

The Digital Accelerate

Penalising Piracy: Amendments to the Cinematograph Act

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Background

The Indian film industry is one of the largest in the world, producing more than 1,500 films annually in more than 20 languages. Its gross total realisation is expected to increase to \$3.7 billion by 2020, growing at 11.5% year on year.¹



However, the Indian film industry has time and again cited piracy as a predominant challenge to its growth. In the 1990s, the options for consuming content were limited and the availability of internet was erratic. Today, this scenario has changed, with increased access to mobile phones, reliable internet connectivity and availability of high-speed internet at a low price driving the demand and consumption of content. The flip side of this technological advancement is that it has also made film piracy or unauthorised duplication of copyrighted content easier.

Film piracy takes place through different channels, but the most common is filming a movie inside a cinema theatre and creating its copies, which are then distributed on portable storage devices or through alternate web-based tools. It is alleged that the full-length pirated copies of movies are generally available online within a few days of their official release. There have also been instances of movies being leaked online even before their official release.

Piracy is believed to be heavily impacting the overall growth and earnings of all the stakeholders involved in film production and distribution, as well as the government. As a result, the film industry has long been demanding amendments to the law preventing camcording and piracy. Prime Minister Shri Narendra Modi had also announced his intention to tackle the menace of piracy at the inauguration of the National Museum of Indian Cinema in Mumbai in January 2019.

Taking note of the significant losses caused by film piracy and copyright violation, etc. to the film industry and government exchequer, the Ministry of Information and Broadcasting (MIB), in January 2019, had proposed the introduction of the Cinematograph (Amendment) Bill, 2019 (the Bill). The Bill was open for comments from the general public till 02 February 2019 and it later received the Union Cabinet's nod.

1. Global Film Tourism Conclave Report 2017 by PHD Chamber of Commerce and Industry and BnBNation

Amendments

The Cinematograph Act, 1952 (the Act) deals with provisions for the certification of cinematograph films for exhibition and the regulation of exhibitions through cinematographs. The Statement of Objects and Reasons of the Bill recognises that the medium of cinema, the tools, the technology associated with it and its audience have undergone radical changes over a period of time. It also recognises that the film industry and the government exchequer are facing huge losses due to the advent of new digital technologies, decline in the number of people visiting cinema theatres, increase in piracy, particularly release of pirated versions online, copyright violation, etc. It was therefore felt necessary to have an enabling provision in the Act in order to check film piracy.

The amendments aim to contest piracy by instituting penal provisions for unauthorised recording and duplication of films. The amendments provide for the insertion of Section 6AA, which aims to prohibit unauthorised recording or transmission of a copy of a film or part thereof. The section also covers unauthorised attempts to record or transmit and any assistance provided in carrying out these acts.

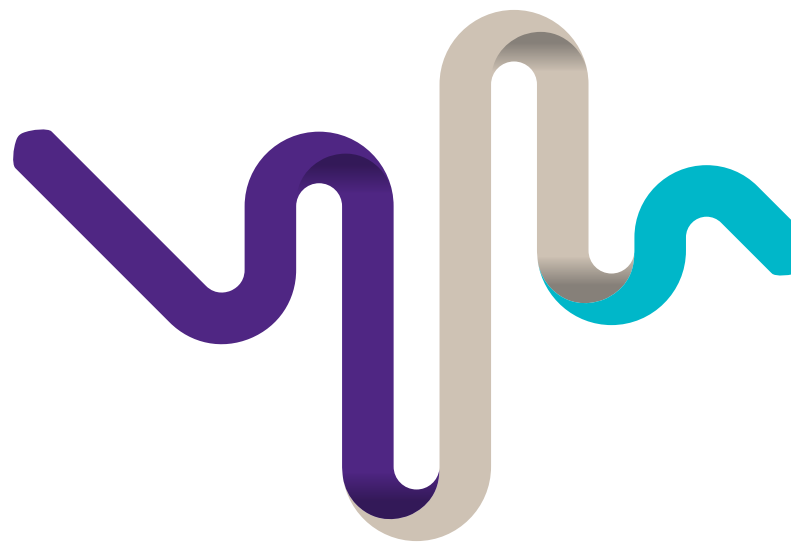
Further to the above, sub-section 1A to Section 7 has been added which lays down the penal provisions for contravention of Section 6AA. The sub-section provides for imprisonment for a term which may extend to three years or with fine which may extend to INR 10 lakh or both.

Before the aforementioned amendments, piracy was punishable under the Copyright Act, 1957 (Copyright Act). Under the Copyright Act, the first offence of infringement of copyright was punishable with imprisonment of six months to three years and a fine of INR 50,000 to INR 2 lakh. Subsequent conviction carried a more severe punishment, ie imprisonment of one year to three years along with a fine of INR 1 lakh to INR 2 lakh. However, the court could impose a shorter imprisonment term or a lesser fine if it was convinced that the infringement was not for commercial purposes.

In its official statement, the government acknowledged that the proposed amendments would increase industry revenues, boost job creation, fulfil important objectives of India's National Intellectual Property Policy and provide relief against piracy and infringing content online.

Our view*

The amendments to the Act are expected to provide a strong framework for the protection of owners of intellectual property and promote innovation and creativity. They aim to provide a deterrent to the people involved in piracy and convey a strong message that unauthorised recording and transmission of films or attempt to do so will be penalised and that the interest of the stakeholders will be safeguarded. This framework is also expected to positively add to the growth of the Indian media and entertainment sector both in terms of revenues and diversity, thereby helping shape a more Vibrant Bharat.



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