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INDIAN PERSPECTIVE OF GRANTING INJUNCTIONS IN COPYRIGHT INFRINGEMENTS IN THE ENTERTAINMENT INDUSTRY

Thamidela Mythri Devi

LLM Scholar

Gitam University

INTRODUCTION

There has been tremendous growth in the Indian Film industry, which enabled it to gain the industry's status by the year 2000. even though several Bollywood films were successfully breaking records in box office collections, there was a concern among them, i.e., privacy and other copyright infringements.

Indian high courts issued numerous injunctions, 238 of John-Doe or Ashok Kumarin between the period of 2006-2013. this number indicates several infringements that have taken place. Copyright is already regarded as weak protection, and because of these infringements, it gets even more vulnerable.

Hence, on the one hand, Bollywood is booming by breaking its previous earning records, while on the other hand, we can see a flood of litigations being filed concerning I.P. rights infringement, contract breach¹.

An injunction was sought before the release of the film Slumdog Millionaire, the author of the story. The movie's script was derived on the movie producers for copyright violation. The presence of producers was required in the court when they were planning for the premier. In these cases, when the injunction was requested as a remedy before the film's release, as the movie has already been made, producers would have to bear huge losses².

¹ Essense Obhan and Taarika Pillai, India: Dynamic Injunctions To Tackle Digital Piracy In India, Mondaq (Dec. 31, 2021, 11:45 AM), <https://www.mondaq.com/india/copyright/1017874/dynamic-injunctions-to-tackle-digital-piracy-in-india>.

² anhavi Prakash Tiwary, Copyright Injunctions and Indian Entertainment Industry, Dissertation for LL.M. NLU Delhi, (2014), <http://14.139.58.147:8080/jspui/bitstream/123456789/48/1/08LLM12.pdf>.

So the main concern here is, what shall be the courts' approach in such cases, should they be supposed to go for a more lenient view, or if they give injunction, what shall be the criteria for granting the same?

In many cases, the famous 'John Doe or Ashok Kumar' order/injunction has been issued, J Dalveer Bhandari pronounced it in the case of Taj Television v. Rajan Mandal the requirements for this kind of injunction, though stands similar to the kind of injunction granted under Order 39 Rule 1 and 2 of C.P.C., injunctions have no doubt proven to be a last resort in such situations.

The main purpose of this paper is to study the incidences of injunctions and a few cases relating to infringements of copyrighted works in the film industry. These days it has become so common to come across litigations where tunes or storylines are lifted. The creator is not being compensated well while the status Indian Entertainment Industry is advancing towards great heights. The practice of maximizing profits with a minimum of investments is also widely followed. All of this leads to the restrictive remedy of injunctions. But there is another side to this story too, in certain cases like Slumdog Millionaire and Satyagraha, suits are filed just before the release of the film. These cases question the credibility of the Plaintiff's claims and have many layers³.

Hence the balance between genuine claims and fatuous litigations needs to be maintained. We should study the protection provided by the Indian Copyright Regime before discussing such bonafide and frivolous litigations, the nature of injunctive relief, the approach of courts of the U.S. and U.K. in granting injunctions, how efficient are injunctions as a remedy in case of copyright violations of cinema works and the different situations of infringements where they are granted and where they are denied along with their comparison with damages inappropriateness.

LITIGATION STRATEGIES IN INDIAN ENTERTAINMENT INDUSTRY USE AND ABUSE OF INJUNCTIONS

Few incidents in the film industry arose a dilemma, "Are injunctive relief has been abused as a remedy?". the analysis of such incidents can help us solve this dilemma-

The Bollywood movie Ghajini was halted for release by Madras High Court through a preliminary injunction. The suit of copyright violation was filed just a day before its release. A. Chandrasekaran, the producer of the original Tamil film and copyright owner of the film, alleged that the producer of this film, A.R Murgadoss violated the terms of assignment of remake rights. The former also alleged an additional charge for fabricating the documents⁴.

The second case raised the dichotomy of idea-expression, which was soaring already in the film industry. Even in this case, the film Knock-out was stalled through a preliminary injunction on the

³ summary of Indian Copyright, Entertainment Law Cases and Rules of 2019., <https://www.bananaip.com/ip-news-center/summary-of-indian-copyright-and-entertainment-law-cases-of-2019/> (last visited on Dec. 31, 2021).

