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# TRAVERSING THE REALMS OF INDIAN COPYRIGHT LAW IN THE WORLD OF DOCUMENTARIES

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### ABSTRACT

*Copyright Law in India caters to the protection of original artistic, literary, or dramatic work. A copyright infringement occurs when an original work of an author is used to produce new copies of work without obtaining the due consent of the original author of the work in terms of licensing. Movies fall under the category of dramatic work produced by a filmmaker. The movie industry in India is largely prone to such infringement of original work without giving due credit. Adaptations or derivative work also come under the domain of the copyright law. Documentaries are movies made on the foundation of such derivative work. Documentary filmmakers have to necessarily use reliable sources as the purpose of a documentary is to showcase reality based on the available shreds of evidence and data. Hence, it becomes essential to protect the intellectual property rights of both the original author of such work and the adaptive author. This paper aims to examine the current position of copyright law concerning such documentary movies. The author delves into the challenges surrounding the domain of documentary films and what relief the copyright law offers them.*

**Keywords:** Copyright act, Documentary, Filmmaking, Fair Use

### **Introduction**

Film Production is a challenging task in India. A movie and its script are always developed around an idea. This idea could be an original creation of the mind or a borrowed concept from some prior work. A movie that borrows the concept from some original piece of literary, dramatic, or artistic work and subsequently converts it into an adaptation requires permission from the original author before using it. An adaptation is defined under Sec 2av of the

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copyright act as – Concerning any work, any use of such work involving its rearrangement or alteration.

In recent times, Bollywood has witnessed an increasing trend in the making of biographical and documentary movies. Making a movie of such sort requires the fulfillment of all the required conditions in the checklist. One of these conditions includes The Copyright Act of 1957. Under Sec 13 of this Act,<sup>2</sup> it seeks to protect work such as original literary, dramatic, musical, and artistic work, cinematograph films, and sound recordings. The Act grants exclusive rights to the owner or author of such work against any exploitation of his work without his will.

### **Classification of Work**

A piece of work can be categorized broadly into three domains such as adaptation, derivation, and transformation. The point of intersection between all three is that they are not purely original, there exist some parts which have been drawn upon by some other work. If all of them involve the use of an already existing piece of work what makes the difference?

The difference lies in the amount of copyrighted work used and also the design of use. An adaptation is a work that is essentially the same as the original work although there may be a change in the format, a derivation is based on the original work but is different from it since it incorporates an original contribution from its creator and a transformation is a work which is completely new but is based on the raw data contained in the original work.<sup>3</sup>

Adaptations and derivations of an original work would infringe upon its copyright, assuming the work is protected by copyright law and there is no license granted by the copyright owner.

But to the contrary, a transformation of the original work would not infringe upon copyright and would not require a license from the copyright holder. This is because adaptations and derivations heavily depend on and incorporate the original work, whereas a transformation uses only the underlying data or ideas from the original work, which are not protected by copyright.<sup>4</sup>

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<sup>2</sup> Copyright Act, 1957, § 13, No. 14, Acts of Parliament, 1957 (India).

<sup>3</sup> Nandita Saikia, *Adaptations, Derivations and Transformations in Copyright Law*, LAW MATTERS, (Oct. 06, 2010), <https://copyright.lawmatters.in/2010/10/adaptations-derivations-and.html>.

<sup>4</sup> Id.

## History of Documentary Filmmaking

Documentary films are a genre of movie peculiarly focussing on available facts and data from reliable sources. A movie of such type aims to showcase the reality of a situation. It is far more original and real completely away from any fictionality. It tends to disseminate information to the common masses which could not be ordinarily obtained by them. Filming of a documentary movie requires thorough and deep research into the issue. Searching for the sources through which information could be gathered is a tedious task and also not all sources could show a true picture hence, picking out an original and reliable source becomes a challenge. A documentary filmmaker must possess good research and analysis skills to draw out scientific and objective conclusions. These movies are either made for educational or entertainment purposes.

Documentaries have been the greatest contributors to the idea of realism in several countries across centuries. The word draws its origin from the French word *documentaire* from the mid-1920s. Its history could be traced back to the filming of the events from the Bolshevik annexation of power during the early 20<sup>th</sup> century.

