

# AN OVERVIEW INTELLECTUAL PROPERTY RIGHTS AND INDIAN ENTERTAINMENT INDUSTRY

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The Indian media and entertainment industry has developed by leaps and bounds in terms of content generation, number of outlets and employment of advance technology. However, when we talk of content generation and its delivery how much are the contents original and how much can we be sure that the principles and regulations of the Intellectual Property Rights(IPR) have been adhered to in its making. IP rights is a major safeguard against any kind of infringement of the originality and the creativity of the makers, providing recognition to the talents of the creators and ensuring the dissemination of original and genuine work among the masses. No doubt the media and entertainment industry is an important segment of Indian economy and is estimated to grow at a CAGR of 14.3% to touch Rs 2.26 trillion by 2020 ( IBEF Report April, 2017). Along with the success stories of healthy growth and expansion of the Indian media and entertainment industry comes the issue of its adherence to legal and ethical norms and how far has the media been successful in complying with them. The Indian media and entertainment industry often faces many legal challenges; violation of IP rights, cyber laws, copyright and trademark laws are the prominent amongst them. As aptly commented in the blog “Dispute Prevention & Resolution in the Film and Media Industry” the Indian film and media industry has achieved exponential growth in the last decades. However, it also quite often gets engulfed in some major legal issues like piracy and copyright violations. Traditional methods of redressal need to be substituted by the very latest methods like Online Dispute Resolution and Alternative Dispute Resolution. Along with the growth of film industry, another noticeable trend has been the rising importance of internet and social media as an alternate media platform. This growth has also seen an increase in violation of IP rights, infringement of copyright and disputes over ownership of content despite the existence of the Digital Millennium Copyright Act since 1998. Even though we have a strong judicial system as our backbone, the legal framework needs improvement and modification. Legal concerns and issues of the Indian media and entertainment industry are too diverse and various forms of violation of IP rights often remain a major point of debate and discussion. Intellectual Property Rights (IPRs), Cyber laws and IPRs laws like copyright, trademark etc. pose a challenge to the Indian entertainment industry. The industry must keep in mind mandates like “cyber due diligence” and other provisions of Information Technology Act, 2000. A majority of disputes in the industry pertains to Intellectual Property Rights (IPRs) and its violation. Such violations are the negative aspect of the functioning of the Indian media industry and further add to its dysfunction. As part of the Asian entertainment industry, India has many instruments to solve these disputes like Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). Organizations like the U.N. have a subsidiary body called the World Intellectual Property Organization (WIPO). But the saddest part is that we don't prefer these methods or devices to resolve our issues; rather what we choose are the traditional methods. Instead of ADR and ODR, what we prefer is the slow and old conventional methods. IPR and its importance in media and entertainment It is essential to know the importance of IPR laws. The Indian entertainment industry has shown tremendous growth; it is expected to grow even more in coming years. The major reason behind this growth is undoubtedly the creativity in content, like it is quite often said that “Content is the King”. The whole entertainment industry is based on this element of creativity for which it can feel proud. Hence, it is very important to keep intact and uphold this element of creativity which forms the basis of functioning of the entertainment industry. This is where IPR laws become all the more important as the sole guardian of one's indigenous and creative work, so that the entertainment industry can function smoothly and the artists can get the due credit and recognition for their original piece of work. It is only when such laws or judicial mechanism exist in the society and they are actively enforced that a creative mind is free to unleash its imagination and to bring out a masterpiece of creative art. Indian films have always acted like torch bearers while showcasing various social concerns and issues and trying to garner popular support. However, it becomes essential that there should be certain strong laws to safeguard the originality and creativity of the makers and in that case the protection of IP rights assumes tremendous importance. Currently, the Ministry of Information and Broadcasting is planning to set up a ‘Copyright Board’ which will ensure firm implementation of intellectual property rights laws in the Indian entertainment industry, especially the film industry. It has already started discussions with the Ministry of Commerce and Industry to work out modalities for the new board.

