisement", "surrogate advertisement", and "free claim advertisements". Keeping the vulnerability of children in mind, several pre-emptive provisions address the same. Guidelines restrain advertisements from creating unrealistic expectations of an advertised product or service and making claims without adequately substantiating them through a recognised body. Guidelines also mandate that children-targeted advertisements ought not to feature any celebrities for products that require a legal health warning. Advertisements' disclosures may be detrimental to the consumer since they limit the company's liability. The Guidelines act against this in stipulating that the disclaimer shall not conceal material information concerning any claim made in

such advertisement that could make the advertisement deceptive or conceal its commercial intent and shall not attempt to correct a misleading claim made in an advertisement. Further, it provides that a disclaimer shall be in the same language as the claim made in the advertisement, and the font used in a waiver shall be the same as that used in the lawsuit. Similarly, clear Guidelines regulating duties of the manufacturer, service provider, advertiser and advertising agency, stating that due diligence is carried out before endorsements. Guidelines aim to protect consumers' interests by bringing in more transparency and clarity in how advertisements are broadcasted so that consumers can make well-informed choices rather than stray after fraudulent statements. The CCPA may penalise such acts up to 10 lakh rupees for manufacturers, advertisers and endorsers for misleading advertisements. For subsequent contraventions, CCPA may impose a penalty of up to 50 lakh rupees. The Authority may also prohibit the endorser of a misleading ad from making any endorsement for up to 1 year, and for subsequent contravention, prohibition can extend up to 3 years.

What Do The Guidelines Imply for the Indian Intellectual Property Landscape?

While the guidelines aim mainly to safeguard the interests of the consumer, it also addresses the specific IP concerns, especially relating to the Trademarks Act of 1999. An interesting common feature between legislation that attempts to curb misleading advertisements and trademark

infringement legislation is that both seek to police the links between the source and the "apparent" source identifier, ultimately focusing on lowering the consumer's transaction costs (search costs, verification costs, etc.). The following sections explain specific provisions of the new Guidelines from an IP perspective.

To Whom Do The Guidelines Apply?

As per Section 3³, all advertisements, regardless of form, format or medium, manufacturers, service providers or traders of goods, products or services are subjects of an advertisement, or to an advertising agency or endorser whose service has been employed to advertise such goods, products or services are subject to the Guidelines.

Surrogate Advertisements

Section 2(h)⁴ defines Surrogate Advertisements as advertisements for goods, products or services that circumvent legal prohibitions and restrictions to their advertising by portraying the goods, product or service to be of such nature that is not legally prohibited or restricted. Section 6 prohibits surrogate advertising and establishes what advertisements qualify to fall under the title. If an advertisement implies directly or indirectly to viewers that it is an advertisement for goods, products or services whose advertising is legally prohibited or restricted, or if the advertisement in question uses any logo, colour, brand name, layout and presentation that links it when any goods, product or service whose advertisement is legally prohibited or restricted, in

the consumers' minds, it constitutes a surrogate advertisement and is prohibited. However, the mere use of a brand name or a company name that may also be applied to goods, products or services whose advertising is legally prohibited or restricted shall not constitute a surrogate advertisement, given that such advertisement is not objectionable as per the Guidelines' provisions. Considering the above provisions, one may question whether they restrain the rights of the holder of such a trademark to be allowed to use it. How far can these restrictions protect the consumer's interests while not allowing trademarks to be used to their total capacity? Firstly, it must be kept in mind that specific instruments like Article 16 of the TRIPS Agreement⁵, for instance, perceive a trademark to not be a positive right but a negative one that gives its holder the right to exclude others from being able to conduct business under it. However, Section 2(zb) of the Indian Trademarks Act, 1999⁶ confers a positive right on any holder to use her trademark wherever she wishes. This indicates a clash between the interests of the two statutes, which may arise in legal disputes. The case's outcome might indicate the judiciary's inclination to protect commercial, intellectual property or the consumer's interest. It must also be kept in mind that the intention behind trademark recognition is to render it a source indicator; in other words, a trademark advertises the company. Although this function of trademarks (advertising) is not explicitly acknowledged in the TRIPS Agreement, is what companies capitalise on when they surrogate advertise. Thus, companies merely

exercise their trademark rights by engaging in surrogate advertising.

