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Celluloid Chronicles: Exploring Cinema and Copyright over Films Across Borders in India, the US & Germany

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The paper examines the intricate relationship between cinema and copyright law, focusing on the jurisdictions of India, the United States, and Germany. As cinema has progressed from film to the digital age, copyright law has played a pivotal role in shaping its development, regulation, and protection.

The research delves into the historical, political, and legal contexts of cinema and copyright law in India, the US, and Germany through a comparative lens. Each jurisdiction presents unique challenges regarding the protection of creative expression and the role of the State in protecting films. Examining the historical evolution of legislative provisions and industry practices seeks to elucidate the evolving dynamics between filmmaking and copyright law. The Doctrinal and Comparative methodology is applied to critically analyse how cinema progressed from inception when Copyright Laws did not recognize films as separate copyrightable work to the era when the film industry was permeated with a plethora of infringement disputes and films found their place as separate work under the Copyright Laws and a few recommendations that Indian Copyright Law can incorporate to bring the legislation at par with other jurisdictions.

Keywords: Cinema, Filmmaking, Copyright Law, Cinematograph Film, Originality

The evolution of cinema is a rich tapestry woven with technological advancements, cultural shifts, and artistic innovations. From its humble beginnings as a novelty spectacle to its status as a global entertainment industry, cinema has undergone remarkable transformations over the past century. Cinema and copyright law share a complex and intricate relationship, shaped by the need to balance artistic expression, creative innovation, and legal protection. This relationship has evolved alongside advancements in technology and changes in societal norms. From the early days of silent films to the digital age of streaming platforms, copyright law has played a crucial role in shaping cinematic works' production, distribution, and consumption.

At its core, copyright law provides creators of original cinematic works with exclusive rights to control the reproduction, distribution, and public performance of their creations. This legal framework incentivizes filmmakers to invest time, effort, and resources into producing new and innovative content by granting them the ability to monetize their creations and protect them from unauthorized use or exploitation.

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However, applying copyright law in the context of cinema is not without its challenges and complexities. Overall, the relationship between cinema and copyright law is multifaceted, reflecting the dynamic nature of artistic expression and legal regulation. As technology evolves and cultural norms shift, the challenges and opportunities faced by filmmakers and copyright holders will continue to shape the future of cinema and its relationship with copyright law.

A discussion on the evolution of cinema offers tremendous insights into the growth of cinema and the position of creators vis a vis the role of the state in promoting cinema. The relationship between cinema and copyright became much stronger post World War II, earlier identification of rights associated with different stakeholders was not much appreciated as the focus was more on control of the state over film distribution, censorship, invoking patriotic feelings and whatnot. Much later, the focus shifted to the rights of creators giving rise to stronger Copyright protection in domestic laws.

The Development of Cinema

The origin of cinema can be traced back to the late 19th century, with the invention of motion picture cameras and the pioneering experiments of

filmmakers like the Lumière brothers and Georges Méliès.[1] These early filmmakers dazzled audiences with short films that captured everyday scenes, exotic locales, and fantastical narratives.[2]

The silent era of cinema saw the emergence of iconic stars such as Charlie Chaplin, Buster Keaton, and Greta Garbo, whose performances transcended language barriers and captivated audiences worldwide.[3] Silent films relied on visual storytelling techniques, including intertitles and expressive gestures, to convey emotion and narrative.

The advent of sound in the late 1920s revolutionized the medium, allowing filmmakers to incorporate dialogue, music, and sound effects into their productions.[4] This technological breakthrough ushered in the golden age of Hollywood, with studios producing lavish productions and establishing the star system as a cornerstone of cinematic marketing. The French New Wave, Italian Neorealism, and Japanese cinema of the 1950s and 1960s introduced audiences to innovative storytelling techniques and existential themes.[5]

The late 20th century brought further advancements in technology, including colour film, widescreen formats, and computer-generated imagery (CGI), transforming the visual aesthetics of cinema and expanding the possibilities of storytelling. Blockbuster franchises like Star Wars, Jurassic Park, and Titanic shattered box office records and solidified the global appeal of Hollywood cinema.The digital revolution of the 21st century has democratized filmmaking, enabling independent filmmakers and amateur auteurs to create and distribute their work with unprecedented ease. The proliferation of streaming platforms, social media, and video-sharing websites has disrupted traditional distribution models and diversified the content available to audiences.

