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ABOUT US

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

ROLE OF INTELLECTUAL PROPERTY LAW FOR PROTECTION OF ENTERTAINMENT INDUSTRY IN INDIA: A CRITICAL ANALYSIS

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Abstract

The media and entertainment industry are a broad and ever-evolving domain that includes several industries, including music, cinema, television, fashion, and more. In this sector, intellectual property (IP) regulations are essential for defending the rights of inventors, artists, and producers. A thorough awareness of intellectual property laws is crucial, regardless of your career goals that of a fashion designer, singer, filmmaker, or just someone curious about the legal side of entertainment. Over the years, the Indian Media and Entertainment Industry has witnessed immense progress in its use of technology and, as a result, increased media generated for the general public. The Entertainment Industry in India is said to be one of the largest in the world, producing thousands of movies in various regional languages. A multi-million-dollar industry run by people's creativity and artistry, the matter of Intellectual Property Rights becomes a crucial topic to discuss and understand.

Intellectual property rights (IPR) are crucial for protecting and fostering innovation in the entertainment industry, a sector known for its creativity and dynamism. This article delves into the roles of various IPR types, including trade secrets, copyrights, trademarks, and patents, within the entertainment industry. It analyzes the current legal landscape, traces the historical evolution of IPR in filmmaking, and assesses the impact of intellectual property protection on stakeholders such as distributors, consumers, and filmmakers. Furthermore, it addresses the challenges and opportunities presented by the digital age, discussing issues like licensing, piracy, and the balance between cultural content access and protection. The article aims to underscore the vital importance of intellectual property rights in driving economic growth, encouraging innovation, and shaping the future of the entertainment industry.

Keywords- Intellectual property rights, Protecting and fostering innovation, Media and Entertainment industry, Rights of inventors, Challenges and Opportunities.

I. Introduction

Intellectual Property can be defined as a class of property that is a product of human intellect. It is intangible and provides the owner with exclusive rights over it. Creations of the mind of any type, such as literary, musical, or scientific inventions, are included. Intellectual Property Rights can be broadly classified into Copyright, Trademark, Patents, and Design Rights. Copyright is the cornerstone of the film industry, safeguarding authors and other rights holders by preventing third parties from exploiting their creations. The extensive credits at the end of a film reveal the numerous individuals involved in its production. This collaborative procedure yields a diverse range of rights pertaining to various components of the production, including the screenplay, music, direction, and performances. To ensure the producer has full ownership of the film, the capacity to obtain funding, and the authorization to distribute it to a large audience, it is necessary to license, transfer, and document these rights. Producers, who initiate film projects, play a crucial role in turning creative ideas into financially viable films. They may not always originate the initial script, but their vision and energy are essential for the survival of a film production. During the process of making a film, producers engage in negotiations to establish agreements that outline the conditions and compensation for the intellectual property rights resulting from the contributions of multiple creative individuals. The chain of title documentation, sometimes referred to as agreements, is legally upheld by copyright and contract law.

India has one of the largest film and entertainment industry, people in India are film enthusiasts and love watching films. As it is said cinema is representation of the society we live in and also it never fails to spice it up with some fantasies which provide a perfect escape for people. What is so unique about the Indian industry is how smoothly the music is incorporated in our films which also quite helps in marketing of the film and we get to enjoy new bangers frequently but what scares the producers or the film-makers is the borrowing or intimation of their content or their songs, script etc. Here comes IP Laws which protect the content or any other related creation of a movie from being used by other creators or makers. IP Laws provide a great platform for the cinema industries to make their innovations restricted and not being copied by any other sources. These rights protect every basic aspect which is essential during the making

