

THE HORIZON

IPR SPECIAL ISSUE

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Toils and Turmoil of Media & Entertainment Sector

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Toils and Turmoil of Media & Entertainment Sector

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Introduction

The Indian Media and Entertainment Sector (“M&E Sector”) is one of the fastest growing sectors in the country and is estimated to generate significant revenues to the tunes of approximately USD 35 billion by 2021 at the rate of 11.6% CAGR or even more. At present,

the M&E Sector generates direct and indirect employment of 4 million approximately.

This sector has witnessed consistent innovative technological trends and also increase in digitization and internet usage by the consumers and the content suppliers. The key growth

segments in the M&E Sector are television broadcasting, distribution, print, film entertainment, digital media, animation, radio, advertising, live events etc. Despite this robust growth, the M&E Sector has not been exempt from diverse legal issues, and an extensor discussion of the same would be beyond the scope of this Article.

Some major legal challenges relate to Intellectual Property Rights Laws (“IPR’s”) and Cyber Laws, in particular, violation of copyright. The main focus of this Article would be bringing to the core legal issues pertaining to Copyright Infringement and Copyright Piracy and Ban on Exhibition. The M&E Sector, faces several roadblocks and hardships with respect to protection and enforcement of their rights in the event of any infringement.

The Copyright Act, 1957 (“Act”) is the oldest IPR legislation in India, which provides for copyright protection for and registration of any literary, dramatic, musical, sound recording and artistic work. The Act has undergone several amendments in the years 1983, 1984, 1992, 1994 and 1999 to meet national and international requirements. The latest Copyright (Amendment) Act, 2012 bringing copyright law into compliance with the World Intellectual Property Organization “Internet Treaties”, viz. harmonized the WCT and WPPT.

Copyright Infringement

What Constitutes Copyright Infringement?

The copyright law confers upon the creator of the work, certain bundle of rights with respect to reproduction of the work and other acts, which enable the creator to benefit financially with due exercise of such rights. It ordinarily means the creator alone has the right to make copies of the works created by him/her or alternatively, prevents all others from making such copies.

Infringement means unauthorized reproduction, importation or distribution either whole or of a substantial part of the work protected by copyright. Section 51 of the Act deals with infringement of copyrights, which under the said provision is deemed to be infringed by any person when he inter alia without a license

granted by the owner of the copyright does anything, which is the exclusive right to do conferred by the Act upon the owner of the copyright. Further, Section 2(m) defines the meaning of ‘infringing copy’. To substantiate infringement, the copyright owner must show that: (a) only he/she own the valid copyright, and (b) the infringer has exercised one or more of the owner’s exclusive rights to reproduce, publicly distribute, perform, display or adapt the copyrighted work.

Interpretation of Copyright Infringement by Indian Courts

Indian Courts have laid down certain tests to determine what and which works can be protected under the current regime of copyright law, and hence, only for these works can an author or owner claim protection against infringement.

Key Case Laws

In the celebrated case of R.G. Anand v. M/s. Deluxe films, the Hon’ble Supreme Court opined the following in relation to copyright infringement:

- (a) There 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, manner and arrangement and expression of the idea by the author of the copyrighted work.
- (b) Where the same idea is developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In order to be actionable, the copy must be a substantial and material one, which at once leads to the conclusion that the defendant is guilty of an act of piracy.
- (c) Where the reader or the viewer pursuant to having read or seen both the works is undoubtedly of the opinion and gets an unmistakable impression

that the subsequent work appears to be a copy of the original.

(d) Where the theme is the same but is expressed differently so that the ensuing work becomes a new work, no question of infringement of copyright arises.

(e) Where there are material dissimilarities which negate the intention to copy the original and the coincidences appearing in the two works are clearly circumstantial, no infringement of the copyright is deemed to exist.

