

UNIQUE LAW



EST. 2020

JOURNAL OF UNIQUE LAWS & STUDENTS

LLPIN: AAS-8750

WEBSITE: UNIQUELAW.IN

EMAIL: PUBLISH.JULS@GMAIL.COM

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“Journal of Unique Laws and Students” (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE II of Volume 1 focuses on three themes i.e. (i) Artificial Intelligence and Block chain in Law (ii) Intellectual Property Rights and Media, and (iii) Laws applicable to the intermediaries.

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Research Title: **INTELLECTUAL PROPERTY RIGHTS AND MEDIA
LAW IN FILM INDUSTRY**

Authors –

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ABSTRACT

In India, a host of pressing issues relating to media, entertainment industry has surfaced. With rapid growth and investment, new players on the rise, and swift technological advancements, Intellectual Property Rights (IP) security and regulation has become significant in this sector.

This research paper will be focusing majorly on two components, the first amongst them is IP protection which is a civil right that safeguards a person's creation and grants a control over it, to investigate potential gains if used by others and thus, has arisen as a significant concern. As the paper proceeds, it sheds light on its second component, that the Indian entertainment and film industry has experienced rapid growth in recent years and is now considered one of India's fastest-growing industries. The paper further highlights the legal provisions that governs the creation and usage of media. Some of the examples covered under the media regulation are broadcast television, the internet, and print media.

Finally, the paper gives a fair and constructive idea on the scope and coverage of various IP principles, such as patents, copyright, designs, and trademarks. It further discusses how media law and IP are interlinked, along with a segment on computer devices, databases, Internet, and cyber laws, are discussed in this paper.

Key words: *Digital Media, Copyright, Intellectual Property, Enforcement, Media and Entertainment Law*

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INTRODUCTION

In terms of content creation, number of channels, and use of advanced technologies, the Indian media and entertainment industry has advanced by leaps and bounds. However, when it comes to content creation and distribution, the questions that arises are, how original the contents are and how confident can we be that they were created in accordance with the rules and regulations of IP. IP rights are a significant protection against any form of violation of the makers' originality and imagination, as well as a means of recognising the authors' abilities and guaranteeing the widespread propagation of original and authentic content.

Intellectual Property Rights are collectively defined as the intangible rights that shield and prohibit certain artistic works and phrases. Copyright is a major aspect and an essential branch of IP that safeguards authors' rights to their artistic works. Movies, storyline, music, artwork, and literary works are among these works. However, it is becoming more difficult to keep track of all copyright infringements. In the film industry, copyright infringement is a challenge to creative creations and expressions. One such challenge is piracy, which is the unauthorised use of a producer's original work that is protected by copyright. According to the film industry, India is the world's largest centre for piracy videos and audios. It is estimated that, by 2022, copyright infringement would cost the global film industry \$51.6 billion in the form of internet platforms. The film industry in India is thought to be failing as a result of India's less reformative IP laws.¹

India's film industry is regarded as one of the largest in the world. This sector has seen rapid growth in recent years and is now considered one of India's fastest-growing sectors. In the current setting, copyright and all other intellectual property rights are very common in the film industry. They offer legal rights and prevent the production of creative or one-of-a-kind works. In the entertainment industry, copyright serves as a link between video, painting, sculpture, illustration, and recordings, among other things. Creative works and phrases are not a modern concept in society; the distinction now is that the security of these terms and expressions is given more importance.

Along with the success stories of the Indian media and entertainment industry's healthy growth and expansion comes the question of the industry's commitment to legal and ethical standards, and how effective it has been in doing so. The Indian media and entertainment

¹Lakshmi Kumaran & Sridharan, *Protecting intellectual property in media and entertainment*, *i-am-media.com*, [21 April 2021 6:34 P.M], <https://www.iam-media.com/copyright/protecting-intellectual-property-media-and-entertainment> .

industry is often confronted with a variety of legal issues, including infringement of intellectual property rights, cyber rules, copyright, and trademark laws. The Indian film and media industry has developed at an unprecedented rate in recent decades and often embodies global legal problems such as piracy and copyright infringement. The solution that stands is that such traditional means of redress must be replaced by cutting-edge techniques such as Online Dispute Resolution and Alternative Dispute Resolution.

