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SVKM’sNMIMSInstituteof Intellectual Property Studies, Mumbai. AProject Submitted OnTheremake of Films and Related Copyright issues: Hollywoodv. Bollywood Incompliance with partial fulfilment of the marking scheme, ToFaculty: Prof. Nazima Munshi                                                                   Submitted by:                                                                                   Mr. PARTH BHUTA                                                          Course: CCIP                                                                                   on 20th January 2018, 3 pmIntroductionTheEnglish film industry (having its largest hub at the United States, popularlyknown as Hollywood) is now recognizing the Indian film industry (amongst themmainly Bollywood), which has had a long tradition of remaking Hollywood movies soas to serve a primarily South-Asian audience. .

Theera of synchronization of the two biggest film industries in the world hasarrived and Hollywood now clearly recognizes the value of the Indian market, keeping in mind the strength of the audience in place, along with the fact thatIndia is reported to have the world’s fastest growing media and entertainmentindustry. TheIndian film industry (including Bollywood) has had a long history of rippingoff Hollywood and other foreign language films and the audience is used to thistrend. Now, from a past decade, it is evident that the Hollywood giantproduction houses are collaborating with the Indian production houses. Theyhave realized not only the available market in the sub-continent but also thefact that Indian filmmakers were already ripping off their story lines as acultural adaption. Whenit comes to Bollywood films it is always difficult to determine whetherthere is a copyright infringement or not. Since, all comprises prominently asimilar concept of love story, song, action and emotional climax.

Theinterpretation of the Apex Court in R. G. Anand v. Delux Films1is primarily considered by judiciary, which lays down the following rules: a)      Therecan be no copyright in an idea, subject matter, themes, plots or historical orlegendary facts and the violation of the copyright in such cases is confined tothe form, manner and arrangement and expression of the idea by the author ofthe copyright work. b)      Inorder to be actionable, the copy must be a substantial and material one whichat once leads to the conclusion that the defendant is guilty of an act ofpiracy. c)      Wherethe theme is the same but is presented and treated differently so that thesubsequent work becomes a completely new work, no question of copyrightinfringement arises.

d)     Wherehowever apart from the similarities appearing in the two works, there are alsomaterial and broad dissimilarities which negative the intention to copy theoriginal and the coincidences appearing in the two works are clearlyincidental, no copyright infringement comes into existence. e)      Wherehowever the question is of the copyright infringement of stage play by a filmproducer or a Director, the task of the plaintiff becomes more difficult toprove piracy. f)       Itis manifested that, unlike a stage play, a film has a much broader perspective, a wider field and a bigger background where the defendants can by introducing avariety of incidents give a colour and complexion different from the manner inwhich the copyrighted work has expressed the idea. Evenso, if the viewer after seeing the film gets a totality of impression that thefilm is by and large a copy of the original play, the copyright infringementmay be said to be proved.” Literary ReviewGiventhe hegemonic role of domestic film productions in India, the Indian filmmakerscan readily assume that, with the possible exception of internationalblockbusters and award winning films, most foreign films will be unfamiliar totheir Indian audiences, and they have used this circumstance to reworkcopyrighted material without first acquiring the rights to it. 2 Bollywoodhas continuously evolved to increase audience appeal and developed films withthe intention of obtaining maximum ticket sales from the movie-going audience. 3 Overthe last few decades, there has been a surge of immigration from India toWestern nations.

4With the diaspora rapidly assimilating to the cultures of the nations it nowinhabits, Bollywood has continued to find new ways to appeal to thisdemographic for an expanded audience base. 5Bollywood viewed Hollywood films favourably; their themes appease theincreasingly diverse and westernized Indian audience. 6The United States had started to experience an influx of immigrants from Indiaafter the passage of the Immigration andNaturalization Act in 1965. As an increasing number of previously Indiannationals began to call the United States home, Bollywood recognized it couldfurther expand its audience by appealing to non-resident Indians. 7The line needs to be drawn between taking inspiration andactually infringing someone’s rights, something that the film industries havealmost forgotten. Our Copyright law provides a protection for an original workand also against people trying to copy it.  It provides protection forexpression of an idea, but not to the idea itself. To plead a successful claimin India the plaintiff must prove that the defendant’s work is a substantialand material copy of the copyrighted work.

Therefore, the Supreme Court ofIndia has said that the best way to determine whether a copyright violation hasoccurred is to “ see if the reader, spectator, or viewer after having read or seen both the works is clearly of the opinionand gets an unmistakable impression that the subsequent work appears to be acopy of the original.” 8Itis utmost crucial to perceive that the most important difference in copyrightlaw is between an idea and an expression. A man likes a woman and the womangets married to a third person – is an idea which has been the fundamental plotin countless films. Take Bollywood for example – we have many films with thesame love triangle yet at least half of those films narrate the plot in theirown distinctive style. It is only when the expression itself is copied that therequirements of copyright infringement are fulfilled.