**Research methodology** The study presents a deeper insight into various issues and 136 challenges concerning IP rights in the Indian media and entertainment industry. To make a detail critical study of the issue, the paper primarily employs Secondary Data Analysis method and presents a picture of the present scenario and the widely discussed matters and issues related to the field and how it is assuming the shape of a big problem in the Indian media and entertainment industry. As part of the Secondary Data Analysis, this paper employs Case Study Method for presenting some of the most befitting cases which amply demonstrate the seriousness of the issue and the various ways it is posing a big challenge to the Indian entertainment industry.

**Theoretical framework** Media, the fourth pillar of democracy, is expected to play a key role in the formulation of thoughts, opinion and ideas amongst the public by being an objective disseminator of facts and news of great importance. The Social Responsibility Theory is very important. It points out the social responsibilities and obligations of media. The theory stresses the fact that media should strive for achieving excellence in its deliberations and professionalism should not be sacrificed at any cost. The theory therefore aims at safeguarding the interests of journalism and journalistic ethics, thus improving the standard of journalism. The theory describes the important role and functions of media towards informing and educating people, enlightening the people about their rights and duties, strongly advocating social causes and criticizing unjust government decisions and policies. However, the present scenario tells us that the Indian media and entertainment industry is getting engulfed in all sorts of controversies and cases of unethical conduct.

The Indian film industry (Bollywood) artists have often been accused of violating IP rights in various ways. In such circumstances how can we expect the media to play an ethical role and to truly act as tools of information dissemination, creators of original knowledge or piece of creative art? Indian media has quite often been accused of violating many laws and regulations of the land and copyright has been one such area where Indian artists have always been accused of infringement, raising serious concern over the issue of protection of IP rights. Increasing number of cases of violation of IP rights by members of the Indian film industry has made us think as to whether

the media professionals are aware of the Social Responsibility Theory. The reality is that members of the entertainment industry instead of setting standards are getting trapped in legal battles and controversies. Various incidents of unlicensed copying of movies by the film industry have put a question mark on the originality of the contents in Indian films and also the moral conscience of the film fraternity members. The cases of infringement of IP rights by the Indian entertainment industry question its obligations towards society and its adherence to the Social Responsibility Theory. IP rights violation in the entertainment industry No doubt, Bollywood as an industry has touched new horizons of success. The success story of Indian cinema undoubtedly revolves around Bollywood movies generating revenue in crores, followed by South Indian movies and some other regional movies as well. The growth in many ways has been a 360 degree development, covering all dimensions of film making. The present era has also witnessed a remarkable development in terms of movie script based on some hard social realities, thus acting as the true mirror of society. A very good illustration of this fact is the making of some legendary and thought provoking movies like Love, Sex and Dhoka, Gangs of Wasseypur, Swades, Ankh Dekhi, D-Day, Talaash, Lunch Box, Ugly, I am Kalaam, Khosla Ghosla, Children of War etc which have won great national and international accolades and have been successful in keeping the viewers glued to the screen. These movies created space for quality content, gave a new line of thinking for the talented movie makers and provided quality entertainment to those sections of the audiences who are interested in watching "out of the box", real life-based inspiring movies. It is actually the contribution of such movies which has held the banner of the Indian entertainment industry high adding to both the name and the fame of Indian cinema. The names of movies like Sarabjit, Queen, Dangal and Bombay Talkies have been able to create an imprint in the minds of cine goers. Along with the remarkable growth of Indian cinema have come issues that have proved to be a threat to these newly opened and widely appreciated new genres of thoughts and ideas. Issues like piracy, copyright etc are still casting an evil shadow on the path of the success and popularity of cinema. Regulations have been formulated and various organizations have emerged to keep the originality element of Indian cinema intact. Cases of IP rights violation Case 1: Kunal Kohli vs Jyoti Kapoor Kunal Kohli, who is well known for making some excellent films like "Faana" and "Hum Tum", recently faced allegation against his movie "Phir Se" for which he finally had no other choice but go for an out of the court settlement. The movie was his debut movie as an actor. It was alleged that the original story and script belonged to Jyoti Kapoor, and the story of the movie was copied from her script. The charges leveled against Kunal Kohli were of a very serious nature. According to Kapoor, in 2010 she had written a script for the movie titled 'R.S.V.P' and registered it with the Film Writers Association. In 2013, she met director-producer Kunal Kohli who showed interest in her script. However, the two could not arrive at an agreement following which Kapoor approached another

