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ABOUT US

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AN ANALYTICAL STUDY ON THE LEGISLATIONS GOVERNING THE TYPES OF INTELLECTUAL PROPERTY RIGHTS IN THE INDIAN FILM INDUSTRY.

AUTHORED BY - PRARRTHANA GOPI

Introduction:

Intellectual property (IP) refers to intangible creations of the human intellect, such as inventions, literary and artistic works, designs, symbols, names, and images used for commercial and artistic purposes. IP is protected by legal rights, which grant exclusive rights to the creators or owners of the work to control the use and exploitation of their creations. The purpose of IP protection is to promote innovation, creativity, and economic growth by providing creators and owners with an incentive to invest time, effort, and resources in developing and commercializing their ideas and creations. The main types of IP protection include patents, trademarks, copyrights, and trade secrets.

Intellectual property and the film industry:

The importance of copyright in the film-making industry is extremely important. Copyright protection is crucial for creators and owners of works in the entertainment industry to prevent unauthorized use their creations. A film production involves the collaboration of many different people with different skills, and each of them may have rights related to their contribution to the production, such as the screenplay, the music, the direction, and the performances.

Producers play a critical role in managing these rights and ensuring that all necessary licenses and agreements are in place to allow the film to be produced, financed, and distributed. Documentation is an essential part of this process, as it helps to establish who owns the various rights associated with the production and how they can be used and monetized. Without proper chain of title documentation, it may be difficult or impossible to secure financing, distribute the film, or protect the rights of the creators and owners of the works.

Additionally, distribution deals often involve the transfer of various IP rights, such as the right to distribute the film in specific territories or formats. Producers may also negotiate revenue sharing agreements with distributors, which can further impact the film's profitability.

Overall, IP rights play a crucial role in the filmmaking industry, providing a means for creative professionals to protect and monetize their work. The process of securing and managing these rights can be complex and require careful negotiation and documentation. Although with a clear chain of title and well-crafted agreements, producers can leverage their IP rights to attract financing, secure distribution deals, and ultimately bring their films to audiences around the world.

A cinematographic film can be divided into various elements, including the script, screenplay, music, sound effects, visuals, dialogues, and performances. Each of these elements is protected under different IP laws, and the legal responsibility for each of these elements varies depending on the nature of the contribution.

Firstly, the script and screenplay of a film are protected under copyright law. The person who creates the script or screenplay is the legal owner of the copyright in the work. This means that they have the exclusive right to reproduce, distribute, and adapt their work. The producer may acquire the rights to use the script or screenplay, either by purchasing the copyright or by obtaining a license to use the work.

Secondly, music and sound effects used in a film are also protected under copyright law. The composer or creator of the music or sound effect holds the copyright in the work. The producer may acquire the rights to use the music or sound effect, either by purchasing the copyright or by obtaining a license to use the work.

Thirdly, visuals, dialogues, and performances in a film are protected under copyright, trademark, and performers' rights laws. The visuals and dialogues in a film may be protected under copyright law, while trademarks may be used to protect logos and other branding elements associated with the film. Performers' rights protect the performers who appear in the film, giving them the right to control the use of their image and performance.

The legal responsibility for each of these elements may vary depending on the nature of the contribution. For example, the screenwriter may be responsible for any copyright infringement related to the script, while the composer may be responsible for any infringement related to the music used in the film. The producer is responsible for obtaining the necessary permissions and licenses for each of these elements, and for ensuring that the use of these elements in the film does not infringe any third-party rights.

A cinematographic film comprises various elements that are protected under different IP laws. Understanding the legal responsibilities associated with each of these elements is essential for filmmakers and producers to avoid legal disputes and ensure that they have the necessary permissions and licenses to commercialize their work.