World War II significantly boosted the production of documentaries. In Germany, the Nazi regime utilized the state-controlled film industry to create propaganda films. Meanwhile, American director Frank Capra produced the "Why We Fight" series (1942-45) for the U.S. Army Signal Corps. In Great Britain, notable documentaries like "London Can Take It" (1940), "Target for Tonight" (1941), and "Desert Victory" (1943) were released. In Canada, the National Film Board focused on creating educational films that served the national interest.<sup>5</sup>

### Filmmaking regulations in India

As we have previously discussed how filmmaking involves the adherence to certain prerequisites before the actual process starts, these barriers are erected to safeguard each one's right. A duty is imposed by law upon the filmmaker to abide by these conditions to make his films. Obtaining a copyright license from the original owner of the work is one of them, however other conditions whose performance ought to be necessary are:

1. CBFC Certification- In India the responsibility for the classification of movies based on the content and its audience is placed on the Central Board of Film Certification. It issues U (Unrestricted), U/A (Parental guidance), and A (Adult) certificates to movies.

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<sup>5</sup> The Editors of Encyclopaedia, *Documentary Film*, BRITANNICA, (Jun. 25, 2024, 4:08 PM), <https://www.britannica.com/art/documentary-film>.

2. State Regulations- Films fall under the purview of the state list in the constitution which allows the state to formulate its guidelines related to it.
3. Contractual Obligation- The making of a film involves directors, producers, actors, screenwriters, musicians, distributors, and several other parties, which gives rise to the signing of multiple contracts and agreements between them to avoid any future disputes. These contracts typically cover royalties, credit, dispute resolution methods, etc.
4. Cracking Deals- These movie makers try negotiating and finalizing deals with distributors and cinema theatres for the movie's exhibition hovering over issues such as the areas of exhibition, profit-sharing, promotion, and marketing.
5. Complying with Labour law, tax law, and locational permits- Before the beginning of the actual shoot, a filmmaker needs to necessarily abide by the Labour laws and respected tax laws of the country. Also, locational permits for shooting must be obtained from the concerned local authority.<sup>6</sup>

#### **Copyright ownership: An endless tussle**

*"A director is the only person who knows what the film is about.*

*-Satyajit Ray"<sup>7</sup>*

Ever wondered when watching through the casting of a movie, who owns the right to the work? Whose rights are being shielded? Ideally, it's the producer of the movie. However, to draw upon this concise conclusion. The journey hasn't been easy, the struggle for securing one's ownership over the work in the cinema industry is still a struggle. The history of reaching the destination has been long and involves various stakeholders such as directors, producers, and writers. So how have we come to guarantee those rights to the producer is to be understood?

Going by the statute in place, Sec 17(b) of the Copyright Act,<sup>8</sup> 1957 clearly states that in a work such as a film, the ownership is delivered to the party whose consideration in its making is significant, unless there subsists an agreement otherwise. This indicates that the producer over any other party be it the writer, director, or lyricist holds authority as an owner of the work to reproduce, distribute, perform, and showcase their work.

However, a contrary question arises regarding the director's role in making a film. A

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<sup>6</sup> Film Making Laws in India, Laws, and Regulations of The Indian Media and Entertainment Industry, Legalities in Making Films in India, <https://mediumpulse.com/2024/05/15/film-making-laws-in-india-laws-and-regulations-of-the-indian-media-and-entertainment-industry-legalities-in-making-films-in-india/>

<sup>7</sup> Manish Jindal, *Understanding the Layers: Copyrights in the Film Industry*, (Dec. 06, 2023), <https://bytescare.com/blog/copyright-director>.

<sup>8</sup> Copyright Act, 1957, § 17(b), No. 14, Acts of Parliament, 1957 (India).

director is the original creator of an idea. It originates as a fruit of the intellectual labour of his mind. Hence, naturally, the idea is his and thus he must have ownership over it. Therefore, his contribution to the making of a film is maximum. Who is responsible for safeguarding his intellectual property then, if not the copyright act? The question came before the court in the case of *Ramesh Sippy v. Shaan Ranjeet Uttam Singh & Ors.*<sup>9</sup> The question was addressed by Bombay HC upholding the law by delivering the ownership right or authorship right of a movie in the hands of the producer. The director argued that his right be acknowledged because of his creative contribution to the work. The rationale behind the court's judgment here was that a producer's financial contributions and the associated risks taken up in a movie are more significant and crucial due to which he is entitled to his rights.<sup>10</sup> Film directors are also without gain from the special right offered to the author to claim relief concerning any distortion, mutilation, or modification of the work if such work causes bias to his reputation under Sec 57(b) of the Copyright Act.

Another important aspect to be dealt with for understanding this tussle for ownership involves answering the question 'Are script writers granted exclusive rights over their work?' The answer is yes. Then how do we solve the conflict between a writer and a producer of the same work? Scriptwriters are the default owner/author of the written work. Authorship rights are granted to them for their literary contribution but the right is not limitless. The following limitation is that a writer has exclusive rights over his work only until it is voluntarily waived off. By voluntarily waiving off, we mean that they are transferred or sold to the production company for commissioning into a movie.