As a violation of copyright amounts to an act of piracy, it must be proved by clear and cogent evidence. The Bombay High Court in Zee Telefilms Limited vs. Sundial Communications Private Limited laid down the following two tests to determine copyright infringement.

i. Average Viewer Test: The impression created in the mind of a viewer is vital to this test, if it can be inferred by virtue of the said impression that the subsequent act is a copy of the original act then it is copyright infringement. This test was initially laid down in the R.G. Anand Case. However, the court in Zee Telefilms case reiterated and affirmed the position in R.G. Anand Case.

ii. Substance/Kernel Assessment Test: This test involves assessing the significance of the copied portion on the rest of the work. If the said work in its totality can sustain without the copied portion, then no copyright infringement can be deemed to have occurred but if the plagiarized portion is so integral to the whole work that if it were censored the rest of the work would lose its meaning then copyright infringement has definitely occurred.

Provisions for Online Infringement in the Act and the IT Act

The major enactments that deal with

the online violation and advanced technology of copyrights in India are: The Act and the Information Technology Act, 2000 ("IT Act").

I. Provisions for online infringement in the Act

The following provisions in the Act deal with online issues arising in copyrights in India:

- The definition of computer in section 2(ffb) is wide enough to include any electronic or similar device that has information processing capabilities. Further, section 13(a) and section 2(o) confer copyright in computer programmes and their infringement attracts severe penal and civil sanctions. Computer databases are now included within the definition of literary works, and includes tables and compilations.
- To combat easy transfer of material through electronic means, the Act provides circumstances that amount to communication to the public. Section 2(ff) prescribes that making any work seen, heard or otherwise enjoyed by the public, by any means including display and diffusion, and regardless of whether any member of the public actually sees, hears or enjoys the work; will amount to violation of copyright.
- Any work that is copied or published without the consent of the copyright owner, or otherwise made available to the public, will amount to violation.
- If a person knowingly makes use on a computer of an infringing copy of a computer programme, he/she shall be held liable for punishment under section 63B of the Act.

Provisions for Online Infringement in the IT Act

The following provisions in the IT Act deal with online issues arising in copyrights in India:

- Section 1(2) read with section 75 of

the IT Act provides for extra-territorial application. If a person, including a foreign national is found to violate the copyright of any person by means of a computer, computer system or computer network located in India, he would be held liable.

- Section 43(b) of the IT Act makes anyone who downloads, copies or extracts any data, computer database or information from a computer, computer system or computer network, without permission of the owner or any person who is in charge of the computer, computer system or computer network, liable to pay damages to the tune of Rupees one crore.
- The provisions of the IT Act will have overriding effect over any other law for the time being in force, notwithstanding anything inconsistent therewith contained in such law.

Remedies in Cases of Copyright Infringement

Where copyright in any work has been infringed, the owner of the copyright would have the following remedies available to him for such cases: 1) Civil; 2) Criminal; and 3) Administrative.

1. Civil Remedies: Various civil remedies are available for copyright protection by the civil courts of justice. A copyright owner shall, except as otherwise provided by this Act, be entitled to all such remedies conferred by law for the infringement of a copyright, as provided in Section 54 to 62 of the Act. Civil remedies under the Act are divided into two broad categories, i.e. Preventive Civil Remedies and Compensatory Civil Remedies. The most extensively sought-after remedy is of interlocutory/interim injunctions and in some cases pecuniary remedies.

1(a) Interlocutory Injunction, which may be divided into two categories viz., (a) Where the infringer is known and (b)

Where the infringer is unknown (Ex Parte/ John Doe/ Ashok Kumar Orders)

Where the Infringer is known: The interlocutory injunction is sought for against a party whose identity is known and is infringing upon the owner's copyrighted works established before a competent court. Generally, the usage of this injunction arises in cases where usage of a popular film, song, clip, background score, musical work etc. in another work without the consent of the original owner takes place. In such cases, it is generally the producer of the film, or composer of the musical work (as the case may be) in cases of infringing films or musical work, who are identified as the infringer and injunction.

