

## INTELLECTUAL PROPERTY RIGHTS IN MEDIA AND ENTERTAINMENT: ISSUES AND CHALLENGES

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### Abstract

Intellectual property is intangible but is often valued higher than tangible assets. Be it a song, an invention or the exclusive right over a particular scheme of colours, the ownership of intellectual property does not only provide a monopoly over such property, allowing one to exploit it in exclusion over others but also allows the owner to further assign or license this property, which allows them to monetize it in numerous ways. Media is such a wide area which plays an important role in our lives needs a sort of protection for the work of its people's work. Such protection can be given to media by Intellectual property. Intellectual property protection is used in various fields. There are different kinds of intellectual properties which mean there are different laws dealing with these properties thereby leading to distinct areas of practices which one could choose from or one could choose not to micro specialize and work towards developing skills pertaining to all fields of intellectual property. IP has a lot to offer, it is up to you to select what you would like on your plate.

**Keywords:** *Media, Entertainment, Intellectual Property Rights, Issues, Challenges*

### Introduction

The firm's Entertainment, Intellectual Property & New Media practice reflects a solid understanding of the business issues and creative challenges resulting from the convergence within the entertainment, hi-tech, gaming and new media industries. The firm's clients include television and film production and distribution companies, talent agency and management firms, and individual musicians, actors, celebrities, writers, producers, and directors.

The ownership of any creation of the mind or ideas or designs by a person is known as Intellectual property. IP can be categorized into many types but the most widely used IP are patents, trademarks, copyrights and trade secrets. A right granted to a person for his/ her invention is called a patent. It prevents usage of one's invention by others illegally. The inventor can sell, use, distribute, create, import or export their invention for over 20 years once his/ her work is patented. "A person has an entitlement to an invention if that person's contribution, either solely or jointly with others, had a material effect on the final concept of the invention". Intellectual property is very important for protecting one's innovation. If IP is not in use there are high chances for many individuals and businesses to lose their rights to their innovation.

## Media

The storage and delivery of information or data through various modes like radio, television, mobile phones, magazines, newspapers, internet etc., are referred to as media. The information is disseminated as films, news, music, promotional messages etc., Since media consists of artistic work from one's own knowledge, an individual must protect his/ her work through media. There is how IP plays a very important role in protecting the works of media.

### **The key issues relating to broadcasting rights and media rights are:**

- novel content.
- rights of the owner.
- remedies for infringement.
- just use and remedies or defenses.
- broadcasting, moral and performance rights; and
- border controls to prevent infringing copies and materials from entering the country.

Because India is a party to the Berne Convention and the Agreement on Trade-Related Aspects of IPR, protection of copyright is extra territorial. In India, a copyright registration is not required to obtain protection. In addition, common law rights such as personality and commercial rights are protected by courts.

## Issues and Challenges

Indian media and entertainment industry may face the legal challenges of Intellectual Property rights (IPRs) laws and cyber law of India. IPRs laws like copyright, trademark, etc. may be frequently violated and occasionally invoked to redress IPRs violations of media and entertainment industry in India. Similarly, online IPRs issues like domain name disputes may also be agitated in the future. Similarly, media and entertainment industry must keep in mind the mandates like "cyber due diligence" and other provisions of Information Technology Act, 2000.

Media and entertainment industry will face technological challenges in future. For instance, the issues pertaining to digital preservation of entertainment industry products may assume significance in future. Dispute resolution of media and entertainment industry is of paramount importance in India.

With the growth of media and entertainment industry in India there are also increasing cases of disputes as well. A majority of these disputes pertain to intellectual property rights (IPRs) issues.

Disputes prevention and resolutions in the film and media industry of India Disputes prevention and resolutions in the film and media industry of India is still evolving. We have to devise methods like Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) in this regard. Surprisingly, Asian Film and Media Industry are not considering utilising the Services of WIPO in this regard. Asian companies prefer to utilise tradition litigations methods instead of alternative dispute resolution (ADR) or online dispute resolution (ODR). Perry4Law Techno Legal Base (PTLB) has opened a techno legal ODR platform where ADR and ODR is used for resolving all sorts of commercial and civil disputes that can be resolved using ADR and ODR. PTLB would cover this issue subsequently in its other posts.