Along with the rise of the entertainment industry, another notable development has been the increased importance of the internet and social media as a forum for alternative media. Despite the advent of the Digital Millennium Copyright Act since 1998, this development has seen an uptick in IP violations, copyright piracy, and content ownership conflicts. While having a solid justice structure as a pillar, the regulatory process needs to be improved and updated. The legal challenges and problems facing the Indian media and entertainment industry are vast, and numerous ways of infringement of intellectual property rights are frequently a topic of debate and discussion².

Another aspect to protect the IP rights of individuals is the involvement of the Information Technology sector that must ensure applicability of mandates such as ‘cyber due diligence’ and other aspects of the Information Technology Act, 2000. The bulk of business cases include Intellectual Property Rights (IPRs) and their infringement. Such abuses are a detrimental feature of the Indian media industry's activity and contribute to its dysfunction. India, as part of the Asian film industry, has a number of tools at its disposal to resolve these conflicts, including Alternative Dispute Resolution and Online Dispute Resolution. The World Intellectual Property Organization is a successor entity of organisations including the United Nations (WIPO). The worst thing is that we don't favour these techniques or devices for resolving our problems; instead, we prefer conventional methods. Rather than ADR and ODR, we choose the sluggish and time-consuming traditional approaches.

²Dr. Rajiv Desai, Entertainment, Drrajivdesaimd.com, [21 April 2021 7:24 P.M], <https://drrajivdesaimd.com/2012/04/05/entertainment> .

OBJECTIVES OF THE STUDY

1. To obtain a better understanding of the different types of IPR violations in the Media as well as the Indian film industry.
2. To critically analyse how IPR violations are impacting the film industry's most fundamental characteristic, its innovation.
3. To get a better understanding of the different problems and challenges associated with IPR breaches based on a few examples.

RESEARCH METHODOLOGY

The research methodology adopted by the researcher for carrying out this dissertation is purely Doctrinal Legal Research Methodology, thus to a large extent the research undertaken by the researcher is based on the libraries, archives and online sources. Secondary sources like thesis available on the internet have been used to understand the various problems, the reasons and analyse various reforms suggested by some learned authors and experts in the field.³

THEORETICAL FRAMEWORK

The fourth pillar of democracy, the media, is supposed to play a vital role in the formation of public opinion, thought, and ideas by serving as an impartial disseminator of important information and news. The importance of the Social Responsibility Theory cannot be overstated. It emphasises the media's civic roles and duties. The philosophy emphasises the importance of striving for excellence in media's deliberations and that honesty should not be compromised at every expense. As a result, the principle seeks to protect media interests and journalistic integrity, thus raising the standard of journalism. The theory explains how the media plays a vital part in influencing and educating people, informing them of their rights and responsibilities, actively endorsing social issues, and opposing oppressive government decisions and policies. However, the current situation indicates that the Indian media and entertainment industry is beset by scandals and instances of immoral conduct⁴.

³ Nishith Desai Associates, <https://www.nishithdesai.com/information/areas-of-service/industry/media-entertainment.html>, [last visited 22 April 2021]

⁴Manish Verma, Tanushri Mukherjee & Vijish J Kurup, *Intellectual Property Rights and Indian Entertainment Industry: An Overview*, Research Gate, [22 April 2021 5:54 P.M],

Artists in the Indian film industry, have been accused of violating intellectual property rights in a variety of ways. The question that is instilled is how do we trust the media to play an ethical part and genuinely function as means of information distribution, producers of original knowledge, or creators of artistic art under those circumstances. Indian media has been accused of breaking several laws and regulations, and copyright has always been one such place where Indian artists have been accused of piracy, creating significant questions about IP rights security. The Indian film industry's violation of IP rights calls into question its societal responsibilities and commitment to the Social Responsibility Theory.

IPR AND ITS IMPORTANCE IN MEDIA AND ENTERTAINMENT SECTOR

It is important to understand the significance of intellectual property laws. The Indian media industry has experienced phenomenal growth, and it is expected to continue to do so in the coming years.