As cinema continues to evolve in the digital age, questions surrounding copyright, intellectual property rights, and access to content remain paramount. Filmmakers, distributors, and policymakers grapple with issues of piracy, licensing agreements, and cultural representation in an increasingly interconnected and competitive landscape.

In summary, the evolution of cinema is a testament to human creativity, ingenuity, and imagination. From the Lumière brothers' first motion picture to the latest blockbuster release, cinema reflects our collective dreams, fears, and aspirations, shaping our perceptions of the world and inspiring generations of audiences around the globe.

The History of Filmmaking in India, the US, and Germany varies in Approach and Execution

The process of making films was largely uniform worldwide.; the shows were usually in the form of a series of visuals moving images. With the advent of technology, the film transitioned from silent to talkie. However, the evolution and the factors behind filmmaking were strikingly different, particularly in the German film industry, which evolved as a part of the state agenda to invoke patriotic feelings amongst the masses.[6] In Germany, the cinema industry was largely under state control, while Indian cinema emphasized art and entertainment, and the US film industry leaned towards commercial ventures and entrepreneurship.

Before World War I, European cinema, especially that of France and Italy, was at the forefront in terms of production and the establishment of studios and theatres. The French Lumiere brothers invented the photographic equipment called "Cinematography", which was used for making films and was launched in 1895.[7] Europe was leading not only in production but also in technological advancement. However, during the world war, the chemical that was used for production was also required for producing gunpowder, which eventually led to the decline of European cinema as stated by some scholars.[8] However, some scholars cite financial reasons for such a fall.[9]

The American cinema saw tremendous growth and by the end of the War, they had stretched their control across Europe, Asia and Africa.[10] Before World War I, Germany was one of the leaders in the construction of film theatres. However, the German film industry did not produce many films and relied heavily on imported films, which was seen as a threat by the then military leaders, when anti-German propaganda films started flooding it. Consequently, in 1917, the German production, and distribution companies were merged into the government-run subsidised association Universum Film Aktiengesellschaft (UFA).[6] After Germany's defeat in the war, the UFA was transferred to private control and became the single largest studio operating in Europe and the rest is history.[8]

Among the jurisdictions explored, the most fascinating evolution occurred in Germany. It underwent various transitions, initially emerging as a pioneering industry marked by technological

advancements, then transitioning to strict state control with substantial subsidies. Authors were protected under security schemes and provided salaries by the state before eventually being privatized again. However, still several funding schemes still provide financial support to the filmmakers to ensure production and competition in the international market.[11]

Indian cinema has a history spanning more than a hundred years similar to the US or European film Industry. Historically, the US film industry i.e. Hollywood is considered the oldest film industry in the world. Thomas Edison founded one of the oldest film studios in the US, and the oldest theatre in the world, located in Washington, displayed the first motion picture in 1897. However, as per the Guinness World Record, the largest film studio in the world is Ramoji Film City in Hyderabad.[12]

The cinema was introduced to India in 1896, by the Lumiere brothers. Later, Indians started making films dedicated to Indians, which also transitioned from the silent era to talkie over the years. The genre of cinema has been diverse from the very beginning. After the British left, the period was considered the Golden era for cinema since all the discrimination in terms of rights and protection of Indian filmmakers ended. Nonetheless, Indian law is heavily based on UK Copyright law, which was customized for Indian post-independence to meet our specific requirements. Indian cinema was recognized as an industry in 2001.[13] In India, the state's role, in the beginning, appeared in censorship and regulation of the import of foreign films.[14] The study of the evolution of cinema in the US is interesting due to the tussle between the independent filmmakers and the big producers then known as the Patent Company.[15] The producers who held ownership of inventions used their power to exclude independent filmmakers from the market by abusing their power as owners of the invention used for film projection.