Sports, media and entertainment law covers a wide range of traditional legal disciplines, including intellectual property laws; telecommunications and Internet law; First Amendment rights; and legal issues regarding the news media and the entertainment and sports industries. Students interested in this area should consider obtaining a solid grounding not only in business law and intellectual property law (especially copyright and trademark) but also in some of the business issues affecting the industries involved in creative and artistic work, such as the motion picture, television and music industries.

The world of media and entertainment continues to grow and evolve, and offers exciting and sophisticated legal and business challenges. The entertainment law field spans different areas, including movies, television, book publishing, multimedia, and music. Increasingly, attorneys specialize in one or more of these fields. Entertainment and media clients can include large corporate entities, as well as individual talent and content creators of all types. Career opportunities for entertainment lawyers can therefore exist “in-house” with many types of employers, such as publishing houses, recording studios, motion picture companies, TV studios and cable networks, telephone companies and software developers. Media and entertainment lawyers may also represent recording artists, composers, authors, directors, songwriters, actors, designers, executives, real estate developers, hotel franchises, museums, educational institutions and all other businesses in the communications, media, entertainment, merchandising and retail industries.

Media and entertainment lawyers perform a variety of services, including the opportunity to:

- Negotiate talent agreements for movie and TV stars.
- Structure agreements for executive producer, producers, show runners and staff members for motion pictures and television.
- Advise and represent clients in rights pertaining to literary, format, and all other forms of rights acquisitions and licenses connected to all media.
- Negotiate employment agreements for entertainment industry executives, talent agents and managers.
- Represent composers and music libraries in acquisitions, licenses and general legal concerns.
- Negotiate and draft agreements for licensing, recording, distribution and merchandising for music performers, composers and labels.
- Counsel on online digital components of celebrity television network deals.
- Advise on online and digital components of multiplatform television production/exhibition agreements.
- Represent clients in cybersquatting protection issues and claims.

There is a frequent cross-over between entertainment litigation and transactional work because threatened or pending litigation in the entertainment industry is often resolved by entering into a new business deal. Clients in the industry tend to look to their lawyers to help them with everything from soup to nuts. If you are representing talent, the clients tend to see you as their personal lawyer and they come to you with all of their problems -- contract issues, media problems, stalkers, criminal issues, neighbour problems, profit participation issues, manager or agent problems, and so forth. "Entertainment law," therefore, is typically a combination of various legal disciplines (contracts, torts, intellectual property) applied to a rather complex and insular industry.

A major trend which has been creating disruption in the entertainment world, both intellectually and financially, for the past 15 years is the digitization of intellectual property. Digitization has raised a number of fascinating and complex legal issues, including piracy, ownership and distribution rights, and the application of international law to a variety of disputes. Digitization has changed both the legal

rules and the business and financial landscape in the entertainment industry. These changes have been happening both fast and incrementally, which has kept the industry in a continual state of turmoil and adjustment for some time.

Entertainment litigation is also a thriving practice. Examples in the film industry include conflicts over initial rights acquisitions, the engagement of talent, motion picture production, exploitation and distribution, copyright and trademark disputes, editing rights, right to final cut and writer's credits. In the television industry an entertainment litigator may handle disputes between actors, production companies and broadcast and cable networks. With respect to the music industry, matters may include representing performers, composers and songwriters, music publishers and record labels in copyright, royalty and other litigation arising out of the exploitation of sound recordings and musical compositions.

Media law practitioners generally have a First Amendment practice and represent publishers, broadcasters, media trade associations, as well as national media. They may provide prepublication review, libel and privacy advice, protection of newsgathering and editorial processes and related services for a range of clients. Some may have a specialized media law litigation practice and may represent international, national, and local publishers, broadcasters, online content providers, reporters, authors, businesses in a variety of disputes involving how information is collected, disseminated and used. Examples include defense against defamation, invasion of privacy, and related claims, prosecuting public records litigation under the Freedom of Information Act and responding to civil, criminal, and grand-jury subpoenas seeking testimony from reporters.