Key Cases

The following are some of the famous cases where injunction was granted against identified infringers:

Trimurti Films Private Limited vs. Super Cassettes Industries Private Limited - The Plaintiff had produced and released a film named "Deewar" in 1975 and engaged the services of a composer and lyricist for the purposes of composing the lyrics and musical works for the songs of the film "Deewar" which included the song titled "Keh Doon Tumhe". Pursuant to the execution of separate contracts of service with both the lyricist and the music composer, Trimurti Films (producer) became the exclusive owner of the copyrights of the underlying original copyrighted works i.e., the musical composition and lyrics of the song "Keh Doon Tumhe".

In January 1974, Plaintiff entered into an agreement with Polydor India Limited (now Universal Music India Pvt. Ltd.) under which the Plaintiff granted Polydor, the right to make and sell gramophone records of the songs of the film Deewar and the mechanical



reproduction rights for the limited purpose of making and selling gramophone records. On one of the days in August 2017, the Plaintiff came to know through an article published in “Mumbai Mirror” that the cast of “Baadshaho” was reviving the yesteryear song “Keh Doon Tumhe”. Reading this, the Plaintiff approached the Bombay High Court for an injunction restraining the Defendants from releasing the film “Baadshaho” with the infringing song, “Keh Doon Tumhe”.

The Defendant contended that it was not an infringement as it has procured the right to use the sound recording from Polydor. After hearing the submissions of both the parties, the Hon’ble Bombay High Court passed the following order:

“Defendants are restrained from releasing the film “Baadshaho” containing the song “Keh Doon Tumhe”. It is clarified that defendants may release the film “Baadshaho” by removing the infringing song from the film;

Defendants are also restrained by an injunction from selling or otherwise distributing copies of CDs, cassettes or any other media containing the infringing song “Keh Doon Tumhe” through any physical or non physical medium including without limitation in cinema halls, the internet, satellites,

DVDs, blue ray discs, removable or embedded drives, ring tones, MP3, CDs, caller tunes or any soft/digital method of defraying the said infringing material either on visual medium or an audio medium.”

The Hon’ble Court stated: The rights in the infringed song were sold only for the purposes of making and selling gramophone records. That is the rights in sound recordings were granted for the purposes of making, selling, reproducing etc. However, as sound recording, literary and musical works are different works entitled to separate copyright protection, selling the rights in sound recording do not by any stretch of imagination include rights in literary or musical works.

Kross Television India Pvt Ltd & Ors. v. VikhyatChitra Production & Ors. - A

petition was filed before the Hon’ble Bombay High Court against the makers of ‘Pushpaka Vimana’, a Kannada film; from exhibiting, making available for viewing and / or in any manner showing the Kannada Film on any medium, including but not restricted to, cinema theatres, television, internet, making and releasing CDs/DVDs or granting of any satellite rights. It was alleged that the Kannada film is a copy of the original Korean film titled ‘Miracle In Cell No. 7’ the rights to which are owned by Kross Pictures India. The Hon’ble Court while concurring with the plaintiff’s arguments granted An ad interim injunction in favour of the plaintiffs. SUIT (L) NO. 162 OF 2017 (Bombay High Court).

1(c) Where the Infringer is unknown:

There are cases of infringement where the identity of the infringer may not be known or is anonymous. Such circumstances generally arise in instances of piracy, torrent streaming, unauthorized broadcasts etc.

An injunction sought against the person or persons whose identity is not



known at the time of issuance of the order is known as seeking a “John Doe” order. John Doe has its origin under the reign of England's King Edward III when the orders were used to refer to unidentifiable defendants. The Oxford Dictionary defines John Doe as an "Anonymous Party". Generally, a relief of temporary injunction is sought under Order 39 R1 & 2 read with Section 151 of the Code of Civil Procedure, 1908. In terms of these provisions, a John Doe order presupposes (a) an imminent possibility of leakage of the copyrighted material (b) causing huge financial or irreparable losses (c) and hence, an injunction against John Doe to restore balance of convenience. The inference that may be drawn is that there has to be a strong presumption that the unnamed person would cause irreparable injury unless an injunction against such person is granted.

