

## LEGAL INTRICACIES IN THE ENTERTAINMENT INDUSTRY: A CONTRACTUAL PERSPECTIVE

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G B Vishwa\*

### ABSTRACT

*One of the main aspects of the entertainment industry is the legal agreements that govern the relationships between these parties. However, the legal intricacies involved in entertainment contracts can be complex and challenging to navigate. There is a wide range of issues that can arise. In this paper, we will explore the various kinds of entertainment contracts, examine the key issues that arise, and the challenges that parties must navigate to create a fair and equitable agreement. By examining industry practices, legal precedents, and real-life incidents, we will gain a deeper understanding of the intricacies involved in different entertainment contracts and the strategies that parties can use to execute these agreements successfully. This paper will begin with an overview of the common types of entertainment contracts, including those related to copyright and trademark. It will then delve into the various legal challenges that can arise in entertainment contracts. The paper will also examine the different dispute resolution methods available to the parties involved in entertainment contracts. As the entertainment industry becomes increasingly global, the legal complexities of contracts across borders and cultures have become more pronounced. Another area of focus for this paper will be the international dimensions of entertainment contracts. In the end, we will conclude with a discussion of future trends and developments in entertainment contracts, including the impact of emerging technologies and changes in distribution models.*

**Keywords:** Contract Drafting, Entertainment Contracts, Entertainment Law, Intellectual Property Rights, Copyrights.

### INTRODUCTION

The entertainment industry has evolved through the ages of innovation. It constantly molds itself according to the needs and tastes of the audience. The spectators' curiosity and thirst for more entertaining experiences fuel this trillion-dollar industry. The core of the industry is creativity, driven by the passion of a variety of people like artists, producers, directors,

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\*BA LLB, FOURTH YERAR, SRM SCHOOL OF LAW, TAMIL NADU.

technicians, etc. in creating entertainment content. For instance, subject to several factors, on average around 500 people will be involved in a film.<sup>1</sup> A massive amount of cooperation is required to bring the best out of such a huge assembly of people. That is where entertainment contracts come in handy. From contracts between artists and studios to licensing agreements for music, film, and television content, these legal agreements are essential to ensure that all parties receive fair compensation for their contributions. Nevertheless, many intricacies are involved in drafting and executing entertainment contracts. A wide range of issues can arise, including disputes over intellectual property (IP) ownership, payment terms, and distribution agreements.

The entertainment industry is a complex and dynamic field that involves a wide range of creative professionals, studios, distributors, and other parties. One of the main aspects of the entertainment industry is the legal agreements that govern the relationships between these parties. From contracts between artists and studios to licensing agreements for music, film, and television content, these legal agreements are essential to ensure that all parties get fair compensation for their contributions. However, the legal intricacies involved in entertainment contracts can be complex and challenging to navigate. There is a wide range of issues that can arise, including disputes over ownership of IP, payment terms, and distribution agreements. Also, the entertainment industry is constantly evolving, with new technologies, distribution models, and creative forms emerging all the time.

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This paper will try to explore the entertainment industry from an Indian and global perspective. It will try to navigate through the nuances of the entertainment industry to find out the importance of entertainment contracts. It will also explore the different ways in which disputes arising out of entertainment contacts can be prevented or resolved. Finally, this paper will try to analyze to what extent the present strategies of drafting entertainment contracts will work in the future with cutting-edge technologies posing new challenges to the entertainment industry and the intellectual property rights (IPR) of the parties involved in it.

## **THE ENTERTAINMENT INDUSTRY: AN INTRODUCTION**

The entertainment industry comprises any business that generates value by providing people

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<sup>1</sup> Pete Briley, 'How Long Does It Take To Make A Movie- The Ultimate Guide' (*Music Gateway*, 22, April 2021) <<https://www.musicgateway.com>> accessed 14 May 2023]

with something interesting to do or watch.<sup>2</sup> It is a vast and diverse sector, encompassing a wide range of media and forms. From the earliest days of silent films and traditional street performances to the contemporary age of digital streaming services, the entertainment industry has played an essential role in shaping popular culture and reflecting the values and aspirations of society. Depending on the medium of entertainment, there are a variety of components of the entertainment industry, which are as follows:

- 1. Movies:** A movie is a recording of moving images that tells a story that people watch on a screen or television.<sup>3</sup> It involves the usage of moving images, sound, and dialogue, which together convey a narrative to an audience. There are different genres of movies, like action, adventure, comedy, crime, fantasy, history, horror, romance, science fiction (sci-fi), etc.
- 2. Music:** Music refers to the vocal, instrumental, or mechanical sounds having rhythm, melody, or harmony.<sup>4</sup> There are different genres of music like pop, rock, rap, country, jazz, heavy metal, electronic dance music (EDM), classical, ambient, etc.
- 3. Media:** From the perspective of mass communication, media are the communication channels through which news, music, movies, education, messages, and other data is transmitted.<sup>5</sup> Media comprises newspapers, television, radio, Internet, etc.
- 4. Performances:** Performance refers to any public presentation or exhibition. It ranges from theatrical and musical performances to dramatic performances.
- 5. Sports:** Sport refers to a game, competition, or activity needing physical effort and skill that is played or done according to rules, for enjoyment and/or as a job.<sup>6</sup> They are a great source of entertainment because of their raw nature and adrenaline-pumped.
- 6. Gaming:** The practice or activity of playing games (such as board games, card games, or

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<sup>2</sup> John Spacey, '10 Example of the Entertainment Industry' (*Simplicable*, 27 June 2019) [www.simplicable.com/new/entertainment-industry](http://www.simplicable.com/new/entertainment-industry) accessed 14 May 2023

<sup>3</sup> 'movie, n' Merriam-Webster.com Dictionary, Merriam-Webster, [www.merriam-webster.com/dictionary/movie](http://www.merriam-webster.com/dictionary/movie). accessed 14 May 2023.

<sup>4</sup> "music, n' Merriam-Webster.com Dictionary, Merriam-Webster, [www.merriam-webster.com/dictionary/music](http://www.merriam-webster.com/dictionary/music). accessed 13 May 2023.

<sup>5</sup> The Market Business News, 'What is media? Definition and meaning' (*The Market Business News*, Undated) [www.marketbusinessnews.com/financial-glossary/media-definition-meaning/](http://www.marketbusinessnews.com/financial-glossary/media-definition-meaning/) accessed 14 May 2023

<sup>6</sup> 'Sport, n' (*OED Online*, OUP Undated) [www.dictionary.cambridge.org/dictionary/english/sport](http://www.dictionary.cambridge.org/dictionary/english/sport) accessed 14 May 2023

video games).<sup>7</sup>

**7. Night economy:** It means the economic activities that occur after 5 PM. It includes dining, nightclubs, karaoke, etc.