The Indian Media & Entertainment industry has seen strong growth in recent years, and according to the FICCI-KPMG study on the Indian Media & Entertainment Industry, the industry is projected to expand at a compound annual growth rate of 15% over the next five years, reaching INR 1.4 trillion in 2016.

The Government of India has given the broadcasting sector (DTH, cable networks, etc.) much needed impetus for growth by opening up and lowering entry barriers for foreign investors in some main areas of the industry, including the recent relaxation norms for the broadcasting sector (DTH, cable networks, etc.). Several segments of the industry such as television, films, sports, and gaming, have seen unprecedented progress on several levels. The use of cutting-edge technology in the manufacturing process, content digitization and globalization, the availability of multiple revenue sources, financial transparency, and corporatization have all led to the M&E industry's paradigm shift in India over the last decade.⁵

The primary driver of this expansion is undoubtedly content innovation, as it is often said that 'Content is King'. The media industry as a whole, is built on this aspect of innovation, which

https://www.researchgate.net/publication/318122730_Intellectual_Property_Rights_and_Indian_Entertainment_Industry.

⁵Sougata Chattopadhyay, *Intellectual Property Rights in Digital Environment*, Research Gate, [22 April 6:19 P.M],

https://www.researchgate.net/publication/320585766_Intellectual_Property_Rights_in_Digital_Environment

it can be proud of. As a result, it's critical to preserve and promote the aspect of innovation that underpins the entertainment industry's operation. This is where IP laws become even more critical as the sole protector of one's indigenous and artistic work, ensuring that the media industry runs smoothly and that artists receive the credit and appreciation they deserve for their original work.

The promise of this industry in India has been recognized globally, and it has drawn international players interested in tapping into it. This is shown by the fact that, despite the economic downturn, this industry received approximately INR 32.64 billion in Foreign Direct Investment (FDI) in 2011, which is 72 percent higher than the FDI received in 2010-11.³ Some of the most relevant examples are; Walt Disney Company's acquisition of an additional 41 percent stake in UTV Software for a value estimated to be over USD 300 million (bringing its shareholding in UTV to approximately 90 percent), Providence Equity Partners' private equity investment in UFO Moviez India (\$58 million), and HSBC's private equity investment in Avitel Post.⁶

As established above, a creative mind is only able to unleash its creativity and create a masterpiece of creative art when certain laws or judicial mechanisms exist in society and are vigorously implemented. Indian films have long served as torch bearers, highlighting numerous social problems and issues in the hopes of gaining public support. However, it is necessary to have such strict laws in place to preserve the creators' originality and innovation, and in this situation, IP security becomes extremely important.

Currently, the Ministry of Information and Broadcasting is planning to establish a 'Copyright Board' to ensure that intellectual property rights laws are strictly enforced in the Indian entertainment industry, especially in the film industry. It has already begun talks with the Ministry of Commerce and Industry about the new board's modalities.

CONTEMPORARY DEVELOPMENTS IN DIFFERENT JURISDICTION

In terms of content development and technology, the Indian media and entertainment industry has progressed. In India, intellectual property rights must be controlled in order to protect the owner's rights in terms of content and copyright infringement. IP rights play an important role

⁶Saylordotorg, https://saylordotorg.github.io/text_understanding-media-and-culture-an-introduction-to-mass-communication/s16-economics-of-mass-media.html, [last visited on 22 April 2021]

in society because they prohibit and preserve the creator's original work, as well as ensuring the propagation of legitimate work. The media and entertainment industry are the world's fastest growing and significant contributors to the Indian economy, with revenues of approximately INR 2.35 trillion (US\$33.6 billion) expected in India by 2021.

The media and entertainment industry has also contributed significantly to global employment growth. The Copyright Act of 1976 governs copyright in the United States. There are several treaties and agreements in place around the world to secure owners' interests against copyright infringement. Such conventions are generally regarded as providing safeguards against copyright infringement around the world. One of the most relevant treaties to protect against copyright violations is the Berne Convention for the Prevention and Défense of Literary and Artistic Works, to which most of the countries are signatories. As a result, in the film and media industries around the world, these treaties and agreements safeguard the interests of original owners against Intellectual Property Rights' infringement.