What stakes the actors hold over ownership is also a pertinent question. The Copyright Act under Section 38(b)<sup>11</sup> seeks to protect the moral rights of the performers in a work whose alteration results in harm to his/her reputation in the eyes of the public. But there lies no remedy to grant any protective right to the director as he is neither considered the owner nor an author of the work.

For developing a movie out of an original adaptive work, prior temporary or perpetual permission must be obtained from the original owner before adapting. The transfer of rights is facilitated by paying a sum of money called a royalty to the owner of the work. A documentary movie works similarly to adaptations. Before including any statement of

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<sup>9</sup> *Ramesh Sippy v. Shaan Ranjeet Uttamsingh*, 2013 SCC OnLine Bom 523

<sup>10</sup> Copyright Act, 1957, § 57(b), No. 14, Acts of Parliament, 1957 (India)

<sup>11</sup> Copyright Act, 1957, § 57(b), No. 14, Acts of Parliament, 1957 (India).

facts, images, or videoclips in the movie, rights have to be obtained from the owners concerned upon whose failure, the original owner might file a suit for copyright infringement under Sec 63 of the Copyright Act.<sup>12</sup>

### **Fair Use Doctrine: A saviour for documentary Filmmakers**

The primary objective of copyright law is to protect the creators of original work and their work from being unauthorizedly copied. An artistic work either in the form of a painting, movie, or book is developed on an idea and an idea cannot just pop out of nowhere, it traces its origin from an inspiration. This inspiration is most of the time an already available work.

To execute the making of any such inspired work, the prior transfer of rights from the original owner to the maker must take place. The copyright act as highlighted previously allows this through the transfer of copyright license. This process often becomes a struggle for documentary filmmakers. Securing a copyright license to use the work isn't a cakewalk most of the time. The insight and frame of reference that documentaries aim to deliver are compromised by the obligation to select only the licensed copyright material and make it available at a reasonable price. At the same time, documentarians also strive to secure their copyright over their own making.

Fair use doctrine as a key principle of copyright law comes to their rescue. This principle has been founded as a result of the negotiation process between the owners of copyrighted works and their users. Its applicability is limited to the domain of transformative work. An illustration of transformative work is the Assamese song "*Bistirnapaarore*" by Dr. Bhupen Hazarika who took inspiration from the song "*Old Man River*"<sup>13</sup>

### **Recognition in Legislation**

Article 13 of the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) stipulates that any limitations or exceptions to exclusive rights must be limited to specific special cases. These limitations must not interfere with the normal use of the work and should not unfairly harm the legitimate interests of the rights holder.<sup>14</sup> Similarly, Article 9(2) of the Berne Convention mandates that any exceptions to exclusive rights should be clearly defined, not disrupt the normal exploitation of the work, and not unjustly prejudice the rights holder's legitimate interests.<sup>15</sup> Since all WTO member countries must adhere to

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<sup>12</sup> Copyright Act, 1957, § 57(b), No. 14, Acts of Parliament, 1957 (India).

<sup>13</sup> Nishka Kamath, *Fair Use under Copyright Law*, IPLEADERS, (Jan. 25, 2023), <https://blog.ipleaders.in/fair-use-under-copyright-law/>.

<sup>14</sup> Agreement on Trade-Related Aspects of Intellectual property rights, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

<sup>15</sup> Berne Convention for the Protection of literary and Artistic Works, September 9, 1886, as revised at Paris on July 24, 1971, 828 U.N.T.S. 221

both TRIPS and the Berne Convention, these principles are embedded in many national copyright laws. The Indian Copyright Act under Sec 52<sup>16</sup> extensively covers this principle. This section allows for a limited usage of copyright-protected material without the need for obtaining permission from the original owner of such work.

### **What constitutes fair Use?**

“Using a literary, dramatic, musical, or artistic work for research, private study, criticism, review, or reporting current events is considered fair use and does not infringe on copyright. The Copyright Amendment Act, of 2012 broadened this scope to include "any work," extending fair use provisions to cinematograph films and musical works.”<sup>17</sup> This means more types of content can be used freely for personal and private purposes, allowing greater relaxation for individuals engaging in these activities. The standards of fair use are flexible depending upon a case-to-case basis and are open to judicial interpretation. However, the difference between a reasonable and fair use of work in the name of freedom of expression and a deliberate attempt to infringe is mostly delineated by a blurry line.