production house which agreed to make a film on her script. In 2014, Kapoor came across newspaper articles about Kunal Kohli launching a new film 'Phir Se'. From the articles and Kohli's interviews, Kapoor realised that Kohli had used her original screenplay. Kapoor lodged a complaint with the FWA and Indian Motion Pictures Producers Association (IMPPA) and also issued a notice to Kohli. The consequences of the allegation were so severe that in November 2014, a Joint Dispute Settlement Committee of IMPPA issued notice to Kohli directing him to stop shooting of the movie 'Phir Se' till the matter was resolved. The story of the movie was allegedly plagiarized. Jyoti Kapoor had filed a case saying that "Theater manager had e-mailed her a 90- page bound script sent to Kunal after which he wanted to buy it. However, negotiations did not work out and the next thing I know is the striking similarity in the script I submitted and the film he announced." The High Court had issued an interim stay order on the release of the movie after allegations leveled by Jyoti Kapoor regarding similarities in the script of two movies, "Phir Se" and "RSVP, but the final loss was in terms of the image of some recognized people who represented the Indian film fraternity which is otherwise known for its The matter was resolved in an out-of-court settlement after Jyoti decided not to fight with her 'family', as they all belong to the same film fraternity. It is said that even after receiving the notice from IMPPA, Kunal didn't stop the film shooting. Seeing this, Jyoti Kapoor approached the Bombay High Court and filed a case against "Bombay Film Company", the production houses of the movie. There was also a new angle to the controversy as the defendant stated that many elements in the movie did not resemble R.S.V.P., such as the setting, the treatment of the story and the climax. There were further claims that R.S.V.P. isn't unique or novel, but the court went through her script and concluded that it can be appropriately termed as a novel. The movie violated the IPR laws for copyright; in simple terms, the script or screenplay was stolen or copied. Unfortunately after a long legal battle, Kunal failed to prove that his screenplay was original. As a result of which the Bombay High Court asked him to go for a settlement. It was only after almost two months after writer Jyoti Kapoor secured an interim stay on Kunal Kohli's upcoming film 'Phir Se' over plagiarism charges that the Bombay High Court gave the green signal to the movie to be screened in theatres. But bad luck followed as the movie couldn't reach the theatre screens.

