



ANALYZING THE BALANCE BETWEEN PRODUCERS AND CONTRIBUTORS CONCERNING THEIR ECONOMIC AND MORAL RIGHTS

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ABSTRACT

The Copyright Act of 1957 protects the vision of an artist from unauthorized usage, and Section 51 of the Act assists the court in determining cases of copyright infringement. This article focuses on the protection accorded by the Act to the creators of the film-making sector, particularly the producers. The courts have held the producers to be the authors and first owners of the film. The rationale is that the producers take the financial risk and hire other professionals to create the movie. So, any person making use of the cinematography film without the consent of the producer is liable to compensate them. This right granted to the producer does not extend to the underlying works. The courts have given decisions in favour of both producers and individual artists to protect their rights concerning cinematographic work. This paper is structured into three parts. Firstly, the general overview of the status of producers under the copyright act is discussed. Secondly, the economic and moral rights of the producer are discussed. Lastly, the right vested in the producer under the Cinematograph Act, of 2023 is discussed.

Keywords: Producers, Underlying works, Moral Rights.

INTRODUCTION

Entertainment has become a major part of everyone's life. A large section of the public watches movies for recreation but it is a means of livelihood for certain individuals. Moviemakers contribute not just a movies but also to values to society. The conventional reference to the filmmaking industry as a profit-making entities is no longer apt. A movie is not a creation of a

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single person. Movie making is such a lengthy process which requires consistent efforts by people hired for it.

The financial responsibility is borne by the producer and other key personnel including the Director, Cinematographer, Musicians, and actors contribute their physical labor. It requires the hard work, skill, and support of many experts to make a final output. A movie that is made for the public is a confluence of work done by several individuals. The copyright act contains a provision that designates the producer(s) of a cinematography film as the first owner of the copyright.

However, claims have been made by the director or other key contributors for seeking ownership over the cinematographic work. The courts have resolved disputes surrounding the claim of copyright over a film. Recently, the Delhi High Court made a remarkable observation that the right to screenplay does not extend to the producer of the film. This judgment opens the door for several other artists to claim ownership over their contribution to the cinematographic work. The courts, by allowing such claims would substantially affect the rights of the producer over the film.

PRODUCER AS AN AUTHOR OF CINEMATOGRAPHIC FILM

According to section 17(b) of the Copyright Act 1957, the first owner of cinematographic film shall be the author of the work. Section 2(d) of the Copyright Act defines an “author” as an individual who initially creates any literary, dramatic, musical, artistic work, or cinematography film. A cinematographic film being a collaborative work of various artists makes it difficult to ascertain the sole author of the cinematographic work. The copyright act contains a bundle of rights over all the creations but not over ideas.

In cinematographic work, the claim of ownership is vested in the author of the work. In the case of Ramesh Sippy Vs Shaan Ranjeet Uttam Singh¹, the appellant, being the director of the movie *Sholay* claimed to be the “author” and “first owner of the copyright”. The Bombay High Court rejected his contention due to a lack of material evidence to substantiate his claim. This court declared the producer’s partnership firm to be the author of the film and the appellant was merely a director, hired for the job, and paid remuneration accordingly.²

¹ Ramesh Sippy Vs Shaan Ranjeet Uttam Singh, 2013 SCC OnLine Bom 1541

² ¶ 15, *ibid*

A plain reading of the Ramesh Sippy case would make it clear that it is the producer, the first owner/author of the work. A different issue arose in the case of S.J. Suryah Vs S.S. Chakravarthy and Ors.³ Where the right of the producer to allow for a remake of the film was in question. The copyright act under section 14(d) grants several rights to the author over his artistic work. In the case, the Madras High Court held that section 14(d)(i) does not preclude the producer from remaking a film in a different language.

The expression “to make a copy” does not explicitly forbid the film to be expressed in different languages. The observation that the producer(s) is the first owner of the cinematographic work has been made because the producer commissions and pays for the story, the screenplay, the dialogue, and the actors' performance. The producer retains the screenplay of the film despite the same has been created by the scriptwriter at the instance of the producer.