of a film whether it's about the script, dialogues, songs etc. Finding a captivating story or screenplay marks the initial phase of the journey. Ideally, a producer discovers a script ready for filming, although often a qualified screenwriter's assistance is required to develop it. Scripts can originate as original works or adaptations from existing sources like comic books, plays, or novels. Intellectual property rights are inherently tied to the script always recognized as an original creation. Typically, the producer initiates with a first draft and a brief outline of the film's narrative. The contract may outline additional drafts, revisions, or enhancements, each anticipated at predetermined costs. The legal standing of the writer's contract is governed by current copyright and associated rights laws. For adaptations of previously published works, such as novels or short stories, the producer first secures usage rights through an option agreement. This agreement grants the producer the right to adapt the work into a film for a specified period. Upon exercise, the option provides the producer perpetual rights to use the work in the film, contingent on predetermined financial terms. Concurrently, negotiations for rights acquisition agreements are commonly conducted to ensure the acquisition of television rights and opportunities in additional markets such as home video and digital media. Producers seek to maximize control and potential revenue, aiming to secure as many rights as possible. Conversely, original copyright holders often retain certain rights, such as publishing, theatrical, radio, and character rights (for potential sequels). Detailed rights acquisition agreements are essential for averting unforeseen legal complications.

II. Copy Right Law in the Entertainment Industry

Copyright Law covers all artistic and literary creations that people create. All subjects covered are referred to as 'Literary and Artistic Works.' As per the definition of copyright under section 14 of the Copyright Act, 1957, it is the exclusive right over the content or work and the right to do or authorise the doing of certain acts in work. The primary aim is to offer protection against the unauthorised use of artistic, literary, and musical works such as songs, films, novels, etc. The cornerstone of intellectual property protection in the entertainment sector is copyright law. It gives authors and artists the sole ownership rights to their original writings, music, films, and artwork. The ability to duplicate, distribute, perform, and exhibit the work is one of these rights. Copyright law is especially crucial in the entertainment sector for safeguarding movies, TV series, songs, screenplays, and literary works. For instance, copyright law makes sure that filmmaker's film is shielded from unauthorized distribution or duplication. Copyright law protects person as a musician by preventing unauthorized use of your creative works. Creators

need to comprehend the fundamentals of copyright law to safeguard their creations and negotiate licensing and distribution contracts with skill.

In the case of *YRF v. Sri Sai Ganesh Productions* (AIR 2019 DEL 1017), the infamous production house, Yash Raj Films (YRF), released the film, 'Band Baja Baarat' in December 2010. The plaintiff learned around December 2011 that Sri Sai Ganesh Productions intended to remake the film in Telugu. Subsequently, YRF issued two cease and desist notices to the defendants, to which they received no response. When Sri Sai Ganesh Productions eventually released a trailer for the movie, 'Jabardasth', YRF issued the third legal notice requesting a copy before it was released. They filed a suit against the defendants on the grounds of copyright infringement as they had outrightly copied the plot and theme of their movie. The Court, in this case, The Delhi High Court determined that there exists an infringement of the copyright of the Plaintiff Production House. The Court was of the opinion that the impugned movie contains a substantial part of the original movie which forms the basis of a copyright infringement case. The Court held that copyright in a cinematograph film exists independent of the supporting works that it comprises, as each intrinsic work and the entirety of the film itself are separate. The two films have a substantial and material similarity between the scenes and plot points. It was also observed that the phrase "to make a copy of the film" in section 14 of the Copyright Act refers to more than just producing physical copies.

III. Patent Law in the Entertainment Industry

Patent law is concerned with protecting ideas and innovations, whereas copyright and trademark laws are primarily concerned with protecting creative works and brands. Within the entertainment sector, patents may be pursued for novel technologies, procedures, or apparatuses that offer useful uses in the development, manufacturing, or dissemination of entertainment material. Patent protection may be available, for instance, for the creation of new audio or visual effects technologies or digital streaming services like Netflix. With the help of patents, creators can make money off of their creations and stop others from exploiting or making money off of their concepts without their consent. Patents also provide inventors with temporary exclusive rights to their discoveries.

