

Svkm's of piracy. c) where the theme is

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SVKM's NMIMS Institute of Intellectual Property Studies, Mumbai. A Project Submitted On The remake of Films and Related Copyright issues: Hollywood v. Bollywood Incompliance with partial fulfilment of the marking scheme,
To Faculty: Prof. Nazima Munshi

Submitted by:

Mr. PARTH

BHUTA

Course:

CCIP

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2018, 3 pm Introduction The English film industry (having its largest hub at the United States, popularly known as Hollywood) is now recognizing the Indian film industry (amongst them mainly Bollywood), which has had a long tradition of remaking Hollywood movies so as to serve a primarily South-Asian audience. .

The era of synchronization of the two biggest film industries in the world has arrived 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 that India is reported to have the world's fastest growing media and entertainment industry. The Indian film industry (including Bollywood) has had a long history of ripping off Hollywood and other foreign language films and the audience is used to this trend. Now, from a past decade, it is evident that the Hollywood giant production houses are collaborating with the Indian production houses. They have realized not only the available market in the sub-continent but also the fact that Indian filmmakers were already ripping off their story lines as a cultural adaptation. When it comes to Bollywood films it is always difficult to determine whether there is a copyright infringement or

not. Since, all comprises prominently a similar concept of love story, song, action and emotional climax.

The interpretation of the Apex Court in *R. G. Anand v. Delux Films* is primarily considered by judiciary, which lays down the following rules: a) There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and the violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work. b) In order to be actionable, the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy. c) Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of copyright infringement arises.

d) Where however apart from the similarities appearing in the two works, there are also material and broad dissimilarities which negate the intention to copy the original and the coincidences appearing in the two works are clearly incidental, no copyright infringement comes into existence. e) Where however the question is of the copyright infringement of stage play by a film producer or a Director, the task of the plaintiff becomes more difficult to prove piracy. f) It is 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 a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality

of impression that the film is by and large a copy of the original play, the copyright infringement may be said to be proved." Literary Review Given the hegemonic role of domestic film productions in India, the Indian filmmakers can readily assume that, with the possible exception of international blockbusters and award winning films, most foreign films will be unfamiliar to their Indian audiences, and they have used this circumstance to rework copyrighted material without first acquiring the rights to it. 2 Bollywood has continuously evolved to increase audience appeal and developed films with the intention of obtaining maximum ticket sales from the movie-going audience. 3 Over the last few decades, there has been a surge of immigration from India to Western nations.

4 With the diaspora rapidly assimilating to the cultures of the nations it now inhabits, Bollywood has continued to find new ways to appeal to this demographic for an expanded audience base. 5 Bollywood viewed Hollywood films favourably; their themes appeal to the increasingly diverse and westernized Indian audience. 6 The United States had started to experience an influx of immigrants from India after the passage of the Immigration and Naturalization Act in 1965. As an increasing number of previously Indian nationals began to call the United States home, Bollywood recognized it could further expand its audience by appealing to non-resident Indians. 7 The line needs to be drawn between taking inspiration and actually infringing someone's rights, something that the film industries have almost forgotten. Our Copyright law provides a protection for an original work and also against people trying to copy it. It provides protection for expression of an idea, but not to the idea itself. To plead a successful claim in India the

plaintiff must prove that the defendant's work is a substantial and material copy of the copyrighted work.

Therefore, the Supreme Court of India has said that the best way to determine whether a copyright violation has occurred is to "see if the reader, spectator, or viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original." It is utmost crucial to perceive that the most important difference in copyright law is between an idea and an expression. A man likes a woman and the woman gets married to a third person - is an idea which has been the fundamental plot in countless films. Take Bollywood for example - we have many films with the same love triangle yet at least half of those films narrate the plot in their own distinctive style. It is only when the expression itself is copied that the requirements of copyright infringement are fulfilled.

To their credit most of the alleged Bollywood "copycats", they, wittingly or unwittingly, remake the same existing storylines in new forms upon the big screen. It would therefore be extremely difficult to successfully sue any of them for the issue of infringement of copyright. While this may sound unfair to many existing suffering artists, the reality is that copyright protection is weak in nature and should remain so as the business of art depends on some healthy borrowing from the existing ideas from the past. Unlike the 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 new work which is created by way of an "adaptation" of the original work can

be construed as work in India which could correspond to the term " derivative work" as defined in other jurisdictions. 10 Under the Indian law, where the owner grants a licence of a remake of a cinematograph film to a third party, such a remake results in the creation of a new work by the licensee and the copyright on such new work shall vest with the licensee unless there is a contract to the contrary. In the event that the owner of the original work wants to own the copyright in the remake, these rights shall have to be assigned by the licensee to the original owner by way of explicit contract. 11 Where the work is produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors, it shall be a work of joint authorship.

