

# [Term so, to get a copyright in cinematographic](https://assignbuster.com/term-so-to-get-a-copyright-in-cinematographic/)

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TERM PAPER          COPYRIGHTIN CINEMATOGRAPHIC FILMS (THECOPYRIGHT ACT, 1957)         SUBMITTED TO: DR. V. K.

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51851 LLM (1ST TERM) 3 Year Course, 2017-18 FACULTY OF LAW UNIVERSITY OF DELHI                    1   INTRODUCTION    By section 13 (1) (b), a virtue ofcopyright subsists in a cinematograph film. According to the Concise Oxforddictionary, a cinematograph film is describes as a film where a rapid projectorrun through an apparatus called cinematograph which produces the illusion ofmotion on a screen of many photographs taken consecutively on a long film. The expression “ cinematograph film” means „ any work of visual recording and includes a sound recording accompanyingsuch visual recording and “ cinematograph” shall be construed as including any work produced byany process analogous to cinematography including video films? 1. “ Visual recording” 2 it means the recording in anymedium, by any method, including the storing of it by any electronic means, ofmoving images or of the representations thereof, from which they can beperceived, reproduced or communicate by any method. “ Sound recording” 3 means a recording of sounds fromwhich such sounds may be produced regardless of the medium on which suchrecording is made or the method by which the sounds are produced. In cinematographic film, theproducer is considered to be the author and possess the copyright of it by sec2 (d) (v).      CONCEPT OF ORIGINALITY IN CINEMATOGRAPH FILM   There is no such connotation underthe act that it should be original as in the case of other copyrighted workslike literary, musical and artistic works. Although there is no expressprovision under the Act that it should be original, copyright will not subsistin a cinematograph film if any part of the film has infringed the copyright ofany other work.

So, to get a copyright in cinematographic film, it sourceshould originate from the producer and not a copy work of some copyrightedworked.      1              Sec 2 (f), Copyright Act, 1957 2Sec 2 (xx a), id. 3Sec 2 (xx) , id. 2  COPYRIGHT IN CINEMATOGRAPH FILM  The author of a cinematograph filmhas the exclusive rights in which the copyright subsists4, they are – ·      He hasthe right to make a copy of the film including a photograph of any imageforming part of the film. ·       Storing of it in any medium by electronic or other means. ·      He hasthe right to sell or give on hire, or offer for sale or hire, any copy of thefilm, regardless of whether such copy has been sold or given on hire on earlieroccasions. ·       And also the right to communicate the film to the public.

The section does not relate to thesound recordings which forms part of the film. The sound recording which hasalready embedded in the film has of its own copyright which is not contrived bythe copyright in the film as a whole.   Cinematograph film including thesound track has a copyright protection. Sound track is protected as a part ofcinematographic film, not as a sound recording. But independent copyright maysubsists in some sound recording which are made for film sound tracks likemaking records of songs from the sound track of a film. The cine actors orperformer in the film are protected under a special right called as„ performer? s rights? 5. Since a film includes a variety ofperformance by various actors, dancers and etc, their prior permission isrequired to film their performances. So, separate contracts are done with theperformers.

COPYRIGHT IN CINEMATOGRAPHIC FILMS ALSO INCLUDES IN-   Videotapes In the case of Entertaining Enterprises v State of Tamil Nadu6, the court held that as per thedefinition of cinematograph film in section 2(f) of the Act, which includes anywork produced by any process analogous to cinematography, where an exhibitionof a film in  4              Sec 14 (d), Copyright Act, 1957 5Sec 38, id. 6AIR 1984 Mad 278 3 a television is broadcast through avideo tapes in which a cinematographic film is recorded. This process will also fall withinthe ambit of the definition of cinematograph film.   VideoCassette Recorder This definition is not defined underthe Act.