Production process:

The production process of a movie is protected by intellectual property in India through various laws and regulations. The main law governing intellectual property in India is the Indian Copyright Act of 1957, which provides for the protection of various forms of artistic and creative works, including movies.¹

Under the Copyright Act, the producer of a movie is considered the first owner of the copyright in the movie. This means that the producer has the exclusive right to reproduce, distribute, perform, and display the movie, as well as to create derivative works based on the movie. These rights are protected for a period of 60 years from the year in which the movie was first published.

In addition to copyright protection, the production process of a movie may also be protected by other forms of intellectual property, such as patents, trademarks, and trade secrets. For example, if a movie involves the use of special effects or other technological innovations, these may be protected by patents.

Trademarks may also be used to protect the name, logo, or other identifying features of a movie, such as its title or characters. Trade secrets, such as the details of the production process or the script, may

¹ The Copyright Act, 1957

also be protected by non-disclosure agreements and other legal mechanisms.

Overall, the protection of the production process of a movie in India involves a range of legal and regulatory measures designed to safeguard the creative and commercial interests of the producers, artists, and other stakeholders involved in the filmmaking industry.

Performer's rights:

Performers' rights are protected with intellectual property in the Indian movie industry through Section 38 of the Copyright Act of 1957² and other related laws and regulations. The Act provides for the protection of various forms of artistic and creative works, including performances in movies. Under the Copyright Act, performers are considered to be the authors of their performances and are granted certain exclusive rights, including the right to reproduce, distribute, perform, and communicate their performances to the public. These rights are protected for a period of 50 years from the year in which the performance was first performed.

In addition to the Copyright Act, performers' rights are also protected under the Performers' Protection Act of 1957. This Act provides performers with additional rights, such as the right to prevent the unauthorized recording and broadcasting of their performances.³

Moreover, the Indian movie industry has several collective management organizations, such as the Indian Performing Right Society (IPRS), which are responsible for collecting and distributing royalties to performers for the use of their works. These organizations work closely with the Indian government to ensure that performers' rights are protected and that they receive fair compensation for their works.

Overall, performers' rights are protected in the Indian movie industry through a combination of legal frameworks and industry practices designed to safeguard the interests of performers and promote the growth of the Indian creative economy.

² The Copyright Act, 1957 (Chapter VIII) s.38

³ Performers' Protection Act of 1957

Scripts:

Scripts are protected with intellectual property rights in the Indian movie industry through the Copyright Act of 1957. Section 17 of the Copyright Act 1957 statutorily recognizes the author of the work to be the first owner of the copyright therein. The Act provides for the protection of various forms of artistic and creative works, including literary works such as scripts.⁴

Under the Copyright Act, the author of a literary work, including a script, is considered the first owner of the copyright in the work. This means that the author has the exclusive right to reproduce, distribute, perform, and communicate the work to the public. These rights are protected for a period of 60 years from the year in which the work was first published.

In order to protect their scripts, screenwriters in the Indian movie industry can register their works with the Indian Copyright Office. Registration is not mandatory, but it provides additional legal protection by creating a public record of ownership and enabling the author to enforce their rights in court.

In addition to copyright protection, scripts may also be protected by other forms of intellectual property, such as trade secrets. Screenwriters can use non-disclosure agreements and other legal mechanisms to prevent the unauthorized disclosure or use of their scripts.

Overall, the protection of scripts in the Indian movie industry involves a range of legal and industry practices designed to safeguard the creative and commercial interests of screenwriters and promote the growth of the Indian creative economy.

Legislations protecting IPRs in the Indian film industry -

Copyright:

India has a robust system of copyright laws in place to protect the rights of creators and owners of copyrighted works in the media industry. The key legislation governing copyright in India is the Copyright Act, 1957, which has been amended several times over the years to keep up with changing

⁴ Copyright Act 1957 (Chapter IV) s.17

technology and the evolving needs of the industry.

Under the Copyright Act, copyright protection is granted to a wide range of works, including literary, artistic, musical, and dramatic works, as well as films and sound recordings. The Act provides for both economic and moral rights to the creators and owners of these works.