Key Cases

i. Star India Pvt. Ltd. & Anr. Vs. Haneeth Ujwal & Ors. - The Plaintiff prayed that over a hundred websites and other similar websites broadcasting content owned by Star India Private Limited be blocked by the Internet Service Providers (ISPs). They contended that blocking individual URLs which contain infringing content will not suffice as the websites can always broadcast the infringing content by merely changing one character in URL setting. It was contended that the defendants owned, operated and managed the various websites identified in the memo of parties and were located all across the world. Many of these websites being anonymous in nature, it was virtually impossible to locate the owners of such websites. The Hon'ble Delhi High Court, owing to the difficulty of identifying all the Defendants passed a John Doe order, wherein it restrained the Defendants from, in any manner, hosting, streaming, broadcasting, rebroadcasting, retransmitting, exhibiting, making available for viewing

and downloading, providing access to and / or communicating to the public (including its subscribers and users), through the internet, in any manner whatsoever, the plaintiffs' broadcast.

ii. Balaji Motion Picture Limited & Anr. v. Bharat Sanchar Nigam Ltd. & 49 Ors.

- The Plaintiff requested for a 'hybrid relief'; combining the principles of Ashok Kumar orders, and Order I, Rule 8 and Section 151 of the Civil Procedure Code, 1908. The Plaintiff prayed that a number of websites, some of which they identified, be completely blocked by the ISPs that hosted links for viewing and downloading the movie “Udta Punjab”. However, pursuant to applying the principles of intermediary liability, the Hon'ble Court held that it was unreasonable to block entire websites as there were unsupported claims of these websites hosting only illegitimate content and nothing else. Hence, the court passed John Doe orders and directed the defendants to remove the torrent links or render them inaccessible. However, the court found it unreasonable to block entire websites, especially those which were “secure” or subscription-based as the same would function as a “gag” order or pre-censorship and would not be feasible.

1.2 Anton Pillar Order

In appropriate cases, the Court has inherent jurisdiction to pass Anton Pillar Order which authorizes the owner (accompanied by Court appointed officer) for discovering evidence in case of copyright infringement by entering in infringer's premises and making inspection of articles and/or relevant documents and taking copies thereof or removal of such documents and/or articles in order to prevent destruction of evidence of infringement by the infringer. These are issued on ex-parte order basis and are extremely useful in collecting evidence of pirated software distributed online, which is

likely to be found at infringer's premises.

1.3 Mareva Injunction

Mareva Injunction is granted by the Court for temporarily freezing the assets of a defendant during pendency of a suit thereby restraining the defendant from disposing of its assets, in the interest of the plaintiff. Mareva injunctions in India can be claimed under Order XXXVI Rule 5 of the Civil Procedure Code, 1908 whereby the Court can direct the defendant to place whole or part of his assets under the Court's disposal as may be sufficient to satisfy the decree until the judgement for the infringement is passed. The Court usually exercises its powers when it has reason to believe that the defendant is deliberately trying to obstruct or delay the execution of the decree.

1.4 Pecuniary Remedies

Copyright owners can also broadly seek three pecuniary remedies under Section 55 and 58 of the Act viz. an account of profits on the basis of the profit made through unlawful conduct, compensatory damages which he has suffered on account of infringement and thirdly conversion of damages based on the value of the article. It may be relevant to note that the remedy of injunction can be joined either with that of damages or accounts but the remedies of accounts and damages can in no case be joined.

2. Criminal Remedies

Sections 63 to 70 of the Act deals with the provision of criminal remedy in India when any person knowingly infringes: (a) the copyright in a work or (b) any other right conferred by the Copyright Act, (viz. broadcasting, special rights, reproduction, etc.) or knowingly abets such infringement.