Sports lawyers represent sports leagues, agents, players, producers, promoters and a variety of other sports-related entities. They may advise buyers and sellers of sports teams, negotiate contractual and IP rights for players, and negotiate stadium and arena leases or development agreements. Sports lawyers need broad interdisciplinary skills to resolve the business issues and disputes that affect clients in these highly competitive entertainment and media markets. A sports law practice group in a firm may include a number of lawyers with experience in sports matters who have different areas of specific expertise: for example, transactional, tax, labor, litigation, antitrust, real estate, bankruptcy, franchise law, IP and new media. They may handle financings and securitizations as well as bankruptcy and insolvency proceedings. In addition to television, cable and radio broadcast agreements; sports lawyers

may handle licensing, sponsorship and marketing agreements with a focus on e-commerce over the Internet and broadband networks. Electronic commerce has created a wide range of new legal issues for sports lawyers, such as the relative rights of telecasters and Internet providers, website "linking," and Internet taxation.

Litigation involving sports-related entities and individuals can include a broad spectrum of legal issues, from criminal law to various common law torts that may range from personal injury to injury to the reputation. Sports lawyers may have to defend their clients against U.S. antitrust proceedings or investigations by European domestic regulatory bodies. They may conduct internal investigations for their clients (for example, regarding player misconduct), provide advice with regard to collective bargaining, and handle other labor and employment law matters (for example, sexual and racial discrimination matters, or the application of the disability laws).

### **Intellectual Property Rights**

Intellectual property is a term used to encompass the rights which may result from intellectual activities in the industrial, scientific, literary and artistic spheres and includes patents, trademarks, commercial names and designations, industrial designs, geographical indications, copyright and related rights and protection against unfair competition (Mauritius Research Council 2003, 1). World Intellectual Property Organization stated that Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce (WIPO n.d, 2).

Intellectual property refers to a number of different types of creations of the mind for which a set of exclusive rights is recognized. Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols and designs. Intellectual property rights however encompass copyrights, trademarks, patents, industrial design rights and trade secrets depending on the jurisdiction. Although copyright laws protecting intellectual property are considered territorial and restricted to the territory of their origin, most countries are parties to at least one or more international copyright agreement (Boundless, 2015).

### **Film Production Intellectual Property Challenges.**

The entertainment industry's core product is intellectual property – mainly copyright. If you want your film to see the light of day without you being named a defendant, you need to consider how this right will be handled.

Copyright is at a crossroads: it must adapt to the increasing demand for legitimate online access to protected works, especially music, but also materials used for research and distance education such as scientific texts. Otherwise, peer-to-peer technology and other forms of online transmission and exchange may sound the death knell of copyright. The answer will depend in large part on how fast the so-called "content industries" are able to provide business models in tune with the demands of the various user communities. Chances are that copyright will survive. However, the way in which it is used and administered will have to change. The traditional exclusive rights to prohibit use of protected material seem almost impossible to apply in the Internet age. Yet, the copyright "concept" is still the best basis to claim financial compensation and organize markets, two essential tools for creators, publishers and producers.

A copyright is created when an original work of authorship is fixed in a tangible form of expression. No external certification process is required for an author to have copyright protection over the work that the author creates. Registering the copyright does provide additional benefits, such as the right to sue for infringement (registration is required before an infringement suit can be brought), as well as statutory damages and attorneys' fees (if the copyright is registered before infringement occurs). Copyright provides the author the exclusive right to reproduce the work, prepare derivative works based on the work, distribute copies of the work, perform the work publicly and display the work.

In film, the script is an obvious example of a copyrighted work, and often first in the chain of title for any production, whether it's a one-minute short or an epic four-hour drama. When the scripted production is shot, one is preparing a derivative work based on the script. If the holder of the script's copyright is not the same one creating the motion picture from the script, those shooting the film need to obtain permission from the script's copyright holder to legally make this derivative work.

In practice, the production company will typically purchase the copyright in the script so that it has all of the rights associated with exploiting the script in its many forms. A production company

should also consider whether the script infringes the copyright associated with another work. Typical measures to avoid such an issue would include doing a Copyright Office search and having the copyright holder make certain representations and indemnify the company for any such breaches. Note that copyright is only validly transferred by a signed, written agreement.