The Dynamic Interplay between Cinema, Patent and Copyright Law Top of Form

The growth in business activity in the entertainment industry opened pandora box leading to many legal problems viz. patent infringement, copyright ownership disputes, contractual disputes, censorship, import quota limitation and so on.[16] Issues surrounding censorship and restriction on the import of foreign films in various jurisdictions such as Germany, France, Italy etc. primarily to promote domestic films were at the forefront. The problems concerning censorship and import restriction were more economic than legal.

The patent disputes precede copyright disputes in the entertainment industry. When various apparatus and machines were invented giving rise to increased film activity, the industry became permeated with litigation involving several infringements of patent rights. Thomas Edison applied for his first moving picture patents in 1891. Such inventions later translated into the 'patent wars'; 'the business wars' between the competitors as well as independent film-makers. He objected to the use of picture cameras that were used to throw the picture on the screen since it directly resembled his patented peep show kinetoscopic camera and hence amounted to infringement. Edison filed several infringement suits, the first suit was against the International Film Company in the United States Circuit Court for the Southern District of New York in 1897 followed by several other suits. It is estimated that not less than two hundred actions were filed by Edison, some were successful, and some were not. As the cinema progressed from silent to talkie, more accusations flooded the industry, notably one suit by Orlando E. Kellum against the Warner Brothers, Ic. asking damages to the tune of $180,000,000.

The development of copyright law does not precede that of cinema. The first ever copyright law was the Statute of Anne, enacted in England in 1710 primarily due to the introduction of the printing press in the late 15th century protected only limited work including books, maps and charts for 14 years. Before the passing of the Statute of Anne and similar legislation in other countries, the authorities primarily concerned themselves with censorship. The 1710 Act introduced the idea of ownership and protection of authors' rights for a very limited period with minimal benefit.[17] Most of the court disputes in the initial years were related to books, authors and publishers in most jurisdictions with Copyright legislation.

In the US the Copyright Act of 1790 was enacted as the first Copyright law modelled on Britain's Statute of Anne. The first Copyright entry in the US was *The Philadelphia Spelling Book* by John Barry[18] followed by registration of Magnetic Atlas and Variation Chart on June 17, 1790. The first general revision of the Copyright law in the US added musical compositions under the ambit of protected work. The

duration of protection offered was 28 years with renewal for another 14 years. The first musical work registered in the US was on February 23, 1831, for "Maid of My Love" by David L. Richardson and I.T. Norton in the Eastern District of Pennsylvania.[19] Further, in the year 1856, Copyright protection was extended to include dramatic compositions.

Subsequent Copyright Amendments addressed technical developments consequently leading to the enlargement of the protected works under the new Copyright law. *Edison* v *Lubin* was one of the first court decisions regarding the copyrightability of motion pictures.[20] The US Court of Appeals for the Third Circuit decided that the negative of the photograph as well as the projection of the film was a photograph and accordingly motion picture was held to be included within the scope of copyrightable works.

The 20th century experienced a comprehensive Copyright Law through the Copyright Act of 1909, which included the provision of a compulsory mechanical license, allowing the reproduction of musical work without consent for limited acts. It was this Act of 1909 that was further amended in 1912 to extend the copyright protection expressly to motion pictures. Until 1912, motion pictures were not recognized as a separate work but had to be registered as a series of photographs[21], later, the first motion picture 'Black Sleep's Wool' was registered by Republic Film Company on September 12, 1912. In the year 1917, the Supreme Court ruled in favour of a collective society [ASCAP] and ordered the New York City Restaurant to pay royalties for the music they played.[22] The major revision of the 1909 Act came in the year 1976, the Copyright Act of 1976 was signed on October 19, 1976, under the Presidentship of Gerald Ford which extended the term of copyright greatly, to the life of the author plus fifty years and copyright was also extended to unpublished work. The Act defined the meaning of a motion picture broadly to protect a wide range of cinematograph and audio-visual works. One of the oldest cases discussed in the existing literature on copyright infringement was related to the adaptation of a scene of the book "Ben Hur" by producing the motion picture. The Defendants sold the exhibited films, which were held to be an infringement.[23]