⁴ A. Chandrasekaran v Geetha Arts Division 2007 MLJ 1045

allegation of copyright infringement⁵. It came to hearing on Wednesday, but it was supposed to release on Friday of the same week. Plaintiff alleged that his script of the film, Phone Booth was ripped off as the defendant's film is similar to that of Plaintiff's. Though the expression was not related, the plot turned out to be similar, which resulted in the preliminary injunction. Later the legitimacy of the plaintiffs was questioned when they claimed higher compensation, compared to the cases of the same kind, for the damages incurred.

The third case is a good example of a pure strategy for a quick out-of-court settlement. A lyricist filed a suit against a television company three days prior to the launch of a serial. The allegation was that one of the film's title songs he wrote was used to name this serial. As the producers took the assent from the owner of the song, i.e., the music company, the issue was resolved. Hence filing a case prior to the release of a movie or the launch of a serial is a pure strategy to obtain a quick out-of-court settlement⁶.

COPYRIGHT INJUNCTIONS IN CASES OF "IDEA-EXPRESSION." DISPUTES

The right to express an idea or art, etc., in a unique or authentic manner, which is not related to the ingenuity of an idea, but whirled around the expression. In the concept of copyright, no principle can restrict another person from coming up with a similar outcome, but the process leading to that similar outcome has to be independent⁷.

WHY IS IT HAPPENING?

The intention behind these kinds of litigations can be found at their disposal. In order to answer this question, one should look into the nature of the relief sought by the litigants in their cases. Usually, the trend shows that these cases are filed shortly before the release of the filming before a day or two. Then the litigant requests for a Preliminary injunction while alleging his right is Infringed. Typically there should not be an argument on the litigant's right, but when such an injunction is issued, it affects the producers and few others as the release of the film is restrained who would settle at any cost immediately. Hence litigations are one of the best strategies to earn money⁸.

Principle of "Fixation"-

This principle states that for a copyright to exist, it needs to be in material form.

For example, in a literary work, the copyright protects the material form available, i.e., the original work, but not the idea, irrespective of its authenticity and uniqueness. The main concern is how an idea is converted into its material form. An expression cannot be subjected to copyright when there is only one way to express the idea, as the resulting expressions are merged⁹.

The line between an expression and an idea is blurred; it was held in Lotus Development Corp. V Paperback Software International 740 F Supp 37. that no one has ever been able to fix the line between an

⁵ Twenty First Century Entertainment Ltd. V Sohail Maklai Ent. Pvt Ltd 2010 Bom LJ 325

⁶ Vikas Swaroop v Christian Colson and Ors 2008 Bom LJ 187

⁷ Gregory Committee Report, 1952, para 9 quoted in Whitford Committee report (1977).

⁸ Raunak Sood, Cyberspace and IPR issues : Indian perspective, ipleaders (Dec. 31, 2021, 12:15 PM),

<https://blog.ipleaders.in/cyberspace-and-ipr-issues-the-indian-perspective/>

⁹ See Total Information Ltd v Daman (1992)FSR 171 at p.181

idea and a 'expression,' and that this can't be done ever, because it has never been the subject of copyright protection. However, where there is a significant similarity between the two works, the copyrighted work whose infringement is alleged is seen to have the upper hand, so the expression of the copyrighted work whose infringement is alleged is seen to have the upper hand, so the expression should be such that any reasonable person cannot distinguish between the two expressions.

In the *R.G. Anand v Delux films*¹⁰ case, the supreme court of India recognized several governing principles. Here, Plaintiff penned down a play named *Hum Hindustani* in 1953 but was put on in 1984. Then the defendant asked Plaintiff to make a movie based on the play. However, no final decision was taken in this regard. Later the defendant planned for a movie titled *New Delhi* and guaranteed Plaintiff that there is nothing identical to that of play. After the movie was released, Plaintiff felt that this movie was based on his play.

Hence he approached the court, filing a copyright infringement suit against the defendant.