The global entertainment industry is a massively revenue-generating industry. It has witnessed only steady growth throughout the past six years, except in the pandemic-hit year 2020. The current market revenue of the global entertainment industry is 2.64 trillion US dollars. Furthermore, it is expected to reach 2.93 trillion US dollars in the year 2026.<sup>8</sup>

The Indian entertainment industry in itself is a gigantic one. It was valued at over 1.6 trillion Indian rupees in the year 2021.<sup>9</sup> India has a multifarious entertainment industry with the content being produced in over 30 languages. It was earlier dominated by television, film, print media, and radio entertainment; but lately, there is a significant dominance of digital entertainment over many other means of entertainment.<sup>10</sup> India's entertainment & media industry is expected to reach INR 4,30,401 Crores by 2026 at an 8.8% Compound Annual Growth Rate (CAGR).<sup>11</sup> Different components of the Indian entertainment industry contribute to varied degrees and they are further expected to see tremendous increase in the years to come. For instance, OTT revenue is expected to reach 14.1% CAGR in 2026, while the revenue from music, radio, and podcasts is set to grow at 9.8% CAGR. These statistics give a picture of the whopping scale of the entertainment industry globally and nationally.

The core of this trillion-dollar industry is made up of three key aspects- creativity, innovation, and collaboration. It combines the outstanding intellectual, physical, and monitory efforts of a galaxy of stars like technicians, designers, producers, directors, performers, artists, writers, editors, engineers, and a myriad of other professionals who come together to produce a

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<sup>7</sup> 'gaming, n' *Merriam-Webster.com* Dictionary, Merriam-Webster, <[www.merriam-webster.com/dictionary/gaming](http://www.merriam-webster.com/dictionary/gaming)>. accessed 14 May. 2023.

<sup>8</sup> A.Guttman, 'Revenue of the global entertainment and media market 2017-2026' (*Statista*, 27 July 2022) <[www.statista.com/statistics/237749/value-of-the-global-entertainment-and-media-market/](http://www.statista.com/statistics/237749/value-of-the-global-entertainment-and-media-market/)> accessed 14 May 2023

<sup>9</sup> Tanushree Basuroy, 'India: value of the media and entertainment industry 2024' (*Statista*, 29 August 2022) <[www.statista.com/statistics/235784/india-value-of-the-media-and-entertainment-industry/](http://www.statista.com/statistics/235784/india-value-of-the-media-and-entertainment-industry/)> accessed 14 May 2023

<sup>10</sup> Tanushree Basuroy, 'Number of digital only content users in M&E sector India 2017-2024' (*Statista*, 13 July 2022) <[www.statista.com/statistics/1016619/india-digital-only-content-users-in-m-and-e-sector/](http://www.statista.com/statistics/1016619/india-digital-only-content-users-in-m-and-e-sector/)> accessed 14 May 2023

<sup>11</sup> PwC, 'India edition: Entertainment & Media Outlook 2021-2025' (*PwC India*, Undated) <[www.pwc.in/industries/entertainment-and-media/global-entertainment-and-media-outlook-2021-2025.html](http://www.pwc.in/industries/entertainment-and-media/global-entertainment-and-media-outlook-2021-2025.html)> accessed 14 May 2023

spectacular output that both entertains and enlightens the audience.

But such a team-oriented industry requires every person in the team to be on the same page. It must provide a win-win situation for all the parties so that everyone gives their very best efforts to the project and gets appropriately rewarded for the same. It also demands building trust between the parties that the outcome of their efforts will be fruitful for them and that their intellectual endeavors and time spent conceiving and executing them do not go to waste. That is where contracts come in handy. Let us delve deep into these contracts.

### **ENTERTAINMENT CONTRACTS: IMPORTANCE AND TYPES**

Entertainment contracts are legally binding agreements between multiple parties in creating, distributing, and exploiting entertainment products like movies, music, performances, and other entertainment content. These contracts play a pivotal role in protecting the interests of the parties and ensuring they receive fair compensation for their contributions to creating and exploiting entertainment content. They aim to establish and clarify the terms and conditions that govern the association between parties involved, covering issues such as obligations, ownership, IPR, royalties, consideration, and other details.

Several aspects make entertainment contracts so intricate. Firstly, as afore-discussed, the entertainment industry demands extreme cooperation from a variety of parties. Every party has its interests and objectives that they want to satisfy through the contract, which is, however, practically challenging. It's hard to meet every party's needs.

Secondly, the entertainment industry is highly dynamic. It depends on various factors like behavioral trends of the audience, technological advancements, etc.

Furthermore, the entertainment industry is highly regulated, with laws and regulations governing the creation, production, and exploitation of entertainment content. For instance, in India, the entertainment industry is regulated by statutes like The Cinematograph Act of 1952, The Copyright Act of 1957, The Cable Television Networks (Regulation) Act of 1955, and other statutes.

Considering the complexities and varying needs of the entertainment industry, entertainment contracts can be highly intricate, demanding fierce negotiation and compromise between the parties.

The entertainment industry has a plethora of agreements. These contracts can be broadly classified based on the type of IP that it deals with. The following are a few common types of entertainment contracts concerning copyrights.

**Copyright Assignment Agreement:** It is the type of agreement that is entered between two or more parties who wish to obtain the rights to use, produce, or distribute the copyrighted work. It transfers the ownership of the copyright from the original owner (assignor) to the assignee. It specifies the scope of the assignment, the consideration payable, the restrictions on the assignee on the use of the copyrighted work, etc. The assignable rights include the right to reproduction, adaptation, translation, and other rights enlisted in the Copyright Act of 1957.<sup>12</sup>

**Synchronization License Agreement:** This type of agreement is used in the music sector within the entertainment industry when a party wishes to use (sync) music some already existing copyrighted music with any audio-visual work like videos, video games, television shows, advertisements, etc. It enables the person to merge the copyrighted song with his original audio-visual work.

**Adaptation License Agreement:** This type of agreement is entered into when a party wishes to create an adaptation of any pre-existing work. Adaptation, as defined under the Copyright Act of 1957,<sup>13</sup> means a change of format i.e., the conversion of a copyrighted work from one form to another, such as the conversion of a novel into a screenplay.<sup>14</sup> For instance, the popular Tamil historical fiction novel *Ponniyin Selvan* written by Kalki Krishnamurthy from the years 1950 to 1954 was adapted into two movies named *Ponniyin Selvan I* and *Ponniyin Selvan II* by Madras Talkies and Lyca Productions in the years 2022 and 2023, respectively.

In the musical sector, adaptation has another meaning. As per the Copyright Act of 1957, an adaptation of a musical work refers to any arrangement or transcription of the work.<sup>15</sup> An arrangement is the rearrangement of an existing musical work, whereas transcription is an arrangement of a musical composition for some instrument or voice other than the original. So, when a person wishes to make a remix or cover version of any pre-existing, he enters into an Adaptation License Agreement with the copyright owner of the original song.

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<sup>12</sup> Copyright Act, 1957, s.14

<sup>13</sup> Copyright Act, 1957, s.2(i)-2(a)(iii)

<sup>14</sup> Nandita Saikia, 'Adaptations, Derivations and Transformations in Copyright Law' (*LawMatter*, 3 September 2010) <[www.copyright.lawmatters.in/2010/10/adaptations-derivations-and.html](http://www.copyright.lawmatters.in/2010/10/adaptations-derivations-and.html)> accessed 14 May 2023

<sup>15</sup> Copyright Act, 1957, s.2(a)(iv)

Apart from the ones mentioned above, several other kinds of License Agreements and Assignment Agreements help transfer specific rights such as rights in the lyrics of a song, famous dialogue spoken in a movie, etc.