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³ S.J. Suryah Vs S.S. Chakravarthy and Ors, 2021 SCC OnLine Mad 5806

⁴ Ramesh Sippy Vs Shaan Ranjeet Uttam Singh, 2013 SCC OnLine Bom 1541

⁵ ¶ 15, *ibid*

⁶ S.J. Suryah Vs S.S. Chakravarthy and Ors, 2021 SCC OnLine Mad 5806

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ELEMENTS TO DECIDE THE AUTHOR/OWNER OF A CINEMATOGRAPHIC WORK

The producers being the architects behind the creation of the movie are given utmost protection under the copyright act. In the past, the censor certificate issued by the central board of film certification would help in determining the real owner/author of a cinematography. With time, the certificate could no longer be relied upon as several stakeholders were involved in the creation. Section 2(uu) of the copyright act defines a producer as a person who takes the initiative and responsibility for making the work. The definitional clause is simple yet not sufficient to address the growing claim over a cinematography film. The definition of a producer is one-dimensional as it only focuses on the financial part. It is true that he hires personnel from different fields together and pays them remuneration irrespective of their contribution. But it is unfortunate that the copyright act refers to the producers as the “author” of the film and makes them the first owner of it under section 17 of the copyright act.

The special status of being the first owner of a cinematographic film is granted to the producer(s). The producer generates the capital required for making the movie and invests it entirely. Hence, being the sole financial risk bearer, the act provides them special status to protect their economic and moral rights. In the year 2021, the Bombay High Court in the case of Kabir Singh Chowdhry Vs Sapna Moti Bhavani and Ors⁷ Decided the requirement of being a co-producer of a film. The appellant argued that he made creative contributions to the film called “Sindhustan” such as re-shooting, and editing. To seek compensation for his work, he made a demand of making him one of the producers of the film. Section 2(z) of the copyright act defines “joint authorship” as a work produced by two or more authors where the contributions are indistinct.

The court relied upon Ramesh Sippy.⁸ The Case for determining the characteristics of the producer. Due to a lack of material evidence, the court rejected the application as there was no *prime facie* case in favour of the appellant. To attain the status of producer, the person must take financial initiative and responsibility and not necessarily make any creative contribution.

⁷ Kabir Singh Chowdhry Vs Sapna Moti Bhavani and Ors, (2021) 02 BOM CK 0013

⁸ *ibid*

The recognition of joint authorship shall be granted when both persons are authors as defined under the act.

SEPARATE CLAIM OF COPYRIGHT OVER A CINEMATOGRAPHY WORK

The copyright act allows copyright to subsist in three classes of work namely, literary work, cinematography work, and sound recording.⁹ The process of making a film involves a series of separate works involving different sets of people. The music director is responsible for composing music likewise the director, editor, choreographer, art master, and cameraman are responsible for different work entrusted to them. Hence, A cinematographic work is a combination of various “underlying” works. The concept of underlying work includes script, music, lyrics of a song, and screenplay. The act allows for claiming individual copyright protection for such underlying works. This practice goes against the interest of the producers and the courts have held the individual artist of the underlying works to enjoy copyright protection over their creation.

The Delhi High Court in the year 2023 permitted HarperCollins to novelize the screenplay of the movie named “Nayak” written by Satyajit Ray in the case of RD Bansal Vs HarperCollins Publishers India Pvt. Ltd.¹⁰ This case attains significance as the court held that the producer is not the author of the screenplay. The decision of the Delhi High Court stands contrary to section 17 of the Act which bestows the producers as the first owner of the cinematographic work. The court gave an inclusive construction to the term “literary work” and considered screenplay to be a part of literary work under section 13(1)(a) of the copyright act. The court took a stance that the right over underlying works does not extend to the producers unless there is a separate agreement between the writer and producer.

The Delhi High Court, in the case of Yash Raj Films Pvt Ltd v. Sri Sai Ganesh Productions and Ors¹¹ Was put to decide on the issue of whether a copyright subsists in a cinematographic work independent of the underlying works that are made under it. After hearing the arguments, the court answered positively and held the copyright of a cinematographic film to exist independently of the underlying works. The copyright of the entire film is required to protect the interest of the producer and also to preserve the originality of the work.

⁹ Section 2(f) of copyright act, 1957.

¹⁰ RD Bansal Vs HarperCollins Publishers India Pvt. Ltd, 2023 SCC OnLine Del 3046

¹¹ Yash Raj Films Pvt Ltd v. Sri Sai Ganesh Productions and Ors, 2019 SCC OnLine Del 9094

In case of infringement of a cinematographic work, the level of originality of a work is compared. The need for protecting the originality of the cinematographic work favors the interest of the producer(s) who solely bears the financial risk. The breach of originality without his authorization warrants adequate consideration to indemnify the losses for the producer.

