



INTERNATIONAL LAW
JOURNAL

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

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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

CHALLENGES FOR IP IN FILM INDUSTRY: A CRITICAL ANALYSIS

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***Abstract:** The art of portraying the creative ideas of imagination on the screen is known as film making. Film making is a proper process of creative idea which is then brought to life by screen plays, producing music and sounds, production and editing and at last presenting it in front of the people as a finished product.*

Intellectual Property comes into the play when the films which is product of imagination and physical efforts is sent for commercialization. Despite the fact that the this process of film making is intangible but because of the rightful laws it holds the same importance as any tangible asset. These rights help the producer to have the monetary benefits from the creative pieces they have created. It is also important to know that the protection is provided to the expression and not the abstract ideas.

Intellectual property is playing major role in providing the protection to the creative aspects of an individual. This sector is all about creativity, stories, expressions which makes it crucial to protect the IP for the growth of the industry. Intellectual Property Rights is very important feature which helps in safeguarding the dynamic and also the creative aspect of this industry. The statement of protection may vary from a small producer to big producers of these stories but IPR makes sure that the originality remains the core of this industry. Current judgements showcases that the originality stays intact that's why the authorization is important, any one wishes to create any remake should have the authorization of original producer.

Despite the fact IPR is available for the film making but there are many aspects to the same which are not highlighted and also some of them are so narrowed down that it should be more highlighted. This paper provides a critical view towards the filmmaking and how IPR plays a very crucial role for safeguarding it so that the creativity do not get hamper and everything and go smoothly. This study provides the brief of IPR with respect to filmmaking and then provides recommendations accordingly.

Key terms: Filmmaking, creative ideas, IPR, trademark, copyright, cinema, Authorization, Producers

& creators.

Intellectual property right is a legal right given to the owners to protect their original work also it provides the monopoly to the that specific owner, this protection is given for a specific time period. IPR provides exclusivity and also helps the owner to get the commercial profits from the same. In modern economy IPR plays a very critical role .It is also important to know that it very essential to give good amount of acknowledgement should be given to the creative labour for the innovation which further provides benefit to the public. IPR is very crucial instrument which helps in safeguarding the investments, monetary aspects, value of time, all the efforts which are provided by the creative team as the protection is granted for the certain period of time . IPR helps in development of the economy as it helps in raising the healthy competition and also push the economic growth.

When we look at film making we see it as charismatic world of actors, directors, producers etc. In film making we come across different stages and at every stage there are different sets of people who comes into picture. When we think about creating a film the first step is working on a story which will be depicted. Now, the story can be a unique story or it can be an old story expressed differently or with authorizations. Now, who takes care of the authorization? Here comes IPR into the picture the story can be expressed in various ways but to make sure that the story do not overlap with the old story or we can also say story should not be copied as the story of any other person. This is the first stage where IPR provides the protection. Moving on to the other stages of film making, it has many other functions like- director, scriptwriter, actors, composers, photographers, designers, animators, choreographers etc. All of them are covered under Intellectual Property Right for safeguarding their work.

Intellectual Property Right is very diverse but if we take film making in consideration then there are certain rights which are highlighted overall. These rights are-

- 1) **Copyright Act-** Copyright law is usually used to safeguards any dramatic, artistic or musical work which is original. Other than this any computer programs, animation work can be also protected through copyright. Copy right is a right which can also be called as exclusive right as it provides protection to a person to take ahead the activities with regard to copyright work. An individual who is also the owner of the copyright can do licencing agreement with the third party for the commercialization.
- 2) **Trade Marks Act-** According to Section 2(z b) Trademark is a pictorial, graphical representation

which helps individual to identify between the different brands. It can be a combination of various colours, shapes, logos etc. The trade mark law protects the existing trademarks or any other trademark which may come to the use in future. The trade mark needsto be registered , if it is to use within the country then it is to be registered under the set law alternatively if an individual wants to use it internationally ,then according to the Madrid Protocol it can be registered outside the countries but should have a pre requisite of being filled in India.