The following are a few common types of entertainment contracts concerning trademarks.

**Trademark Assignment Agreement:** As the name suggests, a Trademark Assignment Agreement is entered into to transfer ownership of a trademark from one party to another. It is common in the entertainment industry to transfer trademarks on brand names of bands or other entertainment groups, logos of the brands, slogans of brands, etc.

**Merchandise License Agreement:** Through this agreement, the trademark holder licenses his right to distribute, market, and sell any merchandise containing his trademark. For instance, Nike Inc. signed a Merchandise Agreement with National Football League (NFL) in 2012;<sup>16</sup> as a part of the agreement, Nike became NFL's official uniform provider. It was renewed for another 8 years in the year 2020.<sup>17</sup>

**Co-Branding Agreement:** It is also a type of trademark-centric entertainment contract in which two or more brands agree to market and sell a product combining both brands. It is common in merchandise tie-ins with movies, TV shows, etc. For instance, Warner Bros. Consumer Products Inc. and Universal City Development Partners Ltd. signed a Co-Branding Agreement in 2007 to create The Wizarding World of Harry Potter, a famous theme park based on the Harry Potter franchise.<sup>18</sup>

There are always different common types of Service Agreements signed between several parties in the entertainment industry. For instance, Service Agreements are common between musicians and concert promoters, movie producers and OTT platforms, movie producers and artists, game developers, and platform providers, etc. An interesting type of Service Agreement is the Endorsement Agreement, which is signed between any brand and celebrities to promote its products.

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<sup>16</sup>Associated Press, 'Nike strikes uniform deal with NFL'; (*ESPN*, 12 October 2010) [www.espn.in/nfl/news/story?id=5677387](http://www.espn.in/nfl/news/story?id=5677387) accessed 14 May 2023

<sup>17</sup>Ahiza Garcia, 'NFL and Nike sign 8-year contract for uniforms' (*CNN Business*, 27 March 2018) [www.money.cnn.com/2018/03/27/news/companies/nike-nfl-gear-contract/index.html](http://www.money.cnn.com/2018/03/27/news/companies/nike-nfl-gear-contract/index.html) accessed 14 May 2023

<sup>18</sup> *Theme Park License between Warner Bros. Consumer Products, Inc.* (n.d.). [www.sec.gov/Archives/edgar/data/1262449/000119312507178559/dex1041.htm](http://www.sec.gov/Archives/edgar/data/1262449/000119312507178559/dex1041.htm) accessed 8 May 2023

## COMMON CLAUSES IN ENTERTAINMENT CONTRACTS

Now that we have discussed several types of entertainment contracts, it's pertinent to discuss certain key clauses that are commonly seen in such contracts.

**Recitals:** The Recitals of any contract provide a background to the agreement. It specified the identity of the parties and the exact reason for entering into the contract.

**Grant of Rights clause:** It is common in many entertainment contracts relating to License and Assignment. It specifies the rights transferred by the Licensor to the Assignee. It also sets the terms and conditions per which the Licensee/ Assignee should use the rights.

**Consideration clause:** It is the clause that specifies the compensation that one party will have to pay to another for the rights transferred or services rendered. It also sets the timeline for such payment.

**Right of First Refusal (ROFR) clause:** It mandates the original copyright owner to approach the Licensee/ Assignee before approaching anyone else if he wishes to exploit his rights similar to the licensed/ assigned ones in another product. For instance, in case the author of a book assigns his adaptation rights over it to adapt it into a movie, he would probably like to include a ROFR clause in his Adaptation Agreement; it would ensure that he gets the first opportunity to acquire the adaptation rights in any sequel of the book.

**Representation and Warranties clause:** It records the assurances from both parties regarding the rights transferred or services rendered.

**Term and Termination clause:** It provides the period for which the agreement shall remain in operation. It will also outline the conditions under which either party can terminate the agreement.

**Non-compete clause:** A non-compete clause prohibits one party from engaging in certain competitive activities for a specified period, either during the term of the contract or after that. It protects the interests of the party who may have disclosed sensitive information, trade secrets, or developed a unique relationship or reputation with their clients. For instance, in any celebrity endorsement agreement wherein a sports footwear brand makes a celebrity its brand ambassador, a non-compete clause is usually added to prohibit the celebrity from entering into an endorsement agreement with any other sports footwear brand during the term of their



agreement and for six months from the termination of the same.

**Confidentiality and Non-Disclosure clauses:** They prohibit the parties from disclosing any information (like budget, storyline, and financial terms) that has strategic importance to either party. Disclosing such information may cause irreparable harm to the party's reputation, business, and financial interests.

## **ENTERTAINMENT CONTRACT DRAFTING: KEY STRATEGIES**

Several strategies need to be considered while drafting any entertainment agreement.

Firstly, the counsel drafting the agreement must have full information about the parties involved in it. It is important to know every about the parties before drafting an agreement because it will ensure that their interests are fulfilled through the agreement. The counsel must be fully aware of the terms and conditions that the parties are willing to enter into. Every party is different, and so are their needs and statuses. The terms of any entertainment contract vary depending on the nature of the parties, their roles, prior agreements, industry experience, and other factors. For instance, if one party is a well-established studio and the other party is a new independent filmmaker, the terms of the contract will reflect the difference in their bargaining power. Similarly, if one party has had a prior record of disputes and litigation with the other party or similar parties, it may need to be taken into account while drafting their contract so that any such similar dispute can be addressed or prevented. So, a fixed template is not suitable for all entertainment contracts. Ultimately, entertainment contracts (or any contract for that matter) must be tailor-made for the parties.

Secondly, it is pertinent to draft the scope of the agreement. The scope of the agreement is the part wherein the obligations expected to be fulfilled by the parties are mentioned. It helps to avoid misunderstandings or confusion between the parties during the term of the agreement. An unambiguous scope of the agreement can help parties avoid disputes down the road. It also establishes the trust between the parties. For instance, in a music recording contract, the scope of the agreement would define the recording process, including details of the recording studio, the producer, the nature and composition of the songs to be recorded, rights granted, restrictions on the singer, etc. It is also necessary to keep the clauses as precise as possible to make them unambiguous.

Accuracy surpasses readability, so it is better to ask the following questions while drafting:

- Is the content accurately stated?
- Could any points be misunderstood because of ambiguity?
- Are irrelevant facts excluded?
- Are key terms used correctly?
- Are paraphrases accurate?
- Names of parties and their status correct?
- Are there clear transitions between paragraphs and sentences?

Thirdly, it is good to keep the contracts well-balanced. A balanced contract favors both parties equally. It protects the interests of both parties and prevents any one party from gaining an unfair advantage over the other, helping them establish a harmonious contractual relationship. Contracts favoring any one party are generally a result of a lack of negotiation power of one party. In the entertainment industry, where relationships between artists, producers, and distributors are critical to success, a well-balanced contract is especially important. For instance, a talent management company may agree to provide career management and representation services to an artist in exchange for a percentage of the artist's earnings, rather than just a fixed fee.