The remedies provided under the Act are punishable with:

1) Imprisonment upto 3 years but not

less than 6 months (in case of second and subsequent conviction, for a term which shall not be less than one year but which may extend to three years).

2) Fine not less than fifty thousand but may extend upto Rs.2 lakhs (in case of second and subsequent conviction, not less than one lakh rupees but which may extend to two lakh rupees).

3) Search and Seizure of the Infringing goods

4) Delivery of infringing goods to the copyright owner

There are certain other criminal remedies for specific offences committed under the Act, such as knowing use of infringing copy of computer programme is an offence punishable with imprisonment for a term not

less than 7 days but may extend to 3 years and with fine not less than Fifty Thousand Rupees which may extend to Three Lakh Rupees; possession of plates for purpose of making infringing copies or is punishable with imprisonment that may extend to 2 years and is also liable to fine; circumvention (subject to exception mentioned in the Act) of an effective technological measures applied for protecting any rights conferred by the Act with the intention of infringement is punishable with imprisonment that may extend to 2 years and would also be liable to fine etc.

3. Administrative Remedies

Besides the abovementioned remedies, administrative remedies or quasi-judicial remedies are also available under the Act. Importation of copies in the Indian Territory can be prevented by the copyright owner for copyrights of work done in India. The Registrar of Copyrights can make an order to that effect upon receipt of such application by the owner of the copyright (or his agent) and after conducting due inquiry. Further, the Registrar or any

person authorised by him on his behalf is empowered to enter into any ship-dock, premises where any such copies may be found and can examine such copies. The copies so confiscated shall not vest in the Government, but shall be delivered to the owner of the copyright in the work. An appeal under section 72 of the Act lies to the Copyright Board against the order of the Registrar.

Copyright Piracy

Copyright Piracy in the simplest of terms can be explained as the unsanctioned, unlicensed and unauthorized reproduction and/or distribution of either the whole or substantial part of works protected by the copyright. Copyright piracy is simply the theft of an owner's property which results in damage and loss.

Online piracy is the term to identify the illegal act of duplication of licensed or copyright material from the internet. There are three main piracy context-music, movie and software. The remedies available for Copyright Piracy are the same as the remedies available for Copyright Infringement and the same have been discussed above.

Key Cases

i) Happy New Year- Red Chillies Entertainments Private Limited vs. Hathway Cable & Datacom Ltd. &Ors. -

The Plaintiff acting on its fear that pirated copies of the film might be circulated in the market or that the film might be transmitted through cable service operators, sought an injunction from the Court against such acts. The Hon'ble Bombay High Court passed an order "restraining the Defendants from telecasting/broadcasting/distributing/putting on the cable TV network /disseminating/ reproducing or otherwise making available to the public, the film 'Happy New Year'" or "from

(i) making a copy of the said film,

including a photograph of any image forming part thereof, (ii) to sell or give on hire, or offer for sale or hire, any copy of the said film, regardless of whether such copy has been sold or given on hire on earlier occasions, (iii) to communicate the film to the public in any manner whatsoever including by way of but not limited to telecasting and/or re telecasting the said film, or even otherwise dealing with the rights in the said film which vest exclusively in the Plaintiff, in any manner whatsoever." ; the order also restrains others "from communicating or making available or distributing, or duplicating, or displaying, or releasing, or showing, or uploading, or downloading or exhibiting, or playing, and/or defraying the movie "Happy New Year" in any manner without proper license from the Plaintiff or in any other manner which would violate/infringe the Plaintiff's copyright in the said cinematograph film "Happy New Year" through different mediums like CD,

DVD, Blu-ray, VCD, Cable TV, DTH, Internet, MMS, Tapes, Conditional Access System or in any other like manner." SUIT (L) NO. 993 OF 2014 (Bombay High Court).

