

# LEGALFOXES LAW TIMES

## INFRINGEMENT OF CINEMATOGRAPHIC WORK UNDER THE INDIAN COPYRIGHT LAW

The constant and rapid technological advancement and the easy availability of the internet has made it easier for a person to steal someone's innovation and creativity. With easy access to the internet, piracy and copyright infringement are the biggest threats to someone's creativity. It is said that a creative mind should not be imitated by others. It is becoming very simple for a person to use someone's creation in an unauthorized manner and use it for profits. Hence, a need of Intellectual Property is needed.

Copyright is a form of an Intellectual Property. Copyright refers to the right of an original work by an individual. A copyright helps the copyright holder to freely make reproduce his own work in a hassle-free manner without of threat of his work being misused by the hands of a outside party. Thus, copy right protects the original work of a person. The Copyright Act, came into force in 1957 and has been amended six times since then, the most recent amendment being in 2012.

**Section 14** of the `1957 Act defines Copyright as “an exclusive right by the virtue of, and subject to the provisions of this Act” to do and authorize the doing of any number of prescribed act in relation to literary, artistic and dramatic works and to cinematograph films and records.

Under **Section 13** of the act, a Copyright is given only to original works and are given a protection of 60 years.

**Cinematograph Film :**

*“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 by any process analogous to cinematography including video films [Section 2 (f)].*

To protect a cinematography from others misusing and publishing under their name and reaping mala fide rewards, it is advised that one should always register their cinematography with the Registrar of Copyrights. It is very important for one to get a copyright for their original work so that there is a legal evidence of their ownership and they can file a lawsuit against any party that infringes the copyright. Along with that, a registered copyright creates a public record and the copyright holder is entitled to reap royalty for lawful licencing by others.

### **Procedure of obtaining a Copyright for Cinematography :**

### **Copyright infringement of a Cinematography :**

Copyright infringement occurs when any of the following occur: unauthorised use of the exclusive rights of the owner of a copyright whether in relation to the whole or a substantial part of the copyright work; permitting a place to be used for infringing purposes on a profit basis; and displaying or exhibiting in public by way of trade or distributing for the purpose of trade or importing infringing copies of a work.<sup>1</sup>

In the case of **R.G Anand V/s Deluxe Films 1954 ( AIR 1978 SC 1613 ) –**

The Plaintiff had written a play named ‘Ham Hai Hindustani’ which became very popular and gained huge audiences over time. The defendant, Mohan Sehgal, who wished to make a movie on the adaptation of this play had discussed this idea with the plaintiff. The plaintiff and the

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<sup>1</sup><http://www.legalserviceindia.com/copyright/Cinematograph-Films.htm>

defendant did not commit upon anything. However, the plaintiff later came to know that the defendant had later made a movie 'New Delhi'. The plaintiff was of the opinion that, after watching the movie he could realise concrete similarities between his play and the movie.

He was of the opinion that the movie was based on the story of his play and filed a suit for permanent injunction and damages. His plea was rejected by both the District Court and the High Court. On approaching the Supreme Court, the Supreme Court held that –

*“Where is the theme is same but is presented differently, there cannot be copyright infringement of any kind. here can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, way and course of action and articulation of the thought by the creator of the copyrighted work. On the off chance that the duplicating considerable and material, at that point an issue of copyright can be raised”<sup>2</sup>*

Abiding to these principles, the Supreme Court was of the view that there was no violation of copyright. If there are broad dissimilarities along with similarities, it negates the intention to copy the work. Since, there is no substantial or material similarities between the play and the movie, a copyright cannot be infringed. This case is an important precedent under the Indian Copyright Law as it clarifies the essentials of a cinematographic copyright infringement.

### **Remedies of Cinematographic Infringement :**

**Section 51** of the Copyright Act deal with a variety of acts that infringe a copyright -*According to Section 51 copyright of a work shall be infringed when any person without a proper licence from the owner : (a) does anything, the exclusive right to do which is conferred upon the owner by the Act; (b) permits to use any place for the performance of a copyrighted work in public for profit, unless he was not aware or had no reasonable grounds for believing that such performance would be an infringement of copyright; (c) makes infringing copies for sale or hire, or selling or letting them for hire; (d) distributes infringing copies either for the purposes of trade or to such an extent as to affect prejudicially, the owner of copyright; (e) by way of trade*

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<sup>2</sup><https://www.asialaw.com/articles/copyright-infringement-in-cinematographic-film/arwumbcr>

*exhibits in public; (f) imports infringing copies, except for the private and domestic use of the importer.*

The Copyright Act places upon the infringer a civil or a criminal remedy. Civil remedy comes in the form of an injunction, rendition and compensation to the infringing party. Civil Remedies are covered under **Section 55** of the Copyright Act. Criminal remedies are much more severe than civil remedies and come in the form of fines, imprisonment and destruction of the infringed material. **Section 63** of the Copyright Act makes infringement of a copyright a criminal offence.