Celebrity Rights in Advertising

Section 8⁷ lays down rules in relation to advertisements that target children. Section 8(h) states that legally-prohibited advertisements must not feature children, including those for tobacco or alcohol-based products. Section 8(i) states that advertisements cannot feature prominent celebrities for products that require a health warning or cannot be purchased by children. In taking a commendable move, this provision indirectly addresses certain celebrity rights issues that child actors in the advertising industry may face. It disallows children to feature in advertisements that may be detrimental to children's well-being. Thus, no attribute of any child (name, likeness, voice etc.) may be used in such advertisements and would contribute to a violation of a subset of celebrity rights. It could also be a form of enforcement of the moral rights of child actors with a particular bandwidth of protection - primarily dealing with advertising any product or service that may adversely affect children's health and well-being. Section 12(a)⁸ lays the responsibility on advertisers/ manufacturers/ service providers/ advertising agencies to ensure that advertisements do not reference, without permission, any person, firm or institution in such a way that confers an advantage to the product advertised or brings disrepute to the person, firm or institution in question. Section 12(d)⁹ prohibits statements or visual presentation in advertisements that directly or

indirectly, by omission, ambiguity or exaggeration, mislead a consumer about the product advertised, the advertiser or another product or advertiser. Section 12 accommodates elements of celebrity rights protection and defamation protection. In addressing the celebrity rights component, the following three rights types are recognised. Personality rights are the rights over the mode of recognition of a certain individual by another through certain characteristic features. When communicated to the world, these distinctive features constitute the individual's contribution to society and must be protected. Publicity rights involve the right to use the celebrity's fame for commercial purposes - as per Section 12, using a celebrity's fame to promote one's product or service would constitute a misappropriation of the celebrity's intellectual property.

Advertisements Prohibited By Law

Aside from advertisements prohibited in the Guidelines, no advertisement for a product or service that is prohibited from being produced, sold or provided under any law in force, for the time being, shall be permitted under Section 9 of the Guidelines. The Indian Trademarks Act, 1999, under Section 9(1)¹⁰ and 9(2)¹¹ prohibits the registration of marks that lack distinctiveness or are descriptive or have become customary to practices established in the business or which may deceive the public or confuse them. An exception to this, however, is where such a mark has acquired distinctiveness through use for many years. Aside from this, if the

mark does not reflect the nature of the product advertised, such a mark will not be permitted for registration and may attract resistance to the enforcement of consumer-protection laws. Thus, as per Section 9¹² of the Guidelines, such deceptive marks that infringe another trademark and whose use has been prohibited by a court cannot advertise their products under such a name as they are barred under Section 9(1) and (2) of the Indian Trademarks Act.

Conditions for Disclaimers

Section 11(1)(a)¹³ states that a disclaimer in an advertisement is intended to clarify and must not contradict the advertisement's main claim as perceived by a consumer. Section 11(1)(b)¹⁴ states that disclaimers must not attempt to hide material information in light of any claim made in the advertisement, which could render the advertisement deceptive without the waiver. Section 11(1)(c)¹⁵ mandates that advertisements cannot try and correct a misleading statement made in an advertisement. Such provisions support the intent of trademark legislation (as discussed under the subheading "Advertisements prohibited by law") to ensure that the way a product is advertised is reflected in the product itself. In other words, to ensure that the product is true to its advertisement. As per Section 13¹⁶, only genuine, reasonably current opinions of any individual, group or organisation making endorsements in an advertisement must be reflected. They must be based on adequate information about, or experience with, the identified goods, products or services and must not be deceptive. For this purpose,

the Guidelines prescribe taking due diligence, which is an additional measure to safeguard the consumer using a regime that mimics the infringement-defence mechanism of trademark law to bring only genuine products and services into the marketplace through the creation of a liability between endorsers and the consumer which was a much-awaited measure.

Conclusion

The Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, ensures that the government utilises complete control against misleading advertisements. It shields the customer from confusion and uncertainty, which is also the essence of the Trademark Act 1999. The Act involves registration of marks as it is imperative to safeguard the goods and to monitor the markets for any possible fraud which can take place. The Guidelines and the Trademarks Act are interrelated as the former regulates misleading advertisements by issuing and enforcing guidelines, and the former amends and consolidates laws relating to trademarks. The interplay between these acts will be interesting to watch as they unfold in cases involving aspects of advertisements as commercial IP assets.