INTELLECTUAL PROPERTY RIGHTS VIOLATION IN MEDIA INDUSTRY

IP is a critical component of the media and entertainment industry's development. Media is a creative field that entertains, inspires, and educates millions of people all over the world. Various media sources, such as television, radio, cinema, print media, music, software companies, online and digital platforms, are brimming with artistic works and formats. This is a mechanism used by the film and media industries to protect their initial work over time so that no one else can use it without their permission. Moreover, because of the increased competition in the entertainment industry, it is now possible to obtain copyright to the original content. In today's world, technological advancements have resulted in an increase in piracy of original works, resulting in financial loss to the owner. As a result, there is a need to protect the owner's original work from copyright infringement, so that no one can access the owner's original work without their permission or authorization. In the film industry, it is also important for the owner to have exclusive rights to the work or content.

Apart from the film and television industries, the IP Laws have also protected other forms of media. In general, any original character created by the author, or any taglines registered by a

radio station for a specific segment, is properly covered by Copyright laws, regardless of the type of media.

To be eligible for Copyright protection, an artistic work must be original, be in any literary, musical, sound, or cinematographic film medium, and be registered for the purposes of proof in any legal battles, if any. The originality of any product advertising created by the maker of the advertisement's music or the person who has written any lyrics for that specific product may also be covered under Copyright laws. The distinctive features of any video game or the tagline of any well-known website can be registered and protected under Copyright laws, preventing infringers from using them for commercial benefit.⁷

As its contribution to the GDP is recognized, its position in cultural exchange is acknowledged, and its labour, pain, and investment in content production is acknowledged, the Indian Media and Entertainment Industry has emerged as one of our country's progressing sectors. This market for all media outlets is growing day by day in the age of digital media and with rising literacy and economic growth. Copying and reproducing others' works in any format has never been easier thanks to technological advancements.

CASES OF INTELLECTUAL PROPERTY RIGHTS VIOLATION

Infringement not only discourages original contributors or authors from producing more artistic works, but it also jeopardizes their earning potential when someone else is stealing their work. Infringement of intellectual property rights can be found in a variety of media and in a variety of forms. Following are the disputes elaborating the infringement principle and safeguarding the interests and rights of IP holders:

1. T-Series v. Guruji.com

The music label T-Series and the website Guruji.com were involved in a big case involving music piracy.

The team of T-Series, Mr. Neeraj Kalyan, VP Digital Content, T-Series, and Mr. Vinod Bhansali, President-Marketing Media Publishing (TV), Guruji.com had a nexus with other

⁷Raghavendra Sharma, *INTELLECTUAL PROPERTY RIGHTS AND MEDIA IN INDIA: COPYRIGHTACT*, Research Gate, [22 April 2021 7:11 P.M], https://www.researchgate.net/publication/342491125_INTELLECTUAL_PROPERTY_RIGHTS_AND_MEDIA_IN_INDIA_COPY.

music pirated websites such as songs.pk, musicplug.in, bollymobile.in, and others, and was infringing on T-Series' copyright contents while masquerading as a search engine.

The final decision was that Guruji.com had to delete the music and song search engine links from its website. The domain was eventually shut down in 2011, indicating T Series' triumph over all copyright infringers.

2. Twentieth Century vs. Sohail Maklai Entertainment

Twentieth Century filed a lawsuit against Sohail Maklai Entertainment in 2010 for the unauthorized and illegal remake of the Twentieth Century thriller Phone Booth into a Hindi film titled Knock Out.

A court in India ruled that Bollywood had violated copyright laws and paid Sohail Maklai Entertainment \$340,000 in damages to the Twentieth Century.

Such attempts have not only forced Indian filmmakers to pay large sums of money in damages and compensation to globally acclaimed filmmakers, but they have also tarnished the Indian film industry, which still has a few talented and innovative filmmakers.

