

Legal Aspects, IPR and Compliances in Media and Entertainment Industry

The Institute of Chartered Accountants of India (Western Regional Office)
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Copyright Law in India



- The Copyright Act, 1957
- The Copyright Amendment Act, 2012
- The Copyrights Rules, 2013
- Landmark Case Laws
- International Conventions

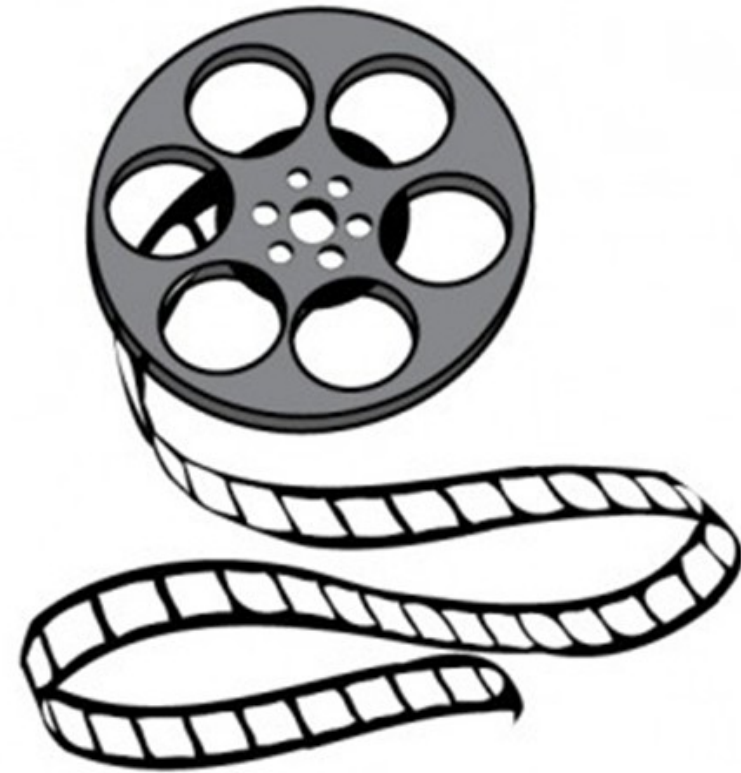
Copyright

- Exclusive right
- Given by the law
- Creator, author, composer or assignee
- Certain term
- Bundle of rights to print, publish, reproduce, adapt, distribute, translate, perform and display



Classes of Work under Protection

- Literary
- Dramatic
- Musical
- Artistic work
- Cinematograph film
- Round recording.



Rights in a musical sound recording

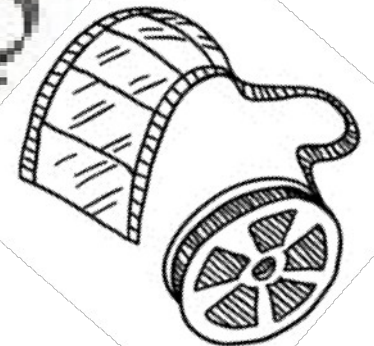
- Lyricist who wrote the lyrics
- Composer who set the music
- Singer who sang the song
- Musician who performed the background music
- Person who produced the sound recording





Object of Copyright law

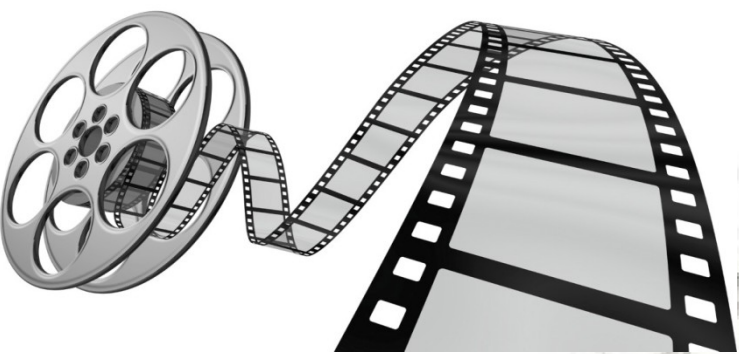
- To encourage authors, composers, artists, etc. to create original works by rewarding them with the exclusive right for a limited period to reproduce works
- To enjoy the fruits of their creative works and protects against plagiarism and unfair exploitation of the works



Need for Protection

- Ensures certain minimum safeguards to Creators
- Protecting and rewarding creativity
- Economic and social development of a society is dependent on creativity
- Atmosphere conducive to creativity





Registration of Copyright

- Existence as soon as a work is created
- No formality is required to be completed for acquiring copyright
- Acquisition of copyright is automatic and it does not require any formality
- Certificate of registration of copyright serve as prima facie evidence in a court of law
- Reference to dispute relating to ownership of copyright



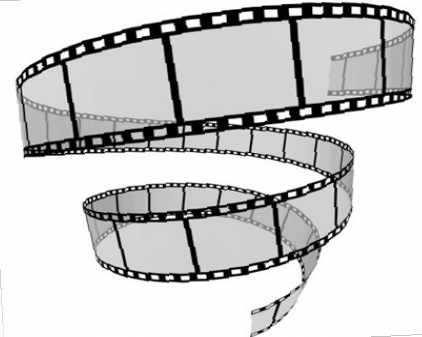


Guidelines for Registration

- Application for registration
- Separate applications for each work
- Requisite fee
- Signed by the applicant or the advocate
- Statement of Particulars
- Three copies of published work

Infringement of Copyright

- Does anything, without license being granted by the owner of copyright, the exclusive right to do which is by the Act upon the owner of copyright
- Dealing with an infringing copy, including sale or hire, display, distribution by any way of trade or import or in a manner to prejudicially affect the owner of copyright



Moral Rights of Authors

- Claim authorship of the work
- Restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to the honor or reputation of the author