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### **Civil Remedies :**

The plaintiff has many civil remedies at his disposal –

1. Interlocutory Injunction - An Interlocutory Injunction is given by the court to prevent or stop the parties to case from doing or rendering any act before the final judgement of the case. It is different from an interim order.
2. Anton Pillar Orders : Anton Pillar Orders were first issued by the court in the case of Anton Pillar AG v/s Manufacturing Processes. Anton Pillar Orders are issued when the court is of the view that there is a prima facie case against the defendant. Along with it must also be satisfied that the possible damage to the plaintiff is grave. Anton Pillar Orders restrain the defendant to from damaging the infringed goods or materials. They also give the plaintiff's lawyer to visit the defendant's premises and lawfully seize the infringed goods.
3. Pecuniary Remedies- Pecuniary remedies are in the form of cash or equivalent. The owner of the copyright is entitled to compensation of the profits made by the defendant via unauthorized use of his work.

### **Criminal Remedies :**

Under Section 63 of the Copyright Act, a person who knowingly infringes or abets the infringement of a copyright commits a criminal offence.

1. Minimum punishment of six months, which can extend upto three years.

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<sup>3</sup><https://www.ssrana.in/ip-laws/copyright-law-india/>

2. Fine not less than Rs. 50,000 which can extend upto Rs.2,00,000.
3. Search, seizure and delivery of the infringing goods to the owner of the copyright.

### **Copyright Jurisprudence in India :**

The case of R.G Anand V/s Deluxe Films set up a valuable precedent under the Indian Copyright Law. The field is constantly evolving in terms of administration of justice for breach of any right under the Copyright Law. Courts have formed an exhaustive regimen for copyright protection through various landmark judgements. Various International Treaties in Intellectual Property have made the protection of IP a priority. India is a member of such International Treaties, mainly the Berne Convention and the Universal Copyright Convention, submitting to the International regimen as well. Moreover, India is also a part of the World Intellectual Property Organization. Thus, it can be said that International Treaties and Conventions help build jurisprudence. Where a treaty is adopted into the domestic law, it becomes binding. Even if the Treaties and Conventions aren't adopted in the domestic law, they set up a valuable precedent in guiding the courts to clarify the grey areas of the subject.

The Delhi High Court, in 2019, set up another valuable precedent in Copyright Law, namely in the case of '*MRF Limited v/s Metro Tyres Limited*'

The plaintiff, for the sale of their tyres produced an audio-visual advertisement which was aired on TV Media as well as on YouTube in June 2015. The said advertisement contained cinematograph work. In October 2016, it came to the plaintiff's knowledge that the defendant, who is involved in the same business of manufacturing and marketing of tyres, had produced similar advertisement. It was the case of the plaintiff that there was a substantial and material similarity between the two advertisements, thus clearly showing the intent of the defendants to infringe the copyright. It was also stated by the plaintiff that other dissimilarities were immaterial and meagre.

The Delhi High Court, while referring to '*R.G Anand vs. Deluxe Films*' stated that the defendants were not liable for cinematographic copyright infringement. The Apex Court of the view that the advertisements did not have any kind of material and substantial similarity between them.

Moreover, the Court was the opinion that there can be a copyright infringement if viewers, after watching both the advertisements are of the view that either one of them depicts the other. The Court further interpreted that to make a copy of the film, does not imply just to make a physical copy of the film by a process of duplication, but it also refers to another film which substantially, fundamentally, essentially and materially resembles or reproduces the original film. Since the Court did not find any resemblance between the two advertisements, the defendants were held not liable.<sup>4</sup>

This case threw light upon the essentials of Copyright Infringement, reiterating the importance of material and substantial reference with the original work. There have been many other divergent cases regarding the scope of cinematographic copyright protection, but this most recent and a landmark caseset out the cloud cast upon the fundamental essence of Cinematographic copyright infringement.

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<sup>4</sup><https://www.mondaq.com/india/copyright/859832/copyright-infringement-in-case-of-cinematographs-analysis-of-mrf-limited-vs-metro-tyres-limited>