Further, the Indian Copyright regime has also undergone several amendments to include and promote copyright protection over cinematograph films. Copyright law was not of much concern to the authorities and stakeholders as compared to censorship and financial issues in the initial days of cinema in India. The Cinematographic Commission of 1927, proposed to visit film centres and interview distributors, and filmmakers to find out ways to promote Indian film exhibitions. The Commission envisioned making Indian films more popular by identifying a potential market for them. The report also highlighted a few copyright-related complaints, i.e. "piracy of films."[24] It was alleged by the exhibitors that the censorship board allowed screening of the pirated movies which interfered with their exclusive contractual rights. More concern was shown for the parallel imports or grey market of the films, however, the Commission noted that the unauthorized importation did not constitute any infringement.

The Commission recommended that Indian exhibitors may add clauses in the contracts with the producers/owners of the film to indemnify them from any harm from unlawful importation of pirated films. Further, the 1951 Report asserted that the issues and challenges of the film industry are not being adequately addressed by the Copyright Law. The Indian Copyright law similar to the U.S. and German Copyright law did not protect films as a separate work, instead, films were protected as a mixture of so many underlying work including photographic work, derivative work, dramatic work etc. Such hybrid treatment caused differential treatment and did not protect the underlying story that ran through the images. Consequently, the producer could not protect the identical story used by another in a different set of images. The 1951 report suggested the registration of film as a whole and the establishment of a centralized agency that could regulate the authors' work as well as mediate disputes. The committee report provided an in-depth status of the film industry in India in terms of exploitation and disputes; however, the proposals were not implemented to the fullest, nonetheless, the current Copyright Act of 1957 does recognize the film as a separate work, which can be copyrighted separately.

Under the German Copyright regime, motion pictures were not initially regarded as copyrightable under the Copyright Act of 1907. Limited protection was accorded to the photographic works for five years after the publication only on registration formalities.[25]

The cinematograph films and TV films were offered uneven protection; there were dual-state

institutions that dealt with them. Although all rights in a film belonged to the authors, they had to transfer their rights explicitly or impliedly to the state-owned institutions or private enterprises, which would broadcast, show or use the films in other ways.[26] However, since there were several authors, the law provided for a representation mechanism wherein DEFA (Deutsche Film-Aktiengesellschaft) acted like a trustee on behalf of authors and became exclusively entitled to grant any right of use in its name to anyone.[27] The legal consequence was that the DEFA could dispose of the rights permanently in favor of any third party. Interestingly, legal uncertainty arose because "authorization to use the rights as a trustee" also expired when in 1990 UrG ceased to be applicable.

The evolution of copyright law for film protection in Germany has been tumultuous. Filmmaking was closely tied to the nationalist agenda, with state ownership and author rights managed by the government. However, the formation, dissolution, and merging of East Germany (GDR) and West Germany (FRG) led to various issues regarding film protection, which were addressed through new copyright legislation. Today, the German film industry follows a typical European model, featuring several large commercial film production companies alongside state and publicly funded television stations.

At the international regime, copyright law remained uncoordinated until the introduction of the Berne Convention for the protection of Literary and Artistic work, in 1886 (hereinafter 'the Berne Convention') in the 19th century. The adoption of the Berne Convention aimed to bring some uniformity across the member states in the context of copyright law. Germany has formally and effectively emhbraced the principles of the Berne Convention. Germany was one of the first countries to sign the Berne Convention. India ratified the Berne Convention in 1928, while the United States joined much later, in 1988, and even then, not entirely in compliance with its principles. For instance, US law does not grant moral rights to the author of all works except the work of visual art.

Policy & Constitutional Objective

The policy objectives regarding intellectual property law differ slightly among the three jurisdictions. The underlying rationale of the US Copyright law can be found in Article 8 of the US Constitution, which aims "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Such guidelines assist the judiciary in decision-making; in clarifying the scope of rights of copyright holders and the boundaries of fair use.

