



INTELLECTUAL PROPERTY RIGHTS IN MEDIA AND ENTERTAINMENT LAW

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ABSTRACT

A certain level of security for the work of its people is essential, given the media's vast and significant role in our lives. Intellectual property can provide the media with a similar level of protection. This protection is relevant across various industries. Since there are different types of intellectual property, there are also various laws governing them. Consequently, there are multiple practice areas to choose from, or one can opt not to microspecialize and instead aim to gain knowledge across all domains of intellectual property. You can select from the many options that IP has to offer. Intellectual property, despite being intangible, often holds greater value than physical assets. Owning intellectual property—whether it's a song, an invention, or exclusive rights to a particular color scheme—provides a monopoly that allows the owner to use it solely for themselves. Additionally, it enables the owner to license or assign the property, creating various opportunities for monetization. While the media and entertainment industry in India showcases impressive growth and development, it also raises concerns about adherence to ethical and legal standards. This sector frequently faces a range of legal challenges, particularly regarding intellectual property rights, cyber laws, and copyright and trademark regulations. The growth of the film industry has been accompanied by a noticeable trend: the rising importance of social media and the internet as alternative media platforms. Despite the Digital Millennium Copyright Act being in place since 1998, this shift has led to an increase in IP rights violations, copyright infringement, and disputes over ownership. For the Indian entertainment industry, navigating intellectual property rights (IPRs), cyber regulations, and trademark issues presents significant challenges. The industry must be aware of the restrictions imposed by the Information Technology Act of 2000, which includes mandates for "cyber due diligence." It can take pride in the fact that the entire entertainment sector is built on this creative foundation. Therefore, it is essential to protect and nurture this creative aspect, as it is the backbone of the entertainment industry.¹

INTRODUCTION

The media and entertainment sector is undeniably a vital part of the Indian economy, projected to reach **Rs 2.26 trillion by 2020**, growing at an annualized rate of 14.3% (IBEF Report April, 2017). However, alongside the impressive growth and expansion stories, there are concerns regarding the industry's compliance with legal

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and ethical standards. This issue has emerged since 1991, marking the beginning of globalization and economic liberalization. In a landscape characterized by fierce competition and rapidly changing technology, managing intellectual property has become crucial for navigating product life cycles, maintaining competitiveness, and attracting more users to the services and innovations being developed. IPR gained global recognition in 1883 with the Paris Convention for the Protection of Industrial Property, and this was further reinforced in 1886 by the Berne Convention for the Protection of Literary and Artistic Works. The World Intellectual Property Rights Organization (WIPO) acts as the central body for both treaties. As one of the 17 agencies of the United Nations, WIPO is headquartered in Geneva, Switzerland, and its mission is to promote innovation and creativity for the economic, social, and cultural development of all countries by establishing an effective and comprehensive international patent and trademark system. The Indian Copyright Act of 1957 governs intellectual property rights (IPR) for software utilized in computers. In 1994, India's copyright laws were significantly revised, and on May 10, 1995, they became some of the most stringent in the world. For the first time, the rights of copyright holders, the regulations surrounding software rental, and users' ability to make backup copies were clearly defined in Indian copyright law. The act introduced severe penalties and financial repercussions for violations of software licenses. People see intellectual property rights as a way to reward creativity and innovation. These rights energize and drive growth and progress. Human development is deeply intertwined with our capacity to create and innovate. The benchmarks of excellence in culture and technology are tied to our progress in these fields. To protect intellectual property rights and harness their benefits for societal advancement, we need a fair and effective framework. These protections help balance the interests of the public and inventors while also encouraging innovators and entrepreneurs.