IV. Trademark Law in the Entertainment Industry

A trademark is a name, word, or sign distinguishing goods from other businesses. Selling goods or services becomes more accessible with a trademark since product recognition is assured and more straightforward. The owner has the right to prevent another rival from using his mark or sign. A trademark is a marketing strategy that increases business financing. A trademark is not always a brand, but a trademark is always a brand. Film companies utilise trademarks to establish a distinctive identity and stand out in a crowded market; for example, Dharma Productions is a word trademark registered to Karan Johar. When it comes to branding and selling entertainment-related goods and services, trademarks are crucial. An identifiable sign, symbol, or statement that sets one product or service apart from competitors in the market is called a trademark. It could be a phrase, mark, motto, or even just a combination of colors or sounds. Trademarks are essential to the entertainment industry's ability to establish and preserve brand identification.

In the 20 years long battle case of *Sholay Media Entertainment v. Yogesh Patel* [CS (OS) 1714/2001], the iconic film 'Sholay' was produced by the plaintiffs. The defendants were the members of the Patel Family, who registered the domain, 'www.sholay.com', published a magazine under the same name, and sold various merchandise exhibiting the scenes and names from the movie, 'Sholay.' The suit sought a permanent injunction restraining the infringement of their registered trademark, 'Sholay', by the defendants. The High Court of Delhi, in this case, held that a word like 'Sholay' associated with the title of an incredibly celebrated film could not be devoid of protection. Some movies transcend the realm of conventional terms, and the title of the film 'SHOLAY' is one of them. The Court stated that "The mention of the word 'SHOLAY' immediately creates a connection with the movie 'SHOLAY'. There are industry estimates which claim that, although the words 'SHOLAY' may have a dictionary meaning in Hindi (specifically, 'burning coal'), upon the movie-going public, the word 'SHOLAY' came to be associated only with the film." Hence, the court ended the twenty-year-long battle by providing relief to the filmmakers. Furthermore, the court barred the defendants from utilising any photographs or clippings from the film and selling products using the name SHOLAY or including any images from the film. Consider the recognizable Nike swoosh or the McDonald's golden arches, for instance. These trademarks enable consumers to quickly recognize a brand and link unique attributes and experiences to a specific good or service. Trademarks are used in the entertainment business to safeguard the names, logos, and slogans connected to motion

pictures, television programs, musical acts, and even individual celebrity names.

V. Enforcement and Licensing in the Entertainment Industry

Another important component of IP management in the entertainment sector is licensing. Through licensing, intellectual property owners can allow third parties to utilize their creations in exchange for royalties or other payments. For instance, a musician may license the use of their song in a commercial or motion picture, or a filmmaker may license the distribution rights to a production firm. Within the complex field of entertainment law, the protection of intellectual property rights and commercial agreements is largely dependent on enforcement and licensing. Enforcement in this context refers to the watchful protection of artists' original works in the fields of literature, music, film, and other artistic mediums against unauthorized use, duplication, or dissemination. This entails a diligent search for copyright violations using tools including cease-and-desist letters, legal action, and requesting injunctions to prevent unauthorized use. Meanwhile, trademark protection is essential for maintaining the unique identities of entertainment companies and avoiding confusion by stopping the illegal use of logos, brand names, and related marks.

VI. Patents in the Entertainment Industry

A patent is a right awarded to an individual in relation to an invention that prevents others from utilising their idea without their permission. After the work is patented, the inventor has 20 years to sell, use, distribute, make, import, or export it. In the entertainment industry, patents are typically utilised to protect technological advances in the production or delivery of material. The motion picture has always been at the confluence of innovation and enjoyment, blending audio, visual, and editing tools to engage the audience creatively. Patents act as the backbone of the technological advancement of any industry. The production of a film is a complex task that requires money to ensure quality in the various stages of its creation, such as editing, special effects, sound effects, lighting, and so on.

VII. Design in the Entertainment Industry

Design registration protects the shape, pattern, arrangement, ornamentation, or composition of particular lines or colours applied to the objects. The Design Act of 2002 protects any sort of design, including computer simulations, sketches, fashion apparel and footwear creations. Characters come to life thanks to their costumes. Design registration can preserve those one-

of-a-kind designs. In other words, it protects distinctive industrial designs created to commercialise, improve, or enhance their aesthetic value. The Design Act governs everything.

