



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

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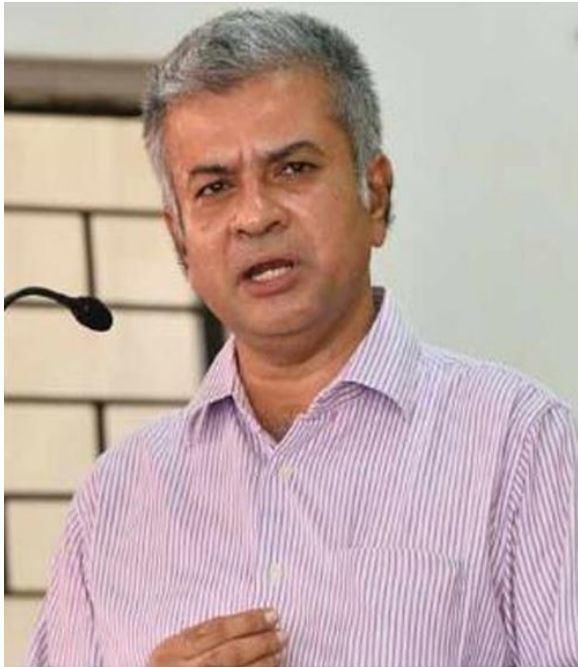
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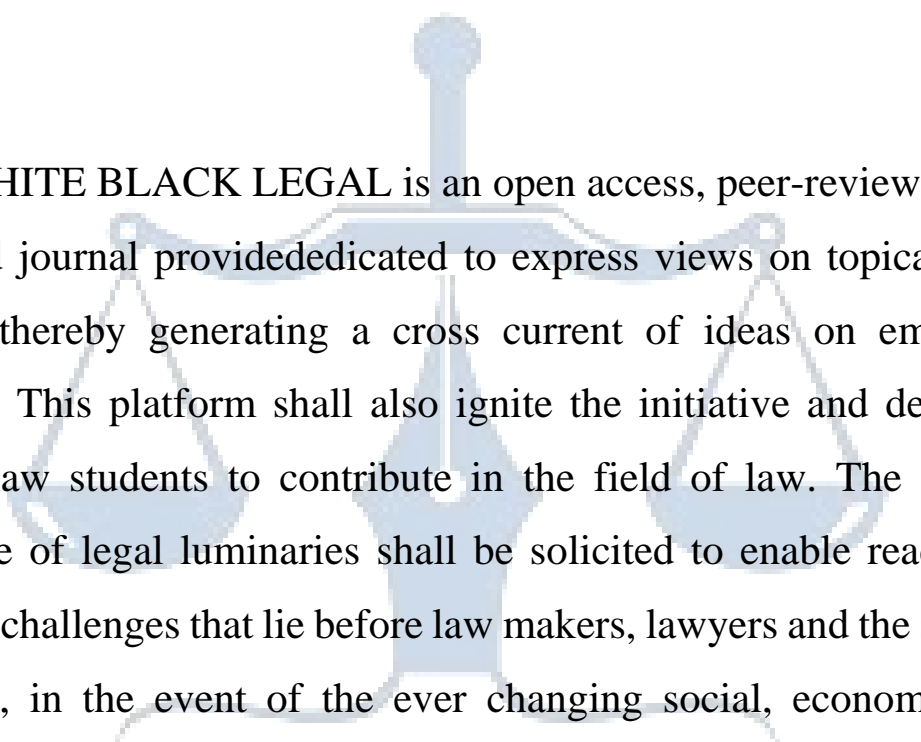


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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DEFENDING CREATIVITY: COPYRIGHT LAW IN THE REALM OF INDIAN MUSIC AND BOLLYWOOD CINEMA

AUTHORED BY - SHIVANI SINGH¹

ABSTRACT

This paper explores the intricate landscape of copyright law as it pertains to the realms of Indian music and Bollywood cinema. Copyright law serves as a vital framework for protecting the rights of creators, fostering cultural diversity, and promoting economic growth. The analysis delves into the evolution of copyright law in India, examining its provisions for safeguarding musical works and cinematographic films. It investigates instances of copyright infringement in both Indian music and Bollywood movies, highlighting legal precedents and challenges faced by creators and copyright holders. Furthermore, the paper discusses the remedies available against copyright infringement, including civil and criminal remedies, as well as the roles of administrative bodies such as the Copyright Board and Copyright Societies. Through a comprehensive examination of legal principles, case studies, and industry practices, this paper underscores the importance of upholding copyright law to protect original works and encourage creativity in the vibrant cultural landscape of India.