Similarly, potential disputes need to be foreseen to a certain extent in contracts. It is particularly vital in the entertainment industry because entertainment contracts do not involve just a couple of parties; it depends on the coordinated functioning of several classes of people. For instance, in the context of an artist agreement which is signed between the producer and an artist (such as a singer, actor, performer, etc.), the collaborative effort of several people like technicians, artist's agents, venue partners, etc. is needed though they are not the parties to the artist agreement. It's teamwork to bring out the best ability of the artist. Any disagreement between such persons, the artist and the producer can have a catastrophic effect on the event or performance. So, the contracts signed with different parties are generally read and considered together while drafting any new entertainment contract, without merely focusing on such parties to the new contract.

Furthermore, reviewing and revising any entertainment contract is another strategy that the

entertainment industry never fails to approach. It is vital because of several reasons. Firstly, the review of the draft agreement ensures that the contract accurately reflects the interests of the parties as discussed during the negotiation phase of the deal. Secondly, it takes a lot of time for parties to come together, negotiate, and finally complete the drafting of their agreement. The amount of time it takes to draft an entertainment contract (or any contract for that matter) ultimately depends upon the parties' specific needs. A basic one-page agreement could take a few days whereas a lengthy, complex document could take several weeks or months.<sup>19</sup> Meanwhile, a lot of changes may happen in the entertainment industry. For instance, new legislation may be enforced or the latest profitable mode of exploitation may be introduced. In such scenarios, the parties would like to revise their draft agreement incorporating such changes. So, it is an extremely common practice in the entertainment industry to review and revise the draft entertainment contract as clearly as possible before signing the final contract.

## INTERNATIONAL CONTRACT LAW AND ENTERTAINMENT LAW

As discussed earlier, the entertainment industry is a global industry that spans different countries and cultures. It transcends geographical boundaries and caters to audiences all over the world. Its products, such as movies, music, television shows, video games, broadcast of international sports, etc. are distributed globally because seldom does anyone hate entertainment. They have the potential to reach millions of people irrespective of their backgrounds or statuses.

The entertainment industry also involves collaboration between artists, production companies, distributors, and a plethora of other parties from different countries, making it indeed an international business. For instance, Hugh Jackman, who gained international recognition for his role as "Wolverine" in the *X-Men* film series, was an Australian actor.<sup>20</sup> Ang Lee, a Taiwanese director directed the blockbuster Hollywood movie *Life of Pi*. Amy Jackson, a British actress, acted in several Indian films like *Madrasapattinam*, *Yavadu*, etc. It shows that the entertainment industry is not restricted to a certain territory or nationality.

The entertainment industry is constantly searching for great talent, resources, and financing from all around the world. This requires a clear understanding of different laws, legal systems,

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<sup>19</sup>ContractsCounsel, 'How To Draft a Contract: 6 Steps to Follow' (*ContractsCounsel*, 17 August 2021) [www.contracts-counsel.com/b/how-to-draft-a-contract](http://www.contracts-counsel.com/b/how-to-draft-a-contract) accessed 14 May 2023

<sup>20</sup> Zhinmag, 'Most favorite non American actors and actresses' (*Zhinmag*, 23 June 2021) [www.zhinmag.com/most-favorite-non-american-actors-and-actresses/](http://www.zhinmag.com/most-favorite-non-american-actors-and-actresses/)

cultures, languages, and the ability to negotiate and draft contracts that reflect the parties' goals. The international entertainment industry is also subject to international laws and regulations on IP, labor laws, tax laws, etc.

Another important aspect of the global entertainment industry is the fact that entertainment products like movies, music, television shows, etc. are consumed by audiences all around the world. So, it's pertinent to take into account cultural sensitivities and differences when creating and distributing entertainment content worldwide. Parties need to also be prepared to address issues that arise when content is considered offensive or inappropriate in different countries.

On the whole, the international aspects of the entertainment industry require an utmost understanding of cross-border legal issues, and cultural differences, and the ability to navigate the complexities of the global marketplace.

Different cross-border legal issues may arise in the case of international entertainment contracts. Firstly, the parties may have conflict over jurisdiction and applicable law. They may have the question of which law will apply to the contract or which court will have jurisdiction over any dispute that may arise concerning the contract.

Another issue that may arise in international entertainment contracts is the differences in payment methods and currency. There are multiple payment-currency issues like currency conversion, tax implication, and payment methods in the international arena.

Further, political instabilities in the parties' countries can have a significant impact on the ability of parties to perform their obligations under the contract.

Issues like the ones discussed above need to be clearly and specifically addressed in international entertainment contracts to avoid the risk of disputes and ensure that the parties rights and interests are equitably protected.

## **INTERNATIONAL IP LAWS AND THEIR APPLICATION IN THE ENTERTAINMENT INDUSTRY**

To understand what goes behind any international entertainment contract, one must have a clear idea of the international framework of IP laws, especially the ones related to copyright and trademarks.

The World IP Organization (WIPO) is the global forum for IP services, policy, information, and cooperation. It was established by the Convention Establishing the World IP Organization of 1967 (WIPO Convention.)<sup>21</sup> Its mission is to lead the development of an effective international IP system that enables innovation and creativity for the benefit of all.<sup>22</sup> It is one of the 15 specialized agencies of the United Nations (UN).<sup>23</sup>

Headquartered in Geneva, Switzerland, WIPO provides legal and technical assistance to countries for the protection of IPR and promotes the use of alternative dispute resolution mechanisms like arbitration to resolve IP-centric cross-border disputes. It creates platforms to discuss international IP rules, provides worldwide IP registration and protection services, and provides reports on the status of IP protection in various countries. It not only protects copyright and trademark, but also patents, industrial designs, geographical indications, and plant varieties.

The WIPO also administers 26 treaties, among which the most entertainment-centric treaty is the Berne Convention for the Protection of Literary and Artistic Works (1886) which is popularly called as “Berne Convention”. It deals with the protection of works and the rights of their authors. It is based on three basic principles<sup>24</sup> and provides for determining the minimum protection to be granted. The basic principles are:

- **Principle of national treatment:** Contracting States must give to the works originating from the other Contracting States the same protection as each of them give to the works originating from themselves;
- **Principle of automatic protection:** The protection should not depend on the compliance of any condition/ formality;
- **Principle of independence of protection:** The protection is independent of the existence of protection in the country where the work originated.