There is an absence of a similar provision in the Indian as well as German Constitution. However, the Indian Constitution in Fundamental Duties under Article 51 A (h) states that "It shall be the duty of every citizen of India to develop scientific temper, humanism and the spirit of inquiry and reform." Both the Constitution of India and the German Constitution, do not explicitly mention intellectual property rights, however, they do refer to "right to property", which may be interpreted to include intellectual property rights. The Constitution of India ensures that "no person shall be deprived of his property save by authority of law".[28] The Supreme Court of India has interpreted the term "property" to include all well-recognized interests which resonate with the characteristics of property.[29] Article 300A is not only confined to land but includes intangibles like copyrights and other IP rights too.[30]

The US film industry from the very beginning was business-oriented; accordingly, the copyright law of the US is inclined more towards protecting the rights of owners rather than authors. Whereas the Indian, as well as the German film industry, was seen more as a cultural and social engagement, to promote creativity and hence the copyright regime of Germany is more inclined towards authors' rights whereas India has taken a middle path. It can be said that the US approach is pro-owner whereas the German approach is pro-author; India has kind of found a middle path and tried to create a balance between the rights of the two, which often gives rise to ambiguity and confusion and shows a lack of ideological basis.

The US copyright law is expressive in terms of the copyrightable works, essentials, rights, and exceptions. For example, the US copyright law states that "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." Nevertheless, this principle is also followed in India but the statute does not mention this anywhere.

Revenue Generation

As per the reports of 2018, Hollywood was the biggest business in terms of generation of revenue with 32.23 billion US dollars. Second place was held by China, Germany at Sixth place with 3.39 billion US dollars and India at Tenth place with 2.34 billion US dollars.[31] In 2020, China succeeded the US in the box office market in the world with revenue of 3 billion US dollars whereas the US stood second with 2.2 billion US dollars and Germany and India with only 0.4 US billion-dollar at fifth and seventh places respectively. At the outset, it can be said that Hollywood films generate the maximum revenue, whereas the German, as well as Indian market, is not as lucrative as the US or China.

The current trends show that India, despite being the largest producer of films in the world and the second oldest film industry, does not generate as much revenue as generated by China, the US and even Germany. One of the reasons for lesser revenue is that India has the lowest ticket prices in the world.[32] In the year 2018, India produced around 1813 films whereas the US produced only 660 and Germany only 353 films.[33] However, the largest gross box office revenue in 2020 has been that of China with 3 billion US dollars, the US with 2.2 billion US dollars and India and Germany with 0.4 billion US dollars.[34]

Contrast of Regulation

The United States, Indian and German Government is organized into three separate branches; the legislative, the executive and the judiciary. In addition, similar to the US, the judicial branch in Germany is divided into two separate groups, the courts for the Lander (similar to states in the US) and a federal court system.[35] In India, instead of two different groups of courts, there is a hierarchy of courts from the District level to the single Apex court. In the US and India, case laws have an important role to play apart from the legislative regime, whereas, in German law, the emphasis is more on the legislative regime as opposed to common law systems.

The German Copyright Law reproduces the provisions of the Berne Convention which is supplemented by other legislation such as EU Copyright Directive 93/98/EEC, Act on the Management of Copyright and Related Rights by Collecting Societies, 2016. The most recent development is the law on copyright in the digital single market, which was adopted by the government in 2021. This new law aims to regulate the work hosted on platforms like YouTube, and Facebook. Such platforms in future will be required to acquire a license for hosting copyrighted content in Germany. Presently, such platforms generally block the content registered by rights holders.

The US Copyright law is tremendously exhaustive, a bundle of legislation governing the copyright including the Copyright Act, of 1976, the Digital Millennium Copyright Act, of 1998, the Music Modernization Act, of 2018 and other related legislations. On the other hand, India has not made much progress in terms of tackling the issues that have arisen due to technological advent. The Copyright Act of 1957 is the only law on copyright that is not equipped enough to face the old challenges let alone the new ones. A comparative chart of statutory provisions is given in Table 1.