The Internet is therefore forcing the rightsholder community to look for ways to ensure that they are adequately compensated for the use of their works and able to recoup the investments necessary for the production and distribution of copyrighted material in a way that does not alienate users. This can be done within the existing framework but with a shift from the current exclusion paradigm to a "compensation" paradigm, at least once a work has been made available legally. Territoriality and time-delayed releases on a country-by-country basis may become an illusion. The world is one and it is the only market.

The perception that the Internet can only be a threat to authors and content providers is false. Several large publishing houses now offer very high-quality content over the Web. For example, readers of scientific, technical and medical literature can find thousands of high-quality journals offered online, usually in addition to the print. Users seem to prefer the new format, which often includes material that could not be made available in the paper edition, such as 3D images that can be manipulated, and complete scientific tables or calculation results. Hundreds of magazine publishers are following the same path, and major newspapers in many countries are available online in full text, often on the same day as or before the paper publication. One major advantage of e-content is that it can be word-searched and previously unavailable archives are often searchable as well.

Business models for providing/delivering content online vary greatly. One model is that of material made available for "free," which can be searched and downloaded without identifying oneself. These models are often advertisement-based and do not work for high-value content. This is not the only model, however. In other cases, users are required to register. This process provides content owners and service providers with valuable demographics and allows them to compile possible e-mail lists for future direct marketing efforts. Sometimes only an abstract or a few seconds of the song or a film "trailer" are available to illustrate the content, but fees are charged to download/view/listen to the complete work. Another possibility, currently in use mainly in the text



world, is the subscription model. This may consist of a subscription to the electronic version only or an e-subscription combined with a paper subscription (in some cases, the electronic version is offered as a bonus for subscribers to the paper version).

Most providers require users to accept a "mouse-click contract" containing terms and conditions limiting what the user can legally do with the material. Such restrictions typically limit use to a single user, who is allowed to read, listen, watch, and possibly print, a single copy. Redistribution or reuse of the material is generally prohibited, except in a super-distribution model where a user can forward a copy to a third party who in turn has to obtain a license key to use the content.

In the world of newspaper, journal and magazine publishing, electronic delivery is mostly based on an "honor" system supported by law and contract, not technological measures of protection. Other industries, especially music and film, want technical solutions, such as digital containers and encryption systems, to enforce their copyright and the terms and conditions of user contracts. One of the most basic questions rights holders and content providers must ask themselves is what their priority is: to minimize unauthorized uses (appropriate in some cases of mass unauthorized reuse) or to maximize authorized (paid) uses?

Today, it's also a very difficult problem for film producers to protect themselves from piracy and illegal movie downloads. Everingham explained that while there was some success in fighting the early file sharing entities such as Napster and Grokster, modern BitTorrent technologies have made it harder for film and television producers to protect themselves from illegal downloads. The challenges posed by the very old, the traditional knowledge, and the very new, the Internet, are oddly identical in the way they test the adaptability of the exclusive copyright right to exclude others from using material already made available. A second challenge, only applicable to traditional knowledge at this time, but which concerns both patent and copyright laws, is the need to grant rights to amorphous subject matter "owned" by a collectivity or community. Intellectual property should be adapted, not to exclude others from using creations or innovations, but rather to ensure proper recognition of authorship and appropriate, market-based compensation of the rightsholders concerned.

In the case of traditional knowledge, this task is very complex. First, certain forms of traditional knowledge such as beliefs or methods are not proper subject matter for intellectual property protection, and the policy reasons that underpin the exclusions of these categories of traditional knowledge are probably unshakable. However, most forms of traditional knowledge are excluded for seemingly benign reasons, such as the passage of time (public domain) or the fact that no identifiable author or inventor can be found.

Intellectual property laws have always played a major role in protecting creative minds specially copyright and trademark. The copyright law mainly protects the literary works of the author from misuse or use without consent for commercial gain. The trademark law on the other hand accords protection to any signs, goods or services. Intellectual property has paramount importance in the media and entertainment industry as it gives the necessary protection thus preventing the misuse of their work and accelerating the business growth.

In the digitized era, Intellectual property plays a more significant role. As more and more content has been being uploaded online, disputes such as copyright piracy are rising. The work of the authors and artists needs protection after they have been created to avoid its misuse by other persons. The role of Intellectual property law comes into play at this stage which has been performed to the best of effect since its inception. It has been amended from time to time to resolve the issues which crop up relating to the rights of the creator in the modern era

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