The Berne Convention provides cross-border protection of copyright. It mandates the

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<sup>21</sup> WIPO, ‘Summary of the Convention Establishing the World Intellectual Property Organization (WIPO Convention) (1967)’ (WIPO, Undated)

[www.wipo.int/treaties/en/convention/summary\\_wipo\\_convention.html](http://www.wipo.int/treaties/en/convention/summary_wipo_convention.html) accessed 10 May 2023

<sup>22</sup> WIPO, ‘Inside WIPO’ (WIPO, Undated) [www.wipo.int/about-wipo/en/](http://www.wipo.int/about-wipo/en/) accessed 10 May 2023

<sup>23</sup> Wikipedia, ‘World Intellectual Property Organization’ (Wikipedia, Undated)

[www.wikipedia.org/wiki/World\\_Intellectual\\_Property\\_Organization](http://www.wikipedia.org/wiki/World_Intellectual_Property_Organization) accessed 10 May 2023

<sup>24</sup> WIPO, ‘Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)’ (WIPO, Undated) [www.wipo.int/treaties/en/ip/berne/summary\\_berne.html](http://www.wipo.int/treaties/en/ip/berne/summary_berne.html) accessed 10 May 2023

Contracting States to protect literary and artistic works because they originated from the other Contracting States. It defines “literary and artistic works” as including:

- Every production in the literary, scientific, and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets, and other writings;
- Lectures, addresses, sermons, and other works;
- Dramatic or dramatic or musical works; choreographic works and entertainments in dumb shows;
- Musical compositions with or without words; cinematographic works which are assimilated works expressed by a process analogous to cinematography;
- Works of drawing, painting, architecture, sculpture, engraving, and lithography; photographic works which are assimilated works expressed by a process analogous to photography;
- Works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.”<sup>25</sup>

Certain exclusive copyrights are provided under the Berne Convention, which are the rights to translate, make adaptations and arrangements, perform in public, recite in public, communicate to the public, broadcast, and make reproductions. It also provides for protecting the moral rights of the author to be recognized or to claim as the author of the work and prevent the mutilation, deformation, or modification of the work.

The Berne Convention also provides certain eligibility criteria for protection under it.<sup>26</sup> The protection applies to all authors who are nationals of one of the Convention’s members, whether it is published or not, and all authors who, though are not nationals of one of the members, but have their work first published in one such member country or simultaneously in a non-member country and a member country. The protection extends to the authors who have habitual residence in one of the member countries though they may belong to a non-member country.

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<sup>25</sup> WIPO, ‘World Intellectual Property Organization (WIPO)TRT/BERNE/001’ (WIPO, Undated) <[www.wipo.int/wipolex/en/text/283693](http://www.wipo.int/wipolex/en/text/283693)> accessed 11 May 2023

<sup>26</sup> The Berne Convention, 1886 Article 3

With exceptional regard to cinematograph works, the Berne Convention provides that the authors of cinematographic works will get protection under it even if they don't fulfill the eligibility criteria under Article 3, provided the maker (producer or producing company) of such cinematographic works has his headquarters or habitual residence in one of the member countries.<sup>27</sup>

The general rule under Article 5 of the Berne Convention is that the work shall be protected by the domestic law of the country of origin. It also provides under what laws the authors' works shall be protected. It provides that the authors' works shall avail the protection of the laws of both the country of origin and the Berne Convention. It also provides that the author can claim the protection of his rights through any means of redressal as governed exclusively by the laws of the country where the protection is claimed. It means the courts of the origin country shall have exclusive jurisdiction over any copyright claims of the authors.

Berne Convention plays a vital role in the international entertainment industry which requires international recognition of copyrights. India became a member country of the same in 1928, according to which The Copyright Act of 1957 was introduced in India.

World Trademark Organization (WTO) is another intergovernmental organization that has created global agreements on copyrights and related rights which influence the flow of trade. Among the various WTO agreements, the most entertainment-centric is the Agreement on Trade-Related Aspects of IPR (TRIPS Agreement) of 1994. Sciences

The TRIPS Agreement provides for the principle of national treatment. It states that concerning IPR, every member country should treat the other members the same way they treat their own. The Agreement also provides for the principle of most-favored-nation treatment, which states that if a member country provides some special IP protection, advantage, favor, privilege, or immunity to any other country, it should provide the same to all the member countries too.

The TRIPS Agreement treats computer programs the same as any literary work treated under the Berne Convention. Unlike Berne Convention, the TRIPS Agreement provides for the protection of a wide range of IPRs like copyrights, trademarks, geographical indications, industrial designs, etc.

One of the key aspects of the TRIPS Agreement is the dispute resolution mechanism that it

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<sup>27</sup> The Berne Convention, 1886 Article 4

provides. Dispute resolution lies at the heart of WTO. We shall discuss the same later in this paper.

### **CONTRACTUAL DISPUTES IN THE ENTERTAINMENT INDUSTRY**

The entertainment industry often witnesses a variety of contract disputes. Broadly, there are six different types of disputes that may arise in the entertainment industry concerning contracts, which are:

- Payment disputes
- IPR disputes
- Breach of contract disputes
- Force majeure disputes
- Disputes on the interpretation of contract terms
- Misrepresentation disputes

**Payment disputes:** These are some of the most common ones in entertainment contracts. There are several kinds of payment disputes. Firstly, there may be a dispute regarding the amount of money payable. Payment amount issues arise when the parties involved in the contract fail to agree on the amount to be paid. This generally happens due to several reasons like changing market rates or the perceived value of the talent. For instance, a musician may demand a higher payment for performing at a concert based on his reputation, while the organizers of the event may feel that the payment is too high or that the musician is overrated.

Secondly, issues may arise in the payment schedule agreed upon by the parties, including the amount of payment, the date of payment, and any milestones for payment. Generally, payment schedules may be impacted by several factors like budget restraints, delayed production, or late invoicing. For instance, in the film industry, actors and crew members may have agreed upon a payment schedule that includes a deposit before the commencement of the production stage and then additional payment throughout the same stage. If such a payment schedule is affected, it will harm the entire production because the actors and crew members will be anxious for their payment and it will reflect in their work.



Another payment dispute that may arise is that the party failing upon their contractual obligations may be subjected to incomplete payment or penalties. For instance, if a music producer fails to deliver the required number of songs to a record label, they may be penalized with a lower payment or no payment at all.

**IPR disputes:** IPR-related disputes. Such disputes may arise in several ways like ownership, licensing, infringement, and exploitation of IP. Ownership disputes arise when there is confusion over who owns the IPR over a work. For instance, when two or more parties collaborate on a work (for example, a co-production under a co-production agreement), they may all claim ownership over the in different ways if the contract between them did not clarify the division of the rights.

Another IPR ownership dispute that may arise in entertainment contracts is the ownership over derivative works. Owners of the original work may have disputes with the author of the derivative work stating that the amount of work derived from the original work is too much to call it a completely new work. This happens when the adaptation agreement signed between them does not clarify the permissible extent of usage of the original work in the derivative work.

**Breach of contracts:** Breach of contracts happens when an agreement abiding by the parties is not honored by one of them. These types of disputes arise when the parties fail to deliver on their promises as per the terms and conditions of the contract. Such failures can have a catastrophic impact on the purpose for which the contract is entered into.