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Misuse of Fair Use From a Documentary Filmmakers' Lens

- Amisha Sharma

Introduction

Copyright infringement is the use or creation of copyright-protected work without the authorization of the copyright owners. Individuals and businesses who create new works must register for copyright protection to profit from their efforts. Other parties may be granted permission to use such works through licensing arrangements, or the work may be purchased from the copyright holder. It is equally crucial to allow other creators the chance to use copyrighted content when producing new work that integrates or depends on it to support new cultural output; without the ability to qualify for such applications, society as a whole, risks losing significant expressions because of the irrationality or avarice of one person. Therefore, under certain circumstances, quotations from works protected by copyright may be produced without permission under provisions of the legislation governing copyright. One of these features, *fair use*, is the most crucial. For more than 150 years, it has been a vital component of copyright law. Fair use is a legal requirement, not just a privilege when it applies.¹ Copyright law does not explicitly state how to apply fair use, which is advantageous to creators. Instead, a “rule of reason” is used by attorneys and judges to determine whether an unauthorized use of copyrighted material is “fair.”² All relevant information must be considered to determine

whether an unauthorized use of intellectual property results in societal or cultural benefits more prominent than the costs it imposes on the copyright holder.

Need of “Fair Use”

A study conducted with some 50 documentary filmmakers over a year, the American University's “Untold Stories”, revealed that documentary filmmakers pay too much, spend too much time, suffer too much frustration and censor their aspirations because of copyright clearance problems.³ It also showed that some of that money, time and suffering is unnecessary. There needs to be more clarity among filmmakers about the reach of intellectual property and the scope of exceptions to its application in doc filmmaking. Within copyright law, fair use embodies the fundamental principle of freedom of expression. This important legal principle is made clear in the declaration, enabling confident usage by filmmakers. Fair use, which under certain conditions permits anybody to utilize existing scientific and cultural works without permission, embodies first amendment safeguards. Four criteria are used to assess whether a specific usage constitutes fair use: 1) the reason and nature of your usage, 2) the content and substantiality of the piece taken, 3) the nature of the work, and 4) the impact of your use on the original's market. This

means that fair usage gives customers, artists, and innovators additional options and also increases the public's access to knowledge.

Addressing Legal Questions

“Fair Use” is a crucial defense against a copyright infringement accusation. Fair usage (and trademark infringement) is a legitimate affirmative defense against copyright infringement. In other words, there are only a few circumstances in which it is acceptable and considered “fair use” to utilize another person's copyrighted work. Determining how much-unlicensed content can be utilized is the most challenging aspect of fair use.⁴ The length of copyrighted material creators can use to show or adequately support a point is limited to what is “reasonably suitable.” No minimum or maximum time limits have been set forth. How much screen time will be given to illegal items must be decided by filmmakers and their legal counsel.⁵ To ensure the advantages of innovation to a thriving culture, we share some limited individual property rights as a society. By providing copyright protection for their work, creators are supported. While determining what is “fair” within the field for any critical or creative activity, such as documentary filmmaking, attorneys and judges consider professional expectations and practice.

The Copyright Act's Four-Part Test Is Used By Courts To Evaluate The Balance At The Centre Of Fair Use Analysis. Returning Mainly To These Questions:-

- 1) Did the material taken from the copyrighted work “transform” by being used for a different purpose from the original, or was it repeated with the same aim and value as the original?
- 2) Were the quantity and kind of material taken suitable in light of the purpose and essence of the copyrighted work?

A court is more likely to judge a usage to be fair if the responses to these two questions are in the affirmative.⁶ With that being the case, it is doubtful that such a usage will ever be contested. The “transformative” criteria are routinely met with ease by documentaries since copyrighted material is frequently used in settings that differ from where it first appeared. Similarly, documentaries typically only use brief, isolated quotes from material protected by copyright. The few times that fair use claims by documentarians have been contested in court, judges have often upheld those assertions. Whether the user acted reasonably and in good faith in light of general practice in their particular area is another factor that underlies and affects how these questions are addressed.⁷

Classes of Circumstances Examined Under Fair Use and The Associated Restrictions On It

1. Using protected content to make social, political, or cultural statements

Description: This category of usage includes instances where documentarians engage in media criticism of written, visual, or aural works. Documentarians hold the particular copyrighted work up for critical study in these situations.