- 3) **Patents Act** – As per the patent act, any new invention done by an individual can be protect through patents act as it safeguards any invention which is not a discovery. The pre- requisite to get the protection of patent act is (1) There must be newness in Invention(2) there should bean inventive step involved (3) industrial application is must. India has signed PCT according to which the patent can be filed internationally and can get protection in various countries.
- 4) **Design Act**- According to section 2(d) of the Designs Act, a "design" encompasses only theshape, form, pattern, decorations, or arrangement of lines and colours applied to any item, regardless of whether it is in two or three dimensions. This application can be done through any industrial method, whether it's manual, mechanical, or chemical, and whether these methods are used independently or in combination. Ultimately, the judgment of the design's merit lies solely in its visual appeal in the finished product.

Methodology-

Firstly, it was imp0rtant to figure out the pl0t between the IPR and the film making, we researched about the prevailing companies in the areas, we wanted to the increase the knowledge about the IPR and how it is prevalent in the film making. The meth0d0l0gy used in the file is the d0ctrinal research meth0d0l0gy. This research meth0d0l0gy is d0ne using the b00ks, articles, and newspaper and with the help of other existing research papers. I have collected the ample amount of information from the books, course books, magazines and the articles and research papers which helped me to sum up the dissertation.

To give a depth knowledge of how the IPR supports the film making is described below-

Protection of film through Copyright- Copyright plays a crucial role in protecting intellectual property rights (IPR) in the film sector. Filmmakers pursue copyright for their works to prevent copy

of work which is not authorized, distribution, and public exhibition. This safeguard encompasses various aspects of a film, ranging from its script and musical score to its visual presentation and overarching narrative.

Comprehensive Safeguard: Copyright ensures the protection of numerous elements within a film, including its script, dialogue, music, characters, cinematography, and other creative components.

Essentials of Originality: To qualify for copyright protection, these elements must demonstrate a necessary level of originality, reflecting the unique creative work that the creator has put in.

Copyright Registration and Enforcement:

Steps of Registration: Individuals that create films are provided with the opportunity to officially register their works with copyright authorities, establishing the documented proof of ownership. This registration process is beneficial in legal proceedings in cases of breach.

Methods of Enforcement: Copyright holders have access to a range of legal measures, including cease and desist orders and claims for damages, which serve as mechanisms for asserting their rights. They can initiate legal proceedings, including litigation, to prevent unauthorized utilization of their works.

Copyright Duration and Constraints:

Copyright Term: Films typically enjoy copyright protection for the duration of the life of the individual who has created the work plus a set number of years (e.g., 70 years). Once the period elapses, the work is introduced in front of the public

Copyright Restrictions: Various constraints, such as fair use, enable the utilization of copyrighted material under specific circumstances like criticism, commentary, news reporting, teaching, and research. Comprehending these restrictions is essential for navigating the legal landscape.

In essence, copyright protection in the film industry is comprehensive, encompassing a broad spectrum of creative components. Its effectiveness hinges on proper registration and vigilant enforcement. Time period of copyright ensures creators have exclusive rights for a specific period, while restrictions maintain a bridge between protection and the public's access to and use of creative works.

Security for Scripts and Screenplays:

Immediate Protection: Scripts and screenplays are already safeguarded by copyright as soon as they are documented in a physical format. This protection extends to expressing the ideas, the attribute, and the dialogues of the film.

Creative Ownership: Copyright ownership of scripts grants scriptwriters exclusive privileges, enabling them to reproduce, distribute, perform, and showcase their creations.

Legal Hurdles in Script Protection:

Establishing Originality: A significant challenge involves proving the originality of a script, particularly when there is overlapping of existing work. This may necessitate demonstrating a distinct creative expression that goes beyond common themes.

Unauthorized Utilization: Scriptwriters encounter difficulties when others exploit their ideas without consent. Distinguishing between works inspired by and those unlawfully copied from original scripts can be legally complex.