The Madras High Court in the case of *Mr. Thiagarajan Kumararaja v. M/S Capital Film Works*¹² Decided on a similar issue. The writer disputed the producer's action of dubbing the movie in other languages. The writer's argument was dismissed primarily because dubbing involves reconfiguring the soundtrack to a language different from the original film. The court decided the producer has the right to dub the cinematographic movie in other languages as embedded in section 14(d) of the copyright act. The individual authors shall have ownership over their work such as script, and screenplay but in cinematographic films, the ownership is vested in the producer. To this, the court emphasized section 2(d)(v) of the copyright act.

Article 14 bis of the Berne convention (1971 Paris Act) further enlarges the position of the producers over the cinematographic work. It provides that the contributing authors to a cinematographic work, subject to any special legislation, may not object to the reproduction, distribution, public performance, or communication to the public by wire, broadcasting, or subtitling or dubbing of texts of the work. The term contributing authors includes scriptwriters, musicians, and other personnel employed by the producers. The above-mentioned article protects the economic interest of the producers over the cinematographic work. The same has been emphasized in *Thiagarajan Kumararaja*.¹³ Case.

TREND AFTER 2012 AMENDMENT

The economic interest of the producers was hindered after the 2012 amendment to the copyright act. The amendment facilitated the authors of the underlying works to receive royalties for their work. The amendment reversed the judgment of the Supreme Court in the case *IPRS vs. Eastern Indian Motion Pictures Association and Others*. The amendment to sections 17, 18, and 19 of the acts leans toward providing more rights to the authors of literary works and musical works. The stance was taken by the Supreme Court in the *IPRS* case.¹⁴ Which allowed the producers

¹² *Mr. Thiagarajan Kumararaja v. M/S Capital Film Works*, 2017 SCC OnLine Mad 37588

¹³ *ibid*

¹⁴ *Indian Performing Rights Society v. Eastern Indian Motion Pictures Ltd.*, AIR 1977 SC 1443

to provide a one-time payment for any literary or musical work incorporated into the cinematographic work.

The creators were denied royalties as they were commissioned a lump sum money for their contribution to the film. Following the ruling, film producers asserted absolute ownership over all copyrightable works commissioned for inclusion in cinematograph films. Authors received only their initial commission and were barred from commercially exploiting their works independently of the film. The 2012 amendment provides relief in the form of royalty to the authors not being a producer of a cinematographic film. The proviso to section 17 of the act—*“Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of section 13”*.

The term “right” confers both the right to royalty and the right to ownership on the author of the literary work and musical work incorporated in the cinematography film. The proviso underscores the importance of protecting the economic interests of the individual authors. This would create a positive impact and boost a lot of creations and innovations.

Section 18 of the Act allows the owner of the copyright to assign their interest to another person. The second proviso to section 18 prevents the owner/author from assigning the right of literary and musical work to receive royalty. The author cannot assign not more than 50% of the right. Section 19(9) of the Act ensures that the author can demand an equal share of royalty and consideration in case of utilization of his/her work. These three amendments as discussed above seek to enlarge the economic interest in their literary and musical work.

WHAT ARE MORAL RIGHTS?

The copyright act vests two kinds of rights on the author namely, the economic right and moral right. The economic right protects the economic interest and includes the right to grant a license, the right to sale, and the right to relinquishment. Moral rights are personal rights that connect the author to their work. The copyright act does not explicitly mention moral rights. However, section 57 of the copyright Act provides statutory recognition of the moral rights of the creator in the name of “special rights of the author”.¹⁵ Section 57 of the Act emphasizes two kinds of moral rights. First, the right to paternity, and lastly the right to integrity. Moral

¹⁵ Arathi Ashok, Economic Rights of Authors under Copyright Law: Some Emerging Judicial Trends, Journal of Intellectual Property Rights Vol 15, pp 46-54 (2010)

rights are independent and operate parallel to economic rights. Hence, the author of the work can claim damages or has the right to restrain the infringement of his work.

Section 57(1) of the Act contains the right to claim authorship for their work. For instance, a new novel is published based on a movie, and the producer of the movie, being the copyright holder can seek due credit for the novelization of the movie. This right enables the producers to protect their identity in cases when their original work is pirated or plagiarized. Section 57(1)b of the act allows the right to restrain or claim damages in respect of distortion, mutilation, modification, or other act about said work that is done before the expiration of the term of copyright. This right to integrity prevents any creation from being prejudicial to the reputation and honour of the original author.