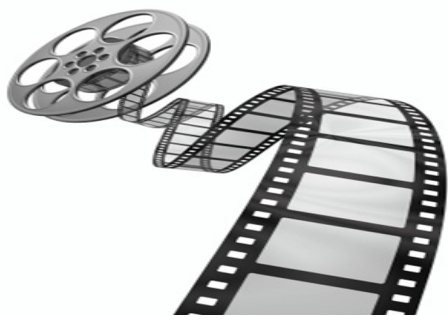
Rights of Authors post 2012

- Right to claim an equal share of royalties and consideration to the author of any work who has assigned the right to make a cinematograph film based on his work, in case of utilization of the work in any form other than for communication of the work along with the cinematograph film in a cinema hall
- Similar right for sound recording
- Right to royalty non-assignable or waive off

Fair Deal

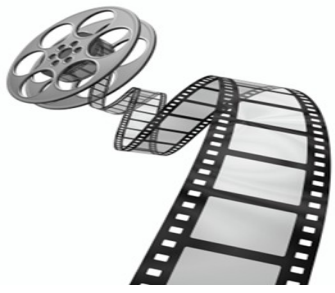
- Purpose of research or private study
- Criticism or review
- Reporting current events
- Connection with judicial proceeding
- Performance by an amateur club or society
- Making of sound recordings of literary or musical works





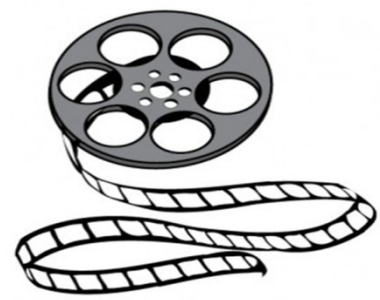
Idea v/s Expression

- No copyright in an idea
- Any person can choose an idea as a subject matter and develop it in his own manner and give expression to the idea by treating it differently
- Copyright does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information.



Author – First Owner

- Literary or dramatic work - person who creates the work.
- Musical work - the composer
- Cinematograph film, the producer
- Sound recording, the producer
- Photograph, the photographer
- Computer generated work, the person who causes the work to be created

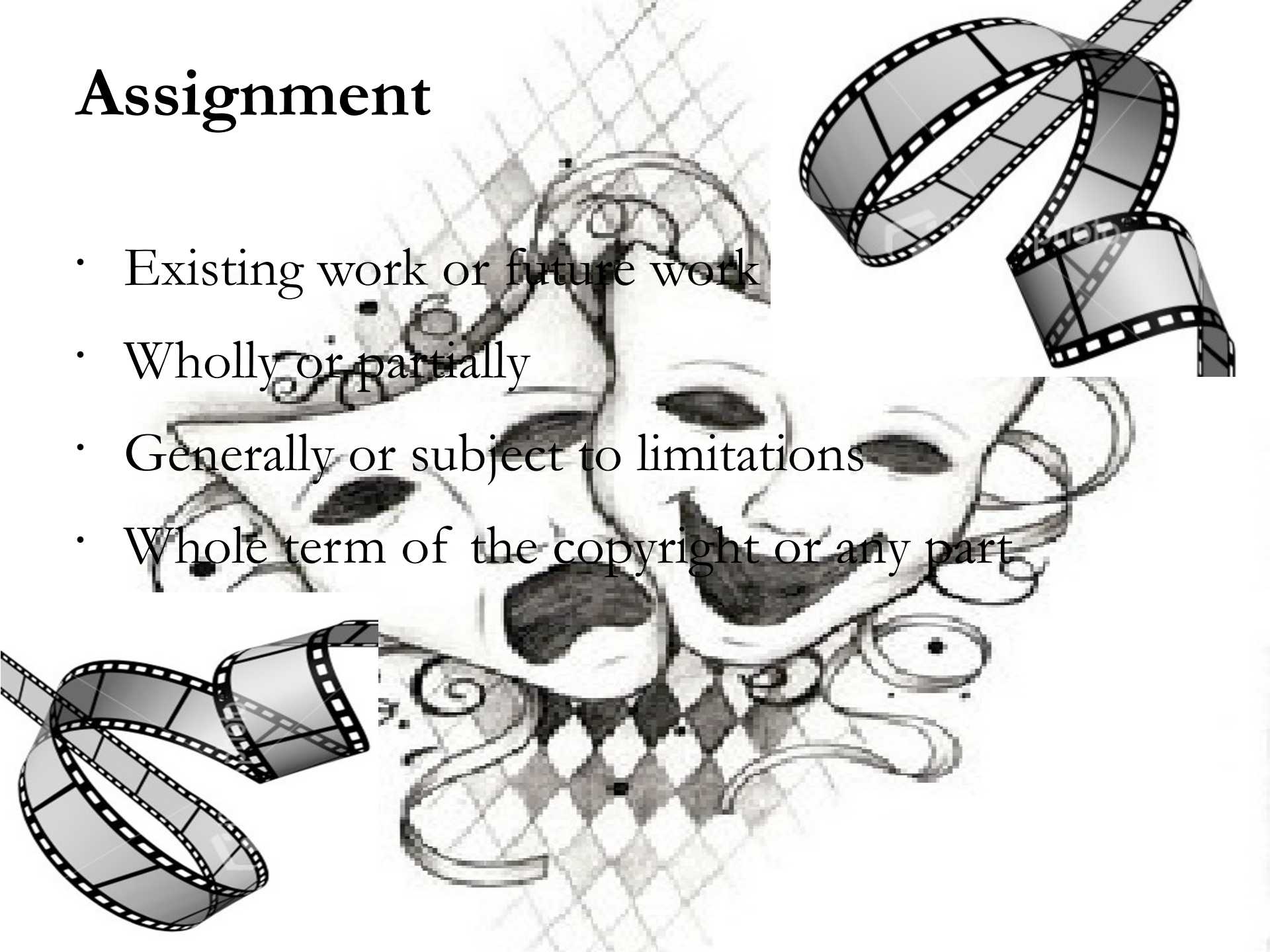


Owner

- Literary, dramatic or artistic work made by author in the course of employment by proprietor of newspaper for purpose of publication, **such proprietor**
- Cinematograph film made for valuable consideration at the instance of any person, **such person**
- Work made in the course of author's employment under contract of service, **the employer**

Assignment

- Existing work or future work
- Wholly or partially
- Generally or subject to limitations
- Whole term of the copyright or any part