Case 2: Pritam Chakraborty vs Iranian Music Band Another very popular case relates to the Indian music industry where the music was stolen, rather used without permission of its creator. It concerns a famous Bollywood music director Pritam Chakraborty. It is surprising that when creativity is given freedom and judicial system remains unbiased such issues do occur. Unfortunately, the industry is full of many such cases of plagiarism. Although shameful, the truth is quite bitter and difficult to be accepted. It is not just one such case but quite a few, including cases related to plagiarizing of music, story etc. No doubt, music director Pritam Chakraborty's tremendously melodious compositions are remarkable, but his name also figures when it comes to the issue of music plagiarism. According to reports, during the pre-production of the movie "Action-Replay", the director Vipul Shah was extra cautious and had made Pritam sign an "anti-plagiarism indemnity". In Vipul Shah's words: "I have taken a written indemnity from our music composer Pritam that not a single song in Action Replay is a copy. How will I know if he takes something from a Chinese, Taiwanese or Syrian song?" "Agent Vinod" was a movie directed by Sriram Raghavanand, released in 2012. The movie had a very famous song called "Pungibaja" sung by Mika Singh. Soon after the release of the song, the music director Pritam got entangled in copyright violation issues under IPR laws. He was alleged to have copied the song from an Iranian music band named Barobax Corp, founded in 2003. The company issued legal notice to Pritam and the production house of the film. The music was discovered to be a copy of the title track of an album created by three Iranian nationals named Kashayar Haghgoo, Kevian Haghgoo and Hamid Farouzmand in 2010. On 12th March, 2012, the band came across the promotion of the movie 'Agent Vinod' on their satellite television in Iran where the song 'Pungi Baja De' was being aired. On listening to the song, the band realized that the initial portion of the song was copied without any change from the title song of their album. Since their song 'Soosan Khanoom' was registered under the Copyright Act in Canada on June 30th 2010, it couldn't be used without the permission of the band. The band learned about Indian copyright infringement laws and filled a case against Pritam in an Indian court. The High Court sent a notice to Pritam Chakraborty and Eros Internationals Pvt. Ltd, Illuminate Films Pvt. Ltd, and Shree Castle's Pvt. Ltd. The notice stated: "We demand that the music director, producers and directors refrain from releasing the song in the movie or use it to promote the movie. Failing to do so, the band shall be compelled to initiate proceedings to seek a restraining order and necessary compensation." Case 3: T-Series vs Guruji.com A major case which deals with the issue of music piracy was between the music giant T-Series and the website Guruji.com. T-Series had labeled charges on Guruji.com alleging that their music and video catalogs has been exploited by the website. As per the statements of Mr. Neeraj Kalyan, VP Digital Content, T-Series and Mr. Vinod Bhansali, President-Marketing Media Publishing (TV), Guruji.com had a nexus with other music pirated websites like songs.pk, musicplug.in, bollymobile.in etc and was infringing the copyright contents of T-Series under the disguise of a search engine. It was stated by T-Series that all music surfers searching for music on Guruji.com were directed to a music player which was again directly linked to various pirated music websites. Guruji.com very soon earned the tag of being a

pirated music search engine. On 16th July, 2008, the site was issued a legal notice by T-Series. The website tried its label best to safeguard its stand on the copyright violation issue by responding that it had done what is normally expected from a search engine by only helping the consumers by pointing out towards music content. The final judgement was that Guruji.com has to remove the search engine links for music and songs from its site. However the site was finally shut down in 2011 reflecting the victory of T-Series against all copyright violators. Case 4: Twentieth Century vs Sohail Maklai Entertainment Bollywood is often accused of committing IP offences mainly in the form of copyright infringement cases where we find so many Indian movies either based on Hollywood films or they are the remake of popular south Indian movies. Such issues cast a deep shadow regarding the protection of IP rights in the entertainment industry. In 2010, a suit was filed by Twentieth Century against Sohail Maklai Entertainment for the unauthorized and unlawful remake of Twentieth Century thriller named Phone Booth into a Hindi film named Knock Out. A court in India ruled that Bollywood had violated the copyright laws and awarded a relief of \$340,000 as damage to the Twentieth Century by Sohail Maklai Entertainment. Such attempts have not only compelled the Indian film makers to pay heavy prices as damages and compensation to the internationally acclaimed film makers but has also brought a bad name to the Indian film industry which still has a few talented and creative film makers. Conclusion The critical analysis of facts related to the violation of IP by the Indian entertainment industry and the few cases cited make it clear that time has come to give a serious thought to the issue of maintaining and safeguarding the element of originality and creativity in the Indian media and entertainment industry. It is important to make optimum use of devices that help fight the cases of violation and safeguard Intellectual Property Rights. It is also been seen that lack of knowledge about IP rights is also an issue, which needs attention. There is a need to know more about IPR laws as it protects a wide spectrum of intellectual properties. All those who belong to the industry must safeguard the originality and creativity of content, raise awareness about the IP laws, discern the various forms of infringement and the modifications incorporated in the law and their implications if the industry is to remain healthy.

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