The economic rights include the exclusive right to reproduce, distribute, and sell copies of the work, as well as the right to create derivative works based on the original work. These rights are typically licensed to publishers, distributors, and other commercial entities that seek to exploit the work for financial gain.

The moral rights, on the other hand, include the right to be identified as the creator or author of the work, as well as the right to protect the integrity of the work and prevent its derogatory treatment. The Copyright Act also includes provisions for the protection of performers' rights, which grant performers certain economic and moral rights over their performances. In addition, the Act provides for the protection of broadcasting organizations' rights, which allow them to control the use of their broadcasts and prevent their unauthorized retransmission or reproduction.

Enforcement of copyright law in India is primarily carried out by the courts, which have the power to grant injunctions and award damages to rights holders who have been harmed by copyright infringement. The Copyright Act also provides for criminal penalties for copyright infringement, including imprisonment and fines.

Overall, the copyright laws in the Indian media industry are designed to provide comprehensive protection for creators and owners of copyrighted works, while also promoting the growth and development of the industry as a whole.

Copyright law protects a wide range of creative works, including literary works, plays, songs, artistic creations, motion pictures, and sound recordings. In the filmmaking process, copyright is crucial as it enables creators to protect their work from unauthorized use and exploitation.

Movie producers often hire authors to create original stories, and in exchange, they offer payment and

assistance in registering copyrights under their production banner. Alternatively, producers may obtain the author's consent and pay a fee or a royalty to make movies based on their original works of literature. Similarly, artists who create original artistic works such as lyrics and music can claim copyright and continue to receive royalty fees.

In India, the Copyright Act of 1957 provides comprehensive protection to creators and owners of copyrighted works, and enforcement of copyright law is primarily carried out by the courts. The Act also includes provisions for fair use or fair dealing, which allow for limited use of copyrighted works for purposes such as criticism, review, news reporting, education, or research without the need for prior permission from the copyright owner.

The artist's work is protected by copyright. The Copyright Act's Section 51 states that making copies constitutes a copyright infringement. A literary, dramatic, musical, or creative work that is reproduced in a cinematograph film is considered to be an infringing copy.⁵

Trademarks:

The Indian movie industry is a significant part of the entertainment sector and includes various types of creative works such as films, music, and merchandise. Trademarks play a critical role in the industry by providing legal protection to the unique brands, logos, and other distinctive features associated with the movies and their merchandise.

The main legislation governing trademarks in India is the Trade Marks Act, 1999, which provides for the registration, protection, and enforcement of trademarks in the country. Under the Act, trademark owners have the exclusive right to use their registered marks in connection with their goods or services and to prevent others from using similar or identical marks that could create confusion among consumers. This includes the use of trademarks in the movie industry to distinguish films, music, and merchandise from those of others.

The Act provides for the registration of trademarks with the Trademark Registry, which is a government agency responsible for administering trademark registration and protection in India.

⁵ The Copyright Act's (Chapter XI) s.51

Registered trademarks are valid for a period of ten years and can be renewed indefinitely, subject to the payment of renewal fees.

In addition to the Trade Marks Act, the Indian movie industry is also governed by various other laws and regulations, including the Copyright Act, 1957, and the Indian Contract Act, 1872. These laws provide additional protection to creators and owners of copyrighted works and establish legal frameworks for contracts and agreements related to the movie industry.

Overall, the legislation governing trademarks in the Indian movie industry plays a crucial role in protecting the brands, logos, and other distinctive features associated with films, music, and merchandise, and ensuring that consumers are not misled or confused by similar or identical marks used by others.

The legislation governing the protection of trademarks in India is the Trademarks Act, 1999, which provides for the registration, protection, and enforcement of trademarks in the country. The Act defines a trademark as a mark that is capable of being represented graphically and is used to distinguish goods or services of one person from those of another.⁶

Under the Act, the unauthorized use of a registered trademark that is identical or similar to an existing registered trademark in connection with goods or services that are the same or similar to those for which the trademark is registered is considered trademark infringement. This includes the use of duplicate or similar marks that could create confusion among consumers.