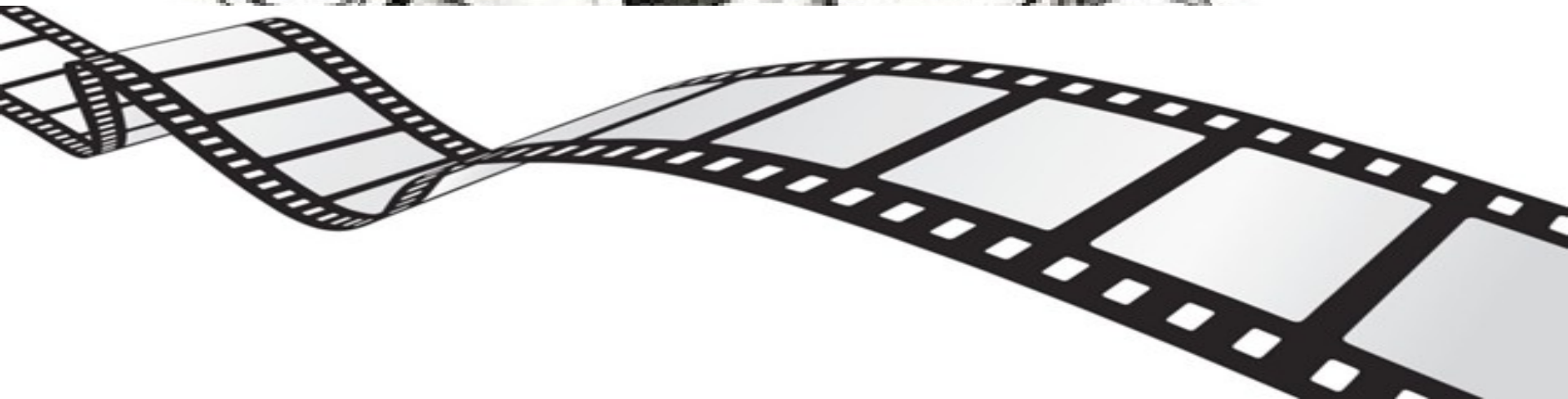
Mode of Assignment

- Writing
- Signed by the assignor or agent
- Specific works
- Specify the rights
- Duration (Five years, if not stated)
- Territorial extent (India, if not stated)
- Specify the amount of royalty payable



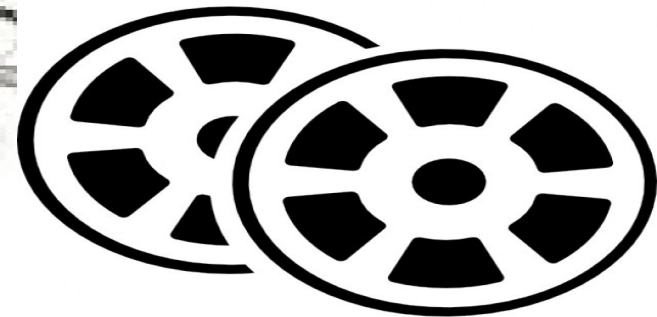
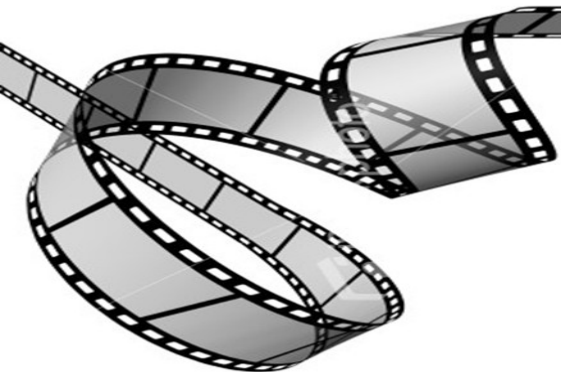
Lapse of Assignment

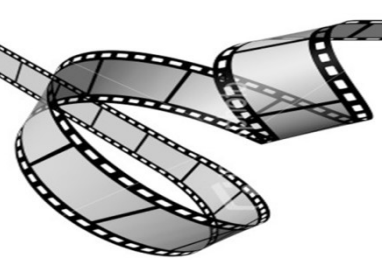
- Assignee does not exercise the rights
- Period of one year from the date of assignment
- Lapse after the expiry of the said period
- Unless otherwise specified in the assignment.



Assignment post 2012

- No such assignment to any medium or mode of exploitation of the work which did not exist
- Not in commercial use at the time when the
- Unless the assignment specifically referred to such medium or mode of exploitation of the work:





Assignment v/s License

- Sale
 - Transfer of ownership
 - Exclusive
 - Action for infringement
 - Revocation for non payment difficult
- License for limited rights
 - Only authorization
 - Exclusive / Non-exclusive
 - Action for infringement, if specified
 - Revocation



Term of copyright

- 60 years in the case of original literary, dramatic, musical and artistic works counted from the year following the death of the author
- In the case of cinematograph films & sound recordings, the 60 year period is counted from the date of first publication



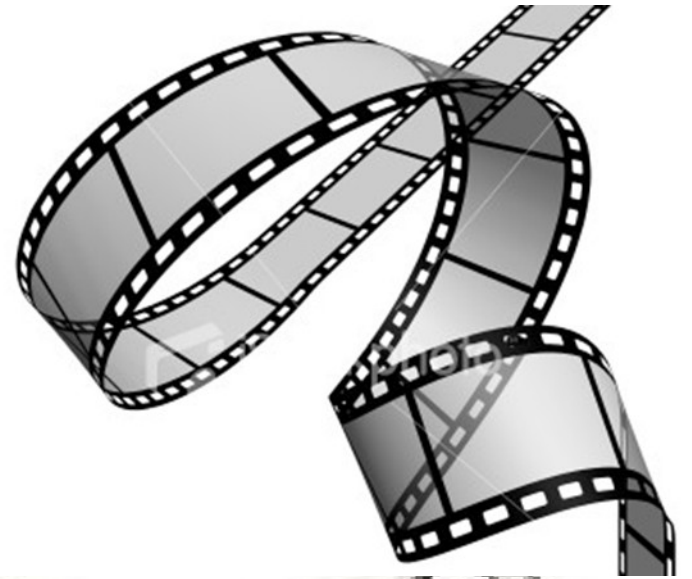


Performer's Rights

- Economic rights which include rights of reproduction, adaptation, distribution, rental, lending, remuneration and communication
- Moral rights which are rights of attribution and integrity over the work performed
- Non-tangible rights which include right over the persona of a performer, the right against use of likeness or name of the performer and other personality rights