To their credit of mostof the alleged Bollywood “ copycats”, they, wittingly or unwittingly, remake thesame existing storylines in new forms upon the big screen. It would thereforebe extremely difficult to successfully sue any of them for the issue of infringementof copyright. While this may sound unfair to many existing suffering artists, thereality is that copyright protection is weak in nature and should remain so asthe business of art depends on some healthy borrowing from the existing ideasfrom the past. 9Unlikethe copyright law of many other countries, particularly in Europe and the U.

S., the Indian Act does not include the term “ derivative work”. However, the newwork which is created by way of an “ adaptation” of the original work can beconstrued as work in India which could correspond to the term “ derivative work” as defined in other jurisdictions. 10Underthe Indian law, where the owner grants a licence of a remake of a cinematographfilm to a third party, such a remake results in the creation of a new work bythe licensee and the copyright on such new work shall vest with the licenseeunless there is a contact to the contrary. In the event that the owner of theoriginal work wants to own the copyright in the remake, these rights shall haveto be assigned by the licensee to the original owner by way of explicitcontract. 11Wherethe work is produced by the collaboration of two or more authors in which thecontribution of one author is not distinct from the contribution of the otherauthor or authors, it shall be a work of joint authorship.

In the case of aremake, if the original owner and the licensee collaborate with each other andwith a common design produce a new work, then they will be regarded as jointauthors and/or co-producers of the new work. Withthe recent controversies of the remakes of numerous movies coming to theforefront, it is but a matter of time that procuring appropriate licences formaking of a remake shall be a matter of practice. The producers at large noware not only vigilant in procuring licences but are ready to adopt allappropriate measures in order to protect their rights in their original work. 12ComparativeStudy: U.

S. vs IndiaA. International Standards for Intellectual Property Rights Boththe United States and India are signatories to the Berne Convention for the Protection of Literary and Artistic Works, 1866as revised by the aid of the Paris Actof the Convention in 1971, which servesas the basis of contemporary worldwide standards regarding intellectualproperty rights. As member states of the World Trade Organization(“ WTO”), India and the United States are bound by the Trade-Related Aspects of IntellectualProperty Rights (“ TRIPS”) agreement of 1994. TRIPS provides thatall WTO member states are required to comply with the provisions set forth bythe Berne Convention and Paris Act and incorporates intellectual propertyrights into the world of trade.

TRIPS aims at protecting expressions but not” ideas, procedures, methods of operation or mathematical concepts,” and this is reflected in the laws of both the United States and India. Creatinga private cause of action for copyright violations, the agreement allows theowner of a copyright to initiate and bring suit directly within the courts ofmember nations where the infringement is occurring, and requires member nationsto accord and recognise the same rights to nationals of other member states asgiven to their own. Thus, since Hollywood and Bollywood films are marketed in boththe U. S. and India, claims of infringement may be brought in either nation’sdomestic legal system.

B. What U. S. and Indian Copyright Law Protect Toaddress with the copyright infringements involved in movies under bothHollywood and Bollywood, the applicable provisions of the Berne Convention that TRIPSmakes binding recognition of the exclusive rights of authors to authorizereproductions and variations of their original work, consisting of what isknown as cinematographic work. While a movie recognizably borrows the plot andprotected content material from a previous work, it is deemed to be a” derivative work.” Unauthorized derivative works are generally consideredharmful if the audience as a whole perceives the derivative so similar to theoriginal that it adversely influences the demand for the original.

C. Defining Infringement Infringementin both the U. S. and India takes place when a party engages in certain movesreserved for the copyright owner. In the U. S., a plaintiff ought to showownership of the copyright and demonstrate that copying of protected material definitelytook place, and that the copying was so significant so as to render thesubsequent work considerably similar to the first.

In India, copyrightinfringement takes place if the chronologically second work is a substantialand material reproduction of the first. Substantiality is measured with the aidof weighing both quantity and quality of the work copied. D.

Standard of Review: Indetermining whether there is substantial similarity between two works, Indianand U. S. courts employ some variation of the “ ordinary observer” test. Essentially, the “ ordinary observer” test states that two worksare substantially similar if an ordinary viewer of reasonable attentivenesswould conclude that the defendant unlawfully appropriated the plaintiff’sprotected expression. The “ ordinary observer” standard in U. S. courtsoriginates from the audience test, first set forth in Daly v. Palmer13.

In Daly, the court examined whether a playwright’s basing of the climax sceneof his play on the highly successful climax of another play constitutedcopyright infringement. Both scenes involve the protagonist tied to railwaytracks by the villain and then saved by a friend who breaks free fromimprisonment, rescuing the protagonist seconds before a train approaches. In analysingthis case, the court held that the creative elements of the original scene werethe same in the defendant’s scene. If the appropriated series of events conveyssubstantially the same impressions and emotions in the same sequence, then thesubsequent work can be said to be substantially similar to, and an infringementof, the first. Though the standard has been further defined in its present-dayapplication, all in all, the copied elements must be substantial and original.