The US copyright law exhaustively defines what all work is copyrightable which includes both motion pictures and other audiovisual works, along with the prerequisites that include “originality, work of authorship, fixed in any tangible medium”.[36] The German law mostly reproduces what has been stated in the Berne Convention. Surprisingly, German law does not have a definition or an interpretation clause unlike Indian law and the US wherein several copyrightable works are defined for the ease of understanding the scope of those terms. However, the German Copyright Law does list out what all works are copyrightable which includes “cinematographic work”, Indian copyright law also includes “cinematograph films” as copyrightable.[37]

The Indian law and the US law define the meaning of film; however, the difference lies in the nomenclature.[38] The Indian law uses the term “cinematograph film” similarly German law also uses the nomenclature “cinematograph film” similar to the Berne Convention, whereas the US law refers to a film as “motion picture”. As far as the definition is concerned, the German law as stated does not have a definition clause, and simply replicates the Berne Convention provisions i.e. “Cinematographic works, including works produced by processes similar to cinematography”, includes documentaries and newsreels.

Indian law defines film to include any work of visual recording and sound recording or any work produced by a process similar to cinematography, which is nothing but similar to German law's

Table 1 — A comparative chart of statutory provisions

	The Berne Convention for the Protection of Literary and Artistic Work, 1886	The Copyright Act, 1957 (India)	The Copyright Act, 1976 (The US)	Copyright and Related Rights passed on (Urheberrechtsgesetz, UrhG), 1965 (Germany)
Works Protected	Article 2 paragraph 1 The expression "literary and artistic works" …. "Cinematographic works to which are assimilated works expressed by a process analogous to cinematography…."	Section 13 "Works in which copyright subsists.— Subject to the provisions of this section...copyright shall subsist in…,— (b) cinematograph films"	Section 102 "(a) Copyright protection subsists, … in original works of authorship fixed in any tangible medium of expression, … from which they can be perceived, reproduced, … Works of authorship include the following categories: (6) motion pictures and other audiovisual works"	Section 2 "Protected works (1) Protected works … include, in particular: 6. Cinematographic works, including works produced by processes similar to cinematography"
Meaning of Originality	Article 2 paragraph 3 "Derivative Works Translations…, as original works without prejudice to the copyright in the original work. Article 2, paragraph (5) Collections of literary or artistic works such as encyclopaedias…, constitute intellectual creations shall be protected…such collections."	Not defined only finds mention just like Berne Convention. (3) "Copyright shall not subsist— (a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;"	Originality is not defined but finds an explicit mention in section 102 (a).	Section 2(2) "Only the author's intellectual creations constitute works within the meaning of this Act."
Requirement of Fixation	Article 2, paragraph 2 "It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form."	No mention of fixation.	Section 101 "A work is "created" when it is fixed in a copy or phonorecord for the first time…" "A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration…"	No mention of fixation
Meaning of Cinematograph film	Article 2, paragraph 1 "(1) cinematographic works to which are assimilated works expressed by a process analogous to cinematography."	Section 2 (f) "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 101 "Motion pictures" are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any."	Section 2(1) 6 "Cinematographic works, including works produced by processes similar to cinematography;"

(*contd.*)

Table 1 — A comparative chart of statutory provisions (*contd.*)

	The Berne Convention for the Protection of Literary and Artistic Work, 1886	The Copyright Act, 1957 (India)	The Copyright Act, 1976 (The US)	Copyright and Related Rights passed on (Urheberrechtsgesetz, UrhG), 1965 (Germany)
Duration of Protection	Article 7, paragraph 1 General Rule (I) The term of protection granted by this Convention shall be the life of the author and fifty years after his death. Article 7, paragraph (2) Term of Protection for Cinematographic Works (2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making.	Section 26. Term of copyright in cinematograph films.— In the case of a cinematograph film, copyright shall subsist until 2 [sixty years] from the beginning of the calendar year following the year in which the film is published.	Section 302(a) lifetime of the author plus seventy years after the author's death. Section 302 (b) In the case of work for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation.	Section 65 (2) Copyright in cinematographic works and works produced like cinematographic works expire 70 years after the death of the last surviving of the following persons: the principal film director, the author of the screenplay, the author of the dialogues, the composer of music specifically composed for use in the cinematographic work in question. Section 94 (3) Producer's rights are only for 50 years.

understanding of cinematograph works. Whereas the US law defines a "motion picture" in a more simplified manner to include audiovisual works consisting of a series of images shown in succession that give an impression of motion accompanied by sounds. Out of all, the US definition gives the most appropriate and understandable definition of a film.