Consider the case of *Netflix, Inc. v. Relativity Media, LLC (In re Relativity Fashion, LLC)*.<sup>28</sup> In 2010, Netflix, Inc. and Relativity Media signed a multi-year License Agreement, to provide exclusive content to Netflix. However, in 2017, Netflix filed a suit for breach of contracts stating that five Relativity films, which were licensed to Netflix, were allegedly provided to its rivals, Amazon and Starz.<sup>29</sup> It also alleged that Relativity Media failed to deliver the promised number of films to Netflix.<sup>30</sup> Following the allegation, Netflix also withheld about \$3.9 million

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<sup>28</sup> *Netflix, Inc. v. Relativity Media, LLC (In re Relativity Fashion, LLC)*, No. 16-3282-bk (2d Cir. Aug. 22, 2017)

<sup>29</sup>PTI, 'Netflix sues Relativity Media, claims breach of agreement' (*The Economic Times*, 2 June 2018)

[www.economictimes.indiatimes.com/news/international/business/netflix-sues-relativity-media-claims-breach-of-agreement/articleshow/64427506.cms](http://www.economictimes.indiatimes.com/news/international/business/netflix-sues-relativity-media-claims-breach-of-agreement/articleshow/64427506.cms) accessed 11 May 2023

<sup>30</sup> Gene Maddaus, 'Netflix and Relativity Settle Contract Dispute, Clearing Obstacle to Sale' (*Variety*, 2 August 2011) [www.variety.com/2018/biz/news/netflix-relativity-contract-dispute-settlement-1202893450/](http://www.variety.com/2018/biz/news/netflix-relativity-contract-dispute-settlement-1202893450/) accessed 11 May 2023

in payments to Relativity Media. Relativity Media was facing bankruptcy back then. After a long legal battle, the parties settled their dispute in New York Bankruptcy Court. A court-supervised sale of Relativity Media to UltraV Holdings took place. Under the settlement agreement, Netflix agreed to pay the withheld fee amount of \$3.9 million along with an additional \$3.25 million fee. It was also agreed that UltraV will have the right to stream up to 30 titles on Netflix.

**Force Majeure events:** Force majeure events are unexpected and uncontrollable circumstances that make it impossible for one or both parties to fulfill their contractual obligations. Such circumstances cannot be generally overcome through reasonable measures. In the entertainment industry, force majeure events can include natural disasters which disrupt production, unexpected illness or injury of artists during the shoot, sudden changes in government policies, etc. These events result in unnecessary delays, alterations, or cancellations in the performance of the contract. So, a force majeure clause limits or waives the liability arising from the non-performance of the parties affected by the happening of a force majeure event.

What better example can there be of force majeure events than the COVID-19 pandemic? Public gatherings were banned during the lockdown period, which led to parties becoming helpless in performing their contractual obligations. The pandemic resulted in the issuance of force majeure notices across the entertainment industry.<sup>31</sup> For instance, Warner Bros sent notices to many of its television writers suspending their agreements, but some of them objected, stating that the pandemic does not hinder their writing abilities.

Whatever the contractual dispute between parties to any entertainment contract is, it can be solved through the dispute resolution methods that are discussed further in this paper.

## **CONTRACTUAL DISPUTE RESOLUTION IN THE ENTERTAINMENT INDUSTRY**

From our discussion so far, we know that contract disputes are common in the entertainment industry due to several reasons. These disputes have significant consequences for the parties involved, like monetary losses, tarnishing of reputation, and loss of prospective opportunities. These disputes can be resolved in many ways, the most common and trusted of which are

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<sup>31</sup> Marc H. Simon and Rom Bar-Nissim, 'Guest comment: Force majeure clauses, coronavirus and the entertainment industry' (*Screen Daily*, 2 June 2020) <[www.screendaily.com/features/guest-comment-force-majeure-clauses-coronavirus-and-the-entertainment-industry/5150117.article](http://www.screendaily.com/features/guest-comment-force-majeure-clauses-coronavirus-and-the-entertainment-industry/5150117.article)> accessed 11 May 2023

litigation and Alternative Dispute Resolution (ADR).

Litigation is the process of taking a dispute to a court of law.<sup>32</sup> The litigation method of contract dispute resolution is approached when the commercial issue between the parties is extremely complex. All kinds of IP-related contract disputes, like a breach of contract, copyright infringement, etc., can be brought before the court. It is the most basic dispute resolution technique, wherein an affected party approaches the court with a complaint and initiates a lawsuit. The matter in dispute will be heard and adjudicated by an impartial judge, who shall finally give a judgment. The judgment would be such that one party will win and the other will lose.

A variety of laws are involved in the litigation process. For instance, in India, the law that deals with copyrights and trademark is the Copyright Act of 1957 and the Trademarks Act of 1999, respectively. Apart from these IP-specific laws, there are also other laws like The Code of Civil Procedure of 1908, The Indian Evidence Act of 1872, the Indian Contract Act of 1872, etc. The appropriate application of these laws requires a knack for IPR and expertise in the court processes. That is where IPR attorneys or law firms come in handy.

Generally, there are two ways in which parties to entertainment contracts get legal assistance concerning litigation. Firstly, they may approach an external law firm seeking legal support in filing a lawsuit and getting represented in court. Secondly, they may have exclusive legal units that exclusively help them with legal matters. Usually, large-scale entertainment entities like media houses, production companies, A-listed celebrities, etc. have exclusive legal teams for drafting and negotiating contracts and representing them in court.

Nevertheless, there are several drawbacks to using litigation as a contract dispute resolution method in the entertainment industry. Not all contract disputes can be well settled by way of litigation. That is because the court of law provides for a winner and loser, therefore leaving one of the parties at the risk of being cheated.<sup>33</sup> Litigation seldom allows for a solution that is mutually beneficial to the parties. Also, copyright lawsuits can last months to years and can

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<sup>32</sup> Burlingtons, 'What is Litigation? All You Need to Know About the Law & Process' (*Burlingtons*, 11 August 2020) <[burlingtonslegal.com/news/what-is-litigation-all-you-need-to-know-about-the-law-process/](http://burlingtonslegal.com/news/what-is-litigation-all-you-need-to-know-about-the-law-process/)> accessed 11 May 2023

<sup>33</sup> Bello Adesina Temitayo, 'Entertainment Industry Disputes; Arbitration As A Catalyst To Perennial Malady' (*SSRN*, 20 October 2017) <[www.papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3055732](http://www.papers.ssrn.com/sol3/papers.cfm?abstract_id=3055732)> accessed 11 May 2023

cost from \$5,000 or up to \$100,000 or more for lengthy litigation.<sup>34</sup> Such a huge amount of money cannot be afforded by a new artist. Further, the prolonged duration of litigation makes parties abandon their project because the judgment is most likely to come very late (most probably after the term of the contract.) Evidently, litigation is not a viable option to resolve entertainment contract disputes.

So, the better alternative to litigation when it comes to entertainment contract disputes is ADR. It refers to dispute resolution techniques other than litigation. There are several ADR techniques like negotiation, mediation, conciliation, and arbitration. In India, ADR techniques can be opted for resolving disputes in two ways- either the court will refer the parties to ADR under Section 89 of the Code of Civil Procedure of 1908 or the parties can privately and mutually agree upon to adopt any ADR technique.

Negotiation is the technique wherein the parties have an amicable conversation among themselves and try to arrive at a mutually profitable solution to resolve small contractual disputes. It's a very cost-efficient method because no middle-man is required in it.

Mediation is another ADR technique wherein a neutral third party helps the parties come up with an amicable solution to their contractual dispute by using special communication strategies. Mediation is a non-binding process, meaning, even though parties have agreed to submit a dispute to mediation, they are not obliged to continue with it after the first meeting.<sup>35</sup>

In the international arena, mediation services to entertainment industries are provided by WIPO, American Arbitration Association (AAA.) The AAA is a not-for-profit organization that provides arbitration and mediation services to individuals and organizations globally. It has a separate division named AAA Mediation.org which provides comprehensive mediation resources. Once parties submit to mediation via AAA, they can choose a mediator or the AAA will appoint one for them, depending on the nature of the dispute.