The court, upon detailed study of several issues, delivered seven important principles while deciding questions based upon such situation¹¹ -

1. There can be no copyright in an idea, subject matter, themes, plots, or historical or legendary facts. In such circumstances, any infringement is limited to the creator of the copyrighted work's form, method, and arrangement, as well as the representation of a concept.
2. When the same idea is developed in a different way, it is clear that because the source is the same, there will be similarities. In this case, courts should decide whether the similarities are basic or substantial.
3. One of the safest and most reliable ways to tell if there has been a copyright violation is to see if the reader, spectator, or viewer, after reading or seeing both works, is definitely of the opinion and has an unequivocal impression that the later works are copies of the original.
4. No such violation occurs when the theme is the same but is presented and treated differently, resulting in the subsequent work being a wholly new work; hence, no injunction can be given.
5. Where, in addition to the similarities between the two works, there are also material and broad dissimilarities that negate the aim to duplicate the original and the coincidences that arise as a result are manifestly coincidental, no infringement occurs.
6. Because a breach of copyright is a kind of piracy, it must be proven by clear and convincing evidence after applying the numerous procedures outlined in the preceding case.
7. When it comes to an infringement of a stage play's copyright by a film producer or director, however, the Plaintiff's duty becomes much more onerous. However, if the audience receives the

¹⁰ *R.G Anand v Delux Films* (1978) 4SCC 118

¹¹ See Ananth Padmanabhan —Intellectual property Rights-Infringement and remediel2012 p.308-309

overall impression after watching the film that it is mostly a replica of the original play, the violation is considered to be proven.¹²

Following that, these principles were followed in all Indian case rulings.

In the *Mirage Studio v Counter Feat Clothing*¹³, it was held-

"I find it difficult to determine that what this phrase, i.e., there is no copyright in ideas means although there are similarities in the graphic reproduction of the defendants, product to those in the plaintiff's product, are mainly reproduction of a concept of the humanoid turtle of an aggressive nature."

In *King Feature Syndicate Inc. V Sunil Agnihotri*¹⁴,

The defendant plagiarized the concept of Phantom comic strips and planned to produce a television named, *Betal*, but the expression was unique. So the court, after taking into regard the substantial difference in expressions, denied an injunction on the defendant to Plaintiff.

In the recent case of *Pepsi Co. Inc v, Hindustan Cola Co*¹⁵.it was held that "where the defendants used the e tag line which was used the plaintiffs in their advertisement, but such use by the deamount was not in the relation of their products, which was actually in a mocking manner in relation to comparative advertising which does not amount to, infringement of copyright and so, here also injunction was refused. As the view of the court was that where there is comparative advertising, the copyrighted work has not been copied but used for comparison, such cant is a case of infringement".

So the ideas do not carry copyright protection. Hence a person can publish any idea or information which is in the public domain and protect this work derived from that idea only if that idea is not protected by nondisclosure agreements in the first place. The following principles should be concerned when there is an allegation of infringement and injunction, damages are demanded as a remedy -

1. That the idea was, if not previously available in the market was protected under nondisclosure agreement'.&
2. That the defendant had copied it without permission, thereby amounting to be an infringing act.

A writer who wishes to use script development funding will share his idea with numerous persons. So the idea does not carry copyright protection while the expression does, but the copyright protects the idea when it is written down with necessary details. Several storylines can be developed from one idea, and all those storylines can have their own copyright protection. So a writer can protect his work only with nondisclosure agreements. The courts backed the protection of ideas with nondisclosure agreements or the idea that was shared by the writer in private. In the case of *Zee Telefilms Ltd. v Sundial Communications Pvt. Ltd*¹⁶, sundial came up with an idea for a television series, namely- *Krishna Kanhaiya*. Later they shared the concept with the managing director of Zee, who plagiarized the concept to make a telivision show titled *Kanhaiya*, which was identical to the T.V. series of sundial communications. Initially, a single Judge

¹² Copyright Infringement in India, <https://www.myadvo.in/blog/copyright-infringement-in-india/> (last visited on Dec. 31, 2021).

¹³ *Mirage Studio v Counter Feat Clothing* (1991)

¹⁴ *King Feature Syndicate Inc. V Sunil Agnihotri* (1997)

¹⁵ *Pepsi Co. Inc v Hindustan Cola Co* 2013 AIPC 240(Del)

¹⁶ *Zee Telefilms Ltd Anr v. Sundial Communication Pvt Ltd & Ors*, 2003 (27).

bench of Bombay High Court awarded an injunction. Zee appealed against this injunction, but the Bombay high court backed the injunction stating that any man can conclude that Zee's movie was on the lines of script from the sundial. And also, because of the business prospects, the goodwill of sundial will deteriorate in case confidential information is used. Additionally, the writer also proved that it is his idea with the date of origination of the idea; hence injunction was awarded.¹⁷