3. Pritam Chakraborty vs. Iranian Music Band⁸

Another well-known example is the Indian music industry, where music was stolen and then used without the creator's permission.

Sriram Raghav Anand directed the film "Agent Vinod," which was released in 2012. Mika Singh sang the song "Pungibaja" in the film, which became a hit. Pritam, the music director, became embroiled in copyright violations under IP laws shortly after the song's publication. He was accused of plagiarizing the song from the Iranian band Barobax Corp, which was formed in 2003.

Pritam Chakraborty and Eros Internationals Pvt. Ltd, Illuminate Films Pvt. Ltd, and Shree Castles Pvt. Ltd received notice from the High Court.

⁸DNA INDIA, <http://www.dnaindia.com/entertainment/report-agent-vinoddistributors-> , [last visited 22 April 2021]

4. *Kunal Kohli vs. Jyoti Kapoor*⁹

Jyoti Kapoor, a Karnal-born scriptwriter, had secured a copyright infringement and breach of confidence case against well-known filmmaker Kunal Kohli.

The storylines of Kohli's film 'Phir Se' and Kapoor's script 'RSVP' were found to be identical by the Supreme Court.

Finally, the court's decision was a moral and legal victory against plagiarism in the Indian film industry. Kohli was required to pay Kapoor a fee of Rs. 25 lakh and give her credit for the film's plot, according to the Supreme Court.

RECENT DEVELOPMENTS

Due to the growth of the industry and technology, there has been a huge demand for intellectual property rights in India in recent years. In the area of intellectual property rights, India has been working to establish a strong administrative framework. The film and media industries are attempting to develop their relations in accordance with international intellectual property standards. This can be seen in India's most recent reforms and advances in intellectual property rights. Centred on the US patents model, the Indian government has been attempting to set up computerized offices for IPs. The government recently made amendments to the patent procedure that will make filing patents in India easier and faster¹⁰.

India is putting a lot of emphasis on globalization and liberalizing foreign trading practices. It is making steady progress toward joining the World Trade Organization under the Trade-Related Intellectual Property Rights Agreement. In India, some changes were made to the functioning of copyright laws to make them more user-friendly and compliant. The changes were made to India's copyright laws to bring them into compliance with the WIPO Copyright Treaty. The Indian copyright act was amended to help deter continued piracy in India, especially in the entertainment industry.

Further improvements and amendments have been made to ensure that the area of Intellectual Property Rights continues to expand. Changes were made to the copyright laws to combat piracy and infringement by enacting more strict laws and regulatory structure. In addition,

⁹DNA INDIA, <http://www.dnaindia.com/entertainment/report-high-court-s-interimstay-> [last visited 22 April 2021]

¹⁰Lexology, <https://www.lexology.com/library/detail.aspx?g=3a5a4a8a-ce0d-42c4-9b88-d1e317aa5841>, [last visited 22 April 2021]

improvements were made in the areas of expediting criminal prosecutions, raising the penalty for infringement, and destroying infringing goods.

CONCLUSION

To summarize, the aim of Intellectual Property Laws is to protect and safeguard the creator's work while also providing some financial benefits in the long run where, its protection has been expanded to the film and media industries. IP is extremely important in the film industry because it preserves the creator's rights and allows him to bring more value to the original work without fear of piracy. The legislative and executive branches have created rules and regulations which are much too complex to keep up with society's technical capabilities. It is thus, pertinent to strike a balance between the rights of all stakeholders.

Unscrupulous practices are growing at an unprecedented pace in this rapidly growing society, and the media and entertainment industry needs to be covered under this ambit. To combat the threat posed by piracy, both industries must take some preventative steps. As a result, the effective and efficient enforcement of copyright laws in these industries should be prioritized. Current IP violation laws must be strictly adhered to, with no exceptions. Judicial penalties against internet piracy should be implemented, since this is one successful way to stop these activities. It is necessary to raise awareness of Intellectual Property Laws and Cyber Laws in India and to improve the IP regime with focus to cover digital media and advancements under their ambit. Thus, this expansion of intellectual property rights in the entertainment and media industries is desirable for the industry to continue to produce artistic and innovative work.