Music and Soundtrack Rights:

Procurement Process: The process of obtaining music for films involves securing licenses from composers, artists, and record labels. It is made sure that there is use of copyrighted music synchronized with the visual elements of the film.

Copyright Ownership: Copyrights for both the composition (musical notes and lyrics) and the sound recording are distinct. Filmmakers usually need licenses for both components to use music in their films.

Composer and Label Negotiations:

Composer Contracts: Negotiating with composers involves delineating collaboration terms, compensation, and the extent of rights conferred to the filmmaker. Well-defined agreements are

essential for preventing future disputes.

Label Contracts: When incorporating pre-existing sound recordings, negotiations with record labels revolve around licensing the rights for the specific recording's use in the film. Agreed-upon terms may cover duration, territorial scope, and financial arrangements.

Legal Considerations Regarding Music Rights:

Risk of Infringement: If someone tries to breach the copyrighted music then there can be legal consequences. Thorough clearance and licensing procedures are essential to minimize the likelihood of infringement allegations.

Royalty Responsibilities: It is important to know the obligation of royalty. Some agreements involve ongoing royalty payments based on the film's performance, and compliance with these terms is vital to avoid legal repercussions.

In conclusion, effectively navigating the complexities of music and soundtrack rights in the film industry requires careful attention to detail in licensing procedures, transparent negotiations with composers and labels, and a vigilant awareness of potential legal obstacles. By addressing these aspects, filmmakers can ensure that musical elements enhance the cinematic experience while staying within the bounds of copyright laws.

Digital Rights Management (DRM):

Digital Rights Management (DRM) is a technology utilized within the film industry to regulate access to digital content. Its implementation involves deploying various measures aimed at safeguarding intellectual property, preventing unauthorized distribution, and protecting the economic interests of filmmakers. DRM endeavours to combat piracy and unauthorized sharing of digital content, ensuring that filmmakers and content creators retain control over the distribution and accessibility of their work. This technology is pivotal in upholding the economic sustainability of the film industry.

Key Aspects of DRM:

1. **Encryption:** DRM employs encryption techniques to secure digital content, rendering it inaccessible to unauthorized users without proper decryption keys.

2. Access Controls: DRM systems establish access controls, determining who can access the content and under what conditions, thereby restricting unauthorized usage.
3. Digital Watermarks: Digital watermarks are embedded within content to provide a unique identifier, enabling tracking and tracing of unauthorized distribution.

Challenges and Criticisms of DRM:

1. Limitations on User Rights: DRM systems have faced criticism for potentially infringing on user rights, such as fair use and the ability to make personal copies of content for legitimate purposes.
2. Inconvenience for Legitimate Consumers: DRM implementations can introduce inconvenience for legitimate consumers, such as limitations on the number of devices on which content can be accessed or restrictions on transferring content between devices.
3. Cat-and-Mouse Game: DRM technologies are often circumvented by determined individuals or groups, leading to a constant cat-and-mouse game between content providers and those seeking to bypass DRM protections.

In summary, DRM plays a crucial role in the film industry by safeguarding intellectual property and preventing piracy. However, it is not without its challenges and criticisms, including concerns about user rights and the ongoing battle against circumvention. Balancing the need for protection with user convenience and rights remains a significant consideration in the ongoing development and implementation of DRM technologies.

Distribution Contracts:

Film distribution agreements are pivotal in the entertainment industry, covering various legal facets that influence how films reach audiences. Territorial rights are fundamental, outlining the geographic regions where the distributor holds exclusive rights to showcase the film. This facilitates effective market segmentation and optimizes revenue potential across different regions. The rise of online streaming platforms adds complexity, requiring clauses that define digital distribution rights. These agreements often stipulate whether the film will be available on specific streaming services and detail revenue-sharing arrangements. Exclusivity provisions are crucial, specifying the duration and scope of exclusive distribution rights granted to the distributor. This may encompass exclusivity within a specific market, platform, or timeframe. These agreements strike a delicate balance, ensuring

filmmakers attain broad exposure while distributors secure a lucrative and protected investment in the ever-evolving landscape of film distribution.