The following factors are kept in mind by jurists while deciding whether the making of a work from copyrighted material can be exempted under the fair use concept:

1. Nature of the copyrighted work
2. Weighing the amount and significance of the copyrighted work in the new work
3. Probable outcome of use on the copyright owner and the reputation of the work<sup>18</sup>

All of the mentioned standards were tested by the court in the case of Sanjay Kuamr Gupta v. Sony Picture Networks India Pvt. Ltd<sup>19</sup> Herein this case the petitioner used the term “*Jeeto Unlimited*” for his idea of a quiz game show whose winners were appreciated for their achievement by giving various gifts. The appellant presented that Sony Network (respondent) compelled him to sign a consent letter that sought to allow them to use his concept without incurring any liability. The petitioner later filed a suit for infringement of copyright on Sony Network for using his concept in their game show named KBC. The court’s decision favoured Sony Network mentioning that getting the audience involved in a television program is a recurring phenomenon. Also, the selection of candidates by way of answering questions displayed on their Television is substantially different from the

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<sup>16</sup> Copyright Act, 1957, § 52, No. 14, Acts of Parliament, 1957 (India).

<sup>17</sup> Copyright Act, 1957, § 52, No. 14, Acts of Parliament, 1957 (India).

<sup>18</sup> Muskaan Mandhyan, *What is Fair use of Copyright doctrine*, MONDAQ, (Jul.28, 2023), <https://www.mondaq.com/india/copyright/1348352/what-is-fair-use-of-copyright-doctrine>

<sup>19</sup> Sanjay Kuamr Gupta v. Sony Pictures Networks (India) (P) Ltd., 2018 SCC OnLine Del 10476

appellant's concept.<sup>20</sup>

### **Purposes for usage of Copyrighted Work**

1. Critical media analysis – A filmmaker is guaranteed his freedom of expression by way of using the fair use doctrine to critically analyse or critique copyrighted material without obtaining a license. The amount of work used should not be more than the material needed to make the argument. The use shall not become a substitute for the original work.
2. Citing to validate a point – Quoting copyrighted works for deliberation and substantiation of one's viewpoint is also discharged from being held as an infringement of copyright material. The intended purpose of use should be to produce new content and not just the mere exploitation of the old content for value.
3. Incorporating copyrighted media in a new work – The use of real-life media sounds and images for the portrayal of reality in a work is also excused under fair use. It is observed that the major role played by documentaries is to showcase reality and not falsify it henceforth, incorporation of copyrighted media does not violate the copyright act.
4. Representing historic events of the past – Historical documentaries are so in fashion these days. Collecting material about a certain period or concerning a past event is in itself a challenging task. However, their use has become essential in filming historical documentaries. Validating and illustrating a stance on such past events in the absence of sufficient records makes it inevitable for documentarians to refrain from using copyrighted work. Thus, the fair use principle provides them with a relaxation to execute their work.<sup>21</sup>

### **Conclusion**

The intricate relationship between Indian copyright law and documentary filmmaking is marked by numerous challenges and evolving dynamics. This paper has explored the various facets of this relationship, from the legal intricacies surrounding adaptations and derivative works to the protection of intellectual property rights of both original and adaptive authors. Fair use doctrine emerges as a critical tool for documentary filmmakers, allowing for the

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<sup>20</sup> Sheetal Vohra, *Bollywood and IPR- Famous Copyright Cases in Movies in India*, (Aug.13, 2019), <https://www.lawyered.in/legal-disrupt/articles/judgemental-hai-kya-movie-posters-copyright-infringement-or-not/>

<sup>21</sup> Documentary Filmmakers' Statement of Best Practices in Fair Use, <https://cmsimpact.org/code/documentary-filmmakers-statement-of-best-practices-in-fair-use/> (last visited Jun. 28, 2024).



use of copyrighted material in a manner that supports creativity and the dissemination of information while respecting the rights of original creators. The history of documentary filmmaking underscores the genre's unique role in portraying reality and educating the public. However, as this study has shown, the legal landscape in India presents significant hurdles that filmmakers must navigate to avoid copyright infringement. The stringent requirements for obtaining licenses and the complex web of ownership rights necessitate a deep understanding of copyright law for anyone engaged in documentary production.

Furthermore, the rise of OTT platforms and digital piracy introduces new challenges that require robust surveillance, governance, and control measures. These platforms, while providing vast opportunities for content distribution, also pose risks to the protection of copyrighted material. The necessity for well-formulated policies that balance the interests of content creators and the free flow of ideas cannot be overstated.

In conclusion, while Indian copyright law aims to protect the intellectual property rights of creators, it must also adapt to the evolving needs of documentary filmmakers. A nuanced approach that considers the unique nature of documentaries, coupled with a strong legal framework that addresses modern challenges, will be essential in fostering a vibrant and fair creative industry. The ongoing dialogue between legal frameworks and creative expression must continue to evolve to support the flourishing of documentary filmmaking in India.

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