IPR AND ITS IMPORTANCE IN MEDIA AND ENTERTAINMENT INDUSTRY

The primary factor driving this growth is creativity in content; as the saying goes, "Content is King." This creative element is the cornerstone of the entire entertainment industry and is something to take pride in. Therefore, it is essential to protect and promote this aspect of creativity, which underpins the operations of the entertainment sector. For the film and television industry to function effectively and for artists to receive the recognition and credit they deserve for their original work, intellectual property rights (IPR) regulations are increasingly important in today's landscape. A creative mind can truly flourish and produce art only when there are laws and legal frameworks in place that are actively enforced. Indian films have historically served as beacons, addressing various social issues while trying to connect with the audience. However, to protect the creativity and originality of artists, it is crucial to implement strict regulations, making IP rights management vital. Rather than setting clear standards, those in the entertainment industry often find themselves caught up in legal battles and controversies. Numerous cases of copyright infringement have raised concerns about the uniqueness of films. Media practitioners often engage with First Amendment law, providing support to national media, publishers, broadcasters, and media trade associations. They may offer services such as prepublication reviews, privacy and libel advice, and assistance in maintaining editorial and news gathering practices. Some focus specifically on media law litigation, representing local, national, and international publishers, broadcasters, online content creators, journalists, authors, and businesses in various disputes

related to the collection, distribution, and use of information. This can include responding to civil, criminal, and grand jury subpoenas for reporter testimony, defending against claims of slander and privacy violations, and pursuing litigation concerning public documents under the Freedom of Information Act. For the entertainment industry to function smoothly and for artists to receive appropriate recognition and credit for their original creations, intellectual property rights (IPR) regulations are increasingly important in today's context. By allowing creators to earn from their work through licensing, distribution, and sales, this protection encourages both investment and creativity. Intellectual Property Rights (IPR) support the business community by maintaining brand value, safeguarding revenue streams, and attracting partnerships. Ultimately, strong IPR safeguards the rights of businesses and artists alike, fostering a dynamic and sustainable environment for innovation.

The historical development of Intellectual Property Rights in the United Kingdom

Most intellectual property rights (IPRs) in Britain are based on statutes. The patent system began with the Statute of Monopolies in 1624, which later encountered legal restrictions. The Statute of Anne, enacted in 1710, established the foundation for copyright, with important rulings taking place in 1774. Today, Parliament uses copyright laws to safeguard new types of intellectual property, such as recordings, films, broadcasts, published works, computer programs, and databases. Judges also have the power to make decisions regarding remedies in these matters. In recent years, judges have often dealt with issues related to passing off and torts, while Parliament has set up a trademark registration system. This has resulted in the creation of intellectual property protections designed to prevent direct imitation of products. Consequently, reverse engineering has been restricted. However, a fundamental principle of a competitive economy is that consumer welfare is protected by competition, which is based on the notion that imitation should be allowed when a new manufacturer enters the market. Therefore, it is crucial for legislation to uphold the right to "reverse engineer," unless there is a compelling reason against it. Reverse engineering involves extracting design information or knowledge from human-made creations to create something new or entirely different. Essentially, it is an analysis aimed at uncovering design features from existing products, without needing extensive knowledge about how those products were originally constructed. It does not entail making copies or altering the original artifact. As a result, it typically does not violate intellectual property rights. However, advancements in technology have complicated matters by making reverse engineering easier and obscuring the tracing of imitations. This situation underscores the necessity for stronger protections for existing intellectual property. History provides a clear example: in 1710, London stationers came together.

The Importance of Intellectual Property Rights in Modern Era

The main objectives of intellectual property law are to offer protection, encourage innovation in research, and ensure that individuals are compensated for their original contributions. Without intellectual property rights, the investments made in these works would never be recovered, and authors and inventors would miss out on profits from new ideas that stem from their efforts. A unique creation or concept holds value because it represents ownership and grants the exclusive right to use, create, reproduce, or market it. Like other forms of property, intellectual property is a commodity that can be bought, sold, or traded.

The Paris Convention for the Protection of Industrial Property, established in 1883, and the Berne Convention for the Protection of Literary and Artistic Works, created in 1886, were the first to recognize the importance of intellectual property. The World Intellectual Property Organization (WIPO) is responsible for managing both treaties. The significance of intellectual property rights (IPRs) has increased since the World Trade Organization (WTO) adopted the Agreement on Trade-Related Intellectual Property Rights (TRIPS). India has been a member of the WTO since 1995.

In 1974, the World Intellectual Property Organization (WIPO) became a specialized agency within the United Nations system. The foundation for this organization was laid with the signing of the "Convention Establishing the World Intellectual Property Organisation" in Stockholm on July 14, 1967. The WIPO Convention officially took effect in 1970. This global entity is committed to safeguarding intellectual property rights and supporting the interests of creators and owners worldwide. By offering international protection, it fosters the fields of literature and the arts, encourages human innovation, and establishes a stable marketplace for goods protected by intellectual property rights. Each year, World Intellectual Property Day is observed on April 26 to emphasize the significance of intellectual property in promoting creativity and innovation.