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INTRODUCTION

Copyright law serves as a fundamental pillar in safeguarding the rights of creators and fostering a vibrant cultural landscape. It not only provides creators with the necessary incentives to produce original works but also ensures that their contributions are duly recognized and protected from unauthorized exploitation. Beyond its legal framework, copyright law plays a pivotal role in shaping societal norms regarding creativity, innovation, and the fair exchange of ideas.

One of the core principles of copyright law is the notion of originality. To qualify for copyright protection, a work must possess a requisite degree of creativity and originality, meaning it must originate from the author and exhibit a minimal level of originality beyond mere facts or ideas. This criterion ensures that copyright protection is granted to works that embody a significant degree of creative effort, thereby incentivizing authors to invest their time and resources into the production of new and original content.

Moreover, copyright law serves as a mechanism for promoting cultural diversity and preserving the rich tapestry of human expression. By granting creators exclusive rights over their works, copyright law enables them to control how their creations are disseminated, ensuring that diverse voices and perspectives are represented in the cultural marketplace. This, in turn, fosters a more inclusive and pluralistic society where a wide range of artistic and cultural expressions can flourish.

Furthermore, copyright law plays a crucial role in promoting economic growth and innovation. By providing creators with a financial incentive to produce original works, copyright law stimulates investment in creative industries, leading to the generation of jobs, revenue, and economic prosperity. Additionally, copyright protection encourages the development of new technologies and distribution channels for creative content, driving innovation and fostering the emergence of new artistic mediums and formats.

In the digital age, copyright law faces new challenges and opportunities posed by the proliferation of digital technologies and the internet. The ease of copying and distributing digital content has led to widespread concerns about online piracy and the unauthorized sharing of copyrighted material. To address these challenges, copyright law has evolved to

encompass digital rights management (DRM) technologies, licensing agreements, and enforcement measures aimed at combating online infringement and protecting the rights of copyright holders in the digital realm.

Moreover, copyright law plays a crucial role in facilitating access to knowledge and promoting the dissemination of information. While copyright protection grants creators exclusive rights over their works, it also includes limitations and exceptions that balance the interests of creators with the broader public interest in accessing and using copyrighted material for purposes such as education, research, and criticism. These limitations, often enshrined in copyright law as fair use or fair dealing provisions, ensure that copyright law strikes an appropriate balance between incentivizing creativity and fostering the free flow of information in society.

In addition to its legal dimensions, copyright law also intersects with broader ethical and moral considerations regarding the ownership and use of creative works. Plagiarism, for instance, represents a violation of academic integrity and ethical norms by misrepresenting the authorship of intellectual contributions. While plagiarism may not always constitute copyright infringement, it nevertheless undermines the principles of honesty, attribution, and respect for intellectual property rights that underpin scholarly discourse and creative expression.

Furthermore, copyright law serves as a mechanism for promoting cultural heritage and preserving the collective memory of society. By protecting the rights of authors and creators, copyright law ensures that their contributions to the cultural heritage are duly recognized, documented, and preserved for future generations. Whether through the protection of traditional folklore, indigenous knowledge, or historical archives, copyright law plays a crucial role in safeguarding the cultural legacy of humanity and promoting intergenerational equity.