Principle: These uses often allow documentarians to assert their fair use rights. Similar to how (for instance) a newspaper might review a new book and use a quote as an example, so is this. As a guarantee for freedom of expression, this action is, in fact, at the very heart of the fair use doctrine. The methods can be different as long as the filmmaker evaluates or makes comments about the work; for instance, parody and direct commentary both serve as types of critique. The fact that the criticism might hurt the market for the referenced work financially (as a bad book review might) is immaterial when copyrighted information is utilized for critical purposes. For the user's actions to be considered fair use, they must fully allow the viewer to understand the critique or analysis.

Limitations: The theory above has one standard caveat. The use should be manageable so that it retains its ability to serve as criticism and starts filling the audience's desire for the object (or type of thing) being criticized. To put it another way, the vital use shouldn't eventually take the place of the work on the market.

2. Citing protected works of popular culture to support a claim or a point

Description: Here, the issue is with material (again, of any form) that is referenced not because it is the subject of criticism in and of itself but rather because it effectively illustrates some argument or points that a filmmaker is developing—as excerpts from fiction films might be used (for example) to indicate evolving American attitudes regarding race.

Principle: Again, this kind of quotation should be considered fair use. The appropriate use claim is unaffected by the prospect that the quotes could amuse and interest an audience and serve to support a filmmaker's thesis. Popular culture pieces frequently have explanatory power, and in like circumstances, print media writers do not hesitate to employ illustrative quotations (both words and images). Such privileged use in documentary filmmaking will be crucial to the documentary's realization and subordinate to the documentary's more great intellectual or artistic objective. The filmmaker uses the referenced information for a new goal rather than presenting it for its original one. This is not a case of “free riding” or exploiting current value; instead, it is an effort to provide considerable new value.

Limitations: Documentarians will be better positioned to argue fair use claims if they ensure that: the material is correctly attributed, either by an accompanying on-screen identification or a mention in the film's final credits; quotations are drawn from a variety of sources, when available and appropriate;

each citation (although many may be used to build an overall pattern of illustrations), is no longer than is necessary to accomplish the intended insight.

3. Capturing copyrighted media content while filming something else

Description: Documentarians frequently record protected noises and images when recording scenes in real-life settings. The words on a wall-mounted poster, the sound of music coming from a radio, and the background sound of television programmes are all familiar. In the framework of the documentary, the accidentally recorded content is a crucial component of the everyday reality being depicted. Documentarians could only escape this by manipulating and distorting the truth they capture, such as by ordering subjects to turn down the radio, take down a poster, or turn off the TV.

Principle: The guiding principle is that fair use should shield documentarians from being pressured to embellish the truth. It should be acceptable to utilize a sound or image that was unintentionally and without planning as part of an unstaged scene, to a reasonable extent, in the finished product of the movie. Any other norm would be incompatible with reality-based filmmaking as a practice and with the principles of the disciplines that underlie it (such as criticism, historical analysis, and journalism).

Limitations: Documentarians should watch out for the following under the justification for classifying such captured media uses as fair ones: The incidentally captured media content featured in the

final version of the film is fundamental to the scene/action; the content is correctly attributed; the scene has not been mainly included to exploit the incidentally caught content in its own right, and the captured content does not constitute the scene's principal focus of interest. When it comes to music, the content is not a replacement for a synch track (as it might, for example, if the sequence containing the captured music was cut on its beat or if the music was used after the filmmaker has cut away to another arrangement).

4. Using copyrighted material; in a historical sequence

Description: Making selective use of language that was used at the events in issue, music that was linked with the events, or photos and films that were taken at that time are frequently the finest (or perhaps the only) effective ways to tell a particular historical story or make a historical point. Such material is often accessible under permission and in fair conditions. But occasionally, the licensing mechanism fails.

Principle: In some cases, fair use should apply, given the social and educational significance of the documentary medium. Any other conclusion would be to discount the ability of cinema to teach future generations of citizens about the past. When handled properly, this type of fair use is essential to achieving copyright objectives. However, if unrestricted, the idea can also be used against the rightful rights of copyrightowners, including documentary filmmakers.