COPYRIGHT LAW IN INDIA

To safeguard the interests of publishers and authors, copyright laws were established. These laws emerged in response to the threats posed by copying in the book industry. They are based on the concept of the "author" and the unique aspects of human creativity. The rights granted to individual authors by the Berne Convention (1971) extend beyond their contractual obligations to their employers. However, this framework is slowly being replaced by one that gives corporate information owners unrestricted "copy rights." Regardless of the author's economic rights and even after those rights have been transferred, the author retains the right to claim authorship of the work and to object to any alterations that could harm their honor or reputation. The context of copyright litigation offers the best insight into how to distinguish between different works. It is deemed excessive copying when "the reader, spectator, or observer, after engaging with both works, clearly believes and gets an unmistakable impression that the later project seems to be a copy of the original." Conversely, "[w]hen the same idea is explored in a different way, it is evident that, given the common source, some similarities are inevitable." This concept includes three rights: the right to the release of the publication, the right to paternity, and the right to legitimacy. It's crucial to understand that moral rights are distinct from the financial interests tied to literary works, which remain with the creator even after copyright is secured. A unique aspect of moral rights in India is the inclusion of author-specific rights that prevent any form of mutilation of their work. In India, copyright protection for original works of literature, drama, music, and art lasts for 60 years beyond the author's life. If there are multiple authors, the protection extends for 60 years after the death of the last surviving author. For cinematograph films, sound recordings, photographs, posthumous publications, and works published anonymously or under a pseudonym, copyright lasts for 60 years from the year of publication. Additionally, copyright for unreleased cinematograph films, photographs, and computer programs is protected for 60 years beyond their creation date. The Copyright (Amendment) Rules, 2021 came into effect on March 30, 2021, primarily aimed at ensuring accountability and transparency

while aligning current regulations with other relevant laws. Furthermore, the amendment seeks to streamline operations by making electronic communication the primary mode of interaction for the Copyright Office. The changes also introduce a new provision for the creation of a copyrights journal, which will be accessible on the official website of the Copyright Office. The GATT negotiations led to an agreement on Trade-Related Intellectual Property Rights (TRIPS), which included measures for protection.

Replicating technology-The issue of infringement remains relatively minor and manageable when the technology required to replicate a work demands expensive equipment, a large workforce, or financial resources that are not easily accessible. The traditional barriers that once made the law effective are becoming obsolete as technology evolves, making copying incredibly easy, especially with digital content. While the simplicity of copying is often seen as the main factor contributing to infringement, it is actually just one aspect of the problem.

Copyright and related rights

In India, the Copyright Act of 1957 governs copyright and related rights, providing essential legal protections for original creators across various fields. "Related Rights" encompass areas such as drama, sound and video recordings, visual arts, architecture, and more, while "Copyrights" mainly safeguard the interests of writers and software developers who produce literary works. Authors—including writers, musicians, filmmakers, and others—are recognized as the original copyright holders since their creations are considered intellectual property. To qualify for protection, works must be original, tangible, and demonstrate at least a minimal level of creativity. This protection grants artists both financial control and moral rights over aspects like translation, modification, distribution, and reproduction. Under Indian law, copyright protection is automatically granted upon creation, and while registration is not mandatory, it is recommended for legal protection.

The Act provides both economic and moral rights to writers. Economic rights ensure that authors receive financial benefits from their work, while moral rights protect the connection between the author and their creations, preventing unauthorized alterations. Under the Fair Use Doctrine, detailed in **Section 52**, copyrighted materials can be utilized for research, teaching, and certain public purposes. Generally, these uses should be factual, non-commercial, limited in scope, and should not harm the original work's value. Distribution or modification for commercial purposes is prohibited without permission, although there are exceptions for media coverage, legal cases, and some educational activities.