The WIPO Arbitration and Mediation Centre also offer mediation services to enable private parties to settle their domestic or cross-border commercial disputes involving the exploitation

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<sup>34</sup>Steve Vondran, 'How Much Does It Cost to Litigate a Copyright Case' (*Vondran Legal*, 23 July 2020) [www.vondranlegal.com/how-much-does-it-cost-to-litigate-a-copyright-case](http://www.vondranlegal.com/how-much-does-it-cost-to-litigate-a-copyright-case) accessed 6 May 2023

<sup>35</sup> WIPO, 'Mediation: Frequently Asked Questions' (*WIPO*, Undated) [www.wipo.int/amc/en/mediation/guide/](http://www.wipo.int/amc/en/mediation/guide/) accessed 6 May 2023

of IP. The WIPO Mediation Rules of 2021<sup>36</sup> shall apply to such parties who submit to WIPO's mediation services by including a WIPO-centric mediation clause in their agreement. WIPO helps parties appoint the right mediator and select a suitable Center for holding the meetings.

The next ADR technique is conciliation. In most places, conciliation is meant synonymous with mediation. But there exists a subtle difference between the two terms. While a mediator assists the parties to themselves arrive at a mutually amicable solution, a conciliator facilitates the negotiation of the parties systematically and suggests a solution that he feels is suitable for the parties. If the parties are mutually satisfied with the conciliator's suggestion, they enter into a settlement agreement. If they mutually don't like it, their negotiation goes on till they arrive at a better solution. In India, conciliation proceedings are governed by the Arbitration and Conciliation Act of 1996.

The last but most commonly opted ADR technique is arbitration. Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute.<sup>37</sup> The agreement between them is called Arbitration Agreement, and the binding decision made by the arbitrator is called an Arbitral Award. The arbitration method is different from the other ADR methods because it gives the final decision-making power to a third-party (arbitrator) and not to the parties themselves. Further, unlike the other ADR methods, a party cannot unilaterally withdraw from arbitration. In India, arbitration proceedings are governed by the Arbitration and Conciliation Act of 1996.

In the international arena, various organizations like AAA, the International Court of Arbitration, WIPO Arbitration and Mediation Centre, Judicial Arbitration and Mediation Service (JAMS), etc. offer arbitration services.

In resolving entertainment contract disputes, many parties prefer the arbitration method due to several reasons. Firstly, it offers extreme privacy to the parties. As the hearings do not take place in an open forum and transcripts don't form a part of the public record, celebrities who seek to keep their disputes private feel more comfortable in going for arbitration. Secondly, arbitration is more cost-effective than litigation, considering the financial capabilities of a struggling artist, author, performer, etc. Thirdly, arbitration proceedings can take place at any

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<sup>36</sup> WIPO, 'WIPO Mediation Rules' (WIPO, Undated) <[www.wipo.int/amc/en/mediation/rules/](http://www.wipo.int/amc/en/mediation/rules/)> accessed 12 May 2023

<sup>37</sup> WIPO, 'What is Arbitration?' (WIPO, Undated) <[www.wipo.int/amc/en/arbitration/what-is-arb.html](http://www.wipo.int/amc/en/arbitration/what-is-arb.html)> accessed 12 May 2023

time suitable for the parties. This is a boon to celebrities with hectic schedules. Fourthly, unlike litigation, arbitration facilitates the parties to choose a judge who has expertise in or knowledge about the entertainment industry and laws. A judge in a court of law may not be efficient enough to understand the difficulties or interests of the parties to an entertainment contract as he may not know the nuances of the industry. Fifthly, arbitration allows parties to choose the seat of arbitration, that is, the law that will govern their arbitration proceeding. All these advantages make arbitration the go-to method to resolve contractual disputes in the entertainment industry.

## INTERNATIONAL ENTERTAINMENT CONTRACT DISPUTE RESOLUTION

As discussed earlier, parties can choose to resolve their contractual disputes by using either litigation or ADR. However, it is pertinent to discuss the matters such as choice of law, forum selection, the jurisdiction of courts, and enforcement of foreign arbitral awards in India to understand how international contractual disputes are resolved in the entertainment industry.

Depending on the agreement between them, parties can choose any seat of arbitration, that is, the jurisdiction whose law will apply to their arbitration proceeding. In India, if the dispute is between an Indian national and a foreign entity and they choose their arbitration proceeding to be governed by Indian laws, then the seat is said to be Indian. Such an arbitration wherein one party is an Indian and the other one is not an Indian and they mutually agree to resolve their dispute as per Indian laws is called an 'international commercial arbitration' under the Arbitration and Conciliation Act of 1996.<sup>38</sup> Similarly, they are free to the seat of their choice. Generally, as held in the case of *BGS SGS Soma JV v. NHPC Ltd.*,<sup>39</sup> in cases where a seat of arbitration is designated by the parties, the courts at the seat of arbitration will have jurisdiction in respect of all cases arising out of or concerning such arbitration.<sup>40</sup>

However, there may also be certain contracts containing two jurisdiction clauses- an 'exclusive jurisdiction clause' and a 'forum selection clause'. A 'forum selection clause' stipulates which court shall have jurisdiction as to the contract as a whole. For instance, in the case of *My Preferred Transformation and Hospitality Pvt. Ltd. v. Sumithra Inn*<sup>41</sup>, a typical situation arose.

<sup>38</sup> The Arbitration and Conciliation Act 1996 s.2(f)

<sup>39</sup> *BGS SGS Soma JV vs NHPC Ltd.* (2020) 4 SCC 234

<sup>40</sup> Rohan Gulati, 'Exclusive Jurisdiction v. Forum Selection Clauses: What's Brewing Amongst the High Courts?' (*The Arbitration Workshop*, 29 August 2021) <[www.thearbitrationworkshop.com/post/exclusive-jurisdiction-v-forum-selection-clauses-what-s-brewing-amongst-the-high-courts](http://www.thearbitrationworkshop.com/post/exclusive-jurisdiction-v-forum-selection-clauses-what-s-brewing-amongst-the-high-courts)> accessed 11 May 2023

<sup>41</sup> *My Preferred Transformation And Hospitality Pvt Ltd. v. Sumithra Inn* 2021 SCC OnLine Del 1536

A Management Services Agreement (MSA) provided that the courts of New Delhi would have exclusive jurisdiction concerning the arbitration proceedings but the courts at Bangalore would have jurisdiction for all the other matters arising out of the MSA. The petitioner approached the Delhi High Court under Section 11(6) of the Arbitration and Conciliation Act of 1996. Resolving the jurisdiction tussle, the Delhi High Court held that since no provision of the MSA conferred jurisdiction and the seat of arbitration was agreed to be New Delhi in the MSA, the Delhi High Court has the jurisdiction to entertain the present case.

Any discussion on international arbitration is incomplete without two conventions- the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 (also called the Geneva Convention) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (also called the New York Convention.)

The Geneva Convention lays down certain conditions necessary for the recognition or enforcement of awards passed concerning parties belonging to different Contracting States.