MEASURES FOR PROTECTION FOR CONCEPTS, SCRIPTS & SCREENPLAYS

The Copyright Act, 1957 (Copyright Act) protects concepts, scripts, screenplays under the category of literary works. In many countries, copyright is given even without formal registration. The work gains protection as soon as it is originated. The Government of India enacted¹⁸. The International Copyright Order, 1999, as it is a member of the Berne Convention and the Universal Copyright Convention. As per this order, any work first made or published in any country which again is a member of any of the above-mentioned Conventions will be treated the same as if they were first published in India, with "equal protection."

In order to create evidence of the origin of the concept notes/script, some of these guidelines are to be followed -

- apply for copyright registration of the script,
- apply for copyright registration of the script,
- register with the writer's association/s,
- mail the script to the person entrusted with the script "Nondisclosure agreement"¹⁹."

INJUNCTIONS –A REMEDY?

IN CASES OF INFRINGEMENTS OF RIGHTS OF PERFORMERS AND OTHER INFRINGEMENTS OF 'CINEMATOGRAPH INDUSTRY -

The provisions of the individual's rights employed in the 'Cinematograph industry' are provided in The terms 'cinematograph film' and 'cinematograph' are defined in Sections 13 and 14 of the act, respectively, as any work of visual recording on any medium produced through a process from which a moving image may be produced by any means, including a sound recording accompanying such visual recording, and the term 'cinematograph' is defined as any work produced by any process analogous to cinematograph, including video films²⁰.'

The producer is the author of any cinematograph film. Significant reforms were brought in through the amendments of 2012. These reforms clarify the rights concerning artistic works, cinematograph films,

¹⁷ Shamnad Basheer, Ghajini vs Fudgini: whither Originality?, SpicyIP (Dec. 31, 2021, 10:30 AM),

<https://spicyip.com/2008/12/ghajini-vs-fudgini-whither-originality.html>

¹⁸ Copyright Act, 1957 | Bare Acts | Law Library | AdvocateKhoj,

<https://www.advocatekhoj.com/library/bareacts/copyright/51.php?Title=Copyright%20Act,%201957&%20copyright%20in%20a%20work%20shall%20be%20deemed%20to%20be%20infringed> (last visited on Dec. 31, 2021).

¹⁹ Janhavi Prakash Tiwary, Copyright Injunctions and Indian Entertainment Industry, Dissertation for LL.M. NLU Delhi, p.64 (2014), <http://14.139.58.147:8080/jspui/bitstream/123456789/48/1/08LLM12.pdf>.

²⁰ 121 Section 2(f) of the Indian Copyright Act 1957

and sound recordings. The amendments were crucial because of the technical issues it addressed in various categories, which were not even mandated by WCT or WPPT²¹.

CONCLUSION:

Courts grant injunctions considering the way law is, and they usually do not add additional narrative, but in certain circumstances, they deter addition of any required principle as observed in the IPRS case. Because of the inconsistency found between the provisions of section 13(4) and section 14(1)(a)(iii) along with s.14(1)(c)(ii), the Supreme Court took a very unfortunate view, and the rights of IPRS performers were seen to be defeated. We have differing perspectives from several High Courts on this topic, but it is necessary to address it. because in the absence of this, there is uncertainty as to granting injunctions in similar situations.

Also, the approach of courts in idea Though the courts generally use the standards established down in the R.G Anand case in expression issues, it is more rational. In most cases, the courts will look at the facts. 4-factor test though not expressly mentioning it, the factors thus, laid are made part of the judgments. In cases involving assignment and licencing infringements, the court takes a more lenient approach because the number of royalty fees is frequently disputed, making it a party-by-party issue. As a result, courts avoid issuing preliminary injunctions unless there is a prima-facie case of infringement. Finally, when it comes to copyright infringements of cinematographic work, courts generally don't mix it up with other kinds of copyright infringements, and prima-facie injunctions are granted because the work has a very different nature than other kinds of work, so this defence hasn't had much success.

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²¹ Janhavi Prakash Tiwary, Copyright Injunctions and Indian Entertainment Industry, Dissertation for LL.M. NLU Delhi, (2014), <http://14.139.58.147:8080/jspui/bitstream/123456789/48/1/08LLM12.pdf>.

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