VIII. Theft of Intellectual Property: Risks and Consequences

The theft of intellectual property poses significant risks not only to the creators but also to the entire entertainment, sports, and art industries. When intellectual property violations occur, they compromise the economic model that underpins creative endeavors. Revenue losses from piracy and unauthorized use can stifle innovation, reducing the incentive for creators to produce new content. For those found guilty of intellectual property violation, the consequences can be severe. Legal repercussions include fines, injunctions, and, in some cases, imprisonment.⁸ Offenders may also face civil lawsuits, which could result in hefty financial damages. These legal measures are in place to deter theft and ensure that creators' rights are upheld. The impact of such theft extends beyond financial losses; it erodes the trust and integrity necessary for thriving creativity and collaboration in entertainment.

IX. Identifiability Protection by IPR

The Celebrity must be identified as a result of the Defendant's improper usage. Violation of a celebrity's right to publicity does not require proof of untruth, confusion, or deception, especially where the celebrity is identified. However, the right to public opinion goes beyond the customary boundaries of misleading advertising regulations. Defendant's culpability for infringement is based on the identifiability of Mr. Amitabh Bachchan and Mrs. Jaya Bachchan in the Defendant's advertising. Identification and the Defendant's mental state are inextricably linked. The Defendant's use of Mr. Amitabh Bachchan and Mrs. Jaya Bachchan's personality rights in its advertisement conveys a clear message of endorsement, which is false and deceptive. Furthermore, because Mr. Amitabh Bachchan and Mrs. Jaya Bachchan are easily recognised, there would be an infringement of the right to publicity because it is not linked to any proof of untruth. As a result, the case was decided in favour of the Plaintiff. Accordingly, Defendant was barred from infringing on Plaintiff's copyright in the Tanishq commercial. For the first time, Indian courts have issued a John Doe order, which protects illegal exploitation of a celebrity's personality against known and unknown defendants. The order's breadth is exceedingly broad, working against the entire world, making it easier for celebrities to assert their rights against any third party. This is especially beneficial against the unorganized sector, which has grown significantly in recent years and where infringement is prevalent. The ruling

adds a new dimension to India's intellectual property regime, notably regarding personality rights. It can be said that this order may set a precedent and establish a more stringent legal framework for the enforcement of Celebrity Rights. India has no exclusive right to allow public performances and broadcast them.

There is only provision for secondary rights to prevent public performance, broadcasting, or recording without the authorisation of the performers and to earn appropriate recompense. As a result, while economic rights are available, moral rights do not exist. There is no protection against 'substantial likeness,' which is fundamental to protecting celebrity rights. This rising problem can only be addressed through litigation. For example, massive damages and multi-million-dollar settlements may end infringement or violation by individuals who have previously failed to respect the privacy of celebrities and employers.

X. Conclusion

Intellectual Property Rights are essential for safeguarding entertainment media through domains such as copyright, trademark, patent, geographical indications, and trade secrets. The entertainment industry has transformed with trends like online gaming, AI, and streaming services, which bring both challenges and opportunities. Piracy is a major issue, leading to losses for original creators and discouraging new works. Using technology to protect content is crucial. Increasingly, film producers are filing for IPR to protect their creations, with laws from the different bodies preventing unauthorized use of original works. These laws ensure creators receive due credit and financial benefits, securing their rights. While Indian laws provide adequate protection, the challenge lies in their application. Additionally, implementing procedures outlined in the IPR Rules to combat piracy presents practical challenges. For instance, trademarks enjoy protection under both common law and the Trademarks Act, even if not registered. Copyright in India does not require registration but proving ownership of unregistered intellectual property rights remains a common hurdle for right holders. Celebrity rights, which are vitally safeguarded by the idea of "substantial similarity," are increasingly in jeopardy and frequently require judicial action. Legislative measures are needed to define the commercial aspects of celebrity rights comprehensively and keep pace with the rapid commercialization of celebrity status, despite sporadic recognition of these rights by courts. It's important for industry members to understand IPR, recognize various violations, and adapt to legislative changes. As innovations increase, so does the demand for IPR knowledge and

protection.

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