Civil Remedies for Infringement

- Injunction
- Damages
- Accounts of profits
- Recovery of possession of the infringed work
- Confiscate infringing items
- Recover any profits that have been earned
- Cost of all parties in any proceedings at the discretion of the court





Criminal Remedies for Infringement

- Imprisonment for six months but which may extend to three years and with fine which shall not be less than Rs.50,000/- but which may extend to Rs.2,00,000/-
- Second and subsequent conviction, shall not be less than one year but which may extend to three years and with fine which shall not be less than Rs.1,00,000/- but which may extend to Rs.2,00,000/-



Threat of Legal Proceedings

- Institute a declaratory suit that the threats related was not in fact an infringement of any legal rights
- Obtain an injunction against the continuance of such threats
- Recover such damages, if any, as he has sustained by reason of such threats.

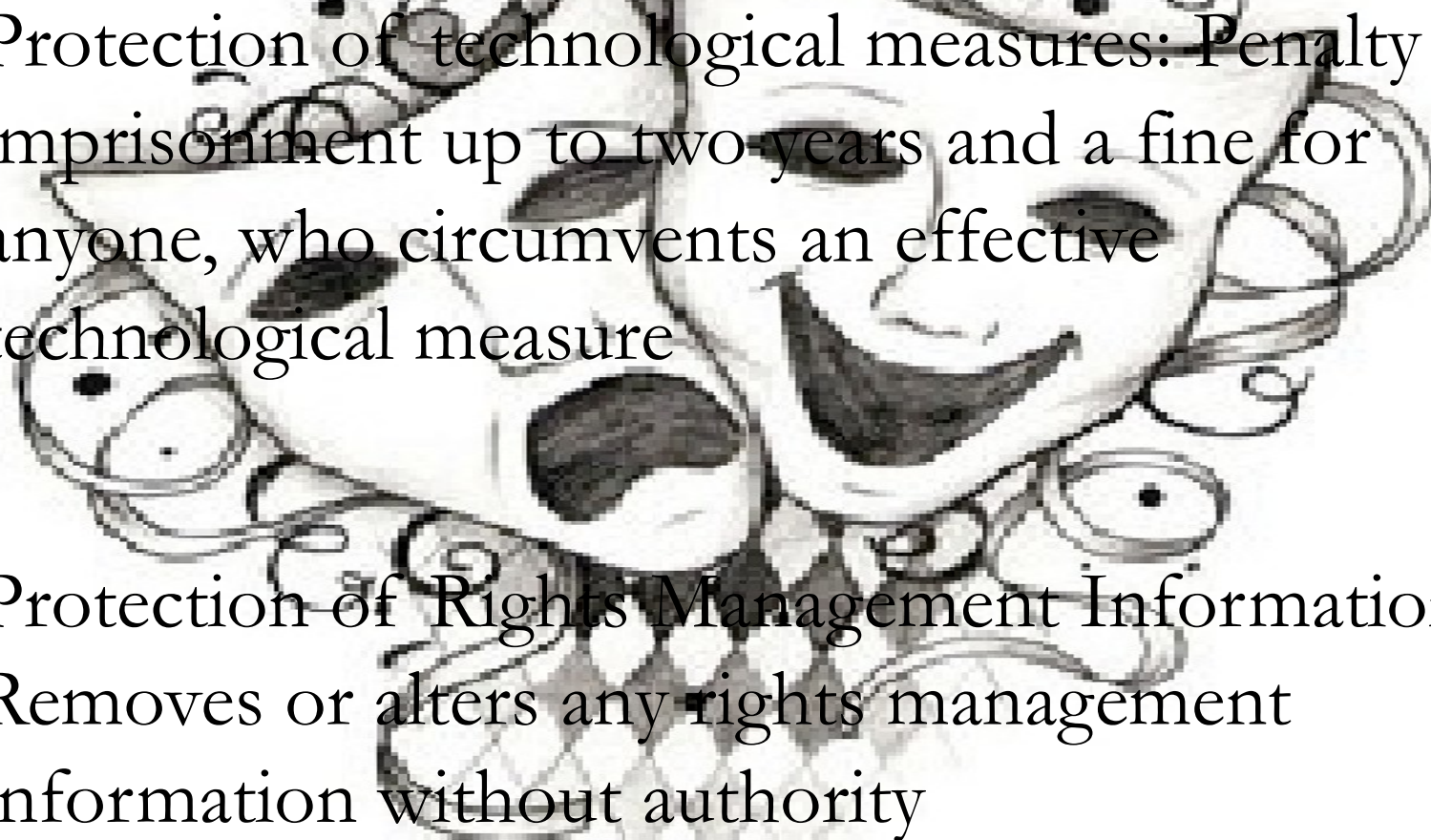
Pre-emptive action for Protection

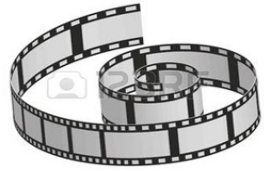
- Registration
- NDA/Confidentiality Agreement
- Prompt Diligent action
- Place on record





Remedies post 2012

- Protection of technological measures: Penalty of imprisonment up to two years and a fine for anyone, who circumvents an effective technological measure
 - Protection of Rights Management Information: Removes or alters any rights management information without authority
- 



John Doe Orders

- Prove ownership of copyright
- Cinematograph film, details of the star cast of the film, music launch, release date, commencement and end date of shooting,
- Certification (CBFC)
- Prima facie case, balance of convenience and irreparable loss
- Instances of infringement



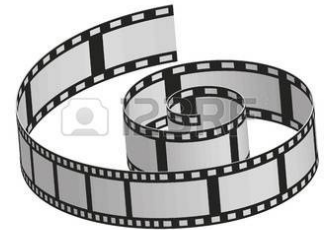


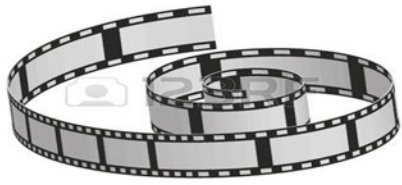
Compulsory License

- Refusal of performance in public of the work and withheld the work from the public or has refused communication to the public by broadcast of the work recorded in sound recording
- Copyright Board
- Basis of a complaint received
- Post inquiry direct the Registrar of Copyrights to grant to the complainant a license

Statutory License for Cover Versions

- Any person desiring to make a cover version being a sound recording in respect of any literary, dramatic or musical work
- Same medium as the last recording
- Conditions precedent – Copies of labels, royalty, no alteration, no misleading information, minimum royalty, etc.