ii. Singham Case

A similar case to the abovementioned, the Plaintiffs sought an injunction to prevent piracy and loss of revenue, apprehending copies of movie 'Singham' being made and sold/distributed in the form of DVDs/CDs in the market and/or shown on TV by cable operators. In this case, the Hon'ble Delhi High Court, after establishing the basic ingredients of the case, that is, imminent danger and balance of convenience, passed John Doe order restraining all Defendants and other unknown persons constituting part of the same class from distributing, displaying, duplicating, uploading, downloading or exhibiting the movie in any manner. Eventually, several Indian ISPs were



ordered to block access to a number of file sharing websites.

iii. Microsoft Corporation vs. Yogesh Papat & Anr.

The recent decision of Delhi High Court in this case has once again established the resolve of the Indian Judiciary to take up Intellectual Property matters upfront. IP theft, which till recently was perceived as a petty white-collar crime owing to its economic milieu, finally seems to have come out of the dark shadows of archetypal criminal offences, which had prejudiced the mindset of Indian judicial and enforcement agencies (the prevalent notion being that the criminal offences are much more felonious and aberrant as compared to their IP counterparts, an argument to which some people still might subscribe).

This case concerns the infringement of copyright in the software and notably the interpretation of Sec. 51 and 55 of Copyright Act, 1957. The Claimant a software giant - Microsoft Corporation, the registered proprietor of the trademark MICROSOFT filed a suit praying for an order of permanent injunction restraining the defendants, its directors and agents from copying, selling, offering for sale, distributing, issuing to the public, counterfeit/unlicensed version of the software programmes, in any manner, amounting to infringement of their copyright in the said computer programmes and related manuals and their registered trademarks, also the defendants from selling and distributing any product to which the plaintiffs' trademark, or any deceptive variant thereof have been applied and further praying for delivery-up and rendition of accounts of profits.

The court approached each of the evidence in turn and based on the assumption of the sale of 100 computers each year and on the basis of the popularity of the software

upheld the computed loss of profit to the plaintiff in sum of Rs. 19.75 lacs and interest @ 9% from the date of decree till the date of payment alongwith the other relieves prayed for. With respect to rendition of accounts, the court observed, "...it may be true that the financial loss is based on certain assumptions, but it cannot be helped for the reason the defendant has chosen to remain ex-parte. It would be futile to direct the defendants to render accounts for the reason that the defendants have been carrying on business surreptitiously."

The Hon'ble Court, stating the observation made by Mr. Justice Laddu of the High Court of Justice, Chancery Division in the case Microsoft Corporation vs. Electrowide Ltd. and Anr. held that "this constitutes a general threat to infringe the Copyright in the class of software." In the words of Justice Predeep Nandrajog, who presided the case, "...it stands established that the defendants have infringed the plaintiffs Copyright by making illicit copies of the operating systems software by openly copying whatever operating system is currently salable."

Ban On Exhibition

In recent times, there have been a few instances when the movies have been banned from being showcased due to the content being hurtful to the sensibilities of certain class of people. In such circumstances, the owner of the copyright suffers from several losses, including financial losses. The most recent example of such a circumstance is the case of the movie "Padmaavat" wherein several states banned the release of the movie as it hurt the sensibilities of certain classes of people.

Key Cases

Manohar Lal Sharma v. Sanjay Leela Bhansali & Ors. - The Hon'ble Supreme Court held that when a matter is

pending or going to be dealt with by the Central Board of Film Certification ("CBFC"), no one, who is holding any post of public responsibility, should comment on how the application for certification is to be processed. This tantamount to creating a sense of prejudice in the mind of the CBFC. The CBFC is expected to take decisions with utmost objectivity as per the provisions contained in the Act, the rules framed thereunder and the guidelines. The Supreme Court allowed the exhibition of the movie pursuant to a few modifications.