In the YRF v. Sri Sai Ganesh Productions case, Yash Raj Films (YRF) brought a lawsuit against Sri Sai Ganesh Productions for alleged copyright infringement. YRF had released the film "Band Baja Baarat" in December 2010 and learned in December 2011 that Sri Sai Ganesh Productions intended to remake the film in Telugu. Despite issuing cease and desist notices to the defendants, YRF received no response. When Sri Sai Ganesh Productions released a trailer for their movie "Jabardasth," YRF requested a copy before its release and subsequently filed a lawsuit against them for copyright infringement, claiming that the plot and theme of their movie had been copied outright.

The court held that copyright in a cinematograph film exists independently of the supporting works it comprises, as each intrinsic work and the entirety of the film itself are considered separate entities. The court found substantial and material similarities between the scenes and plot points of the two films. For instance, the screenplay and dialogues, song lyrics, whole songs, posters, and ads are all considered creative works, each entitled to the same rights. Furthermore, the court observed that the phrase "to make a copy of the film" in section 14 of the Copyright Act encompasses more than just producing physical copies.

Protection of film through Trademark - Trademarks are a form of intellectual property rights that allow individuals to maintain ownership of their innovative products and creative endeavors. A trademark can be a name, word, or sign that distinguishes goods from those of other businesses. Having a trademark makes selling goods or services easier as it ensures product recognition and simplifies marketing efforts. The owner of a trademark has the right to prevent competitors from using their mark or sign. Trademarks also serve as a marketing strategy that enhances business credibility and attracts investment.

In the case of Sholay Media Entertainment v. Yogesh Patel, a 20-year legal battle ensued over the iconic film "Sholay." The plaintiffs, who produced the film, sued the Patel Family members for registering the domain "www.sholay.com," publishing a magazine under the same name, and selling various merchandise featuring scenes and names from the movie. The lawsuit sought a permanent injunction to prevent infringement of their registered trademark, "Sholay," by the defendants.

The Delhi High Court ruled in favour of the plaintiffs, emphasizing that a word like "Sholay"

associated with the title of such a widely celebrated film deserved protection. Some movies transcend ordinary terms, and "Sholay" is one of them. The court noted that the mention of the word immediately evokes a connection with the film. Despite its Hindi dictionary meaning ("burning coal"), "Sholay" had become synonymous with the movie among the public.

As a result, the court granted relief to the filmmakers and prohibited the defendants from using any photographs or clippings from the film or selling products using the name "Sholay" or any images from the movie. This ruling marked the end of the lengthy legal battle.

Protection of film through Patent- A patent is a legal right granted to an individual for an invention, providing them with the exclusive authority to control the use of their idea. This prevents others from utilizing the invention without the inventor's permission. Once patented, the inventor typically has 20 years to sell, use, distribute, manufacture, import, or export the invention. In the entertainment industry, patents are commonly used to safeguard technological innovations in the production or delivery of content.

Filmmaking has always been at the intersection of innovation and entertainment, leveraging audio, visual, and editing techniques to captivate audiences creatively. Patents play a vital role in driving technological progress across industries. The production of a film is a multifaceted endeavour that necessitates investment to ensure quality in various stages of creation, including editing, special effects, sound design, lighting, and more. Patents contribute to the advancement of these technologies, serving as a foundation for the industry's development.

Protection of film through Design- Design registration safeguards the shape, pattern, arrangement, ornamentation, or composition of specific lines or colours applied to objects. Enacted in 2002, the Design Act protects a wide array of designs, including computer simulations, sketches, fashion apparel, and footwear creations. Costumes play a pivotal role in bringing characters to life, and design registration can preserve these unique designs. Essentially, it protects distinct industrial designs intended for commercialization, enhancement, or aesthetic improvement. The Design Act serves as the overarching framework governing these aspects.