Trademark infringement can result in legal action, including injunctions, damages, and even criminal penalties in some cases. The Act provides for civil and criminal remedies for trademark infringement, and the courts in India have the power to grant injunctions, order the destruction of infringing goods, and award damages to the trademark owner.

The Trademarks Act, 1999 plays a critical role in protecting the unique brands, logos, and other distinctive features associated with goods and services, including those in the Indian movie industry.

⁶ Trade Marks Act, 1999

By providing legal protection to trademarks, the Act helps to promote fair competition and prevent consumer confusion and deception.

Patents:

Patent laws in India govern the protection and enforcement of patents, which are exclusive rights granted to inventors for their inventions. The Indian movie industry may not be directly impacted by patent laws, as it is primarily concerned with copyright and trademark protection. However, there may be instances where patents are used in the production or distribution of movies, such as in the development of new technologies or equipment used in the industry.

The primary legislation governing patents in India is the Patents Act, 1970, which provides for the registration, protection, and enforcement of patents in the country. Under Section 7 of the Act, inventors can apply for patents for new inventions, which can include products, processes, and methods of production. Patents provide inventors with exclusive rights to use, manufacture, and sell their inventions, and prevent others from using or copying their inventions without permission.⁷

The Patents Act provides for the patentability of inventions that are novel, non-obvious, and have industrial applications. It also outlines the requirements for filing and prosecuting patent applications, as well as the procedures for granting and enforcing patents. In the Indian movie industry, patents may be used in the development of new technologies or equipment used in the production or distribution of movies. For example, new camera technology, sound recording equipment, or distribution systems could be patented and used exclusively by the inventor or their licensees. In such cases, patent protection could be used to prevent others from using or copying the technology without permission. While patent laws may not be directly relevant to the Indian movie industry, there may be instances where patents are used in the development of new technologies or equipment used in the industry. The Patents Act, 1970 provides for the registration, protection, and enforcement of patents in India, and inventors in the industry can use patent protection to prevent others from using or copying their inventions without permission.

⁷ Patents Act, 1970 (Chapter III) s.7

Design:

Design protection can also be important in the Indian movie industry, particularly for the visual aspects of films, such as costumes, sets, and props. The Indian Designs Act, 2000 governs the registration and protection of designs in India. Designs that are original and have aesthetic appeal can be registered under the Designs Act. By registering a design, the owner can prevent others from using or copying the design without permission, giving them exclusive rights to use and profit from the design. In the movie industry, costumes and sets can play a significant role in creating the atmosphere and visual style of a film. By registering these designs, filmmakers can protect their creations and prevent others from profiting from their work without permission. Design protection can also extend to merchandise related to films, such as toys or clothing featuring characters or designs from the movie. By registering the designs for these products, filmmakers can prevent others from using or selling similar merchandise without permission, and can generate additional revenue streams from their intellectual property. Overall, design protection can play an important role in protecting the visual aspects of films and related merchandise in the Indian movie industry. By registering their designs, filmmakers can protect their intellectual property and generate additional revenue streams from licensing and merchandise sales.

Conclusion:

Intellectual property is a crucial asset for filmmakers and the film industry as a whole. Copyrights, trademarks, and other forms of intellectual property protection provide legal safeguards for filmmakers' creative works and enable them to monetize their efforts.

Investing in intellectual property rights can also lead to innovation and economic growth. Intellectual property protection encourages creativity and inventiveness by providing a legal framework that rewards individuals and businesses for their contributions to society. This, in turn, fosters a culture of innovation, which drives economic growth and development.

However, it is important to note that intellectual property rights should be used responsibly, and infringement should be avoided at all costs. Piracy and unauthorized use of intellectual property can have serious legal and financial consequences for both individuals and businesses. Therefore, it is important for filmmakers to understand the legal implications of intellectual property rights and to take the necessary measures to protect their works.