Adarsh Cooperative Housing Society Ltd V. Union Of India & Ors. - The Petitioner, Adarsh Co-Operating Housing Society, being a society built for the welfare of defence personnel and war widows, filed a petition before the Hon'ble Supreme Court of India contending that the film "Aiyaary" if released would affect the reputation of the society and its members as the movie was based on the Adarshnagar scam and a movie based on the subject would also affect the outcome of the ongoing trial of the case. Writ Petition (Civil) No.129/2018.. The Hon'ble Court unhesitatingly dismissed the petition on grounds that CBFC had already certified the movie for its release and the authority of CBFC cannot be challenged merely on the basis of such unfounded apprehensions.

The tribulations ranging from acquiring a copyright in the content to protecting the content from unauthorized publication, the content creators are nowadays gripped with an uncanny fear of incurring heavy losses on account of the bans imposed on the release and exhibition of a movie by a certain community or section of society even after acquiring certification from CBFC, on the basis of the subject being slightly controversial or supposedly hurtful to the sensibilities of a few people. It raises the question that even

though, CBFC is the only body that has been endowed with the power prerogative to censor media content, do we want to give every person the right to censor each and every movie?

Even though the Courts, as discussed above in the cases of 'Padmaavat' and 'Aiyaary', have dismissed such baseless propositions to ban a film, such litigations have certainly led to extreme revenue losses to the respective production houses or at least result in negative publicity for the makers as well as the artists associated with the movie. Generally, the claims with respect to plagiarism in the content or public policy considerations are raised a few days before the release of the film. It is the peak time for increasing revenue prospects of the film by way of promotions, etc. and these producers lose revenue solely on account such lawsuits being filed irrespective of the decision.

Further, it is significant to mention here that tussles between the Judiciary and the Executive majorly lead to huge losses to a Media Content owner. In Padmavat's Case, even though the Judiciary allowed the release of film, the Executive, that is, the State Governments of 6 states including Rajasthan and Gujarat amongst others imposed a ban on circulation of the film in these States thereby overpowering the Judiciary in lieu of Executive policy matters to maintain security, peace and harmony in these states, leading to a loss of revenue to Bhansali Productions.

In the face of such impediments, the Courts have played a seemingly positive role by balancing the considerations of public sentiments against the efforts and creativity of these content owners, trying to safeguard the media content owners from incurring huge losses endorsing the fundamental right of speech and expression.

Awards & Accolades



Alok Dhir is recognized as an exceptional lawyer and featured in 'The A-List: India's top 100 lawyers 2018' by India Business Law Journal and the Indian Corporate Counsel Association



Leading law firm in **Restructuring & Insolvency**

Leading Individuals for **Restructuring & Insolvency** - Alok Dhir and Nilesh Sharma

Band 2 in **Dispute Resolution, Capital Markets, Banking & Finance**

Band 3 in **Corporate and M&A, TMT, Projects & Energy**

Band 4 in **Labour & Employment, Real Estate & Construction**



Leading individuals: **Alok Dhir & Nilesh Sharma**- Restructuring & Insolvency and **Maneesha Dhir**-Technology, Media, Telecoms by Chambers & Partners 2018

Ranked in band 3 in **Dispute Resolution 2018** by Chambers & Partners

Ranked in band 4 in **Projects, Infrastructure & Energy 2018** by Chambers & Partners



Tier IV firm in **Banking and M&A 2018** by IFLR1000

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Leading Lawyer – **Maneesha Dhir** for **Dispute Resolution**

Leading Lawyers – **Alok Dhir and Nilesh Sharma** for **Dispute Resolution – Insolvency**

IPR Round Up - Recent Developments



BIGTREE ENTERTAINMENT PVT LTD V. BRAIN SEED SPORTAINMENT PVT LTD & ANR

Delhi High court, in the matter of Bigtree Entertainment Pvt Ltd V. Brain Seed Sportainment Pvt Ltd & Anr held that 'BOOKMYSHOW' has not acquired any kind of distinctiveness. The Court examined that the Plaintiff possesses a trademark for its domain name as www.bookmyshow.com. The Court has also observed the fact that there are website pages of domain names which start with "BOOKMY", that have existed both before and subsequent to the Plaintiff's website. The court concluded that if there is a prefix which is a descriptive one. Therefore the court declined to grant the injunction to BookMyShow. The court has clearly stated that Plaintiff's trademark "BOOKMYSHOW" has not acquired distinctive nature.