If enough original elements are copied, even if individually insubstantial, they may constitute copyright infringement in the aggregate. Indian Courts havea similar standard of review, as held in R. G. Anand v. Delux Films14. CasesThefollowing are the cases wherein Bollywood has allegedly made a remake of itsmovies based on corresponding Hollywood movies: i.                   TwentiethCentury Fox Film vsSohail Maklai Entertainment Pvt.

Ltd. 15: the petitioner 20th Century Fox claimed that producer Sohail Maklai’s movie ‘ Knockout’ was a rip-off of Hollywood’s ‘ Phone Booth’. ii.

20thCentury Fox vs. BR Films: BR Films in 2009 made a film ‘ Banda Yeh Bindaas Hai’ starring Govindaand Tabu which was a copy of 20th Century Fox film ‘ My Cousin Vinny’. The 20th Century Fox filed a suit against BRfilms asking damage for Rupees 7 Crores but, later on, the matter was settledoutside the court with a settlement of 1. 3 Crore Rupees. iii.               BangBang, produced by Fox Star Studios was allegedly a remakeof the Hollywood blockbuster Knight andDay.

iv.               Raaz(2002), was allegedly inspired by the Hollywood movie What Lies Beneath (2000)16. v.                 Partner wasconsidered to be allegedly a copy of Will Smith/Kevin James’ Hitch. EvenHollywood is not deemed to be clean when it comes to their copyrightinfringements, wherein their movies have been substantially alleged to havebeen copied over original Bollywood scripts. Some examples for the same asstated below: i.

ACommon Man, directed by Sri Lankan Director Chandran Rutnam, had remade the hit Bollywood suspense thriller A Wednesday. ii.                 Rangeela, the classic Bollywood blockbuster was remade by the western counterparts as Win a Date with Tad Hamilton, nine yearafter the release of Rangeela. iii.               JabWe Met served as a blueprint for the 2010 Hollywood’spopular movie Leap Year. iv.               JustGo With It (2011) was based on the plotline of Bollywood’s Maine Pyaar Kyun Kiya (2005).

v.                 Chhotisi Baat gave Hollywood one of its biggest hits, Hitch in 2005.  Conclusion and Recommendations BothIndian as well as U. S. laws treats film copyright as a signal copyright.

TheUnited States and English judges have circuitously rectified this gap bycategorizing films and dramatic works. Since our domestic laws preclude thismethod of dual protection, a Hollywood filmmaker suing a Bollywood filmmakerfor imitating visual sequences would be placed at a disadvantage. Nevertheless, the broad concept of altered copying still gives such plaintiffs thepossibility to succeed in a claim based on screenplay-to-screenplay copying. Somerecommendations to tackle the issue of copyright infringement are enlistedbelow: i.

The copyright-holders should take enoughprecaution to protect copyright works and in case violations come to theirnotice/knowledge, they should file complaints with the police. They should beof assistance to the police in conducting raids and producing evidence duringthe trial by the court. ii.                 The copyright industryassociations/copyright societies should launch an extensive campaign, highlighting the adversities associated with the piracy, in schools, colleges, universities and other places to create a consciousness among people againstthe evils of piracy. iii.               The law enforcement authorities need tobe imparted proper training in copyright fields. Various provisions of theCopyright Act are also to be taught apart from differentiating originalcopyright products from the pirated ones. iv.

The registration of copyright worksshould be encouraged as registering a work helps to establish ownership in awork which, in turn, may be useful for the right holders to prove ownership incases of litigation. v.                 The video cassettes, CDs and cassettesfor cable should carry all necessary details as mentioned in the section 52A(2)of the Copyright Act. Besides, they should also inscribe the duration of the right(s)on such storage devices. vi.               A separate copyright cell in each stateshould be formed and such cells should publicise their activities and carry outmass campaign against the malady through pamphlets, seminars and relateddissemination activities.

vii.             All the copyright industry associationsand copyright cells at states/UTs should have an anti-piracy hotline via which, they should be able to provide information and register/record cases of piracyand such hotline should be able to provide information on sources of acquiringlegal copies, various aspects of copyright laws in India and other relatedmatters. BibliographyBooks/Journals:·        TheOxford Handbook of Adaptation Studies, Thomas Leitch·        TheValues of Fantasy: Indian Popular Cinema through Western Scripts, Sheila J. Nayar, (1997)·        Foundin Translation: From Hollywood Hits to Bollywood Blockbusters, Ally Ostrowski·        FingerprintingPopular Culture: The Mythic And The Iconic In Indian Cinema, Vinay Lal & Ashis Nandy·        Religion, Ethnicity and Politics: Hindu and Muslim Indian Immigrants in the United States, Prema Kurien (2001)Articles:·        https://spicyip. com/2009/08/hollywood-v-bollywood-v-tollywood-when.

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html 13 (C. C. S. D.

N. Y. 1868)14 (1978) 4 SCC 11815 Suit No. 2692 of 2010, BombayHigh Court16 2002’s box office success RAAZwas reviewed by Planet Bollywood as a retelling of WHAT LIES BENEATH (2000). The web site further mentioned the director of RAAZ, Vikram Bhatt, has beenknown to completely rip off Hollywood storylines in his past films.