Under the Tamil Nadu Exhibition of film on Television Screen throughVideo Cassettes Recorders (regulation) Act 1984, the expression “ VideoCassettes Recorder” is defined in sec 2 (6)- as to make cinema for the purposeof giving cinematograph, an exhibition of film is recorded on video cassettetape. In Restaurant Lee vs State of Madhya Pradesh7, the court observed the MadhyaPradesh Cinema Regulation Act, 1955, and held that the exhibition of movies by playing back pre-recorded cassette inrestaurant falls within the ambit of „ Cinemas? under the act. This decision wasapproved and followed in Dinesh KumarHanumanprasad Tiwari vs State of Maharashtra8, where it was held that as per the definition of “ cinematograph” under the Cinematograph Act, 1952, a a VCR which is pre-recorded and used inan apparatus for playing cassettes of movies on the television screen, fallsunder the ambit of the definition. Also in these both the cases Balwinder Singh v Delhi Administration9 and in Thulsidas v Vasantha Kumari10, the court held that both video andtelevision comes under cinematographfilm.  SoundTrack In a Film Section 2(f) shows the term” cinematograph film” includes a sound track associated with the film, that isthe sound embodied in a sound track which is associated with the film.      MEANING OF THE EXPRESSION ‘ TO MAKE COPY’-   The Word „ Copy? is not defined underthe Act. With the coming of the Copyright Amendment Act, 2012, the word “ Copy” means including a photograph of any image forming part thereof or storing of itany medium by electronic and other means. As such it leaves a great scope forthe interpretation and further expansion of the term through courts.

7              28 April, 1984 8AIR 1984 Bom 34 9AIR 1984 Del 379: 1984 Rajdhani LR 302 10           (1991)1 LW (Mad) 220 (229) 4 Apart from another film which is thecopy of film it appears that taping the film in a cassette tape would also becopy of the film because from the cassette tape through a video cassette playerit can be exhibited. Hence, it can be said the expression „ to make a copy ofthe film? would mean physical copy of the film itself and not another whichmerely resemble the film.     The exclusive right which isavailable to the owner of copyright under the Act in relation to cinematographfilm is to copy the recording of a particular film. Hence work by anotherperson does not make him liable for infringement of copyright provided; it hasnot been reproduced by a process of duplication i.

e. by the use of mechanicalcontrivance. In this regard Bombay H. C.

in Star India Pvt. Ltd v Leo Burnett India Pvt. Ltd11, it was observed that „ making ofanother film is not included under Sec 14 (d) (i) and such other film eventhough it resembles completely the copyright film does not fall within the theexpression „ to make a copy of the film?. Therefore, if a film has been filmedor shot separately by a person and it resemble the earlier film the subsequentfilm is not a copy of the earlier film and therefore not amount to infringementof whole of whole of the copyright of the first film.   MEANING OF THE TERM ‘ COMMUNICATION TO PUBLIC’-   The expression “ Communication toPubic” means making any work or performance available for being seen or heardor otherwise enjoyed by the public directly or by any means of display ordiffusion without issuing physical copies, whether simultaneously or at placesand times chosen individually, regardless of whether any member of the publicactually sees, hears or otherwise enjoys the work or performance so madeavailable. 12 The explanation of this sectionstates that for the purpose of this clause, communication through satellite orcable or any other means of simultaneous communication to more than onehousehold or places of resident including residential rooms of any hotel orhostel shall be deemed to be communication to public.

11          2003 (2) Bom CR 655, 2003 (27) PTC 81 Bom 12           Sec2 (ff), Copyright Act, 1957 5 COPYRIGHTIN LYRIC AND MUSIC AND OWNER OF CINEMATOGRAPHIC FILM-   If the author of a lyric or amusical work parts with one of the pieces of his copyright work by empowering afilm producer to make a cinematograph film of his work and to have his workincorporated or recorded on the sound track of a cinematograph film which thelatter acquire by virtue of Section 14(d), on completion of the cinematographfilm, it gives him the exclusive right interalia of performing the work in public i. e. to cause the film as it consistsof visual images to be seen in public and as it consists of the acousticalportion which includes a lyric or a musical work that can be heard in publicwithout asserting any further permission of the author(composer) of the lyricor a musical work for the performance of the work in public.   However, the right of the composerof a lyric or musical work still pertains.