In the case of a remake, if the original owner and the licensee collaborate with each other and with a common design produce a new work, then they will be regarded as joint authors and/or co-producers of the new work.

With the recent controversies of the remakes of numerous movies coming to the forefront, it is but a matter of time that procuring appropriate licences for making of a remake shall be a matter of practice. The producers at large now are not only vigilant in procuring licences but are ready to adopt all appropriate measures in order to protect their rights in their original work.

12 Comparative Study: U.

S. vs India A. International Standards for Intellectual Property Rights Both the United States and India are signatories to the Berne Convention for the Protection of Literary and Artistic Works, 1866 as revised by the aid of the Paris Act of the Convention in 1971, which serves as the basis of

contemporary worldwide standards regarding intellectual property rights. As member states of the World Trade Organization ("WTO"), India and the United States are bound by the Trade-Related Aspects of Intellectual Property Rights ("TRIPS") agreement of 1994. TRIPS provides that all WTO member states are required to comply with the provisions set forth by the Berne Convention and Paris Act and incorporates intellectual property rights 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. Creating a private cause of action for copyright violations, the agreement allows the owner of a copyright to initiate and bring suit directly within the courts of member nations where the infringement is occurring, and requires member nations to accord and recognise the same rights to nationals of other member states as given to their own. Thus, since Hollywood and Bollywood films are marketed in both the U. S. and India, claims of infringement may be brought in either nation's domestic legal system.

B. What U. S. and Indian Copyright Law Protect To address with the copyright infringements involved in movies under both Hollywood and Bollywood, the applicable provisions of the Berne Convention that TRIPS makes binding recognition of the exclusive rights of authors to authorize reproductions and variations of their original work, consisting of what is known as cinematographic work. While a movie recognizably borrows the plot and protected content material from a previous work, it is deemed to be a "

derivative work." Unauthorized derivative works are generally considered harmful if the audience as a whole perceives the derivative so similar to the original that it adversely influences the demand for the original.

C. Defining Infringement Infringement in both the U. S. and India takes place when a party engages in certain moves reserved for the copyright owner. In the U. S., a plaintiff ought to show ownership of the copyright and demonstrate that copying of protected material definitely took place, and that the copying was so significant so as to render the subsequent work considerably similar to the first.

In India, copyright infringement takes place if the chronologically second work is a substantial and material reproduction of the first. Substantiality is measured with the aid of weighing both quantity and quality of the work copied. D.

Standard of Review: In determining whether there is substantial similarity between two works, Indian and U. S. courts employ some variation of the "ordinary observer" test. Essentially, the "ordinary observer" test states that two works are substantially similar if an ordinary viewer of reasonable attentiveness would conclude that the defendant unlawfully appropriated the plaintiff's protected expression. The "ordinary observer" standard in U. S. courts originates from the audience test, first set forth in *Daly v. Palmer*¹³.

In *Daly*, the court examined whether a playwright's basing of the climax scene of his play on the highly successful climax of another play constituted copyright infringement. Both scenes involve the protagonist tied

to railway tracks by the villain and then saved by a friend who breaks free from imprisonment, rescuing the protagonist seconds before a train approaches. In analysing this case, the court held that the creative elements of the original scene were the same in the defendant's scene. If the appropriated series of events convey substantially the same impressions and emotions in the same sequence, then the subsequent work can be said to be substantially similar to, and an infringement of, the first. Though the standard has been further defined in its present-day application, 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 have a similar standard of review, as held in *R. G. Anand v. Delux Films*¹⁴. Cases The following are the cases wherein Bollywood has allegedly made a remake of its movies based on corresponding Hollywood movies:

i. Twentieth Century Fox Film vs Sohail 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.

20th Century Fox vs. BR Films: BR Films in 2009 made a film 'Banda Yeh Bindaas Hai' starring Govinda and Tabu which was a copy of 20th Century Fox film 'My Cousin Vinny'. The 20th Century Fox filed a suit against BR Films asking damage for Rupees 7 Crores but, later on, the matter was settled outside the court with a settlement of 1.3 Crore Rupees.

iii. Bang Bang, produced by Fox Star Studios was allegedly a remake of the Hollywood blockbuster Knight and Day.

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

A Common 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 years after the release of Rangeela. iii. Jab We Met served as a blueprint for the 2010 Hollywood's popular movie Leap Year. iv. Just Go 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 Both Indian as well as U. S. laws treat film copyright as a signal copyright.

