

**ASTREA LEGAL ASSOCIATES LLP**

# **MEDIA & ENTERTAINMENT INDUSTRY**

*Spotlight on Tomorrow's Sunrise*

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## **An Overview of Media and Entertainment Industry.**

Walt Disney once said, *“And in my opinion, entertainment in its broadest sense has become a necessity rather than a luxury in the life.”*

The media and entertainment industry is that ray of light that is spreading its sunshine all over the Indian economy and creating a heat of growth for the industry as a whole. Demonstrating its versatility to the world, the Indian Media and Entertainment industry is on the peak of a solid period of development, supported by rising buyer request and enhancing advertisement incomes. This is perhaps, one of those very few industries in the country, which has

The Government of India has bolstered Media and Entertainment industry's development by taking different whip hands, for example, digitizing the cable distribution sector to pull in prominent institutional subsidizing, expanding FDI limit from seventy four percent to hundred per cent in cables and DTH satellite stages, and conceding industry status to the film industry for simple access to institutional finances. Off late, the Ministry of Information and Broadcasting is working towards advancing simplicity of business, which will guarantee less regulation and encourage India to wind up and become the centre point of media and entertainment industry.

Very recently, the government of India and Canada have agreed upon an audio-visual co-production deal. The objectives behind this deal were to encourage producers in order to widen their scope to experiment on their creative, financial, technical and artistic skills and feed them with marketing resources for the activity of co-production which in turn also shows a path to exchange of culture and art amongst the two nations.

Even after tremendous growth in the industry and colossal help by the government, the Media and Entertainment industry has also had its Achilles heels.

Music is the line that connects all the dots. Individuals of different cultural background perform together and music is heard by people no matter the language or

any other cultural barrier. Pandit Ravi Shankar, the great Indian Sitar maestro performed with the legendary band The Beatles. George Harrison, the lead guitarist of the band was a student of the Pandit and the Pandit was a major inspiration for the music composed by the band.<sup>1</sup> But the entertainment industry has had its tough days too.

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### **IPR, the gravest challenge for Media And Entertainment Industry?**

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When we talk about the hindrances faced by the Media and Entertainment Industry in India, the very first issue raised is regarding the Intellectual Property Rights. The entertainment industry today faces the most serious and gravest of challenges posed by piracy. And it is here

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<sup>1</sup> <http://iippta.com/role-of-ipr-in-the-music-industry/>

when the problems regarding intellectual property come into picture. Intellectual property in context of the entertainment industry is majorly circumscribed around trademarks and copyrights. Being a typical Indian and considering the love for bollywood that we all have, when we talk about the entertainment industry, the very first thing that strikes our mind is films and with films comes the title of the film, which is a highly debatable issue in this industry. Unlike the scenario in the United States wherein the title alone cannot command for protection under the copyright laws, India recognises the need to cushion titles and any other literary work including dramatics, cinematography, sounds, music, artistic work and even dialogues.



## **Judicial intervention in the Media and Entertainment disputes.**

In the case of *Sholay Media and Entertainment Private Limited and another V. Parag Sanghavi and others*<sup>2</sup> the plaintiff's company was engaged in the business of producing, exhibiting and distributing cinematograph films. Plaintiffs were the copyright owners and administered all intellectual property in respect of film 'SHOLAY'. Copyrights are governed by the Copyrights Act, 1957 in India. The defendant applied for making modern day remake of film 'SHOLAY' to which plaintiffs declined.

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<sup>2</sup> 2015 (223) DLT 152

Defendant made a film under title 'Ram Gopal Varma Ke Sholay' against which plaintiff filed a suit and undertaking to change title of film to 'Ram Gopal Varma ki Aag' was accepted. Film titled 'Ram Gopal Varma Ki Aag' retains same plot as film 'SHOLAY' and the defendants used underlying music, lyrics and background score and even dialogues from original film. Hence, an instant suit was filed and the question before the Delhi High was, whether there was infringement of copyright. On 24<sup>th</sup> August 2015, the court held that publicity material coupled with film 'Ram Gopal Varma ki Aag', gives an overall impression that it is a remake of the film SHOLAY. The use of similar plot and characters in the film coupled with use of underlying music, lyrics and background score and even dialogues from

original film SHOLAY amounts to infringement of copyright in film SHOLAY. Thus, the suit of the plaintiffs is decreed by passing permanent injunction restraining the defendants from manufacturing, selling, offering for sale, distributing, advertising and in any other manner using “SHOLAY, GABBAR, GABBAR SINGH” trademarks or any other deceptively similar mark and plaintiffs are granted a sum of rs.10,00,000 as punitive damages against defendants.<sup>3</sup> The suit was disposed off. Similar contentions were made and issues regarding infringement of the intellectual property were raised in several cases like, *World Wrestling “Entertainment, Incorporation v Savio Fernandes and others”*<sup>4</sup>; *“Time Incorporated v*

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<sup>3</sup> 2015 Indlaw DEL 5125  
<sup>4</sup> CS (OS) 784/2013

*Lokesh Srivastava and Another”*<sup>5</sup> ; *“Multiplex Association of India, New Delhi v United Producers/Distributors Forum, Mumbai and others”*<sup>6</sup> etc.

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Companies Act and Complex Contracts: A shield to Entertainment Companies?

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While discussing the aspects of the entertainment industry, we need to emphasize on its relation with the company laws in India. While we talk about companies like Red Chillies Entertainment, Zee entertainment enterprises, TV18 Broadcast etc, it also includes the contractual relationship these companies have with their employees as well the outsiders. It is due to the compulsion to abide by

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<sup>5</sup> 116 (2005) DLT 599  
<sup>6</sup> 2011 Indlaw CCI 18

the laws laid down by the Companies Act, 2013 and the laws laid down by the Indian Contracts Act, 1872 that leads to certain legal conflicts. The entertainment companies, emphasizing on the term ‘company’ as they are also formed as per Section 3 to Section 22 of the Companies Act, 2013, enter into various kinds of contracts to ensure avoiding any kind of economic uncertainty. Customer preferences in creative items can change rapidly, pushing certain artistic developments to the statures of ubiquity and lessening others to lack of definition. Due to this shakiness, the entertainment industry depends on complex contracts, which are more often drafted to shield the entertainment companies against any kind of economic risk. One of the noteworthy agreements is the personal service agreement. This is

basically a legal document signed by the artist and the entertainment company that promotes, manufactures or distributes the said artist's product or service. It is to be noted that this type of agreement is present only in the entertainment industry. It is the aspects of intellectual property rights, contracts, company law as well as competition faced in the market that affect the entertainment industry as a whole. The growing needs for media lawyers and the rising legal issues are reaching its peak.