They have the right of performing inthe public for profit motive otherwise than as a part of cinematograph film andhe cannot be restrained from doing so. In other words, the author (composer)ofa lyric or musical work who has authorized a cinematograph film of his work byincorporating or recording it to the sound track of a cinematograph film cannotrestrained the author(owner)of the film from causing the acoustic portion ofthe film to be performed or projected or screened in public for profit or frommaking any record embodying the recording in any part of the sound trackassociated with the film by utilizing such sound track or from communicating orauthorizing the communication of the film by radio diffusions, as section 14(d) of the act expressly allowed the owner of the copyright of thecinematograph film to do all these things. Later, the author (owner) of thecinematograph film cannot be blame for befitting anything which belongs to thecomposer of the lyric or musical work. With the definition of cinematographfilm, a cinematograph film has a right to protect both the film and the soundtrack if it is carried out into film proper (i.

e. visual sequence). TheCopyright in the entire film will be entitled to the right in portions of thefilm; but this idea or connotation cannot be extended to accept an idea that therewould be only one owner of the cinematograph film, as there are many differentowner of portions who have collectively and creatively played a role incarrying out the motion picture.                6 INTERNATIONAL CONVENTION –   BerneConvention Article 9 (1) of the conventionprovides that the author of literary and artistic works which includecinematographic films also protected by this convention have the exclusiveright of authorizing the reproduction of these work in any manner or form. Inaddition article 11 (1) provides that such authors enjoy an exclusive right toauthorize and broadcast- •       Their work or communicate to thepublic by means of wireless diffusion of signs, sound or images, •       To Communicate their work to thepublic by wire or by re-broadcasting of the broadcast work when thiscommunication is made by an organization other than the original one, and •       The broadcast the work and makepublic communication by use of loud speaker or any other analogous instrumentwhich is transmitted by use of signs, sound or images.      UniversalCopyright Convention   The minimum basic right availablefor cinematographic works under universal copyright convention are reproductionrights, public performance rights and broadcasting rights.

TRIPs Agreement Article 9 of the TRIPS Agreementprovides that member shall comply with Article 1-21 except Art 6 and Appendixof the Berne Convention 1971. This means that right available to the owner ofcinematographic film under Berne Convention will continue to remain availableunder TRIPs Agreement by virtue of its Article 9             7 COPYRIGHT INFRINGEMENT IN CINEMATOGRAPHIC WORKS-   The original producers of a cinema, who has exclusively a sole right, also have a right to sell cinematographicrights, video rights, cable rights, commercial rights and satellite right. Copyright relating in cinema has its five components and each of the 5components are divided again into 5 distinct parts.

These are: •      Cinematic Rights, includingTheatrical, Non theatrical and Public Video •      Ancillary Right, including, Airline, Ship, Hotel. •      Video Rights, including, Homerental, Home see through cable and commercial •      Pay T. V. Rights, including, Terrestrial, Cable and Satellite. •      Free T. V Rights, including, Terrestrial, Cable and Satellite   It is generally mentioned in theagreement under which of the above rights is sold. This agreement may be toassign the right or for a license or any other mode of transfer. At the sametime it may be for the whole of the copyright or any single right or acombination of right with respect to time and territory.

According to sec. 51(a) Copyright in a work shall be deemed to be infringed when any person doesanything which is the exclusive right of the owner of the copyright to do, without a license granted by the owner of the copyright or the registrar of thecopyright or in contravention of the condition granted under it or in violationof any condition imposed therein.   For example if a cinematographicrights were to be sold. The agreement would clearly specify the duration andthe territory in which one can exercise his right. If one has obtained theright to show only in theaters (mainly the distribution in the case of India)then the buyer does not necessarily have the right to show those movies throughvideo or by any other means to the public.

