

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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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 projectorrin 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 accompanying such 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,

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copyright will not subsist in a cinematograph film if any part of the film has infringed the copyright of any other work.

So, to get a copyright in cinematographic film, its source should originate from the producer and not a copy work of some

copyrighted work. 1 Sec 2 (f), Copyright Act, 1957 2 Sec 2 (xx a), id. 3 Sec 2 (xx) , id. 2 COPYRIGHT IN CINEMATOGRAPH FILM The author of a cinematograph film has the exclusive rights in which the copyright subsists⁴, they are - · He has the right to make a copy of the film including a photograph of any image forming part of the film. · Storing of it in any medium by electronic or other means. · He has the right to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions. · And also the right to communicate the film to the public.

The section does not relate to the sound recordings which form part of the film. The sound recording which has already been embedded in the film has of its own copyright which is not contrived by the copyright in the film as a whole. Cinematograph film including the sound track has a copyright protection. Sound track is protected as a part of cinematographic film, not as a sound recording. But independent copyright may subsist in some sound recordings which are made for film sound tracks like making records of songs from the sound track of a film. The cine actors or performer in the film are protected under a special right called as „ performer's rights? 5. Since a film includes a variety of performance by various actors, dancers and etc, their

prior permission is required to film their performances. So, separate contracts are done with the performers.

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

Under the Tamil Nadu Exhibition of film on Television Screen through Video Cassettes Recorders (regulation) Act 1984, the expression " VideoCassettes Recorder" is defined in sec 2 (6)- as to make cinema for the purpose of giving cinematograph, an exhibition of film is recorded on video cassette tape. In *Restaurant Lee vs State of Madhya Pradesh*⁷, the court observed the Madhya Pradesh Cinema Regulation Act, 1955, and held that the exhibition of movies by playing back pre-recorded cassette in restaurant falls within the ambit of „ Cinemas? under the act. This decision was approved and followed in *Dinesh Kumar Hanumanprasad Tiwari vs State of Maharashtra*⁸, 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 in an apparatus for playing cassettes of movies on the television screen, falls under

the ambit of the definition. Also in these both the cases *Balwinder Singh v Delhi Administration*⁹ and in *Thulsidas v Vasantha Kumari*¹⁰, the court held that both video and television comes under cinematograph film. SoundTrack In a Film Section 2(f) shows the term "cinematograph film" includes a sound track associated with the film, that is the 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 under the 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 it any medium by electronic and other means. As such it leaves a great scope for the 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 the copy of film it appears that taping the film in a cassette tape would also be copy of the film because from the cassette tape through a video cassette player it can be exhibited. Hence, it can be said the expression „ to make a copy of the film? would mean physical copy of the film itself and not another which merely resemble the film. The exclusive right which is available to the owner of copyright under the Act in relation to cinematograph film is to copy the recording of a particular film. Hence work by another person does not make him liable for infringement of copyright provided; it has not been reproduced by a process of duplication i.

e. by the use of mechanical contrivance. In this regard *Bombay H. C.*

in *Star India Pvt. Ltd v Leo Burnett India Pvt. Ltd*¹¹, it was observed that „ making of another film is not included under Sec 14 (d) (i) and such other film even though it resembles completely the copyright film does not fall within the the expression „ to make a copy of the film?. Therefore, if a film has been filmed or shot separately by a person and it resemble the earlier film the subsequent film is not a copy of the earlier film and therefore not amount to infringement of whole of whole of the copyright of the first film.

MEANING OF THE TERM ‘ COMMUNICATION TO PUBLIC’- The expression “ Communication to Pubic” means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion without issuing physical copies, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available. ¹² The explanation of this section states that for the purpose of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or places of resident including residential rooms of any hotel or hostel shall be deemed to be communication to public.

¹¹ 2003 (2) Bom CR 655, 2003 (27) PTC 81 Bom ¹² Sec 2 (ff), Copyright Act, 1957

5 COPYRIGHT IN LYRIC AND MUSIC AND OWNER OF CINEMATOGRAPHIC FILM- If the author of a lyric or a musical work parts with one of the pieces of his copyright work by empowering a film producer to make a cinematograph film of his work and to have his work incorporated or recorded on the sound track of a cinematograph film which the latter acquire

by virtue of Section 14(d), on completion of the cinematograph film, it gives him the exclusive right inter alia of performing the work in public i. e. to cause the film as it consists of visual images to be seen in public and as it consists of the acoustical portion which includes a lyric or a musical work that can be heard in public without asserting any further permission of the author (composer) of the lyric or a musical work for the performance of the work in public. However, the right of the composer of a lyric or musical work still pertains.