Copyright law serves as a cornerstone of modern legal systems, providing creators with the necessary incentives and protections to produce original works and contribute to the cultural and economic vitality of society. Beyond its legal framework, copyright law embodies broader societal values and ethical principles regarding creativity, innovation, and the fair exchange of ideas. As we navigate the complexities of the digital age, it is imperative to

uphold the principles of copyright law while also fostering a culture of respect for intellectual property rights, ethical conduct, and the free exchange of knowledge and ideas.

COPYRIGHT INFRINGEMENT IN THE INDIAN MUSIC

Original musical work is provided with copyright protection under section 13 (1) (a)². Section 2 (p) of the Copyright Act, 1957 defines 'Musical work' as 'a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music'. Also section 14(a) lays down exclusive rights in respect to musical work which includes the right to reproduce, issue, copies, perform, translate, adaptation, etc.³

Copyright protection is also provided to an adaptation of musical work i.e. any arrangement or transcription as copyright subsists in an arrangement of music by adding new rhythm, new accompaniments, and new harmonies.

In India, music being an integral part of our lives are broadly classified into three categories:

- (i) Classical music
- (ii) Traditional or folklore music
- (iii) Film music.

The amendment to the definition of 'musical work' was intended to protect Indian Classical music and folklore because they descend from generations without anyone claiming rights over such music. Also, the composer-performer dichotomy is absent in case of Indian classical music and folklore whereas it is common in Western classical music.

In the last few decades saw the music of yesteryears being marketed with contemporary beats as 'remixes'. This went on to become a trend and was criticised by original composers of such songs like Naushad, R.D.Burman etc as they argued that their music was being distorted by a new generation of musicians.

² Section 13(1)(a), The Copyright Act, 1957

³ Section 2 (p), The Copyright Act, 1957

They also argued conversion of soft Hindi film music into remixes amounts to ‘plagiarism’ but as provided under the Copyright Act, 1957. Plagiarism is not same as copyright infringement and thus remixes are covered under the term ‘Adaptation’ and has its own copyright.

The amendment of 2012 in the Copyright Act, 1957 deleted section 52 (1) (j) permitted that if the copyright holders, composers and lyricists are provided with notice of intent along with 5% royalty and an advance then any song older than 2 years could be used for ‘version recording’. This resulted in a payment of nominal amount to music companies owning the copyright as they received no royalty for any subsequent album sales. Therefore Indian Music Industry (IMI) and other Industrial players demanded for the detention of section 52 (1) (j).

The introduction of section 31 made the production of cover version more difficult. It provides statutory license for cover version. The time period has also been increased from 2 years to 5 years for making cover version. Only note- for- note and word- for- word covers are allowed from the original song therefore without the copyright owners’ permission no imaginative covers are allowed in which music is reworked or lyrics are changed.

Agent Vinod (2012) produced by Dinesh Vijan starring Saif Ali Khan faced legal proceedings for copyright infringement for song ‘Pyaar ki pungi’. The Iranian underground Pop band ‘Brobax Corp.’ claimed that the song’s initial portion is identical to the composition of their work ‘Soosan Khanoom’.

COPYRIGHT INFRINGEMENT IN BOLLYWOOD MOVIES

Cinematography film is ‘defined under 2(f) of the Copyright Act, 1957 which means any work of visual recording, including any work which is produced by any exercise equivalent to cinematography including video films⁴.

The cinematography work is beautifully explained by Justice Krishna Iyer as ‘a felicitation blend, a beautiful totality, and a constellation of stars. Cinema is more than a long strips of celluloid, more than miracles in photography, more than song, dance and dialogue and,

⁴ Section 2(f), The Copyright Act, 1957

indeed, more than dramatic story, exciting plot, gripping situations & marvellous acting. But it is that ensemble which is the finished product of orchestrated performance by each of the several participants, although the components, may, sometimes, in themselves be elegant entities. Copyright in a cinema film exists in law, but 13 (4) of the Act preserves the separate survival, in its individuality, of a copyright enjoyed by the 'work' notwithstanding its confluence in the film'⁵.