Moving on to the requirement of originality, the Berne Convention does not define or expressly state that the copyrightable work needs to be original but does mention in a few provisions that certain work may qualify as original or intellectual such as translations, adaptations, an encyclopedia which is merely a collection of existing work.[39] On the same lines, German law states that it is only the "author's intellectual creation" that qualifies as a work.[40] It suggests that the work created by the author herself qualifies as copyrightable work. The Indian and US law does not define what originality is but does require the work to be original.[41] The judicial approach does help to define the standard of originality required in a respective jurisdiction. Different tests have been propounded and followed to determine the threshold of originality. A general understanding of originality has two aspects, one, it is the author's creation, two, it has some amount of creativity. The level of creativity may vary depending on the nature of the work and the jurisdiction. The test followed in India is "skill and judgement", in the US is "modicum of creativity" and in Germany is the "intellectual creation/individuality test."[42] The threshold of creativity required in India is slightly lower than in the US and higher than in Germany.

Expression is a quintessential requirement of all copyright legislation. It is a well-accepted principle across international laws and domestic laws that the work needs to be expressed to attract copyright protection meaning thereby, it is only the expression of a work that will be protected and not the ideas, concepts, theme, scene a faire and so on. Another facet of expression i.e. fixation finds express mention in US law whereas Indian law and German law do not require the work to be fixed in a particular format. Since the Berne Convention gives that freedom to the member countries to incorporate the requirement or discard it, Indian and German law chose not to incorporate the requirement whereas the US law expressly mentioned the work to be fixed in some tangible medium. Accordingly, it defines at length

when a work is considered as fixed and in what medium it is to be fixed.

Unlike Germany, the US Copyright law does not consider creative contributions to determine authorship, rather financial contribution is determinative of the authorship over a motion picture. Perhaps, the reason producers are considered authors and owners of the motion picture. Along similar lines, Indian Copyright law also identifies the producer as the author and owner of the cinematograph film as a whole.[43] Whereas German Copyright law does not correspond to the system of complete transfer of ownership. Film producers in the German Copyright system are considered licensees for a limited duration of time.[44]

The Berne Convention provides that the work be protected for the life of the author and 50 years after death, however in the case of a film, it gives an option to the member countries to provide that the term of protection expires in case of a film 50 years after the work has been published with the consent of the author, or in case the film is not published, it shall expire 50 years after the making of such work.[45]

The Indian law protects the film for sixty years after the film is published, the rights of literary and musical work are protected for the life of the author plus sixty years.[46] This means that the rights of producers over the film are only for sixty years from the publication date whereas the rights of the authors of script, lyrics, and musical work shall not expire on the expiration of the film right and shall be protected for the life of the author plus sixty years.[47]

The US law protects the rights of authors for their lifetime plus seventy years after the author's death.[48] In the case of work for hire, the copyright endures for a term of ninety-five years from the year of its first publication or a term of one hundred and twenty years from the year of its creation.[49]

According to German law, the duration of protection is the life of the author plus seventy years.[50] In the case of a cinematograph film too, the copyright "expires seventy years after the death of the last surviving of the following persons: the principal film director, the author of the screenplay, the author of the dialogues, the composer of music specifically composed for use in the cinematographic work in question."[51] Whereas in the case of a producer, the rights are only for fifty years.[52]