They have the right of performing in the public for profit motive otherwise than as a part of cinematograph film and he cannot be restrained from doing so. In other words, the author (composer) of a lyric or musical work who has authorized a cinematograph film of his work by incorporating or recording it to the sound track of a cinematograph film cannot restrain the author (owner) of the film from causing the acoustic portion of the film to be performed or projected or screened in public for profit or from making any record embodying the recording in any part of the sound track associated with the film by utilizing such sound track or from communicating or authorizing the communication of the film by radio diffusions, as section 14(d) of the act expressly allowed the owner of the copyright of the cinematograph film to do all these things. Later, the author (owner) of the cinematograph film cannot be blame for befitting anything which belongs to the composer of the lyric or musical work. With the definition of cinematograph film, 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). The Copyright in the entire film will be entitled to the right in portions of the film; but this idea or connotation cannot be extended to accept an idea that there would be only one owner of the cinematograph film, as there are many different owners of portions who have collectively and creatively played a role in carrying out the motion

picture. 6 INTERNATIONAL CONVENTION - Berne Convention Article

9 (1) of the convention provides that the author of literary and artistic works which include cinematographic films also protected by this convention have the exclusive right of authorizing the reproduction of these works in any

manner or form. In addition article 11 (1) provides that such authors enjoy an exclusive right to authorize and broadcast-

- Their work or communicate

- to the public by means of wireless diffusion of signs, sound or images, •

- To Communicate their work to the public by wire or by re-broadcasting of the broadcast work when this communication is made by an organization other

- than the original one, and • The broadcast the work and make public communication by use of loud speaker or any other analogous

- instrument which is transmitted by use of signs, sound or

- images. Universal Copyright Convention The minimum basic right

available for cinematographic works under universal copyright convention are reproduction rights, public performance rights and broadcasting rights.

TRIPs Agreement Article 9 of the TRIPs Agreement provides that member

shall comply with Article 1-21 except Art 6 and Appendix of the Berne

Convention 1971. This means that right available to the owner

of cinematographic film under Berne Convention will continue to remain

available under 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 cinematographic rights, video rights, cable rights, commercial rights and satellite right. Copyright relating in cinema has its five components and each of the 5 components are divided again into 5 distinct parts.

These are: • Cinematic Rights, including Theatrical, Non theatrical and Public Video • Ancillary Right, including, Airline, Ship, Hotel. • Video Rights, including, Home rental, 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 the agreement under which of the above rights is sold. This agreement may be to assign the right or for a license or any other mode of transfer. At the same time it may be for the whole of the copyright or any single right or a combination 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 does anything 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 the copyright or in contravention of the condition granted under it or in violation of any condition imposed therein. For example if a cinematographic rights were to be sold. The agreement would clearly specify the duration and the territory in which one can exercise his right. If one has obtained the right 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 through video or by any other means to the public.

If so he has violated the copyright law. The nature of copyright in the cinematographic work is more complex and in the meantime confused as it includes a variety of copyrights in a single work and has many a times these rights have been overlapped. The first right granted in a film is the theatrical right i. e.

the right to exhibit the film in theaters. The producer is the copyright holder. The actual work takes place when the distributor comes into agreement with the producer to make theatrical rights. He later makes some arrangement with the theater owners and thus an actual exhibition takes place to the public. The theatrical rights are limited by territory and time. Films are also released in video cassettes. With the changing of time, nowadays people are keener to watch the film back at home rather than in the theaters. The producers have the right to sell out the video to another party, who are engaged in making video cassettes for sale in the market.

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

And thus such cassette cannot be used for showing the film in cables or through satellite channels. Showing films in cable or satellite channel require accession of separate sets of rights, like cable rights and satellite rights. A cable network is generally limited to local areas which are to be physically

connected through cable wire to the operator. In case of satellite channel, there is no such physical limit as transmission, as it takes place through air and received at the users end by dish antenna. In India satellite transmissions in most of the cases, reach to end users through cable network only.

An integral part of any cinematographic work is music. A country like India is famous for its music with different kinds in its varieties. Films sound tracks account for almost 80% of the total music in the market. Even if a film producer has the copyright in the film, the music included in the film is the finished work undertaken by a separate group of creative people such as composer, lyricist etc., each of which is a right holder of its own right. Generally the producer sells this right to a music company who makes cassettes/CD of such songs for sale in the market.

The incidence of a large number of rights in a single work and the involvement of a variety of right holders make the copyright issue very complicated in cinematographic work. There are two kinds of piracy in cinematographic works. They are "video piracy" and "cable piracy". Video piracy has said to be occurred when a film is remake/produced in the form of video cassettes without obtaining consent or any kind of authorization from the copyright holder 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 usually engaged in making video cassettes for further sell or lending. The video cassettes kept for sale are meant for home viewing only and thus an act which is use in video parlors or in cable network for commercial violate

the act of copyright. Cable piracy means an unauthorized transmission of films connecting through cable network. To have the right to showing film in a cable network, a proper authorization or consent should be obtained from the person having its copyright, if not it will amount to infringement of copyright act. That's why many a time, a film which is newly released are broadcast through cable network and thus infringed the right of the copyright owner which amount to tantamount of piracy.

Satellite channels are such channels which are properly organized and often no films are shown without having a valid authorization and thus, Piracy in satellite channels is rare as compared to other channels. 9 CONCLUSION- A cinematographic film may be displayed in various form like a live performance of sport events, public functions, or dramatic or music performance or it may be based on the cinematographic version of a literary or dramatic work. In the latter case, if the analogous literary or dramatic work is copyrighted, then the making of the film will require the consent or license of the owner of the copyright in the literary or dramatic work since that copyright includes the right to make cinematograph 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 the verse writer and the song writer if copyright subsists in them. One has to see whether the film infringes the copyright in other works in the context of the exception to infringement listed in sec

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