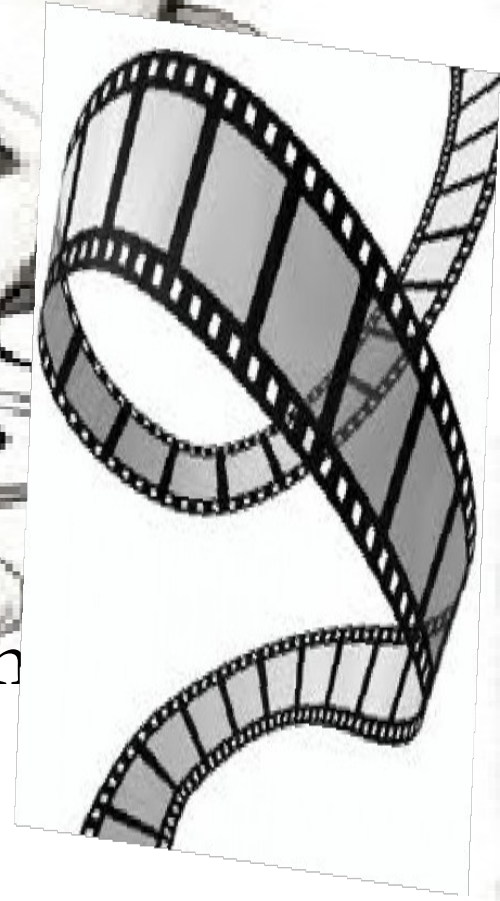


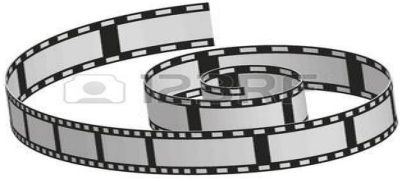
Statutory License for Broadcasting

- Any broadcasting organization desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording
- Prior notice, of its intention to broadcast the work stating the duration, territory and royalties
- Rates of royalty for radio broadcasting shall be different from television broadcasting

Stamp Duty for Assignment of Copyright

- If amount does not exceed Rs.10 lakh- Rs.2.50 for every Rs.1,000 or part thereof on the amount agreed in the contract subject to minimum of Rs.100
- In any other case- Rs.5 for for every Rs.1000 or part thereof on the amount agreed in the contract





Compliance Checklist for Content

- Animal Welfare Laws
- Drug & Magic Remedies Act
- Children
- Flag Code
- Gambling Laws
- Obscenity, Sex & Nudity
- Women
- Religion
- Violence
- Tobacco & Alcohol
- Special Children
- Superstitious Material
- Pre-Natal Diagnosis
- Contests



Legal Compliances for

- Content
- Cinematograph Film
- Live Events
- Television
- Internet

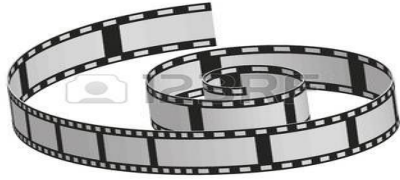




CINEMATOGRAPH FILM

Compliances

- Certification by Central Board of Film Certification (CBFC) prior to public exhibition
- Compliance with principles of Cinematograph Act, 1952. No certification if film is against the security of state, public order, decency, involves defamation or contempt of Court



CINEMATOGRAPH FILM

Compliances

- No depiction of pre-natal diagnosis for sex determination of unborn child
- Obtain NOC from Animal Welfare Board of India (AWBI) if performing animals are used in the Film. NOC of AWBI to be filed with certification application made to CBFC

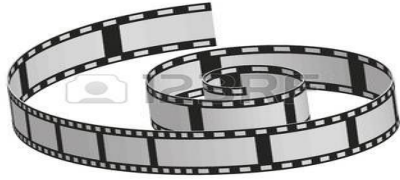


LIVE EVENTS

Compliances :

- Payment of royalties to author of underlying works and performers
- Trademark license from owner of any logo / trademark intended to be used in the event
- Compliance with Noise Pollution (Regulation and





LIVE EVENTS

Compliances.

- License from Copyright Society where authors of underlying works are members of Copyright Societies
- License from producer in case any scene, dialogue costume or set design is used in an event
- Permission from local authorities such as police, traffic



TELEVISION

Compliances

- Uplinking and downlinking guidelines notified by the Ministry of Information and Broadcasting (MIB)
- Regulations of Telecom Regulatory Authority of India
- Cable Television Networks Regulation Act, 1995



INTERNET

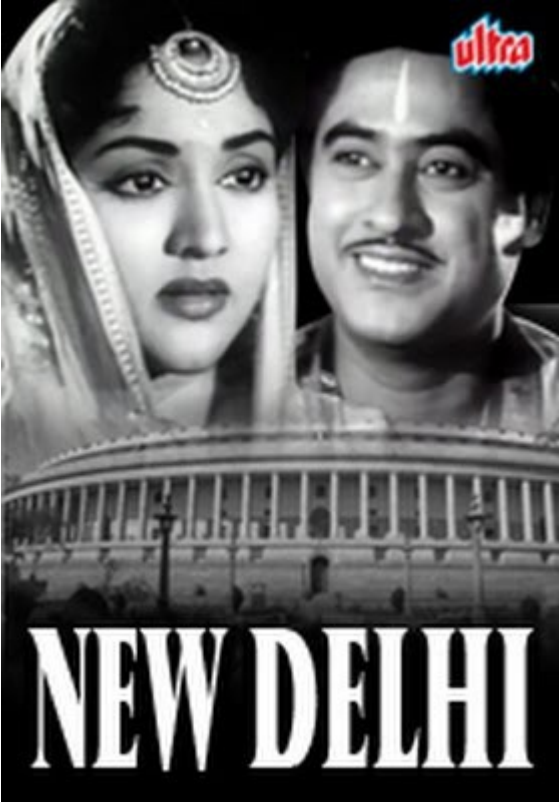
Compliances

- Compliance with Section 65 A of Copyright Act. No circumvention of effective technological measures for protection of rights conferred by Copyright Act, 1957