The duration of protection of the film as far as producers' rights are concerned is minimum in German law and maximum in US law. Whereas the duration of protection of rights of other contributors, such as lyricists, and music composers, is maximum in the US and Germany and less in India by ten years. The rationale for sixty years of protection and not seventy years is not clear when other jurisdictions like Germany and the US are protecting the films for a longer duration. A revisit to the duration of protection will bring Indian law to par with the global standards. The fact that now the film industry is looking at co-production agreements with a foreign jurisdiction, it will be of interest for Indian cinema to bring the law in conformity with these jurisdictions. Given the fact that India is becoming a big market for Hollywood films as well and the Indian film industry is also expanding in foreign jurisdictions, rights on similar lines will make the negotiation easy otherwise, on the "principle of reciprocity", the other jurisdiction might refuse to offer the Indian creators same protection available in their home country. In addition, recently, the justification for putting a cap on the rights of lyricists and music composers is often questioned, that is, how can there be a limit to one's right to property particularly in the context of literary and musical work?

Unlike Indian law, wherein the authorship of the film is conferred only on the producer, German law makes room for authorship in a film for other contributors as well including the principal film director, the author of the screenplay, the author of the dialogues, and the composer of music.[53] The concept of authorship and ownership in the context of the duration of protection needs a revisit partially due to the rationale for limiting the years for protection and due to the international standard.

Further, as far as the registration requirement is concerned, the German and Indian Copyright law does not require any formal registration, which complies with the "automatic protection principle" of the Berne Convention.[54] The US Copyright also does not mandate copyright registration, the work is protected the moment it is created however, it is required that the author registers the work before filing a lawsuit to secure necessary remedy and damages.[55]

Conclusion

The Cinema and Copyright Law share an intricate relationship well-founded in the social, political and legal framework. The humungous growth of cinema

is attributed to several facets including state interest in promoting films as nationalist propaganda, awareness of rights of creators, enforcement of IP rights etc. The Copyright Law in India, the US and Germany have undergone multiple amendments to give films their due credit under the Copyright Law.

The growth in business activity in the entertainment industry opened a Pandora box leading to many legal problems viz. patent infringement, copyright ownership disputes, contractual disputes, censorship, import quota limitation and so on. Issues surrounding censorship and restriction were at the forefront in the initial days. Later, the industry struggled with several patent disputes since inventors and owners created a monopoly in the market over their patented apparatus and machines used to project films giving rise to 'patent wars' or 'business wars'. Copyright discussion started with the issues concerning the copyrightability of films, earlier films were protected as a series of photographs giving rise to several underlying challenges. Several years after the inception of copyright laws, films were recognized as separate works of authorship. Having said that, the Copyright Act of 1957 (India) still needs to be revisited:

- The definition of the author should be amended: Section 2 (d) of the Copyright Act 1957 "author" means, — (v) in relation to a cinematograph film or sound recording, the producer;

The producer should only be considered as the "owner" of the film and not the "author". The jurisprudential basis for according authorship should be not be diluted. In addition, if the Director cannot be regarded as an author then there can be no justification for considering the producer as an author. A producer can only be considered as an "owner".

- The meaning of the copyright should be widened in the sense to include any work that suffices the requirement of originality. So, that Directors or any other creative work can also be recognized as copyrightable.
- In addition, since the law does not require 'fixation' as a pre- requisite to confer copyright, the Directors can safely be protected as an author.
- Accordingly, an amendment in Section 13 of the Copyright Act 1957 should be made: Substitute: "Section 13. Copyright protection subsists, in original works of authorship throughout India and include the following categories:" Delete: "13. Works in which copyright subsists.— (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall throughout India in the following classes of works, that is to say,—"
- A revisit to the duration of protection of copyright in a film and underlying works is required to bring the "term of copyright" at par with jurisdictions like the US and Germany. The fact that now the film industry is looking at co-production agreements with a foreign jurisdiction, it will be of interests for our jurisdiction to bring the law in conformity with these jurisdictions. India is becoming a big market for film investment as well as the Indian film industry is also expanding in foreign jurisdictions, rights on similar lines will make the negotiation easy otherwise, on the "principle of reciprocity", the other jurisdiction might refuse to offer the Indian creators same protection available in their home country.

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