Bollywood has been provoking copyright infringement due to the modern trend of remaking movies based on South Indian movies and taking encouragement from Hollywood films. It has dragged the focus to the root of protection of Intellectual Property Rights in Entertainment Industry. Since a long time, the Hollywood filmmakers were highly ignorant of their films being replicated in India. Bollywood has been carrying out activities such as unlicensed copying of movies, altering some sequences in the movies and easily passing them off as 'inspirations' to circumvent giving credit to the original filmmakers.

Though this milieu is changing a bit now, as Hollywood has for defence for safeguarding their work laid down offices in India to monitor any unlicensed replica of American films.

In 2010, a successful suit for the first time was filed by Twentieth Century against Sohaila Maklai Entertainment for the unlawful recast of Twentieth Century's 2002 thriller 'Phone Booth' into 'Knock Out'. The Indian court then for the first time ruled that Bollywood has violated Hollywood's copyright. The Bombay High Court granted Twentieth Century injunction relief until Rs 3, 40,000 as damages were not paid off by the defendant.

This habit of Indian film makers of restoring to easy way out of plagiarism. Hollywood movies have made Indian Cinema pay extortionate prices as damages.

In 2004, the Bhatt family made 'Murder' extracting the plot from the Adrian Lyne film 'Unfaithful' (2002) with Richard Gere and Diane Lane. For 'Murder 3', the rights of Columbia thriller, 'The Hidden Face' were bought by the Bhatt's. And their recent production 'Citylights' was the licit remake of the 2013 British-Filipino film 'Metro Manila'.

Filmmaker Karan Johar also bought the rights to recast 'Stepmom' (1998) in Hindi as 'We

⁵ Law of Copyright, Alka Chawla, LexisNexis

Are Family' (2010). And recently Johar and producer Guneet Monga issued a statement that they had bought the sanctions to remake the French hit 'Intouchables'.

Indian cinema has been wallow in copyright infringement and Hollywood has a substantial knowledge about it still Hollywood producer's prospects the sedate and tedious Indian legal system which keeps aggrieved Hollywood producers from seeking redressal in cases of plagiarism. Moreover, insightful producers considerably change plots and storylines which makes it very laborious to prove in the court of law that a theme has been plagiarized. Secondly why Hollywood don't seem to care is that it takes almost two years after the original having "inspired" plots hit Indian screen from the date after the original is released in India, by which time the potential of the Hollywood version is exhausted.

Uncontrolled plagiarism and unsanctioned copying from Hollywood and other international films has been a long-standing malaise hampering the reputation of Bollywood as a major creative source of original intellectual property.

It is essential to determine "what add up to as an original work".

There are few examples of copyright infringement in Bollywood. Partner (2009), a copy of Will Smith starrer 'Hitch' based on the fact that the story revolves around a simple guy and a matchmaker, should one not look over one of our own gem 'Chotti Si Baat' which starred Ashok Kumar and Amol Palekar in 1975? It revolves around the same story of a simple guy and a matchmaker.

Act of piracy is another name for copyright infringement. Where there is copyright infringement of stage play by a film producer or a Director, it becomes difficult for plaintiff to prove piracy.

It is demonstrated that, unlike a stage play, a film has a much broader outlook, an extensive field and a larger background where the defendants can by establishing a variety of incidents give a colour and interpretation different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, the copyright infringement may be said to be proved.

1. In the case of Twentieth Century Fox Film vs Sohail Maklai Entertainment Pvt. Ltd., the petitioner 20th Century Fox claimed that producer Sohail Maklai's movie 'KNOCKOUT' was a rip-off of 'PHONE BOOTH'. On record, the court didn't find a copyright infringement and the matter was settled peaceably between both the parties with a settlement amount of Rupees 1.25 Cr given by producer Sohail Maklai to the 20th Century Fox.
2. 'BAGHI- THE Follower', it was an official remake of South Indian film 'VARSHAM'. Though the movie is an official Hindi remake of Varsham, the last 20 minutes fight is found to be similar to The Raid: Redemption.
3. 'GAJHINI' was the official remake of A.R. Murugadoss's Tamil film. Before the release, it was stuck in multiple suits, the first being from the producers of the Tamil version A. Chandrasekaran against A.R. Murugadoss for forging documents and claiming to have the copyright for the original Tamil Version. The Bombay High Court ordered A.R. Murugadoss to submit an affidavit and removed the stay for the release of the film. Both the films were loosely based on Christopher Nolan's 'Momento'.
4. 'Bang Bang' starring Hrithik Roshan and Katrina Kaif, produced by Fox Star Studios, is a Hindi version of 'Knight and Day' featuring Tom Cruise and Cameron Diaz, with almost having Hindi version of all punch lines, plot, scenes, timings etc.

