



Ayana Legal

THE BUZZ

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Proposed Amendments

In 2010 major changes were proposed to the Copyright Act. One of the proposed amendments was to include both 'principal director' and producer as joint authors of cinematographic work. The Amendment gave retrospective effect, stating that all directors of films made prior to the amendment would get copyright for a period of 10 years after the expiration of the author i.e. the producers copyright subject to any contract to the contrary. Proposing for films made thereafter that the principal director would enjoy copyright over the cinematographic work for a duration of seventy years from the next calendar year after it's publication.

The 2010 amendments did not come into force. The Parliamentary Standing Committee rejected the proposal to grant authorship to the director.

COPYRIGHT IN CINEMATOGRAPHIC WORK

The Indian Copyright Act, 1957 protects original literary, dramatic, musical, artistic works including cinematographic films. Cinematographic films consist of a bundle of rights due to multitude of aspects involved that go into creation of a film.

AUTHOR

The first owner of the copyright is called the 'author'. With respect to cinematographic work, the Indian Copyright Act recognises the producer as the author. The producer is defined as the person who takes "the initiative and responsibility for making the work." The reason for giving the producer the status of an author was explained in the case of Ramesh Sippy v. Shaan Ranjeet Uttamsingh, the Bombay High Court held that "where a person financed and took the risk of making the work and directed others to do the work for valuable consideration, such person should be the owner of the copyright." The court reasons that because the producer of a film takes the financial burden and risk of making the film he should be the one to enjoy copyright.

In the case of MRF Limited v. Metro Tyres Limited, the Delhi High Court held that the cinematographic film is greater than the sum total of its independent parts and thus, the copyright subsists in the film as a whole.

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Author of underlying works

Recently, the Delhi High Court in the case of RDB and Co. v. Harper Collins Publishers has held that a producer cannot claim a supervening right in the screenplay. That once it is recognized that the copyright existed in the author of the screenplay, any right the producer could claim in the cinematographic work would not either impact or dilute the right of the author of the screenplay. Thus, holding that author Satyajit Ray would be the first owner of the copyright in the screenplay of the film Nayak and not the producer.

Thank You

We at Ayana Legal thank you for your continued support and patronage. We look forward to being back with our next edition soon.

Disclaimer

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SCRIPT

Section 2(y) of the Indian Copyright Act gives protection for literary work which includes scripts. Though the script may be written by a script writer, since the producer of the film is considered the author of the cinematographic work, it is necessary that the producer acquires all rights and title over the script. The rights over the script are assigned to the producer.

MUSIC

Lyrics can be protected under literary work while the musical scores and compositions are protected under musical work. Recordings of the songs are protected under sound recordings and performers rights protects performances made by the singer or musicians. As per Section 13 (4) of the Act, musical work or sound recordings used in cinematographic work will not lose their individual copyright. Hence, the original composers and lyricists will be the authors of such work who then assign it to the producers of the cinematographic work and thus, will be entitled to receive royalties from the use of their work by the assignee.

ACTORS

Section 2(qq) of the Copyright Act, 1957 defines performer and includes within its definition an actor. Section 38A (2) states that if a performer has by contract agreed to the incorporation of his performance into a cinematographic work then he shall not object to the producer enjoying the performers rights with respect to the performance. However the performer can still receive royalties in the commercial use of the performance. Section 38B gives moral rights to performers allowing the performer to be identified as the performer of his performance and “to restrain or claim damage in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.”