Limitations: To prove that the use of this kind is appropriate, the documentarian must be able to demonstrate the following: the project was not created with the material in question specifically in mind; the material in the question serves a crucial illustrative function, and there is no suitable substitute (i.e., a substitute that has the same general qualities) for the material in question. The use of the material is only as extensive as is required to convey the point for which it has been chosen, or the material may only be licensed under conditions that are exorbitant compared to a fair budget for the film in the issue.

Spielberg's Blockbuster Movie "The Extra-Terrestrial" wouldn't have been possible without Satyajit Ray's "The Alien"? Or rather, to put it, it had been plagiarized, and it wasn't Fair Use.⁸

Ray had received a phone call shortly after the premiere of Steven Spielberg's hit film *ET: The Extra-Terrestrial*. It was renowned science fiction author Arthur C. Clarke. After seeing *ET*, he called Ray and informed him of its parallels to Ray's 'The Alien' script. Ray was even more devastated since he was in negotiations to have his book *The Alien* made into a movie with Hollywood executives. The initiative, however, never got off for one reason or another. "You know, at least two of the Spielberg-Lucas films, *Close Encounters of the Third Kind* and *ET*, would not have been feasible without my script

*of 'The Alien' being distributed in mimeographed copies throughout America", Ray had claimed: Arthur Clark called me from London a few days ago and advised me to pursue a copyright lawsuit and not to take it lying down.⁹ When *The Alien* script was circulated in Hollywood, Steven said he was a high school student, refuting the accusations. While the plot of *ET* had a young child befriending an alien in the US and sheltering him there, the story of *The Alien* saw an alien flying into a Bengali village and making friends with a boy.*

Conclusion

A common misconception among filmmakers is that a certain length can be used without cutting the clip. They kindly inquire, "Two minutes?" Confidence increases. "Isn't it two minutes already?" "I only need permission to utilize a film clip for up to two minutes. It is known as 'fair use.'" The reply is an unambiguous "NO." Hence, a person should be aware of what they are getting into. The fact that it was "thought" that all the permissions have been cleared is of little use if something goes wrong. In the case of litigation, such good intentions can shield a person from punitive penalties, but they will still be required to pay dearly for their errors.¹⁰ Hence, it should be ensured that precise representation and warranties are acquired if a person has to rely on stock footage films for more than just visual photographs on film stock. Few may wonder why attorneys are not appointed to outline precisely when persons can and cannot employ fair use (and other copyright balance features)? It is good and terrible news that it doesn't operate this way. Anyone who

has dealt with lawyers before is aware of their reluctance to offer definitive advice and their fondness for emphasizing that “It depends”¹¹ This is always the case when determining fair usage. If the benefit of the usage to the public outweighs the owner's private interest, fair use is triggered. This right depends on how, when, how much, and for what a person intends to use the information that has been quoted. The key is to be entirely sure and keep meticulous records of the origin of every clip that is utilized and the person's efforts to secure all the clearances.¹²

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Broadcasting Contracts: Legal Issues Surrounding Bidding, Negotiations & Control

-Anjali Saran

Introduction

Broadcasting Rights has existed since the inception of development of media. Through various legal precedents, it has been declared as an essential part of the democratic structure, as it helps to promulgate various information to be dispersed to its audience. However, it is not just the information now that gets distributed, but also entertainment. In fact, broadcasting rights form the crux of the entertainment industry now, with distributors minting money out of the sheer popularity of the media. Some famous broadcasting agents involved in billion-dollar transactions include Viacom¹⁸, T-Series and Sony.¹ However, the entertainment industry is not just limited to cinema. Even Sports can be included in this media, especially with the ginormous audience that sports enjoy across the globe. Recently, with the end of FIFA 2022, about

\$2.64 billion has been garnered alone from the television and broadcasting rights auctioned out to different companies.² Therefore, it is an area which has enormous economic potential.