PROTECTION TO INTERMEDIARIES (Section

CASE LAWS





CINEMATOGRAPH FILM

RG Anand v Delux Films

Supreme Court of India – August 18, 1978

While holding that no copyright exists in an idea, the court observed: “Thus, the position appears to be that an idea, principle, theme, or subject matter or historical or legendary facts being common property cannot be the subject matter of copyright of a particular person. It is always open to any person to choose an idea as a subject matter and develop it in his own manner and give expression to the idea by treating it

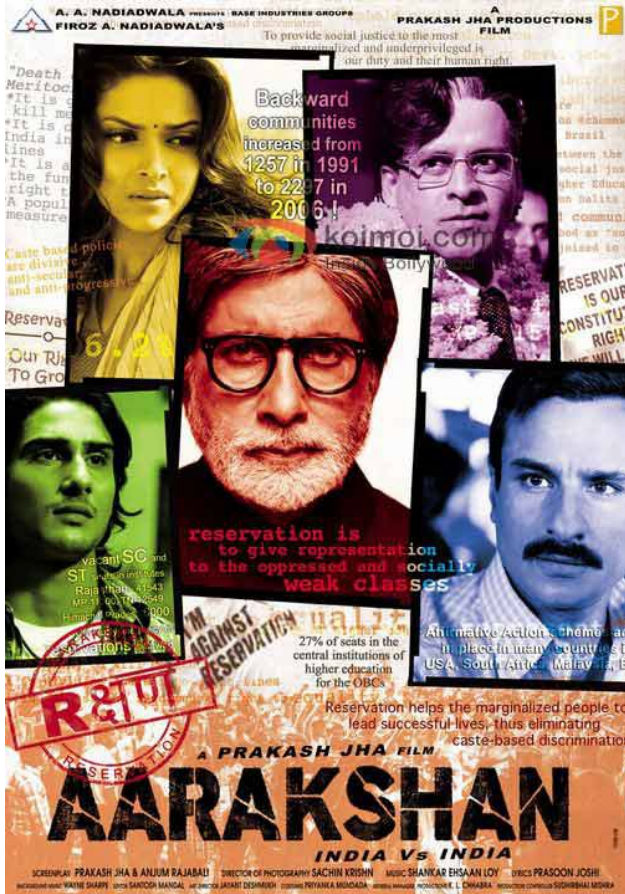


CINEMATOGRAPH FILM

Prakash Jha Productions and Anr

v/s

Union of India & Ors W.P. Civil No. 345
of 2011 (Supreme Court)



Hon'ble Supreme Court quashed the ban imposed on the film 'Aarakshan' by U.P. State government and held that once CBFC had considered the impact of Film on the public and had cleared the Film for exhibition, government cannot raise the excuse that there would be law and order problem. It was for the state government to see that the law and order situation was maintained.





CINEMATOGRAPH FILM

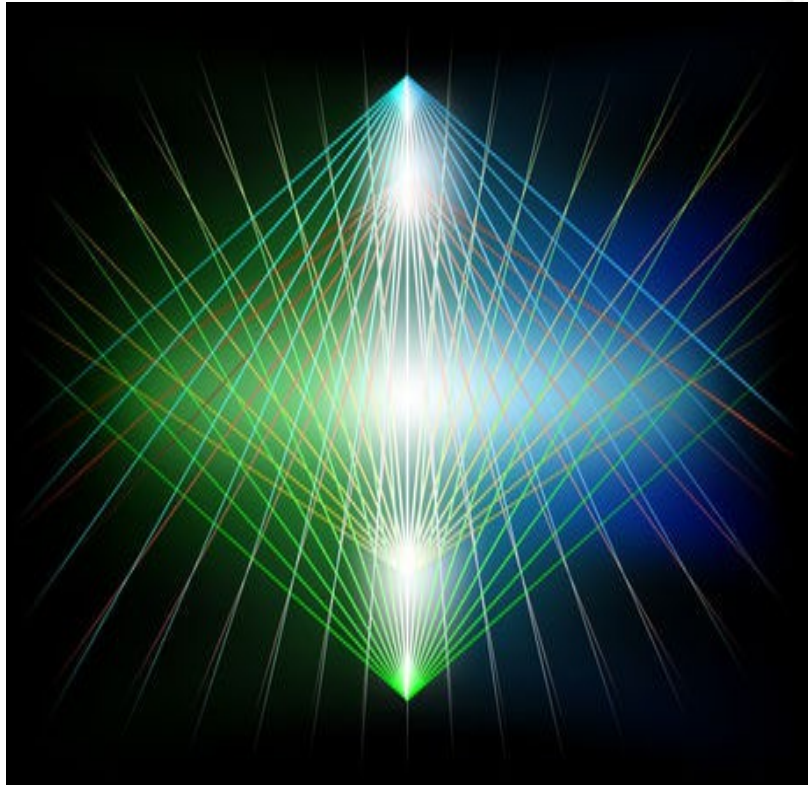
**Krishika Lulla & Ors v/s Shyamrao Devkatta &
Anr**

Criminal Appeal Nos 258 and 259 of 2013

“NO COPYRIGHT IN TITLE OF A WORK”
(Supreme Court)

After referring to several Indian and international precedents on the subject, Hon'ble Supreme Court held that there was no copyright in the title 'Desi Boys'. Hence criminal proceedings filed before Magistrate's Court on the ground of infringement of copyright in title were quashed

LIVE EVENTS



IPRS v/s AD Venture

Communication India Pvt Ltd

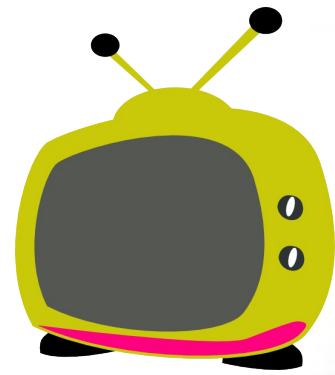
CS (OS) 2132 /2010 &

IA 14025/2010 (Delhi HC)

Defendants had organized a live musical event and used Plaintiff's literary / musical work was used without obtaining the requisite license from the Plaintiff.