Celebrity Rights In India- A celebrity is a prominent figure in society, spanning authors, actors, models, athletes, singers, politicians, and others who command public attention. Their status is

determined by public perception and influence, impacting individuals both professionally and personally. In India, the concept of personality rights traces back to common laws or natural laws, recognizing them as inherent rights. These rights encompass the right to publicity, preventing unauthorized commercial exploitation of one's image and likeness, and the right to privacy, safeguarding against public representation without consent. Derived from Articles 19 and 21 of the Indian Constitution, these rights are fundamental.

In the landmark case of Titan Industries Ltd. v. M/s. Ramkumar Jewellers, the Delhi High Court addressed the issue of Celebrity Rights. The case arose from copyright infringement and misappropriation of personality rights. Titan Industries, using the brand 'Tanishq' for jewelry endorsed by Mr. Amitabh Bachchan and Mrs. Jaya Bachchan, filed suit against a defendant who copied their hoarding designs featuring the celebrities and not asking for their consent.

The court held that using a famous personality's identity for commercial purposes without consent infringes the Right to Publicity. This right encompasses the control over commercial use of one's identity. Liability for infringement of the Right to Publicity requires:

1. Validity: For using the identity of someone it can be for commercialization should take a proper validation from that personality.
2. Identifiability: The celebrity must be identifiable due to the defendant's improper usage. Proof of untruth or deception is unnecessary, especially when the celebrity is identified.

The court found the defendant's advertisement featuring Mr. Amitabh Bachchan and Mrs. Jaya Bachchan conveyed a false endorsement message, leading to infringement of the right to publicity. The ruling favoured the plaintiff, barring the defendant from infringing on Tanishq's copyright.

In a significant move, Indian courts issued a John Doe order for the first time, protecting celebrities' personality rights against known and unknown defendants globally. This order strengthens enforcement against infringement, particularly in the unorganized sector.

However, India lacks exclusive rights for public performances and broadcasts, with only secondary rights available to prevent unauthorized use without performers' authorization. While economic rights exist, moral rights, such as protection against substantial likeness, are absent. Litigation remains a recourse for addressing these issues, often resulting in substantial damages and settlements.

While the judiciary has recognized various aspects of celebrity rights, legislative action is needed to identify commercial aspects and address legal gaps. This would ensure alignment with the rapid commercialization of celebrity status and provide a more robust legal framework for the enforcement of Celebrity Rights in India.

IPR Contravention in film making-

Cinema has touched various heights whether we talk about Indian Film industry which is Bollywood and it extends to the Tollywood also. They generate a humongous amount of revenue on every Fridays by a new release.

These days movies are not just a piece of art but also an eye opener for lot of people which help in societal development. There are so many movies which are made with the motive of knowledge and development only. These movies are recognized on both national and international stages. This has given a platform to new creative ideas and also gives a lot of opportunities for individuals who brings new ideas to the table. But with the growth there comes some causalities also like infringement and piracy. Even after so much of protection these issues are still prevalent. Nonetheless, the proactive measures are being introduced which leads to formulation of new rules, and also an organization is formed whose sole purpose is to safeguard the integrity of cinema.

Conclusion- By examining key rulings in intellectual property rights (IPR) within the Indian Entertainment Industry, we gain insight into the necessity of IP protection and its impact on the sector. It is imperative for industry stakeholders to safeguard the originality and creativity of their content, enhance awareness of intellectual property regulations, and comprehend various types of infringements and legislative amendments. These factors have significant implications for the industry's vitality, especially amidst ongoing innovations such as the rise of OTT platforms. As the industry evolves, understanding and exploring the diverse aspects of IPR becomes increasingly crucial. IPR not only supports the creativity in India but was prevalent in every country, for example Sweden. IPR may differ a little bit from country to country but the sole purpose of it is to provide the protection to the creative work or the people who brings art to the world. There are different examples which are available in the world which shows that how effective the IPR is to protect every peace and individual of art.

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