History of Broadcasting Contracts

At the beginning of TV broadcasting, as soon as in the 1980s, just Doordarshan, which was a nationalized telecom media, was accessible, yet with advancements, TV media changed over to a vast number of private TV slots which currently accommodate the broadcast of different news reports and other amusement programs incessantly round the clock.³ In the 1990s, 24x7 News channels gave the news to the Indian crowd or Indian people groups commuting in different Indian languages, including Hindi, Marathi, English and a lot more local dialects, which helped in its rise to fame.⁴

Presently, in 2000, there is stiff rivalry amongst the different media, with all of them striving hard to achieve better skills. They also give fresh insights into contemporary issues. The government, for the regulation of broadcasting, firstly attempted to regulate the non-government broadcast media focused on cable operators, resulting in the passing of the Television Networks (Regulation) Act, 1995.⁵ These guidelines were necessary as there was a rise of multiple media houses, coming up with unethical and illegal tricks to top the TRP market and profit over it. This was also done to ensure that reasonable restrictions to the freedom of speech and expression of the broadcasting agents are put into check in accordance with art. 19(2) of the Constitution.

Legal Compliances in Broadcasting Contracts

Broadcasting Contracts are also a form of contract. Hence, the general rules of contracts under the Indian Contracts Act 1872 will still be applicable to them. However, over and above the Contracts Act, certain other compliances may also be imposed on the broadcasting agents; for instance, in 1995, that was there for the regulation of cable TV. However, with the entire cable network becoming almost redundant, various Rules and orders came into effect to govern the system without glitches.

The Digital Addressable System (DAS), or rather the entire Set-up Box regime, is one such system that was implemented through Government Order. The Telecommunication (Broadcasting and Cable) Services (Digital Addressable Cable TV Systems)

Tariff Order, 2013, is mainly responsible for the setting up of the DAS pan-India. This Order also mentions specific rules regarding the service and tariff that has to be adhered to. However, with the increase in sports, particularly with the start of IPL franchises, and the airing of other sporting events, it was decided by the government to bring in legislation for regulating this high-potential sector, which could soon turn into a morally inept market if *laissez-faire* is followed. This led to the passing of The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007. This Act is valid to date and plays a significant role in all the broadcasting contracts dealing with sports airing. Section 3 of the 2007 Act mandates the sharing of broadcasting rights with the government for any sport of national importance the government determines.⁶ Sec. 5 also talks of the guidelines to be followed in the case of the broadcaster obligated to share the rights.⁷ These ensure that adequate ceilings are placed on the corporations' power to control the broadcasting rights of sports media. However, in other sectors, such types of blocs may still exist. Apart from all these compliances, there is also the issue of copyright that comes into play here. Section 37 of the Copyright Act 1957 states that every broadcaster shall have the right to reproduce its work till twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.⁸ Therefore, broadcasting contracts also have to adhere to this legal provision, giving broadcasters an upper hand over the content for 25 years.

Recent Development in The Broadcasting Arena

The Broadcasting arena has undergone massive developments since its potential was tapped. This sector has seen (and is still witnessing) various mergers and acquisitions or partnerships being formed only for the sake of profits. An instance can be Shemroo Entertainment partnering with Amagi to strengthen their individual stances. This will lead to more Bollywood content being displayed on the Shemroo, leading to a broader audience.⁹ Another example can be Viacom 18 and Disney+ Hotstar coming together for the airing of IPL. Both these companies have bagged the broadcasting rights of IPL for over \$3.05 bn and \$3.02 bn, respectively, for 5 years starting from 2023.¹⁰ This can be seen as another way of big media houses coming together to have shared contracts that benefit both. TRP (Target Rating Point), used to calculate the show's prosperity amongst the target audience, is another concept that has emerged as an essential factor of income earning. The show with the highest TRP gets numerous benefits, inciting the wrath of its rivals. Hence, TRPs are rigged to display an outcome favourable to that person. Therefore, strict penalties are imposed on the wrongdoers.

Conclusion

The broadcasting contracts in India lack a uniform framework; hence, most contracts suffer from unavoidable defects. In the case of *Culver Max Entertainment Private Limited v. FI.MyLiveCricket.Live*, wherein the plaintiff, who

operates “Sony Ten Network”, expressly filed for protection from illegal content transmission, despite the plaintiff having acquired broadcasting rights with the due process from competent authorities.¹¹ The Delhi HC, while deciding the case in favour of the plaintiff, granted him complete protection against any form of misuse of the content and the rights granted to him. Therefore, in cases like these, an injunction order can be sought from the court against the defaulter; however, the presence of guidelines in respect of this would solidify their stance. Since Broadcasting Contracts are another genre within the Contracts, it will be in the interest of the contracting parties if the government takes steps to ossify their stance.

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