NECESSITY TO ACCORD MORAL RIGHTS TO THE PRODUCER

The moral right allows the author to protect, preserve, and allow for the recreation of his work. The producer being the author of the cinematographic work needs to be vested with the moral right over the movie he produces. It is essential because he employs several artists for the creation of the movie. The producer bears the financial risk of the movie and he has to compensate the contributors for their work. Thus, protecting the moral rights of the producer requires significant attention. The Delhi High Court in the case of Mannu Bhandari vs Kala Vikas Pictures Pvt Ltd¹⁶ Decided on the question of balancing the freedom of expression of the director with that of the original author.

The contract of assignment was made between parties to create a movie based on a novel. The court dismissed the appeal and dismissed the suit, leaving the parties to bear the cost but the significant part about this judgment is that the court made a solid interpretation of this judgment. The court does not permit the modification of the work to be in a manner prejudicial to the reputation and honour of the author. Section 57(1)b allows people to seek remedy for any adverse modification of their original work thereby protecting the moral right of the author.

Recently, the Delhi High Court allowed the publication house i.e. Harper Collins to publish their new novel made of the screenplay of the movie “Nayak”. The court considered the screenplay to be a “literary work” and concluded that the screenplay writer had sole ownership over his work. The producer's suit to grant an injunction against novelizing the screenplay of

¹⁶ Mannu Bhandari vs Kala Vikas Pictures Pvt Ltd, AIR 1987 DELHI 13

the film “Nayak” was dismissed. This judgment significantly affects the economic rights as well as the moral rights of the producer. Screenplay writers are given ownership over their work and they can monetize it in any form in the future provided the contract between the producer and him does not explicitly stop him.

The court's decision to not grant the producer the right over the screenplay significantly impacts the moral rights of the producer. This would allow the screenplay writer to use them in the future for any other purpose without giving any due/credit to the producers. The producer who commissioned the screenplay writer for his work should be given credit whenever such underlying work is used in the future. The idea of allowing individual artists to assert ownership over their underlying work helps promote creativity and provide them economic guarantee. However, such an initiative should not be a burden for the producer in the future when his moral rights are being impacted. The responsibility is on the court to balance the economic interest of the individual artist and the moral right of the producer(s) who commissions them.

PROTECTION ACCORDED UNDER THE CINEMATOGRAPHY (AMENDMENT) ACT, 2023

The Parliament has successfully brought in amendments to the decade-old Cinematography Act, of 1952 in the year 2023. The Cinematograph (Amendment) Act, 2023 got the assent of the president on 4th August 2023. One of the main objectives of this amendment is to reduce the revenue loss incurred by the film industry due to the increase in film piracy. The practice of piracy means unauthorized duplication of films in the form made accessible by the people. The direct consequence of film piracy is the reduction of people coming to cinema theatres which takes away the economic gains of the producers.

The producer(s) invest large amounts of money in making a film. Such an investment is made with the confidence that the movie will become a blockbuster and provide the producer with a sufficient return on investment. The return on investment is affected due to the prevalence of film piracy. Film piracy takes place in various forms such as video piracy, cable piracy, DVD piracy, and online piracy. Unfortunately, this form of piracy has a substantial market due to a lack of stringent rules and regulations. Hence, the 2023 amendment to the Cinematograph Act aims to undertake certain measures like imposing penalties to curb the presence of online piracy.

The new provisions of the Cinematograph Act seek to protect the interest of producers as well as impose liability on the person responsible for piracy. Section 6AA of the act states that no person shall use the audio-video recording with the intention or attempts to make or transmit an infringed copy of a film, wholly or in part in a place licensed to exhibit. On the other hand, Section 6AB of the act allows no person to use or abet the use of an infringing copy of any film to make money out of it. One of the salient features of this amendment is the added benefits for the producer or any other aggrieved party to sue under either section 6AA or under section 6AB of the act against the act of piracy.