Copyright Infringement, Enforcement, and Registration

According to the Act, copyright infringement is a crime that carries penalties such as fines and jail time. It includes the illegal copying, public performance, distribution, and importation of copies that violate copyright. Internet use and public spaces must respect these rights, and those who wilfully permit copyright infringements face severe consequences. Digital work that is protected by copyright also includes websites and software. Copyright registration offers initial proof of ownership in court cases, even if it is not required. Copyright protects original work, which strengthens the rights of creators and allows for an organised approach to intellectual property in India, even if it cannot protect concepts or brief words.

Trends in copyrights

The Copyright Office has chosen to implement e-filing for "Registration/renewal of a Copyright Society (Form VIII) and Form (IX)" and "Registration/renewal of a Performer's society (Form XI) and Form (XII)" as part of its efforts to increase transparency and user empowerment through digital means.

21523 applications were reviewed out of the 24451 applications that were received in 2020–21. The differences found during the test were shared with the candidates for correction. There were 16399 Register of Certificates (R.O.C.) created in 2020–21. **This table presents the statistical statistics from 2016–17 to 2020–2021.**

Year	Total applications received	Total application examined	Register of Copyright(ROC) generated	Total disposal
2016-17	16617	16584	3596	5444
2017-18	17841	34388	19997	39799
2018-19	18250	22658	14625	25943
2019-20	21905	29670	16029	22516
2020-21	24451	21523	16399	19477

Category wise Registration of Copyright (ROC) generated during for the Year 2020-21

Sl.NO	Category	ROCs
1	Artistic	3655
2	Cinematograph film	230
3	Computer Software	961
4	Literary/Dramatic	10514
5	Music	69
6	Sound recording	970
	Total ROCs	16399

Source: Annual Reports, Office of CGPDTM, Mumbai (2011-20)

<https://dipp.gov.in/sites/default/files/annualReport-English2020-21.pdf>

Interesting copyright cases

David vs. Macaques, Indonesia, 2011 - Photographer David Slater from the UK set up his tripod to capture images of the macaques at the wildlife reserve. The macaques showed a keen interest in the equipment and found the camera intriguing. One monkey even took a selfie that went viral, sparking a significant legal debate over copyright. Since the monkey technically took the picture, it raised questions about who owns the copyright. However, David Slater claimed the copyright for himself. The dispute between him and People for the Ethical Treatment of Animals (PETA) eventually went to court. This settlement has now been finalized.

Due to his substantial involvement, David Slater will not retain the copyright to the image; instead, he has agreed to donate 25% of the royalties to the wildlife sanctuary where the monkey resides.

‘Happy Birthday to you’ case law- According to a 1998 report by Guinness World Records, "Happy Birthday to You" is the most recognized song in the English language. Its melody originates from "Good Morning to All," a song composed in 1893, which is generally attributed to American sisters Patty Smith Hill and Mildred J. Hill. The sisters created the music to make "Good Morning to All" more appealing to children. In 1935, Summy Company registered the copyright for the song's piano arrangement. After acquiring the company in 1999, Warner/Chappell started collecting royalties from "Happy Birthday," generating substantial profits. Warner Music, through its publishing division Warner/Chappell, agreed to a settlement for a group of "thousands of people and entities" who had paid licensing fees to use the song since 1949, as only the melody was registered during a federal court mediation, leading to the song now being in the public domain.

CONCLUSION

India's copyright law is quite progressive, as it effectively adapts to the country's evolving sociocultural, political, and technological landscape through regular government updates and amendments. Our media and entertainment industry is growing rapidly, attracting significant investments. It's crucial to protect these rights from any infringements. When copyright violations occur, the legal system addresses the penalties. However, preventing these violations at all levels is neither feasible nor sufficient. Increasing awareness is another way to reduce the incidence of such infractions. With informed citizens, we can foster a more innovative, advanced, and improved environment in our country. Despite the rigid and often harmful nature of copyright law, lawmakers have sought to establish a fair and practical balance between the needs of society and the rights of copyright holders by implementing certain restrictions and exceptions. Copyright laws permit the free use of works for purposes such as research, commentary on current events, legal proceedings, and activities by charitable organizations. Copyright provides essential protection for the contributions of creators. With this legal safeguard, the rewards for their creations are secured. Encouraging creativity is vital for a civilized society, as it serves as the foundation for progress. Copyright protection is closely tied to motivation and helps create an environment that nurtures innovation, inspiring authors, musicians, artists, filmmakers, architects, and software developers to be more original and inventive.

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