Norowzian v Arks Ltd⁶. In this case the question as to whether a short film called "joy" comprising of a man dancing to music was violation by another film called 'Anticipation'. In both films the ocular impact was produced by an editing technique known as 'jump cutting'. Both were advertising films. It was held by the court of appeal that

- (1) Since 'joy' was a work of action capable of being discharged before an audience it was a dramatic work
- (2) 'Joy' was not a recording of a dramatic work;
- (3) 'Anticipation' was not a copy of a substantial part of 'joy'.

⁶ Norowzian v Arks Ltd. (No.2) [2000] FSR 363 (CA).

REMEDIES AGAINST COPYRIGHT INFRINGEMENT

The Copyright Act, 1957 also provides certain remedies against copyright infringement in Chapter XII. The act provides three kinds of remedies namely:

1) Civil Remedies

Section 54⁷ of the Copyright Act, 1957 provides that only an owner of copyright including an exclusive license can file for civil remedies.

a) Interlocutory Injunction: The grant of interlocutory injunction is the most important civil remedy. Most of the actions begin with an application for interlocutory relief but mostly the matter never goes beyond this stage. Civil remedies include two types of damages actual and conversion.

In the case of **American Cyanamid vs Ethicon Ltd**⁸ American Cyanamid vs Ethicon Ltd, (1975)AC 368 (HL(E)), the principles for the grant of interlocutory injunction was discussed.

These requirements are:

- (i) Balance of convenience
- (ii) Prima Facie case
- (iii) Irreparable injury.

Interlocutory injunction is granted under Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908. Section 55 of the copyright Act, 1957 provides the remedy of injunction in the situation where:

- (i) The defendant might suffer irreparable injury
- (ii) A bona fide defence of fair dealing has been pleaded.
- (iii) Plaintiff has been guilty of undue delay in approaching the court.

⁷ Section 54, The Copyright Act, 1957

⁸ American Cyanamid vs Ethicon Ltd, (1975)AC 368 (HL(E))

- b) **Anton Piller Order:** Anton Piller order is named after the case of **Anton Piller K.G. vs Manufacturing Processes Ltd**⁹. In a situation where it is believed that some activity of infringement of the copyright is being carried on by the plaintiff, the court can permit the inspection of the premises.

Anton Piller order is also an important weapon against piracy as it is granted on an *Ex Parte* basis.

In the case of **Autodesk Inc. vs A.V.T Shankardass**¹⁰ the Division Bench of the Delhi High Court issued guidelines for the issue of Anton to prevent abuse of this order in software infringement cases.

- c) **Mareva Injunction:** This injunction restraint the defendant from disposing of any such assets that may be required to satisfy the plaintiff's claim or removing them from the jurisdiction of the court. The Anton Piller order and Mareva injunction if combined can destroy the defendant's business.
- d) **Permanent Injunction:** A perpetual injunction and damages are two remedies which are usually available to copyright owner following the final trial of infringement action.

2) Criminal Remedies

Criminal Remedies refers to the seize of infringing copies and imprisonment of the infringer.

One can get Anton Piller order for search of defendant's premises for infringed copies. Here, *Mens Reas* in the form of knowledge of accused is one essential element.

Also, copyright infringement is a cognizable offence and under Section 63¹¹ Copyright Act, 1957 is a non-bailable offence.

The infringer is liable for:

(i) Imprisonment ranging 6 months to 3 years or of the

(ii) Fine of Rs 50,000/- to Rs 2Lakhs.