KENT RO SYSTEMS LTD. & ANR. V. AMIT KOTAK & ORS

Delhi High court, in the matter of Kent RO Systems Ltd. & Anr. v. Amit Kotak & Ors held that there is no obligation on the intermediaries to screen content alleged to be violative of intellectual property laws before publishing the same (i.e. on an ex-ante basis). Therefore court rejected to direct E-bay to remove listings of water purifiers that allegedly infringed Kent RO's registered design from its website or to issue a prohibitory injunction preventing E-bay from publishing the same in the future.

FERRERO ROCHER SPA VS PIYUSH DEVGAN

Delhi High court, in the matter of Ferrero Rocher spa vs Piyush devgan court has granted ex-parte permanent injunction to the Plaintiff as defendant was using its trade dress. As the plaintiff were manufacturing and selling the deceptively similar chocolates as "Ferrero Rocher" under the name of 'D-Lize'. The trade dress of the defendant is deceptively similar to the plaintiff.

TOYOTA JIDOSHA KABUSHIKI KAISHA V. M/S PRIUS AUTO INDUSTRIES LTD

Supreme court, in the matter Toyota Jidosha Kabushiki Kaisha v. M/S Prius Auto Industries Ltd. held that IP rights are "territorial" in nature and not be called as "global". The court has rejected to grant an injunction restraining the defendant from using its registered trademark as 'Prius' though Toyota was a prior user of the mark. It reasoned that even though Toyota's mark was well-known outside India, Toyota failed to prove that it enjoyed a reputation in the 'Indian' market at the relevant point of time i.e. the year 2001 when the defendant began using the mark in India.

Thought Leadership



Alok Dhir, Managing Partner speaking on 'The IBC Trio - Debtors, Creditors, Bidders - Possible Peace?' at 'The Lex Witness Grand Masters 2018, New Delhi edition held on 08 Feb, 2018



KPS Kohli, Associate Partner addressing the MSOP Workshop for Freshly Qualified Company Secretaries on the topic of Insolvency & Bankruptcy Code, 2016 at NIRC New Delhi, 13th January 2018



KPS Kohli, Associate Partner speaking at 'The Lex Witness Grand Masters 2018, New Delhi edition held on 08 Feb, 2018



Can there be a Litigation Proof Contract? Namrta Sudan, Associate Partner Dhir & Dhir Associates, delivers an insightful talk on the art of contracting in with special focus on negotiations in commercial contracts during a workshop on Contract Drafting and Dispute Resolution.



Siva Gopinath, Partner addressing the Workshop on Technique of Drafting International Contracts, 9th March, 2018 in Bengaluru



Making Headlines



THE ECONOMIC TIMES

Bhushan Steel promoter seeks recast of Rs 44k-cr debt under S4A scheme

Feb 01, 2018- "However in some cases, where settlements have happened between the applicant and the corporate debtor, the Supreme Court has interfered under Article 142 of the constitution of India on the basis of complete justice have permitted withdrawal," said Alok Dhir, Managing Partner, Dhir & Dhir Associates. The Economic Times

Links to Electronic Media Coverages



Alok Dhir, Managing Partner, Dhir & Dhir Associates Interview Section
29A of The IBC 2016

https://youtu.be/70-_7sCV-Kw



Alok Dhir, Managing Partner, Dhir & Dhir Associates
sharing his views on Blow for Defaulting Promoters

<https://www.youtube.com/watch?v=tYr47x4dZwo>



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