Court held that a soft view while awarding damages against a person infringing copyrights of the others to earn unlawful profits, by organizing live events would be wholly misplaced and uncalled for.

TELEVISION



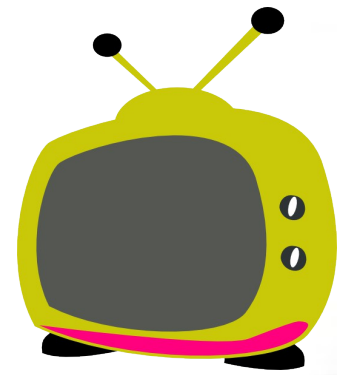
Anil Gupta and Anr v/s Kunal Das Gupta and Ors
AIR 2002 Del 379

Plaintiff alleged that the Defendant's TV program Shubh Vivah was based on concept developed by the Plaintiff. Plaintiff averred that earlier he had discussed the concept of the show with the Defendants.

Court held that if a concept has some attractiveness so as to get an audience on television program and could be realized as an actuality, then concept is capable of being subject to confidential information.

Court granted injunction against the Defendants holding that if injunction was not granted, it would amount to giving premium to the Defendants and robbing the Plaintiff of his work

TELEVISION



Gen X Entertainment vs Zee News Limited Notice of Motion No 2945 of 2009 in Suit No 2083 of 2009 (Bombay High Court)

Plaintiff was owner of reality game show titled 'Dadagiri'. Defendant was likely to broadcast a show 'Dadagiri Unlimited' on its Bangla-TV channel. Plaintiff filed a suit against the Defendant seeking injunction against telecast or broadcast of Dadagiri Unlimited or any title deceptively similar containing the mark 'Dadagiri'.

Court held that Plaintiff had failed to make out a prima facie case for grant of injunction and that if the program / show was not even conceptually identical, then the balance of convenience is also not in Plaintiff's favour.



INTERNET

Rediff Communication Limited vs Cybertooth and Anr AIR 2000 BOM 27

Appellant filed a suit for injunction Respondents from using the mark / domain name 'Radiff' which was similar to its domain name Rediff

Court held that Apellant's Rediff and Respondent's Radiff were deceptively similar and filed of activity of the Appellant and Respondent were also overlapping.

Court granted the injunction in Appellant's favour holding that there was every possibility of internet users being confused and deceived in believing that both domain names viz., 'Rediff' and 'Radiff' belong to one common source and connection.



INTERNET

Vinod Kaushik and Anr vs Madhvika Joshi and Ors Adjudicating Officer, Information Technology Act, 2000

Complaint u/S 43 and Section 63 of Information Technology Act, 2000 was filed against Respondent for unauthorizedly accessing emails of her husband and father-in-law

Emails were used as evidence in dowry harassment case against them

Adjudicating Officer held the Respondent guilty and was asked to pay a token fine of Rs. 100.

Respondent was spared imprisonment as information extracted by her was provided only to police and courts and not published in public domain



INTERNET

Super Cassettes Industries vs MySpace Inc 2011 (48) PTC 49 (DEL)

Section 79 of the Information Technology Act, 2000 does not protect 'intermediaries' against copyright infringement claims. MySpace allowed users to upload works in which Super Cassettes had copyright on MySpace website.

The works added by users would be saved in MySpace database and MySpace would take license to add, delete and modify the works and thereafter communicate the work to the public alongwith advertisements or after obtaining sponsorships.

Court held that this amounted to prima facie infringement of copyright under Section 51 (a) (ii) of the Copyright Act and restrained MysSpace from dealing with Super Cassettes' works.

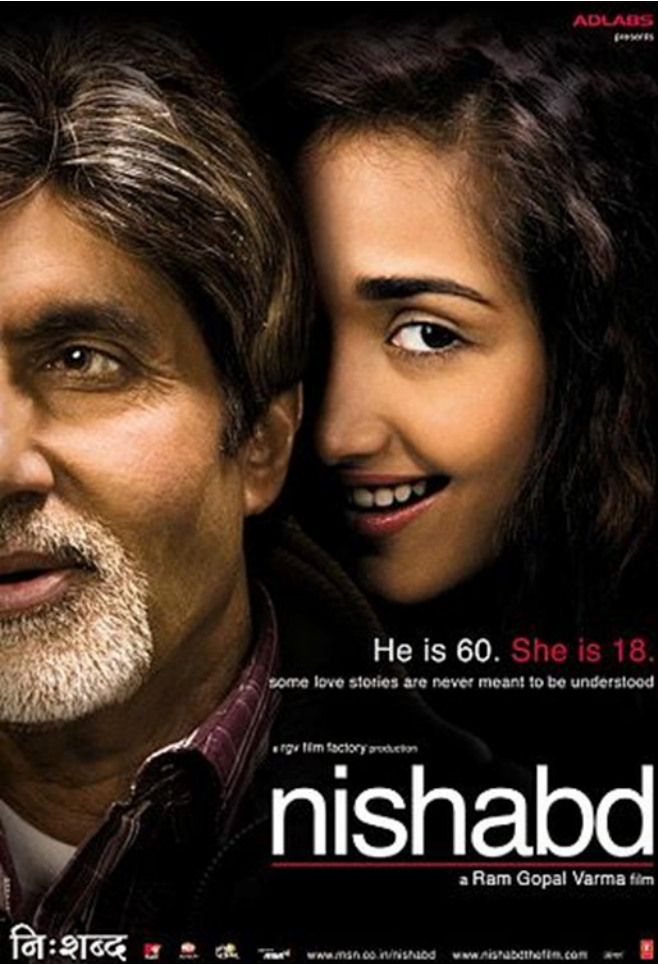


Biswaroop Roy Choudhary vs. Karan Johar

Delhi High Court - July 28, 2006

The court refused to grant interim relief. It held that neither of the parties had authored or conceived the words/catchy phrase, Kabhi Alvida Naa Kehna, since it is a part of a popular film song





Kanungo Media (P) Ltd v RGV Film Factory

Delhi High Court - February 27, 2007

The court while refusing to grant injunction to the Plaintiffs observed that there was delay on the Plaintiff's part to approach the court. The action also failed because the Defendant's film had acquired much more publicity than the Plaintiff's film as the latter's film was a documentary in Bengali language made for the viewership of a particular category.