⁹ Anton Piller K.G. vs Manufacturing Processes Ltd, (1976) RPC 719

¹⁰ Autodesk Inc. vs A.V.T Shankardass, 2008 (37) PTC 581

¹¹ Section 63, The Copyright Act, 1957

Further the court has discretion to impose a sentence for a period less than 6 months or fine less than Rs 50,000/- in cases where the infringement has not been done with the intention of gain.

Section 63 to 63B of the Copyright Act 1957, lays down provision for offence, penalties and procedures that are to be followed.

3) **Administrative Bodies**

a) Copyright Board: For the discharge of certain judicial functions the Copyright Board has been constituted under Section 11¹² of the Copyright Act, 1957. It shall consist of a chairman and two or more member which shall not be more than fourteen members. The appointment of chairman and members is made for the period not exceeding five years.

Section 74¹³ of the Copyright Act, 1957 provides certain power of Civil Courts that are possessed by the Registrar of Copyright and Copyright Board.

These powers are namely:

- i) Summoning and enforcing the attendance of any person and examining him an oath.
- ii) Requiring the discovery and production of any documents
- iii) Receiving evidence on affidavits
- iv) Issuing commissions for the examination of witnesses or documents
- v) Requisitioning any public record or copy thereof from any court or office.
- vi) Any other matter which may be prescribed.

The main functions of Copyright Board is:

- i) Settle disputes arising out of assignment of copyright.
- ii) Consider the grant of compulsory licences.
- iii) Consider the rectification of Register.

¹² Section 11, The Copyright Act, 1957

¹³ Section 74, The Copyright Act, 1957

iv) Decide the term of copyright for any work.

v) Decide whether a work has been published for the purpose of determining the date.

b) Copyright Society:

It is a legal Entity constituted to safeguards the interests of owners. It discharges the following functions-

i) It grants licence of copyright in the work including reproduction, performance or communication to public.

ii) Locate Instances of Copyright Infringement of Copyright and initiate Proceedings.

The Indian Performing Right Society Limited (IPRS) and the Phonographic Performances Limited (PPL) are the two societies that deals with musical copyright

i) Indian Performing Right Society Limited (IPRS) – It came into existence on 23rd August 1969 and is registered under the Companies Act 1956. It constitutes composers, authors and publishers of music works. Its main objective is to control and administer the performing rights and mechanical right and synchronization rights in musical work of its members. The society has about 757 local members (424 composers, 253 authors and 80 publishers). These members control nearly 92% of the Indian Music. Being a non-profit body, it distributes all the collected royalties to its members and other after deducting small administration cost of 15%.

ii) Phonographic Performers Limited (PPL) - It is a society registered with the registrar of Copyright in 1906. The main objective is to authorize the use of sound

Recording and to negotiate of their term to remuneration with broadcasting and there users (hotels, discos, restaurants etc.).65 recording companies are its members like HMV, TIOS, Universal Music, Venus Music, Sony Music, Times Music etc.

Conclusion

In this aeon of resistance less ingress, it is impossible that juxtaposition won't be done. It is inescapable and bound to happen. The key is to carefully observe that at what standard the work is dependable on the said copied work. In this era, two different works can have connection, though, both may be original in their own sphere. It is common to distinguish between original and copied work. The landmark judgment of R.G. Ananad states the test as 'a person with common memory after watching or reading a work is able to distinguish between the original and copied work'.

There must be a limit of taking Inspiration and actually infringing others rights, which our Bollywood has almost forgotten. Our Copyright law provides a protection for an original work and also against people trying to copy it. The Supreme Court of India has said that the best way to decide whether a copyright violation has occurred is to "see if the reader, spectator, or viewer after having read or seen both the works is clearly of the stance and gets an unmistakable impression that the successive work appears to be a copy of the original."

While it took a while to get into the fray, the Courts now deal with issues of copyright infringement far more often and with clear reasoning. A stage is been reached where infringers will not be able to hide behind the term inspiration.

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