If so he has violated the copyrightlaw.   The nature of copyright in thecinematographic work is more complex and in the meantime confused as itincludes a variety of copyrights in a single work and has many a times theserights have been overlapped. The first right granted in a film is thetheatrical right i. e.

the right to exhibit the film in theaters. The produceris the copyright holder. The actual work takes place when the distributors cameinto agreement with the producers to make theatrical rights. He later makessome arrangement with the theater owners and thus an actual exhibition takesplace to the public. The theatrical rights are limited by territory and time. Films are also released in video cassettes. With the changing of time, nowadayspeople are 8 keener to watch the film back athome rather than in the theaters. The producers have the right to sell out thevideo to another party, who are engaged in making video cassettes for sale inthe market.

These cassettes that are sole out on this notion are only meant forhome viewing i. e. one can buy a copy for seeing at home and family members oralone with friends.

And thus such cassette cannot be used for showing the filmin cables or through satellite channels. Showing films in cable or satellitechannel require accession of separate sets of rights, like cable rights andsatellite rights. A cable network is generally limited to local areas which areto be physically connected through cable wire to the operator. In case ofsatellite channel, there is no such physical limit as transmission, as it takesplace through air and received at the users end by dish antenna. In Indiasatellite transmissions in most of the cases, reach to end users through cablenetwork only.

An integral part of anycinematographic work is music. A country like India is famous for its musicwith different kinds in its varieties. Films sound tracks account for almost80% of the total music is the market. Even if a film producer has the copyrightin the film, the music included in the film is the finished work undertaken bya separate group of creative people such as composer, lyricist etc., each ofwhich is a right holder of its own right. Generally the producer sells thisright to a music company who makes cassettes/CD of such songs for sale in themarket.

The incidence of a large number of rights in a single work and theinvolvement of a variety of right holders make the copyright issue verycomplicated in cinematographic work.   There are two kinds of piracy incinematographic works. They are “ video piracy” and “ cable piracy”. Video piracyhas said to be occurred when a film is remake/produced in the form of videocassettes without obtaining consent or any kind of authorization from the copyrightholder i.

e. the producer. When the video is released, after six weeks or more, the producers of the film tend to sell it out to any people who are usuallyengaged in making video cassettes for further sell or lending. The videocassettes kept for sale are meant for home viewing only and thus an act whichis use in videos parlors or in cable network for commercial violate the act ofcopyright.   Cable piracy means an unauthorizedtransmission of films connecting through cable network. To have the right toshowing film in a cable network, a proper authorization or consent should beobtained from the person having its copyright, if not it will amount toinfringement of copyright act. That? s why many a time, a film which is newlyreleased are broadcast through cable network and thus infringed the right ofthe copyright owner which amount to tantamount of piracy.

Satellite channelsare such channels which are properly organized and often no films are shownwithout having a valid authorization and thus, Piracy in satellite channels israre as compared to other channels.  9  CONCLUSION-   A cinematographic film may bedisplay in various form like a live performance of sport events, publicfunctions, or dramatic or music performance or it may be based on thecinematographic version of a literary or dramatic work. In the latter case, ifthe analogous literary or dramatic work is copyrighted, then the making of thefilm will require the consent or license of the owner of the copyright in theliterary or dramatic work since that copyright includes the right to makecinematograph film.

Similarly, if the film sound is the record of the music, the producer of the cinematographic film will have to obtain the consent of theverse writer and the song writer if copyright subsists in them. One has to seewhether the film infringes the copyright in other works in the context of theexception to infringement listed in sec 52(1).                                              10 BIBLIOGRAPHY-   1.  Narayanan, p; Law of Copyright andIndustrial Designs; Eastern Law House. 2ndedition, New Delhi    2.  Dr.

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