The requirements are:

- The award should be made in pursuance of an arbitration agreement valid under the applicable law;
- The subject matter of the award can be settled by arbitration in the country where it is sought to be enforced;
- The award should be made by the Arbitral Tribunal formed as per the Arbitration Agreement and the governing law;
- The award must be final in the country where is made, and
- The enforcement of the award should not be against the public policy of the country is sought to be enforced.

India is a signatory to the Geneva Convention; the foreign arbitral awards made as per the Geneva Convention are enforced in Indian courts under Part II Chapter II of the Arbitration and Conciliation Act of 1996.

Similar protection is provided under the New York Convention as well. It provides that the Contracting States must enforce the foreign arbitral awards made in other Contracting States.

It also provides the circumstances when such awards cannot be enforced. India is a signatory of the New York Convention too. The awards made under it can be enforced in India under Part II Chapter I of the Arbitration and Conciliation Act of 1996.

## **FUTURE TRENDS AND CHALLENGES IN ENTERTAINMENT CONTRACTS**

The entertainment industry has always been at the forefront of innovation and evolution. From the advent of sound in films to the rise of content streaming platforms, the entertainment industry has witnessed several transformative changes over the decades. As we move toward the future, several trends and challenges will likely shape the entertainment landscape.

With the widespread availability of high-speed Internet, content streaming services, and social media, consumers have more options than ever before to choose from when it comes to entertainment content. This trend is going to stay in the industry. As a result, traditional media companies have to adapt their business models to stay relevant in an increasingly digital world.

Copyright owners have to find new ways to exploit their copyrights effectively. One classic example of how it is being done nowadays is that producers are in a partnership with a wide range of content streaming platforms to exploit their movies after a considerable amount of theatrical exploitation. But this method has its drawbacks. For instance, a lead artist in a movie may demand a variable fee in the digital exploitation of the movie as well along with the fixed fee and variable fee in the theatrical distribution. In such a situation, though the demand of the artist seems logical, the producer may not be happy with it. So, parties will have to negotiate for a long time before signing the artist agreement. The consideration clause of the agreement should expressly elucidate the accurate percentages of share in the movie's theatrical and digital distribution of the film which the artist is entitled to receive.

Content exploited through OTT platforms have a peculiar characteristic. Unlike theatrical distribution wherein the content can be viewed by the audience for only a specific period, digital content can be viewed until it is available on the platform. It gives more time for the movie to generate revenue. That is why it is pertinent to specify in the agreement the duration till when the artist demanding a variable fee in the digital distribution of a film is entitled to get the payment.

One of the most prominent future trends that the entertainment industry is going to witness is an increase in the usage of augmented reality (AR) and virtual reality (VR). There is a lot of



talk about metaverse technologies. Metaverse is a collective virtual shared space, created by the convergence of virtually enhanced physical and digital reality.<sup>42</sup> Metaverse is a forum that facilitates digital humans, gaming, virtual spaces, shared experiences, spatial computing, tokenized assets, etc.

As these ground-breaking technologies continue to rapidly evolve, novel legal issues involving concepts like antitrust, data privacy, IP, etc. are emerging. As far as the issues involving IP are concerned, one of the key questions is the ownership of IP in the metaverse. It is difficult to identify the creators of work in the metaverse because such work is the outcome of a decentralized collaborative process performed by anonymous users behind avatars.

Similarly, there is also a question as to how trademark dilution will take place in the metaverse; do digital assets qualify as ‘goods’ under trademark laws? How to determine the identity of an infringer? For instance, in the year 2022, French luxury fashion house *Hermès* sued a Non-Fungible Token (NFT) creator named Mason Rothschild for marketing a digital assets line called *MetaBirkins*, which was a digital duplication of the *Birkin* bag created by the fashion house for a lot of money. The fashion house alleged trademark infringement and dilutive use of its bag’s name. *Hermès* won the suit, making Rothschild pay \$110,000 for IP infringement and another \$23,000 for squatting on the Birkin domain name.<sup>43</sup>

So, traditional contract drafting strategies may not be very helpful in the future. Issues like these are yet to be figured out by the courts. Writing all the terms and conditions of the contract clearly can neither prevent nor solve to a large extent the disputes that may arise from these issues. Novel problems concerning metaverse cannot be prevented unless the courts address them and a clear interpretation of laws on metaverse is made. Basic AI-specific laws at national and international levels need to be formulated to assist the judiciary in resolving unique disputes.

Another trend that is likely to be seen in the entertainment industry is the growing need for remote employees across the globe. While the COVID-19 pandemic set high standards for the quantity of content that can be produced for entertainment, the post-pandemic scenario is setting benchmarks for better quality and quantity of entertainment content. There is a growing necessity to create content faster and better than ever before. There is also a constant quest for

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<sup>42</sup> Jackie Wiles, ‘What Is a Metaverse? And Should You Be Buying In?’ (*Gartner*, 21 October 2022)

[www.gartner.com/en/articles/what-is-a-metaverse](https://www.gartner.com/en/articles/what-is-a-metaverse) accessed 12 May 2023

<sup>43</sup> *Hermes Int'l v. Rothschild*, 22-CV-384 (JSR) (S.D.N.Y. May. 18, 2022)

creative minds irrespective of their nationalities. The creative minds may be artists, performers, engineers, editors, etc. So, more production companies need to have cross-border collaborations. Such collaborations required clear contractual understanding between the parties concerning the scope of work, payment, dispute resolution, labor policies, etc. It is trickier for remotely working parties; the differences in time zones, quality of work, labor policies, etc. need to be carefully considered while drafting such agreements. Nevertheless, since the essence of the entertainment industry is its adaptiveness, such complicated steps are inevitable.

## CONCLUSION

The power of the entertainment industry is in its adaptability. It has evolved along with the dynamic trends of the audience's behaviors and tastes. It is a truly global industry with so many cross-border collaborations. In hindsight, the glitz and glamour of the industry are handled by a plethora of contracts between multiple parties. These contracts help them synchronize their skills and focus them on a particular project. A variety of clauses help parties stay on the same page throughout the project. International collaborations in entertainment demand a different level of precaution while drafting contracts, due to several differences in laws and culture.

Any contractual misunderstanding between the parties can impact both their professional relationship and the project they work on. Such misunderstandings may lead to disputes between them, which can be resolved by either litigation or ADR techniques. For an amicable settlement between them, parties should opt for the latter. Arbitration is a proven way to smoothly settle disputes in a mutually acceptable way. It can be effective in resolving disputes related to entertainment contracts at both national and international levels. At an international level, it is beneficial to avail the arbitration and mediation services of several organizations like WIPO and WTO.

In hindsight, most of the disputes in the entertainment industry can be prevented by establishing a clear understanding between the parties by giving enough time for negotiations, accurately elucidating all the terms and conditions of the contract, and reviewing and revising it before signing. Nevertheless, the new-age disputes in the entertainment industry cannot be prevented or resolved by merely having a water-tight contract in place. Issues concerning the latest technological advancements like AI, VR, AR, etc. are being realized gradually. Well-negotiated and drafted contracts cannot keep such issues at bay. As the industry sets its eyes to

reach unimaginable heights, it will have to depend on judicial interpretation of existing laws and the legislation of new-age laws to resolve such disputes. Until then, the usage of the fundamental strategies of contract drafting needs to be continued.