The United States and English judges have circuitously rectified this gap by categorizing films and dramatic works. Since our domestic laws preclude this method of dual protection, a Hollywood filmmaker suing a Bollywood filmmaker for imitating visual sequences would be placed at a disadvantage. Nevertheless, the broad concept of altered copying still gives such plaintiffs the possibility to succeed in a claim based on screenplay-to-screenplay copying. Some recommendations to tackle the issue of copyright infringement are enlisted below: i.

The copyright-holders should take enough precaution to protect copyright works and in case violations come to their notice/knowledge, they should file complaints with the police. They should be of assistance to the police in conducting raids and producing evidence during the trial by the court.

ii. The copyright industry associations/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 against the evils of piracy. iii. The law enforcement authorities need to be imparted proper training in copyright fields. Various provisions of the Copyright Act are also to be taught apart from differentiating original copyright products from the pirated ones. iv.

The registration of copyright works should be encouraged as registering a work helps to establish ownership in a work which, in turn, may be useful for the right holders to prove ownership in cases of litigation. v. The video cassettes, CDs and cassettes for 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 state should be formed and such cells should publicise their activities and carry out mass campaign against the malady through pamphlets, seminars and related dissemination activities.

vii. All the copyright industry associations and 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 piracy and such hotline should be able to provide information on sources of acquiring legal copies,

various aspects of copyright laws in India and other related matters. Bibliography Books/Journals: · The Oxford Handbook of Adaptation Studies, Thomas Leitch · The Values of Fantasy: Indian Popular Cinema through Western Scripts, Sheila J. Nayar, (1997) · Foundin Translation: From Hollywood Hits to Bollywood Blockbusters, Ally Ostrowski · Fingerprinting Popular 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.html> · <http://law.emory.edu/eilr/content/volume-26/issue-1/comments/is-bollywood-unlawfully-copying-hollywood.html> · <http://www.oxfordbibliographies.com/view/document/obo-9780199791286/obo-9780199791286-0128.xml> · <http://www.livemint.com/Consumer/d186ijClpc5OzQGizUj8EN/Movie-remakes-and-the-copyright-question.html> · <https://selvams.com/blog/bollywood-copyright-infringement-inspiration> Statues and Treaties referred: · Berne Convention for the Protection of Literary and Artistic Works, 1866 · Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) agreement of 1994 · Paris Act of the Convention in 1971 · Copyright Act of 1976 (U. S.) · Indian Copyright Act of 1957 · Immigration and Naturalization Act in 1965 (1978) 4 SCC 1182 The Oxford Handbook of Adaptation Studies, Thomas Leitch, pg 2593

html · <http://law.emory.edu/eilr/content/volume-26/issue-1/comments/is-bollywood-unlawfully-copying-hollywood.html> · <http://www.oxfordbibliographies.com/view/document/obo-9780199791286/obo-9780199791286-0128.xml> · <http://www.livemint.com/Consumer/d186ijClpc5OzQGizUj8EN/Movie-remakes-and-the-copyright-question.html> · <https://selvams.com/blog/bollywood-copyright-infringement-inspiration>

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<https://assignbuster.com/svkms-of-piracy-c-where-the-theme-is/>

Sheila J. Nayar, *The Values of Fantasy: Indian Popular Cinema through Western Scripts*, 31 J. POPULAR CULTURE 73, 75 (1997)⁴ Ally Ostrowski, *Found in Translation: From Hollywood Hits to Bollywood Blockbusters*⁵ VINAY LAL & ASHIS NANDY, *FINGERPRINTING POPULAR CULTURE: THE MYTHIC AND THE ICONIC IN INDIAN CINEMA* xi-xxvii⁶ Nayar *Supra* note 37 Prema Kurien, *Religion, Ethnicity and Politics: Hindu and Muslim Indian Immigrants in the United States*, 24 ETHNIC & RACIAL STUDIES 263, 266 (2001)⁸
<https://selvams.com/blog/bollywood-copyright-infringement-inspiration/> ⁹ <https://spicyip.com/2009/08/hollywood-v-bollywood-v-tollywood-when.html> ¹⁰ <http://law.emory.edu/eilr/content/volume-26/issue-1/comments/is-bollywood-unlawfully-copying-hollywood.html> ¹¹ <http://www.oxfordbibliographies.com/view/document/obo-9780199791286/obo-9780199791286-0128.xml> ¹² <http://www.livemint.com/Consumer/d186iJClpc5OzQGizUj8EN/Movie-remakes-and-the-copyright-question.html> ¹³ (C. C. S. D.

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