**Narayani Production and another Vs. Prakash Jha
Production and Others**

Bombay High Court - August 28, 2013

The Hon'ble Court was of the view that the Plaintiffs were themselves to be blamed for having lost their registration to the title "Satyagraha" as they were negligent in getting it reregistered



Sai Paranjpaye v/s PLA Entertainment Pvt. Ltd. and others

Bombay High Court - April 4, 2013

The Court found the balance of convenience in favor of the Defendants and rejected the ad-interim application of the Plaintiff. The Court held that the Plaintiff is guilty of

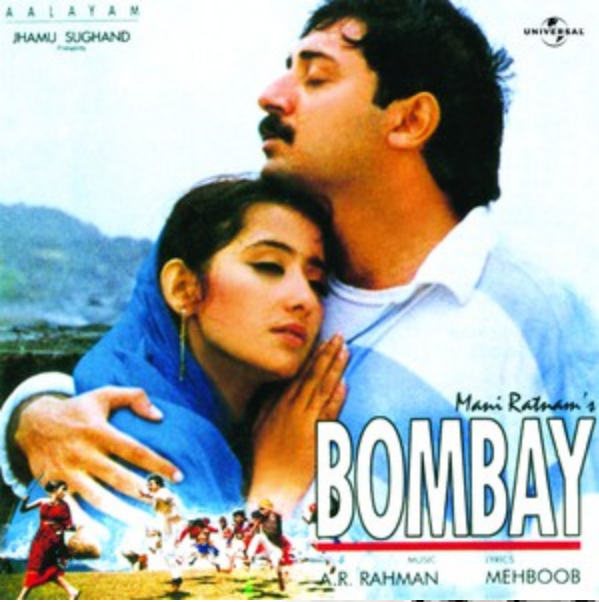


Ram Sampath v Rajesh Roshan

Bombay High Court - April 9, 2008



The court held that the Defendants' work infringes the copyright of the Plaintiff on the grounds that an expert feels that The Thump track and the aforesaid four songs share the same musical cadence, rhythmic structure and phrasing, genre of music and melodic structure; There is a tacit admission by the defendants that the songs contain



Shri Raghvendra Films v Govt. of AP

Andhra High Court

April 7, 1995

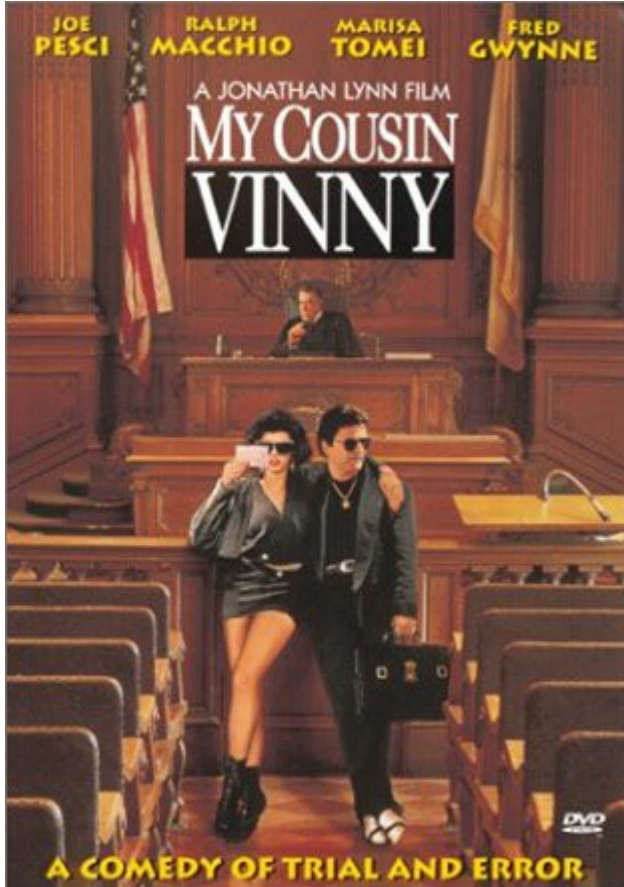


The court quashed the suspension orders and held that no reasonable person could form opinion that exhibition of film would cause breach of peace and created religious animosity and hatred between different communities. Film Censor Board had issued certificate for unrestricted public exhibition after satisfied that no part of film was against interests of sovereignty and integrity. Standard from film had to be judged that of an ordinary man of common sense and prudence and not that of out of ordinary or hypersensitive man or point of view of religious fanatic.



Barbara Taylor Bradford v Sahara Media Entertainment Ltd

The court held, “The Copyright Law does not protect basic plots and stock characters. In 2013, it granted such protection, four or five writers writing 15 or 20 novels with stock characters and stock plots could stop all writers of pop literature from writing anything thenceforth.” The court observed that the Appellant-Plaintiff had failed to establish a prima-facie case as copyright infringement could not alone be established on the borrowing of some characters and plot. The court held that the balance of convenience was in the favor of the Respondents-Defendants as they had expended a great amount of money on the said serial.



Twentieth Century Fox v BR Films and Anr.

The Plaintiff filed a suit on May 7, 2009, for Bombay High Court August 5, 2009, for copyright infringement against the Defendants claiming that the Defendant's film, *Banda Yeh Bindaas Hai*, was an unofficial remake of their film, *My Cousin Vinny*. Plaintiffs sought an Injunction against the release of the film, *Banda Yeh Bindaas Hai*. The parties settled the matter out of court and the consent terms were recorded by the court.