The insertion of sections 7(1A) and 7(1B) imposes punitive measures against the act of copyright infringement through pirated versions. Under section 7(1A), a person who is found violating section 6AA or section 6AB shall be imprisoned for a period not less than 3 months which may extend to 3 years, and with a fine which shall not be less than 3 lakh rupee but may extend to 5% of audited gross production cost. Further, section 7(1B) allows any aggrieved person to initiate an action under other statutes such as the Copyright Act, and Information Technology Act.¹⁷

BALANCING FAIR USE AND PROTECTION UNDER THE COPYRIGHT ACT AND CINEMATOGRAPH ACT

The intention behind such an amendment to the Cinematograph Act is to create a healthy and positive environment which in turn could promote ideas and innovations. Piracy deprives copyright holders of a portion of their rightful revenue. When copyrights are commercially utilized, they generate income for creators through royalties. Additionally, the state benefits from such income via taxes like excise duty, sales tax, and income tax taxes that pirates evade. As a result, piracy causes financial losses to all parties involved in the legitimate creation and distribution of copyrighted content, particularly impacting the film industry.¹⁸

The primary difference between the Copyright Act and the Cinematography Act concerning preserving cinematographic work is that the former tries to classify the circumstances of

¹⁷ Shreya Sampathkumar, Ready...Set...Action? Copyright Piracy and The Cinematograph (Amendment) Act, 2023, IPmatters.com (Sept 22, 2024), (<https://www.theipmatters.com/post/ready-set-action-copyright-piracy-and-the-cinematograph-amendment-act-2023>)

¹⁸ Shashank Pandey & Varun Pandey, Cracking Down on Piracy: A Closer Look at the Cinematograph (Amendment) Bill, 2023, The RMLNLU Law Review Blog (Sept 25, 2024), <https://rmlnlulawreview.com/2023/10/28/cracking-down-on-piracy-a-closer-look-at-the-cinematograph-amendment-bill-2023/>

infringement as mentioned under section 51. The latter aims to tackle film piracy by including penal provisions against unauthorized duplication and according to films. The FICCI-EY committee reports have pointed out that the Indian Film Industry loses \$2.8 billion of its yearly revenue due to piracy issues.¹⁹ Unlike the copyright act, which allows certain exceptions under section 52 of the act, the Cinematograph Act 2023 does not even encourage fair use of cinematographic work in any medium.²⁰ Such relaxation would defeat the whole purpose of this act thereby causing economic loss to the producers.

CONCLUSION AND WAY FORWARD

The legal recognition of producers as the first owners of cinematographic works has been crucial in preserving their financial interests and investments. However, recent judicial pronouncements such as those recognizing the rights of screenplay writers and other contributors for their works, highlight a growing shift that risks diluting the producer's ownership and rights over a film. This shift, while supportive of creative contribution, presents challenges in maintaining the balance between protecting the rights of creators and preserving the producer's role as the architect of the final work. The changing trend of ownership, especially after the 2012 amendment, towards the individual artists over their works used in the cinematography film, demotivates the producer(s) as it diminishes their economic and moral rights.

Moving forward, it is essential to strike a more balanced approach that recognizes both the producer's economic and moral rights without discouraging individual creativity. Legislative amendments could help clarify the scope of individual ownership over underlying works, while also ensuring that producers retain adequate control and credit over the film. A joint authorship framework, as recognized under UK law, may offer a model for balancing these competing interests. Moreover, introducing mechanisms for clear contractual agreements between producers and contributors will be key to mitigating disputes. Such contracts should define the

¹⁹ Ninth Report on 'The Cinematograph (Amendment) Bill, 2019' of the Ministry of Information and Broadcasting (Sept 25, 2024),

[https://prsindia.org/files/bills_acts/bills_parliament/2019/SC%20Report_Cinematograph%20\(A\)%20Bill.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2019/SC%20Report_Cinematograph%20(A)%20Bill.pdf)

²⁰ Lokesh Vyas, Cinematograph (Amendment) Act, 2023: Of Piracy and Penalties, SpicyIP, (Sept 24, 2024)

<https://spicyip.com/2023/08/cinematography-bill-2023-certification-censorship-and-public-consciousness.html#:~:text=Increased%20Punishment%20For%20Piracy%3A%20The,the%20audited%20gross%20production%20cost>

extent of each party's rights, especially concerning future uses of underlying work ensuring that producers retain adequate recognition and control.

Finally, the evolving technological landscape requires constant vigilance. With the rise of digital distribution and ease of unauthorized content use, strong enforcement of both copyright and moral rights is needed to protect the interest of producers without stifling creative freedom. Thus, the copyright regime must strive to evolve, ensuring that both producers and creators are fairly compensated and encouraged while fostering a healthy film industry.